

Unite

HEALTH AND SAFETY

Briefing

Legal and political update: November 2013



Introduction

This briefing is issued to update members on recent health and safety changes, most of which are effective from 1 October 2013.

The briefing highlights changes to legislation to update the Unite Health and Safety Guide which was last issued with minor revisions in February 2013. Unite currently plans to carry out a full revision of the Guide in 2014 and members are advised to keep a copy of this briefing with their H&S guide. It is also posted on the Unite website alongside the guide.

Unite is strongly opposed to deregulation and all weakening of health and safety legislation and will continue to fight further attacks on workers' rights and protections by the Tory led coalition government.

Government attacks on health and safety

Members will be aware of the sustained attack by the Coalition government on workers' employment rights including health and safety protection for workers:

Hostile rhetoric from the Prime Minister and others in government about health and safety protection being "red tape", and a "burden on business", pledging to "kill off health and safety culture for good", and attacking facility time for union representatives, particularly those working in the public sector.

Savage cuts to the budgets of the Health and Safety Executive and local authority enforcers.

Falsely categorising as lower risk some industries, including transport, general manufacturing and service sectors, which renders them not worthy of proactive inspection by the enforcers.

Proposed self-employed exemption: the government plans to amend the Health and Safety at Work etc Act 1974 to exempt an estimated 800,000 self employed people – whose work activities "pose no potential risk of harm to others" from health and safety legislation – at an estimated saving to business of a paltry £300,000 a year.

Deregulation

The government has already taken this action:

■ **Weakening legislation** such as the removal of strict liability from health and safety regulations, reducing accident and ill health reporting requirements and removing the requirement for the HSE to approve health and safety training.

- **Scrapping** key approved codes of practice such as the code supporting the Management of Health and Safety at Work Regulations 1999 and replacing it with guidance and weakening other guidance.
- **Trivialising harassment** and violence at work by repealing the Equality Act 2010 provisions on third party harassment so that employers will not be liable under equality legislation for third party harassment of staff for example, by customers or members of the public. These provisions were repealed under the Enterprise and Regulatory Reform Act 2013 and with effect from 1 October 2013.

Weakening of health and safety legislation

Two revised health and safety regulations took effect on 1 October 2013. These are:

- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR 2013)
- Amended Health and Safety (First Aid) Regulations 1981.

RIDDOR 2013

The Health and Safety Executive (HSE) has formally implemented changes to reduce the scope of mandatory reporting of workplace injuries for businesses.

The new regulations include the change which took effect on 1 October 2012 when the requirement to report accidents which result in a worker being incapacitated for more than three days was changed to seven days. However, the employer must still record "over three day" injuries.

1. The additional main changes are significant and are as follows:

- The classification of 'major injuries' to workers is replaced with a shorter list of specified injuries
- The previous list of 47 types of industrial diseases is being replaced with eight categories of reportable work-related illness
- Fewer types of dangerous occurrences require reporting.

2. There are no significant changes to the reporting requirements for:

- Fatal accidents
- Accidents to non-workers (members of the public)

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3. Amendment to the Safety Representatives and Safety Committees Regulations 1977:

RIDDOR 2013 also amends the SRSC regulations as follows:

Regulation 6 (inspections following notifiable accidents, occurrences and diseases) has been amended as follows (additions in red):

Reg 6(1) Where there has been **an over three day injury**, a notifiable accident or dangerous occurrence in a workplace or a notifiable disease has been contracted there and... [regulation continues].

Reg 6(3) In this Regulation "notifiable accident or dangerous occurrence" and "notifiable disease" mean any accident, dangerous occurrence or disease, as the case may be, notice of which is required to be given by virtue of any of the relevant statutory provisions within the meaning of section 53(1) of the 1974 Act, **and "over three day injury" means an injury required to be recorded in accordance with Regulation 12(1)(b) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations Regulations 2013.**

Further information

RIDDOR – the regulations

<http://www.legislation.gov.uk/ukxi/2013/1471/contents/made>

HSE leaflet: Brief Guide to RIDDOR 2013
<http://www.hse.gov.uk/pubns/indg453.pdf>

HSE information about reportable incidents
<http://www.hse.gov.uk/riddor/reportable-incidents.htm>

First aid

The Health and Safety (First Aid) Regulations 1981 have been amended to remove the requirement for HSE to approve first aid training and qualifications. The new approach applies to businesses of all sizes and from all sectors.

Further Information

The regulations, and guidance for employers, are available on the HSE website at <http://www.hse.gov.uk/firstaid/>

Removal of strict liability – a further attack on workplace health and safety

Professor Löfstedt, in his review of health and safety, identified "potential unfairness" that arises in his view where health and safety at work regulations impose a strict liability on employers, making them legally responsible to pay compensation despite having done all that was reasonable to protect their employees. Professor Löfstedt recommended that regulatory provisions which impose strict liability should be reviewed.

No review took place. Instead the Government, without prior consultation, inserted a clause in the Enterprise and Regulatory Reform Act 2013 (ERRA). ERRA became law on 1 October 2013. Section 69 of ERRA amends Section 47 of the Health and Safety at Work Act 1974.

The effect of Section 69

The government has:

- Weakened health and safety legislation by removing strict liability in health and safety regulations.
- Effectively removed the right of injured people to rely upon breaches of health and safety regulations when pursuing a legal claim. An injured person will now be left to rely solely upon proving his/her claim by reference to common law negligence, which will make it much more difficult to succeed.

Important advice regarding personal injury claims

Members should not be deterred by this development from seeking advice from Unite's solicitors with regard to personal injury claims.

If a member requires legal assistance as a result of an accident at work or being diagnosed with an occupational disease or any other personal injury they should telephone Unite's panel solicitors directly on 0800 709 007 or telephone their local Unite office to obtain direct access to a Unite solicitor – **WITHOUT DELAY.**

For more information about legal services please go to this link on the Unite website:
<http://www.unitetheunion.org/how-we-help/legalservices/>

This briefing is issued by Unite the union.

General Secretary: Len McCluskey
Unite House
128 Theobalds Road
London WC1X 8TN

www.unitetheunion.org

Unite Health and Safety Unit contacts

National Health and Safety Advisers

Bud Hudspith bud.hudspith@unitetheunion.org
Susan Murray susan.murray@unitetheunion.org

Unite health and safety website resources pages
<http://www.unitetheunion.org/unite-at-work/healthsafety/>

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