

Personal Injury? What to Do?

**PERSONAL INJURY?
WHAT TO DO?**

ACCIDENT
↓
INJURY
↓
CLAIM
↓
COMPENSATION

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If you have been involved in
**a road traffic accident,
an accident at work**

or

**an accident in a public place,
you may be liable for a
compensation!**

Every personal injury case is different
and the best approach is to discuss it
with your solicitor who will advise if you
have a valid case.

Motor Accident

Where there is a road traffic accident in which there are no obvious injuries at the time, telephoning the Gardai and informing them of this will more often than not result in the Gardai indicating that they will not call out to the scene since there is a general policy by the Gardai to let the drivers sort the matter out themselves. Where of course there is serious injury and an ambulance is called, the Gardai will nearly always attend and may caution one or both drivers and in due course they will take statements from various people involved in the accident and forward these to the DPP to decide whether or not a prosecution will result.



The following is intended as a brief outline of the DOs and DON'Ts and as a general guide when you have been involved in a road traffic accident.

***DO* Get the registration number of the other vehicle.**

This is perhaps the most important piece of information that is required. People have often taken insurance details from the other driver only to discover that the insurance was faulty or that there was not in fact any insurance on the vehicle at the time. This may mean that your solicitor will become involved with the Motor Insurers Bureau of Ireland who deal with uninsured drivers and for them the most important piece of information is generally the registration number, since it can assist them in completing their investigations with greater speed.

Take insurance details which can be readily obtained from the disc on the screen. Each driver should exchange insurance details with the other.

Wherever and whenever possible behave politely but be firm in the determination to take information from the other driver. People are very often shocked following an accident and may take insufficient or false information from the other driver.

***DO* Report the accident to the Gardai. Where the Gardai do not attend at the scene of the accident, go to the nearest Garda station and ask the Garda at the station to take details of the accident.**

This will be important at a later date if the third party denies that the accident occurred or if he is uninsured. There is a book in each Garda station which records details of road traffic accidents and you should get the Garda to take down details in your presence. Simply give your own details i.e. name, address, registration of car and insurance details and where possible the same details concerning the other driver.

***DO* Go to your doctor as soon as possible and have as possible and have a check-up even where your injury is minor.**

One of the questions which will be asked in connection with a claim is when you first attended with you doctor or at a hospital.

If, therefore, you feel that it is not necessary to go to a doctor and that the injury may go away, it is essential that you simply attend with your general practitioner and inform him of your injury, even if you have no intention of bringing a claim. The doctor will then have a record of the initial attendance and complaint in the event that subsequently the injury becomes more serious and it is necessary to bring a claim.

***DON'T* admit liability at the scene of the accident.**

Many people will be surprised to learn that it is actually very often a condition of their insurance policy not to admit liability following an accident. This can be pointed out to the other party since it is in his/her interest that your policy is not invalidated. Even where one is blatantly at fault one should politely assist the other driver (particularly where the other party has been injured) and then exchange particulars and indicate to the other driver that you are going to report the matter to your insurance company. Time and time again we receive examples of drivers admitting liability at the scene of the accident and then denying it subsequently. Whereas if one admits liability at the scene of the accident it is not conclusive that one is going to be held to blame subsequently. Nevertheless, it is better for all sides concerned that liability should not be admitted at the accident scene. If the Gardai are called to the scene of the accident and you are asked to explain what happened, simply explain what happened to the Garda.

***DON'T* leave the scene of the accident until particulars have been exchanged.**

If one encounters an irate driver who is insisting that the cars remain in their position following the accident until the Gardai arrive, one should be cautious here and ascertain

whether or not the Gardai are going to come to the scene. If they are not, firmly and politely state to the other driver that you have fulfilled your obligations and that you are reporting the matter to the Gardai yourself. If there is an injury and the Gardai are being called you should remain at the scene of the accident until the Gardai arrive.

***DON'T* take literally what the other driver states to you at the scene of the accident.**

Very often, for example, liability will be admitted, but in due course the other driver may change his story and this can complicate matters. If a party does admit liability then you should get him to do so in writing. Furthermore, if the other party states that he is going to return to the scene of the accident, don't necessarily believe him since he may change his mind once he has left the accident location. To be on the safe side, make sure that all details are exchanged before anyone leaves the scene.

SUMMARY

In the majority of accidents where there are no injuries, or only minor injuries, and where the Gardai do not concern themselves with attending at the scene of the accident, you should be sure to at least get the registration number of the other car and bring this information to your solicitor. In addition, your solicitor will find the following information helpful:

- The full name and address of the driver.
- The full name and address of the owner, if different from above.
- The name and address of the insurance company involved with details of policy number.
- The expiry date of the policy.

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Accidents at Work

The following is a short list of the DOs and DON'Ts concerning a work accident in Ireland. The employer in Ireland has a particular duty towards his employee. He is, by law, obliged to provide a safe place of work, a safe system of work and employees are supposed to be correctly trained. In the real world, however, particularly in view of the large degree of unemployment, work places are often unsatisfactory, but this of itself may not be sufficient for one to succeed in a claim against one's employer. Certain judges may take the view that an employer is only supposed to do what is reasonable in the circumstances in providing employment.



