

## **Contents**

- 1. The importance of accurate sickness reporting**
- 2. First corporate manslaughter conviction**
- 3. Review of sickness absence launched**
- 4. Back to basics: Contact with the HSE Inspector**
- 5. Back to basics: Improving joint safety committees**
- 6. Health4Work advice**
- 7. Driving fatigue**
- 8. Occupational Health Services & voluntary accreditation**
- 9. Draconian Australian procedures under attack**
- 10. Updated Fire Precautions checklist**
- 11. Next Health and Safety Rep induction course**

### **1. More encouragement for employers to ignore**

It is becoming increasingly clear that important statistical data on work-related stress and consequent sickness absence is not readily available to UCU representatives. The HSE don't break down the figures, so cannot say how many university or college staff are off work due to stress-related sickness. Neither do the employer's organisations collect such information. UCU reps in colleges and universities regularly report that their employer refuses to present sickness absence figures to safety committees; presents them in a way that doesn't help identify where the real problems lie; or is unable to say if an absence is actually stress-related or not.

Stress related illness is not reportable to the HSE under RIDDOR, although in the past the DWP ruled that, if the event initiating the absence from work was an identifiable incident, such as being shouted at or abused by a manager, then this could be classified as an "accident" – i.e. an event that caused an injury that resulted in the injured person becoming ill and off work. The DWP did this for the purposes of determining what a sickness benefit claimant would be entitled to after sick pay or SSP ended; but to be consistent, this "accident" should then be reported under RIDDOR. I'm not sure what the employer reaction would be if UCU tried to insist they made a RIDDOR report on stress-related absence caused by a supervisory outburst.

Meanwhile, encouraging staff to record an accurate cause of absence on medical certificates would help reps to better establish the causes of absence when employers present figures to the union or the safety committee.

### **2. First corporate manslaughter conviction**

The first company to be prosecuted under the Corporate Manslaughter and Corporate Homicide Act 2008, Cotswold Geotechnical Holdings Ltd, was fined £385,000 at Winchester Crown Court on Thursday 17<sup>th</sup> February 2011.

The company, which had a turnover of £333,000 in 2008, the year the incident occurred, will be able to pay the fine over a ten-year period, with £38,500 due every year of that period. The court did not award costs against the company. Charges were originally laid against Peter Eaton, the director of the company, but were dropped because he was ill. There have been reports however that say he continues to go to work, and to take part in social and other activities in the community where he lives. [http://www.workplacelaw.net/news/display/id/32742?a\\_id=4319](http://www.workplacelaw.net/news/display/id/32742?a_id=4319) will take you to a series of links on this case.

At the time the Act was passed, campaigning organisations including trade unions were critical that it did little more than replicate the penalties already in place under existing health & safety legislation. A breach of the Health & Safety at Work Act prosecuted in a Crown Court already permits the court to impose an unlimited fine. The Corporate Manslaughter Act allows charges to be laid against an organisation where a senior management failure is identified. What many were hoping for was for the Act to impose statutory duties on individual directors and senior managers in large organisations, so that where they were held responsible for gross breaches of duty, they could be sent to prison. No director or senior manager in a large organisation has ever been imprisoned for H&S breaches because of the difficulty of identifying a "controlling mind". Only a few small employers have ever been imprisoned for causing a work-related death.

<http://www.hazards.org/deadlybusiness/relativejustice.htm> for more background on the corporate manslaughter act.

### 3. Review of sickness absence launched

The Government has launched a review into the sickness absence system, saying it wanted to tackle the "staggering" £100 billion cost to the economy every year.

The review will examine "radical" new ways of helping more people stay in work and reduce the cost of sickness to businesses as well as the wider economy. It will be undertaken by David Frost, director general of the British Chambers of Commerce, and Dame Carol Black, the government adviser on work and health, and is expected to report later this year. Wot – no worker representatives? No surprise there.

- The Government said that under the current system, employers had to bear the costs of short-term sickness, with taxpayers absorbing the cost of longer-term ill health. It was determined to end the "vicious cycle" of people being out of work then seeing their health deteriorate even further.
- Minister for Welfare Reform Lord Freud, said: "We all have a stake in reducing sickness absence, but it's not clear who is best placed to take responsibility for this change." (It's the government, daft one – you are part of it.)
- Employment Relations Minister Edward Davey wants the review to result in recommendations to manage sickness absence more effectively. (Oops – has he told the dark dame & the former alternative satirist journalist this? If so, why are we spending the money?)

But UCU says:

- Workers and their families bear the majority of the real cost of ill-health and injury in much wider ways than simply financial cost, but that as well
- There is no mention of the long-term effect of sickness on workers
- Nothing about those workers whose illness or injury is caused by their work

- Nothing about the dismally low level of statutory sickness pay, most often paid to workers who are already low paid. When you are off sick your need for money increases, especially if you or relatives need to make hospital trips, or buy prescription medicines, special diet food etc.
- Many workers believe that their employer's absence management procedures are pretty draconian already.

