

SAFETY REPRESENTATIVES: YOUR LEGAL RIGHTS

Introduction

Safety Reps possess an impressive array of legal rights, the most comprehensive of any trade union representative in the workplace.

These rights are described in the Health and Safety Executive's (HSE) "brown book" (*Safety Representatives and Safety Committees, 3rd Edition, 1996*) and are derived from the *Safety Representatives and Safety Committees Regulations 1977 (SRSCR)*. The brown book contains the regulations, approved code of practice (ACOP) and guidance on the regulations, including the rights of safety reps' and employer obligations. Copies can be obtained from the HSE at a cost of £5.75 per publication.

Summary of legal rights

The main provisions of the *SRSC* are:

- ❑ That recognised trade unions have the legal right to appoint workplace safety reps (with rights to represent their constituents, make representations to their employer, and represent their constituents in consultations with the HSE or other enforcing agencies)
- ❑ The employer must establish a safety committee within three months of a request by two or more safety reps
- ❑ Safety reps have the right to be consulted (regulation 4A) by their employer in good time on the introduction of any measure which may significantly impact upon the health and safety of employees
- ❑ Safety reps are entitled to inspect designated work places at least once every three months and conduct further inspections if work practices have altered (the employer must have been given reasonable notice in writing)
- ❑ Safety reps can investigate potential hazards, complaints from constituents and the causes of accidents, dangerous occurrences and diseases

Appointing safety reps

According to the *SRSC* (regulation 3) the entitlement to appoint safety reps is the prerogative of independent **trade unions** which enjoy **employer recognition**.

Regulation 3 imposes the following conditions:

- ❑ Where "*reasonably practicable*" a safety rep should have a minimum of two years' employment with their current employer or at least two years "*experience in similar employment*"
- ❑ Safety reps should be employees in the workplace where they perform their duties

If an employer recognises a union for other purposes but declines to recognise a safety rep, the **rep should, in the first instance, inform his or her union**, as the employer are ignoring their legal obligations under the *SRSC* regulations.

An employer must be notified in writing of the names of the union appointed safety reps. The regulations **do not stipulate the precise number of safety reps that should be appointed**, leaving this to negotiation between unions and employers, but the brown book does offer "*appropriate criteria*":

- i. The total numbers employed
- ii. The variety of different occupations
- iii. The size of the workplace and the variety of workplace locations
- iv. The presence of shift systems
- v. The type of work performed and the degree and nature of the hazards

Information provision

Safety reps may seek advice from the **Employment Medical Advisory Service (EMAS)** under *section 55* of the *Health and Safety at Work Act (HSWA)*. EMAS employs full time medical staff, within the remit of the HSE, and local offices can advise on occupational health issues.

Regulation 7 states that "*appointed safety representatives will need to be given information and knowledge over and above that necessary for employees generally to enable them to play an informed part in promoting health and safety at work*".

Safety reps are also entitled to receive information from **HSE inspectors** and **local authority environmental health officers (EHOs)** during their work site visits.

The approved code of practice (ACOP) to the *SRSC* describes the type of information an employer should divulge to safety reps. Included are:

- ❑ *Information about the plans and performance of their undertaking and any changes proposed insofar as they affect the health and safety at work of their employers*
- ❑ *Information of a technical nature about hazards to health and safety and precautions deemed necessary to eliminate or minimise them, in respect of machinery, plant, equipment, processes, systems of work and substances in use at work, including any relevant information provided by consultants or designers or by the manufacturer, importer or supplier of any article or substance used, or proposed to be used, at work by their employees*
- ❑ *Information which the employer keeps relating to the occurrence of any accident, dangerous occurrence or notifiable industrial disease and any statistical records relating to such accidents, dangerous occurrences or cases of notifiable industrial disease*
- ❑ *Any other information specifically related to matters affecting the health and safety at work of his employees, including the results of any measures taken by the employer or persons acting on his behalf in the course of checking the effectiveness of his health and safety arrangements*
- ❑ *Information on articles or substances which an employer issues to homeworkers*

The employer is exempt from the obligation to disclose information in the following circumstances:

- ❑ That disclosure of information “*would be against the interests of national security*”
- ❑ Where it would contravene a prohibition imposed by law
- ❑ Any information relating to an individual (unless consent has been given)
- ❑ Information that would harm the employer’s undertaking
- ❑ Information obtained for the sole objective of bringing, prosecuting or defending legal proceedings

If an employer fails to make specific information available or denies certain facilities to a safety rep, the **rep should, in the first instance, inform his or her union** as an **HSE inspector could issue an improvement notice**.

