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1. Questions about time-off and safety rep functions

We've had a few enquiries recently which boil down to asking exactly what safety reps are entitled to when undertaking their functions. The Safety Representatives & Safety Committees Regulations, recently amended and with updated guidance are here: http://www.ucu.org.uk/media/pdf/g/t/R25807_Safety_Reps_Brown_Book_2015_UCU.pdf

Safety rep functions are statutory functions, set out in clear and unambiguous terms in Regulation 4(1)(a-h) of the Safety Representatives and Safety Committees Regulations. Regulation 4(2) says, "An employer shall permit a safety representative to take such time-off with pay during the employees working hours as shall be necessary for the purposes of performing his (sic) functions under Section 2(4) of the 1974 Act and Paragraphs (1) (a-h) above."

Regulation 4A(2) requires that "every employer shall provide such facilities and assistance as safety representatives reasonably require for the purposes of carrying out their functions under Section 2(4) of the 1974 Act and under these Regulations". This is the requirement under which we recommend you ask your employer to purchase a copy of the TUC

Hazards at Work manual for the Branch, or even all safety reps.

These are duties imposed on the employer to support and facilitate safety rep functions, and have been made with a reference to the principles of co-operation and consultation on which the Act and the SRSCR are based to ensure that safety representatives functions are facilitated, and not obstructed, by employers. They are absolute and unqualified duties, sometimes observed, if my mailbox is any guide, in the breach rather than the application. This may be a failing on the part of local managers, and not an element of deliberate employer policy; if so there are training implications for managers which reps should take up with the employer.

The regular quarterly inspection: One of the reps main functions is the regular quarterly workplace inspection given by Regulation 4(1)(e), and detailed by Regulation 5 which requires reps to give the employer reasonable notice in writing of their intention to conduct such a workplace inspection. Quarterly inspections are important politically; they tell the employer we are active and enthusiastic, and they confirm UCU reps are on top of the job and exercising their function effectively. It's also raising the awareness of our members and others to our activity, and consequent benefits of trade union organisation in the workplace.

UCU advice is to plan for the year ahead, and notify the employer at the start of new academic year (or even the end of the preceding academic year). That will ensure that reasonable notice has been given, and avoids potential conflicts around how "reasonable notice" may be defined. That keeps the initiative with us.

Investigation of complaints and incidents: the safety rep function for everyday matters and problems that arise or we spot can be addressed as any other issue raised with the union would be. Reps investigate and draw such matters to the employer's attention, with a view to resolving the problem and improving conditions. Nothing special, it's just basic trade unionism representing our member's interests. There is no reference to giving the employer "reasonable notice" for general investigation, talking to members etc, so it's best this should remain relatively uncomplicated.

Inspections of the scene of an incident: Regulation 6 now refers to inspections following over-three-day injuries, notifiable accidents, dangerous occurrences and diseases. Reps only have to give the employer notice they intend to exercise this function "where it is reasonably practicable to do so". What is more important, and often ignored, is for there to be some procedure in place to ensure safety representatives are notified of incidents so that they are able to exercise the statutory inspection functions at the scene as soon as possible.

Inspection of documents and provision of information: Regulation 7 requires the employer to give safety reps access to, and a copy of, any document the law requires the employer to keep, if they request it. That would include the asbestos management plan, RIDDOR reports, and the recorded main points of all risk assessments. There is also a general duty on employers to make available to safety reps any information

within their knowledge necessary to enable the reps to fulfil their functions.

Hope this helps to clarify a few points. In cases where an employer restricts a safety reps functions, or fails to observe a duty imposed on them under SRSCR, you will need to put pressure on the employer locally to comply – it is highly unlikely that an enforcer will take any action, but you can always try. Remember failure to permit time-off or pay for time-off taken to undertake a safety rep's function or attend trade union approved training is an offence that can be taken to an Employment Tribunal under Regulation 11 of the SRSCR.

2. Fit-for-Work expands to fill the space

The Government says that the Fit for Work service has now been successfully "rolled out" across England and Wales, and since 8 September, employers have also been able to refer employees to the service, not just GPs.

Fit for Work claims to provide occupational health services to people who have been, or are likely to be, off work for four weeks or more. It is particularly aimed at small and medium-sized businesses (SMEs) that have little or no occupational health support, but is also available to larger employers, where the government say it can help complement existing occupational health provision. Many have argued that it is being used to devise return-to-work plans to get people back to work and to cut the potential numbers entitled to benefits.

See earlier issues of H&S News for more information about Fit for Work. The operational rules say that no worker can be forced to use it, no GP can be forced to refer a patient to it, and no employer can be forced to implement any return-to-work programme that comes out of it. Active consent is required at all stages of reference to the scheme, and anyone who gives initial consent can withdraw it at

any point. Employers cannot penalise any worker who fails to give consent, but it isn't clear how that would be enforced.