TUC General Secretary Brendan Barber commented "We are concerned that it will end up as just another part of the Government's cost-saving onslaught on the income and rights of those at work, and those on benefits. The fact that the review is being conducted by a leading voice of employers' interests, with no corresponding involvement from unions representing workers affected by sickness absence, gives us little confidence in the outcome."

*UCU would suggest that the government might concentrate more on the causes of sickness, especially those things in the workplace cause stress and consequent mental and physical ill-health and absence.*

## 4. Back to basics: Contact with the HSE Inspector

It's apparent that some Branches and LA's don't have contact with the HSE Inspector responsible for their workplace. This is a serious weakness in UCU local organisation, and needs to be put right. It is an organisational matter, so the Branch or LA needs to agree who the contact person should be. **So, if you are not already in contact with your workplace HSE Inspector:**

- Discuss and agree who the UCU Branch/LA contact person should be.
- Ask your employer for the name and contact details of the inspector responsible for the college or university. This is information within the employers knowledge that they have to give you under Regulation 7(2) of the SRSC Regulations, and Regulation 4A(2) – such assistance as safety reps reasonably require – you DO reasonably require this in order to undertake your functions in respect of HSE Inspectors as set out in Regulation 4(1)(f & g)
- E-mail the inspector, or better still ring them up to introduce yourself. The HSE e-mail convention is [firstname.lastname@hse.gsi.gov.uk](mailto:firstname.lastname@hse.gsi.gov.uk) which works for about 95%+ of inspectors. If you get the office switchboard number, ask for the inspector by name – and insist on speaking to them. Don't let them fob you off with a workplace contact officer – it's likely to just get lost. If necessary, ask for the inspectors direct line number and/or check their e-mail address. If all else fails, write to the inspector.
- Set-up an arrangement with the Inspector so that they know who to contact on the union side when they visit the workplace. You may be put in touch with a team leader – a principal inspector responsible for a team of inspectors whose work will include your college or university. Confirm the arrangements you make by letter **and** e-mail to the Inspector.
- You need to establish a good working relationship with your Inspector, so that they know that when you contact them, there is a real problem. Like many workers, anything you can do to help them do their job is welcome, so it's important that you don't run off to the inspector every time a problem arises. They, like us, have workload problems, so need to prioritise what they do. Try to resolve it locally first, and keep a paper trail record. Go the extra mile and only

then ask the Inspector for help, with the evidence that you have not made any progress in trying to resolve the problem.

- Having made contact, suggest that the safety committee invites the Inspector to attend the next meeting.

HSE management instruction to inspectors to contact safety reps are available from <http://www.hse.gov.uk/foi/internalops/og/ogprocedures/inspection/conduct.htm#step33> This primary instruction is supplemented by more detailed guidance outlining the practical steps an Inspector should take to contact safety reps and keep them involved in, and informed about, the visit. The additional detailed guidance document is at <http://www.hse.gov.uk/foi/internalops/og/ogprocedures/inspection/reps.htm>.

Latest UCU Factsheet at [http://www.ucu.org.uk/media/docs/7/8/ucu\\_hseinspectors.doc](http://www.ucu.org.uk/media/docs/7/8/ucu_hseinspectors.doc)

## **5. Back to basics: Improving joint safety committees**

The advice service has had a number of discussions and enquiries about a variety of questions relating to safety committees over the past few months, so this is a good opportunity to restate the position on joint safety committees.

Joint health and safety committees are there to allow us to have an input and influence on the employer's strategy for health & safety, and to influence policy in the best interests of our members and other staff. It's a place for debate and discussion leading to agreement. It isn't a forum for simple rubber-stamping employer decisions made earlier; it isn't a place where day-to-day H&S issues should be discussed – they need to be dealt with via the bargaining and grievance procedures and other representative fora.

Guidance on what should be on safety committee agendas is in the Guidance to Regulation 9 of the Safety Reps & Safety Committees Regulations – Paragraphs 74 – 82. SRSC copy from <http://www.tuc.org.uk/extras/brownbook.pdf>

Our role on a safety committee is as representatives, NOT experts in occupational health, safety & welfare. Our expertise is in representing the interests of our members, taking-up problems and issues we have identified in the workplace.

The main focus for safety representatives activity should be the investigative and representative functions set out in Regulation 4 of the SRSC Regulations; attendance at the safety committee is only one of nine functions given to reps. Successful "shop floor" activity is what gets members support, and enables non-members to see the effectiveness of the union in resolving local issues.

