



Enforcing your rights as a safety representative

Information used were from the following resources:

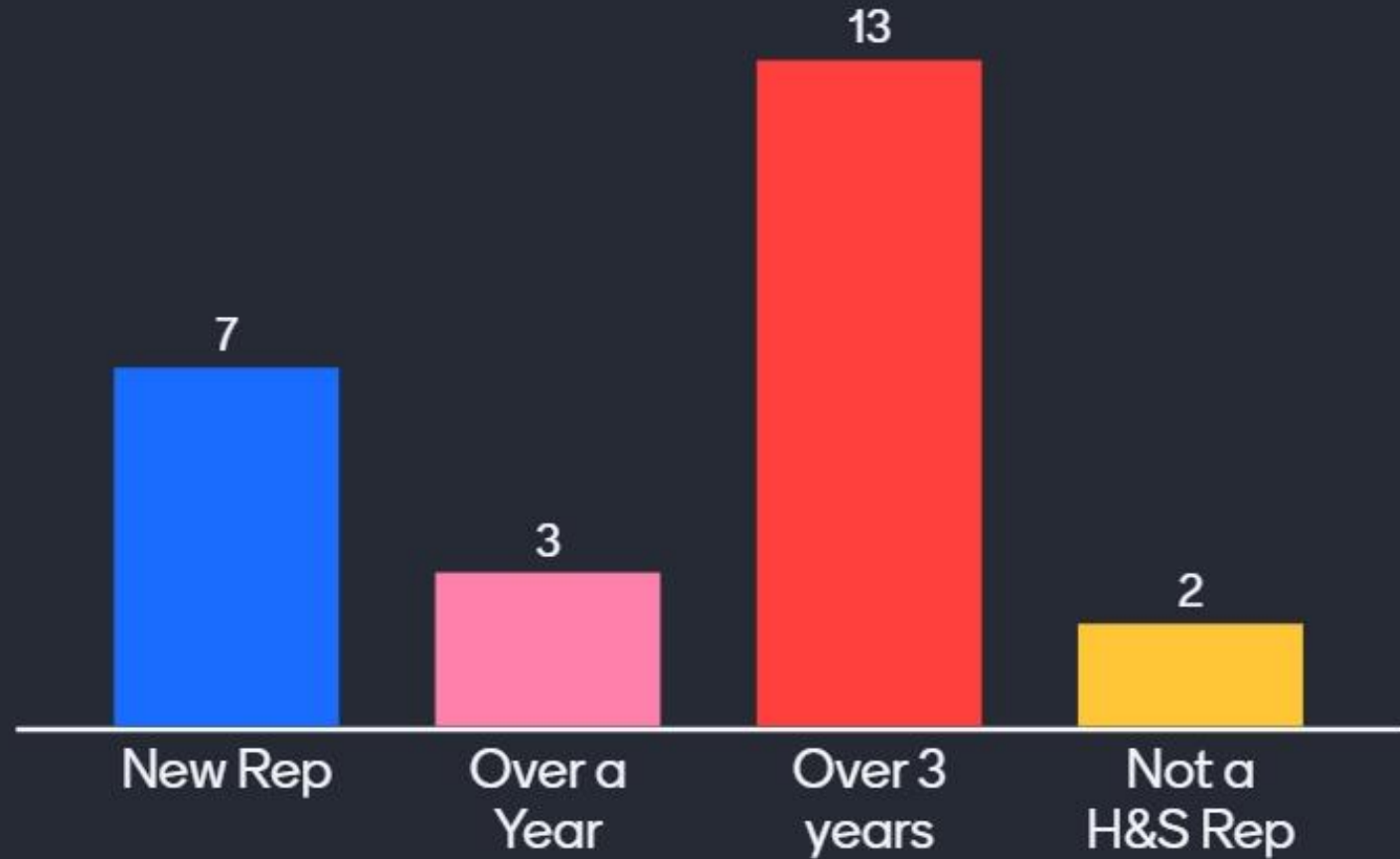
Legislation.gov.uk; TUC Hazards At Work; TUC Risk Assessment; TUC Brown Book (SRSC Regs); LRD H&S Law.

How long have you been a H&S Rep?

