



Health & Safety Organiser, Health and Safety Unit, UNISON, 1 Mabledon Place, London, WC1H 9AJ. Tel: 020 75511156. Email: [healthandsafety@unison.co.uk](mailto:healthandsafety@unison.co.uk) Website: <http://www.unison.org.uk/safety>

Out to UNISON safety reps and officers every two months – inside this issue:

Enforcement	Safety Reps Rights
H&S Inspections	Sickness Absence
H&S Week	Stress Conference
Mental Health	TUC Safety Rep Survey
NHS law	Worker Involvement
Non-Union H&S	Young Workers

June/July 2006

Issue 44

# Speak Up for Better Safety Reps Rights!

**Give the HSE your views on how to encourage, improve, and increase worker involvement in managing health and safety.**

After lengthy pressure from UNISON, the TUC, and other unions, the Health and Safety Executive (HSE) is consulting on how to encourage, improve, and increase worker involvement in managing health and safety risks. Undertaken on behalf of the Health and Safety Commission (HSC), which says that involving workers is a key theme to its strategy, the consultation will run until 8 September.

Commenting on the consultation, HSE chief exec Geoffrey Podger said: “Workers know the most about the jobs they do, so they are often in the best position to develop safe and practical systems of work. Effective worker involvement is fundamental to ensuring the success of all other interventions on health and safety. It is important, therefore, that we actively encourage and support organisations to involve their workers.”

## **Safety reps improve health & safety**

There is a wealth of evidence that employers with active safety reps are twice as safe as those without, and that the arrangements that lead to the highest injury rates are where management deals with health and safety without consultation. One study went on to state that “the general conclusion that health and safety should not be left to management should be supported.” Another study concluded that “arrangements associated with trade unions... lower the odds of injury and illness when compared with arrangements that merely inform employees of... issues.”

For more information on the positive role that unions play in health and safety see the TUC report, *The Union Effect* at: [http://www.tuc.org.uk/h\\_and\\_s/tuc-8382-f0.cfm](http://www.tuc.org.uk/h_and_s/tuc-8382-f0.cfm) or the UNISON summary in issue 35 of this newsletter at: <http://www.unison.org.uk/acrobat/B1523.pdf>

### **It's vital that you have your say!**

UNISON urges its safety reps and safety officers to respond. Do not be put off by the official forms. You don't have to give a detailed response, nor do you have to reply to every question. If you want, just write a letter. The key thing is to use your knowledge and experience and that of your members, and give as many as possible practical real-life examples of where your effectiveness was reduced because of a lack of effective law, or a lack of enforcement by the HSE or local authority inspectors.

If you have good worker involvement or have negotiated additional rights such as roving safety reps (RSRs), then try to send a joint response with your employer. This will count a lot towards showing that many employers value the safety reps role. However, when responding do not allow the HSE to pre-determine the scope your suggestions, for the proposals in the consultation document (conduc) do not go far enough. In addition to the measures identified by the HSE; UNISON, the TUC, and other unions will also be calling for: RSRs, the right for safety reps to stop the job, and the right to issue legally binding improvement notices. See page 2 for more.

In consultation with UNISON and other unions, the TUC has produced a pack to assist safety reps in responding to the conduc. Go to: [http://www.tuc.org.uk/h\\_and\\_s/tuc-11984-f0.cfm](http://www.tuc.org.uk/h_and_s/tuc-11984-f0.cfm) It includes a link to the HSE conduc which is at: <http://www.hse.gov.uk/consult/condocs/cd207.htm> If you don't have web access, contact UNISON's Health and Safety Unit for a copy of the TUC pack, and HSE Books on 01787 881165 for a copy of the *Improving Worker Involvement* conduc.

### **What's wrong with the current law?**

Despite the overwhelming evidence in support of and the legal requirement for consultation, many safety reps struggle to get consulted, or even the information that they're entitled to, but there has never been one case where an employer has been prosecuted for this. Getting time off to carry out their other functions and get trained, overwhelming work pressures, and the fear of victimisation all mean that many do far less than they could, especially when faced by an antagonistic employer.