If your committee doesn't reach the standards set out in the guidance, make your HSE Inspector aware of this the next time they come into the workplace.

## **6. Health4Work advice**

Health4Work (it's SO important to ensure you have the capital letters and numbers in the right place when you are dealing with language that isn't English) is a free helpline set-up by the government in response to Dame Carol Black's report on the health of the working age population. It mirrors almost exactly a similar advice service called "Workplace Health Connect" that ran for two years from February 2006 - 08. That proved to be a pretty dismal failure given the money spent on it, despite the spin put into the review report. Will Health4Work prove to be more successful?

According to the Regional Director for Health & Work for Yorkshire & Humberside, speaking at a TUC/HSE seminar in Sheffield in February, 42% of Health4Work enquiries were about sickness absence, and 24% about the "Fit Note". So two-thirds were about administrative matters, not work-related health questions. That doesn't sound good so far.

Perhaps that is what prompted the following example from Health4Work website – dodging as it does between stereotypical tabloid views of workers as "skivers" who "pull sickies", unpleasant direct and implied threats employers might use, and confusing health, sickness and absence into "a corporate ongoing wellness programme which Adviceline can help you create." Is any of this written in English? Is this what wellbeing is about? Is this a proper and responsible use of taxpayer's money? Should Health4Work produce a more comprehensive skivers calendar to inform employers of all skiving opportunities?

<http://blog.health4work.nhs.uk/2010/12/small-business-owners-uk-discourage-staff-pulling-sickies/> takes you to this quite discreditable article posted by [Health4Work](#) just before Xmas 2010. I am just not sure that Daily Mail or Evening Standard quotes provide the quality of evidence that a serious study and advice warrants. The article contains **"5 tips on surviving the most popular days for skiving"**

Try this one too; I'm convinced you'll be the happier for it, especially as you fill-up with bottled water! Mind you, your increased visits to the lavatory might attract your employers unwelcome attentions. <http://blog.health4work.nhs.uk/2011/01/simple-small-business-owners-encourage-healthier-happier-workplace/>

## 7. Driving fatigue

New research by road safety charity Brake and Direct Line insurance has found that almost three-quarters of drivers report driving whilst tired, a big increase since 2004. The research focussed on trunk road driving, where the high speeds involved can have very serious consequences, but the consequences on urban roads where pedestrians are at risk can be equally serious. As we reported in the February newsletter, increased workloads, longer hours and more stressful work environments mean UCU members are likely to suffer the effects of more tiredness, so driving between sites or on other institutional business can put them at risk of incidents due to that tiredness.

Brake has some good advice for drivers; but perhaps more importantly, employers need to have effective policies in place to ensure that where staff drive, they are safe to do so, and that effective risk assessments have been done. If not, UCU suggests that it might be safer if staff use public transport on college or university business, and that timetables and workloads are adjusted to ensure this is possible. UCU Health & Safety Advice would like to see any staff vehicle use policies colleges or universities have.

<http://www.brake.org.uk/selby2011> for more information, and access to Brake's general advice.

## 8. Occupational Health Services & voluntary accreditation

Many workers view their employer's occupational health provision with suspicion. Mostly attached to HR Departments, it is seen as part of the HR function that frequently threatens and disciplines those who become sick, or helps the employer rid themselves of employees they no longer want or need, rather than helping workers to recover from illness or injury, focus on effective rehabilitation, and provide adjustments to help people stay in work. We have addressed a number of queries about OHS provision recently, so here's an update.

Staff are referred to OH doctors for reports on conditions that may affect their ability to do their job, or where there has been long-term absence, or where, under DDA provisions, workers need the employer to make reasonable adjustments. The Medical Reports Act 1988 requires employers to give workers the opportunity to refuse a reference to OH doctors; where they are referred, they can see the report beforehand; but the Act doesn't require OH doctors to seek the patients consent for their reports to be given to the employer. The guidance from the General Medical Council to all doctors is clear that they have a responsibility to seek the patients consent to refer any report to the employer. Download the Medical Reports Act from <http://www.legislation.gov.uk/ukpga/1988/28/contents> The TUC issued guidance on the Act, available from <http://www.tuc.org.uk/workplace/tuc-17272-f0.cfm>. [http://www.tuc.org.uk/h\\_and\\_s/tuc-15982-f0.cfm](http://www.tuc.org.uk/h_and_s/tuc-15982-f0.cfm) is TUC advice on Occupational Health doctors.

While there is no specific statutory requirement for an employer to provide an OHS service, there will be occasions where such a provision will enable employers to better meet the general duties imposed on them in respect of the health of the staff they employ. OH services can also undertake any necessary health surveillance the employer is required to undertake. OH services can be provided in-house, or by an outside contractor.

