



Unite Guidance on Health Surveillance at Work

Health and safety laws place a requirement on employers to consider whether health surveillance of some or all employees is necessary or appropriate. That decision should be based on an assessment of the actual risks in the workplace, and how they should be avoided or controlled. It must be stressed that health surveillance in itself does not deal with the root problem; it is only a means of detecting harmful effects after they have occurred. Greater emphasis should always be placed on avoiding risks, controlling risks at source, and monitoring control measures to make sure they are working, rather than relying on monitoring people's health.

Assessment of work

Employers should consider the value of health surveillance procedures when an assessment of the work shows the following criteria apply.

- (a) there is an identifiable disease or adverse health conditions related to the work concerned;
- (b) valid techniques are available to detect indications of the disease or condition;
- (c) there is a reasonable likelihood that the disease or condition may occur under the pertaining conditions of work; and
- (d) surveillance is likely to further the protection of the health of the employees concerned.

The primary benefit and therefore the objective, of health surveillance should be to detect health effects at an early stage, thereby enabling further harm to be prevented.

There are many instances when health surveillance can be of benefit, and may indeed be advocated by Unite. For example, Unite policy supports the inclusion in all agreements covering the Union's membership, the right to in-plant health screening, in particular covering cancer screening. However, health surveillance could also present serious implications in terms of restriction of employment and screening out of members from certain types of work.

In some cases, because of certain health conditions, it may sometimes be in the best interests of members not to undertake specific tasks. Therefore we need to ensure in all cases that medical examinations or health surveillance are not used to the detriment of members.

Consultation

Unite workplace representatives will need to make judgements about the employers' arrangements and intentions. Therefore, any medical examinations, including pre-employment medical examinations, blood tests, eye tests, hearing tests (audiometry), lung function tests etc. should only take place after full consultation and agreement between the union and the employer.

Purpose of Examination

There should be written justification for carrying out the proposed examination and/or tests. The testing procedure and the reasons for performing it should be explained. If a member has to reach a certain standard in order to qualify for certain employment, the standard should be explained and it should be established that this is a recognised or appropriate standard.

Safeguards on Continuity of Employment

There should be written agreement on the procedures to be followed when a member fails to reach the standard. These procedures should be designed to protect the continuity of employment of the member involved.

Suitability of Medical Personnel

Where specific examinations are involved, the medical personnel's knowledge and expertise in these areas should be established and they should be aware of the workplace conditions. When health monitoring is involved, if this is to be carried out by a nurse or other person, the suitability of their qualifications should be established. In such cases, there is also the need to establish who will be responsible for interpreting the results and to ensure that person is suitably qualified.

Confidentiality of Records

Before examinations or tests take place, it should be clearly established in what form the results will be presented and who will receive them.

If the medical records are to be held by the occupational health nurse or company medical officer, no-one else should have access to the records. Any further access to records should only be allowed following the written permission of the member involved.

Similar conditions should apply to records that are kept by a third party, eg occupational health provider. In the event that any non medical personnel have access to the records, their terms and conditions of employment must include strict confidentiality clauses.

The amount of information to be passed on to management by medical personnel should be established and should amount to no more than an opinion as to the person's suitability to carry out the designated job. Any more medical information than this can only be disclosed with the express permission of the individual concerned. This permission should also identify the specific individuals to which medical information can be disclosed.

If consent is to be relied on, it must be freely given. That means a worker must be able to say 'no' without penalty and must be able to withdraw consent once given. Blanket consent obtained at the outset of employment cannot always be relied on. Consent should not be confined to the testing itself, it should also cover the subsequent recording, use and disclosure of the test results.

Data Protection

Under Section 51 of the Data Protection Act the Information Commissioner has issued an Employment Practices Data Protection Code which covers the information that employers are permitted to keep about workers health.

It may be highly intrusive to obtain information about workers' health. Workers have legitimate expectations that they can keep their personal health information private and that employers will respect their privacy. If employers wish to collect and hold information on their workers' health, they should be clear about the purpose and satisfied that this is justified by real benefits that will be delivered.

Where information about workers' health is to be processed, one of the Act's sensitive data conditions must be satisfied. Employers holding information about workers' health ought to be able to answer 'yes' to one or more of these questions:

- Is the processing necessary to enable the employer to meet its legal obligations, for example to ensure health and safety at work, or to comply with the requirement not to discriminate against workers on the grounds of sex, age, race or disability?
- Is the processing for medical purposes, e.g. the provision of care or treatment, and undertaken by a health professional or someone working under an equivalent duty of confidentiality, e.g. an occupational health doctor?
- Is the processing in connection with actual or prospective legal proceedings?
- Has the worker given consent explicitly to the processing of his or her medical information?

“Mandatory” and optional health surveillance

There is a tendency for companies to contract out their workplace health surveillance to external providers. In such cases it is important that the external providers identify which test are legally required or are a requirement of high level guidance from the HSE, and which tests are optional.

For example, Unite will generally accept the need for medical testing of lift truck operators over the age of 40; for hearing tests (audiometry) of workers exposed to dangerous noise levels: for skin checks on workers exposed to chemicals known to cause skin damage.

In most case, for example, there is no legal requirement for blood tests, general lung function tests, or questions about smoking, drinking or general health. Any questions or test of this nature are not mandatory and workers should be able to refuse to them without any consequences.

Optional tests or questions may be generally helpful and/or desirable and workers can choose to be involved with them if they wish.

Epidemiology

Many work-related diseases do not develop until long after exposure has occurred.

We should therefore seek agreement that medical records, together with details of occupational exposure, should be maintained by the company medical officer or occupational health nurse for an appropriate number of years, depending on the type of exposure. Such records should be maintained even if the member leaves or retires.

Under the COSHH Regs, health records must be kept for at least 40 years from the date of the last entry.

Information

Where medical examinations are required by the company as part of the control of specific hazards, members should be informed in advance of the hazards, of the possible medical effects and the symptoms.

The type of medical examination and the reasons for it should be clearly explained.

Environmental Control

Medical examinations should only be one part of any company's arrangements for ensuring the health and safety of their employees.

Therefore, any agreements for our members to undergo medical or biological surveillance should be coupled with an agreement from the company to control chemical and physical contaminants in the workplace, to eliminate or substitute toxic substances where possible, or control them by enclosure or by efficient ventilation techniques.

Where appropriate, there should also be a comprehensive programme of environmental measurement to define levels of exposure.

Statutory Medical Examinations

Some members may do work which is covered by Regulations requiring them to undergo statutory medical examination. They therefore have a legal duty to attend such examinations.

The employer will be informed by the medical examiner of the fitness of the member to continue the specific work. If passed unfit, the employer cannot legally continue to employ the member in that particular work.

Further information

Data protection The Employment Practices Code Website: www.informationcommissioner.gov.uk (for information, to download the Code and for notifications)