From TUC Safety Rep
Connect Breakout Session

23 responses

30 Jun 2024





Is Health
and Safety
law
adequate?

Activity 1

Resources:

- Own Experience

- Complete Checklist – Getting Management to Act
- In groups discuss your thoughts about Health and Safety Law and whether it is fit for purpose, adequate or suitable and sufficient.
- Think about:
 - Its effectiveness or lack of
 - What would you suggest needs improving – if anything.
 - Anything else that causes a problem?
- Nominate one of your group to report back
- Prepare to take part in a whole group discussion

Changes to H&S Law

- The recent and present governments continue to weaken existing health and safety rights and protections, starting with the ERR Act 2013
- Post Brexit the UK is no longer bound by the obligations of new or amended European directives.
- Certain industries have had safety rules changed as soon as the UK left the EU
- The *EU Withdrawal Act 2018* (EUWA) converted all EU-derived legislation and case-law — including H&S law — into national law.
- It “froze” the law as it stood at this point, but allowed the government to decide which laws it wants to retain, repeal or amend, subject to the provisions of the *UK-EU Trade and Cooperation Agreement* (TCA).

Changes to H&S Law

- UK courts are no longer bound by new decisions of the CJEU. Under the EUWA, the Supreme Court can depart from retained EU case law in circumstances where it considers it right to do so. Further regulations allow lower courts to do the same.
- Reference to workers' rights and protections were removed from the *EUWA* now part of Retained EU Law (Revocation and Reform) Act 2023 (REUL)
- But the Smarter Regulation proposals amount to “deregulation via the backdoor” that could further weaken health and safety law
- Consultation on removing provisions contained in the *Working Time Regulations 1998*
- The Law Society flagged up concerns about the lack of parliamentary scrutiny of future legislative changes and that “workers could lose access to long-established rights that now form an integral part of Britain’s reputation as a fair society”, including holiday pay.

Current Health & Safety Law

KEY PROVISIONS

Common Law

- Common law is developed through legal cases rather than Acts of Parliament
- The most important common law duty with regard to health and safety is the duty of care.
- Employers have a duty to take reasonable care to protect their employees and their immediate family from the risk of foreseeable injury, disease or death at work.
- This duty of care is particularly important where there is no specific statutory regulation, such as when dealing with RSI or stress, bullying and violence

Health & Safety at Work Act 1974

- First single Act covering all workers
- Enabling Act: supplemented by regulations
- Established Health & Safety Commission (HSC) & Health & Safety Executive (HSE). HSC & HSE merged in April 2008
- Employers & self-employed have the main general duties but others have duties too

Health & Safety at Work Act 1974

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2. General Duties of employers to their employees

1. It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.
2. Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular
 - a) Safe plant and systems of work
 - b) Safe use, handling, transport and storage of substances and articles
 - c) Provision of information, instruction, training and supervision
 - d) Safe place of work, access and egress
 - e) Safe working environment with adequate welfare facilities

Health & Safety at Work Act 1974

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2. General Duties of employers to their employees

3. Provision of a written safety policy & other arrangements (if 5 or more employees)
4. Appointment of Trade union Safety Reps
5. *Repealed by Employment Protection Act 1975 (c. 71), Sch. 18*
6. Requirement to Consult and Cooperate with Safety Representatives
7. Formation of safety committees where there are recognised trade unions.

Health & Safety at Work Act 1974

2. General Duties of employers to their employees

4. Regulations made by the Secretary of State may provide for the appointment in prescribed cases by recognised trade unions (within the meaning of the regulations) of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and shall have such other functions as may be prescribed.
5. F1.....
6. It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

Health & Safety at Work etc Act 1974

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The Safety Representatives and Safety Committees Regulations 1977

The SRSC Regulations were made under sections 2(4), 2(7), 15(1), 15(3)(b), 15(5)(b), 80(1) and 80(4) of the Health and Safety at Work etc Act 1974 (HSW Act),

as amended by paragraphs 2, 6 and 19 of Schedule 15 to the Employment Protection Act 1975.