Until recently, there were no performance standards for occupational health services. Since 2008, the Faculty of Occupational Medicine has been developing standards to establish a voluntary scheme of self-assessment and accreditation. Safe Effective Quality Occupational Health Service (SEQOHS) is a set of standards and a process of voluntary accreditation that set out what is expected of OH services to ensure that what they provide helps to make a meaningful difference to the health of people at work. Download the standards from [http://www.seqohs.org/DocumentStore/fom\\_seqohs.pdf](http://www.seqohs.org/DocumentStore/fom_seqohs.pdf) It remains to be seen how these standards will be accepted, and how many OH providers will voluntarily sign-up. The record of voluntary self-regulation generally in the UK hasn't been particularly positive so far.

UCU supports high quality occupational health provision that is under joint control, focused on employee needs, provides sympathetic and positive support for those who are sick or injured, and which supports effective rehabilitation processes to get people back to work after illness. Anything less is suspect. You should review the occupational health provision in your college or university to see it meets our basic standards rather than the employers.

## 9. Draconian Australian procedures under attack

Our colonial cousins need your support. This is a long running case in Australia, where in 2005, John Howard's then conservative-led coalition government established the Australian Building and Construction Commission (ABCC) following a Royal Commission



into what was claimed to be abuse of health and safety complaints to further industrial relations disputes.

The ABCC has draconian powers – it can force people to appear before it to be interrogated in secret, and they can be taken to court and imprisoned for refusing to attend or give information. Professor George Williams, a Constitutional Law Expert at the University of New South Wales commented *"The ABCC has powers that not even police agencies have. It has the ability to force people to give evidence against themselves, to give evidence against their families, to give evidence against their fellow workers."* The chair of this Commission isn't called McCarthy, but what IS co-incidental is that in 2003 someone named Thatcher was appointed to the (now abolished in 2010) Australian Industrial Relations Commission, where the deputy president WAS named McCarthy. Do political prejudices attach themselves to names?

The whole issue was presented by the Howard government's PR machine as being even-handed and redressing a significant power imbalance – the usual story when conservatives of any persuasion act to limit the power of organised workers. The International Labour Organisation has condemned this Commission and its anti-democratic powers as they have condemned the equally draconian and employer-friendly legal restrictions on trade union activity here in the UK. You can read the history of this particular attack on the ability of workers to defend themselves against poor HS&W standards here:

[http://en.wikipedia.org/wiki/Royal\\_Commission\\_into\\_the\\_Building\\_and\\_Construction\\_Industry](http://en.wikipedia.org/wiki/Royal_Commission_into_the_Building_and_Construction_Industry)

The Construction, Forestry, Mining and Energy Union (CFMEU) has been a major target of the ABCC, mostly for doing what the average trade union does every day. Significant fines and penalties have been imposed on the union – does that ring a bell? Similar things happened here following the legal restrictions imposed on unions by the Conservative Governments of Margaret Thatcher in the 1980's.

CFMEU has been campaigning against the ABCC and its undemocratic powers since it was established, and has so far defended two individual construction workers who were prosecuted and threatened with imprisonment for undertaking what most people would recognise as normal trade union action over health and safety. 29 further court cases are in the pipeline. On the other hand, despite many deaths and serious injuries in construction, the Commission has taken remarkably little action against employers. The union and the Australian TUC (ACTU) are continuing to campaign for the removal of this body – and they say that international support is very welcome. Perhaps Australia's current Labour-led coalition government isn't yet ready to deal with the issue. Coalitions, eh – they can never get it right.

The CFMEU campaign against the ABCC is here <http://www.rightsonsite.org.au/> , then click the "Take Action" button to sign their petition.

So please, if you believe it is right for workers to organise against poor, hazardous and unhealthy working conditions without being threatened by undemocratic inquisition or McCarthy style witch-hunting and victimisation, support their international appeal.

## **10. Updated Fire Precautions checklist**

We recently updated our Fire Precautions checklist. Download the new copy from [http://www.ucu.org.uk/media/docs/6/t/ucu\\_firecheck\\_revmar11.doc](http://www.ucu.org.uk/media/docs/6/t/ucu_firecheck_revmar11.doc)

## **11. Next Health and Safety Induction Course**

**The next Safety H&S rep's induction course: Representatives Role and Functions will be held at London, Carlow Street, Monday & Tuesday 4<sup>th</sup> – 5<sup>th</sup> April. Visit <http://www.ucu.org.uk/index.cfm?articleid=4821> to register.**

### **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](mailto:jbamford@ucu.org.uk) (t) 0161 636 7558**

**Visit the [UCU Health and Safety web page](http://www.ucu.org.uk/index.cfm?articleid=2132):  
<http://www.ucu.org.uk/index.cfm?articleid=2132>**