The service is already fully available in Scotland and run by the NHS there, but referrals can currently only be made by telephone. It does not operate in Northern Ireland.

3. Self-employed exemptions from H&S requirements

Since 1 October a key change to the Health and Safety at Work Act 1974 that exempts some self-employed workers from health and safety law came into force, under the Health and Safety at Work etc. Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015.

The change was made under the Deregulation Bill that followed the 2011 Löfstedt Review, which recommended simplification of health and safety regulation in the UK. The legislation now says that if you are self-employed and your work activity poses no potential risk to the health and safety of other workers or members of the public, then health and safety law will not apply to you. HSE estimates over a million and a half self-employed workers will be exempt, including lots of people who work from home, but who are not employed homeworkers; writers, graphic artists, website designers and similar occupations, for example.

The Schedule to the new Regulations defines those categories of self-employment where the legal framework will still apply; in agriculture, construction and on the railway, or where it involves asbestos, gas or genetically modified organisms (GMOs). But there will be many self-employed occupations where a presumption that health and safety law does not apply could actually increase the risk of an incident. Colleges and universities often employ self-employed

contractors for a variety of jobs, so we should ensure that institutional management effectively monitor the activities of such workers. Are glaziers and painters classified as construction workers, for instance?

Trade unions, the TUC and organisations representing H&S professionals have all expressed the view that this is a retrograde step and can only lead to confusion, and perhaps increased risk. Many also believe that it based on little more than Cameron's personal antipathy to the health, safety and welfare of workers and others. It would have been better left alone.

More information at:

<http://www.legislation.gov.uk/ukxi/2015/1583/contents/made>

and:

<http://www.hse.gov.uk/selfemployed/what-the-law-says.htm>

4. The Trade Union Bill affects safety reps

The Trade Union Bill currently going through parliament does more than provide for further restrictions on a union's ability to take industrial action or campaign politically. There are measures that will enable this or any future government to restrict the time-off and facilities for health & safety representatives in the public sector (the wording of the Bill is such that Ministers can include "a body or other person that is not a public authority but has the functions of a public nature and is funded wholly or partly from public funds" so could include almost anyone), and reduce the ability of unions to campaign on health & safety issues.

The Hazards Campaign has pointed out that, in terms of priority, attention really should be paid to the 151 official workplace deaths and 28.2 million days

lost due to injury or ill-health caused by work, rather than even tighter restrictions on trade unions over the 0.8 million days lost through strike action last year. That would require an evidence-based approach to Regulation, and it's clear that the government must have ignored a lot of the evidence. Can we claim that this further restriction on trade union activity is part of the same "over-Regulation" of workers health and safety that this and the previous government has been so keen to reduce. (See Item 5 below, for example)

What we really need is support for a huge increase in the number of active safety reps, as the evidence shows that union safety reps help to reduce serious injuries at work by 50%. We won't get that from government, so it's really up to us to organise.

The TUC has set-up an awareness-raising campaign, with a decent poster and other graphics using the Hazards Campaign comparison. For the poster and graphics see:

<https://www.tuc.org.uk/government-threat-safety-reps>,

and www.tuc.org.uk/tubill for more general information. Download a poster for the union noticeboard. See also Hugh Robertson's blog at:

<http://strongerunions.org/2015/07/17/government-takes-a-swipe-at-safety-representatives/>

5. Hazards Campaign postcards

The Hazards Campaign has produced a campaigning postcard for sending to the prime minister, pointing out how the previous government undermined the protection of UK workers health, safety

and welfare, and protesting this one continues in a similar fashion.

We gave a lot away on the Manchester demonstration on 4 October, and we will send you 10 free-of-charge if you send your postal address to John Bamford at jbamford@ucu.org.uk

For the price of a second-class stamp, 10 UCU members in your workplace can remind David Cameron of what many UK workers think about his approach to workplace health and safety. That's got to be worth 53p.

6. H&S training coming up

Health, safety and welfare issues are as much working conditions as any other issue we take-up with the employer on behalf of members, so all UCU reps and Branch officers should attend. Please encourage others to do so.

H&S Stage 1:

Manchester: 11-13 November 2015

Exeter: 25-27 January 2016

Newcastle: 3-5-February 2016

Tackling Organisational Stress:

Birmingham: 6 and 25 November

H&S Stage 2:

London: 20-22 January 2016

Birmingham: 2-4-March 2016

Exeter: 11-13-May 2016

Full details and application form at http://www.ucu.org.uk/media/pdf/l/p/A/activist_guide_2015-16.pdf or contact training@ucu.org.uk

John Bamford

UCU Health & Safety Advice

Contact **UCU Health & Safety Advice**
UCU Health & Safety Advice is provided by the Greater Manchester Hazards Centre, and is available for 3 days each week during extended term times. The contact person is John Bamford: (e) jbamford@ucu.org.uk (t) 0161 636 7558