Facilities for reps

SRSC regulation 5 requires employers to “*provide such facilities and assistance as the safety representatives may reasonably require (including facilities for independent investigation by them and private discussion with the employees)*” during formal inspections.

The TUC advocate that the facilities recommended in the **ACAS Code of Practice on time off for trade union duties and activities** should apply to safety reps. Included are:

- ❑ Accommodation and equipment – such as a room with a desk at the workplace
- ❑ Facilities for storing correspondence
- ❑ The names of new workers

The regulations also permit safety reps the **right to the necessary paid time off work** to perform their safety duties and to attend **TUC or union training courses**. It also advises that reps should attend a course as soon as possible after their appointment.

Legal protection for reps

Regulation 4 exempts safety reps from any legal liability when discharging their safety functions.

The *Trade Union Reform and Employment Rights Act 1993* enhanced the position of safety reps (and employees) by granting them **protection if they are unfairly treated** or suffer a detriment because they:

- ❑ Object to unsafe conditions
- ❑ Perform designated health and safety duties
- ❑ Propose to vacate, or actually vacate, their workplace
- ❑ Propose to take action against a perceived “*serious or imminent danger*”

This protection is applicable irrespective of length of service or hours of work. Claims can be heard in an employment tribunal. Although the law does not require tribunals to reinstate workers who have been dismissed following a health and safety dispute, safety reps should always request reinstatement, as successful compensation awards will be greater if the employer declines.

Safety Committees

An employer is obliged to establish a safety committee **within three months** of a **written request from at least two safety reps.**

When establishing a committee, an employer has a duty:

- ❑ To **consult with the reps** who submitted the request and with **representatives of recognised trade unions** in workplaces that will be covered by the committee
- ❑ To post a prominent notice stating the composition of the committee and the work locations it is responsible for

The HSE has recommended basic objectives for the operation of safety committees, and these include:

- ❑ *"The promotion of co-operation between employers and employees in instigating, developing and carrying out measures to ensure the health and safety at the work of the employees"*
- ❑ That a safety committees remit is not restricted to *"purely safety matters"* but should reflect the functions of safety reps which *"comprise health, safety and welfare at work and so safety committees should therefore be concerned with all relevant aspects of these matters"*
- ❑ Analyzing accident and disease trends
- ❑ Developing safety rules
- ❑ Advising on safety communication

Remember that the HSE state clearly that the function of a safety committee, just like the role of a safety rep, is to monitor the health and safety performance of the employer and both roles are not intended to exonerate an employer from his statutory duties.

"It is management's responsibility to take executive action and to have adequate arrangements for regular and effective checking of health and safety precautions and for ensuring that the declared health and safety policy is being fulfilled. The work of safety committees should supplement these arrangements; it cannot be a substitute for them."

Health and safety disputes

There are **three situations** where an HSE inspector may intervene in disputes involving safety reps:

- i. Where an employer fails to accept the appointment of a safety rep by a recognised trade union
- ii. Where an employer fails to provide adequate information and facilities
- iii. Where an employer ignores the request to discuss the establishment of a safety committee with the trade union following a written request from two safety reps

Although an employer has an obligation to **listen to and consult safety reps**, there is **no legal mechanism** available to compel an employer to implement safety rep's recommendations.

Consultation rights of employees

Employers under the Health and Safety (Consultation with Employees) Regulations 1996 must consult any employees not within groups covered by trade union safety reps.

The employer has the choice of consulting directly with the employees or through elected representatives. If representatives are to be elected, the employer has to make arrangements for the election of **representatives of employee safety (ROES)**. ROES are the representatives elected by the constituency of employees with whom they work.