The SRSC Regs in the Brown Book contain the Regulations, Codes of Practice and Guidance

UK Law

Primary Legislation

- Act of Parliament
 - Interpretation of Statutes by Superior courts
- Prerogative Orders
 - Orders in Council
 - Orders of Council

Secondary Legislation

- Statutory Instruments
- Orders
- Regulations
- Rules





UK Law Hierarchy

- Act of Parliament
- Regulations/ Statutory Instruments
- Codes of Practice
- Guidance

Note: A breach of a Codes of Practice or Guidance is not necessarily 'illegal' but would need to be directly linked to the primary legislation.

Safety Reps & Safety Committee Regulations 1977

The SRSC Regs were amended by:

- Employment Rights (Dispute Resolution) Act 1998 Chapter 8,
- Management of Health and Safety at Work Regulations 1992
- Health and Safety (Consultation with Employees) Regulations 1996
- Fire Precautions (Workplace) Regulations 1997
- Police (Health and Safety) Regulations
- Quarries Regulations 1999
- Management of Health and Safety at Work Regulations 1999
- Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006
- Regulatory Reform (Fire Safety) Order 2005

Safety Reps and Safety Committee Regulations 1977

- Reg 3 Appointment of safety representatives
- Reg 4 Functions of safety representatives
 - Reg 4A Employer's duty to consult and provide facilities and assistance
 - Schedule 2 Pay for time off allowed to safety representatives
- Reg 5 Inspections of the workplace
- Reg 6 Inspections following notifiable accidents, occurrences and diseases
- Reg 7 Inspection of documents and provision of information
- Reg 8 Cases where safety representatives need not be employees
- Reg 9 Safety committees

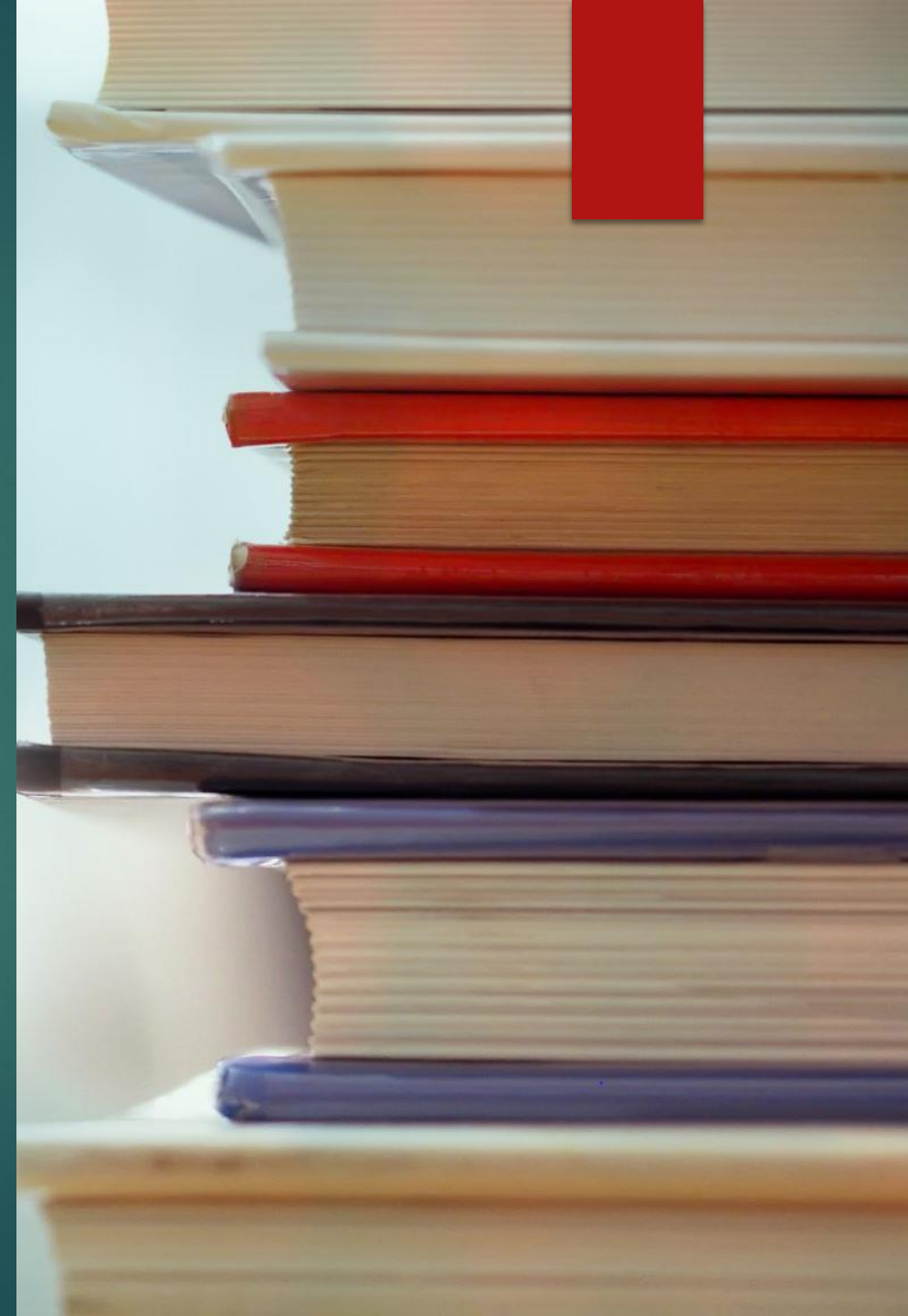
More Health and Safety Regulations

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- Health and Safety (Display Screen Equipment)
- Control of Substances Hazardous to Health Regulations 2002 (COSHH)
- Regulations 1992 (amended 2002)
- Electricity at Work Regulations 1989
- Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- Manual Handling Operations Regulations 1992
- Control of Noise at Work Regulations 2005
- Working at Height Regulations 2005
- Working Time Regulations 1998
- The Cosmetic Products (Safety) Regulations 2008

Other Health & Safety Information

- International Standards
- British Standards
- Institute Guides
- Industry Best Practices
- Manufacturers Information
- HSE Advice and Guidance





So where is
it going
wrong?

What do you think are the main reasons for not being able to enforce your rights?

From TUC Safety Rep
Connect Breakout Session

80 responses

30 May 2024



Worker Involvement and Cooperation

What effective cooperation looks like

- Provision of information & training to enable staff to work safely and healthily
- TU H&S reps carry out their full range of functions
- TU H&S reps are involved in risk assessment.
- TU H&S reps are consulted in good time on matters relating to their health & safety
- Suggestions made by TU H&S reps are considered before H&S decisions are made
- TU H&S reps are comfortable and supported in reporting unsafe acts and conditions.
- The company has key performance indicators for worker involvement, progress against which is reviewed and reported.

What it looks like when done badly or not at all

- There are no arrangements to enable H&S cooperation
- Employees lack the right level of info or training needed to do their job in safely and healthily
- TU H&S reps are not supported to carry out their functions.
- Risk assessments are made without worker engagement.
- Change and new technologies are introduced without involving TU H&S reps in assessing any H&S impact.
- H&S controls are not practical
- No line manager discussion of: - how to do a job safely - the safe use of new equipment.
- Workers do not know how to report H&S concerns or fear making a report will disadvantage them.
- There is little or no evidence of information being cascaded through the organisation.

The Management of Health and Safety at Work Regulations 1999 MHSWR

- It places a legal duty on all employers to carry out risk assessments.
- Where there are five or more workers employed the employer must record the main points of the assessment.
- Risk assessments should be Suitable and Sufficient
- Carried out by Competent Persons
- Risk assessments should be carried out using the principles of prevention as specified in Schedule 1 of the MHSWR
- Consult with TU H&S reps and their employees

Five Steps to Risk Assessment



Schedule 1 General Principles of Prevention

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- a) avoiding risks;
- b) evaluating the risks which cannot be avoided;
- c) combating the risks at source;
- d) adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
- e) adapting to technical progress;
- f) replacing the dangerous by the non-dangerous or the less dangerous;
- g) developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;
- h) giving collective protective measures priority over individual protective measures; and
- i) giving appropriate instructions to employees.

Activity 2

Resources:

- Checklist
- Own Experience

1. Read and complete the Checklist - *Getting Management to Act*
2. Then in groups briefly discuss your thoughts about the legal framework for enforcing your rights.
3. Are there any other issues that give problems
 - What are your thoughts now?
 - What would you change?
 - List your findings on a flipchart

Nominate someone to report back

Prepare to join in a whole group discussion.



Any
Questions?