The regulations giving safety reps their rights (the Safety Representatives and Safety Committees Regulations 1977 -the *Brown Book*) are accompanied by an Approved Code of Practice (ACoP) and official guidance. Both of these are also in grave need of updating to reflect the world of work today. Since 1977, there have been great changes with more small employers, more contracted out staff, and more agency workers. The limit to only representing workers employed by your own employer, when often you have employees working in the same workplace, but with different employers, does not make sense. Many unions have negotiated RSRs as a way to get round this, but a legal right to RSRs could protect all workers.

Where a workplace is clearly unsafe and a serious injury is likely to take place, a safety rep should be able to stop the job until safe. At present individual workers have the right to stop work if there is a "serious and imminent" danger, but this almost never happens as, individually, they fear the repercussions from the employer. If safety reps had the right with full protection against victimisation, dangerous practices could be stopped immediately.

## **No Union = No Consultation**

**A** HSL (the HSE's Laboratory) investigation into workforce participation in non-union workplaces has found that most are clueless when it comes to consultation rules and that there is very limited participation from the workforce as a whole. It concluded that: "In most cases managers, health and safety officers, employee reps, and workers were not aware of the relevant health and safety regulations." Where there was some awareness, it was not at a detailed level. "Therefore... the impact of health and safety legislation was negligible upon the nature or extent of participatory processes."

“The lesson is simple enough.” says the TUC’s Head of Health and Safety. “If you want to get a say, get a union.” *Workforce participation in occupational health and safety management in non-unionised workplaces* is on the web at: [http://www.hse.gov.uk/research/hsl\\_pdf/2005/hsl0541.pdf](http://www.hse.gov.uk/research/hsl_pdf/2005/hsl0541.pdf)

## Mental Health

The mental health charity MIND is surveying the office environment and its effect on mental health.

Please see the questionnaire at:

<http://www.mind.org.uk/News+policy+and+campaigns/Campaigns/officesurvey.htm>

## Improving Worker Involvement (two page special)

The National Health and Safety Committee and the Health and Safety Unit will be producing UNISON’s national response. But here are some initial thoughts.

### Less Carrot and More Stick

**Question 1** - asks whether we have the right legislation, guidance, and encouragement? **Question 2** - asks whether the balance between these is right?

The answer to question 1 with regard to legislation is clearly no. There are clear problems when at present for example, safety reps can raise any safety matter they want with their employer but there is no legal duty on the employer to respond.

The answer to question 2 is also a resounding no. The condoc recognises that employers don’t always consult when they should. Since it’s often a case of refusing to consult rather than not knowing that they should, further encouragement or guidance is likely to fail. If such were more successful than enforcement, why not just ask and encourage individuals to pay their tax and to not speed! What is needed is better law, and perhaps more importantly better enforcement. Since no employer has ever been prosecuted for not consulting, why should rogue employers bother? For more on how enforcement is the key to compliance, even where education and encouragement are also seen as a tool, see the CCAs report, *Making Companies Safe, What Works?* Go to: <http://www.corporateaccountability.org/dl/courtreport04/makingcompaniessafe.pdf>

**Question 4** - asks whether the existing guidance should be improved and if so how? It should. When responding, give examples from your own experience. The guidance and ACoP need to better clarify the right to paid time off and training. Moreover, following the guidance is not compulsory. Employers may choose to take other action, although when a safety rep incurs a problem, it is often because the employer has taken no action. The condoc states that it is not certain that new guidance will result in significant changes in consultation. So why not move most of the guidance into the ACoP which must be complied with unless employers can show compliance in some other way? In addition, any guidance or ACoP are only as good as the law they supplement, which is, only as strong as the enforcement action taken against those who breach it.

**Question 6** - asks whether best practice standards would be useful in encouraging worker involvement? The condoc simply requests a “yes” or “no” answer, but its not that simple, so add an extra sheet of paper. Voluntary standards aren’t effective unless their purpose is to reinforce strong and enforced laws. Without such, they will be of little use to safety reps facing employers indifferent to or who wilfully break the law. The condoc actually acknowledges this. In addition whilst the condoc says that this voluntary approach has been welcomed in other areas such as stress, this is not completely true. Whilst HSC/HSE

action on stress was welcomed, the overwhelmingly preferred option was for a law on stress. It was felt that this would be more effective.

**Question 7** - asks what incentives by the HSC, the HSE, and employers could encourage more worker participation? The condoc cites research which shows that more pay is not the answer. This is not surprising. Safety reps often carry out their role whilst trying to balance the demands of work, often requiring use of their own time, whilst facing a difficult or hostile employer. They don't seek fame and fortune, they do it because workers should have a safe and healthy workplace, and they know the difference a safety rep makes. The condoc states that a modest gift or a "thank you" might be appropriate. How about recognising their valuable role?

What better "thank-you" could there be than enforcing and improving the law so that this dedicated lot: get time off for their duties and training, get replies from and are consulted by the employer, become more effective by serving PINs (see later), can stop the job when the work is unsafe, and are protected from victimisation. When visiting a workplace, inspectors should also demonstrate their worth by always asking to speak to the safety rep. Late last year, safety minister Lord Hunt told local authorities that in their enforcement role, they must make union and worker involvement a key element. In your response highlight any initiatives that have worked at your workplace.

### **More Burden or Nothing New**

**Question 8** - asks whether a duty on employers to consult on risk assessments would be helpful and practical? Again there is only space for "yes" or "no" so on an additional sheet show how consultation has or has not worked in your workplace.

## **Some of Questions they' do ask Plus Answers to some of the Questions they don't!**

A recent TUC survey found that less than 30% of safety reps were satisfied with their involvement. Around 50% weren't consulted at all.

Clearly safety rep and worker involvement is crucial - they and their workers know what actually goes on in the workplace. Given this, a specific requirement would act as a prompt, especially as the condoc acknowledges, for reluctant employers.

However, the condoc questions whether it would create additional burden and bureaucracy and thereby discourage the spirit of trust and cooperation needed to secure true involvement. Since as the condoc acknowledges, unless current employee and safety rep involvement is just superficial, then in reality, such consultation is already (though not specifically) required, then there will be no further burden. As for "reluctant" employers, they are probably attempting to avoid a spirit of trust and cooperation.

Lastly, the proposal that a risk assessment affecting an individual should only involve the safety rep if consent is given is misleading. Safety reps must always be consulted as: it is the work activity which is assessed, workers may change tasks, and the activity may affect more than one worker (remember employers often carry out generic risk assessments for identical tasks which cover a number of posts).

**Question 9** - asks what other measures would ensure that the consultation does not become bureaucratic or just a paper exercise? Risk assessing is the foundation to health and safety law, so to improve worker involvement must require consultation, and making it a specific requirement is a positive step. If risk assessments are already carried out properly, consulting reps will not be any greater burden than any other part of the process, but will add significant value.

**Question 10** - asks whether employers should have a duty to respond to safety reps, and if so whether in writing? Again there is only space for a “yes” or “no” so add another sheet and give examples of the problems you’ve experienced. It is a serious omission under the current law that employers need not respond, and this is not what was intended. Since the role of safety reps is to raise health and safety concerns, if employers had to respond the process would be more effective because safety reps would be able to judge whether the matter had been handled correctly or required further attention. Many safety managers also welcome this proposal since they recognise that managers often fail to act upon a safety reps legitimate concern.

The union inspection notice (UIN) is one such system negotiated for by many safety reps and is implemented after a failure to act. As a formal written process it is more likely to get a response, but it still suffers from the weakness of being a voluntary system (unlike provisional improvement notices - PINS). For more on Pins and UINS see issue 19 of this newsletter.

**Question 14** - asks if the proposals will improve worker involvement for those without union or non-union safety reps?

This is an interesting question given the HSL research that found that non-unionised workplaces were generally clueless about the need to consult and the requirements of health and safety law (see page 2). Perhaps then, the solution is greater access to union safety reps. Making safety reps more effective would as the RIA assumes (see below), encourage more workers to become safety reps. Another route is legislating for RSRs to be able to cover workers employed by other employers at the same workplace, or even to be able to cover such workers at other workplaces. The condoc says that this would raise various difficulties and so does not make any proposals. Given the marked improvement RSRs would make, perhaps it’s time to find a solution!

**Question 15** - asks how any administrative burdens could be kept to a minimum? Since the proposals simply reinforce and support the current law, any good sensible employer should already be meeting the requirements, hence no additional burden. In addition, the cost of doing business in a safe and healthy manner is not an unnecessary burden. Workers have a legal and moral right not to be harmed by their work. There is also sound economic reason; for the individual and their family, for society as a whole, and for employers.

**Question 16** - asks what is the most effective thing that the HSE could do? Give an example for your workplace. It might be: making safety reps compulsory where there are more than five employees, RSRs, a safety reps right to stop the job, PINS, or more enforcement.

**Question 17** - covers the regulatory impact assessment (RIA) - that is the costs and benefits of the proposals, but it is very misleading. It over optimistically bases employers costs on 100% compliance but unfortunately this is unlikely to occur. Besides, if there is good reason for a health and safety law, then that should be part of the cost of doing business.

The RIA estimates the cost of the various proposals (requiring assumptions to be made) but doesn’t adequately do the same for their benefits. The total annual cost to employees of fatal, major, and over three day injuries is stated as £3,595 million (m), with the cost of work-related ill health to society at £11-£17 billion (bn), including £8bn costs to employers. Firstly, note that these figures are incomplete. They do not include the self-employed, the public, nor accidents requiring less than three days off work or not resulting in injury.

Secondly, there is no attempt to quantify the saving made as compared to the cost of, for example, the proposals on guidance (estimated at most, to be less than £250,000). However, using the figures given in the RIA, if only one additional life was saved, this would save almost £1.4m. Save two of the 169 lives lost due to accidents alone and after costs, over £2.5m is saved. Add in just a few of the 260,000 major and over three day injuries, and that small investment is beginning to look like the best bargain ever. And that’s without considering all the other “accidents” including those whilst driving at work, and occupational ill health.

Similarly, whilst the benefit of the proposed changes in the law is estimated, it's set at a lowly £300,000. So if every employer was forced to consult with and respond to safety reps concerns (and the RIA does assume 100% compliance), they don't expect it to save one life (which the RIA costs at £1.4m). And whilst the RIA states that the £300,000 estimate is at the lower end of the range, they don't give the higher end, when for the costs they appear more than happy too! If the RIA calculations are to be reliable, there must be some consistency. It is also arguable that for a robust system of managing health and safety, employers should already be consulting and responding and so there shouldn't be any additional cost.

Make your voice heard, have your say, and help to get better rights for safety reps.

## H&S Inspectors Save Lives

Rarely is it so easy to show a direct link between good enforcement and the saving of lives, and the deadly cost of a failure to enforce health and safety law. Here are two clear examples.

Days before a fire in January which killed two coal miners in the US, a safety inspector had tried to close down part of the mine because of a fire risk along the conveyor where the deadly blaze began. The demand for production outweighed safety concerns that coal and coal dust along the belt line had accumulated to a danger point and that the fire-suppression system was not adequate. The inspectors bosses told him to back off. By contrast, in April inspectors shut down and evacuated a new development because of concerns about an unsafe roof. No more than 10 minutes later, the roof fell in and part of the walls collapsed. The action followed an anonymous tip-off and saved a number of lives. Go to the TUC's Risks newsletter at: [http://www.tuc.org.uk/h\\_and\\_s/tuc-11789-f0.cfm](http://www.tuc.org.uk/h_and_s/tuc-11789-f0.cfm) for more information.

## UK Inspections at New Low

Safety inspections in the UK have plummeted to a new low, increasing the chances of workers being killed, made ill, or injured by their jobs. Previously unpublished HSE figures obtained by the UNISON backed *Hazards* journal show that in the three years from 2002/03, visits by safety inspectors dropped by over a quarter from 74,000 to 55,000 per year.

UK employers are now less likely to be inspected, prosecuted, and convicted of safety crimes, and less likely to receive a safety improvement notice. In 2003/04, HSE took legal action against 960 firms but in 2004/05 this had fallen to just 712. With more than 30,000 fatal or major injuries reported to the HSE that year, employers had only a one in 40 chance of being prosecuted following a major accident at work. Over the same period, prohibition and improvement notices fell by 25%. The *Hazards* report *Sure, we'll be safe: HSE is walking away from inspections*, says that the shift away from more dangerous blue collar to safer white collar jobs is masking a serious official failure to make significant inroads into the numbers of deaths and serious injuries at work.

Inspections and prosecutions are the most effective way to stop employers from breaking the law. Whilst good employers have nothing to fear, rogue bosses have never before enjoyed such freedom to neglect safety rules. Negligent employers can now risk their employees health and safety safe in the knowledge that the HSE inspector is only likely to visit once every 13 years. There is a real danger that the UK's safety record will get worse unless more resources are devoted to a greater number of more effective inspections.

*Hazards* editor Rory O'Neill said: "Breaking safety laws is a crime with possible life or death consequences. Safety criminals should be policed, caught, and prosecuted. Tens of thousands die each year as a result of entirely preventable diseases caused by their work... HSE resisted handing over the enforcement figures for several months, and you can see why. However HSE dresses it up, fewer inspections amount to less justice."

For the full report, go to *Hazards*, number 94, Summer 2006 at: <http://www.hazards.org/commissionimpossible/hse> And don't forget the 10% UNISON branch and safety rep discount you'll entitled to when taking out or renewing a subscription to *Hazards*. Email: [sub@hazards.org](mailto:sub@hazards.org) or tel: 0114 201 4265.

## TUC Survey '06

All UNISON safety reps are encouraged to take part in the TUCs sixth safety reps survey. The information it will provide will allow UNISON and the TUC to better focus our campaigns, strategies, and resources. A copy of the questionnaire, which should be returned by 1 August, has been inserted into UNISON's *Focus* along with this newsletter. It's also available on the web at: [http://www.tuc.org.uk/h\\_and\\_s/tuc-11930-f0.cfm](http://www.tuc.org.uk/h_and_s/tuc-11930-f0.cfm)

## Proposed new law for NHS

Consultation is occurring over proposals for a new law to tackle nuisance or disturbance behaviour on NHS premises in England. Plans include a new offence which could lead to prosecution and a £1000 fine, plus the power for NHS bodies to remove individuals from their premises. The full condoc is at: [http://www.dh.gov.uk/Consultations/LiveConsultations/LiveConsultationsArticle/fs/en?CONTENT\\_ID=4130745&chk=EwC%2Bu0](http://www.dh.gov.uk/Consultations/LiveConsultations/LiveConsultationsArticle/fs/en?CONTENT_ID=4130745&chk=EwC%2Bu0) and should be responded to by 1 September. This is an issue of major importance to UNISON's health members, who continue to suffer attacks and abuse by patients and the general public. UNISON health branches are encouraged to consult widely and respond. Check that your Health Branch is responding and let it have your views.

## Stress Conf. '06

*Managing Sickness Absence with Care* is the theme for this years National Stress Network Conference, in Birmingham on 18 November. There will be speakers from the HSE, UNISON, and the Stress Network. Workshops include: managing returns to work, employer sickness absence procedures, disability issues and sickness absence, and the stress management standards and absence. For further details, go to: [http://www.workstress.net/downloads/Conference\\_2006\\_flier.pdf](http://www.workstress.net/downloads/Conference_2006_flier.pdf) , email: [lesvroberts@hotmail.com](mailto:lesvroberts@hotmail.com) , or write to: Les Roberts, 33 Old Street, Upton, Upon Severn, WORCS, WR8 0HN.

## H&S Week 2006

*Safe Start!* is the slogan for the 2006 Health and Safety Week which takes place from 23 October. Dedicated this year to young people, the Week will highlight the need to ensure that they have a safe and healthy start to their working lives, and draw attention to the fact that they run a 50% higher risk of work accidents than more experienced workers. Following concerns expressed at the 2006 Young Members Forum, UNISON's theme will also include Bullying and Harassment, under the slogan, *Respect! is a Health and Safety Issue*.

The European Good Practice Awards will this year recognise organisations, including schools and union branches, that have made an outstanding and innovative contribution to ensure that young people make a safe start in their working lives; promoting risk awareness, management, and prevention. For more, go to: <http://ew2006.osha.eu.int/goodpracticeawards>

UNISON will promote its National Inspection Day, and produce materials and a webpage for the Week. In the meantime go to the website of the European Agency for Safety and Health (<http://ew2006.osha.eu.int>) and keep watch for developments on the HSEs at: <http://www.hse.gov.uk/campaigns/index.htm>