Trade union members are eligible to contest elections and can represent a workforce, even if the union is not recognised. The regulations permit unions the opportunity to **increase recruitment** by demonstrating that union members are most effective representatives of the workforce.

Rights to time off, training and protection from harassment are basically the same for safety reps and ROES, but ROES do not possess the rights to inspect or to establish a safety committee.

An employer has a duty to consult employees on matters regarding health and safety at work, including:

- ❑ Any change which potentially affects significantly their health and safety at work
- ❑ The procedures for appointing competent people to assist the employer or comply with health and safety laws
- ❑ Information on the risks present in the workplace and the measures to eliminate or control the risks, including what action should be taken by employees
- ❑ The planning of health and safety training
- ❑ The health and safety implications of introducing new technology or new work practices

Checklist: TSSA Safety Reps legal rights

INVESTIGATE

SRSC Regulation 4 – These investigations can be conducted at any time, although it is good practice to notify the employer when and why.

Safety reps have the right to investigate:

- ❑ Potential hazards
- ❑ Dangerous occurrences
- ❑ Causes of accidents and/or ill-health
- ❑ Complaints by employees

INSPECT

SRSC Regulation 5 - The formal inspections of designated work-place areas can be conducted at least once every three months

SRSC Regulation 5 – After a “*substantial change(s)*” in working conditions

SRSC Regulation 6 – After a notifiable accident, dangerous occurrence or disease

SRSC Regulation 5 – After the HSE has published new information relevant to the hazards in the workplace

SRSC Regulation 7 – Relevant documents held by the employer, such as accident statistics and records of monitoring, technical information, information from supplier’s etc

INVOLVE MEMBERS

SRSC Regulation 4 – Investigate safety concerns raised by members

SRSC Regulation 5(3) – Meet privately with members during inspections and after accidents

SRSC Guidance Note 12 – Keep members continuously informed of health & safety issues

SRSC Guidance Note 23 – Publicise inspection results throughout the workplace

TAKE UP ISSUES WITH EMPLOYERS

SRSC Regulation 4 – Make representation to the employer

SRSC Code of Practice 5(c) – Provide notice of hazards, usually in writing

SRSC Regulation 5(c) – Have access to the employer without delay

SRSC Regulation 4 & 9 – Request the formation of safety committees in most workplaces

FACILITIES AND ASSISTANCE

SRSC Regulation 5(3) – Safety reps should have access to “*facilities and assistance*” to perform their safety functions

SRSC Regulation 6(2) – Safety reps should have access to “*facilities and assistance*” to conduct post-accident investigations

SRSC Regulation 4 – Safety reps are entitled to such reasonable time off with pay as “*shall be necessary for the purposes of training.*”

PROVISION OF EMPLOYER INFORMATION

SRSC Code of Practice 6 – Safety reps are entitled to have access to almost all documents relating to health and safety

LIAISE WITH HEALTH & SAFETY INSPECTORS

SRSC Regulation 4 – Represent employees in consultations with enforcing authorities

HSWA section 28(8) – Receive information, including copies of letters and enforcement notices, from inspectors

Sources

1. *Health & Safety Law – A trade unionists' guide* (Labour Research Department, January 1999)
2. *Safety Representatives and Safety Committees* (HSE, 3rd Edition 1996)
3. *The Safety Representatives and Safety Committees Regulations (SRSC) 1977* (HSE)

Further reading

Safety Reps in action – (Labour Research Department, March 1998)

Further Information

□ Health & Safety Executive's Information line – 0541 545500

It is a very useful source of information and you can ask for clarification of HSE regulations, discuss health and safety issues or order leaflets and other literature.

- The British Safety Council – 0181 741 1231
- Department of Health – 0171 210 3000
- Health Education Authority – 0171 222 5300
- The Royal Society for the Prevention of Accidents – 0121 248 2000
- The Institution of Occupational Safety & Health – 0116 257 1399
- TSSA Help desk – 0800 328 2673
- The TUC – 0171 636 4030
- Labour Research Department publications – 0171 928 3649