

Health & Safety at Work

Representatives and their legal rights

Overview

The Health and Safety at Work Act 1974 and its Regulations impose a series of important duties on employers and employees. The principle of the Act is that prevention is the cure and this is overseen by a Commission and Executive.

What do the Commission and Executive do?

The Commission's duty is to assist and encourage health and safety research and the wide dissemination of advice and information, and to prepare regulations. The Commission is independent, though Government financed. The Secretary of State has supervisory control and may give the Commission directions on how it performs its statutory functions. The Commission may delegate some of its functions to Government Departments, set up committees of advice or order investigations and enquiries.

The Health & Safety Executive (HSE) has responsibility for enforcement. It reports to the Secretary of State, who can transfer duties to Local Authorities. Some parts of health and safety enforcement are the responsibility of Local Authorities. Appointing Health & Safety Inspectors is the job of the enforcing authority.



Inspectors

Both the HSE and Local Authority Inspectors have a range of powers. They may enter premises at any reasonable time or at any time where there is a danger. Inspectors are able to undertake examinations and investigations. They also have the power to ask for relevant information, and to access books and documents required to be kept by statute.

Inspectors also have enforcement powers, for instance they can serve Improvement Notices where the Act or a regulation has been contravened, giving a set period within which to rectify the problem. If an Inspector regards an activity as involving, or potentially involving, a risk of serious personal injury, the Inspector may serve a Prohibition Notice. This will stop the activity with immediate effect. Criminal charges can also be pursued against an offending party.

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The role of Health & Safety Representatives

Under the 1977 Safety Representative Regulations, independent recognised trade unions may appoint a safety representative at any workplace where they have membership. The safety representative must be an employee at that workplace though there are some exceptions to this.

Ideally, a Safety Representative should have two years' experience either with the employer or in similar employment. The role of a Safety Representative is to keep health, safety and welfare arrangements in the workplace under continual review. They can investigate potential hazards and the causes of accidents and investigate employee complaints.



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Representatives can raise matters on health and safety and welfare with the employer, carry out inspections and consult with the various Inspectors and enforcement authorities. They should also receive safety information and attend meetings of the Safety Committee.

If asked, the employer must establish a Safety Committee within three months of a Safety Representative making such a request. The employer must also post a notice that highlights the fact that a Committee is in operation and outlines the area of its work. Trade Union-appointed Safety Representatives have far more extensive rights to secure a safe working environment than non-union Safety Representatives.

Special powers of union Safety Representatives

Union Safety Representatives have the right to seek regular inspection of the workplace. Written notice of intention to inspect must be given to the employer.

Inspections can also be carried out where there has been a notifiable accident or disease, and the represented employees' interests are involved. The employer must provide facilities and assistance where there is such an inspection. If inspections take place at less than three monthly intervals, there must be an agreement with the employer.

When there has been a substantial change in conditions of work, or if new information on hazards has been published by the Commission or Executive, Safety Representatives should be consulted.

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Disclosure by the employer

Union-approved Safety Representatives are entitled to take copies of safety documents and be provided with other relevant information. The Safety Representative is empowered to inspect and take copies of any records, which the employee is required to keep, relating to health and safety issues and incidents (other than the health records of an individual employee). Regulations state that the employer must make available to the Safety Representative any “information within the employer’s knowledge, necessary to enable the Safety Representative to fulfil safety representative functions.”

Safety Representatives are entitled to see a wide range of information and documentation, and this includes:

- Plans and performances of the undertaking and any changes proposed, so far as they affect health and safety
- Technical information about health and safety hazards, including consultants’ reports and manufacturers’ instructions
- Records of accidents, dangerous occurrences and notifiable industrial diseases
- Other information relating specifically to health and safety, including the results of routine checks
- Information about articles and substances issued to home-workers.

Any information the employer is aware of which helps the Trade Union appointed Representative fulfil their role must be disclosed.



Consultation

Consultation between the employer and the union Safety Representative must take place in “good time”. Such consultations should cover:

- The introduction of any measure at the workplace which may affect workers the health and safety official represents
- The employer’s arrangements for appointing persons to keep employees’ health under surveillance
- Any health and safety training the employer is required by law to provide
- The health and safety consequences of introducing any new technology to the workplace.

It is estimated that over 20% of Safety Representatives have never been consulted by their employers, and more than half have had to press the employer before consultation resulted.

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Risk assessments

Safety Representatives should ensure that employers conduct risk assessments as required by law. It has been estimated that less than half of all employers complete adequate risk assessments, and nearly 25% do not undertake risk assessments at all.



Safety Representatives and time off

When can Health and Safety Representatives get time off work to undertake their duties?

The employer should permit a Safety Representative to take such time off work, with pay, as is necessary to enable them to perform statutory functions or to undergo reasonable training.

The HSE has issued a code of practice on time off. It states that a Safety Representative should be given basic training as soon as possible after appointment. Further training should be given if that person has special responsibilities or new laws come into effect. All training facilities should be approved by the TUC or by the appointed union concerned. The basic level of knowledge that Safety Representatives should have includes an understanding of the law relating to health and safety, the nature and extent of hazards at work and the employer's policies and administrative arrangements regarding this.

Ensure that you exercise your right to up to date training – it is in everyone's interest.

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Dismissal or victimisation of Representatives

The Safety Representative's role is very important, and obviously may lead to criticisms from an employer. As a result, employers may try to undermine Safety Representatives' credibility and effectiveness by victimisation or even dismissal. The law protects Safety Representatives against being dismissed in such circumstances, and also protects against them being subjected to a detriment simply because they were performing health and safety duties.

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Every employee has a right not to be subjected to any detriment or dismissal in the following situations:

- If having been designated by the employer to carry out activities in connection with health and safety matters, the person carried out those duties
- Being a representative of employees on health and safety matters or a member of a Safety Committee, they performed or proposed to perform any of the functions related to that post
- Where the employee brought to the employer's attention a harmful or potentially harmful risk to health and safety, but there was no Representative or Safety Committee, or these being present, it was not reasonably practicable to use these channels
- In circumstances of danger which it was believed were serious and imminent, the employee left their place of work or the place of danger or refused to return while the danger persisted.



The protection and promotion of the welfare of workers cannot be undermined by victimisation or dismissal of Health and Safety Representatives.

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If you have been dismissed on the grounds of a health and safety issue in circumstances such as those above, you can bring a claim for unfair dismissal. A claim must be brought within three months of dismissal.

You may also bring a claim if you suffer detriment in the above situation, even if you weren't dismissed. Again, these claims must be brought within three months of the act complained of. A Tribunal has the power to make an award for compensation which will reflect the amount it considers is fair in all circumstances. The compensation will cover any expenses incurred or loss of benefits.

These are important rights - use them.



Non-union Safety Representatives

Where there are no union Representatives appointed under the 1977 Regulations, the 1996 Health and Safety Consultation Regulations allow for the appointment of non-union Safety Representatives, or for direct consultation with all workers on health and safety matters.

If there is no direct consultation the employer will establish a system for electing Representatives.

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Please feel free to discuss your own position and concerns. Contact your nearest office on:

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