***DO* Always report accidents at work to one's employer or to the supervisor or to somebody in authority.**

If there is no record of the accident having been reported, this will initially cast doubt on the claim in the eyes of the employer.

***DO* Go to a doctor or to hospital if this is deemed necessary.**

One of the questions which will be asked in connection with a claim is when you first attended with your doctor or at a hospital.

If, therefore, you feel that it is not necessary to go to a doctor and that the injury may go away, it is essential that you simply attend with your general practitioner and inform him of your injury, even if you have no intention of bringing a claim. The doctor will then have a record of the initial attendance and complaint in the event that subsequently the injury becomes more serious and it is necessary to bring a claim.

***DO* Remember that there is no obligation on an employer to pay the employee whilst the employee is out of work.**

This is one of the most misunderstood areas of the employer/employee relationship. Many companies will have particular insurance arrangements whereby an employee is paid whilst out sick. This is not, however, an obligation on the employer. If one is out of work, the employee must seek social welfare benefit. On the other hand, you will normally at a later stage be claiming for your loss of earnings from your employer because you are holding your employer responsible for your injuries. The verified loss of earnings will be recovered when ascertained at the conclusion of your case.

***DON'T* sign an admission of liability or other document which holds you responsible for the accident.**

This is often very difficult where an employee is pressurised to sign a statement and does not wish to jeopardise his job. Nevertheless, wherever possible one should politely decline to sign such a document. It is worthy of note that if one does sign a statement in relation to one's accident it may subsequently be disregarded at the Hearing of your claim and it is not necessarily, in itself, deemed an admission of liability as far as the claim is concerned.

DON'T forget that insurance cover is very expensive in the Republic of Ireland in relation to employer's liability claims.

This means that very often there is an excess on the policy. In other words, the employer will have to pay a given amount, for example, the first €5,000 in any claim. This may well mean that the employer has significant influence and interest in the outcome of the case.

DON'T forget that although the employee may have a cause of action against the employer for negligence which resulted in personal injury, this does not mean that the employer can necessarily dismiss the employee simply because a claim is being brought.

If the employer tries to dismiss the employee on these grounds then the employee will have a separate action in the Labour Court for wrongful dismissal. Such an action on the part of the employee is quite separate to the action for personal injuries. Normally, however, no employer would risk an unfair dismissal action by letting an employee go following an accident. If there is a genuine accident at work, the employer realises that the employee is entitled to be compensated and that's why insurance was arranged in the first place. An employer may, however, be entitled to dismiss an employee for different reasons (nothing to do with the action for personal injuries) and the employee's rights in these circumstances will depend on, amongst other things, whether proper warnings were given and whether the employee has worked with the company for a sufficiently lengthy period of time (normally twelve months) to acquire statutory rights. Naturally, we would be pleased to advise on rights of this nature separately from personal injuries action, if so required.

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Accidents in Public Places

Much has been said and written about accidents in public places; people falling into pot holes and tripping on footpaths as many of the fraudulent claims which have been brought and highlighted in the press have been this type of claim. It has often been said, however, that the local authority has no objection to people bringing genuine claims. They are responsible for public areas, roads and footpaths and people are directly or indirectly paying taxes in order to have these roads in good condition. Where a road or footpath is in excellent condition, it will be very, very difficult for someone to successfully bring a claim because the local authority would have done everything in its power to provide proper roads and footpaths. The following are some brief guidelines to consider following a public liability accident in Ireland:



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***DO* Wherever possible take a photograph of the place where you had your accident.**

This should be taken during day light even when the accident occurred at night. Keep the digital images and make sure that the person taking the photographs will, if necessary, be available to attend court. The injured person can of course take photographs themselves. Use a digital camera rather than a mobile phone if possible.

***DO* Notify the local authority.**

If there is a particularly bad danger or trap in your residential area you should report this, even if you have had no accidents. This should be done in writing. If, subsequently, somebody injures themselves the local authority will have a note of the complaint and they will have very little defence, particularly if the danger or trap is an obvious one.

***DO* Take the names of any witnesses to your accident and their addresses.**

They can later be written to by your solicitor in order to provide statements.

***DO* Take details of the company or persons who were working at the place where the accident occurred.**

This is where works were being carried out shortly before or at the time of your accident. If you are not certain who is working at the accident location, you can ask any of the persons in the adjoining houses and they will more than likely know. One of the most difficult areas of public liability claims is finding who was responsible for particular works and this can result in exhaustive research by the solicitor and the plaintiff. It is best to find out as much information as possible at the time of the accident. If a long period elapses, the gathering of information can become very difficult. It may not always be the local authority with whom responsibility

rests. Very often, the problem can lie with other utility companies - for instance E.S.B., gas company or telecommunications provider.

DON'T Wage a **personal campaign** against the local authority following such an accident or incident. Attend with your solicitor who will pursue the matter on your behalf through the courts.

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*In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement.