New Reps Induction Resource Pack Virtual Students

UNITE LAY MEMBERS EXPENSE FORM – EDUCATION - REGIONAL

IMPORTANT: SEE OVERLEAF FOR INSTRUCTIONS AND GUIDANCE

Your Name:	**Membership No:**		
Home Address:		Post Code:	
(Has address changed since last expenses claim Yes / No)		YES	NO
CONFIRM OR UPDATE YOUR BANK DETAILS			
Bank Name:	Account No:		
Account Name:	Sort Code:		

Course Title/Number:		Venue:
Dates of Course	From:	To:
Date **&** Time Leaving for Meeting:		Date **&** Time Returning Home:

Travel Costs					**Total Amount**
By Car	From Postcode	To Postcode	No. miles	@ 45/25p mile + 5p pm per additional passenger (See over)	
By Rail (2nd class fare) - Receipted (If warrant used, specify warrant number)					
By Air (only if authorised in advance) - Receipted					
Taxi (only if essential) - Receipted					
Other Travel (Bus / Tube / Parking / Tolls) - Receipted					
Non-Receipted Travel (Please list separately overleaf)					

Fees		**No.**	**Total Amount**
FEES – A separate invoice must be attached	@ agreed rate		

Daily Allowances			
***Note* -- The allowances below can only be claimed if in line with Unite's Lay Members Expense Policy**			
5 Hour	£5.00		
Special Regional 5 Hour allowance	£5.00		
10 Hour	£10.00		
15 Hour	£25.00		
Evening Meal (return home after 20.00 and no meal provided by Unite)	£10.00		
Incidental Overnight (UK/RoI/Gibraltar)	£5.00		

Overnight Accommodation	**No.**	**Total Amount**
Bed & Breakfast cost only - Must be receipted		

TOTAL CLAIM	

Signature of Member:			Date:
Authorised by Event Organiser:	Name:	Signature:	**Date:**

Form: EDExpGBP0419

INSTRUCTIONS

Please complete this form in BLOCK CAPITALS in ink. For constitutional meetings, please sign and send to the addresses below. For all other meetings, please ensure that this form is signed (authorised) by the person organising the event you attended, as well as (Central or Regional) Administration and either hand it to them or send it (signed) to the addresses below.

Where to send your form: All members for non-National meetings & conferences - to appropriate Regional Office.

Non-Receipted Travel

Date	Type of Travel	To	From	Fare
			Total	

Guidance Notes

Mileage

1. Mileage may only be claimed for the distance driven. Where travel is shared using only one car, only the driver may claim.
2. It is important to declare the starting and destination postcodes.
3. 45p per mile may be claimed for the first 10,000 miles per tax year and 25p per mile thereafter. A further 5p per mile is claimable per additional member transported to the meeting. Tax years are from April 6th to April 5th the following year. Members may wish to maintain a cumulative record of mileage claimed per year.

Please explain complicated car journeys; multiple stops, diversions, road-works, completed routes or any reason why your journey is not from point A to point B and return. List the name and membership number for any passenger transported in member's vehicle.

Loss of Pay

To be eligible for loss of pay, members need to meet the following three criteria:

1. Be in employment.
2. Would have worked on the day(s) claimed for.
3. Have not been given paid release by their employer to attend the Union activity.

It is the accepted practice that member's (with the support, if necessary, of their local union official) will negotiate time off with pay from their employer for Union responsibilities. If the employer will not co-operate, the appropriate Regional Secretary/National Officer must be approached to attempt to resolve the problem.

In the circumstances where this is unsuccessful, loss of pay will be reimbursed as follows:

The Loss of Pay claim is to be calculated based upon actual net basic pay lost (including shift premium but excluding overtime) plus make-up for lost employer pension contributions.

Losses will only be paid upon the production by the member of evidence documenting the loss – e.g., payslip, confirmation from employer, etc. In order to avoid delay in payment, members intending to claim loss of pay should speak to Regional/National Administration in advance so that they clearly understand how the loss will be calculated and what evidence they will be required to produce.

For the avoidance of doubt, at the insistence of HMRC, the former regime where members could claim up to £55.80 per day without producing evidence of loss is rescinded.

Self-employed members are not eligible for Loss of Pay but can claim their gross loss via invoice. Members should consult with Regional/National administrators in advance to be fully advised as to the procedure to be followed.

WRONG CLAIMS

Any member whose claim(s) are subsequently proven to be wrong must re-pay the Union any amounts overpaid and shall, where the claim(s) are found to be fraudulent (a proper investigation having been conducted), the member shall, as appropriate, be subject to disciplinary procedures of the Union. The Union shall likewise pay the member any amounts underpaid.

Changing the world of work for good

TUC Education

LEARNING AGREEMENT

For funding purposes, the Trades Union Congress (TUC) is required to collect anonymised learner data from courses that award a TUC qualification. The further education college provides this anonymised data to the TUC who use it for statistical reporting.

Which union are you a member of?

Receive training updates from TUC Education With your consent, we will send you emails about newly released training resources, classroom courses, exclusive events and the latest news from TUC Education. You can opt out at any time. First name:
Last name:
Email address:
☐ I'd like to receive information via email about online training resources, events, courses and the latest news from TUC Education.

To read the full TUC Education privacy statement and see more information about your rights, please visit www.tuceducation.org.uk/privacy

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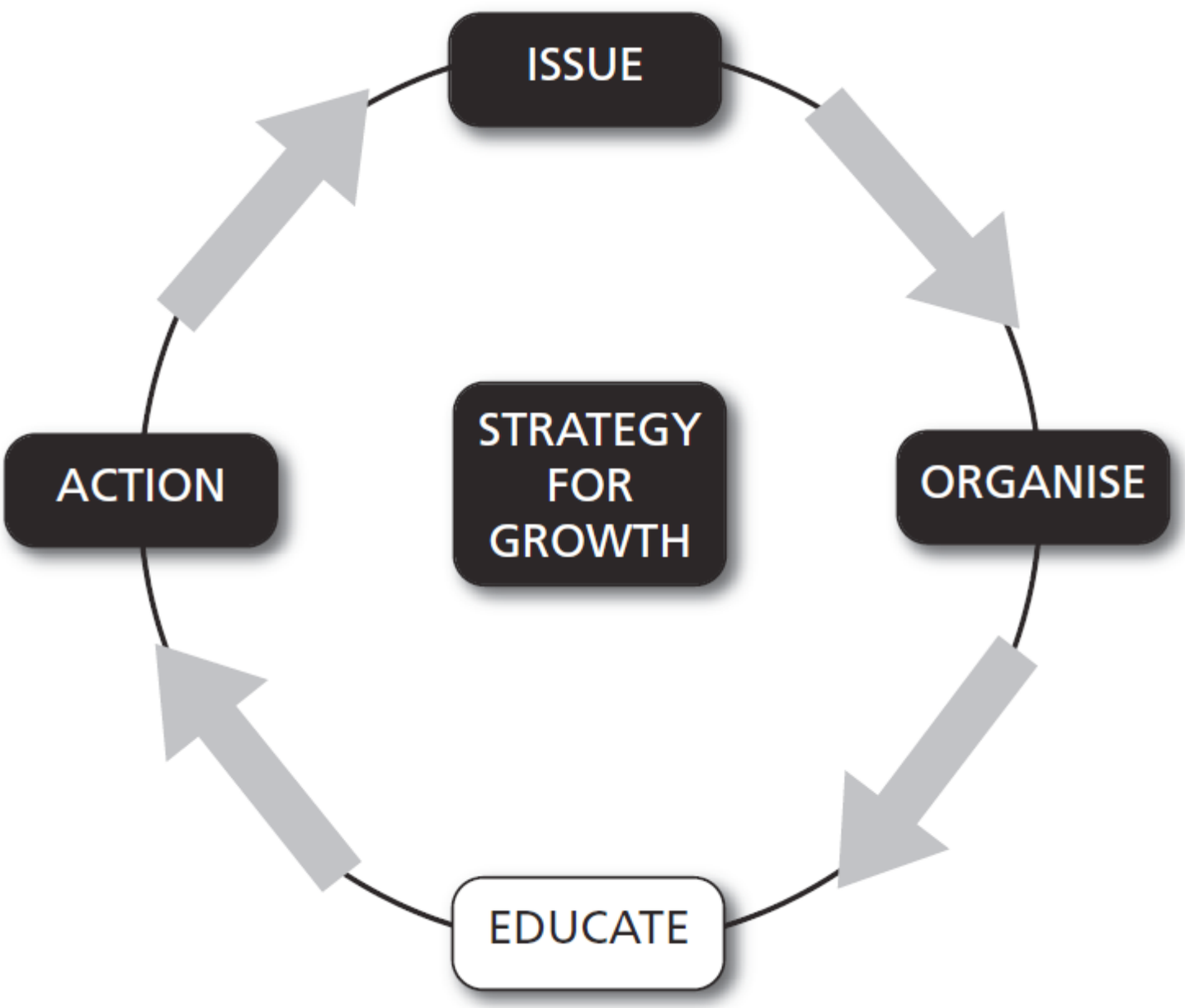
Appendix Four Unite Zero Tolerance, Dignity at work
Appendix Five Union learning reps handbook
Appendix Six Unite Family rights
Appendix Seven ACAS – Disciplinary and Grievance

NEW REPS INDUCTION



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ACTIVITY 2: - Unite Reps Roles and Responsibilities

Introduction

There are a number of roles available as a Unite Activist, each has its primary functions along with its strengths and weaknesses in terms of legislation. Unite Representatives are elected by the members in their workplace, this can be a formal process where elections need to take place due to more people wanting to take up the role than roles available. Or, in some cases simply being the only person to volunteer. We also find that many activists take on more than one role within their workplace.
The skills you will develop throughout this training are crucial to each role. A knowledge of each role and how it functions means you can gain support or guidance from other reps in the workplace. It also means you can look at alternative approaches to dealing with your management or supporting your members.

Minimum rights for union representatives

Workplace reps, health and safety reps and union learning reps have certain minimum rights which are outlined below. Equality reps do not have statutory recognition for their role as with the three listed. Generally the role is either written into local agreements for recognition or done as a duel role where an employer will not recognise the elected rep for release etc.

The minimum rights include: -

Paid time off for union duties:

If you're an employee and an official (or an elected representative such as a Workplace Rep or Safety Rep – Duties include:

- Negotiating terms and conditions of employment, helping with disciplinary or grievance procedures on behalf of union members (including accompanying workers at disciplinary or grievance hearings), or negotiating issues about union membership
- Discussing issues that affect union members, such as redundancies or the sale of the business
- Being trained for your union work

If you're a union learning representative (ULR), you have the right to take reasonable paid time off for this during working hours, as long as your union has given notice in writing to your employer that you're a learning representative and your union is recognised by your employer.
The duties for which a ULR can take paid time off are:

- To analyse learning or training needs
- To provide information and to arrange or promote learning or training
- To discuss learning or training with the employer
- For training as a learning representative

Unpaid time off for trade union activities:

Employees who are members of a recognised union are allowed to take a reasonable amount of unpaid time off during the working day to take part in union activity or to talk to a union learning representative.

You can take time off for:

- Going to workplace meetings to talk about and vote on negotiations with your employer
- Going to a meeting with a full-time union official to discuss issues relevant to the workplace
- Voting in a union election

If you're a union official, such as a workplace representative, you can al so take un paid time off t o go t o union conferences and meetings, including policy-making committees of the union.

Although, there's no statutory right to be paid for this time off, some employers make payments in some circumstances. Your contract of employment may explain whether you have the right to be paid.

As time off for union activities is not usually paid, meetings are often held during breaks such as lunchtime. Although industrial action is a trade union activity there is no right time off for it. However, union officials do have the right to time off to take part in negotiations to avoid industrial action.

What is 'reasonable'?

It's important for union officials and representatives, and employers, to be reasonable in handling requests for time off for union duties and activities. There's no legal definition of reasonable time off. You need to take into account the type of employer, the need to keep production going, the importance of health and safety at work and the amount of time off you've already had. Those seeking time off for trade union duties and/or activities should provide their employer with as much notice as possible and give details of the purpose of the time off and how much time off is required.

The ACAS Code of Practice on Time off for trade union duties and activities recommends that unions and individual employers have formal agreements about time off for union activities.

What if you are not allowed to take time off?

If you are sacked for exercising your rights to take time off for union activities or duties it will be unfair. You can then make an unfair dismissal claim to an Employment Tribunal (or Industrial Tribunal in Northern Ireland). You can also apply to the Employment Tribunal for an interim relief order, under which your employer has to take you back until your case is decided. You should consult your full time union official about interim relief.

If your employer won't let you take reasonable time off for union duties or activities, or if you are a trade union official or learning representative and your employer doesn't pay you for some or all of the time off, you have grounds for a complaint to an Employment Tribunal.

Before taking the matter to an Employment Tribunal try and sort out the problem through discussion with your employer, perhaps involve a full time union officer or see if your employer will involve ACAS, Complaining to an Employment Tribunal should be a last resort. It's better to try to resolve disputes through discussion and conciliation.

The Advisory, Conciliation and Arbitration Service (ACAS) publishes a Code of Practice about

rights to time off for union duties and activities, and offers free, confidential and impartial advice on all employment rights issues. You can call the ACAS helpline on 0300 123 1100 from 8 am to 6 pm Monday to Friday and 9 am to 1 pm Saturday.

Alternatively, your local Citizens Advice Bureau (CAB) can provide free and impartial advice. You can find your local CAB office in the phone book or online. And clearly, members, workplace representatives and other representatives of Unite or other trade unions can get help, advice and support from them. You can download the ACAS Code of Practice at www.acas.org.uk

Minimum rights as a safety representative:

Your employer must allow you "such time off with pay during … working hours" as is necessary for you to carry out your various functions and to undergo approved Unite or TUC training. The law clearly states that it's a function of a safety representative to "undergo such training in aspects of those functions as may be reasonable in all the circumstances" and that it's the legal duty of the employer to allow safety representatives time off with pay. Your employer must "make available to safety representatives information within the employer's knowledge, necessary to enable them to fulfil their functions …"

- Information on the plans and performance of the organisation and any changes proposed that may affect health and safety
- Technical information about hazards and necessary precautions, including information provided by manufacturers, hygiene measurements, and so on information and statistical records on accidents, dangerous occurrences and notifiable diseases; and
- Any other information relevant to health and safety at work, such as measures to check the effectiveness of health and safety arrangements (e.g. audit results, consultants' reports, etc.)

There are exemptions, however, such as information the provision of which would be against the interests of national security or the disclosure of which would contravene a prohibition order imposed by law. Information that would damage the employer's business and information that relates to an individual, unless his or her consent has been given, are also exception.

Under section 2 (4) of the 1974 Health and Safety at Work etc. Act and 4a (2) of the Management of Health and Safety at Work Regulations 1999, employers have had to "provide such facilities and assistance as safety representatives may reasonably require for the purposes of carrying out their functions."

Union Learning Reps (ULRs)

A union learning representative (ULR) is a member of an independent trade union,
recognised by their employer, and elected by their union in the workplace.
ULR's have been instrumental in championing the importance of training and development. ULR's work very hard to boost the image and strengthen the organisation of their union within the workplace, they are also instrumental in many organising campaigns across Unite the Union. They can help widen union membership across the board and in underrepresented groups such as migrant workers.

The ULR Role Involves: -

- Promoting the value of learning
- Supporting learners
- Arranging learning/training
- Supporting workplace learning centres to embed learning in the workplace

ULR Statutory functions: -

- Analysing learning or training needs
- Arranging and supporting learning and training
- Consulting the employer about carrying out such activities
- Preparing to carry out the above activities

Statutory rights for ULR's and Union Members

- Union learning representatives are entitled to reasonable paid time off for training and for carrying out their duties as set out above.
- Union members are entitled to unpaid time off to consult their learning representative, as long as they belong to a bargaining unit for which the union is recognised.

For more information, see the **ACAS Code of Practice - Time off for trade union duties and activities.**

The Importance of a learning agreement

Your workplace may already have a number of agreements with your employer; these might include recognition and a facilities agreement. Negotiating a learning agreement helps embed learning in the workplace and secures employer commitment to supporting lifelong learning and skills. Working together, union learning reps and stewards can ensure that workplace learning projects and initiatives support the wider work of the union in the workplace, company or organisation.

The agreement can also allow you to easily recruit new members and have access to all employees not just your members. As a ULR you also have an additional support network within your region. Unite has in place a team of Union Learning Organisers (ULO's) who can help and support new ULR's and other reps wanting to progress the learning and organising agenda in your workplace. A model Unite learning agreement can be found in the Reps Resources area of www.learnwithunite.org

Widening participation

One of unions' key contributions to the learning and skills agenda is the ability of Union Learning Reps (ULRs) to engage learners that are otherwise hard for providers to reach. ULRs offer support and guidance to learners throughout their learning journey and it is important to note that the support is ongoing.

ULRs don't just engage learners, they offer information, advice and guidance, carry out initial assessments of skills, link learners up with providers or assist them through union learning centres, arrange flexible provision for shift workers and plan next learning steps.

The ULR can play a pivotal role in any workplace campaign as many of the things you will need to do, such as create promotional materials, speak to members etc. can be done as part of the role of the ULR and are clearly defined within the ACAS guide.

The Role of the Equality Representative

As a union equality representative you are an important part of the union team, promoting equality in the workplace and community. Some union equality reps will also be shop stewards, safety or union learning reps, while others will be union equality reps only. Some will be general equality representatives, while others will be more specialist e.g. women's rep, disability champion, black

members' rep, young members, LGBT, or harassment listening support rep. While union equality reps currently have no legal rights to time off, UNITE has negotiated agreements with employers, the role is included in our rules, and the campaign for statutory rights for union equality reps continues.

The Equality Rep role involves

- Work alongside other union reps such as shop stewards, union learning reps, safety reps and branch officers to recruit, organise, represent and involve all members.
- Be aware of harassment, discrimination and equality issues in your workplace and community.
- Check how representative the workforce and union membership are of the community, and organise with others to identify and remove barriers to equality.
- Listen to members' equality issues and concerns, and link up with the shop steward and other union reps to help address them.
- Be involved in discussions with other union reps and members on priorities for pay and bargaining with management, so that everyone is aware of the need to prevent discrimination and injustice.
- Check policies and agreements with shop stewards to keep them up-to-date with equality legal changes and good practice.
- Build involvement of under-represented members and encourage diversity in union reps, so that all workers are involved and represented.
- Play your part with others in taking forward key union campaigns such as equal pay, family friendly and flexible working, zero tolerance of harassment and bullying, and equality for migrant and agency workers.

Remember, as an elected union equality rep, you are entitled to back-up and support from your union Unite:

- From other union reps
- From union equality reps education courses
- From your UNITE officer
- From the Regional Women's & Equalities Organiser – if you aren't sure about anything, don't worry on your own, make contact

As soon as you are elected make sure you let the union know nationally and regionally so that you can get support and information. Finally, it is important to remember that shop stewards/workplace representatives have the authority to negotiate in the workplace so;

You can only enter negotiations when you have the agreement of your shop steward or workplace representative.

ACTIVITY 3: - Unite Reps Rights

Useful codes of practice and legislation for you as a Unite Representative

There are a number of ACAS guides relating to a whole range of topics. The first of these and follows in its entirity in this section is the ACAS Code of Practice - Time off for trade union duties and activities. An A to Z list of all ACAS guides can be found in the rep resource section under the emloyment law tab of www. learnwithunite.org or by searching for ACAS A to Z on the internet.

Other legislation which is included here covers the Safety Representatives and Safety Committee regulations 1977 and the Equality Act 2010.

Safety representatives and safety committees

The Regulations, Codes of Practice and guidance relating to the Safety Representatives and Safety Committees Regulations, 1977.

This booklet also lists all other health and safety legislation that requires employers to consult with employees or safety representatives.

March 2015 edition

Contents

Introduction by the TUC

Trade unions have always played a vital role in ensuring that people go home safe and well from their work. We know that the safest and healthiest workplaces are those where organisations involve their trade union health and safety representatives. Engaging them in decisions about health and safety provides opportunities for:

- their practical knowledge of the work to be shared
- concerns to be raised and solutions offered
- the workforce to have a say
- a culture of good health, safety and welfare which is achieved through trust and consensus.

This is recognised by our health and safety laws which set down legal obligations on employers to work with recognised trade unions in the belief that this is the best way to develop a positive health and safety culture in the workplace.

Culture of cooperation

Section 2(6) of the Health and Safety at Work Act 1974 obliges employers to make and maintain arrangements that will enable employer and employees *"to **cooperate** effectively in promoting and developing measures to ensure the health and safety at work of the employees"* and thereafter checking these measures work. So the arrangements for cooperation are an indicator of employer commitment: the priority given to protecting people's lives.

Legal status

This book, known as the 'Brown Book' (because of its origins), is an extract from the Health and Safety Executive (HSE) publication called *Consulting workers on health and safety. Safety Representatives and Safety Committees Regulations 1977 (as amended) and Health and Safety (Consultation with Employees) Regulations 1996 (as amended). Approved Codes of Practice and guidance*[(a)]. HSE calls it L146 for short. The Brown Book only contains the 1977 regulations (plus associated code of practice and guidance) which are reproduced with HSE's permission. The rest of L146 has no relevance to organisations where trade unions are recognised.

Using the Brown Book in your organisation

Where trade union health and safety representatives are appointed and active, they offer a sole means of consulting and engaging with everyone in the workforce. Trade unions and their employers may therefore use the Brown Book safe in the knowledge that it outlines the health and safety consultation law applicable to their workplace.

It complements good practice guidance developed by HSE with Acas (the Advisory, Conciliation and Arbitration Service) called *Involving your workforce in health and safety: Good practice for all workplaces* (HSG263)[(b)].

(a) L146 (second edition) published in 2014 (ISBN 978 0 7176 6461 0)
(b) HSG263 published in 2008 (ISBN 978 0 7176 6227 2)

Use both publications to stimulate the development and agreement of your organisation's policy and arrangements for effective worker involvement. This will ensure best practice in promoting health and safety, assessing the impact of evolving strategy (such as new technologies and organisational change) and protecting people from harm. Buy-in and consensus can result in the achievement of high standards of health and safety, boosting organisational morale and reputation.

The table below provides a summary of what good and bad worker involvement look like.

What effective cooperation looks like	What it looks like when done badly or not at all
• There is provision of information and training to enable staff to work in a safe and healthy manner. • Trade union H&S representatives carry out their full range of functions either independently or, if agreed, jointly with management. • Trade union H&S representatives are involved in risk assessment. • Trade union H&S representatives are consulted in good time on matters relating to their health and safety and the results of risk assessments (e.g. systems of work including procedures). • Suggestions made by trade union H&S representatives are considered before health and safety decisions are made with an explanation from management if suggestions are rejected. • Trade union H&S representatives 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.	• There are no arrangements or measures to enable health and safety cooperation between the employer and workforce. • Employees lack the right level of information or training needed to do their job in a safe and healthy manner. • Trade union H&S representatives are not supported to carry out their functions. • Risk assessments are made without worker engagement. • Change and new technologies are introduced without involving trade union H&S representatives in assessing any health and safety impact. • Health and safety controls are not practical, forcing workers to work around difficulties. • No supervisor/line manager discussion of: - how to do a job safely - the safe use of new equipment. • Workers do not know how to report health and safety concerns or fear making a report will disadvantage them. • There is little or no evidence of information being cascaded through the organisation.

Preface

The law requires you to consult your employees on matters that affect their health and safety. There are two sets of regulations that deal with this subject according to the circumstances in your workplace, so this book is split into two parts. Part 1 contains:

(a) the Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500), as amended by the Employment Rights (Dispute Resolution) Act 1998 Chapter 8, the Management of Health and Safety at Work Regulations 1992 (SI 1992/2051), the Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513), the Fire Precautions (Workplace) Regulations 1997 (SI 1997/1840), the Police (Health and Safety) Regulations 1999 (SI 1999/860), the Quarries Regulations 1999 (SI 1999/2024), the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242), the Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006 (SI 2006/594) and the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541);
(b) the Code of Practice on safety representatives;
(c) the Code of Practice on time off for the training of safety representatives;
(d) guidance on the Regulations.

Part 2 contains:

(a) the Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513), as amended by the Employment Rights (Dispute Resolution) Act 1998 Chapter 8, the Fire Precautions (Workplace) Regulations 1997 (SI 1997/1840), the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242), and the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541);
(b) guidance on the Regulations.

The regulations are shown in *italics*, the Codes of Practice on the Safety Representatives and Safety Committees Regulations 1977 are shown in **bold**, and the guidance on regulations is in plain text. The relevant Code and guidance appear alongside each regulation.

The Safety Representatives and Safety Committees 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 Health and Safety (Consultation with Employees) Regulations were made under powers in section 2 of the European Communities Act 1972.

The Approved Codes of Practice were made under section 16 of the HSW Act and under the Safety Representatives and Safety Committees Regulations 1977 by the then Health and Safety Commission to give some practical guidelines on those Regulations.

Background

The former Health and Safety Commission decided that it would be wrong to try and make regulations which cater in detail for the wide variety of circumstances in which they will have to be applied. Accordingly, the purpose of the Safety Representatives and Safety Committees Regulations and Codes of Practice is to provide a legal framework for employers and trade unions to reach agreement on arrangements for health and safety representatives and health and safety committees to operate in their workplace.

The Health and Safety (Consultation with Employees) Regulations set out the legal framework which will apply if employers have employees who are not covered by representatives appointed by recognised trade unions. It is possible therefore that in some workplaces employers may have to consult under both sets of regulations. The purpose of both sets of regulations is to provide a framework within which employers can develop effective working arrangements to suit their business.

To supplement the statutory framework, the revised guidance helps to clarify what the law means. The Health and Safety Executive (HSE) hope it will be of help to employers, trade unions, appointed and elected health and safety representatives, and members of health and safety committees. This second edition, originally published in 2012, has been subject to some minor amendments and corrections to reflect changes to linked HSE guidance and revisions/revocations to other, related pieces of legislation. The guidance remains substantially the same.

Further good practice guidance for employers is available in *Involving your workforce in health and safety* (HSG263).

Employers and employees can agree to alternative arrangements for joint consultation on health and safety at work as long as such arrangements do not detract from the rights and obligations created by the above regulations. Recognised trade unions can at any time invoke the rights given by the Safety Representatives and Safety Committees Regulations and the obligations on the employer would then apply.

Introduction

1 This book gives you advice on how to consult and involve your employees and their representatives on health and safety matters at work under the Safety Representatives and Safety Committees Regulations 1977 (as amended) and the Health and Safety (Consultation with Employees) Regulations 1996 (as amended).

2 It complements the guide *Involving your workforce in health and safety* (HSG263). There is also a free leaflet, *Consulting employees on health and safety: A brief guide to the law* (INDG232(rev1)), as well as advice on HSE's website at www.hse.gov.uk/involvement.

3 This book should apply to the majority of workplaces. However, the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 apply to offshore workplaces. There are also specific requirements to consult your employees or their health and safety representatives in other health and safety legislation which applies to specific industries. Where it is more appropriate and relevant, you should refer to industry-specific guidance for your workplace.

4 The law sets out how you must consult your employees in different situations and the different choices you have to make. In some workplaces you may have to consult under both sets of regulations. There is more advice on the relationship between the two sets of regulations and how they affect you and your workforce in *Involving your workforce in health and safety* (HSG263).

Consulting where both sets of regulations apply

5 A range of workforce structures and arrangements exist in workplaces so it is not unusual to have some parts of a business where employees are members of recognised trade unions and others where they are not. In this case, you may have to consult both:

(a) health and safety representatives (called 'safety representatives' in the Regulations) appointed by recognised trade unions under the Safety Representatives and Safety Committees Regulations 1977;
(b) the remainder of your workforce, either directly where practical, or through elected health and safety representatives (called 'representatives of employee safety' in the Regulations) under the Health and Safety (Consultation with Employees) Regulations 1996.

6 Where you already have existing consultation arrangements that satisfy health and safety law, there is no requirement to change them. However, you may want to review your arrangements to make sure that they are the right ones for your organisation now.

Resolving disputes

7 Disagreements that may arise between employers and trade unions or employees on the interpretation of these regulations should be settled through the normal machinery for resolving employment relations problems. The exceptions to this are matters covered by regulation 11 in the Safety Representatives and Safety Committees Regulations and regulation 7(3) Schedule 2 of the Health and Safety (Consultation with Employees) Regulations.

8 In certain circumstances, it may be helpful to involve the Advisory, Conciliation and Arbitration Service (Acas). Health and safety inspectors (from HSE and local authorities) can enforce for failure to comply with legal duties on procedural matters (eg failure to set up a health and safety committee where there is evidence that a request has been made in the correct fashion). They will apply HSE's *Enforcement policy statement* in deciding what action to take (see www.hse.gov.uk/enforce).

9 There are two circumstances in which representatives may present a complaint to an employment tribunal – if employers have failed to allow time off, or if they have failed to pay health and safety representatives while carrying out their functions, or undergoing training. The time off with pay must be necessary and the training must be reasonable in all the circumstances (see paragraphs 42 and 43). Health and safety representatives are also protected against victimisation and dismissal by rights conferred under other employment legislation (for example part of the Employment Rights Act 1996).

Part 1 Safety Representatives and Safety Committees Regulations 1977 (as amended)[a]

Regulation 1

Citation and commencement

Regulation 1

These Regulations may be cited as the Safety Representatives and Safety Committees Regulations 1977 and shall come into operation on 1 October 1978.

Code of Practice 1

10 The Safety Representatives and Safety Committees Regulations 1977 concern safety representatives appointed in accordance with section 2(4) of the Health and Safety at Work etc Act 1974 (the HSW Act) and cover:

(a) prescribed cases in which recognised trade unions may appoint safety representatives from among the employees;
(b) prescribed functions of safety representatives.

11 Section 2(6) of the Act requires employers to consult with safety representatives with a view to the making and maintenance of arrangements which will enable them and their 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. Under section 2(4) safety representatives are required to represent the employees in those consultations.

12 This Code of Practice was approved by the Health and Safety Commission with the consent of the Secretary of State for Employment. It relates to the requirements placed on safety representatives by section 2(4) of the Act and on employers by the Regulations and takes effect on the date the Regulations come into operation.

13 The employer, the recognised trade unions concerned and safety representatives should make full and proper use of the existing agreed industrial relations machinery to reach the degree of agreement necessary to achieve the purpose of the Regulations and in order to resolve any differences.

(a) Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500) as amended by 1998 c.8, SI 1992/2051, 1996/1513, 1997/1840, 1999/860, 1999/2024, 1999/3242 and 2006/594.

Guidance 1

Consulting employees if you recognise a trade union

14 The Safety Representatives and Safety Committees Regulations 1977 (as amended) prescribe the cases in which recognised trade unions may:

(a) appoint health and safety representatives;
(b) specify the functions of such health and safety representatives;
(c) set out the obligations of employers towards them.

15 When appointing health and safety representatives, the trade union should inform the employer of the group or groups of employees represented. For example, they may say a health and safety representative will represent:

(a) only their own members;
(b) all the employees in a particular category; or
(c) employees who are not members of a trade union recognised by the employer, but are part of a group of employees for which a union is recognised.

Guidance 1

16 If union health and safety representatives cover only their own members, or employees are not members of a group that unions have agreed to cover, then the employer needs to make arrangements to consult these employees either directly or through representatives elected by them for this purpose under the Health and Safety (Consultation with Employees) Regulations 1996. For more information see Part 2 of this publication.

17 Disagreements between employers and employees about the interpretation of these Regulations – with the exception of matters covered by regulation 11 – should be addressed through the normal machinery for resolving employment relations disputes. In certain circumstances, it may be helpful to involve Acas.

Regulation 2

Interpretation

Regulation 2

(1) In these Regulations, unless the context otherwise requires –

"the 1974 Act" means the Health and Safety at Work etc. Act 1974;

"the 1975 Act" means the Employment Protection Act 1975;

"employee" has the meaning assigned by section 53(1) of the 1974 Act and "employer" shall be construed accordingly;

"recognised trade union" [..][(a)] means an independent trade union as defined in section 30(1) of the Trade Union and Labour Relations Act 197 4[(b)] which the employer concerned recognises for the purpose of negotiations relating to or connected with one or more of the matters specified in section 29(1) of that Act in relation to persons employed by him or as to which the Advisory, Conciliation and Arbitration Service has made a recommendation for recognition under the Employment Protection Act[(c)] which is operative within the meaning of section 15 of that Act;

"safety representative" means a person appointed under Regulation 3(1) of these Regulations to be a safety representative;

"welfare at work" means those aspects of welfare at work which are the subject of health and safety regulations or of any of the existing statutory provisions within the meaning of section 53(1) of the 1974 Act;

"workplace" in relation to a safety representative means any place or places where the group or groups of employees he is appointed to represent are likely to work or which they are likely to frequent in the course of their employment or incidentally to it.

(a) Inserted by the Police (Health and Safety) Regulations 1999 and revoked by the Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006.
(b) 1974 c.52. The relevant law is now found in the Trade Union and Labour Relations (Consolidation) Act 1992. Section 178(3) defines recognition as 'recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining'. Collective bargaining is defined by reference to the matters listed in section 178(1). These include, for example, negotiations on terms and conditions of employment, allocation of work and duties of employment between workers or groups of workers, and disciplinary matters.
(c) This refers to former procedure and is now irrelevant. See section 70A and Schedule A 1 to the Trade Union and Labour Relations (Consolidation) Act 1992.

Regulation 2

(2) The Interpretation Act 1889[a] shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) These Regulations shall not be construed as giving any person a right to inspect any place, article, substance or document which is the subject of restrictions on the grounds of national security unless he satisfies any test or requirement imposed on those grounds by or on behalf of the Crown.

[Regulation 2A Bodies to be treated as recognised trade unions][b]

(a) 1889 c.63. The Interpretation Act 1978 (1978 c.30) is now in force.
(b) Regulation 2A inserted by the Police (Health and Safety) Regulations 1999 and revoked by the Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006.

Code of Practice 2

18 In this Code:

(a) 'the 1974 Act' means the Health and Safety at Work etc Act 1974 and 'the Regulations' means the Safety Representatives and Safety Committees Regulations 1977 (SI 1977 No 500);*
(b) words and expressions which are defined in the Act or in the Regulations have the same meaning in this Code unless the context requires otherwise.

*** As amended by 1998 c8, Sls 1992/2051, 1996/1513, 1997/1840, 1999/860, 1999/2024, 1999/3242 and 2006/594.**

Regulation 3

Appointment of safety representatives

Regulation 3

(1) For the purposes of section 2(4) of the 1974 Act, a recognised trade union may appoint safety representatives from amongst the employees in all cases where one or more employees are employed by an employer by whom it is recognised.

(2) Where the employer has been notified in writing by or on behalf of a trade union of the names of the persons appointed as safety representatives under this Regulation and the group or groups of employees they represent, each such safety representative shall have the functions set out in Regulation 4 below.

(3) A person shall cease to be a safety representative for the purposes of these Regulations when –

(a) the trade union which appointed him notifies the employer in writing that his appointment has been terminated; or
(b) he ceases to be employed at the workplace but if he was appointed to represent employees at more than one workplace he shall not cease by virtue of this sub-paragraph to be a safety representative so long as he continues to be employed at any one of them; or
(c) he resigns.

(4) A person appointed under paragraph (1) above as a safety representative shall so far as is reasonably practicable either have been employed by his employer throughout the preceding two years or have had at least two years experience in similar employment.

Guidance 3

19 When the Safety Representatives and Safety Committees Regulations were introduced, employees in a mine were specifically excluded from the provision of section 3(1). This was amended by regulation 13 of the Health and Safety (Consultation with Employees) Regulations 1996, so that recognised trade unions can now appoint safety representatives to represent employees working at coal mines. This change does not affect the provision in the Mines and Quarries Act 1954 for the appointment of workers' inspectors.

20 Although there is some overlap between that provision and regulation 5 of the Safety Representatives and Safety Committees Regulations 1977, HSE believes that, in practice, employers and trade unions will be able to reach agreement on arrangements which will meet the requirements of both the Mines and Quarries Act 1954 and the Safety Representatives and Safety Committees Regulations 1977.

Who appoints health and safety representatives?

21 The Regulations mean that recognised trade unions may appoint health and safety representatives to represent the employees. Any disputes between employers and trade unions about recognition should be dealt with through the normal employment relations machinery. Acas can offer advice and guidance relating to trade union recognition issues, and may provide conciliation where there is a dispute.

Deciding who to appoint as a health and safety representative

22 The Regulations require appointed health and safety representatives to normally have either worked for their present employer throughout the preceding two years or have had at least two years' experience in similar employment. This is to ensure they have the necessary experience and knowledge of their particular type of work to enable them to make a responsible and practical contribution to health and safety in their workplace. However, circumstances may arise where it will not be reasonably practicable for the appointed health and safety representative to possess such experience (eg where the employer or workplace location is newly established, where work is of short duration, or where there is a high labour turnover). In such cases, trade unions will appoint the most appropriate representatives, in relation to their experience and skills.

Who do health and safety representatives represent?

23 Normally, recognised trade unions will appoint representatives to represent a group or groups of workers of a class for which the union has negotiating rights. However, limiting representation to a particular group or groups should not be regarded as a hindrance to the representative raising general matters affecting the health and safety of employees as a whole.

24 Equally, these general principles do not prevent a health and safety representative representing, by mutual agreement between the appropriate unions, more than one group or groups of employees (eg in a small workplace or within the organisation of a small employer when the number of recognised trade unions is high relative to the total numbers employed).

Guidance 3

25 Additionally, a health and safety representative employed by the same employer can represent employees who do not work at the same site as them. There is nothing in these Regulations to prevent a health and safety representative being appointed to represent a group of employees at more than one site. Therefore, if you have a multi-site business it may be appropriate for a representative to represent a group of employees across a number of sites, provided this is practical. This is to enable the best arrangements for representation to be made, although you should discuss and agree such arrangements with the recognised trade unions.

How many health and safety representatives should be appointed?

26 When trade unions are considering the numbers of health and safety representatives to be appointed in a particular case, paragraph 13 of the Code of Practice should be borne in mind so that employers and the recognised trade unions can reach the degree of agreement necessary to achieve the purpose of the Regulations. Appropriate criteria would include:

(a) the total numbers employed;
(b) the variety of different occupations;
(c) the size of the workplace and the variety of workplace locations;
(d) the operation of shift systems;
(e) the type of work activity and the degree and character of the inherent dangers.

27 In the case of a large employer with multiple sites, the number of representatives ought to reflect the structure of the business. There should be good communication between the health and safety representatives and the management team responsible for making health and safety decisions, so that issues are promptly picked up and addressed.

28 There may be a need for flexibility of approach both to the question of the group (or groups) of the employees the health and safety representative represents, and to the number of safety representatives that might be appropriate in particular circumstances. Examples of such circumstances might include:

(a) workplaces with rapidly changing situations and conditions as the work develops and where there might be rapid changes in the numbers of employees, eg building and construction sites, shipbuilding and ship repairing, and docks etc;
(b) workplaces from which the majority of employees go out to their actual place of work and subsequently report back, eg goods and freight depots, builders' yards, service depots of all kinds;
(c) workplaces where there is a wide variety of different work activities going on within a particular location;
(d) workplaces with a specially high process risk, eg construction sites at particular stages such as demolition, excavations, steel erection etc, and some chemical works and research establishments;
(e) workplaces where the majority of employees are employed in low-risk activities, but where one or two processes or activities or items of plant have special risks connected with them;
(f) workplaces where work activities may be spread over several different, but linked, locations.

Regulation 4

Functions of safety representatives

Regulation 4

(1) In addition to his function under section 2(4) of the 1974 Act to represent the employees in consultations with the employer under section 2(6) of the 1974 Act (which requires every employer to consult safety representatives with a view to the making and maintenance of arrangements which will enable him and his employees to cooperate 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), each safety representative shall have the following functions –

(a) to investigate potential hazards and dangerous occurrences at the workplace (whether or not they are drawn to his attention by the employees he represents) and to examine the causes of accidents at the workplace;
(b) to investigate complaints by any employee he represents relating to that employee's health, safety or welfare at work;
(c) to make representations to the employer on matters arising out of sub-paragraphs (a) and (b) above;
(d) to make representations to the employer on general matters affecting the health, safety or welfare at work of the employees at the workplace;
(e) to carry out inspections in accordance with Regulations 5, 6 and 7 below;
(f) to represent the employees he was appointed to represent in consultations at the workplace with inspectors of the Health and Safety Executive and of any other enforcing authority;
(g) to receive information from inspectors in accordance with section 28(8) of the 1974 Act; and
(h) to attend meetings of safety committees where he attends in his capacity as a safety representative in connection with any of the above functions;

but, without prejudice to sections 7 and 8 of the 1974 Act, no function given to a safety representative by this paragraph shall be construed as imposing any duty on him.

(2) An employer shall permit a safety representative to take such time off with pay during the employee's working hours as shall be necessary for the purposes of –

(a) performing his functions under section 2(4) of the 1974 Act and paragraph (1) (a) to (h) above;
(b) undergoing such training in aspects of those functions as may be reasonable in all the circumstances having regard to any relevant provisions of a code of practice relating to time off for training approved for the time being by the Health and Safety Commission under section 16 of the 1974 Act.

In this paragraph "with pay" means with pay in accordance with [Schedule 2][(a)] to these Regulations.

(a) Words in square brackets substituted by SI 19991860, regulation 3(1),(4).

Regulation 4A

Employer's duty to consult and provide facilities and assistance[a]

Regulation 4A

(1) Without prejudice to the generality of section 2(6) of the Health and Safety at Work etc Act 1974, every employer shall consult safety representatives in good time with regard to –

(a) the introduction of any measure at the workplace which may substantially affect the health and safety of the employees the safety representatives concerned represent;
(b) his arrangements for appointing or, as the case may be, nominating persons in accordance with regulations 6(1) and 7(1)(b) of the Management of Health and Safety at Work Regulations 1992;[b]
(c) any health and safety information he is required to provide to the employees the safety representatives concerned represent by or under the relevant statutory provisions;
(d) the planning and organisation of any health and safety training he is required to provide to the employees the safety representatives concerned represent by or under the relevant statutory provisions; and
(e) the health and safety consequences for the employees the safety representatives concerned represent of the introduction (including the planning thereof) of new technologies into the workplace.

(2) Without prejudice to regulations 5 and 6 of the Regulations, every employer shall provide such facilities and assistance as safety representatives may reasonably require for the purpose of carrying out their functions under section 2(4) of the 1974 Act and under these Regulations.

(a) This regulation was added by a schedule to the Management of Health and Safety at Work Regulations 1992, now replaced by the Management of Health and Safety at Work Regulations 1999.
(b) This is now in accordance with regulations 7(1) and 8(1)(b) of the Management of Health and Safety at Work Regulations 1999, or article 13(3)(b) of the Regulatory Reform (Fire Safety) Order 2005.

Schedule 2

Pay for time off allowed to safety representatives

Schedule 2
Regulation 4(2)

Regulation 4(2)

(1) Subject to paragraph 3 below, where a safety representative is permitted to take time off in accordance with Regulation 4(2) of these Regulations, his employer shall pay him –

(a) where the safety representative's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time;
(b) where the safety representative's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work (ascertained in accordance with paragraph 2 below).

Schedule 2
Regulation 4(2)

(2) The average hourly earnings referred to in paragraph 1 (b) above are the average hourly earnings of the safety representative concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(3) Any payment to a safety representative by an employer in respect of a period of time off –

(a) if it is a payment which discharges any liability which the employer may have under section 57 of the Employment Protection Act 1975[(a)] in respect of that period, shall also discharge his liability in respect of the same period under Regulation 4(2) of these Regulations;
(b) if it is a payment under any contractual obligation, shall go towards discharging the employer's liability in respect of the same period under Regulation 4(2) of these Regulations;
(c) if it is a payment under Regulation 4(2) of these Regulations shall go towards discharging any liability of the employer to pay contractual remuneration in respect of the same period.

(a) 1975 c.71.

Code of Practice 4

29 In order to fulfil their functions under section 2(4) of the Act, safety representatives should:

(a) take all reasonably practicable steps to keep themselves informed of:

(i) the legal requirements relating to the health and safety of persons at work, particularly the group or groups of persons they directly represent;
(ii) the particular hazards of the workplace and the measures deemed necessary to eliminate or minimise the risk deriving from these hazards;
(iii) the health and safety policy of their employer and the organisation and arrangements for fulfilling that policy;

(b) encourage co-operation between the employer and their employees in promoting and developing essential measures to ensure the health and safety of employees and in checking the effectiveness of these measures;
(c) bring to the employer's notice (normally in writing) any unsafe or unhealthy conditions, working practices or unsatisfactory arrangements for welfare at work which come to their attention, whether on an inspection or day-to-day observation. The report does not imply that all other conditions and working practices are safe and healthy or that the welfare arrangements are satisfactory in all other respects.

30 Making a written report does not prevent bringing such matters to the attention of the employer or his representative by speaking to them directly in the first instance, particularly in situations where speedy remedial action is necessary. It will also be appropriate for minor matters to be handled through this sort of direct discussion without the need for a formal written approach.

Code of Practice 4

Code of Practice approved under regulation 4(2)(b) of the Regulations on Safety Representatives and Safety Committees (SI 1977/500)

31 The function of safety representatives appointed by recognised trade unions, as set out in section 2(4) of the HSW Act, is to represent employees in consultations with employers about health and safety matters. Regulation 4(1) of the Safety Representatives and Safety Committees Regulations (SI 1977 No 500)* prescribes other functions of safety representatives appointed under those Regulations.

32 Under regulation 4(2)(b) of those Regulations, the employer has a duty to permit those safety representatives such time off with pay during the employee's working hours as shall be necessary for the purpose of 'undergoing such training aspects of those functions as may be reasonable in all the circumstances'.

*** As amended.**

33 As soon as possible after their appointment, safety representatives should be permitted time off with pay to attend basic training facilities approved by the Trades Union Congress (TUC) or by the independent union or unions which appointed the safety representatives. Further training, similarly approved, should be undertaken where the safety representative has special responsibilities or where such training is necessary to meet changes in circumstances or relevant legislation.

34 With regard to the length of training required, this cannot be rigidly prescribed, but basic training should take into account the functions of safety representatives placed on them by the Regulations. In particular, basic training should provide an understanding of the role of safety representatives, of safety committees, and of trade unions' policies and practices in relation to:

(a) the legal requirements relating to the health and safety of those at work, particularly the group or class of people they directly represent;
(b) the nature and extent of workplace hazards, and the measures necessary to eliminate or minimise them;
(c) the health and safety policy of employers, and the organisation and arrangements for fulfilling those policies.

35 Additionally, safety representatives will need to acquire new skills in order to carry out their functions, including safety inspections, and in using basic sources of legal and official information and information provided by, or through, the employer on health and safety matters.

36 Trade unions are responsible for appointing safety representatives. When the trade union wishes a safety representative to receive training relevant to their function, it should inform management of the course it has approved and supply a copy of the syllabus, indicating its contents, if the employer asks for it. It should normally give at least a few weeks' notice of the safety representatives it has nominated to attend. The number of safety representatives attending training courses at any one time should be that which is reasonable in the circumstances, bearing in mind such factors as the availability of relevant courses and the employers' operational requirements. Unions and managers should endeavour to reach agreement on the appropriate numbers and arrangements and resolve any problems that may arise using the relevant agreed procedures.

Guidance 4

What must you consult health and safety representatives about?

37 Regulation 4A specifically requires employers to consult health and safety representatives on:

(a) introducing any measure in the workplace that may substantially affect the health and safety of those employees that the health and safety representatives concerned represent;
(b) arrangements for getting a competent person or persons to help them comply with health and safety requirements. The Management of Health and Safety at Work Regulations 1999 ('the Management Regulations') require employers to make such an appointment unless they are self-employed and not in partnership with any other person, and have sufficient training experience, knowledge or other qualities to deal with these matters themselves. The Management Regulations also require the nomination of competent people to implement procedures for dealing with serious and imminent danger, ie evacuating people at work from the premises. There are also provisions in the Regulatory Reform (Fire Safety) Order 2005 requiring employers to take measures regarding fire fighting and nominating employees to implement those measures. Regulation 4A requires employers to consult health and safety representatives on how they plan to go about this;
(c) information they must give their employees on risks to health and safety, and preventive measures, including information they are already required by other regulations to give their employees. Appendix 1 sets out some relevant details. For example, under the Management Regulations, employers must tell their employees about risks identified by the risk assessment they have to carry out, and their preventive and protective measures. They must also tell their employees about the emergency procedures, and who will carry out evacuation procedures. Regulation 4A requires employers to consult health and safety representatives about these matters before telling them what has been decided and before they make changes;
(d) the planning and organising of any health and safety training they must provide to employees under health and safety law. For example, the Management Regulations have a requirement to instruct and train employees when they are first recruited, and when they are to be exposed to new or increased risks. Appendix 2 sets out some of the other relevant regulations;
(e) the health and safety consequences of new technology employers plan to bring into the workplace if there could be implications for employees' health and safety, and for risks and hazards they are exposed to (eg moving from paper-based systems to new display screen equipment, or introducing new lifting aids instead of manually lifting parts).

Consulting health and safety representatives on risk assessments

38 Under the Management Regulations, you have a duty to assess the health and safety risks your employees are exposed to while they are at work. The risk assessment process needs to be practical. Seeking the views of employees and their health and safety representatives, who will have practical knowledge to contribute, will help to ensure you take account of all relevant information. Appendix 3 provides further information on requirements for employers to consult health and safety representatives and/or employees.

Guidance 4

39 Consulting employees or their representatives about matters to do with their health and safety is good management, as well as being a requirement under health and safety law. Employees are a valuable source of information and can provide feedback about the effectiveness of health and safety management arrangements and control measures. Where safety representatives exist, they can act as an effective channel for employees' views.

40 Safety representatives' experience of workplace conditions and their commitment to health and safety means they often identify potential problems, allowing the employer to take prompt action. They can also have an important part to play in explaining safety measures to the workforce and gaining commitment.

When must you consult health and safety representatives?

41 Regulation 4A requires that employers consult health and safety representatives 'in good time'. Good time is not defined. However, it means that before making decisions involving work equipment, processes or organisation which could have health and safety consequences for employees, you should allow time to:

(a) provide health and safety representatives with information about what you propose to do;
(b) give the health and safety representatives an opportunity to express their views about the matter in the light of that information; and then
(c) take account of any response.

Your duty to permit paid time for health and safety representatives' training

42 Regulation 4(2) requires employers to allow health and safety representatives paid time as is necessary, during working hours, to perform their functions. In practice, this means they should carry out their functions (such as workplace inspections or attending health and safety committee meetings) as part of their normal job, and employers will need to take account of this in their workload.

43 Regulation 4(2) also requires employers to allow health and safety representatives paid time as is necessary to receive training in aspects of their functions that is 'reasonable in all the circumstances'. The important point is that what is reasonable in all the circumstances is not always just what is necessary. Training does not have to be the necessary bare minimum to fulfil the safety representatives' functions but it does have to be reasonable in all the circumstances (what must be necessary is time off with pay). When considering what is reasonable in the circumstances, bear in mind the guidance in the Code of Practice approved under regulation 4(2)(b) – see paragraphs 31-36. You can also refer to general principles of case law in this area. Case law is fact-specific and subject to change so you can check the current position as you must ensure your arrangements satisfy the law.

Guidance 4

Rama v South West Trains (1997)*

The Claimant had applied to undertake a union-organised health and safety course in his capacity as a health and safety representative. His employers refused to pay him to attend, on the basis that the particular course was not necessary for him to carry out his functions as a health and safety representative under regulation 4 of the 1977 Regulations.

The Court agreed with the employer and held that attendance was not necessary. The Claimant appealed and the Employment Appeals Tribunal upheld the appeal. **It agreed that the Tribunal had equated what was reasonable with what was necessary. Necessity does not always determine all aspects of reasonableness**, and there is no suggestion in the Code of Practice that the reasonableness of training under regulation 4 is to be equated with, or limited to, what is necessary to fulfil his functions under the 1977 Regulations.

Whether attendance on the Stage 2 course was reasonable was referred back to the Tribunal to determine. When determining what is reasonable, each case should be decided on its own merits.

* EWHC Admin 976 5/11/1997.

Duthie v Bath and North East Somerset Council (2003)*

In determining whether to permit an employee paid time for training, the duty on an employer under regulation 4(2) is to permit such paid time as is 'necessary' for the purposes of undergoing training that is 'reasonable' in all the circumstances.

In determining what is **reasonable in all the circumstances**, the Employment Appeals Tribunal agreed with Counsel for the Claimant that it was necessary to **look at a number of features**, such as the contents of the course, whether it involved basic training, how it related to the particular functions that the employee was performing, whether the training would have helped him perform those particular functions, and considering whether the employer would be able to manage if the employee was permitted time to attend the particular course.

* LTL 1 /5/2003.

Davies v Neath Port Talbot County Borough Council (1999)*

A part-time employee, who was a union health and safety representative and who attended a full-time course, was entitled to be paid on the same basis as a full-time employee for time spent on the course. Attendance at such a course was 'work' within the meaning of Article 119 of the EC Treaty, and it followed that part-time workers should be paid on the same basis as their full-time counterparts when attending such courses away from work.

* LTL 26/10/99.

Guidance 4

Functions of health and safety representatives

44 The Regulations state that no function given to a health and safety representative shall be construed as imposing any duty on them other than those they may have as an employee under sections 7 and 8 of the HSW Act. For example, a health and safety representative, by accepting, agreeing with or not objecting to a course of action taken by the employer to deal with a health or safety hazard, does not take upon themselves any legal responsibility for that course of action. HSE shall not institute criminal proceedings against any health and safety representative for any act or omission by them regarding the performance of functions assigned to them by the Regulations or indicated by the Code of Practice. Similar arrangements have been made with the other enforcing authorities.

Representing

45 Recognised trade unions will have well-established methods of communication within a workplace, or within a particular employer's undertaking. These will be the appropriate channels by which the appointed health and safety representatives can keep the members of the group or groups they represent informed on all matters significantly affecting their health, safety and welfare at work. Appointed health and safety representatives will also need to establish close relationships with other appointed health and safety representatives, including those appointed by trade unions other than their own. For example, they could look at hazardous situations, and develop a common approach to carrying out their responsibilities.

46 It is important that health and safety representatives can take matters up with management without delay if they need to. Therefore, they should be able to easily contact the employer or their representatives, whoever is appropriate depending on local circumstances. It may not be desirable to specify one individual for all contacts, bearing in mind that hazards could involve differing degrees of urgency and importance.

47 Large, multi-site businesses will also need to have arrangements for communicating messages appropriately between health and safety representatives on sites and management centrally. This is to ensure that health and safety representatives have a clear idea as to who is authorised to act as the employer's representative for the purpose of these Regulations.

48 Section 28(8) of the HSW Act requires inspectors to give certain types of information to employees and employers. Where health and safety representatives have been appointed under the Regulations, they are the appropriate people to receive this information on behalf of the employees.

Inspections

49 Health and safety representatives should record when they have made an inspection. Examples of the kinds of forms they might use, both to record that an inspection has been made (F2534) and to draw the employer's attention to an unsafe or unhealthy condition (F2533), are available on pages 20 and 21, and on the HSE website at www.hse.gov.uk/forms/incident/f2534.pdf and www.hse.gov.uk/forms/incident/f2533.pdf. A copy of each completed form should be given to the employer.

A suggested form to be used for recording that an inspection by a safety representative(s) has taken place – F2534

Number

Safety Representative: Inspection Form

Record that an inspection by a safety representative or representatives has taken place

Date of inspection | Time of inspection

Area of workplace inspected

Name(s) and signature(s) of safety representative(s) taking part in the inspection	Name(s) and signature(s) of employer (or his representative(s)) taking part in the inspection (if appropriate)

(This record does not imply that the conditions are safe and healthy or that the arrangements for welfare at work are satisfactory)

Record of receipt of form by the employer (or his representative)

Signature | Date

A suggested form to be used for notifying the employer, or their representative, about unsafe and unhealthy conditions and working practices and unsatisfactory arrangements for welfare at work – F2533

Number

Safety Representative: Report Form

Notification to the employer (or his representative) of conditions and working practices considered to be unsafe or unhealthy and of arrangements for welfare at work considered to be unsatisfactory.

Date and time of inspection or matter observed	Particulars of matter(s) notified to employer or his representative (include location where appropriate)	Name(s) of safety representative(s) notifying matter(s) to employer (or his representative	**This column to be completed by the employer** Remedial action taken (with date) or explanation if not taken. This information to be relayed to the safety representative(s)

(This record does not imply that the conditions are safe and healthy or that the arrangements for welfare at work are satisfactory)

Signature(s) of safety representative(s) _____ Date _____

_____ _____

Record of receipt of form by the employer (or his representative)

Signature _____ Date _____

Regulation 5

Inspections of the workplace

Regulation 5

(1) Safety representatives shall be entitled to inspect the workplace or a part of it if they have given the employer or his representative reasonable notice in writing of their intention to do so and have not inspected it, or that part of it, as the case may be, in the previous three months; and may carry out more frequent inspections by agreement with the employer

(2) Where there has been a substantial change in the conditions of work (whether because of the introduction of new machinery or otherwise) or new information has been published by the Health and Safety Commission or the Health and Safety Executive relevant to the hazards of the workplace since the last inspection under this Regulation, the safety representatives after consultation with the employer shall be entitled to carry out a further inspection of the part of the workplace concerned notwithstanding that three months have not elapsed since the last inspection.

(3) The employer shall 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) for the purpose of carrying out an inspection under this Regulation, but nothing in this paragraph shall preclude the employer or his representative from being present in the workplace during the inspection.

(4) An inspection carried out under section 123 of the Mines and Quarries Act 1954[(a)] [or regulation 40 of the Quarries Regulations 1999][(b)] shall count as an inspection under this Regulation.

(a) 1954 c.70.
(b) Inserted by the Quarries Regulations 1999.

Guidance 5

Frequency and organisation of inspections

50 The Regulations deal with the frequency of formal inspection by the appointed health and safety representatives. In some circumstances, where a high-risk activity or rapidly changing circumstances are confined to a particular area of a workplace or sector of an employee's activities, it may be appropriate for more frequent inspections of that area or sector to be agreed.

51 The Regulations require appointed health and safety representatives to give reasonable written notice to the employer of their intention to conduct a formal inspection of the workplace. Where possible, the employer and the health and safety representatives should plan a programme of formal inspections in advance, which will itself fulfil the conditions for providing notice. Variations in this planned programme should be subject to agreement.

52 HSE sees advantages in formal inspections being jointly carried out by the employer representatives and health and safety representatives, but this should not prevent health and safety representatives from carrying out independent investigations or private discussion with employees. The health and safety representatives ought to co-ordinate their work to avoid unnecessary duplication. There should also be co-ordination of inspections for large businesses responsible for managing multiple sites.

Guidance 5

53 The formal inspection may take various forms, and it will be for the appointed health and safety representatives to agree with their employer about this. The following types of inspection, or a combination of any or all of them over a period of time, may be appropriate to fulfil this function:

(a) safety tours – general inspections of the workplace;
(b) safety sampling – systematic sampling of particular dangerous activities, processes or areas;
(c) safety surveys – general inspections of the particular dangerous activities, processes or areas.

54 The numbers of health and safety representatives taking part in any one formal inspection should be agreed between the appointed health and safety representatives and their employer, depending on their particular circumstances and the nature of the inspection. It will often be appropriate for the safety officer or specialist advisers to be available to give technical advice on health and safety matters that may arise during the inspection.

55 At large workplaces, it may be not be practical to conduct a formal inspection of the entire workplace at a single session, or for the complete inspection to be carried out by the same group of health and safety representatives. In these circumstances, arrangements may be agreed between the employer (or their representative) and the appointed health and safety representatives for the inspection to be carried out by breaking it up into manageable units (e.g. on a departmental basis). It may also be appropriate, as part of the planned programme, for different groups of health and safety representatives to carry out inspections in different parts of the workplace either simultaneously or at different times but in a way that ensures complete coverage before the next round of formal inspections is due.

56 There may be special circumstances in which appointed health and safety representatives and their employer want to agree a different frequency of inspections for different parts of the same workplace (e.g. where there are areas or activities of especially high risk).

Following an inspection

57 Where health and safety representatives have made a written report to the employer in accordance with paragraph 29(c) of the Code of Practice, appropriate remedial action will normally be taken by the employer. Where remedial action:

(a) is not considered appropriate;
(b) cannot be taken within a reasonable period of time; or
(c) the form of remedial action is not acceptable to the health and safety representatives,

the employer or their representative should explain the reasons and give them in writing to the health and safety representatives. A suggested method for this is to record it in the Form F2533 available on page 21 and on the HSE website at www.hse.gov.uk/forms/incident/f2533.pdf.

Guidance 5

58 Where remedial action has been taken:

(a) the health and safety representatives who notified the matter(s) ought to be given the opportunity to make any necessary re-inspection to satisfy themselves that the matter(s) have received appropriate attention. They should also be given the opportunity to record their views on this;
(b) it should be publicised throughout the workplace and to other appropriate parts of the business, if necessary the whole organisation, by the normal channels of communication;
(c) it may be appropriate to bring it to the specific attention of the health and safety committee, if one exists.

Regulation 6

Inspections following over-three-day-injuries, notifiable accidents, dangerous occurrences and diseases

Regulation 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 –

(a) it is safe for an inspection to be carried out; and
(b) the interests of employees in the group or groups which safety representatives are appointed to represent might be involved,

those safety representatives may carry out an inspection of the part of the workplace concerned and so far as is necessary for the purpose of determining the cause they may inspect any other part of the workplace; where it is reasonably practicable to do so they shall notify the employer or his representative of their intention to carry out the inspection.

(2) The employer shall 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) for the purpose of carrying out an inspection under this Regulation; but nothing in this paragraph shall preclude the employer or his representative from being present in the workplace during the inspection.

(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.

"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 2013.

Guidance 6

Purpose of inspections following an over-three-day injury or a notifiable incident

59 From 6 April 2012 RIDDOR changed. The over-three-day reporting requirement for people at work changed to more than seven days. This means that injuries that lead to a worker being incapacitated for more than seven consecutive days must be reported. A record must still be kept if a worker is incapacitated for more than three days, this can be done by keeping a record of the incident in the accident book. The 2013 RIDDOR Regulations clarified further, reportable accidents, occurrences and diseases.

Guidance 6

60 The main purpose of an inspection following a reportable accident, dangerous occurrence or notifiable disease should be to determine the causes so that measures to prevent a recurrence can be considered. It is therefore important that the approach to the problem should be a joint one by the employer and health and safety representatives.

61 Following an accident or dangerous occurrence, it may be necessary for the employer to take urgent steps to safeguard against further hazards. If this is the case, the employer should notify the health and safety representatives of the action taken and confirm this in writing. It may be appropriate to notify such actions to other sites if you are responsible for managing more than one, where the issue is relevant.

The functions of health and safety representatives in formal inspections following an over-three-day injury or a notifiable incident

62 In the event of an over-three-day injury, a reportable accident, dangerous occurrence, or notifiable disease, health and safety representatives may carry out an inspection of that workplace. They will need to examine any relevant machinery, plant, equipment or substance in the workplace. Their examinations may include visual inspection, and discussions with those likely to have relevant information and knowledge regarding the circumstances of the accident or occurrence. However, the examination must not interfere with any evidence or the testing of any machinery, plant, equipment or substance which could disturb or destroy the factual evidence before any inspector from the appropriate enforcing authority has had the opportunity to investigate the circumstances of the accident or occurrence as thoroughly as is necessary.

63 Health and safety representatives, when performing their functions, have rights under the Regulations to inspect and take copies of documents relevant to the workplace or to the employees they represent which the employer is required to keep in accordance with the 1974 Act and other relevant statutory provisions. This particularly applies to formal inspections of the workplace and examinations following over-three-day injuries, notifiable accidents, dangerous occurrences or notifiable diseases,

64 In exercising this right, health and safety representatives should give employers reasonable notice and bear in mind any other circumstances the employer may be faced with in producing such documents. There are certain documents which the employer does not have to provide (see regulation 7(2)).

65 Where technical matters are involved, the appointed health and safety representatives may find that the necessary expertise is not available within the business or organisation. The employer and the health and safety representatives may wish to seek external advice, for example from appropriate universities or colleges. They should agree on arrangements for calling upon people from such institutions. If the representatives need advice from their own technical advisers, they may be called in where this has been agreed in advance with the employer. A copy of any report specifically relating to health or safety matters made to the health and safety representatives should also be available to the employer.

Regulation 7

Inspection of documents and provision of information

Regulation 7

(1) Safety representatives shall for the performance of their functions under section 2(4) of the 1974 Act and under these Regulations, if they have given the employer reasonable notice, be entitled to inspect and take copies of any document relevant to the workplace or to the employees the safety representatives represent which the employer is required to keep by virtue of any relevant statutory provision within the meaning of section 53(1) of the 1974 Act except a document consisting of or relating to any health record of an identifiable individual.

(2) An employer shall make available to safety representatives the information, within the employer's knowledge, necessary to enable them to fulfil their functions except –

(a) any information the disclosure of which would be against the interests of national security; or
(b) any information which he could not disclose without contravening a prohibition imposed by or under an enactment; or
(c) any information relating specifically to an individual, unless he has consented to its being disclosed; or
(d) any information the disclosure of which would, for reasons other than its effect on health, safety or welfare at work, cause substantial injury to the employer's undertaking or, where the information was supplied to him by some other person, to the undertaking of that other person; or
(e) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings.

(3) Paragraph (2) above does not require an employer to produce or allow inspection of any document or part of a document which is not related to health, safety or welfare.

Code of Practice 7

66 The Regulations require employers to make any information they are aware of available to safety representatives that is necessary for them to fulfil their functions. Such information should include:

(a) information about the plans and performance of their business and any changes proposed where they affect the health and safety at work of their employees;
(b) technical information about health and safety hazards and precautions needed to eliminate or minimise them, regarding 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;
(c) information 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;
(d) any other information specifically related to matters affecting the health and safety at work of their employees, including the results of any measurements taken by the employer or people acting on their behalf in the course of checking the effectiveness of their health and safety arrangements;
(e) information on articles or substances which an employer issues to homeworkers.

Guidance 7

Your duty to provide information

67 You have a duty under section 2(2)(c) of the 1974 Act to provide such information, instruction and training, and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of all your employees (see Appendix 1 and Appendix 2 for more information). Appointed health and safety representatives will need to be given appropriate and sufficient information and knowledge to enable them to play an informed part in promoting health and safety at work. The recognised trade unions responsible for appointing health and safety representatives will make their own arrangements for providing them with the information and guidance they need to carry out their functions.

68 Employers have duties under the Management Regulations to, among other things, provide information on:

(a) risks to their employees' health and safety identified by their risk assessment;
(b) preventive and protective measures designed to ensure employees' health and safety;
(c) procedures to be followed in the event of an emergency in the workplace;
(d) the identity of any 'competent person' or persons nominated by the employer to help with implementing those procedures;
(e) risks notified by another employer with whom a workplace is shared, arising out of, or in connection with, the conduct of the second employer's undertaking.

69 You should already have the relevant information you need to provide your health and safety representatives with as part of your health and safety management system. There is no need for you to present this information in a different format and provide it as a separate package, or to get hold of additional information you do not have specifically for your health and safety representatives. In providing this information, it can be useful to reflect the structure of your business. For example, if you manage a large, multi-site business, you should ensure good communication between those who make decisions in your business and your health and safety representatives.

Regulation 8

Cases where safety representatives need not be employees

Regulation 8

(1) In the cases mentioned in paragraph (2) below safety representatives appointed under Regulation 3(1) of these Regulations need not be employees of the employer concerned; and section 2(4) of the 1974 Act shall be modified accordingly

(2) The said cases are those in which the employees in the group or groups the safety representatives are appointed to represent are members of the British Actors' Equity Association or of the Musicians' Union.

(3) Regulations 3(3)(b) and (4) and 4(2) of these Regulations shall not apply to safety representatives appointed by virtue of this Regulation and in the case of safety representatives to be so appointed Regulation 3(1) shall have effect as if the words "from amongst the employees" were omitted.

Regulation 9

Safety committees

Regulation 9

(1) For the purposes of section 2(7) of the 1974 Act (which requires an employer in prescribed cases to establish a safety committee if requested to do so by safety representatives) the prescribed cases shall be any cases in which at least two safety representatives request the employer in writing to establish a safety committee.

(2) Where an employer is requested to establish a safety committee in a case prescribed in paragraph (1) above, he shall establish it in accordance with the following provisions –

(a) he shall consult with the safety representatives who made the request and with the representatives of recognised trade unions whose members work in any workplace in respect of which he proposes that the committee should function;
(b) the employer shall post a notice stating the composition of the committee and the workplace or workplaces to be covered by it in a place where it may be easily read by the employees;
(c) the committee shall be established not later than three months after the request for it.

Guidance 9

Setting up a health and safety committee

70 The detailed arrangements needed to fulfil this requirement of the 1974 Act should evolve from discussion and negotiation between employers and the appointed health and safety representatives, who are best placed to interpret the needs of the particular workplace or places concerned. For further guidance on setting up health and safety committees and making them work effectively, see *Involving your workforce in health and safety: Guidance for all workplaces* (HSG263) or refer to the worker involvement web pages on the HSE website: www.hse.gov.uk/involvement. Acas also provide useful guidance on employee communications and consultations.

71 Although the title 'safety committees' might suggest functions limited to purely safety matters, the functions of health and safety representatives comprise health, safety and welfare at work (see regulation 4), so safety committees should be concerned with all relevant aspects of these matters in the working environment.

72 Circumstances will vary greatly between one workplace and another. Health and safety committees will be set up to deal with work situations as varied as that between a construction site and a hospital. Each situation must be looked at carefully by those involved in it, and systems for safety, including health and safety committees, will need to be developed to take full account of all the relevant circumstances.

73 Although the relationship of the health and safety committee to other works committees is a matter for local organisation, ensure that the work of the health and safety committee has a separate identity, and that health and safety matters are not just added onto the agenda for other meetings, without enough time to consider them.

Guidance 9

74 Health and safety committees are most likely to prove effective where their work is related to a single establishment rather than a collection of distinct places. There may be a place for health and safety committees at group or company level for larger organisations, particularly where relevant decisions are taken at a higher level. In general, an employer should not need to appoint duplicate committees for the same workplace, for example representing different levels of staff. In large workplaces, however, a single committee may either be too large, or if kept small, may become too remote. In these circumstances, it may be necessary to set up several committees with adequate arrangements for co-ordination between them.

Objectives and functions of health and safety committees

75 Under section 2(7) of the 1974 Act, health and safety committees have the function of keeping measures taken to ensure the health and safety at work of the employees under review. In carrying out this function, health and safety committees should consider drawing up agreed objectives or terms of reference.

76 An objective should be the promotion of co-operation between employers and employees in instigating, developing and carrying out measures to ensure the employees' health and safety at work.

77 Within the agreed basic objectives, certain specific functions might include:

(a) studying accident and notifiable disease statistics and trends, so that reports can be made to management on unsafe and unhealthy conditions and practices, together with recommendations for corrective action;
(b) considering aggregated absence statistics and reasons for such absences on a similar basis;
(c) examination of management's safety audit reports;
(d) considering reports and factual information provided by inspectors of the enforcing authority appointed under the 1974 Act;
(e) considering reports which health and safety representatives submit following inspections;
(f) assistance in developing works safety rules and safe systems of work;
(g) a watch on the effectiveness of the health and safety content of employee training;
(h) a watch on the adequacy of safety and health communication and publicity in the workplace;
(i) providing a link with the appropriate enforcing authority.

78 The purpose of studying accidents is to stop them happening again; it is not the committee's business to allocate blame. Its job should be to:

(a) look at the facts in an impartial way;
(b) consider what sort of precautions might be taken;
(c) make appropriate recommendations.

79 There are advantages in looking at not only legally notifiable cases, but also at selected groups of minor injuries. The records of such injuries can yield valuable information if it is extracted and analysed.

Guidance 9

80 The committee may also be able to:

(a) advise on the appropriateness and adequacy of the rules for safety and health proposed by management;
(b) draw attention to the need to establish rules for a particular hazardous work activity or class of operations.

81 Employees are more likely to follow the rules if they appreciate the reasons for having them, and know that their representatives have been consulted in making them.

82 Where written reports have been made by health and safety representatives following inspections, they may be brought to the attention of the health and safety committee. In such cases the committee may suggest suitable publicity.

83 In certain instances, health and safety committees may consider it useful to carry out an inspection by the committee itself. However, it is management's responsibility to take action, to have adequate arrangements for regular and effective checks of health and safety precautions, and to ensure that the declared health and safety policy is being fulfilled. The work of health and safety committees should supplement these arrangements; it cannot be a substitute for them.

Membership of health and safety committees

84 The membership and structure of health and safety committees ought to be settled in consultation between management and the trade union representatives concerned by using the normal processes. The aim should be to keep the committee as compact as possible, and compatible with the adequate representation of the interests of management and of all the employees, including health and safety representatives. The number of management representatives should not exceed the number of employee representatives.

85 Management representatives should not only include those from line management but others such as work engineers and personnel managers. The supervisory level should also be represented. Management representation should be aimed at ensuring:

(a) adequate authority to give proper consideration to views and recommendations;
(b) the necessary knowledge and expertise to provide accurate information to the committee on company policy, production needs, and on technical matters in relation to premises, processes, plant, machinery and equipment.

86 Where a company doctor, nurse, occupational health professional or safety officer/adviser is employed, it makes sense that they are members of the health and safety committee. Other company specialists, such as project engineers, chemists, organisation and methods staff and training officers, might be co-opted for particular meetings when subjects they have expertise in are to be discussed.

87 It should be fully understood that a health and safety representative is not appointed by the health and safety committee or vice versa. The relationship between health and safety representatives and the health and safety committee should be a flexible but close one. Neither is responsible to, or for, the other. The aim should be to form the most effective organisation appropriate to the particular workplace, especially in effective co-ordination between the work of the committee and the health and safety representatives.

Guidance 9

88 Under regulation 4(2), an employer must permit health and safety representatives paid time as is necessary to perform their functions. This includes attending meetings of health and safety committees, where they attend as a health and safety representative in connection with any of the functions in regulation 4(1)(a) to (h), including investigating hazards and dangerous occurrences, investigating complaints about health, safety, or welfare at work and making representations to employers. Health and safety representatives should therefore suffer no loss of pay through attending health and safety committee meetings or other agreed activities, such as inspections carried out by, or on behalf of, such committees, provided the time away from normal duties is necessary to perform their functions.

89 The effectiveness of a joint health and safety committee will depend on the pressure and influence it is able to maintain on all concerned. The following activities could assist in maintaining the impetus of a committee's work:

(a) regular meetings (with effective publicity) of the committee's discussions and recommendations;
(b) speedy decisions by management on the committee's recommendations, where necessary, promptly translated into action and effective publicity;
(c) participation by members of the health and safety committee in periodical joint inspections;
(d) development of ways of involving more employees.

The conduct of health and safety committees

90 An essential condition for the effective working of a health and safety committee is good communications between management and the committee, and between the committee and the employees. In addition, there must be a genuine desire on the part of management to tap the knowledge and experience of its employees and an equally genuine desire on the part of the employees to improve health and safety standards at the workplace.

91 Health and safety committees should meet as often as necessary. The frequency of meetings will depend on the volume of business, which in turn is likely to depend on local conditions, the size of the workplace, numbers employed, the kind of work carried out and the degree of inherent risk. Sufficient time should be allowed during each meeting to ensure full discussion of all business.

92 Meetings should not be cancelled or postponed except in very exceptional circumstances. Where postponement is absolutely necessary, an agreed date for the next meeting should be made and announced as soon as possible.

93 The dates of the meetings should be arranged well in advance as far as possible, even to the extent of planning a programme six months or a year ahead. In these circumstances all members of the committee should be sent a personal copy of the programme, giving the dates of the meetings. Notices of the dates of meetings should also be published where all employees can see them. A copy of the agenda and any accompanying papers should be sent to all committee members at least one week before each meeting.

94 Committees may wish to draw up additional rules for the conduct of meetings. These might include procedures by which committees might reach decisions.

95 In certain workplaces it might be useful for the health and safety committee to appoint subcommittees to study particular health and safety problems.

Guidance 9

96 Agreed minutes of each meeting should be kept and a personal copy supplied to each member of the committee as soon as possible after the meeting, with a copy being sent to each health and safety representative appointed for workplaces covered by the committee. A copy of the minutes should be sent to the most senior executive responsible for health and safety; and arrangements should be made to ensure that the Board of Directors is kept informed generally of the work of the committee. An adequate number of copies of the minutes should be displayed, or made available by other means, along with any other information which the employer provides whether required by statute or not.

Regulation 10

Power of Health and Safety Commission to grant exemptions

Regulation 10

The Health and Safety Commission may grant exemptions from any requirement imposed by these Regulations and any such exemption may be unconditional or subject to such conditions as the Commission may impose and may be with or without a limit of time.

Regulation 11

Provisions as to [employment tribunals][a]

Regulation 11

(1) A safety representative may, in accordance with the jurisdiction conferred on [employment tribunals} by paragraph 16(2) of Schedule 1 to the Trade Union and Labour Relations Act 1974,[b] present a complaint to an [employment tribunal} that –

(a) the employer has failed to permit him to take time off in accordance with Regulation 4(2) of these Regulations; or
(b) the employer has failed to pay him in accordance with Regulation 4(2) of and the Schedule to these Regulations.

(2) An [employment tribunal] shall not consider a complaint under paragraph (1) above unless it is presented within three months of the date when the failure occurred or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(3) Where an [employment tribunal} finds a complaint under paragraph (1)(a) above well-founded the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(a) Reference to industrial tribunals was replaced by "employment tribunals" by the Employment Rights (Dispute Resolution) Act 1998.
(b) 1974 c.52 Jurisdiction is now conferred on tribunals by the Employment Tribunals Act 1996. Section 2 gives tribunals jurisdiction if that was conferred by any other Act. Although the Trade Union and Labour Relations Act 1974 has been repealed, tribunals do retain jurisdiction. (See Duthie v Bath and North East Somerset Council [2003J ICR 405 EAT, and White v Pressed Steel Fisher [1980] IRLR 176.)

Regulation 11

(4) Where on a complaint under paragraph (1)(b) above an [employment tribunal} finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under paragraph (1)(b), the tribunal shall order the employer to pay the employee the amount which it finds due to him.

(5) ... [amends the Trade Union and Labour Relations Act 1974, Schedule 1, paragraph 16 and is not set out here]

[Schedule 1 Regulation 2A Bodies to be treated as recognised trade unions][a]

(a) Schedule 1 Regulation 2A was inserted by the Police (Health and Safety) Regulations 1999 and revoked by the Serious Organised Crime and Police Act (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006.

Appendix 1

Requirements for information for employees in existing health and safety legislation

1 The following health and safety legislation requires employers to give information to their employees. It is for illustrative purposes only and is not intended to be exhaustive. You need to satisfy yourself of your obligations. Each entry contains a brief summary of what is required but you will need to find out your precise duties by checking the relevant legislation or from the publications listed in the 'References' section.

2 In addition to requirements for information for employees in health and safety legislation, there are broader requirements in Employment Law under the Information and Consultation of Employees (ICE) Regulations 2004, introduced on 6 April 2005. They apply to all businesses with 50 or more employees. For more information about what the ICE Regulations require you to inform and consult your employees about, visit www.acas.org.uk for practical advice or www.gov.uk/informing-consulting-employees-law.

General health and safety

Health and Safety at Work etc Act 1974

Section 2: General duties of employers to their employees

3 Every employer has a duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees, including the provision of information, instruction, training and supervision.

Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

4 Information including:

(a) risks to health and safety identified by risk assessments;
(b) preventive and protective measures;
(c) procedures for dealing with serious and imminent danger (including who is responsible for implementing the procedures such as dealing with evacuation);
(d) for temporary employees on fixed contracts, any special occupational skills or qualifications needed for the work and any requirements for health surveillance;
(e) where you employ a child, to provide a parent of the child with information on risks to health and safety and preventive and protective measures.

5 The employer must also ensure that any person working in their undertaking who is not their employee (and every self-employed person) is provided with appropriate instructions and comprehensible information regarding risks to their health and safety, and sufficient information to identify competent persons to implement evacuation procedures.

Employers' Liability (Compulsory Insurance) Act 1969

6 Employers must display copies of the certificate of insurance for the information of their employees.

Health and Safety (First Aid) Regulations 1981 (SI 1981/917)

7 First-aid arrangements: including facilities, responsible personnel and where first-aid equipment is kept.

Health and Safety (Safety Signs and Signals) Regulations 1996 (SI 1996/341)

8 Each employee must be given comprehensible and relevant information on the measures to be taken in connection with safety signs.

Health and Safety Information for Employees Regulations 1989 (SI 1989/682)

9 Information about employees' health and safety welfare in the form of:

(a) an approved poster to be displayed where it is reasonably accessible to the employee and in such a position where it can be easily seen and read by that employee as soon as is reasonably practicable after any employees are taken on; or
(b) an approved leaflet to be given to employees as soon as practicable after they start.

Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513)

10 Necessary information to enable those employees who are not represented by representatives under the Safety Representatives and Safety Committees Regulations 1977 to fully take part in consultation under those Regulations, any records to be kept under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 and any health and safety information under any other statutory provision.

Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500)

11 Necessary information to assist the work of safety representatives nominated in writing by a recognised trade union. (See also Railways and Other Guided Transport (Safety) Regulations 2006.)

Health hazards

Control of Asbestos Regulations 2006 (SI 2006/2739)

12 Information to those who are or who are liable to be exposed to asbestos, or supervise such employees and those who carry out work in connection with the employer's duties under these Regulations, on:

(a) the properties of asbestos and its effects on health (including interaction with smoking);
(b) the types of products likely to contain it;
(c) operations which could result in asbestos exposure and the importance of preventive controls to minimise exposure;
(d) safe work practices, control measures and protective equipment;

(e) the purpose, choice, limitations, proper use and maintenance of respiratory protective equipment;
(f) emergency procedures;
(g) hygiene requirements;
(h) decontamination procedures;
(i) waste-handling procedures;
(j) medical examination requirements;
(k) control limit and the need for air monitoring;
(l) the significant findings of risk assessments;
(m) the results of air monitoring, with an explanation of the findings.

13 The information and instruction must be given at regular intervals, adapted to take account of significant changes in the type or methods of work carried out and provided in a manner appropriate to the nature and degree of exposure identified by the risk assessment.

Control of Lead at Work Regulations 2002 (SI 2002/2676)

14 Suitable and sufficient information to employees who are liable to exposure to lead. The information must be adapted to take account of significant changes in the type of work or methods of work used, and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment. This includes information on:

(a) the form of lead (the risks it presents, any relevant occupational exposure limit, action level and suspension level, access to any relevant safety data sheet, and any other provisions concerning the hazardous properties of that form of lead);
(b) the significant findings of the risk assessment;
(c) appropriate precautions and actions to be taken by employees to safeguard themselves and other employees;
(d) the results of any monitoring of exposure to lead;
(e) the collective results of any medical surveillance (in a form so that they cannot be identified as relating to a particular person).

15 You also have to provide suitable and sufficient information, instruction and training to any person who carries out work under the Regulations whether or not they are your employee.

Control of Noise at Work Regulations 2005 (SI 2005/1643)

16 Information, where there is exposure to noise at or above a lower exposure action value (daily or weekly personal noise exposure of 80 dB (A-weighted)), and a peak sound pressure of 135 dB (C-weighted), on:

(a) the nature of the risks from exposure to noise;
(b) the measures taken to comply with obligations to eliminate or control exposure to noise;
(c) exposure limit values and upper and lower exposure action values;
(d) the significant findings of risk assessments, any measurements taken and explanation of findings;
(e) the availability and correct use of personal hearing protectors;
(f) why and how to detect and report signs of hearing damage;
(g) the entitlement to health surveillance where there is a risk to health, and its purposes;
(h) safe working practices to minimise exposure to noise;
(i) the collective results of any health surveillance.

17 The information must be updated to take account of significant changes in the type of work carried out or the working methods you use. You must also provide suitable and sufficient information to anyone (not just your employees), who carry out work in connection with your duties.

Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677)

18 Suitable and sufficient information must be given to employees who are liable to exposure to a substance hazardous to health. The information must be adapted to take account of significant changes in the type of work or methods of work used, and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment. This includes information on:

(a) details of the substances (including names, the risks to health they present, any relevant workplace exposure limit or similar occupational exposure limit, access to the relevant data sheet, and other legislative provisions which concern the hazardous properties of those substances);
(b) the significant findings of risk assessments;
(c) appropriate precautions and actions to be taken by employees to safeguard themselves and others;
(d) the results of any required exposure monitoring, including providing information immediately if a workplace exposure limit has been exceeded;
(e) the collective results of any required health surveillance, provided they cannot be identified as relating to a particular person;
(f) written instructions for employees working with a Group 4 biological agent or material that may contain such an agent and if appropriate the display of notices which outline procedures for handling the material.

19 You also have to provide suitable and sufficient information, instruction and training to any person who carries out work under the Regulations whether or not they are your employee.

Control of Vibration at Work Regulations 2005 (SI 2005/1093)

20 Where, as a result of health surveillance, an employee is found to have a disease or adverse health effect from exposure to vibration, employers must ensure that a suitably qualified person informs the employee and provides them with information and advice regarding any further health surveillance they should undergo.

21 Suitable and sufficient information and instruction must be given to employees and their representatives who are, or are liable to be, exposed to vibration if identified by risk assessment, or if employees are likely to be exposed to vibration at or above an exposure action value. The information must be adapted to take account of significant changes in the type or methods of work used by the employer. This includes information on:

(a) the measures taken to comply with regulation 6 to eliminate or reduce the risk of exposure to vibration at source;
(b) the exposure limit values and action values set out in regulation 4;
(c) the significant findings of the risk assessment, including any measurements taken, with an explanation of those findings;
(d) why and how to detect and report signs of injury;
(e) entitlement to appropriate health surveillance and its purposes;
(f) safe working practice to minimise exposure to vibration;

(g) the collective results of any required health surveillance, provided they cannot be identified as relating to a particular person.

22 Employers must ensure that any person, whether or not their employee, who carries out work in connection with the employer's duties under these Regulations has suitable and sufficient information and instruction.

Health and Safety (Display Screen Equipment) Regulations 1992 as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002 (SI 1992/2792)

23 Health and safety information must be given about their workstations to both operators and users, and information on the measures taken to carry out an analysis of the workstations, and to ensure that the workstations meet the requirements set out in the Regulations. (The Regulations define who is an operator and who is a user.)

Ionising Radiations Regulations 1999 (SI 1999/3232)

24 The Regulations require:

(a) suitable and sufficient information and instruction to enable employees working with ionising radiations to know:
  (i) the risks to health created by exposure;
  (ii) precautions which should be taken;
  (iii) the importance of complying with medical, technical and administrative requirements;

(b) adequate information to be given to other people who are directly concerned with ionising radiation work you are doing;
(c) information for female employees on the possible hazard to the unborn child and to a nursing infant and the importance of telling the employer as soon as they find out they are pregnant or if they are breastfeeding.

Radiation (Emergency Preparedness and Public Information) Regulations 2001 (SI 2001/2975)

25 Where the risk assessment shows that it is reasonably foreseeable that a radiation emergency might arise, the operator must provide suitable and sufficient information and instruction for any employee who may be involved with or affected by arrangements in the operator's emergency plan.

Manual Handling Operations Regulations 1992 (SI 1992/2793)

26 General indications to employees undertaking any manual handling operations and, where reasonably practicable, information on:

(a) the weight of loads for employees undertaking manual handling;
(b) the heaviest side of any load whose centre of gravity is not positioned centrally.

Safety hazards

Provision and Use of Work Equipment Regulations 1998 (SI 1998/2306)

27 Adequate health and safety information and, where appropriate, written instructions must be given to employees and their supervisors or managers regarding the use of work equipment, including:

(a) conditions and methods of use of work equipment (including hand tools);
(b) foreseeable abnormal situations and what to do if such a situation were to occur;
(c) conclusions to be drawn from experience in using the work equipment.

Personal Protective Equipment at Work Regulations 1992 (SI 1992/2966)

Employers must provide information to employees and ensure that such information is kept available to them on:

(d) the risk(s) that the personal protective equipment (PPE) will avoid or limit;
(e) the PPE's purpose and the way it must be used;
(f) what their employees need to do to keep the PPE in working order and good repair.

Special hazards

Borehole Sites and Operations Regulations 1995 (SI 1995/2038)

28 An operator must ensure that the health and safety document is available to each employer at work at the site. The health and safety document must demonstrate that the risks to which people at the borehole site are exposed to have been assessed and that adequate measures concerning the design, use and maintenance of the borehole site and of its plant will be taken, and how these measures will be co-ordinated.

29 The health and safety document should, where appropriate, also include:

(a) an escape plan in the event of danger and an associated rescue plan;
(b) a plan for the prevention of fire and explosions including provisions for preventing blowouts and uncontrolled escape of flammable gases and for detecting the presence of flammable atmospheres;
(c) a fire protection plan detailing the likely sources of fire and the precautions to be taken;
(d) where hydrogen sulphide or other harmful gases are or may be present, a plan for the detection and control of such gases to protect employees from them.

30 Where the owner is not the operator of a borehole site, they must provide the operator with all information in his possession needed to perform his duties under these Regulations.

Construction (Design and Management) Regulations 2007 (SI 2007/320)

31 There are detailed requirements on the information to be provided to HSE or the Office of Rail Regulation and obligations on the principal contractor to provide information to workers relating to the planning and management of the project, or which otherwise may affect their health, safety or welfare at the site (except in the conditions provided in the Regulations).

32 There are detailed regulations regarding information and training of construction workers. For example, every contractor shall provide every worker carrying out the construction work under their control with any information and training which they need for the particular work to be carried out safely and without risk to health, including:

(a) suitable site induction, where not provided by any principal contractor;
(b) information on the risks to their health and safety:

    (i) identified by their risk assessment under regulation 3 of the Management of Health and Safety at Work Regulations 1999; or
    (ii) arising out of the conduct by another contractor of their undertaking and of which they are, or ought reasonably to be, aware;

(c) the measures identified by the contractor in consequence of the risk assessment as the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions;
(d) any site rules;
(e) the procedures to be followed in the event of serious and imminent danger to such workers;
(f) the identity of the persons nominated to implement those procedures.

33 In addition, the principal contractor has the duties to take all reasonable steps to ensure that every worker carrying out the construction work is provided with:

(a) a suitable site induction;
(b) the information and training required to be provided by a contractor;
(c) any further information and training needed for the particular work to be carried out without undue risk to health or safety.

Dangerous Substances and Explosive Atmospheres Regulations 2002 (SI 2002/2776)

34 Suitable and sufficient information must be given to employees where a dangerous substance is present at the workplace. The information must be adapted to take account of significant changes in the type of work carried out or methods of work used by the employer, and provided in the manner appropriate to risk assessment:

(a) appropriate precautions and actions to be taken by the employee;
(b) the details of the substance including the name of the substance and the risk which it presents, access to any relevant safety data sheet and legislative provisions concerning the hazardous properties of the substance;
(c) the significant findings of the risk assessment.

35 Employers must also ensure that information on emergency procedures and arrangements, details of relevant hazards, hazard identification arrangements and specific hazards likely to arise at the time of an accident, incident or emergency, is displayed at the workplace unless the results of the risk assessment make this unnecessary.

Dangerous Substances in Harbour Areas Regulations 1987 (SI 1987/37)

36 Information for employees handling dangerous substances to ensure their own health and safety (and that of others).

Mines and Quarries Act 1954

37 Requirements for employers to provide a book containing information with respect to the Act and Orders and regulations thereunder to every person employed at the mine.

Management and Administration of Safety and Health at Mines Regulations 1993 (SI 1993/1897)

38 A written statement of general policy regarding health and safety of employees, the organisation and arrangements to carry out the policy, and details of information to be provided to surveyors and to HSE.

The Mines Miscellaneous Health and Safety Provisions Regulations 1995 (SI 1995/2005)

39 The owner of a mine must ensure that no work is to be carried out at the mine unless the health and safety document has been prepared and was made available to each employer at work. The health and safety document must demonstrate that the risks to people at work have been assessed; and that adequate measures, including measures concerning the design, use and maintenance of the mine and its equipment, have been taken to safeguard the health and safety of the people at work; and how the measures referred to will be co-ordinated.

40 The health and safety document shall, where appropriate, also include:

(a) a plan detailing the equipment and measures required to protect people at work at the mine from the risk of explosion;
(b) a fire protection plan detailing the likely sources of fire, and the precautions to be taken;
(c) where toxic gases are or may be present in the atmosphere in such concentration that it may be harmful to the health of people at work, a plan detailing the protective equipment and measures required;
(d) in any zone below ground where rockbursts or gas outbursts may occur, an operating plan setting out the susceptible zones and the measures necessary for the protection of people at work in, approaching or traversing such zones.

41 The owner must ensure that the health and safety document is kept up to date and revised where necessary.

The Quarries Regulations 1999 (SI 1999/2024)

42 The owner of every quarry must ensure that the health and safety document is made available to each employer of people at work at the quarry and to all people at work at the quarry. The health and safety document must:

(a) demonstrate that the risks to people at work at the quarry have been assessed;
(b) demonstrate that adequate measures, including measures concerning the design, use and maintenance of the quarry and of its plant, will be taken to safeguard the health and safety of the people at work at the quarry and people in the area immediately surrounding the quarry who are directly affected by its activities;
(c) include a statement of how the measures referred to will be co-ordinated;
(d) give details of the management structure and sets out the authority and duties of each person in the management structure;
(e) record the information concerning rules and systems in place and arrangements for the review of health and safety measures (as detailed in the Regulations).

43 The health and safety document shall, where appropriate, also include:

(a) a plan detailing the equipment and measures required to protect people at work at the quarry from the risk of explosion;
(b) where toxic gases are or may be present in the atmosphere in such concentration that it may be harmful to the health of people at work, a plan detailing the protective equipment and measures required;
(c) a diagram of the quarry indicating those areas to which these Regulations do not apply.

44 The owner must ensure that the health and safety document is kept up to date and revised where necessary.

Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (SI 2006/2183)

45 Health and safety information and, where appropriate, written instructions relating to the use of work equipment for all workers who use the work equipment and those supervising or managing them, including:

(a) the conditions in which, and the methods by which, the work equipment may be used;
(b) foreseeable abnormal situations and the actions to be taken if such a situation were to occur;
(c) any conclusions to be drawn from experience in using the work equipment.

46 Employers also need to ensure that every worker is made aware of:

(a) any dangers relevant to them;
(b) work equipment present in the work area or site;
(c) any changes affecting them and work equipment situated in their immediate work area or site, even if they do not use such equipment directly.

47 The information must be readily available and comprehensible to a worker who is using, or may be about to use, the work equipment and any worker supervising or managing them.

Nuclear Installations Act 1965 (as amended)

48 Employers who hold site licences must give information on safety, and effective implementation of emergency arrangements.

Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 (SI 1989/971)

49 The installation owner, the installation manager and the employer have a duty to make available to safety representatives the information relating to occupational health and safety within their knowledge to enable them to fulfil their functions (with the exception as detailed in the Regulations).

50 They must also make available to safety representatives and safety committees any documents relating to the occupational health and safety of the workforce required by statutory provisions to be kept on the offshore installation, except the health record of an identifiable individual.

51 The installation owner must ensure that at least one copy of these Regulations is readily available on the installation for inspection by the workforce.

Pressure Systems Safety Regulations 2000 (SI 2000/128)

52 Operators (employees) of installed, or owners of, mobile pressure systems must be informed about safe operation of the system, and action to be taken in the case of an emergency.

53 There are also obligations for the information to be provided by designers or suppliers and those modifying or repairing a pressure system or part of it.

Railways and Other Guided Transport (Safety) Regulations 2006 (SI 2006/599)

54 See the Regulations for details on the information to be provided in applications for safety certificates including how to ensure workers are carrying out work in accordance with relevant statutory provisions relating to safety. Safety representatives must be consulted on the preparation or revision of safety certificates or safety authorisations, or if an employer sends a notice to the Office of Rail Regulation under regulation 13 (Notice of changes), or under paragraph 9 Schedule 5 (Notices where the safety case is materially different).

Work in Compressed Air Regulations 1996 (SI 1996/1656)

55 The compressed air contractor must ensure that adequate information has been given to any person who works in compressed air so that they are aware of the risks arising from such work and the precautions to be taken.

Appendix 2

Requirements for instruction and training for employees in existing health and safety legislation

1 The following are examples of health and safety legislation which require employers to instruct and train their employees. This list is for illustrative purposes only and is not intended to be exhaustive. You need to satisfy yourself of your obligations. Each entry contains a brief summary of what is required but you will need to find out your precise duties from the publications listed in the 'References' section.

General health and safety

Health and Safety at Work etc Act 1974

Section 2: General duties of employers to their employees

2 Every employer has a duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees, including the provision of information, instruction, training and supervision.

Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

3 Health and safety training:

(a) on recruitment of new employees;
(b) on being exposed to new or increased risks because of:

  (i) a transfer or change of responsibility;
  (ii) new work equipment or a change to existing equipment;
  (iii) new technology;
  (iv) new system of work or change to the existing system;

(c) the training must be repeated periodically as appropriate and adapted to take account of new or changed risks to health and safety and takes place during working hours.

Health and Safety (First Aid) Regulations 1981 (SI 1981/917)

4 First-aiders provided under the Regulations must have appropriate training and qualifications.

Health and Safety (Safety Signs and Signals) Regulations 1996 (SI 1996/341)

5 Each employee must be given suitable and sufficient instruction and training on:

(a) the meaning of safety signs;
(b) measures to be taken in connection with safety signs.

Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513)

6 Training for employee representatives in their functions as representatives (as is reasonable in the circumstances). You are required to meet the reasonable costs of this training, including travel and subsistence and giving such time off with pay as is necessary to perform the functions of a health and safety representative or for training. See paragraphs 119 and 120 of this book.

Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500)

7 Employers must allow such time off with pay as is necessary for safety representatives to perform their functions and to undergo training in aspects of their functions as may be reasonable in all the circumstances.

Health hazards

Control of Asbestos Regulations 2006 (SI 2006/2739)

8 Adequate instruction and training to employees who are, or who are liable to be, exposed to asbestos, or supervise such employees, and those who carry out work in connection with the employer's duties on:

(a) the properties of asbestos and its effects on health (including interaction with smoking);
(b) the types of products likely to contain it;
(c) operations which could result in asbestos exposure and the importance of preventive controls to minimise exposure;
(d) safe work practices, control measures and protective equipment;
(e) the purpose, choice, limitations, proper use and maintenance of respiratory protective equipment;
(f) emergency procedures;
(g) hygiene requirements;
(h) decontamination procedures;
(i) waste-handling procedures;
(j) medical examination requirements;
(k) control limit and need for air monitoring;
(l) the significant findings of risk assessments;
(m) the results of air monitoring with an explanation of the findings.

9 The instruction and training must be given at regular intervals, adapted to take account of significant changes in the type or methods of work and provided in a manner appropriate to the nature and degree of exposure identified by the risk assessment.

Control of Lead at Work Regulations 2002 (SI 2002/2676)

10 Training for employees who are liable to be exposed to lead. The information must be adapted to take account of significant changes in the type of work or methods of work used, and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment. This includes information on:

(a) the form of lead (the risks it presents, any relevant occupational exposure limit, action level and suspension level, access to any relevant safety data

sheet, and any other provisions concerning the hazardous properties of that form of lead);
(b) the significant findings of the risk assessment;
(c) appropriate precautions and actions to be taken by employees to safeguard themselves and other employees;
(d) the results of any monitoring of exposure to lead;
(e) the collective results of any medical surveillance (in such a format that they cannot be identified as relating to a particular person).

11 You also have to provide suitable and sufficient information, instruction and training to any person who carries out work under the Regulations, whether or not they are your employee.

Control of Noise at Work Regulations 2005 (SI 2005/1643)

12 Instruction and training for employees (and their representatives) who are exposed to noise likely to be at or above a lower exposure action value, including:

(a) the nature of the risks from exposure to noise;
(b) organisational and technical measures taken to eliminate or control exposure to noise;
(c) exposure limit values and upper and lower exposure action values (set out in the Regulations);
(d) the significant findings of a risk assessment, including any measures taken, with an explanation;
(e) the availability and provision of personal hearing protectors and their correct use;
(f) why and how to detect and report signs of hearing damage;
(g) entitlement to health surveillance and its purposes;
(h) safe working practices to minimise exposure to noise;
(i) the results of any health surveillance.

13 The training must be updated to take account of significant changes in the type of work carried out or the working methods you use. You must also provide suitable and sufficient training to anyone (not just your employees), who carries out work in connection with your duties.

Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677)

14 Instruction and training for people who may be exposed to substances hazardous to health in:

(a) the details of the substances (as set out in the Regulations);
(b) the significant findings of a risk assessment;
(c) the precautions and actions to be taken by employees to safeguard themselves and other employees;
(d) the results of any monitoring of exposure, particularly if a workplace exposure limit is exceeded;
(e) the collective results of any required health surveillance;
(f) written instructions and, if appropriate, the display of notices outlining the procedures for handling a Group 4 biological agent or material containing it.

15 The instruction and training must be adapted to take account of significant changes in the type or methods of work and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment. Employers must ensure that any person (whether or not their employee) who carries out work in connection with the employer's duties under these Regulations has suitable and sufficient instruction and training.

Control of Vibration at Work Regulations 2005 (SI2005/1093)

16 Suitable and sufficient instruction and training to employees and their representatives who are liable to be exposed to vibration if identified by risk assessment, or if employees are likely to be exposed to vibration at or above an exposure action value. The instruction and training must be adapted to take account of significant changes in the type or methods of work and comprehensible to employees. This includes:

(a) the measures taken to comply with the requirements of regulation 6 to eliminate or reduce the risk of exposure to vibration at source;
(b) the exposure limit values and action values set out in regulation 4;
(c) the significant findings of the risk assessment, including any measurements taken, with an explanation of those findings;
(d) why and how to detect and report signs of injury;
(e) entitlement to appropriate health surveillance and its purposes;
(f) safe working practice to minimise exposure to vibration;
(g) the collective results of any required health surveillance, provided they cannot be identified as relating to a particular person.

17 The employer must ensure that any person, whether or not his employee, who carries out work in connection with the employer's duties under these Regulations has suitable and sufficient instruction and training.

Genetically Modified Organisms (Contained Use) Regulations 2000 (SI 2000/2931)

18 Training and formulating local codes of practice for the safety of employees whose work involves genetically modified organisms.

Health and Safety (Display Screen Equipment) Regulations 1992 (SI 1992/2792)

19 Adequate health and safety training in the use of any workstation to be used, including if the workstation is substantially modified.

Ionising Radiations Regulations 1999 (SI 1999/3232)

20 Appropriate training on radiation protection and suitable and sufficient instructions to enable employees working with ionising radiations to meet the requirements of the Regulations. For example, to know the risks to health created by exposure, precautions to take, the importance of complying with medical, technical and administrative requirements of the Regulations, together with training under the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005.

Radiation (Emergency Preparedness and Public Information) Regulations 2001 (SI 2001/2975)

21 Where the risk assessment shows that it is reasonably foreseeable that a radiation emergency might arise, the operator must ensure that any employee who may be involved with or affected by arrangements in the operator's emergency plan is provided with suitable and sufficient information, instruction and training.

Registration, Evaluation, Authorisation of Chemicals Regulation (REACH)

22 Safety data sheets or the information they contain to be made available to employees (or their appointed representatives).

Safety hazards

Provision and Use of Work Equipment Regulations 1998 (SI 1998/2306)

23 Written instructions to employees and for those who manage or supervise them regarding the use of work equipment where appropriate, including:

(a) conditions and methods of use of work equipment (including hand tools);
(b) foreseeable abnormal situations and what to do if such a situation were to occur;
(c) conclusions to be drawn from experience in using the work equipment.

24 Adequate training for employees who use work equipment (including hand tools) and those who manage or supervise them in:

(a) methods which must be used;
(b) any risks from use and precautions to be taken.

Personal Protective Equipment at Work Regulations 1992 (SI 1992/2966)

25 Employees who must be provided with personal protective equipment (PPE) need instruction and training in:

(a) risk(s) the PPE will avoid or limit;
(b) the PPE's purpose and the way it must be used;
(c) how to keep the PPE in an efficient state and working order and good repair;
(d) how to wear it (with demonstrations).

Work at Height Regulations 2005 (SI 2005/735)

26 You should make sure that people with sufficient skills, knowledge and experience are employed to perform the task or, if they are being trained, that they work under the supervision of somebody competent to do it.

Special hazards

Borehole Sites and Operations Regulations 1995 (SI 1995/2038)

27 Written instructions for employees who may be affected where borehole operations are carried out, containing:

(a) rules necessary for ensuring the health and safety of their employees;
(b) the use of emergency equipment and the action to be taken in an emergency.

Construction (Design and Management) Regulations 2007 (SI 2007/320)

28 There are detailed regulations regarding information and training of construction workers. For example, every contractor shall provide every worker carrying out the construction work under their control with any information and training which they need for the particular work to be carried out safely and without risk to health, including:

(a) suitable site induction, where not provided by any principal contractor;
(b) information on the risks to their health and safety:

    (i) identified by risk assessment under regulation 3 of the Management of Health and Safety at Work Regulations 1999; or
    (ii) arising out of the conduct by another contractor of their undertaking and of which they are, or ought reasonably to be, aware;

(c) the measures identified by the contractor in consequence of the risk assessment as the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions;
(d) any site rules;
(e) the procedures to be followed in the event of serious and imminent danger to such workers;
(f) the identity of the people nominated to implement those procedures.

29 Every contractor must also provide employees with any health and safety training which he is required to provide to them in respect of the construction work under the Management of Health and Safety at Work Regulations 1999.

30 In addition, the principal contractor has the duties to ensure that every worker carrying out the construction work is provided with:

(a) a suitable site induction;
(b) the information and training which was to be provided by a contractor; and
(c) any further information and training needed for the work to be carried out without undue risk to health or safety.

Control of Major Accident Hazards Regulations 1999 (SI 1999/743)

31 There is a general duty to take all measures necessary to prevent accidents and limit their consequences to people and the environment. This will include training.

Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 (SI 2007/1573)

32 There are detailed requirements on the carriage of dangerous goods and the use of transportable pressure equipment, including training to be provided.

Dangerous Substances and Explosive Atmospheres Regulations 2002 (SI 2002/2776)

33 Suitable and sufficient instruction and training to employees where a dangerous substance is present at the workplace. The instruction and training must be adapted to take account of significant changes in the type of work carried out or methods of work, and provided in the manner appropriate to the risk assessment:

(a) appropriate precautions and actions to be taken by the employee;
(b) the details of the substance including the name of the substance and the risk presented, access to any relevant safety data sheet and legislative provisions concerning the hazardous properties of the substance;
(c) the significant findings of the risk assessment.

Dangerous Substances in Harbour Areas Regulations 1987 (SI 1987/37)

34 Employees handling dangerous substances to be instructed and trained to ensure their own health and safety (and that of others).

Management and Administration of Safety and Health at Mines Regulations 1993 (SI 1993/1897)

35 No person to do any work unless:

(a) they have received adequate instruction in, and training for, the doing of that work and is competent;
(b) they do so under the instruction and supervision of someone who is competent to give instructions in and supervise the work for training purposes.

The Quarries Regulations 1999 (SI 1999/2024)

Training and competence

36 The operator must ensure that any person who undertakes any work at the quarry is competent to do that work or being under the instruction and supervision of a competent person for the purpose of training them.

Instructions, rules and schemes

37 The operator must ensure that copies of all current instructions, rules and schemes required under these Regulations to secure the safe use of equipment and the health and safety of people at work at the quarry and immediately surrounding areas are kept at the quarry and given to any person at work who has duties under these Regulations. They must be comprehensible to all people at work. The operator must ensure that each person at work at the quarry understands any rules required under these Regulations relevant to them.

Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (SI 2006/2183)

38 Written instructions on the use of work equipment, where appropriate, for employees who use the work equipment and those supervising or managing them, including:

(a) conditions and methods of use of work equipment (including hand tools;
(b) foreseeable abnormal situations and what to do if such a situation were to occur;
(c) conclusions to be drawn from experience in using the work equipment.

Nuclear Installations Act 1965 (as amended) – Nuclear Site License Conditions

39 The licensee must ensure that every person to be authorised to be on the site receives adequate instruction about the risks and hazards associated with the plant and its operation. These instructions should cover the actions to be taken in the event of an accident or emergency on the site.

Training requirements

40 The licensee must make and implement adequate arrangements for suitable training for those who have responsibility for any operations which may affect safety.

Operating instructions

41 The licensee must ensure that all operations which may affect safety are carried out in accordance with operating instructions.

Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 (SI 1989/971)

42 Training for safety representatives in their functions as safety representatives (as reasonable in the circumstances). The employer must meet any reasonable costs associated with the training including travel and subsistence.

Pressure Systems Safety Regulations 2000 (SI 2000/128)

43 Operators of installed or mobile pressure systems to be instructed on:

(a) safe operation of the system;
(b) action to be taken in the case of an emergency.

Work in Compressed Air Regulations 1996 (SI 1996/1656)

44 Adequate information, instruction and training for any person who works in compressed air so that they are aware of the risks and the precautions that need to be taken.

Appendix 3

Requirements to consult health and safety representatives and/or employees in existing health and safety legislation

1 The following are examples of health and safety legislation which contain specific requirements for employers to consult health and safety representatives and/or employees. This list is for illustrative purposes only and is not intended to be exhaustive. You need to satisfy yourself of your obligations. Each entry contains a brief summary of what is required but you will need to find out your precise duties from the publications listed in the 'References' section.

General health and safety

Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513)

2 Requirements for employers to consult their employees, either directly or through their representatives, in good time on matters relating to their health and safety at work.

3 See regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996 and guidance notes.

Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500)

4 Employers must consult safety representatives in good time with regard to matters concerning their health and safety at work.

5 See regulation 4(A) of the Safety Representatives and Safety Committees Regulations 1977 and accompanying guidance.

Health hazards

Control of Asbestos Regulations 2006 (SI 2006/2739)

6 The introduction to HSE's guidance on the Regulations states that proper consultation with those who do the work, including all those who may be affected by the presence of asbestos in their workplace, is crucial in helping to raise awareness of the importance of health and safety.

Control of Noise at Work Regulations 2005 (SI 2005/1643)

7 Requirements for employers who carry out work which is liable to expose any employees to noise at or above a lower exposure action value to consult the employees concerned or their representatives on

(a) risk assessment.
(b) the measures to be taken to eliminate or reduce the exposure to noise at the workplace to as Iow a level as is reasonably practicable.

Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677)

8 The Approved Code of Practice makes clear that employers should consult their employees and their safety representatives on any measures introduced as a result of a risk assessment

9 The guidance suggests that employers may wish to involve employees and/or safety representatives when carrying out and reviewing risk assessments as it's a good way of helping to manage health and safety risk.

Control of Vibration at Work Regulations 2005 (SI 2005/1093)

10 The guidance on these Regulations suggests that employers should discuss with employees and/or their representatives any proposed changes in the workplace which might affect their health and safety and consult safety or employee representatives on the proposal for controlling the risk from vibration exposure following risk assessment findings.

Ionising Radiations Regulations 1999 (SI 1999/3232)

11 Employers must consult any affected employees before putting into effect a system of dose limitation, and inform any employees affected and the approved dosimetry service in writing of the decision and the reasons for that decision.

12 The Approved Code of Practice makes clear that employers should consult the appointed safety representatives or employees and, where appropriate, any established safety committee about the introduction of new measures at the workplace which may affect the health and safety of the employees.

Radiation (Emergency Preparedness and Public Information) Regulations 2001 (SI 2001/2975)

13 Operators must consult their employees, and any person carrying out work on their behalf, on the preparation and review of the operator's emergency plan to secure the restriction of exposure to ionising radiation and the health and safety of people who may be affected by such emergencies, as are identified by the risk assessment.

Special hazards

Construction (Design and Management) Regulations 2007 (SI 2007/320)

14 The principal contractor must:

(a) make and maintain arrangements to enable them and the workers engaged in the construction work to co-operate effectively in promoting and developing measures to ensure the health, safety and welfare of the workers and in checking the effectiveness of those measures;
(b) consult workers or their representatives in good time on matters connected with the project which may affect their health, safety or welfare, unless they or their representatives are consulted on those matters by their employers;
(c) ensure that workers or their representatives can inspect and take copies of any information which the principal contractor has, or which these Regulations

require to be provided to them relating to the planning and management of the project, or which otherwise may affect their health, safety or welfare at the site (with the exception as detailed in the Regulations).

Control of Major Accident Hazards Regulations 1999 (SI 1999/743)

15 Requirements for the operator to consult workers on the preparation of the on-site emergency plan.

Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 (SI 1989/971)

16 Installation owners and installation managers must consult safety representatives on the arrangements for effective co-operation in promoting and developing measures to ensure the health and safety of people working on or from the installation, and in checking the effectiveness of such arrangements.

17 Requirements for the dutyholder (the installation owner/operator) to consult safety representatives in good time on:

(a) the revision, review or preparation of a safety case relating to the installation under the Offshore Installations (Safety Case) Regulations 1992;
(b) the introduction of any measure which may substantially affect the health and safety of the workforce;
(c) the health and safety consequences arising from the introduction of new technologies to the installation;
(d) the arrangements for the appointment of competent persons to undertake emergency duties.

18 Requirements for the dutyholder (the installation owner/operator) and employer to consult safety representatives in good time on:

(a) any health and safety information they are required to provide to members of a workforce by or under the relevant statutory provisions;
(b) the planning and organisation of any health and safety training they are to provide to members of a workforce by or under the relevant statutory provisions.

19 In addition, employers must consult safety representatives about the arrangements for appointing competent persons to assist them in complying with the Regulations.

20 See the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 for more details.

Quarries Regulations 1999 (SI 1999/2024)

21 Operators must make and maintain arrangements which will enable them and people who regularly work at the quarry to co-operate effectively in promoting and developing measures to ensure the health, safety and welfare of those people and in checking the effectiveness of such measures.

22 A committee of people with suitable practical experience of quarrying operations may be appointed for this purpose. The functions of the members of this committee include inspections, scrutiny of documents kept at the quarry in compliance with the statutory provisions, review of risk assessment and measures

to safeguard the health and safety of people working at the quarry, and to suggest improvements to the risk assessment, to which the operator must respond. If suggested improvements are not accepted, the operator must give written reasons to the members of the committee who made the inspection.

Railways and Other Guided Transport Systems (Safety) Regulations 2006 (SI 2006/599)

23 Safety representatives or such other employees must be consulted on the preparation or revision of safety certificates or safety authorisations, an amended safety certificate or safety authorisation or if an employer sends a notice to the Office of Rail Regulation under regulation 13 (Notice of changes), or under paragraph 9 Schedule 5 (Notices where the safety case is materially different).

24 There are also requirements for the operator's safety management system to describe how people carrying out work or voluntary work and their representatives on all levels are involved with the safety management systems.

Confined Spaces Regulations 1997 (SI 1997/1713)

25 The guidance on the Regulations states that employees and their representatives should be consulted when assessing the risks connected with entering or working in a confined space.

This booklet has been published by the TUC to ensure that all safety representatives are aware of their rights and responsibilities. It reproduces the text of the Regulations, Codes of Practice and guidance relating to the Safety Representatives and Safety Committees Regulations, 1977.

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acas working for everyone

Time off for trade union duties and activities

including guidance on time off for union learning representatives

Code of Practice 3

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Contents

This code revises the Acas Code of Practice on Time Off for Trade Union Duties and Activities which came into effect on 27 April 2003. This revised code is issued under Section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and comes into force by order of the Secretary of State on 1 January 2010.

Introduction

1 Under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 the Advisory, Conciliation and Arbitration Service (Acas) has a duty to provide practical guidance on the time off to be permitted by an employer:

(a) to a trade union official in accordance with section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992; and

(b) to a trade union member in accordance with section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Section 199 of the Act, as amended by the Employment Act 2002, also provides for Acas to issue practical guidance on time off and training for Union Learning Representatives.

This Code, which replaces the Code of Practice issued by Acas in 2003, is intended to provide such guidance. Advice on the role and responsibilities of employee representatives is provided in two Acas Guides: *Trade union representation in the workplace: a guide to managing time off, training and facilities* and *Non-union representation in the workplace: a guide to managing time off, training and facilities*.

Terminology

2 In this Code the term 'Trade union official', is replaced by 'union representative'. In practice there is often confusion between an 'official' and an 'officer' of a union and the term 'representative' is commonly used in practice. Section 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 defines an official as

'(a) an officer of the union or of a branch or section of the union, or (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent'. Section 181 (1) of the same Act defines a 'representative', for the purposes of sections 181 – 185 of the Act, as 'an official or other person authorised by the union to carry on such collective bargaining'.

In this Code a union representative means an employee who has been elected or appointed in accordance with the rules of the independent union to be a representative of all or some of the union's members in the particular company or workplace, or agreed group of workplaces where the union is recognised for collective bargaining purposes. This is intended to equate with the legal term 'trade union official' for the purposes of this Code.

The term 'union full-time officer' in this Code means a trade union official who is employed by an independent trade union to represent members in workplaces, or groups of workplaces, where the union is recognised for collective bargaining purposes.

A Union Learning Representative is an employee who is a member of an independent trade union recognised by the employer who has been elected or appointed in accordance with the rules of the union to be a learning representative of the union at the workplace.

The background

3 Union representatives have had a statutory right to reasonable paid time off from employment to carry out trade union duties and to undertake trade union

training since the Employment Protection Act 1975. Union representatives and members were also given a statutory right to reasonable unpaid time off when taking part in trade union activities. Union duties must relate to matters covered by collective bargaining agreements between employers and trade unions and relate to the union representative's own employer, unless agreed otherwise in circumstances of multi-employer bargaining, and not, for example, to any associated employer. All the time off provisions were brought together in sections 168 – 170 of the Trade Union and Labour Relations (Consolidation) Act 1992. Section 43 of the Employment Act 2002 added a new right for Union Learning Representatives to take paid time off during working hours to undertake their duties and to undertake relevant training. The rights to time off for the purpose of carrying out trade union duties, and to take time off for training, were extended to union representatives engaged in duties related to redundancies under Section 188 of the amended 1992 Act and to duties relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

General purpose of the Code

4 The general purpose of the statutory provisions and this Code of Practice is to aid and improve the effectiveness of relationships between employers and trade unions. Employers and unions have a joint responsibility to ensure that agreed arrangements work to mutual advantage by specifying how reasonable time off for union duties and activities and for training will work.

Structure of the Code

5 Section 1 of this Code provides guidance on time off for trade union duties. Section 2 deals with time off for training of trade union representatives and offers

guidance on sufficient training for Union Learning Representatives. Section 3 considers time off for trade union activities. In each case the amount and frequency of time off, and the purposes for which and any conditions subject to which time off may be taken, are to be those that are reasonable in all the circumstances. Section 4 describes the responsibilities which employers and trade unions share in considering reasonable time off. Section 5 notes the advantages of reaching formal agreements on time off. Section 6 deals with industrial action and Section 7 with methods of appeal.

6 The annex to this Code reproduces the relevant statutory provisions on time off. To help differentiate between these and practical guidance, the summary of statutory provisions relating to time off which appears in the main text of the Code is in **bold type**. Practical guidance is in ordinary type. While every effort has been made to ensure that the summary of the statutory provisions included in this Code is accurate, only the courts can interpret the law authoritatively.

Status of the Code

7 **The provisions of this Code are admissible in evidence in proceedings before an Employment Tribunal relating to time off for trade union duties and activities. Any provisions of the Code which appear to the Tribunal to be relevant shall be taken into account. However, failure to observe any provision of the Code does not of itself render a person liable to any proceedings.**

SECTION 1

Time off For Trade Union Duties

Union representatives undertake a variety of roles in collective bargaining and in working with management, communicating with union members, liaising with their trade union and in handling individual disciplinary and grievance matters on behalf of employees. There are positive benefits for employers, employees and for union members in encouraging the efficient performance of union representatives' work, for example in aiding the resolution of problems and conflicts at work. The role can be both demanding and complex. In order to perform effectively union representatives need to have reasonable paid time off from their normal job in appropriate circumstances.

Entitlement

8 **Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to carry out certain trade union duties.**

9 **Union representatives are entitled to time off where the duties are concerned with:**

- **negotiations with the employer about matters which fall within section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) and for which the union is recognised for the purposes of collective bargaining by the employer;**
- **any other functions on behalf of employees of the employer which are related to matters falling within**

section 178(2) TULR(C)A and which the employer has agreed the union may perform;

- **the receipt of information from the employer and consultation by the employer under section 188 TULR(C)A, related to redundancy or under the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer;**
- **negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer; or**
- **the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under regulation 9 of the Transfer of Undertakings (Protection or Employment) Regulations 2006.**

Matters falling within section 178(2) TULR(C)A are listed in the sub headings of paragraph 13 below.

10 **The Safety Representatives and Safety Committees Regulations 1977 regulation 4(2)(a) requires that employers allow union health and safety representatives paid time, as is necessary, during working hours, to perform their functions.**

Further advice on time off provisions for health and safety representatives is provided by the Health and Safety Executive in their approved Code and Guidance 'Consulting workers on health and safety'. This is not covered in this Acas Code.

11 **An independent trade union is recognised by an employer when it is recognised to any extent for the purposes of collective bargaining. Where a trade union is not so recognised by an employer, employees have**

no statutory right to time off to undertake any duties except that of accompanying a worker at a disciplinary or grievance hearing (see para 20).

Examples of trade union duties

12 **Subject to the recognition or other agreement, trade union representatives should be allowed to take reasonable time off for duties concerned with negotiations or, where their employer has agreed, for duties concerned with other functions related to or connected with the subjects of collective bargaining.**

13 **The subjects connected with collective bargaining may include one or more of the following:**

(a) **terms and conditions of employment, or the physical conditions in which workers are required to work**. Examples could include:

- pay
- hours of work
- holidays and holiday pay
- sick pay arrangements
- pensions
- learning and training
- equality and diversity
- notice periods
- the working environment
- operation of digital equipment and other machinery;

(b) **engagement or non engagement, or termination or suspension of employment or the duties of employment, of one or more workers**. Examples could include:

- recruitment and selection policies
- human resource planning
- redundancy and dismissal arrangements;

(c) **allocation of work or the duties of employment as between workers or groups of workers**. Examples could include:

- job grading
- job evaluation
- job descriptions
- flexible working practices
- work-life balance;

(d) **matters of discipline**. Examples could include:

- disciplinary procedures
- arrangements for representing or accompanying employees at internal interviews
- arrangements for appearing on behalf of trade union members, or as witnesses, before agreed outside appeal bodies or employment tribunals;

(e) **trade union membership or non membership**. Examples could include:

- representational arrangements
- any union involvement in the induction of new workers;

(f) **facilities for trade union representatives**. Examples could include any agreed arrangements for the provision of:

- accommodation
- equipment
- names of new workers to the union;

(g) **machinery for negotiation or consultation and other procedures**. Examples could include arrangements for:

- collective bargaining at the employer and/or multi-employer level
- grievance procedures

- joint consultation
- communicating with members
- communicating with other union representatives and union full-time officers concerned with collective bargaining with the employer.

14 The duties of a representative of a recognised trade union must be connected with or related to negotiations or the performance of functions both in time and subject matter. Reasonable time off may be sought, for example, to:

- prepare for negotiations, including attending relevant meetings
- inform members of progress and outcomes
- prepare for meetings with the employer about matters for which the trade union has only representational rights

15 **Trade union duties will also be related to the receipt of information and consultation related to the handling of collective redundancies where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days, and where the Transfer of Undertakings (Protection of Employees) Regulations apply but also including the negotiations with a view to entering an agreement under regulation 9 of the Regulations (variation of contract in insolvency)**.

Union Learning Representatives

16 Employees who are members of an independent trade union recognised by the employer can take reasonable time off to undertake the duties of a Union Learning Representative, provided that the union has given the employer notice in writing that the employee is a learning representative of the trade union and the training condition is met (see paras 28–33 for further

information on the training condition). **The functions for which time off as a Union Learning Representative is allowed are**:

- **analysing learning or training needs**
- **providing information and advice about learning or training matters**
- **arranging learning or training**
- **promoting the value of learning or training**
- **consulting the employer about carrying on any such activities**
- **preparation to carry out any of the above activities**
- **undergoing relevant training.**

In practice, the roles and responsibilities of Union Learning Representatives will often vary by union and by workplace but must include one or more of these functions. In some cases it may be helpful if Union Learning Representatives attend meetings concerned with agreeing and promoting learning agreements. Employers may also see it in their interests to grant paid time off for these representatives to attend meetings with external partners concerned with the development and provision of workforce training.

Recognition needs to be given to the varying roles of Union Learning Representatives where the post holder also undertakes additional duties as a union representative.

17 Many employers have in place well established training and development programmes for their employees. Union Learning Representatives should liaise with their employers to ensure that their respective training activities complement one another and that the scope for duplication is minimised.

Payment for time off for trade union duties

18 **An employer who permits union representatives time off for trade union duties must pay them for the time off taken. The employer must pay either the amount that the union representative would have earned had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do**.

The calculation of pay for the time taken for trade union duties should be undertaken with due regard to the type of payment system applying to the union representative including, as appropriate, shift premia, performance related pay, bonuses and commission earnings. Where pay is linked to the achievement of performance targets it may be necessary to adjust such targets to take account of the reduced time the representative has to achieve the desired performance.

19 **There is no statutory requirement to pay for time off where the duty is carried out at a time when the union representative would not otherwise have been at work unless the union representative works flexible hours, such as night shift, but needs to perform representative duties during normal hours. Staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases the amount of time off must be reasonable**.

Time off to accompany Workers at disciplinary or Grievance Hearings

20 **Trade union representatives are statutorily entitled to take a reasonable amount of paid time off to accompany a worker at a disciplinary or grievance hearing so long as they have been certified by their union as being**

capable of acting as a worker's companion. The right to time off in these situations applies regardless of whether the certified person belongs to a recognised union or not although the worker being accompanied must be employed by the same employer. Time off for a union representative or a certified person to accompany a worker of another employer is a matter for voluntary agreement between the parties concerned.

SECTION 2

Training of union representatives in aspects of employment relations and employee development

Training is important for union representatives to enable them to carry out their duties effectively. Training should be available both to newly appointed and to more established union representatives. It is desirable, from time to time where resources permit it, for joint training and development activities between union representatives and managers to occur.

Entitlement

21 **Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to undergo training in aspects of industrial relations relevant to the carrying out of their trade union duties. These duties must be concerned with:**

- **negotiations with the employer about matters which fall within section 178(2) TULR(C)A and for which the union is recognised to any extent for the purposes of collective bargaining by the employer; or**
- **any other functions on behalf of employees of the employer which are related to matters falling within section 178(2) TULR(C)A and which the employer has agreed the union may perform;**
- **matters associated with information and consultation concerning collective redundancy and the Transfer of**

Undertakings, and the negotiation of an agreement under Regulation 9 of the Transfer of Undertakings (Protection of Employees) Regulations.

Matters falling within section 178(2) TULR(C)A are set out in paragraph 13 above.

22 **The Safety Representatives and Safety Committees Regulations 1977 regulation 4(2)(b) requires that employers allow union health and safety representatives to undergo training in aspects of their functions that is 'reasonable in all the circumstances'**.

Further advice on the training of health and safety representatives is provided by the Health and Safety Executive in their approved Code and Guidance 'Consulting workers on health and safety'. This is not covered in this Acas Code.

23 **Employees who are Trade Union Learning Representatives are also permitted reasonable time off during working hours to undergo training relevant to their functions as a Union Learning Representative**.

What is relevant employment relations training?

24 **Training should be in aspects of employment relations relevant to the duties of a union representative**. There is no one recommended syllabus for training as a union representative's duties will vary according to:

- the collective bargaining arrangements at the place of work, particularly the scope of the recognition or other agreement
- the structure of the union
- the role of the union representative
- the handling of proposed collective redundancies or the transfer of undertakings

25 **The training must also be approved by the Trades Union Congress or by the independent trade union of which the employee is a union representative**.

26 Union representatives are more likely to carry out their duties effectively if they possess skills and knowledge relevant to their duties. In particular, employers should be prepared to consider releasing union representatives for initial training in basic representational skills as soon as possible after their election or appointment, bearing in mind that suitable courses may be infrequent. Reasonable time off could also be considered, for example:

- for training courses to develop the union representative's skills in representation, accompaniment, negotiation and consultation
- for further training particularly where the union representative has special responsibilities, for example in collective redundancy and transfer of undertakings circumstances
- for training courses to familiarise or update union representatives on issues reflecting the developing needs of the workforce they represent
- for training where there are proposals to change the structure and topics of negotiation about matters for which the union is recognised; or where significant changes in the organisation of work are being contemplated
- for training where legal change may affect the conduct of employment relations at the place of work and may require the reconsideration of existing agreements
- for training where a union representative undertakes the role of accompanying employees in grievance and disciplinary hearings.

27 E-learning tools, related to the role of union representatives, should be used where available and appropriate. However, their best use is as an additional learning aid rather than as a replacement to attendance at approved trade union and Trades Union Congress training courses. Time needs to be given during normal working hours for union representatives to take advantage of e-learning where it is available.

Training for Union Learning Representatives

28 **Employees who are members of an independent trade union recognised by the employer are entitled to reasonable paid time off to undertake the functions of a Union Learning Representative. To qualify for paid time off the member must be sufficiently trained to carry out duties as a learning representative:**

- **either at the time when their trade union gives notice to their employer in writing that they are a learning representative of the trade union**
- **or within six months of that date**.

29 **In the latter case, the trade union is required to give the employer notice in writing that the employee will be undergoing such training and when the employee has done so to give the employer notice of that fact. During the six month period in which he or she is undergoing this training, the Union Learning Representative must be allowed time off to perform their duties**. It should be confirmed by the union in a letter that the training undertaken is sufficient to allow the Learning Representative to undertake their role and it is good practice for the union to give details of the training which has been completed and any previous training that has been taken into account. In the interests of good practice, the six month qualifying period may be extended, with agreement, to take into account any

significant unforeseen circumstances such as prolonged absence from work due to ill health, pregnancy, bereavement or unavoidable delays in arranging an appropriate training course.

30 To satisfy this training requirement an employee will need to be able to demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of the following areas of activity relevant to their duties as a Union Learning Representative:

analysing learning or training needs;

- this could for example include understanding the different methods for identifying learning interests or needs, being able to effectively identify and record individual learning needs or being able to draw up a plan to meet identified learning requirements.

providing information and advice about learning or training matters;

- including, for example, the development of communication and interviewing skills
- knowledge of available opportunities, in order to be able to provide accurate information to members about learning opportunities within and outside the workplace
- the ability to signpost members to other sources of advice and guidance where additional support is needed, for example, basic skills tutors or fuller in depth professional career guidance.

arranging and supporting learning and training;

- for example, obtaining and providing information on learning opportunities including e-learning where available, supporting and encouraging members to

access learning opportunities and helping to develop and improve local learning opportunities;

promoting the value of learning and training;

- some examples of this activity could be, understanding current initiatives for the development of learning and skills in the workplace, promoting the value of learning to members and within trade union networks and structures, working with employers to meet the learning and skill needs of both individuals and the organisation, and appreciating the value of learning agreements and how they may be developed.

31 An employee could demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of these areas of activity by:

- completing a training course approved by the Trades Union Congress or by the independent trade union of which the employee is a Union Learning Representative, or by
- showing that they have previously gained the relevant expertise and experience to operate effectively as a learning representative.

In the latter case, previous experience and expertise gained in areas such as teaching, training, counselling, providing careers advice and guidance or human resource development, may well be relevant, as may periods of extensive on-the-job training and experience gained in shadowing an experienced Union Learning Representative.

32 Reasonable time off should also be considered for further training to help Union Learning Representatives develop their skills and competencies.

33 Although not required by law it is recognised that there would be clear advantages both to the individual and the organisation if training undertaken leads to a recognised qualification standard.

Payment for time off for training

34 **An employer who permits union representatives or Union Learning Representatives time off to attend relevant training, must pay them for the time off taken. The employer must pay either the amount that the union representative or the Union Learning Representative would have earned had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do**.

The calculation of pay for the time taken for training should be undertaken with due regard to the type of payment system applying to the union representative and Union Learning Representative including, as appropriate, shift premia, performance related pay, bonuses and commission earnings. Where pay is linked to the achievement of performance targets it may be necessary to adjust such targets to take account of the reduced time the representative has to achieve the desired performance.

35 **There is no statutory requirement to pay for time off where training is undertaken at a time when the union representative or Union Learning Representative would not otherwise have been at work unless the union representative or Union Learning Representative works flexible hours, such as night shift, but needs to undertake training during normal hours. Staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases, the amount of time off must be reasonable**.

SECTION 3

Time off for trade union activities

To operate effectively and democratically, trade unions need the active participation of members. It can also be very much in employers' interests that such participation is assured and help is given to promote effective communication between union representatives and members in the workplace.

Entitlement

36 **An employee who is a member of an independent trade union recognised by the employer in respect of that description of employee is to be permitted reasonable time off during working hours to take part in any trade union activity. An employee who is a member of an independent and recognised trade union is also permitted to take reasonable time off during working hours for the purposes of accessing the services of a Union Learning Representative (provided those services are services for which the Union Learning Representative is entitled to time off)**.

What are examples of trade union activities?

37 The activities of a *trade union member* can be, for example:

- attending workplace meetings to discuss and vote on the outcome of negotiations with the employer. Where relevant, and with the employer's agreement, this can include attending such workplace meetings at the employer's neighbouring locations.

- meeting full time officers to discuss issues relevant to the workplace
- voting in union elections
- having access to services provided by a Union Learning representative.

38 Where the member is acting as a representative of a recognised union, activities can be, for example, taking part in:

- branch, area or regional meetings of the union where the business of the union is under discussion
- meetings of official policy making bodies such as the executive committee or annual conference
- meetings with full time officers to discuss issues relevant to the workplace.

39 **There is no right to time off for trade union activities which themselves consist of industrial action**.

Payment for time off for trade union activities

40 Paragraphs 18 and 19 set out the statutory entitlement to payment for time off to undertake trade union duties.

41 **There is no statutory requirement that union members or representatives be paid for time off taken on trade union *activities***. Nevertheless employers may want to consider payment in certain circumstances, for example to ensure that workplace meetings are fully representative or to ensure that employees have access to services provided by Union Learning Representatives.

SECTION 4

The responsibilities of employers and trade unions

Employers, trade unions, union representatives and line managers should work together to ensure that time off provisions, including training, operate effectively and for mutual benefit Union representatives need to be able to communicate with management, each other, their trade union and employees. To do so they need to be able to use appropriate communication media and other facilities.

General considerations

42 **The amount and frequency of time off should be reasonable in all the circumstances**. Although the statutory provisions apply to all employers without exception as to size and type of business or service, trade unions should be aware of the wide variety of difficulties and operational requirements to be taken into account when seeking or agreeing arrangements for time off, for example:

- the size of the organisation and the number of workers
- the production process
- the need to maintain a service to the public
- the need for safety and security at all times.

43 Employers in turn should have in mind the difficulties for trade union representatives and members in ensuring effective representation and communications with, for example:

- shift workers
- part-time workers

- home workers
- teleworkers or workers not working in a fixed location
- those employed at dispersed locations
- workers with particular domestic commitments including those on leave for reasons of maternity, paternity or care responsibilities
- workers with special needs such as disabilities or language requirements.

44 For time off arrangements to work satisfactorily trade unions should:

- ensure that union representatives are aware of their role, responsibilities and functions
- inform management, in writing, as soon as possible of appointments or resignations of union representatives
- ensure that union representatives receive any appropriate written credentials promptly
- ensure that employers receive details of the functions of union representatives where they carry out special duties or functions.

45 Employers should ensure that, where necessary, work cover and/or work load reductions are provided when time off is required. This can include the allocation of duties to other employees, rearranging work to a different time or a reduction in workloads.

46 While there is no statutory right for facilities for union representatives, except for representatives engaged in duties related to collective redundancies and the Transfer of Undertakings, employers should, where practical, make available to union representatives the facilities necessary for them to perform their duties efficiently and communicate effectively with their members, colleague union representatives and full-time officers.

Where resources permit the facilities should include:

- accommodation for meetings which could include provision for Union Learning Representatives and a union member(s) to meet to discuss relevant training matters
- access to a telephone and other communication media used or permitted in the workplace such as email, intranet and internet
- the use of noticeboards
- where the volume of the union representative's work justifies it, the use of dedicated office space
- confidential space where an employee involved in a grievance or disciplinary matter can meet their representative or to discuss other confidential matters
- access to members who work at a different location
- access to e-learning tools where computer facilities are available.

47 When using facilities provided by the employer for the purposes of communication with their members or their trade union, union representatives must comply with agreed procedures both in respect of the use of such facilities and also in respect of access to and use of company information. The agreed procedures will be either those agreed between the union and the employer as part of an agreement on time off (see section 6) or comply with general rules applied to all employees in the organisation. In particular, union representatives must respect and maintain the confidentiality of information they are given access to where, the disclosure would seriously harm the functioning of, or would be prejudicial to, the employer's business interests. The disclosure of information for collective bargaining purposes is covered by the Acas Code of Practice on that topic. Union representatives should understand that unauthorised publication risks damaging the employer's business, straining relations

with the representative body concerned, possible breaches of individual contracts of employment and, in extreme cases such as unauthorised publication of price-sensitive information, the commission of criminal offences.

48 Union representatives will have legitimate expectations that they and their members are entitled to communicate without intrusion in the form of monitoring by their employer. Rules concerning the confidentiality of communications involving union representatives should be agreed between the employer and the union. Guidance on this is set out in paragraphs 49 and 57 below.

49 Employers must respect the confidential and sensitive nature of communications between union representatives and their members and trade union. They should not normally carry out regular or random monitoring of union emails. Only in exceptional circumstances may employers require access to communications but such access should be subject to the general rules set out in statute and the Employment Practices Code issued by the Information Commissioner's Office. In the context of the Data Protection Act 1998 whether a person is a member of a trade union or not is defined as sensitive personal data. This also applies to data concerning individuals, for example communications concerned with possible or actual grievance and disciplinary issues. There are therefore very strict provisions on how such data can be used and monitored in compliance with the law.

Requesting time off

50 Trade union representatives and members requesting time off to pursue their duties or activities or to access the services of a Union Learning Representative should provide management, especially their line manager, with as much notice as practically possible concerning:

- the purpose of such time off, while preserving personal confidential information relating to individuals in grievance or disciplinary matters
- the intended location
- the timing and duration of time off required.

51 Union representatives should minimise business disruption by being prepared to be as flexible as possible in seeking time off in circumstances where the immediate or unexpected needs of the business make it difficult for colleagues or managers to provide cover for them in their absence. Equally employers should recognise the mutual obligation to allow union representatives to undertake their duties.

52 In addition, union representatives who request paid time off to undergo relevant training should:

- give at least a few weeks' notice to management of nominations for training courses
- provide details of the contents of the training course.

53 When deciding whether requests for paid time off should be granted, consideration would need to be given as to their reasonableness, for example to ensure adequate cover for safety or to safeguard the production process or the provision of service. Consideration should also be given to allowing Union Learning Representatives access to a room in which they can discuss training in a confidential manner with an employee. Similarly, managers and unions should seek to agree a mutually convenient time which minimises the effect on production or services. Where workplace meetings are requested, consideration should be given to holding them, for example:

- towards the end of a shift or the working week
- before or after a meal break.

54 For their part line managers should be familiar with the rights and duties of union representatives regarding time off. They should be encouraged to take reasonable steps as necessary in the planning and management of representatives' time off and the provision of cover or work load reduction, taking into account the legitimate needs of such union representatives to discharge their functions and receive training efficiently and effectively.

55 Employers need to consider each application for time off on its merits; they should also consider the reasonableness of the request in relation to agreed time off already taken or in prospect.

SECTION 5

Agreements on time off

To take account of the wide variety of circumstances and problems which can arise, there can be positive advantages for employers and trade unions in establishing agreements on time off in ways that reflect their own situations. It should be borne in mind, however, that the absence of a formal agreement on time off does not in itself deny an individual any statutory entitlement. Nor does any agreement supersede statutory entitlement to time off.

56 A formal agreement can help to:

- provide clear guidelines against which applications for time off can be determined
- establish realistic expectations on the part of union representatives and managers
- avoid misunderstanding
- facilitate better planning
- ensure fair and reasonable treatment.

57 Agreements should specify:

- the amount of time off permitted recognising that this will vary according to the fluctuations in demand on the union representatives' role
- the occasions on which time off can be taken including meetings with management, meetings with other union representatives, time needed to prepare for meetings, communicating with members and their trade union, time to undertake e-learning if appropriate and to attend approved training events
- in what circumstances time off will be paid
- arrangements for taking time off at short notice

- how pay is to be calculated
- to whom time off will be paid
- the facilities and equipment to be provided and limits to their use, if any
- arrangements for ensuring confidentiality of communications involving union representatives. These should include agreed rules on the use of data and the exceptional cases where monitoring may be necessary, for example in cases of suspected illegal use, specifying the circumstances where such monitoring may be undertaken and the means by which it is to be done, for example by company IT or security personnel
- the role of line managers in granting permission to legitimate requests for time off and, where appropriate and practical, ensuring that adequate cover or work load reductions are provided
- the procedure for requesting time off
- the procedure for resolving grievances about time off.

58 In addition, it would be sensible for agreements to make clear:

- arrangements for the appropriate payment to be made when time off relates in part to union duties and in part to union activities
- how and in what circumstances payment might be made to shift and part time employees undertaking trade union duties outside their normal working hours.

59 Agreements for time off and other facilities for union representation should be consistent with wider agreements which deal with such matters as constituencies, number of representatives and the election of officials.

60 The operation of time off agreements or arrangements should be jointly reviewed by the parties from time to time.

61 In smaller organisations, it might be thought more appropriate for employers and unions to reach understandings about how requests for time off are to be made; and more broadly to agree flexible arrangements which can accommodate their particular circumstances.

SECTION 6

Industrial action

62 Employers and unions have a responsibility to use agreed procedures to settle problems and avoid industrial action. Time off may therefore be permitted for this purpose particularly where there is a dispute. **There is no right to time off for trade union activities which themselves consist of industrial action**. However, where a union representative is not taking part in industrial action but represents members involved, normal arrangements for time off with pay for the union representatives should apply.

SECTION 7

Resolving disputes

There is advantage in agreeing ways in which disputes concerning time off arrangements, including training and access to facilities, can be settled and any appropriate procedures to resolve disputes should be followed.

63 Every effort should be made to resolve any dispute or grievance in relation to time off work for union duties or activities. **Where the grievance remains unresolved, union representatives, Union Learning Representatives or members have a right to complain to an employment tribunal that their employer has failed to allow reasonable time off or, in the case of a Union Learning Representative or union representative, has failed to pay for all or part of the time off taken. Such complaints may be resolved by conciliation by Acas or through a compromise agreement and, if this is successful, no tribunal hearing will be necessary.** Acas assistance may also be sought without the need for a formal complaint to a tribunal.

ANNEX

The law on time off for trade union duties and activities

Section 168 of the Trade Union and Labour Relations (Consolidation) act 1992, states:

(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with –

(a) negotiations with the employer related to or connected with matters falling within section 178(2) (collective bargaining) in relation to which the trade union is recognised by the employer, or

(b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union, or

(c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 2006, or

(d) negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer, or

(e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation.

(2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations –

(a) relevant to the carrying out of such duties as are mentioned in subsection (1), and

(b) approved by the Trades Union Congress or by the independent trade union of which he is an official.

(3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by Acas.

(4) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

Section 168a of the Trade Union and Labour Relations (Consolidation) act 1992 states

(1) An employer shall permit an employee of his who is –

(a) a member of an independent trade union recognised by the employer, and

(b) a learning representative of the trade union, to take time off during his working hours for any of the following purposes.

(2) The purposes are –

(a) carrying on any of the following activities in relation to qualifying members of the trade union

(i) analysing learning or training needs,

(ii) providing information and advice about learning or training matters,

(iii) arranging learning or training, and

(iv) promoting the value of learning or training,

(b) consulting the employer about carrying on any such activities in relation to such members of the trade union,

(c) preparing for any of the things mentioned in paragraphs (a) and (b).

(3) Subsection (1) only applies if –

(a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and

(b) the training condition is met in relation to him.

(4) The training condition is met if –

(a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact,

(b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or

(c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.

(5) Only one notice under subsection (4)(b) may be given in respect of any one employee.

(6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by Acas or the Secretary of State.

(7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes –

(a) undergoing training which is relevant to his functions as a learning representative, and

(b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).

(8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by Acas or the Secretary of State.

(9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

(10) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union –

(a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and

(b) in relation to whom it is the function of the union learning representative to act as such.

(11) For the purposes of this section, a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules.

Section 169 of the Trade Union and Labour Relations (Consolidation) act 1992 states:

(1) An employer who permits an employee to take time off under section 168 or 168A shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he shall be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he shall be paid an amount calculated by reference to the average hourly earnings for that work.

The average hourly earnings shall be those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(4) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but –

(a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and

(b) any payment under this section in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(5) An employee may present a complaint to an employment tribunal that his employer has failed to pay him in accordance with this section.

Section 170 of the Trade Union and Labour Relations (Consolidation) act 1992 states:

(1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in –

(a) any activities of the union, and

(b) any activities in relation to which the employee is acting as a representative of the union.

(2) The right conferred by subsection (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.

(2A) The right conferred by subsection (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.

(2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.

(2C) Subsection (2B) only applies if the learning representative would be entitled to time off under subsection (1) of section 168A for the purpose of carrying on in relation to the employee activities of the kind mentioned in subsection (2) of that section.

(3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by Acas.

(4) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

(5) For the purposes of this section –

(a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and

(b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in section 168A(2) in that capacity.

Section 178(1) – (3) of the Trade Union and Labour Relations (Consolidation) act 1992, states:

(1) In this Act "collective agreement" means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below; and "collective bargaining" means negotiations relating to or connected with one or more of those matters.

(2) The matters referred to above are –

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;

(b) engagement or non engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

(c) allocation of work or the duties of employment as between workers or groups of workers;

(d) matters of discipline;

(e) a worker's membership or non membership of a trade union;

(f) facilities for officials of trade unions; and

(g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

(3) In this Act "recognition", in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and "recognised" and other related expressions shall be construed accordingly.

Section 173(1) of the Trade Union and Labour Relations (Consolidation) act 1992, states:

For the purposes of sections 168, 168A and 170 the working hours of an employee shall be taken to be any time when in accordance with his contract of employment he is required to be at work.

Section 119 of the Trade Union and Labour Relations (Consolidation) act 1992 states:

"official" means –

(a) an officer of the union or of a branch or section of the union, or

(b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them,

and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent.

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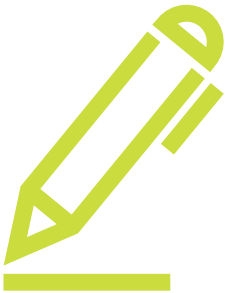

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04/18

The Equality Act 2010

The Act consists of 251 pages of legal text which we have tried to simplify here. ACAS offers a number of guides to Equalities and there are also a vast range of guides available via the gov.uk website.

ACAS Summary of the key points

An employer must consider making 'reasonable adjustments' for a disabled employee or job applicant if:

- it becomes aware of their disability and/or
- they ask for adjustments to be made and/or
- a disabled employee is having difficulty with any part of their job and/or
- either an employee's sickness record, or delay in returning to work, is linked to their disability.

There are limited circumstances where an employer may act in a way which is discriminatory if it can objectively justify discrimination as what the law terms 'a proportionate means of achieving a legitimate aim'. Employers should note that this can be a difficult process.

An employer can take what the law terms 'positive action' to help employees or job applicants it thinks:

- are at a disadvantage because of a protected characteristic and/or
- are under-represented in the organisation, or whose participation in the organisation is disproportionately low, because of a protected characteristic and/or
- have specific needs connected to a protected characteristic.

An employer must be able to show evidence that any positive action is reasonably considered and will not discriminate against others. Men and women in full-time or part-time employment have a right to **equal pay (Sex Equality)** - which in law means 'no less favourable' pay, benefits and terms and conditions in their employment contracts where they are doing equal work.

Employers and employees in the public sector, and in private or voluntary organisations carrying out work on behalf of a public sector employer, have a legal **public sector equality duty** in the workplace to prevent and eliminate discrimination, establish and promote equality and equal opportunities, and foster good relations between people with different protected characteristics. To find out more, visit **GOV.UK - Equality.**

If an employer believes it is necessary to ask health-related questions before making a job offer, it can do so only to determine whether an applicant can carry out a function essential to the role, and/or take 'positive action' to assist disabled people, and/or monitor, without revealing the candidate's identity, whether they are disabled (for example, to check whether its job advertisement is reaching disabled people), and/or confirm that a candidate has a disability where this is a genuine requirement of the job.

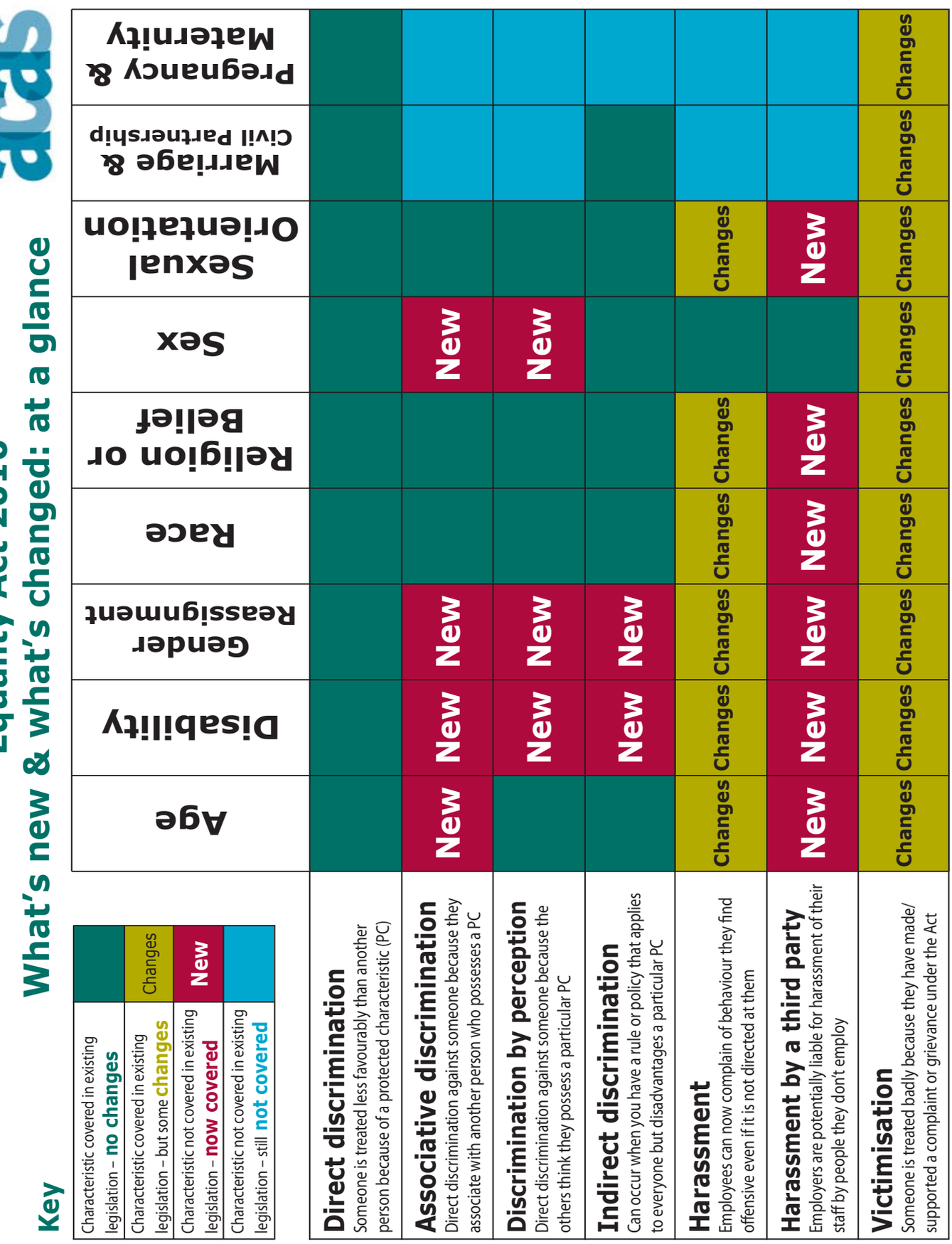
Asking and responding to questions of discrimination

A good practice Acas guide, **Asking and responding to questions of discrimination in the workplace** [164kb] will assist parties in exchanging information.

Issues of discrimination can be complex. A written question and answer process can be particularly helpful in establishing what has happened and can help in trying to resolve concerns, avoiding

claims and disputes. The guide explains

- how jobseekers and employees, who think they may have been discriminated against under the Equality Act 2010, can ask questions about what may have happened to them
- and how people or organisations, such as employers, receiving an information request can respond appropriately.



ACTIVITY 16: - Note Taking Skills

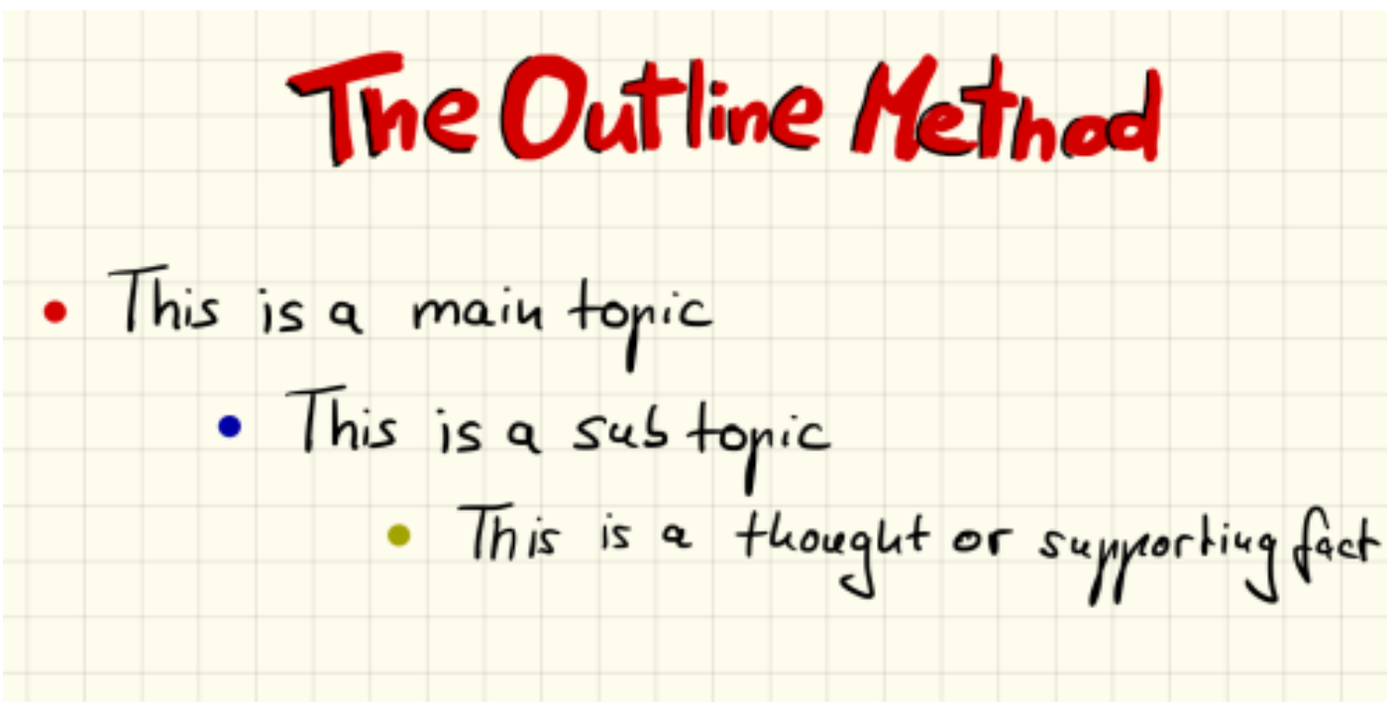
Note-taking is one of the most important activities for reps There are a variety of reasons for it but we only want to highlight the most important one here: Taking notes will help you recall information that would otherwise be lost. And we all know how crucial that can be when we're preparing to represent a member or dealing with management. But taking notes the right way isn't as easy as it sounds. It isn't simply about jotting down everything that you hear. Taking notes is about summarising core concepts as precisely as possible in your own words.

One thing that most of the successful reps have in common is that they use a note-taking method. A note-taking method will help you to prepare before the meeting and to review key concepts after a meeting. It will help you to stay focused during the meeting to pay attention and actively participate. It will help you to organise your notes properly so that you don't have to worry about losing the overview once you get back to them to prepare a report etc. In this section, we give an overview of the some note-taking methods, how to apply them and when you should or shouldn't use them.

Let's dive in.

1.Note-taking method #1: The Outline method

The Outline method is one of the best and most popular note-taking methods for college students. It lets you organise your notes in a structured form, helping you save a lot of time for further reviewing and editing. As the name suggests, this method requires you to structure your notes in form of an outline by using bullet points to represent different topics and their subtopics. Start writing main topics on the far left of the page and add related subtopic in bullet points below using indents.



When should you use this note-taking method

This method can be used in a variety of situations but works best if the meeting follows a relatively clear structure.

Pros

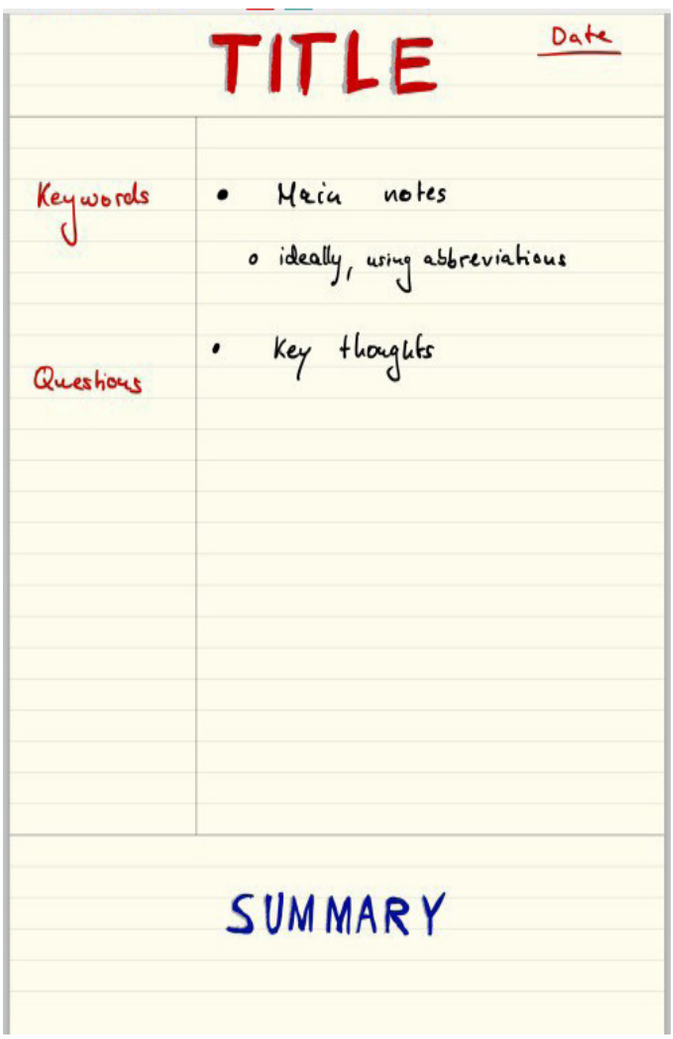
Highlights the key points of the lecture in a logical way
Ease of use allows the note taker to focus
Reduces the reviewing and editing time
Gives a proper and clean structure to your notes

Cons

Doesn't work well if the attended meeting doesn't follow a certain structure

2.Note-taking method #2: The Cornell Method

The Cornell method is a unique note-taking method that finds its application in a variety of situations. What differentiates it from other methods is the page layout. The page is divided into three or four sections starting from one row at the top for title and date (optional) and one at the bottom along with two columns in the center. 30% of width should be kept in the left column while the remaining 70% for the right column.



All notes go into the main note-taking column. The smaller column on the left side is for comments, questions or hints about the actual notes. After the meeting, you should take a moment to summarise the main ideas of the page in the section at the bottom which will speed up your reviewing and understanding process immensely when reading the notes at a later date. The best part is that many people already remember and digest the information while they write a summary like this.

When should you use this note-taking method

The Cornell method is ideal for all types of lectures or even meetings.

Pros

A quicker way to take, review, and organise your notes.
Summarises all the information in a systematic manner.
Helps you to extract main ideas.
Cuts down time for reviewing.

Cons

Pages need to be prepared before a meeting
Requires some time for reviewing and summarising the key concepts or points of the meeting.

There are more ways to structure and take notes these two methods are simple to learn and easy to master. Find what works best for you and remember practice makes perfect. Don't rely on others to write notes for you as what they write might not make sense or be a true reflection of what was said.

ACTIVITY 22: - Dignity at work, Equality Terminology

Language and the use of language is very important in the workplace. Words and phrases that were commonplace 10 years ago may now cause offence or have a different meaning. An example of this is the word ‘Queer’. Queer is an umbrella term for sexual and gender minorities who are not heterosexual or are not cisgender. Originally meaning “strange” or “peculiar”, queer came to be used pejoratively against those with same-sex desires or relationships in the late 19th century. Historically the word was used to insult or degrade members of the LGBT community. More recently it has been taken back by this community and is now incorporated into LGBTQ. Not all members of the LGBTQ community are comfortable yet using the term or being called Queer. Below are more descriptions of words you may come across today.

Ally – a (typically) straight and/or cis person who supports members of the LGBT community.

Banter - the playful and friendly exchange of teasing remarks.

Bisexual - sexually attracted not exclusively to people of one particular gender; attracted to both men and women.

Cisgender - denoting or relating to a person whose sense of personal identity and gender corresponds with their birth sex.

Discrimination - the unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, or sex.

Gender dysphoria – used to describe when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity. This is also the clinical diagnosis for someone who doesn’t feel comfortable with the gender they were assigned at birth.

Gender Fluid - denoting or relating to a person who does not identify themselves as having a fixed gender.

Gender identity – a person’s internal sense of their own gender, whether male, female or something else.

Gender Queer -denoting or relating to a person who does not subscribe to conventional gender distinctions but identifies with neither, both, or a combination of male and female genders.

Gender reassignment – another way of describing a person’s transition. To undergo gender reassignment usually means to undergo some sort of medical intervention, but it can also mean changing names, pronouns, dressing differently and living in their self-identified gender. Gender reassignment is a characteristic that is protected by the Equality Act 2010.

Gender Recognition Certificate (GRC) – this enables trans people to be legally recognised in their self-identified gender and to be issued with a new birth certificate. Not all trans people will apply for a GRC and you have to be over 18 to apply.

LGBT – the acronym for lesbian, gay, bi and trans.

Outed – when a lesbian, gay, bi or trans person's sexual orientation or gender identity is disclosed to someone else without their consent.

Prejudice - preconceived opinion that is not based on reason or actual experience.

Pronoun – words we use to refer to people's gender in conversation - for example, 'he' or 'she'. Some people may prefer others to refer to them in gender neutral language and use pronouns such as they/their/ze/zir.

Pan sexual - not limited in sexual choice with regard to biological sex, gender, or gender identity. In simple terms attracted to you for who you are not what you are.

Sex – assigned to a person on the basis of primary sex characteristics (genitalia) and reproductive functions. Sometimes the terms 'sex' and 'gender' are interchanged to mean 'male' or 'female'.

Trans – an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, cross dresser, non-binary, genderqueer.

Transgender man – a term used to describe someone who is assigned female at birth but identifies and lives as a man. This may be shortened to trans man, or FTM, an abbreviation for female-to-male.

Transgender woman – a term used to describe someone who is assigned male at birth but identifies and lives as a woman. This may be shortened to trans woman, or MTF, an abbreviation for male-to-female.

Transitioning – the steps a trans person may take to live in the gender with which they identify. Each person's transition will involve different things. For some this involves medical intervention, such as hormone therapy and surgeries, but not all trans people want or are able to have this. Transitioning also might involve things such as telling friends and family, dressing differently and changing official documents.

Transphobia – the fear or dislike of someone who identifies as trans.

SOURCE: Stonewall Website (2017) & Dictionary online (2019)

ACTIVITY 28: Tackling inequality - truth and lies

Below are extracts from the most recent Rowntree Foundation research into UK poverty.

The research

This is a summary of Joseph Rowntree Foundation's annual report examining the nature and scale of poverty across the UK and its effect on people gripped by it. The report examines how UK poverty has changed in our society over the last few years, as well as over the longer term. It focuses particularly on changes to poverty among children and workers, as well as giving an overview of trends among pensioners and other groups.

What's the headline story in the latest data

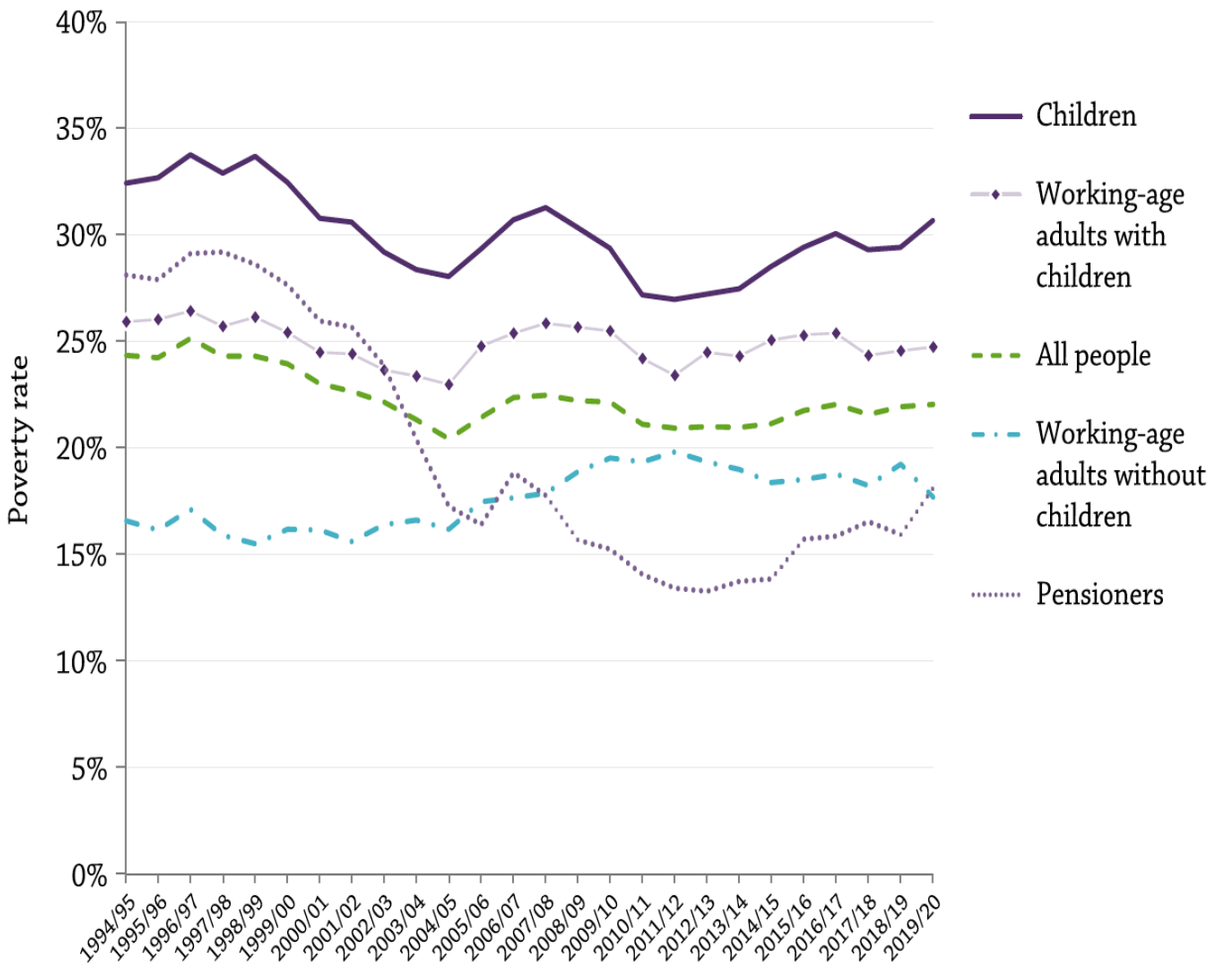
More than 1 in 5 of our population (22%) are in poverty in our country – 14.5 million people. Of these, 8.1 million are working-age adults, 4.3 million are children and 2.1 million are pensioners. Throughout this report, when we use the term poverty we are using the relative poverty rate, after housing costs, to measure poverty unless otherwise stated. See Annex 1 for more information on poverty definitions.

Child poverty continues to rise. The latest data tells us that almost 1 in 3 children in the UK are living in poverty (31%). Nearly half of children in lone-parent families live in poverty, compared with 1 in 4 of those in couple families.

Of the working-age adults, lone parents are by far the most likely of any family type to be struggling with poverty. When we look at pensioners, the poverty rate for single pensioners is double that of couple pensioners and almost 1 in 5 pensioners overall are living in poverty.

Group	Number in poverty	Poverty rate (%)
People in poverty	14,500,000	22
Children in poverty	4,300,000	31
Working-age adults in poverty	8,100,000	20
Pensioners in poverty	2,100,000	18
Single pensioners in poverty	1,200,000	26
Couple pensioners in poverty	900,000	13
Single working-age adults in poverty, no children	2,900,000	23
Working-age adults in a couple in poverty, no children	1,700,000	13
Working-age lone parents in poverty	800,000	45
Working-age parents in poverty in couple families	2,600,000	22
Children in poverty in lone-parent families	1,500,000	49
Children in poverty in couple families	2,800,000	25

Overall UK poverty rates



Source: Households Below Average Income, 2019/20, DWP

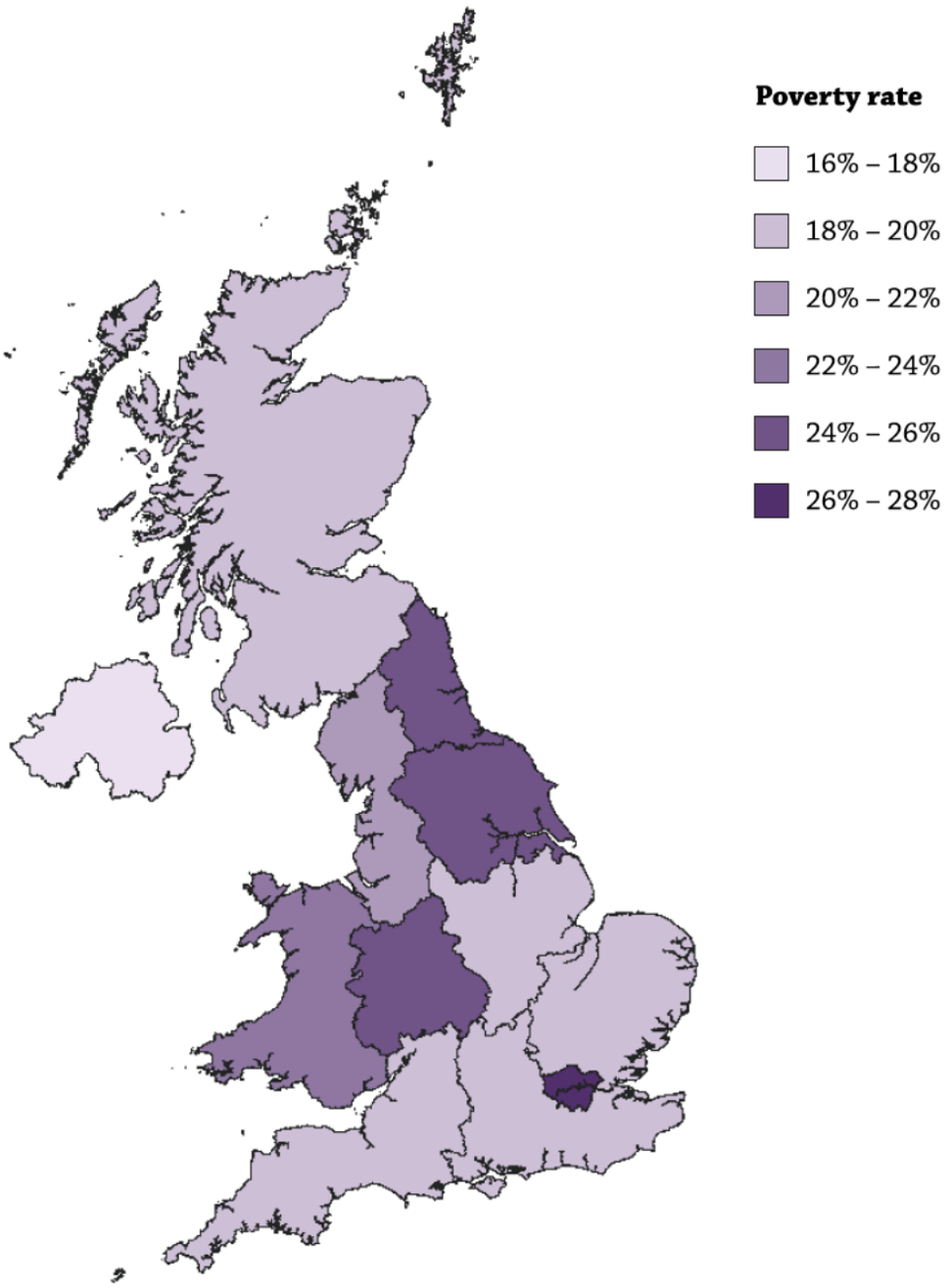
The graph above cleary shows that children and pensioners have had the sharpest rise in poverty. There is however still a slight rise in all people. So we have to ask a question, 'Is the living wage a living wage'?

Another shocking finding of the report (which can be found in full on the resource bank day 7) is that 13% of single working age males with no childrew and 14% of single working age females with no children are in persistant poverty!

Across the UK, our best estimate is that the number of households experiencing destitution, the most severe form of poverty, at any point during the year has increased by 35% between 2017 and 2019. So much for leveling up one might say. We have also seen a huge rise in the number of people needing to access food banks in the UK.

Poverty rates are high in the **North East (25%), West Midlands (25%) and Yorkshire and Humberside (24%)**. In these areas the high poverty rates are driven by comparatively lower earnings, with a higher proportion (33%) of in-work adults in lower-paid 'routine' occupations compared with the rest of the UK (27%) and a higher proportion of working-age adults not in work (27%, compared with 23% for the rest of the UK on average).

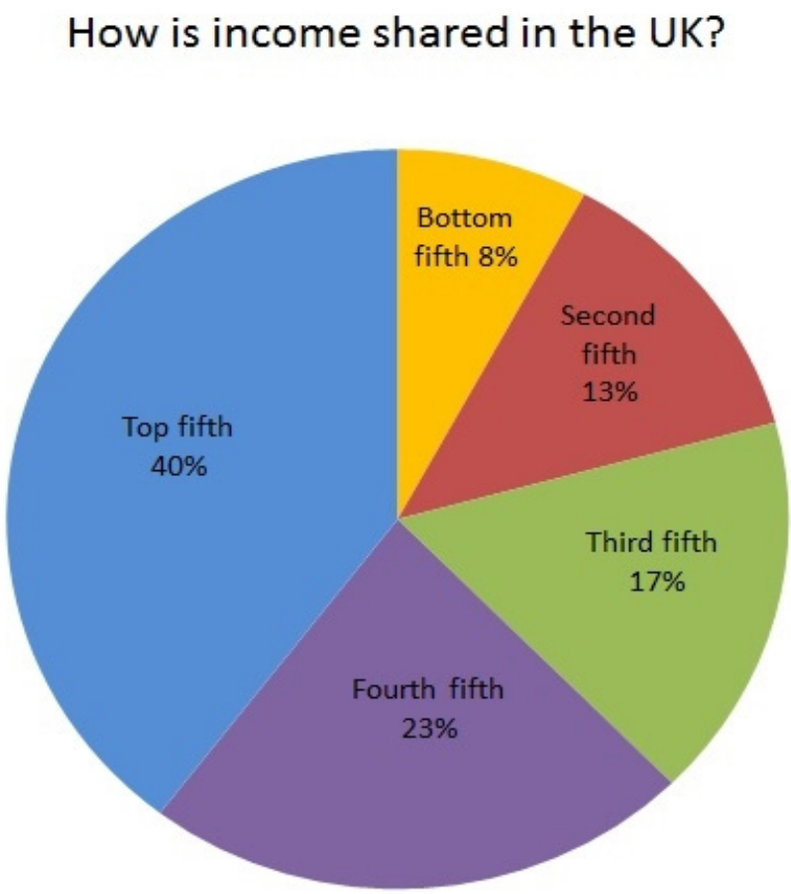
Poverty rate by region, 2017–20



Source: JRF analysis of Households Below Average Income 2017–20, DWP

How Income is Shared

The graph below shows how disposable income is shared amongst households. The poorest fifth of society has only 8% of the total income, whereas the top fifth has 40%.



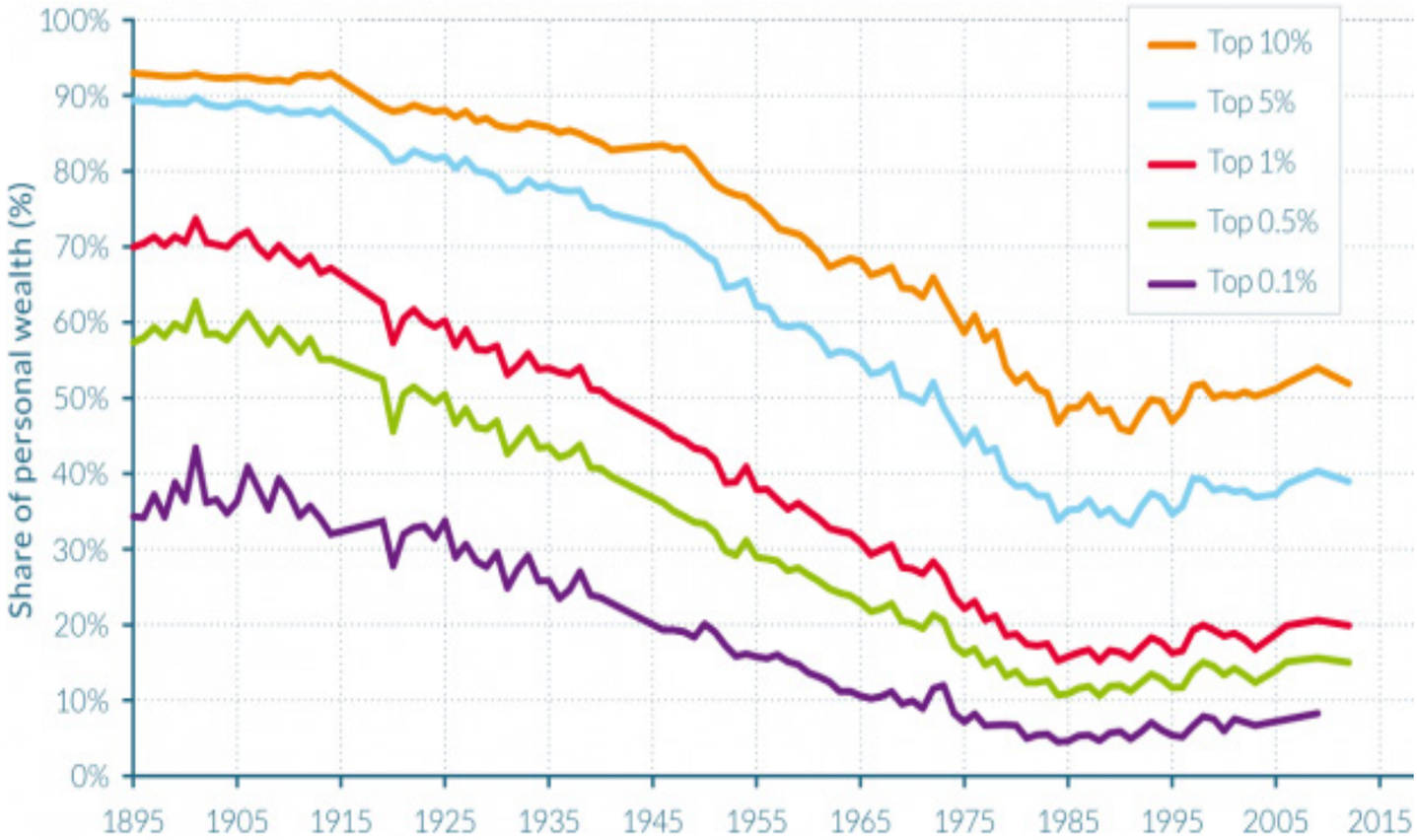
Disposable income share by quintile group for financial year ending 2018, ONS

The redistributive effect of taxes and benefits is felt most significantly in retired households, where disposable income inequality is lower than non-retired households. Retired households' Gini for disposable income is 28.5%, whereas for non-retired households this figure is 32.8%.[4] Most of the increase in retired households' income since end-1970s has to do with the seven-fold rise in private pension income in this period.

GB Wealth Inequality

Wealth in Great Britain is even more unequally divided than income. In 2016, the ONS calculated that the richest 10% of households hold 44% of all wealth. The poorest 50%, by contrast, own just 9%.[6] More than that, for the UK as a whole, the WID found that the top 0.1% had share of total wealth double between 1984 and 2013, reaching 9%.

The graph below shows how wealth distribution has changed since the last century for the top 10%, who have consistenlty held the majority of wealth.

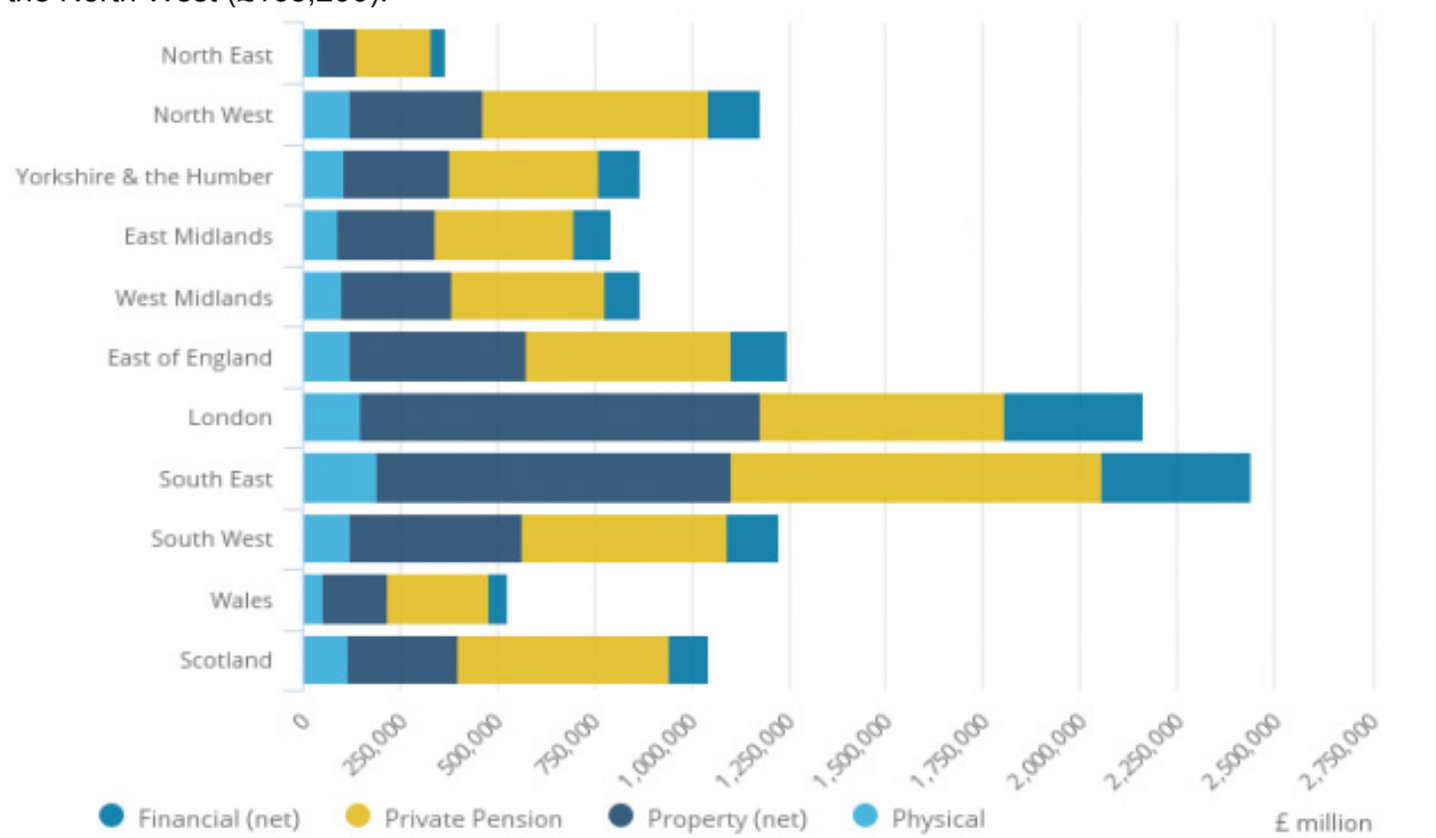


Source: Alvaredo, Atkinson and Morelli (2017). See wir2018.wid.world/methodology.html for data series and notes.

In 2013, the Top 10% owned 47% of personal wealth.

Wealth Spread Between Great Britain's Regions and Nations

Wealth is also unevenly spread across Great Britain. The South East is the wealthiest of all regions with median household total wealth of £387,400, over twice the amount of wealth in households in the North West (£165,200).



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APPENDIX ONE

acas working for everyone

Guidance

Equality and Discrimination: Understand the basics

September 2017

About Acas – What we do

Acas provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems. Go to www.acas.org.uk for more details.

'Must' and 'should'

Throughout the guide, a legal requirement is indicated by the word "must" - for example, an employer must make 'reasonable adjustments' to ensure that workplace requirements or practices do not disadvantage employees or potential employees with a disability.

The word 'should' indicates what Acas considers to be good employment practice.

Understanding the term 'employee'

Regarding discrimination matters, under the Equality Act 2010 the definition of 'employee' is extended to include:

- employees (those with a contract of employment)
- workers and agency workers (those with a contract to do work or provide services)
- apprentices (those with a contract of apprenticeship)
- some self-employed people (where they have to personally perform the work)
- specific groups such as police officers and partners in a business.

Job applicants are also protected.

September 2017

Information in this guide has been revised up to the date of publishing. For more information, go to the Acas website at www.acas.org.uk.

Contents

The difference between characteristics and types of discrimination

If an employee believes they have been discriminated against, they will often connect this to grounds such as age, sex or race. These are called protected characteristics.

But the way in which they have been allegedly discriminated against will determine which type or types of discrimination apply within their protected characteristic. For example, whether direct, indirect, harassment or victimisation.

Sections on 'protected characteristics' and 'types of discrimination', along with an at-a-glance chart, explain how and where they can fit together.

About this guide

This guide outlines the basics of what employers of all sizes, employees and their representatives must and should do to make their workplaces a fair environment and comply with equality legislation which:

- extends to nine areas known in law as protected characteristics: Age; Disability; Gender reassignment; Marriage and civil partnership; Pregnancy and maternity; Race; Religion or belief; Sex (gender); and Sexual orientation.

- sets out the different types of discrimination - for example, direct, indirect, harassment and victimisation.

- makes certain exemptions and exceptions where in some limited circumstances treating employees and job applicants less favourably can be lawful.

This is the first of three main guides for an overview of discrimination, equality and diversity. The second, Prevent discrimination: support equality, outlines how to promote and benefit from the principles of equality and diversity, and put them into practice in the workplace. The third, Discrimination: what to do if it happens, covers the basics of dealing with discrimination, including handling complaints.

There are also guides giving guidance related to individual protected characteristics.

At-a-glance chart

The different 'types of discrimination' listed across this chart and the nine 'protected characteristics' set out down the left-hand side of the chart are fully explained further into this booklet.

Age	Direct covered	Indirect covered	Harassment covered	Victimisation covered
Disability*	Direct covered	Indirect covered	Harassment covered	Victimisation covered
Gender reassignment	Direct covered	Indirect covered	Harassment covered	Victimisation covered
Marriage and civil partnership	Direct covered (but not by association or perception)	Indirect covered	Harassment not covered	Victimisation covered
Pregnancy and maternity	Direct covered (but not by association or perception)***	Indirect not covered	Harassment not covered	Victimisation covered
Race	Direct covered	Indirect covered	Harassment covered	Victimisation covered
Religion or belief	Direct covered	Indirect covered	Harassment covered	Victimisation covered
Sex (gender)**	Direct covered	Indirect covered	Harassment covered	Victimisation covered
Sexual orientation	Direct covered	Indirect covered	Harassment covered	Victimisation covered

* Also includes 'discrimination arising' – see section headed 'Disability' for more information

** Also includes 'sexual harassment'

*** While there is uncertainty over whether the Equality Act would allow a claim of direct discrimination by association because of Pregnancy or maternity, The Equality and Human Rights Commission's Code of Practice on Employment advises that an employee who is treated less favourably because of their association with a pregnant woman may have a claim for sex discrimination

The nine protected characteristics

The Equality Act 2010 defines nine protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

In the Equality Act, no one protected characteristic has a higher priority than any other.

Discrimination claims can be made on the grounds of:

1. **a single protected characteristic** - for example, because an employee is female

2. **a number of single, but unrelated, characteristics** – for example because an employee is female and also because she is of a particular age (in these situations, each characteristic would be considered separately).

Age

The Equality Act protects employees from discrimination, harassment and victimisation because of age, which may include because they are 'younger' or 'older' than a relevant and comparable employee. For example, if an organisation has a training policy excluding employees aged 60 or more from applying for courses then this is likely to be discriminatory.

Direct discrimination because of age is the only one of the three different types of direct discrimination that may be objectively justified as what the law terms 'a proportionate means of achieving a legitimate aim' – for more information see the section headed, 'Can discrimination ever be justified?'

However, under the Act, limited exceptions in some other areas, including pay and other employment benefits, can be allowed based on length of service. There are also some limited exceptions and exemptions relating,

for example, to the National Minimum Wage, redundancy payments, insurance and pensions.

To find out more about the protected characteristic of Age, see the Acas guide, Age and the workplace: a guide for employers and employees.

Disability

The Equality Act protects employees from discrimination - direct, including by association and by perception, indirect, harassment and victimisation - because of disability. For example, the dismissal of an employee because they are dyslexic could be potentially discriminatory.

Under the Act, a person is disabled if they have a physical or mental impairment which has a long-term (usually lasting more than a year) and substantial adverse effect on their ability to carry out normal day-to-day activities. A number of impairments, such as cancer, HIV and multiple sclerosis are automatically considered disabilities and other progressive conditions will be considered a disability as soon as the symptoms of that condition have an effect.

What constitutes a disability can be variable and difficult to define. Employers should remember that:

- a reasonable adjustment is a change or adaptation to the physical or working environment that has the effect of removing or minimising the impact of the individual's impairment in the workplace so they are able to undertake their job duties, and;

- employers are accountable for deciding what (if any) reasonable adjustments will be made. It is good practice for employers to seek advice in coming to this decision. The focus is very much on the employee's ability to function on a day-to-day basis rather than on medical diagnosis.

Where the employer or another person acting for the employer knows, or could reasonably be expected to know, that the employee or job applicant has a disability, the potential for discrimination occurs. An employer should be ready to discuss what a reasonable adjustment should be with the disabled employee or job applicant.

Reasonable adjustments

An employer must make 'reasonable adjustments' to ensure that workplace requirements or practices do not disadvantage employees or potential employees with a disability.
Reasonable adjustments should be made with the employee's involvement. They can often be simple and inexpensive. In law, adjustments have to be 'reasonable', and need not be excessive. There is more on 'reasonable adjustments' further into this guide.

Discrimination arising from a disability

The Equality Act also protects an employee from what the law terms 'discrimination arising from a disability' – this is where they are treated unfavourably because of something connected with their disability. For example, a tendency to make spelling mistakes arising from dyslexia.

At an employment tribunal, a claim of discrimination arising from disability would succeed if the employer (or, for example, the manager or another employee against whom the allegation was made) was unable to objectively justify the unfavourable treatment by pointing to a valid and non-discriminatory reason for it.

In law, this means the unfavourable treatment would have to be justified as 'a proportionate means of achieving a legitimate aim'. For more information see the section headed, 'Can discrimination ever be justified?'
However, it is very unlikely an employer would be able to justify discrimination arising from a disability if the unfavourable treatment could have been prevented by a reasonable adjustment.

Questions about job applicants' health

Health issues should be treated with care, as it is generally unlawful for an employer to ask questions about a job applicant's health, absences from work or disability before offering them employment. There is more on 'job applicants' health' further into this guide.

To find out more about the protected characteristic of Disability, see the Acas website page on Disability discrimination, and the Acas guide, Disability discrimination: key points for the workplace.

Gender reassignment

The Equality Act protects employees from discrimination, harassment and victimisation relating to gender reassignment. In the Act, someone who proposes to, starts, or has completed a process to change his or her gender is referred to as a 'transsexual'.

Previously, people reassigning their gender had to be under medical supervision to be covered, but this is no longer the case. For example, a male employee who decides to live as a woman, but does not undergo any medical procedures, must not be harassed if the employee begins to use female toilet facilities.

It is discriminatory to treat a transsexual employee less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment. An employer must not treat them any differently than it would if they were absent because they were ill or injured.

In law, cross-dressers are not regarded as transsexual people as they do not intend to live permanently in the gender opposite to their sex at birth. While they are not specifically protected under the Act as cross-dressers, if they are harassed because they are perceived to be transsexual or to have a particular sexual orientation, they may be in a position to claim discrimination under the relevant protected characteristics.

As a matter of good practice, employers and employees should not try to make a distinction whether a colleague is a cross-dresser or transsexual. An employer should make it clear to all staff that it agrees that a transsexual employee, once living and working in their new gender, can then use the toilet facilities for that gender.

To find out more about the protected characteristic of Gender reassignment, see the Acas website page on Gender reassignment discrimination and the Acas guide, Gender reassignment discrimination: key points for the workplace.

Marriage and civil partnership

The Equality Act protects employees from direct discrimination (although not the forms by association or by perception), indirect discrimination and victimisation because of marriage or civil partnership. For example, an employee must not be ignored for promotion because they are in a civil partnership. However, single people and couples in relationships which are not legally recognised are not protected.

As well as direct discrimination by perception or association, harassment because of this characteristic is also not covered by the Equality Act, but

there are legal provisions where claims against some behaviours might be made. For example, there might be circumstances where harassment of an employee in a marriage or civil partnership amounts to discrimination because of sex or sexual orientation, or sexual harassment. Regarding civil partnership, there might be circumstances where an employee in a civil partnership may have grounds to bring a claim of sexual orientation discrimination.

As this is one of only two protected characteristics where some types of discrimination do not apply, see the chart for the at-a-glance overview of where protected characteristics and types of discrimination can fit together.

Civil partnerships and same-sex marriage

Civil partnerships have the same legal protection against discrimination as marriage. Same-sex marriages became legally recognised in England and Wales on 29/03/2014 and in Scotland on 16/12/2014.

Employers should also ensure that employees in same-sex marriages or civil partnerships are not subjected to behaviour that could amount to harassment because of sexual orientation.

To find out more about the protected characteristic of Marriage and civil partnership, see the Acas website page on Marriage and civil partnerships, and the Acas guide, Marriage and civil partnership discrimination: key points for the workplace.

Pregnancy and maternity

The Equality Act protects an employee from one type of direct discrimination and victimisation because of their pregnancy, or for taking/seeking to take maternity leave. For example, an employer must not take into account pregnancy-related illness when considering other sickness absence or in making a decision about her employment. During this time, any other discrimination because of her sex would be a separate and overlapping matter which might amount to sex discrimination and/or sexual harassment.

A particular aspect of the Pregnancy and maternity protected characteristic is that a woman who is pregnant or on maternity leave must not be treated **unfavourably** because of pregnancy or maternity leave. That means there is no need for her to show that she has been treated **less favourably** than a man, or a woman who was not pregnant, just that she was in fact treated detrimentally because of pregnancy or maternity.

As this is one of only two protected characteristics where some types of discrimination do not apply, see the chart for the at-a-glance overview of where protected characteristics and types of discrimination can fit together.

To find out more about the protected characteristic of Pregnancy and maternity, see the Acas website page on Pregnancy and maternity discrimination.

If an organisation is considering redundancies, an employee who is pregnant or on maternity leave can have additional employment rights. To find out more, see the joint Acas and Equality and Human Rights Commission guide Managing redundancy for pregnant employees or those on maternity leave.

Race

The Equality Act protects employees from discrimination, harassment and victimisation because of the protected characteristic of Race, which may include different elements that often merge:

- **race** – an umbrella term for the other four aspects.
- **colour** – like 'race' it tends to overlap, particularly with the concepts of 'ethnic origin' and 'national origin'. Examples include black and white.
- **ethnic origin** – may include racial, religious and cultural factors which give a group of people a distinct social identity with a long and shared history. Examples include Sikhs, Jews, Romany Gypsies and Irish Travellers.
- **national origin** –birthplace, the geographical area and its history can be key factors. Examples include Welsh and English.
- **nationality** – usually the recognised state of which the employee is a citizen. In other words, what it says in their passport if they have one. For example, British citizen.

For example, it would be unlawful for an employee to make racial slurs against Eastern European colleagues. Additionally, a racial group can be made up of two or more of these aspects, such as black Britons. Welsh, Scottish, Northern Irish/Irish and English are all recognised under this protected characteristic, as is British.

But the Race protected characteristic does not cover more local or regional distinctions. For example, an employee working in the south of England who feels they are being treated unfairly solely because they are a 'Geordie', or an employee treated unfairly solely because they are a

'Southerner' with an Essex accent working in the north of England, are unlikely to succeed in claims of race discrimination.

However, there could be circumstances where such behaviour might be argued to be because of national identity, while other legislation and employment rights may still offer other protections. In addition, such behaviour should be considered unacceptable as it damages workplace morale and an individual's dignity.

Caste discrimination

Caste usually refers to the social levels in certain cultures and racial groups, such as in India, where people's positions in society are fixed by birth or occupation, and are hereditary.

There are moves to have 'caste' recognised specifically as part of the Race protected characteristic. While it is possible the Equality Act 2010 may be amended in the future, some legal opinions and cases consider caste to be already covered because they say it coincides with ethnic origin.

To find out more about the protected characteristic of Race, see the companion guide in this series, Race discrimination: key points for the workplace.

Religion or belief

The Equality Act protects employees from discrimination, harassment and victimisation because of religion or belief. For example, a manager should ensure that religiously offensive graffiti in a staff toilet is removed, and that the matter is thoroughly investigated and handled. The law also protects employees or job applicants if they do not follow a certain religion or belief, or have no religion or belief at all.

In the Act, **religion** means any religion with a clear structure and **belief** system. Belief means any religious or philosophical belief. Denominations or sects within a religion can be considered a protected religion or religious belief. A belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour, worthy of respect in a democratic society and does not conflict with the fundamental rights of others.

The Equality Act has special provisions which, while rarely applicable, can place restrictions or requirements on job applicants and jobholders with a certain protected characteristic or protected characteristics (including religion and belief, sex, sexual orientation, gender reassignment, and marriage and civil partnership) in organised religion or where the

organisation has an 'ethos based on religion or belief' – for example, a deeply-held and sincere environmental belief.

Political affiliations

Political affiliations are unlikely to be protected under the Equality Act. However, under other legislation – The Employment Rights Act 1996 - dismissing an employee because of their political opinions or affiliation may be unlawful.

To find out more about the protected characteristic of Religion or belief, see the Acas guide, Religion or belief discrimination and the workplace.

Sex (Gender)

The Equality Act protects both male and female employees from discrimination, harassment and victimisation because of sex (gender). For example, an employer must ensure its managers do not favour team members of a particular gender.

Protection from sexual harassment

Employees are protected against sexual harassment, which is unwanted conduct that is of a sexual nature and/or relates to the protected characteristics of sex and/or gender reassignment. Examples may be either verbal or physical, and may include staring or leering, or a display of explicit material.

It would have the purpose or effect of violating the employee's dignity, or creating an environment for the employee which is intimidating, hostile, degrading, humiliating or offensive. It also applies where an employee is treated 'less favourably' because they have rejected sexual harassment or been the victim of it.

An employer should make clear to employees what sort of behaviour would be considered sexual harassment.

Sexual harassment may be both an employment rights matter and a criminal matter, such as in sexual assault allegations.

To find out more about the protected characteristic of Sex, see the Acas website page on Sex discrimination, and the Acas guide, Sex discrimination: key points for the workplace.

Sexual orientation

The Equality Act protects employees from discrimination, harassment and victimisation because of sexual orientation. It applies equally to bisexual, gay, heterosexual and lesbian orientations. For example, an employer must ensure that an employee who is perceived to be bisexual (whether they are or are not is irrelevant) is not bullied by colleagues.

To find out more about the protected characteristic of Sexual orientation, see the companion guide in this series, Sexual orientation: key points for the workplace.

Types of discrimination

Under the Equality Act, there are four main types of discrimination:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation.

No minimum length of continuous employment is necessary for a discrimination claim to be made to an employment tribunal. Protection starts from when a role is advertised through to the last day of employment and beyond to include references.

Direct discrimination

Direct discrimination occurs where someone is treated less favourably directly because of:

- a protected characteristic they possess – this is **ordinary direct discrimination;** and/or

- a protected characteristic of someone they are associated with, such as a friend, family member or colleague – this is **direct discrimination by association**; and/or

- a protected characteristic they are thought to have, regardless of whether this perception by others is actually correct or not – this is **direct discrimination by perception**.

Direct discrimination in all its forms could involve a decision not to employ someone, to dismiss them, withhold promotion or training, offer poorer terms and conditions or deny contractual benefits because of a protected characteristic.

For example... ordinary direct discrimination

Paul, a senior manager, turns down Angela's application for promotion to supervisor. Angela, a lesbian, learns that Paul did this because he believes the team she applied to manage are homophobic. He thought that her sexual orientation would prevent her from gaining the team's respect and managing them effectively. This is direct discrimination against Angela because of her sexual orientation.

For example... direct discrimination by association

June, a project manager, has been promised promotion by her boss. However, after she tells him that her mother, who lives at home, has cancer, he withdraws the promotion because he feels the commitment of looking after her mother and moving to a higher grade role will be too much for her. This is potentially discrimination against June because of her association with a disabled person.

For example... direct discrimination by perception

Dimitri is 45, but looks much younger. Many people assume he is in his mid-twenties. He is not allowed to represent his company at an international meeting because the managing director thinks he is too young. Dimitri has been discriminated against because of his perceived age.

Indirect discrimination

This type of discrimination is usually less obvious than direct discrimination and can often be unintended. In law, it is where a provision, criterion or practice is applied equally to a group of employees/job applicants, but has (or will have) the effect of putting those who share a certain protected characteristic at a particular disadvantage when compared to others without the characteristic in the group, and the employer is unable to justify it.

An employee or job applicant claiming indirect discrimination must show how they have been, or could be, personally disadvantaged. They must also show how the application of the 'provision, criterion or practice' has or might disproportionately disadvantage other employees or job candidates with the same protected characteristic.

The Equality Act does not define a 'provision, criterion or practice'. However, in the workplace, the term is most likely to include an employer's policies, procedures, rules and requirements, whether written down or not. Examples might include recruitment selection criteria, contractual benefits, a redundancy scoring matrix or any other work practice.

In some limited circumstances, indirect discrimination may be justified if it is 'a proportionate means of achieving a legitimate aim', an area covered later in this guide.

For example... indirect discrimination

Abu is in his late twenties and working as a surveyor in a property investment company. He is fully qualified, doing well in his current role and ambitious. He spots a post advertised with another employer for what he sees as the next step in his career.

However, the advertisement specifies that candidates must have ten years' experience in the profession. Abu has six.

Unless the employer can lawfully justify why candidates need ten years' experience, this is likely to be indirect discrimination against young candidates such as Abu who can demonstrate that they are qualified and capable, but don't have ten years' experience because of their age.

Harassment

Harassment is defined as 'unwanted conduct' and must be related to a relevant protected characteristic or be 'of a sexual nature'. It must also have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Generally, harassment:

- includes bullying, nicknames, threats, jokes, 'banter', gossip, inappropriate questions, excluding an employee (for example - ignoring them or not inviting them to meetings), insults or unwanted physical contact
- can be verbal, written or physical
- is based on the victim's perception of the unwanted behaviour rather than that of the harasser, and whether it is reasonable for the victim to feel that way
- can also apply to an employee who is harassed because they are perceived to have a protected characteristic, whether they actually have it or not
- can also apply to an employee who is harassed because they are associated with someone with a protected characteristic
- can also apply to an employee who witnesses harassment because of a protected characteristic and that has a negative impact on their dignity at work or the working environment, irrespective of whether they share the protected characteristic of the employee who is being harassed.

While the Equality Act 2010 protects against harassment related to most protected characteristics, other legislation such as the Protection from Harassment Act 1997 may also apply. This legislation is not limited to circumstances where harassment relates to a protected characteristic. For example, it may apply where a protected characteristic is not specifically covered for harassment in the Equality Act (Marriage and civil partnership, and Pregnancy and maternity). Harassment under the Protection from Harassment Act must amount to conduct which is criminal.

For example… harassment within an organisation

Nnamdi has a severe stammer and is claiming harassment against his line manager after she frequently teased and humiliated him about his disability. Richard, who shares an office with Nnamdi, is also claiming harassment, even though he is not disabled, as the manager's behaviour created an offensive environment for him, too.

Both lodged separate grievances against the manager who, at the grievance hearings, was found to be at fault. She apologised to both Nnamdi and Richard, and welcomed senior management's decision that she should undergo full refresher training in the manager's role in fostering equality and diversity in the organisation.

Harassment from outside an organisation (third party)

Harassment of an employee by individuals outside an organisation - such as customers, clients and suppliers - as a defined type of discrimination was removed from the Equality Act in October, 2013.

However, even though third party harassment, as it was known, is no longer listed as a specific type of discrimination under the Act, employees may still be protected against this type of harassment if an employer fails to take reasonable steps to prevent it. The protection may arise from the broader provisions of the Act and other legal protections for employees.

An employer should make it clear, within and outside its organisation, that it will not tolerate harassment, and if it does occur that all reasonable steps will be taken to prevent it from happening again. This is a complex area and employers with concerns may wish to seek legal advice.

For example...

Chris manages a council benefits office. One of his staff, Frank, who is gay, mentions that he is unhappy after a claimant made homophobic remarks in his hearing. Chris is concerned and monitors the situation.

Within a few days, the claimant makes further offensive remarks. Chris reacts by having a word with the claimant, pointing out that this behaviour is unacceptable. He follows it up with a letter to the claimant pointing out he will be banned from the benefits office if he behaves that way again. Chris keeps Frank informed of the actions he is taking and believes he is taking all reasonable steps to protect Frank from harassment.

Victimisation

Victimisation is when an employee suffers what the law terms a 'detriment' - something that causes disadvantage, damage, harm or loss - because of:

- making an allegation of discrimination, and/or
- supporting a complaint of discrimination, and/or
- giving evidence relating to a complaint about discrimination, and/or
- raising a grievance concerning equality or discrimination, and/or
- doing anything else for the purposes of (or in connection with) the Equality Act 2010

Victimisation may also occur because an employee is suspected of doing one or more of these things.

An employee is protected under the Equality Act if they make, or support, an allegation of victimisation in good faith – even if the information or evidence they give proves to be inaccurate. However, an employee is not protected if they give, or support, information or evidence in bad faith – in other words maliciously.

For example... victimisation
Halina makes a formal complaint against her manager because she feels she has been discriminated against because she is married. Although the complaint is resolved through the organisation's grievance procedures, Halina is subsequently ignored and excluded from work-related social events by her colleagues after they realised she had named them in her complaint. She could claim victimisation.

Exemptions and exceptions – where discrimination is lawful

Matching core 'occupational requirements' of the job

In certain and rare circumstances, it may be lawful for an employer to specify that applicants for a job must have a particular protected characteristic under the Equality Act. In law, this approach is known as an 'occupational requirement'.

Examples might include specifying a practising Catholic to work as a chaplain in a Catholic chaplaincy at a university. Or, specifying an actor for a film role needs to be a young woman.

However, it is not enough for an employer to simply decide they would prefer to employ someone who has a particular protected characteristic. The requirement must:

- be crucial to the post, and not just one of several important factors **and**
- relate to the nature of the job **and**
- be 'a proportionate means of achieving a legitimate aim'. If there is any reasonable and less discriminatory way of achieving the same aim, it is unlikely that the employer could claim an occupational requirement.

All three points apply to an occupational requirement, not just one or two of them. There is more on 'legitimate aims' in the next section.

In addition, there can be exemptions and exceptions regarding occupational requirements related to particular protected characteristics. For more information, see the companion Acas guides on individual protected characteristics.

An occupational requirement must be reassessed each time the job is advertised, even though it may have been valid for the same post in the past. Circumstances may have changed, meaning the occupational requirement may no longer be applicable.

An employer should think very carefully, and consider seeking specialist legal advice, before claiming an 'occupational requirement', as it can be **difficult to justify** and will be rare. Also, a job applicant might challenge at an employment tribunal an 'occupational requirement' which appears unjustified.

Further, an occupational requirement can only be used in a defence against claims of direct discrimination (but not for by association or by perception). It cannot be used in a defence against claims of indirect discrimination, harassment or victimisation.

'Occupational requirements' and religion or belief

Regarding 'occupational requirements', there are exemptions and exceptions in the protected characteristic of Religion or belief which are not found in the other protected characteristics.

To find out more, see Acas guide Religion or belief discrimination and the workplace.

Can discrimination ever be justified?

There are limited circumstances where an employer may act in a way which is discriminatory, but where it can objectively justify discrimination as 'a proportionate means of achieving a legitimate aim'.

Employers should note that proving 'a proportionate means of achieving a legitimate aim' can be a difficult process.

Direct discrimination because of age is the only form of direct discrimination which may be objectively justified. Indirect discrimination is potentially justifiable in all of the relevant protected characteristics.
In attempting to demonstrate 'a proportionate means of achieving a legitimate aim', an employer must show:

- there is a legitimate aim such as a good business reason, but employers should note that cost alone is unlikely to be considered sufficient **and**

- the actions are proportionate, appropriate and necessary.

Both points apply in justifying 'a proportionate means of achieving a legitimate aim', not just one of them.

An employer should consider if there is another way to achieve the same aim which would be less discriminatory. Also, it should be able to show it was fair and reasonable, and looked for a less discriminatory alternative.

The process of determining whether discrimination is justified involves weighing up the employer's need against the discriminatory effect on the employee and group of employees with the protected characteristic.

Employers should scrutinise closely whether any discriminatory act, policy, procedure or rule can really be justified. For example, is there another way of achieving the same aim which would be less discriminatory?

It is important to stress that employers should monitor carefully their policies and practices, otherwise they may inadvertently indirectly discriminate. For example, policies and practices which were not discriminatory when they were first introduced may become discriminatory over time, perhaps because of a change in the composition of the workforce. For more on monitoring, see the companion guide, Prevent discrimination: support equality.

For example... discrimination which is potentially lawful

A small finance company needs its staff to work late on Friday afternoons to analyse stock prices in the American finance market. The figures arrive late in the day because of the time difference, where London is five hours ahead of New York. During the winter, some staff would like to be released early on Friday afternoons to be home before sunset – a requirement of their religion.

They propose to make up the time during the rest of the week. The company is not able to agree to the request because the American figures are necessary to the business, they need to be worked on immediately and the company is too small to have anyone else do the work.

The requirement to work late on Friday afternoons is unlikely to be unlawful indirect discrimination as it could be seen as a proportionate response to achieving a legitimate business aim and there is no alternative course available.

For example... discrimination which is potentially unlawful

In another small finance firm, some staff make the same request as in the example above. However, in this case there is a key difference – this London firm specialises in dealing with stock prices from Frankfurt, Germany, which is one hour ahead of the UK. The Frankfurt data arrives so they can complete their tasks on a Friday, go home before sunset and make up the time during the rest of the week.

For the firm to insist they stay until after sunset could be ruled to be unreasonable – unless there was another business reason it could objectively justify as 'a proportionate means of achieving a legitimate aim'.

Taking 'positive action' in the workplace

Under the Equality Act, an employer can take what the law terms 'positive action' to help employees or job applicants it thinks:

- are at a disadvantage because of a protected characteristic, and/or
- are under-represented in the organisation, or whose participation in the organisation is disproportionately low, because of a protected characteristic and/or
- have specific needs connected to a protected characteristic.

An employer must be able to show evidence that any positive action is reasonably considered and will not discriminate against others. If it can, it may legally:

- take proportionate steps to remove any barriers or disadvantages
- provide support, training and encouragement to increase the participation of people with a particular protected characteristic.

There is no legal necessity for an employer to take - or consider taking - positive action if it does not wish to do so.

For example... taking 'positive action'

A national retailer finds out that despite employing a diverse workforce at junior management level, only three of 55 senior managers are female. Research indicates that many of the female employees are put off from applying for promotion because of an apparent 'all-male environment' and that this is losing the business a wealth of experience and creativity.

The company sets up a programme of training and development for female staff where they can develop management skills and gain an understanding of how senior management operates through a mentoring scheme. Over the next 12 months, the proportion of female applicants and appointments increase, and a new campaign spearheaded by the newly-promoted staff brings an increase in sales.

Taking 'positive action' in hiring and promoting staff

In certain circumstances, an employer could use a protected characteristic as a 'tie-breaker' when deciding who to recruit or promote. These situations arise where the employer needs evidence to show that employees and/or job applicants with that protected characteristic:

- experience disadvantage related to that characteristic in the workplace, or
- are disproportionately under-represented in the workforce or the particular job where there is a vacancy.

This does not mean the tying candidates need to have exactly the same qualifications as each other – but it does mean that the employer's selection assessment on a range of criteria rates them as equally qualified and/or capable of doing the job.

The 'tie-breaker' must only be used in considering an individual vacancy and means that in these circumstances it may not be unlawful to select

the candidate with the protected characteristic. However, automatically treating all job applicants who share a protected characteristic more favourably (or guaranteeing them a promotion because of that characteristic) would be discriminatory.

Employers should also be mindful that there can be circumstances where 'positive action' can unintentionally unsettle all staff.

It remains good practice – and is sound - to distinguish between candidates based entirely on their qualifications, attributes and ability to do the job, rather than a protected characteristic.

For example... taking 'positive action' in recruitment

A high school, where almost half of the pupils are from a minority ethnic group and none of the ten existing department heads are from a minority community, is recruiting for a new department head.

In the job advertisement, the school says it would welcome applications from qualified candidates from minority ethnic groups as they are under-represented in senior staff positions at the school. All 80 staff at the school are trained to put into practice its equality policies, and deal with any bullying and harassment.

In the recruitment process, all the candidates are scored against a range of job-relevant questions in interviews. The interview panel also objectively assess the experience and qualifications of each candidate. At the end of a rigorous and well-documented selection process, the two best candidates have equal scores. The interview panel has robust documentary evidence to prove the two candidates are equally qualified for the role.

Both are women and one is black. The head of the school thinks it important that its senior leadership reflects the local population and the school, and so decides to appoint the black candidate. This may be lawful under the Equality Act.

'Positive action' is not 'positive discrimination'

Positive discrimination is not specifically mentioned in the Equality Act, but is otherwise generally regarded as automatically favouring, without proper consideration of merit, under-represented individuals from minority groups over individuals in majority groups. On this basis, positive discrimination is unlawful in England, Scotland and Wales.

Other aspects of equality law

Making reasonable adjustments

An employer can lawfully treat employees who are disabled more favourably because of their disability than non-disabled employees. In fact, it is unlawful for an employer to fail to make 'reasonable adjustments' enabling a disabled person to work for it.

However, employees who are not disabled are unable to claim discrimination on the grounds they have been treated less favourably because of the 'reasonable adjustments' given to a disabled colleague.

An example of a 'reasonable adjustment' might include changing a disabled employee's terms and conditions of employment or working arrangements, so they will not be disadvantaged in doing their job compared to colleagues who are not disabled, and/or so they and their work performance really benefit from the change.

An employer must consider making 'reasonable adjustments', involving the disabled employee or job applicant in the decision, if:

- it becomes aware of their disability
- a disabled employee or job applicant asks for adjustments to be made
- a disabled employee is having difficulty with any part of their job
- either an employee's sickness record, or delay in returning to work, is linked to their disability.

Further, there are three questions an employer should consider in assessing what reasonable adjustments might need to be made:

1. Does it need to **change how things are done**?

For example... The employer's policy is to only offer car parking spaces to senior managers. However an employee who is not a manager has developed a mobility impairment and needs to park very close to the office. The employee is allocated a parking space. This is likely to be a reasonable adjustment to the employer's car parking policy.

2. Does it need to **physically change the workplace**?

For example... Clear glass doors at the end of a workplace corridor present a hazard for a visually impaired employee. The employer adds brightly coloured strips at eye level that can be more easily seen by the employee. This is likely to be a reasonable adjustment.

3. Does it need to **provide extra equipment** or get someone to **assist** the disabled employee in some way?

For example... As a reasonable adjustment the employer provides specialist software for an employee who has developed a visual impairment. Their job involves using a computer and the software enables them to continue in the role.

But whether any suggested adjustments are actually reasonable can depend on whether:

- they are practical for the employer to make
- the employer has the resources to pay for them? An employment tribunal may expect more from a large organisation than a small one because it may have greater means, or if an organisation has access to other funding such as the Government's Access to Work scheme
- they will be effective in overcoming the 'disadvantage' in the workplace.

In considering reasonable adjustments for a disabled employee or job applicant, an employer should meet with them to discuss what can be done to support them. While an employer has a legal duty to make 'reasonable adjustments', there may be times when suggested changes are unreasonable and it can lawfully refuse to make them.

Making reasonable adjustments can be a complex area. The Acas helpline on 0300 123 1100 can give advice on specifics.

Equal pay (Sex Equality)

The Equality Act says men and women in full-time or part-time employment have a right to 'no less favourable' pay, benefits and terms and conditions in their employment contracts where they are doing equal work either as:

- **'like work'** – work by one employee that is the same or broadly similar to that done by an employee of the opposite sex. It is the nature of the work that is important, rather than the job title or job description, or

- **'work rated as equivalent'** - an employee's work is rated as equivalent to that of an employee of the opposite sex if an employer's job evaluation study of a number of roles gives an equal rating to their work in terms of factors such as effort, skill and decision-making. Because of the focus on the jobs' demands rather than their nature,

jobs which may seem of a very different type can be rated as equivalent, or

- **'work of equal value'**– the work one employee does, although different from an employee of the opposite sex, is assessed as of 'equal value' in terms of the demands placed on the two employees. So while the jobs are different, they can be regarded as of equal worth when looking at the training and skills necessary to do each job, the working conditions or the decision-making required. Again, in some cases, jobs thought to be of an entirely different type – for example, manual and administrative – can be rated as being of equal value.

The main difference between 'work rated as equivalent' and 'work of equal value' is that the former is usually based on a comprehensive job evaluation study taking into account a wide range of different jobs. In contrast, an assessment of 'work of equal value' will tend to focus on an individual case - the role of the employee making the equal pay claim and the job of the employee he or she is comparing their role to – the comparator.

Regarding 'comparators', there could be circumstances where a comparator cannot be found. For example, a woman may be appointed to a post where she later finds out the previous holder of the post, a man, was paid more than her. Even though the man is no longer with the company, his salary could still be used as evidence.

The right to equal pay on grounds other than gender

An employee concerned over inequality on pay and other terms and conditions of employment will usually challenge their employer by making a comparison with someone of the opposite sex in what the law terms 'the same employment' with that organisation. The other person is called a comparator.

However, an employee might make a claim under the Equality Act that he or she is being paid less on the grounds of their protected characteristic of race. Claims for discrimination on pay could also be made on the grounds of other protected characteristics, such as disability and religion or belief.

Since October 1, 2014, an employment tribunal can order an employer, which it finds has breached its equal pay duties, to carry out an organisation-wide audit on pay as a first step towards helping the organisation get in line with the law.

To find out more, see the Acas website page on Equal pay, and the Equality and Human Rights Commission website for Pay audits and Equal pay action plans.

Who is liable?

Both employers and their employees can be held responsible and liable for their actions where they breach the Equality Act. So, in relevant circumstances, someone who believes they have been discriminated against at work can write to an employment tribunal, naming their employer, and any colleagues they allege were involved, as 'Respondents'.

Staff are responsible for their actions in what the law terms 'the course of their employment' if they discriminate against, harass or victimise a colleague because of a protected characteristic. The behaviour might occur at work or at a time and place associated with the workplace, such as at a social gathering or through the use of personal social media accounts. Whether the colleague intended to discriminate or cause offence will not usually make a difference or constitute a defence. They may have to pay compensation.

An employer will also be liable for the actions of its staff. This aspect of liability is known as **vicarious liability** or **secondary liability.**

So, in circumstances where an employer has not discriminated against an employee because of a protected characteristic, it could still be held responsible if one of its staff discriminates against, harasses or victimises a colleague because of a protected characteristic during 'the course of their employment'.

For example... an employer taking steps to protect itself against vicarious liability

James and Opeyemi both work for CarpetZone as sales staff. As with all staff, CarpetZone annually trains and tests James on equality, diversity and discrimination. James was also familiarised with the 'respect for people' part of the employee handbook at his induction. Last year, CarpetZone ran an anti-bullying campaign across all its stores.

James sends Opeyemi a string of offensive and sexually suggestive emails at work. After Opeyemi complains about this to her line manager, CarpetZone immediately opens an investigation into the matter and suspends James' access to his email account.

CarpetZone's actions may help to show it took 'all reasonable steps' to prevent discrimination occurring and could be taken into account if Opeyemi chooses to submit an employment tribunal claim.

An employer may not be found to be vicariously liable if an employment tribunal decides that the employer took all reasonable steps to prevent discrimination, harassment and victimisation. Whether the employer has

an equality policy, provided managers and all staff with equality training, and how any complaint of discrimination, harassment and victimisation was dealt with, are likely to be key factors when establishing whether the employer is vicariously liable for the actions of its staff.

Job applicants' health

For all job interviews and recruitment processes, an employer must ask whether a job applicant needs any reasonable adjustments, often called 'access requirements', for any part of the process.

For example...
The Holm City Gazette asks job applicants if they require any reasonable adjustments to the selection process so they can give their best. They do not take this information into account when deciding who to employ.

However, under the Equality Act, if an employer believes it is necessary to ask health-related questions before making a job offer, it can do so only in the following circumstances:

1. To determine whether an applicant can carry out a **function essential to the role**

For example... The Holm City Gazette has a job which entails a lot of heavy manual lifting. It could ask a candidate with a mobility impairment whether they could manage the lifting, but it could not ask how the impairment might affect their journey to work as that is not part of the actual role.

2. To take **'positive action'** to assist disabled people

For example... The Holm City Gazette wants to improve disabled people's chances of being selected for its vacancies, offering guaranteed interviews to disabled people. To identify disabled people, it asks on the application form whether a candidate is disabled and makes it clear why the question is being asked.

3. To **monitor**, without revealing the candidate's identity, whether they are disabled

For example... The Holm City Gazette which has a small proportion of disabled people working for it may decide to ask applicants to state whether they have a disability so it can assess whether its vacancy advertisements are reaching disabled people.

4. To check that a candidate has a disability where this is a **genuine requirement** of the job

> **For example...** An advice service for people with mental health conditions requires a counsellor who has personal experience of mental health conditions. It advertises for candidates who have such a condition and is allowed to ask at interview that an applicant confirms that they have the condition.

These limited circumstances apply to all stages of the recruitment process prior to a job offer. This includes application forms, health questionnaires, interviews and any other assessment and selection methods.

A job applicant who thinks an employer is acting unlawfully by asking questions about their health cannot take it to an employment tribunal on that basis alone – but they can complain to the Equality and Human Rights Commission, which has powers of enforcement if an employer is found to be non-compliant.

However, if an employer does ask unlawful questions about a job applicant's health, and the employer does not subsequently employ the candidate, they could bring a claim of discrimination against the employer.

For most jobs, it is not necessary for candidates' health to be checked before they are offered a job, but once an employer has offered a candidate a job, whether unconditionally or conditionally, it is permitted to ask appropriate health-related questions.

That might be because of other legislation - for example, the legal requirement for a commercial vehicle driver to have an eye-sight test. Or, it might be to do with a requirement of the job – for example, the employer's cycle couriers need a health check because its insurer insists on it.

Employers making conditional offers are advised to keep a full record of why an offer is withdrawn for health reasons in case the matter leads to a claim of discrimination.

Also, an employer must ensure that a health check itself does not discriminate. For example, targeting health checks at certain age groups, singling out disabled people for assessment or discouraging people from applying are likely to be discriminatory.

References

An employer should always be careful in writing a reference – it should always be accurate and fair.

Protections in the Equality Act reach beyond the end of the working relationship, so it would be unlawful if a former employer provided a written or verbal reference that discriminated against, harassed or victimised a former employee.

For example... direct discrimination in a reference
Natalie's former line manager is approached by a prospective employer asking for a reference because she has applied for a job with it. The manager says he cannot recommend Natalie, as her decision to 'come out' as bisexual was disruptive, and lists a number of examples where he believed this resulted in team arguments, customer complaints and other members of staff quitting.

An option for an employer can be to have a rule that it will only give a simple, factual reference for all employees and former employees. For example, this might amount to job titles, dates of employment and salary. The employer should also explain, in giving the reference, that this is its policy.

Bullying and the Equality Act

Bullying and harassment are terms often used inter-changeably. However, employers should be aware that 'harassment' is covered under the Equality Act and a harassment claim can be made to an employment tribunal, whereas a claim of 'bullying' cannot be taken to a tribunal because it is not related to a protected characteristic.

While the unwanted behaviours that constitute bullying and harassment are the same, harassment is behaviour related to a protected characteristic, with the exception of sexual harassment. Sexual harassment is unwanted conduct that is of a sexual nature and/or relates to the protected characteristics of sex and/or gender reassignment.

There can be circumstances where an employee might experience conduct amounting to both bullying and harassment, with the bullying part of the behaviour not related to a protected characteristic, and the harassment part of the behaviour related to a protected characteristic.

Employers have a legal 'duty of care' for all their employees, are usually responsible for the acts of their employees and are accountable for taking all reasonable steps to prevent both bullying and harassment. In an

extreme case, where bullying and harassment caused an employee to become ill, an employer might face a civil claim under common law.

Acas characterises bullying as offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power through ways that undermine, humiliate, denigrate or injure the recipient.

While it is not possible in law to make a specific complaint about bullying to an employment tribunal, there can be circumstances where bullying might amount to behaviour defined as harassment or discrimination under the Equality Act.

Or, because of bullying and harassment at work, an employee might resign and go to an employment tribunal claiming 'constructive dismissal' on the grounds of breach of contract. This aspect and more information about 'bullying and harassment' are covered in the Acas guides Bullying and harassment at work: a guide for managers and employers, or Bullying and harassment at work: a guide for employees.

Further information

Acas learning online
Acas offers free E-Learning. The Equality and diversity course gives an overview of what equality and diversity mean, why they are important, putting the principles into practice in an organisation and a test to gauge understanding of the key points.

Acas training
Our Equality and Diversity training is carried out by experienced Acas staff who work with businesses every day. Training can be specially designed for smaller companies and our current programme includes:

- equality, diversity and discrimination: the essentials
- tackling bullying and harassment at work
- promoting mental health at work.

Go to www.acas.org.uk/training for up-to-date information about our training and booking places on face-to-face courses.

Also, Acas specialists can visit an organisation, diagnose issues in its workplace, and tailor training and support to address the challenges it faces. To find out more, see to the Acas website page Business solutions.

Acas guidance
Prevent discrimination: support equality
Discrimination: what to do if it happens

Age and the workplace: a guide for employers and employees
Disability discrimination: key points for the workplace
Gender reassignment discrimination: key points for the workplace
Marriage and civil partnership discrimination: key points for the workplace
Religion or belief discrimination and the workplace
Sex discrimination: key points for the workplace
Sexual orientation discrimination: key points for the workplace
Race discrimination: key points for the workplace
Asking and responding to questions of discrimination in the workplace
Managing redundancy for pregnant employees or those on maternity leave
Bullying and harassment at work: a guide for managers and employers
Bullying and harassment at work: a guide for employees
Code of practice on discipline and grievance
Guide on discipline and grievances at work
Age discrimination
Disability discrimination
Gender identity discrimination
Marriage and civil partnerships
Maternity leave and pay
Race discrimination
Religion or belief discrimination
Sex discrimination
Sexual orientation discrimination
Equal pay

The Equality and Human Rights Commission
http://www.equalityhumanrights.com/

Equality Advisory Support Service
For wider equality issues the Acas helpline does not cover, call the EASS helpline on 0808 800 0082 (Text phone: 0808 800 0084)

Additional help
Employers may be able to seek assistance from groups where they are members. For example, if an employer is a member of the Confederation of British Industry or the Federation of Small Businesses, it could seek its help and guidance.

If an employee is a trade union member, they can seek help and guidance from their trade union representative or trade union equality representative.

Keep up-to-date and stay informed

Visit www.acas.org.uk for:

- Employment relations and employment law guidance – free to view, download or share
- Tools and resources including free-to-download templates, forms and checklists
- An introduction to other Acas services including mediation, conciliation, training, arbitration and the Acas Early Conciliation service
- Research and discussion papers on the UK workplace and employment practices
- Details of Acas training courses, conferences and events.

Sign up for the free Acas e-newsletter. The Acas email newsletter is a great way of keeping up to date with changes to employment law and to hear about events in your area. Find out more at: www.acas.org.uk/subscribe

The Acas Model Workplace. This engaging and interactive tool can help an employer diagnose employment relations issues in its workplace. The tool will work with you to identify areas of improvement you can consider, and will point toward the latest guidance and best practice: www.acas.org.uk/modelworkplace

Acas Helpline Online. Have a question? We have a database of frequently asked employment queries that has been developed to help both employees and employers. It is an automated system, designed to give you a straightforward answer to your employment questions, and also gives links to further advice and guidance on our website: www.acas.org.uk/helplineonline

Acas Helpline. Call the Acas Helpline for free and impartial advice. We can provide employers and employees with clear and confidential guidance about any kind of dispute or relationship issue in the workplace. You may want to know about employment rights and rules, best practice or may need advice about a dispute. Whatever it is, our team are on hand. Find out more: www.acas.org.uk/helpline

Look for us on:

Facebook - https://www.facebook.com/acasorguk
LinkedIn - http://linkd.in/cYJbuU
Twitter - http://twitter.com/acasorguk
YouTube – https://www.youtube.com/user/acasorguk

APPENDIX TWO

acas working for everyone

Guidance

Promoting positive mental health in the workplace

October 2017

About Acas – What we do

Acas provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems. Go to www.acas.org.uk for more details.

'Must' and 'should'

Throughout the guide, a legal requirement is indicated by the word 'must' - for example, where an employee's mental ill health amounts to a disability, an organisation must make reasonable adjustments that will help them to do their job without being at a disadvantage.

The word 'should' indicates what Acas considers to be good employment practice.

October 2017

Information in this guide has been revised up to the date of publication. For more information, go to the Acas website at www.acas.org.uk

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Contents

About this guide

The mental health of staff is integral to how they feel about their jobs, how they perform in their role and how they interact with colleagues and customers. Staff with good mental health are more likely to perform well, have good attendance levels and be engaged in their work. It is, therefore, in an employer's interests to:

- Improve mental health awareness in the organisation
- Tackle the causes of work-related mental ill health
- Create a workplace culture where staff feel able to talk about their mental health
- Support staff who are experiencing mental ill health.

Achieving these objectives can help an employer reduce the severity, duration and quantity of mental ill health in its workplace.

This step-by-step guide is written for employers and senior managers. It explains how you should approach changing your workplace to promote positive mental health and where to go when further guidance and support are necessary.

Step 1: Understand mental health

An employer that understands mental health is better able to support and encourage staff to be more open about their mental health. To fully understand mental health, an employer should:

- Recognise what mental health is and what mental ill health actually means
- Identify the causes of mental ill health in the workplace
- Recognise the stigma associated with mental ill health and consider how this can be removed from its workplace
- Know its legal obligations to staff.

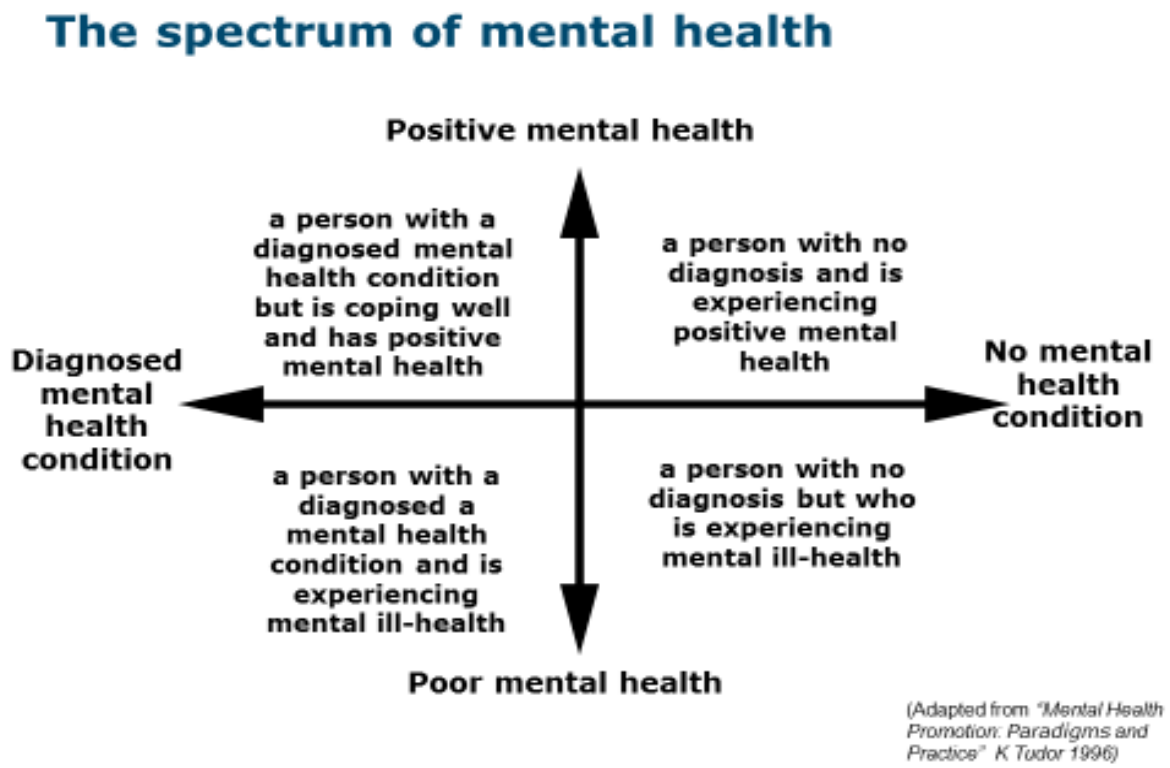
What is mental health?

Mental health is the mental and emotional state in which we feel able to cope with the normal pressures of everyday life.

Positive mental health is rarely an absolute state. Factors both in and out of work affect the mental health of staff and move them up or down a spectrum that ranges from good to poor.

For example, an employee may generally have positive mental health but a relationship break up may trigger a period of depression moving them into poor mental health. Alternatively, an employee with a mental health condition, such as depression, may have developed coping strategies that

are working well and mean they move into having positive mental health.



Anyone can suffer a period of mental ill health. It can emerge suddenly, as a result of a specific event, or gradually, where it worsens over time. It can range from feeling stressed to common conditions such as anxiety and depression and, in limited cases, to severe mental health conditions such as bipolar disorder or schizophrenia.

Some conditions can be persistent and may be classed as a disability, while others come and go, giving the individual 'good days' and 'bad days'. While someone may be diagnosed with a mental health condition, with the right support they can still enjoy positive mental health.

Why understanding mental health is important

It is important for organisations to better understand mental health because:

- Mental ill health is very common – the Government's Department of Health advises that one in four of us will experience it at some point in our lives
- The Work Foundation estimated that mental ill health costs the UK economy £70 billion each year
- Staff with positive mental health are more likely to work productively, interact well with colleagues and adapt to changes in the workplace
- Staff who feel unable to talk to their manager about their mental health may attend work when they are too ill to carry out their duties, which may be a health and safety risk

- Staff supported by their employer are more likely to be able to stay in work or return to work after a period of absence, reducing long-term absences in the organisation
- If mental ill health is not treated, the pressures of it can cause other 'secondary symptoms'. For example, the strain of coping with depression may cause someone to become dependent on alcohol or drugs.

What can cause mental ill health?

Many causes of mental ill health are related to problems outside of the workplace. For example, a family bereavement or illness may lead to stress, anxiety and/or depression.

While work can be good for people's mental health (providing a sense of identity and personal achievement), **the workplace can sometimes have a negative effect on mental health.** Common workplace causes of mental ill health include:

- Unmanageable workloads and/or demands
- Poorly defined job roles and responsibilities
- Lack of control over work
- Unhealthy work-life balance
- Poor relationships with management and/or work colleagues
- Organisational change and/or job insecurity
- Lack of variety in work
- Lack of career progression opportunities.

While an organisation may not be able to prevent all the causes of mental ill health, it can take steps to reduce the work-related causes.

For more information, go to Tackle work-related causes of mental ill health.

The stigma associated with mental health

There is still a lack of understanding about mental health and misconceptions persist. It is often thought to be a sign of weakness, which it is not. Additionally, people experiencing mental ill health can still be seen as dangerous, when in fact they are more likely to be attacked or harm themselves.

This stigma creates a fear of being judged or discriminated against and discourages people from talking about their mental health. Someone experiencing mental ill health often feels unable to tell their manager or seek help. As a result, they may try to hide their problems and therefore their mental ill health may not be spotted until it becomes a serious problem for the individual and the organisation.

An organisation that promotes positive mental health and educates its staff can tackle this stigma. Staff who are able to talk openly about their mental health without fear of judgement or discrimination are more likely to:

- **Disclose existing mental health conditions**, making it easier to identify signs of mental distress should they experience mental ill health again in the future
- Be honest about their own mental health and feel able to **seek help at an early stage if their mental health begins to deteriorate**
- **Stop trying to hide their mental ill health**, which can cause additional stress and cause further problems
- **Support colleagues** experiencing mental ill health.

Comply with legal obligations

Employers must make sure they comply with legal obligations when dealing with mental ill health. Where an employee's mental ill health amounts to a disability, **an organisation must consider making 'reasonable adjustments' that will allow them to carry out their job**. A 'reasonable adjustment' is a change or adaptation to the working environment that has the effect of removing or minimising the impact of the individual's disability in the workplace so they are able to undertake their job duties, or apply for a job, without being at a disadvantage.

Whether an adjustment is reasonable will depend on the size of the organisation and available resources. However, many adjustments are simple and inexpensive, and just require good people management.

Adjustments, with the employee's agreement, might include:

- Flexible working hours or changes to their start and/or finish times
- Changes to their role (this could be temporary or permanent)
- Moving their workplace (such as moving their desk to better suit their needs or homeworking)
- Increased help and support from their manager to ensure they can manage their workload
- Providing extra training, coaching or mentoring.

Once in place, an adjustment should be regularly reviewed to check it is still appropriate and/or working as intended.

Understanding when a mental ill health issue amounts to a disability

A person is disabled if they have 'a physical or mental impairment' which has 'a substantial and long-term adverse effect' on their 'ability to carry out normal day-to-day activities'.

For example, someone with a mild form of depression that has only minor effects on their daily life may not be covered. But someone with severe

depression that has substantial effects on their daily life is likely to be considered disabled.

An employer must consider not just current staff, but also anyone with a mental health condition who is applying to join the organisation. It is unlawful to discriminate against applicants because of a previous or current mental health condition which amounts to a disability.

To understand more about what is likely to amount to a disability, see the Acas guide, Disability discrimination: key points for the workplace at www.acas.org.uk/disability

An employer must also assess the risks of stress-related mental ill health for all its staff arising from work activities and take steps to effectively manage and control them. For example, designing jobs to be within the capabilities of staff. The Health and Safety Executive has detailed management standards that employers should follow. For more information, go to www.hse.gov.uk/stress/standards.

Step 2: Make a commitment to improve mental health at work

Once an employer has decided to try to promote positive mental health in its workplace, it should make a commitment by:

- Developing an action plan to change attitudes
- Creating a mental health policy to set out its values
- Ensuring senior managers champion awareness of mental health and fight to remove the stigma around mental health in the workplace.

Develop an action plan to change attitudes

It can take time to change an organisation's workplace culture. An employer should therefore plan how it will promote mental health and highlight the organisation's commitment to supporting staff with their mental health.

Planning how to change the workplace can ensure all relevant avenues are explored and considered. It can also provide a process to follow, with goals and objectives identified that will improve the organisation. An action plan should include:

- Why the organisation is committed to promoting positive mental health and what the objectives of the organisation are
- How the organisation will identify and tackle the causes of mental ill health in its workplace
- Planning a range of activities and key messages to educate staff and managers, prevent mental ill health and remove the stigma associated with mental ill health. This could include engaging in national initiatives such as Mental Health Awareness Week and World Mental Health Day

- Putting in place support processes for staff experiencing mental ill health. For example, training managers in mental health and having named mental health champions in the workplace, who can be approached if the employee does not want to talk their manager
- How the organisation will measure itself against its objectives
- A commitment to revisit the plan on a regular basis to check its effect on staff mental health and how the organisation is progressing against its objectives.

Publicise the organisation's commitment

An employer should consider publicising its commitment to promoting positive mental health among staff. This can also make the organisation more attractive to job seekers.

There are a number of different initiatives an employer can sign up to. These can help an employer set objectives and plan activities to help achieve them.

For more information, go to Support and information for an employer or a manager

Create a mental health policy

An organisation should set out its approach towards mental health in a policy. Managers and staff can then refer to one document when requiring guidance, ensuring consistent approaches are taken. A policy can also highlight the organisation's dedication to promoting positive mental health.

A policy may include, for example:

- The organisation's **commitment to promote positive mental health for all its staff and tackle the causes of work-related mental ill health** - this commitment should come from the head of the organisation
- Its aim to **provide a workplace where all staff feel able to talk openly about their mental health** and not fear discrimination if their condition is a disability, or bullying and harassment
- A requirement that **managers and staff receive mental health training**
- **Recognition that an employee's performance or behaviour can be affected if they are experiencing mental ill health** and that appropriate support and adjustments should be explored before considering any formal measures such as disciplinary action
- **A request that staff seek help at the earliest opportunity** in the knowledge their employer will do its best to support them
- Details of **all support services in place for staff experiencing mental ill health**

- The **types of additional support that might be offered to help a team member** experiencing mental ill health or who has been diagnosed with a mental health condition
- A process to **reintegrate staff absent from work due to mental ill health back into the workplace**
- Where to go for **further support and information.**

When developing a mental health policy, an employer should consult with staff and their representatives, if there are any. Any existing consultation and/or negotiating arrangements should be followed.

Policies should be regularly reviewed to check they are still relevant and working. This might include seeking staff feedback and analysing staff turnover and absence data.

Some employers may decide it is not necessary to have a dedicated mental health policy. However, they should ensure their managers and staff know where to go for support and further information when required.

Review and update existing policies

If an employer creates a mental health policy, its other policies should be checked and updated to refer managers and staff to it when dealing with mental ill health. Policies that may require updating include:

- Absence and sickness
- Health and safety
- Bullying and harassment
- Recruitment and induction
- Redundancy
- Equality
- Whistleblowing
- Performance management

Ensure senior managers champion awareness and fight stigma

All senior managers can play an important role in removing the stigma around mental health from the workplace. This can be helped by them arranging and actively participating in team meetings that discuss mental health and organisational initiatives that promote awareness.

If a senior manager has experienced a period of mental ill health, it can be particularly useful for them to talk about it. This can help highlight to staff how common mental ill health can be and that it is not a barrier to promotion and a successful career.

Senior managers should also act as role models to encourage healthy behaviours. For example, always taking a break from their desk or work area for lunch can encourage staff to take a break as well.

If staff are aware that senior management take mental health seriously and want to support them, it helps to normalise the subject and make staff feel better able to talk to their manager (and their colleagues) about their own mental health.

Taking responsibility for promoting mental health awareness

In larger organisations, having a senior manager responsible for overseeing the development of a policy and putting support processes in place can help to prioritise mental health and drive the change across the organisation. It can, therefore, be helpful to assign a senior manager to be a Mental Health Champion. Their role should include:

- Raising mental health awareness across the organisation to normalise the topic
- Promoting positive and preventative approaches to good mental health
- Checking on how successful the promotion of mental health has been across the organisation
- Seeking thoughts from staff on how to improve mental health across the organisation
- Being available to speak to staff and provide support.

A senior manager acting as a mental health champion should consider seeking further training in mental health, such as taking a mental health first aid course. For more information go to Support and information for an employer or manager.

Step 3: Identify ways to improve the workplace

An employer should identify how it could change its workplace to improve the mental health of its staff. In particular it should:

- Tackle the work-related causes of mental ill health
- Provide additional resources of support
- Work with trade unions and other employee representatives.

Tackle work-related causes of mental ill health

An employer should seek to identify what areas of the workplace might be a cause of mental ill health. Gathering information on staff turnover, sickness absence and performance data can be a good starting point.

Staff should also be involved in identifying these areas. They will be aware of what the organisation does well and what it needs to improve. They are also likely to be able to suggest how the workplace itself could be improved. Involving staff can create a sense of ownership in the programme and usually help get staff to commit to the resulting changes.

In larger organisations, this might be done through team meetings or an employee survey. In smaller organisations, the owner may simply talk to staff on a one-to-one basis to get their thoughts.

For example...

Adnan runs a small independent shop. Recently, one employee left saying they were becoming depressed by working there every day. Adnan took this personally and wants to take steps to ensure the shop is a good place to work.

He arranges one-to-ones with his staff to talk about their feelings towards work, what they dislike about it and what they would improve if they could.

A few say that while generally happy, they do feel there is a lack of responsibility in their roles. It is suggested that Adnan could start delegating some of his work. This would provide staff with more variety, more responsibility and the chance to learn new skills.

Adnan thinks this is a good idea and makes an effort to delegate appropriate tasks to staff.

Some causes of mental ill health may be difficult to tackle. For example, job insecurity when there is the possibility of redundancies. However, many causes can be reduced or removed when carefully considered.

Common causes of mental ill health and potential solutions include:

Unmanageable workloads and/or demands	Review and/or redesign job roles to ensure that the demands are reasonable and appropriate. For more information, go to www.acas.org.uk/jobevaluation Create clear job descriptions that ensure staff and their managers fully understand the duties and tasks of each role. Provide support and additional training to help staff manage their workload effectively.
Poorly defined job roles and responsibilities	Create targets and objectives for the role that are closely aligned to the goals of the organisation. Review the organisation's induction process to ensure it provides an introduction to the role and how the role fits within their team and the organisation as a whole.
Lack of control over work	Give staff as much control over their work as is practicable. For example, have clearly defined objectives but allow staff to control how they approach the task. Involve staff in workplace decisions that affect them. For example, use team meetings, employee surveys or staff forums to seek their views on how the organisation might be improved and highlight how

	their suggestions have been considered and actioned where practicable.
Unhealthy work-life balance	Encourage staff to consider flexible working arrangements to help them better meet their responsibilities outside of the workplace and reduce the stress these can cause. For more information, go to www.acas.org.uk/flexibleworking Ensure staff take the breaks (such as lunch break) they are entitled to during the day and take their annual leave entitlement each year.
Poor relationships with management and/or work colleagues	Managers should provide feedback promptly after a team member does good work to highlight that their efforts are appreciated. Managers should have regular one-to-ones and catch-ups with their team members to help build good working relationships. Managers should have an open door policy for team members to discuss any problems with them. Have clear discipline and grievance procedures and investigate any complaints thoroughly and fairly.
Organisational change and/or job insecurity	Staff should be involved in any decisions that may affect them and be kept updated about potential changes. Suggestions from staff should be considered and the reasons behind a decision fully explained to them. Be honest with staff, even if it may be bad news.
Lack of variety in work	Ensure staff understand why their work is important. Review and/or redesign job roles to reorganise working processes and create more varied responsibilities. For example, rotate duties between staff working at the same grade.
Limited career progression within the organisation	An employer should discuss with team members how they might be developed further to benefit them and the organisation. Opportunities - such as further education, training courses, and/or the delegation of work for staff to acquire new skills/experience - should be identified.

An employer should always seek to involve staff in changes to the workplace. For some changes there will be a legal requirement to consult with staff about a proposed change. For example, redesigning and

changing the job roles of staff will require varying their contracts and a variation to staff contracts must be agreed with those affected.

For more information, go to www.acas.org.uk/varyingacontract

Set up additional resources of support for staff

Staff should be encouraged to tell their manager of any existing mental health conditions or if they become concerned about their mental health.

However sometimes they may find it easier to speak to someone who isn't their manager. Therefore an employer should consider how else it may be able to support staff.

Within the organisation, an employer could designate particular managers or work colleagues to be mental health champions in the workplace. Mental health champions can help raise mental health awareness. They can also provide an additional source of confidential support for someone experiencing mental ill health, and who does not want to confide in their manager.

For example...

Tania owns a business employing over 100 people. While she wants to encourage her staff to talk to their manager about their mental health, she acknowledges that sometimes staff do not initially want to do so.

Unsure what else to offer, she gets feedback from team meetings on what type of additional support staff would be most likely to use. This shows that staff would like a contact who is outside of the line management structure. Tania therefore offers other staff the opportunity to become mental health champions.

She asks for expressions of interest and, after interviews, arranges for those chosen to go on an external training course to learn the skills the role requires.

An employer may also use external services to provide additional support. Services, such as Employee Assistance Programmes, can provide round-the-clock, confidential support, advice and counselling for staff dealing with personal problems that might adversely affect their job performance, health and wellbeing. For more information go to, Support and information for an employer or manager.

Taking steps to provide additional resources for staff to seek support can help encourage staff to raise any concerns they have over their mental health at the earliest opportunity.

Work with trade union and other employee representatives

Trade union and other employee representatives can play a vital part in promoting positive mental health in the workplace. They are often trained and/or experienced in mental health and can help an employer get messages across to staff.

Reps usually possess an awareness of the organisation and may be more willing to highlight areas of concern to management than staff. They might also know how similar issues have been successfully dealt with in other organisations.

They can provide an additional source of support for staff experiencing mental ill health, including if the employee is not yet ready to talk to their manager. It can also be helpful to suggest an employee experiencing mental ill health can be accompanied by a rep or a work companion at any meetings with their manager. This can reassure the employee and make them more willing to talk openly.

Step 4: Educate the workforce about mental health

To successfully promote positive mental health, it is important that staff understand what mental health means and know what support is available for them should they experience mental ill health. An employer should therefore:

- Train all managers to deal with mental ill health
- Train all staff on mental health awareness to help them understand their own mental health and support the mental health of colleagues
- Continue to regularly talk about mental health.

Train managers to deal with mental ill health

The role of a manager is to support their team members to be healthy and motivated so that they can perform at their best. However, without training, managers may not spot the signs that a team member is experiencing mental ill health.

Additionally, even if they do become concerned about a team member, they may lack the confidence to approach the matter, fearing they will get drawn into areas they are unqualified or unable to deal with.

However, managers should keep in mind that they deal with physical ill health on a regular basis and they should approach mental ill health in a similar way in focussing on how to support the team member to continue working or return to work when they are ready.

Managers should already have many of the skills required to manage staff experiencing mental ill health. For example, being an effective communicator and experience in having difficult conversations.

To help a manager become confident in dealing with mental ill health they should receive training to:

- Become more emotionally intelligent and improve their self-awareness and social-awareness
- Spot the signs of mental ill health
- Understand the common types of mental ill health and the differences between them
- Understand the types of support and possible adjustments that may help a team member experiencing mental ill health
- Refer or signpost staff to local services or external support.

For example...

Maya is a manager at a care home and is experienced in supporting staff with mental ill health. She has spotted that Roger's behaviour has changed. He has been late for work several times and colleagues have mentioned that he is not completing all the tasks he is set.

Maya arranges an informal meeting in private. At the meeting, Roger admits that his wife has left him and he is struggling to cope. Maya encourages Roger to go to his GP to talk about it, but makes clear that she and the organisation will try to support him as best they can.

Maya suggests they have another chat next week, after Roger has seen his GP, to discuss what she can do to help him. She also makes it clear that if Roger ever needs to talk about it or needs more support, she or the organisation will help if they can.

Acas offers training courses for HR professionals and anyone with management responsibilities on mental health awareness. For further information, go to www.acas.org.uk/training.

There are also external training resources that managers may find useful. For more information go to, Support and information for an employer or manager.

Some organisations may not have the resources to train all their managers in mental health at once. In these circumstances, an employer should assign certain managers to be trained as mental health champions, trained in mental health and then available to assist other managers in the organisation.

For information on managing staff experiencing mental ill health, go to www.acas.org.uk/managingmentalhealth

Train staff

All staff should receive training in mental health awareness. Training should cover:

- The organisation's commitment to promoting positive mental health
- The law concerning equality and discrimination, and how it can be relevant to attitudes towards mental health in the workplace
- Standards of behaviour expected of all staff, and how unacceptable conduct will be dealt with
- What staff can do to improve and maintain positive mental health. For example, fun or productive out-of-work activities
- Spotting the signs that they or someone they know may be experiencing mental ill health
- Who they should go to if they need advice or support. For example, their manager and/or mental health champion. If there are trade unions in the workplace, they may also be able to offer further support and advice
- Any concerns or questions staff may have.

Ideally, training should be conducted by a senior manager, HR professional or an external trainer who is trained and experienced in dealing with mental ill health.

It may be helpful for an employer to provide staff with written summaries of key points from the training that they can refer back to should situations arise in the workplace.

The training session should also be added to an organisation's induction process so all new members of staff also receive the training.

Continue talking about mental health

An employer should use a mixture of communication channels to continue promoting positive mental health to help ensure staff do not forget their training or revert back to old habits. Channels include:

- **Team meetings** which are a good way to regularly discuss how the team are feeling about their workload, upcoming challenges and get staff thinking about their own mental health and what affects it. Talking about mental health in team meetings can also normalise the topic. While it is likely that some team members will take a more active role, a manager should ensure that all team members are able to contribute so no one feels excluded
- **One-to-one meetings** between a manager and a team member provide regular opportunities to discuss mental health, check on how the team member is doing and identify any issues early. Conversations that may contain personal information the team member may not want widely known should be held in private

- **Informal chats around the workplace** should be a normal part of workplace life, with managers regularly working around their team. This can help them check on how staff are doing and whether there are any issues that may be affecting the mental health of team members
- **Awareness days/weeks,** such as Mental Health Awareness Week, can be used as a set date when staff are asked to think about their mental health. Activities could include talks and/or blogs from people who have experienced mental ill health sharing their insights.This can be a good way to get staff talking about their own experiences and reminding them of the organisation's commitment to promoting positive mental health
- **Noticeboards** (in a physical location or online) provide a set area for an employer to put up general information or key messages around mental health
- **Newsletters and email** are useful for general communications and for keeping staff up-to-date with any actions the organisation is taking to improve mental health in the workplace.

Step 5: Where to go for further support

It is essential an employer and its managers are aware of what further resources are available for further support and information when required. In particular an employer should know:

- Where they and their managers can go for additional help and advice
- Where to encourage staff to go for additional help and advice.

Support and information for an employer or manager

There are a range of organisations and programmes to help an employer and its managers.

To help promote mental health awareness and improve workplaces:

- **Mindful Employer** is a UK-wide, NHS initiative. It is is aimed at increasing awareness of mental health at work and providing support for businesses in recruiting and retaining staff. For more information, go to www.mindfulemployer.net or call 01392 677064
- **Business in the Community** is a network committed to ensuring that age, gender, race and wellbeing do not limit an employee's engagement and success in the workplace. It provides toolkits on Mental Health, Suicide prevention and Suicide postvention to help employers support the mental health and wellbeing of employees. For more information go to, www.bitc.org.uk
- **Time to change** can help organisations develop an action plan, and set objectives and activities that will be undertaken to achieve them. For more information, go to www.time-to-change.org.uk

- **Employee assistance programmes** can provide round-the-clock support for staff dealing with personal problems that might adversely impact their job performance, health, and wellbeing. This includes issues such as relationship problems, money worries and other pressures. An employer can join an EAP for a fee. For a list of providers, go to www.eapa.org.uk
- **Mental Health First Aid England** offers courses that can help managers and/or HR staff identify, understand and help a person who may be experiencing mental ill health. For more information, go to www.mhfaengland.org

To help managers support team members who experience mental ill health:

- **Acas website** provides information and guidance to help support and manage staff experiencing mental ill health. For more information, go to www.acas.org.uk/managingmentalhealth
- **Wellness Action Plans** can provide a practical way for a manager to support the mental health of their team members. They can be used to help identify when a team member may be experiencing mental ill health and what support to offer during these periods. Mental health charity Mind have guides on creating Wellness Action Plans. For more information, go to www.mind.org.uk or call 0300 123 3393
- **Additional help** may be available from groups where the employer is a member. For example, if an employer is a member of the Confederation of British Industry or the Federation of Small Businesses, it could seek its help and guidance.

Support and information for staff

When a member of staff is experiencing mental ill health, they may benefit from seeking external support. There are a number of services that may be able to help. These include:

- **Access to work** can provide advice and an assessment of workplace needs for individuals, with disabilities or long-term health conditions, who are already in work or about to start. Grants may be available to help cover the cost of workplace adaptations that enable an employee to carry out their job without being at a disadvantage. These might be used to pay the costs of adapting equipment or buying special equipment for the employee, the cost of getting to work if they cannot use public transport and/or disability awareness training for colleagues. For more information, go to www.gov.uk/access-to-work
- **Mind** is the leading mental health charity in England and Wales. Their helpline and website provide information and support to empower anyone experiencing mental ill health and general advice on mental health-related law. For more information, go to www.mind.org.uk or call 0300 123 3393

- **NHS choices** has a website that offers information and practical advice for anyone experiencing mental ill health. For more information, go to www.nhs.uk/livewell/mentalhealth
- **Remploy** offers a free and confidential Workplace Mental Health Support Service for anyone absent from work or finding work difficult because of a mental health condition. It aims to help people remain in, or return to, their role. For more information, go to www.remploy.co.uk or call 0300 4568114
- **Rethink Mental Illness** is the largest national voluntary sector provider of mental health services, offering support groups, advice and information on mental health problems. For more information, go to www.rethink.org or call 0300 5000 927.

Further information

Acas learning online

Acas offers free e-learning courses at www.acas.org.uk/elearning including Mental Health Awareness for Employers. It gives an overview of managing mental health in the workplace.

Acas training

Our training is carried out by experienced Acas staff who work with businesses every day. Training can be specially designed for companies too. Current training includes:

- Mental Health Awareness for Employers
- Building Resilience in the Workplace
- Stress in the Workplace
- Effective Absence Management

Go to www.acas.org.uk/training for up-to-date information about our training and booking places on face-to-face courses.

Also, Acas specialists can visit an organisation, diagnose issues in its workplace, tailor training and provide practical solutions to address the challenges it faces. To find out more, go to, www.acas.org.uk/businesssolutions.

Acas guidance

- Managing people
- Stress at work
- Equality and discrimination: understand the basics
- Prevent discrimination: support equality
- Discrimination: what to do if it happens
- Disability discrimination: key points for the workplace
- Code of practice on discipline and grievance
- Guide on discipline and grievances at work
- Bullying and harassment at work: a guide for managers and employers
- Flexible working and work-life balance
- The right to request flexible working
- Handling in a reasonable manner requests to work flexibly

Keep up-to-date and stay informed

Visit www.acas.org.uk for:

- Employment relations and employment law guidance – free to view, download or share
- Tools and resources including free-to-download templates, forms and checklists
- An introduction to other Acas services including mediation, conciliation, training, arbitration and the Acas Early Conciliation service
- Research and discussion papers on the UK workplace and employment practices
- Details of Acas training courses, conferences and events.

Sign up for the free Acas e-newsletter. The Acas email newsletter is a great way of keeping up to date with changes to employment law and to hear about events in your area. Find out more at:

www.acas.org.uk/subscribe

The Acas Model Workplace. This engaging and interactive tool can help an employer diagnose employment relations issues in its workplace. The tool will work with you to identify areas of improvement you can consider, and will point toward the latest guidance and best practice:

www.acas.org.uk/modelworkplace

Acas Helpline Online. Have a question? We have a database of frequently asked employment queries that has been developed to help both employees and employers. It is an automated system, designed to give you a straightforward answer to your employment questions, and also gives links to further advice and guidance on our website: www.acas.org.uk/helplineonline

Acas Helpline. Call the Acas Helpline for free and impartial advice. We can provide employers and employees with clear and confidential guidance about any kind of dispute or relationship issue in the workplace. You may want to know about employment rights and rules, best practice or may need advice about a dispute. Whatever it is, our team are on hand. Find out more: www.acas.org.uk/helpline

Look for us on:

Facebook - https://www.facebook.com/acasorguk

LinkedIn - http://linkd.in/cYJbuU

Twitter - http://twitter.com/acasorguk

YouTube – https://www.youtube.com/user/acasorguk

APPENDIX THREE

Unite

Mental Health Guide for reps and negotiators

unite the UNION

Preventing stress and promoting GOOD MENTAL HEALTH AT WORK

mental health

FOREWORD

As your General Secretary, I believe that now is the time for real change. There are many issues we must face together : fire and rehire, closures, suppression of pay and attacks on our Reps, with many employers emboldened to take advantage of the pandemic.

Mental health and stress have been high on Unite reps' priorities for a number of years, and COVID19 has intensified the need for Unite action.

This guide is to support our shop stewards, workplace reps, safety reps, union equality reps, and our members to tackle mental health issues and discrimination at work, and to campaign and negotiate for good mental health.

Unite's industrial programme is about protecting jobs and improving pay and conditions - getting back to the workplace, defending jobs, pay and conditions - and supporting our members' and reps' health, safety, equality and wellbeing.

In solidarity

Sharon Graham

Sharon Graham
General Secretary

The printed version of this guide contains model agreements and policies and the online version provides links to these documents.

CONTENT

INTRODUCTION

Recently there has been a significantly greater public awareness of mental health issues. Many of our members have been affected and our reps have been negotiating for prevention and support on behalf of members.

In the past few years, the pressure on workers has been intense as they have faced government cuts, social security reforms, the increased cost of living and threats to job security, pay and conditions. Unite reps have reported that colleagues are approaching them much more frequently to talk about mental health issues and ask for information and support.

Issues such as redundancies, reorganisation, overwhelming workloads, being expected to do more with less, low paid jobs and zero hour contracts are common; bullying and all forms of harassment are also increasingly being raised; all these issues often resulting in increased levels of stress, anxiety and depression which sometimes has led to mental health problems among our members.

This guide is for shop stewards/workplace reps and provides an overview of mental health issues at work; how to support members and negotiate with employers. The guide includes good practice examples and case studies; model agreements and policies on mental health, stress and disability equality; and a stress at work survey.

Stigma

Unite believes that it is important for mental health problems to be recognised as a disability equality issue. People who are using mental health services or have used these services in the past should not be discriminated against in the workplace on this basis. Different people, even those with the same medical diagnosis, react in a variety of ways to certain situations. The individual is always the best person to indicate their own needs. DO NOT MAKE ASSUMPTIONS.

According to Time to Change survey[1], nine out of ten people with mental health issues reported the negative impact of stigma and discrimination on their lives. They also, have the highest 'want to work' rate of any disability group but have the lowest in-work rate. One third of people with mental health issues reported having been dismissed or forced to resign from their job and 70% have been put off applying for jobs, fearing unfair treatment.

Labour Force Survey analysis[2] of mental health problems confirmed they are a significant barrier to getting into work.

We know that work pressures, as well as austerity, have been causing emotional distress for many workers. Many employers are unable to deal with this effectively leading to increased stigma, and many losing their jobs and unable to find new employment.

[1] https://www.time-to-change.org.uk/news/latest-survey-shows-public-are-less-likely-discriminate-against-people-mental-health-problems

[2] https://touchstoneblog.org.uk/2017/05/mind-gap-impact-mental-health-problems-employment/#_ftn5

Interestingly, even the government's 'Thriving at Work' report found that 300,000 people have to leave work every year because of long-term mental health issues.

Social Model of Disability

Unite supports the "Social Model" of disability. We advocate that it is not a person's impairment or condition which disables them but it is society's reaction to it that limits their lives and opportunities.

When there is support it still puts the onus on the individual e.g. cognitive behavioural therapy, recovery plans etc. While this can be very important, alone it cannot be enough as this does not address the many root causes: unemployment, poverty and discrimination. It is the discrimination we have to tackle, ending the blaming of individuals.

Reps in the workplace

Employers have a legal duty of care to ensure healthy and safe workplace environments.

Time off for reps in Food Manufacturing

Unite reps have ensured that the employer is aware of mental health problems at work and that action is taken.

Members have been affected by for example, managers and HR practices as well as disability. Also, some members were unable to attend interviews due to mental health problems. Therefore, reps negotiated for reasonable adjustments and time off for counselling and ensured that members were not penalised for not attending an interview.

The union equality rep negotiated time-off to attend members' homes with HR to discuss return to work with members who find it difficult to do so.

Unite supports members through representation at work and in negotiations with the employer, as well as through campaigns, guidance and training. Unite has a wide network of workplace reps, shop stewards, safety reps, union equality reps and union learning reps. Reps too, need protection from stress.

Unite reps have a critical role in negotiating policies that address stress related problems and control the risk of mental health issues arising from the workplace.

They should make certain that those affected have access to appropriate support and also that measures are in place to ensure retention of staff. Unite reps can carry out a stress survey among members to help with further action on good mental health in the workplace. The Unite Stressbusters 'stress at work' survey can be found at the end of this guide.

The Health and Safety Executive's stress survey is a valuable tool which can also be used by Unite reps. A link to this survey can be found on page 21 of this guide.

Resolving a dispute in housing

Unite surveyed its contract maintenance members in a social housing organisation during a dispute over changes in pay, working hours and conditions.

The findings revealed shocking levels of mental health issues and stress among the workforce. Also, 59% of those affected had not raised their issues with management.

Unite shared these findings with the employer and following negotiations the dispute ended successfully.

LEGISLATION

The Equality Act 2010 [1]

The Equality Act 2010 makes it clear that mental health issues are covered by the Act and states that a person has a disability if that person "...has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities."

Also, the Code of Practice states that "The term 'mental impairment' is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities."

Workers with mental health illnesses do not need to have a clinically well-recognised condition to be covered under the Equality Act 2010. This protection may also cover those members suffering from stress, depending on the circumstances.

Please remember that mental health disability discrimination employment tribunal claims must be brought within three months of the occurrence of the discrimination.

This period does not include time spent in early conciliation. If early conciliation is unsuccessful, a certificate will be sent by Acas. Once the certificate is received the amount of time left to make a claim is the same as before the conciliation started.

In some cases discrimination may extend over a period of time to make up a continuing act and in these cases a claim must be brought within three months of the last discriminatory act.

[1] Northern Ireland – Disability Discrimination Acts of 1995 to 2009
Republic of Ireland – The Equal Status Acts 2000-2015

Health and safety legislation

Employers have duties under the health and safety legislation, as well as some common law duties.

Under Section 2 of the **Health and Safety at Work Act 1974**[2] employers have a general duty of care to ensure the health, safety and welfare of all their employees and this includes employees' mental health.

The **Management of Health and Safety at Work Regulations 1999**[3] require employers to carry out suitable and sufficient assessments of health and safety risks.

Following the risk assessment employers have the duty to identify preventative and protective measures to reduce risks. This includes risks to mental health.

As well as the duties placed on an employer under health and safety law, there is a common law duty of care between an employer and employee. This duty of care is in place to protect an employee from psychiatric injury as well as physical injury.

Remember claims for work related psychiatric injuries are hard to prove. If you feel you have suffered psychiatric injury as a result of your working conditions you should seek legal advice from Unite Legal Services as soon as possible. They will ensure that you achieve the best possible outcome. By claiming, you can make your employer investigate and put preventative measures in place.

The Safety Representatives and Safety Committee Regulations 1977[4] give safety reps the right to investigate and tackle workplace stress.

While the burden of proof used to be on the employer to show they were not negligent, **The Enterprise and Regulatory Reform Act 2013** amended the Health and Safety at Work Act 1974 so that the burden is now on the employee to prove that the employer was negligent and that the negligence caused the injury.

[2] Northern Ireland – Health and Safety at Work (Northern Ireland) Order 1978
Republic of Ireland – Safety, Health and Welfare at Work Act 2005
[3] Northern Ireland – Management of Health and Safety at Work Regulations (Northern Ireland) 2000
Republic of Ireland – Safety, Health and Welfare at Work Act 2005
[4] Northern Ireland – The Safety Representatives and Safety Committees Regulations (Northern Ireland) 1979
Republic of Ireland – sections 25 and 26 of the Safety, Health and Welfare at Work Act 2005

AGENDA FOR GOOD HEALTH & SAFETY

Unite reps need to ensure:

- That work is designed to fit the worker, and not the worker to the job
- Mental health issues are dealt with appropriately
- Stress management is undertaken with full participation within a workplace culture which encourages the raising of concerns without fear of ridicule or victimisation

Union action at International level

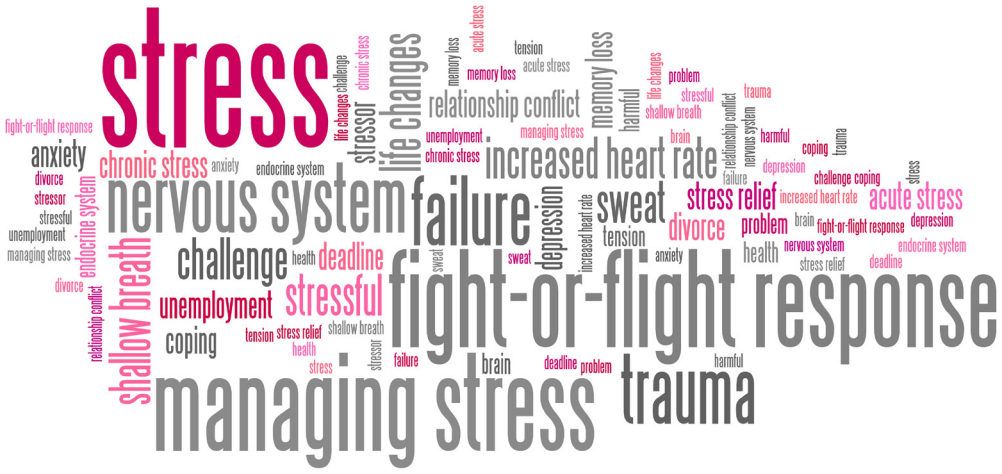
The European Works Council of a global insurance company took up the issue of work related stress after its 160,000 staff reported suffering from burnout.

The EWC negotiated an agreement on guidelines concerning work related stress. This was circulated with a letter from the CEO to all management in the European Economic Area and Switzerland asking them to implement the agreement.

Reps at local level worked to have the agreement implemented. The guidance covers the involvement of health and safety reps and committees.

The agreement had a two-year review date, but after 1 year the EWC asked country representatives for progress reports. After renewed efforts the agreement was implemented within two years in all the countries.

The social partners at EU level welcomed the agreement and the EWC is continuing to work with the employers on preventing stress through further initiatives.



PREVENTION IS KEY

Tackling mental health problems in transport

The sector organised a well attended and successful Mental Health seminar addressed by the General Secretary. He emphasised the importance of the ability of those present in the room who are making a difference in our workplaces. Also, the important role Unite can play around this issue.

This seminar was for HR from major companies and stewards from the same companies. There were a number of speakers including from Samaritans, Mind, Health and Safety Executive and Mental Health First Aid. There were also key contributions from stewards who spoke on the effects it can have on them at work and personally.

This was a successful initiative and several companies have committed to engage with their stewards to begin implementing positive change on this very important subject.

The European Commission's Mental Health and Employment toolkit describes good workplaces as:

- All staff have some control of their working day
- Staff are able to make suggestions and influence activities.
- Staff are clear about what they are expected to do.
- Staff get feedback on performance
- There is a safe and healthy working environment

Unite reps raising awareness in Construction

Within a company, reps have developed awareness raising techniques, utilising site inductions in order to deliver key messages about mental health and ensuring signposting. Also, the following methods have been effective:

1) Speaking to small groups using tool-box talks. This breaks down perceived barriers faced by workers with mental health issues. This has developed awareness and helped build confidence to have conversations around mental health.

2) Reps have taken part in a video on a major infrastructure site with Scottish Health Working Lives. This involved workers having discussions about how they felt at work, with a particular focus on stress and their own mental health. Unite had a positive outcome where this was widely used throughout Scotland to support Mental health awareness strategies.

Preventing work-related mental health conditions by managing stress in the workplace, and protecting workers' dignity at work by preventing bullying and harassment is central to Unite's health and safety and equality agenda.

Some employers are training Mental Health First Aiders which can be beneficial and some of our reps have taken up this position in their workplaces. However, many employers are using Mental Health First Aiders as a means to an end and claim that they are dealing with mental health well-being at work.

Unite reps need to emphasise that it is the employers' duty to prevent stress and mental health problems in the first place and not just providing first aid after the event.

NEGOTIATORS CHECKLIST – Prevention

Ensure employers:

- Commit and promote good mental health at work
- Address mental health problems regardless of the cause
- Create an environment where members feel confident to disclose their mental health disability and ask for adjustments without fear of reprisal
- Inform employees that support is available and signpost them
- Carry out regular mental health and stress audits
- Carry out a mental health impact assessment when introducing or reviewing work practices, policies and procedures
- Provide early access to occupational health services
- Provide advice and support to staff who need to take time off due to mental health problems
- Prevent bullying, harassment and victimisation

Negotiating policies in Health

High levels of stress in the NHS, growing pressure to do more work, gaps in mental health services, and shortage of medical staff mean that mental health nurses are themselves stressed.

Unite Scottish region negotiated stress and mental health policies with management seeking positive commitment to managing stress, and making sure everyone knows their responsibilities.

Unite reps need to negotiate a mental health policy which focuses on prevention, protection and support that includes:

- A general positive attitude towards workers with mental health issues
- Commitment to promote awareness
- Promotion of good mental health
- Training for managers, supervisors and other staff members
- Non-discriminatory recruitment, selection and retention process
- Rehabilitation of those returning to work after long term absence
- Adjustments at work
- Regular mental health/stress audits
- Recording absence due to mental health issues separately from sickness absence
- Health & safety in the workplace – not just stress prevention but also dealing with all hazards, some of which (such as manual handling) may add to occupational stress
- Links to other policies and procedures for example, flexible working, disability leave, career breaks, grievance & disciplinary procedures, capability, sickness absence, performance management, dignity at work (bullying and harassment), training and development
- Support provided by the employer and role of managers and Human Resources
- Recognising the role of union reps including shop stewards, safety reps, union equality reps and disability champions and ensure that they are involved and consulted

NEGOTIATORS CHECKLIST – Policy

Ensure employers:

- Develop and put in place a supportive mental health policy that includes actions to tackle workplace stigma about mental health problems
- Identify steps they will take to support and promote mental health well-being
- Have policies and practices that are above legal minimum standards
- Review sickness absence policies to ensure they do not discriminate against those with mental health issues
- Review all policies and practices to ensure they follow the social model of disability
- Address and tackle causes of stress and mental health problems in policies and practices
- Ensure the disciplinary procedure does not discriminate against members with mental health issues
- Develop and implement anti bullying and harassment, flexible working and stress management policies
- Include links to other policies and procedures in their stress and mental health policies for example: flexible working, disability leave, career breaks, grievance & disciplinary procedures, capability, sickness absence, performance management, stress management, harassment and bullying, training and development
- Actively involve all staff in establishing the improvements and changes necessary for inclusion and well-being at work

SUPPORT IN THE WORKPLACE

Members with mental health problems should be supported by the employer and there are a number of ways that employers can provide support. For example, reasonable adjustments, preventative measures, training and development, raising awareness, disability leave, flexible working, employee assistance programme, being understanding and ensuring non-discrimination and equality.

Holistic approach in shipbuilding and repair

At Europe's largest dockyard, Unite reps are working closely with the company using a holistic approach. In recognising that many factors may cause or contribute to the worsening of mental health problems, a triage system has been put in place to identify issues and offer support.

The Employee Assistance Programme (EAP) identifies whether the person needs health support, HR support, advice or a combination of any one of these. For example, mental health counselling and emotional support, debt counselling and support, family care, everyday matters, personnel relationship counselling.

The system incorporates a 24/7 advice line using telephone, email or online. Mental Health First Aiders (MHFA) who are based across the site provide confidential support; this will be further supported through specific occupational health provision.

Joint up working in Aerospace and Shipbuilding

Recognising that mental health problems are one of the leading causes of sickness, the union and the company adapted their existing mental health policy.

Everyone is supported by the occupational health team through counselling sessions and Cognitive Behavioral Therapy. These are provided by fully trained counsellors and NHS nurses.

The company also introduced mental health first aiders across all sites covering all shift patterns.

Unite also offered all reps Mental Health Awareness training and Mental Health First Aid training on site. This means that reps have the necessary tools to recognise the signs and provide help and support to members.

Reps are now looking for improvements in company policies to prevent mental health issues and support members who need it.

Unite reps need to make sure employers comply with their duty of care and create an environment that anyone with a mental health problem can seek help and support.

Unite reps need to negotiate a policy to prevent issues arising in the first place and if they do, ensuring a support system is already in place.

NEGOTIATORS CHECKLIST – Support

Ensure employers:

- Comply with confidentiality
- Fully consult the member on their recovery and return to work plans. This should be with support and necessary adjustments for example: flexible working, a gradual return to work, changes to workstation or job, longer breaks
- Include support mechanisms in return to work plans for the possibility of relapse in mental health problems and regularly reassess for any changes that might be suggested by the member
- Agree with the member how or if colleagues will be informed of their condition, absence or return to work. This should be done in a supportive way
- Brief other staff on any changes that might affect them e.g. changes to the member's shift pattern and any knock on effect
- Assign another member of senior management if the members' manager is part of the problem

TRAINING, DEVELOPMENT AND UNION EDUCATION

For members

The right training and development can be a significant factor in supporting people in the workplace. This could either be part of reasonable adjustments for a member with mental health issues or as part of a wider approach to mental health awareness training for all workers.

Negotiating training for members – Steel industry

A union learning rep noticed large numbers of people going off sick with stress, and therefore, set up mental health first aid courses in the workplace. This was supported by Unite and the Wales Union Learning Fund. 700 people have attended and this was later incorporated into the company's 'Well-being' policy.

When negotiating, Unite reps can include mental health awareness as part of training and development discussions.

Unite reps can also organise and support members through, for example, organising workplace forums, talking to members informally and formally about their experiences in the workplace. Moreover, Unite education and training encourage members with mental health issues to get more actively involved.

Negotiating training in Not for Profit

A recent Unite survey of 500 members in a not for profit organisation revealed that almost 60% were subjected to stress, long hours and work pressures and about 20% had suffered bullying at work. Only 3% of respondents said they used the staff helpline.

Unite is negotiating for management training to help eradicate an epidemic of stress and cases of bullying and to provide the right support in an often highly pressurised working environment.

For reps

As well as representing individual members with grievances and disciplinary cases related to mental health issues, the role of Unite reps is to ensure employers prevent and tackle any workplace issues that may contribute to members' mental health problems including adjustments at work.

Mental Health Awareness training for reps

Unite has been delivering Mental Health Awareness training in regions. Unite reps who attended these courses reported that they now, understand the signs and are available to listen and provide guidance. The training also helps reps to approach management and negotiate for prevention as well as providing support.

Unite reps would benefit from the union's mental health awareness training and organising for equality Unite education courses. These courses will increase their awareness of how the workplace can affect mental health and help improve terms and conditions and policies for members and equality.

Ask your Regional Education Officer for information about Unite's education courses on Mental Health Awareness and Equality.

NEGOTIATORS CHECKLIST – Training

Ensure employers:

- Provide training for all staff on stress and mental health and remove stigmas
- Provide training for managers to recognise critical signs of stress and mental health problems and ways of dealing with it constructively

LOOKING AFTER UNITE REPS

Many of our reps have been under pressure at work as well as supporting and representing an increasing number of members with mental health issues. It is crucial that Unite reps receive the right support to safeguard their own mental health.

As set out on page 16 of this document, Unite provides Mental Health Awareness training for our reps. However Unite reps are also employees of their own organisations, and as such their employers have a duty of care to them under health and safety law and good practice. Employers therefore, should provide mental health awareness training for reps and robust support systems. These should take into account extra pressures and responsibilities reps are exposed to.

To this end Unite reps as a matter of vital importance, should negotiate inclusion of these support systems in any facilities agreement, mental health policies and agreements at both national and regional levels. Please refer to employer's responsibility section in the model agreement on page 23 of this document.

It is important for reps to:

- Take care of themselves and ask for help and support when needed
- Set practical and achievable goals

UNITE'S CAMPAIGNING AND GUIDANCE

Unite launched a campaign, Organising and Campaigning on Stress and Mental Health (2011), an initiative of the Unite National Disabled Members' Committee working with the union's National Health & Safety and Unite Mental Health Nurses Association. The union published a campaign pack including a workplace stress questionnaire. Members were encouraged to carry out workplace surveys and follow this up with their employers to get action on the findings. This campaign was built on the positive experiences of a sectoral campaign initiated by the Community, Youth Workers and Not for Profit Sector.

The Health and Safety Executive "Stress Management Standards" are used in the union's training and resources. The HSE has promoted constructive dialogue between employers and employees to manage work demands, the control someone has over their work and role, and managing change at work and work relationships.

If used properly, the Standards put control back into the hands of those who are affected – providing management commits to it as well. For more information please refer to pages 20-21 in this guide and Unite's stress guidance available from the union's National Health & Safety.

Unite Disability Equality at Work Guide includes model policies emphasising employer commitment to provide paid disability leave ensuring sufficient time to adjust to changed circumstances, paid time off for reasonable adjustments, counselling and support; and specifically for all workers to have equal access to Health & Safety provision, and to ensure that Health & Safety is not used to justify discrimination against disabled people.

Unite guidance on Dignity at Work covers zero tolerance on harassment, discrimination and bullying that can affect mental health.

EXAMPLES OF UNITE ACTION ON MENTAL HEALTH

Action on Mental Health in Road Transport Commercial Logistics and Retail Distribution

Across transport, Unite has been building alliances and prioritising mental health action and awareness by engaging all the major road transport and logistics employers. The sector organised two separate but linked events – a well attended and successful Mental Health seminar for HR in all major employers in the sector and for Unite reps in the same employers. As well as leading lay reps and senior officers, a number of speakers including from Mind, HSE and Mental Health First Aid contributed. There were also key contributions from stewards with experience in this area who spoke about representing members with mental health issues and what is needed from employers and the union. They also highlighted the effect it had on them not just as stewards but as individuals and the knock on effect to their personal lives.

The feedback has been that "these were excellent seminars and this was just the beginning."

Action on Mental Health in Construction
A survey of Unite members revealed that mental problems are rife in construction. However; the majority do not seek help or raise this with management.

Breaking the silence and seeking help is a construction sector campaign. Unite's focus is to highlight the issue and end the conspiracy of silence that surrounds mental health problems while lobbying employers to raise awareness, train managers and staff and to put preventative and supportive measures in place.

In the longer-term the focus is on major reforms to the industry. There needs to be greater job security and an end to the hire and fire culture.

The immediate challenge is to make the industry take their heads out of the sand.

Action on Mental Health in Health

Unite and its Mental Health Nurses Association (MHNA) have signed up to support the #WheresYourHeadAt campaign. The campaign aims to improve the mental health of the nation by ensuring employers look after the wellbeing of their workforce by explicitly including mental health in the First Aid regulations. This is to make it easy for members to talk about their mental health issues at work and ensure that there are trained colleagues on site for guidance and signposting.

This is just one piece in the jigsaw to help support workers with their mental health problems. Please use the link to find out more about the campaign http://www.wheresyourheadat.org and read the open letter to the Prime Minister via http://www.wheresyourheadat.org/open-letter.pdf.

Action on Mental Health, Unite Health & Safety campaign – "Looking for Trouble"

"If we don't look for trouble, trouble is going to come looking for us. Look for trouble, find it, fix it."

"Looking for Trouble" on health and safety in the workplace is one of the key functions of Unite Safety Reps.

Unite expects employers to be doing this as part of their duties on health and safety at work. It is often the case that to identify problems it is necessary to go out and look for them. Having found problems, something must be done about them. As part of that campaign, we expect Unite safety reps to get involved in dialogue with employers in looking for stress and psychosocial risks in the workplace, and creating a climate where workers feel comfortable raising their stress and mental health concerns.

WORK-RELATED STRESS

According to TUC, work-related stress is the second-biggest occupational health problem in the UK, which costs the UK £3.6bn every year; there is evidence to suggest that 30 to 40 per cent of sickness absence is linked to work-related stress. This is a very important issue that should be tackled and prevented. However, stress is not a mental health diagnosis or a recognised mental health condition but work-related stress either leads to mental health problems or exacerbates existing problems. Most people subjected to work related stress will have anxiety, depression or what is termed generalised anxiety disorder.

Mental health issues will have several contributing factors, with good management of work related stress playing an important role in preventative strategies. The Health and Safety Executive (HSE) Stress Management Standards is an essential element in identifying and controlling the risk around work related stress.

Reps can use the Unite Model Stress Policy and Unite Stressbuster Survey in this guide to help with discussions and negotiations with the employer.

What are the Health & Safety Executive (HSE) Management Standards for work related Stress?

The Management Standards define the characteristics, or culture, of an organisation where the risks from work related stress are being effectively managed and controlled. The Management Standards cover six key areas of work design that, if not properly managed, are associated with mental health and well-being issues, lower productivity and increased sickness absence. In other words, the six Management Standards cover the primary sources of stress at work. These are:

- **Demands** – this includes issues such as workload, work patterns and the work environment
- **Control** – how much say the person has in the way they do their work
- **Support** – this includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues
- **Relationships** – this includes promoting positive working to avoid conflict and dealing with unacceptable behaviour
- **Role** – whether people understand their role within the organisation and whether the organisation ensures that they do not have conflicting roles
- **Change** – how organisational change (large or small) is managed and communicated in the organisation

The Management Standards represent a set of conditions that, if present, reflect a high level of health well-being and organisational performance. The Management Standards:

- demonstrate good practice through a step by step risk assessment approach;
- allow assessment of the current situation using surveys and other techniques;
- promote active discussion and working in partnership with employees to help decide on practical improvements that can be made;
- help simplify risk assessment for work related stress by: identifying the main risk factors for work related stress;
- helping employers focus on the underlying causes and their prevention; and
- providing a yardstick by which organisations can gauge their performance in tackling the key causes of stress.

HSE website
http://www.hse.gov.uk/stress/standards/index.htm
"How to tackle work-related stress
A guide for employers on making the Management Standards work"
http://www.hse.gov.uk/pubns/indg430.pdf
HSE Survey Tool on work related stress
http://www.hse.gov.uk/stress/assets/docs/indicatortool.pdf"

AN EXAMPLE OF A MENTAL HEALTH AGREEMENT

Between

Unite the union

and

_____(Company Name)

1. Statement

The employer and Unite the union (henceforth known as 'the union') recognise that good mental health is paramount in a workplace environment.

To ensure good mental health requires good, coordinated industrial relations across the company in order to create a workplace environment that promotes and supports the mental wellbeing of all employees.

To this end, the employer and the union agree that employers have a duty of care to their employees which means that they should take all steps possible to ensure their health, safety and wellbeing.

Demonstrating concern for the physical and mental health of workers including those with fluctuating conditions should not just be seen as a legal duty. It is a key factor in building trust and reinforcing an employer's commitment to its employees and can help improve staff retention, boost productivity and pave the way to greater employee engagement.

In this agreement the employer and the union set out their full commitment to address any issues through cooperation, consultation and mutual agreement to set firm principles that will apply across the organisation.

2. Scope

This agreement applies equally to all employees who are employed by.....
Separate policies and procedures exist to deal with different aspects of health & safety and equality and should be read in conjunction with this agreement as appropriate.

The employer and the union aim to promote mental health wellbeing in the workplace.

This agreement does form part of the contract of employment and may be amended with required notice at any time following meaningful consultation with the union.

3. Objectives

To recognise workplace factors that may negatively affect mental health of staff including aspects of work organisation and management, and environmental and social conditions.

To develop the required skills through training, and to promote and manage mental health problems effectively.

To create and promote a workplace culture based on trust, support and mutual respect that allows for open communication amongst workers, management and the trade union, and that is free from stigma and discrimination by:

- Providing all staff information on mental wellbeing, increase their awareness and provide training
- Ensuring that all staff are set realistic targets which include hours, quantity and intensity of work
- Ensuring all staff have clearly defined job descriptions, objectives and responsibilities and provide them with good management support, appropriate training and adequate resources to do their job
- Establishing proper two-way communication to ensure staff involvement, particularly during periods of organisational change
- Encouraging those with mental health issues to consult with the union representative, HR, their own GP or a counsellor of their choice
- Dealing sympathetically, fairly and consistently with any member of staff experiencing mental health problems ensuring non-judgmental and proactive support
- Investigating the contribution of working conditions and other organisational factors to mental health problems and take steps to eradicate the effects
- Ensuring all managers have the information and training about managing mental health in the workplace

4. Employer Responsibility

Must abide by relevant health and safety and employment law, the Equality Act 2010 including their legal duty of care.

Have a moral and ethical duty not to cause physical or psychological injury or fail to prevent it.

In addition to its legal duty of care, the employer will:

- Ensure a safe working environment
- Ensure jobs are clearly defined and staff do not work excessive hours
- Provide areas for rest and relaxation
- Carry out regular risk assessments including for jobs, workstations, policies and procedures and implement recommendations in consultation with staff and union representatives

- Prevent and protect staff from discrimination, bullying and harassment, by colleagues, managers, supervisors and third parties
- Provide adequate training for all staff including managers, supervisors and union representatives including shop stewards, workplace reps, health and safety reps, union equality reps and union learning reps
- Ensure paid release and facilities to support all union representatives in this training and in carrying out their duties as well as providing them with breaks during their working day
- Provide communication channels for any member of staff to raise concerns
- Conduct regular mental health/stress audits
- Assist and support any member of staff with mental health problems and to sympathetically manage sickness absence
- Ensure sickness absence due to mental health problems is recorded separately from sick leave and will not be used in any circumstances as criteria for redundancy, disciplinary, promotion or performance appraisals
- Make temporary or permanent reasonable adjustments to prevent issues arising and to support employees with mental health problems. This should be done in full consultation with the employee and the union
- Ensure a system of support is in place for all staff including union representatives whom are emotionally affected when dealing with difficult mental health cases
- Provide awareness training and robust support systems for union representatives at an appropriate level. This should take into account that representatives will be dealing with other employee's mental health issues including possible complex cases
- Monitor and review the effectiveness of measures to promote mental health wellbeing and the effectiveness of this policy

5. Employee Responsibility

Employees also have responsibilities for their health and safety at work and it is expected that they will:

- Take reasonable care of their own health, safety and wellbeing
- Be mindful of their colleagues' health, safety and wellbeing, ensuring that they do not knowingly or willingly do anything which may have an adverse health and wellbeing impact on others
- When appropriate, raise any health, safety and wellbeing issues of concern and seek help from their manager, human resources, occupational health and union representative

6. Role of the Union Safety Representatives

- All union safety representatives should be meaningfully consulted in good time about any proposed changes to workplace practices that could precipitate stress and mental health problems and be involved at all stages
- Their role will not include responsibility for mental health issues or matters within the work environment
- Use their rights and functions to work with management in implementing appropriate measures to give effect to this agreement
- Attend training with paid time off, to identify and support and represent members with mental health issues in the workplace

5. Role of the Union Equality Representatives

Union Equality Representatives work alongside other union representatives to:

- Promote equality
- Tackle discrimination
- Discuss priorities for pay and bargaining, and to equality-proof policies and agreements
- Recruit, organise, represent and involve all members

Union Equality Representatives are provided with support and assistance from the union, other representatives, branch officers, union education, regional officers and regional Women's & Equalities Officers.

8. Confidentiality

Information about any employee's mental health including fluctuating or progressive conditions will be kept confidential and will not be disclosed to anyone without the individual's written consent.

Any breaches of confidentiality by any member of management or individual employee will be treated as a serious offence and subject to disciplinary procedures.

Signed by _____ (Unite the union)

Print Name _____ (Unite the union)

Post Held _____ (Unite the union)

Signed by _____ (Company /Employer)

Print Name _____ (Company /Employer)

Post Held _____(Company /Employer)

Date _____

AN EXAMPLE OF A STRESS POLICY

Introduction

We are committed to protecting the health, safety and welfare of our employees and recognise that workplace stress is a health and safety issue and acknowledge the importance of identifying and reducing workplace stressors.

This policy will apply to everyone in the company. Managers are responsible for implementation and the company is responsible for providing the necessary resources.

Definition of stress

The Health and Safety Executive define stress as "the adverse reaction people have to excessive pressure or other types of demand placed on them". This makes an important distinction between pressure, which can be a positive state if managed correctly, and stress which can be detrimental to health.

Policy

- With the involvement of Safety Representatives, the company will identify all workplace stressors and conduct risk assessments to eliminate stress or control the risks from stress. These risk assessments will be regularly reviewed
- The company will consult with and involve Safety Representatives on all proposed action relating to the prevention of workplace stress
- The company will provide training for all managers and supervisory staff in good management practices
- The company will provide confidential counselling for staff affected by stress caused by either work or external factors
- The company will provide adequate resources to enable managers to implement the company's agreed stress management strategy

Responsibilities

Managers

- Conduct and implement recommendations of risk assessments in consultation with staff and other representatives
- Ensure good communication between management and staff, particularly where there are organisational and procedural changes
- Ensure staff are fully trained to discharge their duties
- Ensure staff are provided with meaningful developmental opportunities
- Ensure that staff are trained to recognise when they are stressed and know what to do

- Monitor workloads to ensure that staff are not overloaded
- Monitor working hours and overtime to ensure that staff are not overworking. Monitor holidays to ensure that staff are taking their full entitlement
- Attend training as requested in good management practice and health and safety
- Ensure that bullying and harassment are not tolerated
- Be vigilant and offer additional support to a member of staff who is experiencing stress outside work e.g. bereavement or separation

Occupational Health and Safety Staff

- Provide specialist advice and awareness training on stress
- Train and support managers in implementing stress risk assessments
- Support individuals who have been off sick with stress and advise them and their management on a planned return to work
- Refer to workplace counsellors or specialist agencies as required
- Monitor and review the effectiveness of measures to reduce stress
- Inform the employer and the health and safety committee of any changes and developments in the field of stress at work

Human Resources

- Give guidance to managers on the stress policy
- Assist in monitoring the effectiveness of measures to address stress by collating sickness absence statistics
- Advise managers and individuals on training requirements
- Provide continuing support to managers and individuals in a changing environment and encourage referral to occupational workplace counsellors where appropriate

Employees

- Raise issues of concern with your Safety Representative, line manager or occupational health
- Accept opportunities for counselling when recommended

Safety Representatives

- Safety Representatives must be meaningfully consulted and involved, in good time, on any changes to work practices or work design that could precipitate stress
- Safety Representatives must be able to consult with members on the issue of stress including conducting workplace surveys
- Safety Representatives must be meaningfully involved in the risk assessment process
- Safety Representatives should have access to collective and anonymous data from HR
- Safety representatives should have sufficient paid time-off to carry out their functions
- Safety Representatives should be provided with paid time away from normal duties to attend any Trade Union training relating to workplace stress
- Safety Representatives should conduct joint inspections of the workplace at least every 3 months to ensure that environmental stressors are properly controlled

Role of the Safety Committee

- The joint Safety Committee will perform a pivotal role in ensuring that this policy is implemented
- The Safety Committee will oversee monitoring of the efficacy of the policy and other measures to reduce stress and promote workplace health and safety

Signed by Managing Director

_____ Date: _____

Signed by Unite the union representative

_____ Date: _____

Stress at Work Survey

The Health and Safety Executive defines stress as 'the adverse reaction people have to excessive pressures or other types of demands placed upon them'.

At Unite the union we know that stress at work increasingly impacts on people at work to some extent. We are asking you to take a few minutes to fill out this survey. This survey will form the baseline to understanding what is happening in your workplace and your contribution will help to ensure that your organisation has an action plan in place to combat work-related stress.

Please return the survey form to your Unite representative whose details are at the bottom of the second page of this form. Unite will seek to ensure that the identity of respondents is kept anonymous so we have not asked for personal details.

ABOUT YOU

Name of Employer

.....

Gender.....

Please tick your race/ethnicity:

☐ Black/Asian ☐ White

Please tick if you are:

☐ Disabled ☐ LGBT+

Age

<25 25 – 34 35 – 44 45 – 54 55>

1. I am aware of a workplace stress strategy at work

☐ Yes ☐ No

2. Do you feel you are stressed by your work?

☐ Yes ☐ No

HOW ARE YOU?

Do you generally suffer from symptoms caused by stress in your workplace? (frequent headaches, depression, anxiety attacks, sleeplessness, indigestion, continual tiredness, or other symptoms)

☐ Yes ☐ No

WHAT MAKES YOU STRESSED AT WORK?

(Please mark 1 for low level of stress, 5 for high level of stress)

1. Demands of the job

a. Long working hours	1 2 3 4 5
b. Too much work	1 2 3 4 5
c. Too little work	1 2 3 4 5
d. Repetitive or monotonous work	1 2 3 4 5
e. Insufficient time to do your job	1 2 3 4 5
f. Not enough rest breaks	1 2 3 4 5

2. Lack of control

a. Lack of control over work	1 2 3 4 5
b. Unrealistic targets	1 2 3 4 5
c. Pace of the work dictated by others	1 2 3 4 5
d. Deadlines which are regularly too tight	1 2 3 4 5
e. Unremitting pressures to perform well	1 2 3 4 5
f. Unfair pay system	1 2 3 4 5
g. Over-harsh discipline	1 2 3 4 5
h. Too much supervision	1 2 3 4 5
i. Too little supervision	1 2 3 4 5
j. Too little job/task specific training	1 2 3 4 5

3. Work-life balance

a. Inflexible working hours (causing childcare, domestic, access to work problems, etc)	1 2 3 4 5
b. Inflexible working patterns (job sharing, part-time work, compressed work weeks, remote working, etc)	1 2 3 4 5
c. Unsympathetic management	1 2 3 4 5
d. Lack of family-friendly policies	1 2 3 4 5

4. Relationships at work

a. Bullying, harassment or unwanted behaviour	1 2 3 4 5
b. Respect as an employee	1 2 3 4 5
c. Discrimination or prejudice from colleagues or managers	1 2 3 4 5
d. Risk of violence and abuse from customers or service users and colleagues or managers	1 2 3 4 5
e. Working alone	1 2 3 4 5
f. Failure to recognise achievements	1 2 3 4 5
g. Skills not being fully utilised	1 2 3 4 5
h. Lack of communication between colleagues	1 2 3 4 5
i. Lack of communication between staff and management	1 2 3 4 5

5. Change

a. Uncertainty about your future	1 2 3 4 5
b. Lack of job security	1 2 3 4 5
c. Introduction of digitalisation, automation and new management techniques	1 2 3 4 5
d. Restructuring	1 2 3 4 5
e. Lack of consultation over changes	1 2 3 4 5

6. Conflicting roles

a. Unclear job responsibilities	1 2 3 4 5
b. Conflicting responsibilities	1 2 3 4 5
c. Confusing demands	1 2 3 4 5

7. Working environment

a. Overcrowding or cramped work areas	1 2 3 4 5
b. Untidy or unclean working areas	1 2 3 4 5
c. Poor facilities	1 2 3 4 5
d. Badly designed, unsuitable or uncomfortable equipment and workstations	1 2 3 4 5

What do you believe are the major causes of your stress at work?

.....

.....

.....

.....

What do you believe your organisation could do to reduce stress at your workplace?

.....

.....

.....

.....

I am a Unite member

☐ Yes ☐ No

I am a Unite representative

☐ Yes ☐ No

I am interested in getting more involved in this campaign

☐ Yes ☐ No

I am interested in being a Unite representative

☐ Yes ☐ No

If you are interested in becoming a Unite representative please contact your local representative or your Unite local office (go to **www.unitetheunion.org** for details).

If you are interested in joining Unite, please go to **www.unitetheunion.org** to join online or talk to your local representative.

unite theUNION

Thank you for completing this questionnaire. Please return it to your Unite representative.

RETURN SURVEY TO:

NAME: CONTACT DETAILS:

DB/5660/6-19

UNITE MODEL AGREEMENT ON DISABILITY EQUALITY

Statement of intent

There should be a statement confirming that the parties to the Agreement (the Employer and the Union) are committed to disability equality and equal opportunities for ALL, including those who have a physical, mental or sensory impairment that this will apply to the operation and implementation of all policies, recognising responsibilities in relation to disability under the Equality Act 2010 and related codes of practice.

The employer is committed to equality for all disabled employees including those with a condition that is intermittent, may recur in future but has not done so for a time or where it may not yet have lasted twelve months.

The employer shall recognise that in some cases the likely level of absence may be unpredictable and therefore must review this form of absence, reasonable adjustments, and consideration point, whenever circumstances change, and shall be flexible in management of such cases.

Employment practice

Recruitment
All job applicants will be assessed on the basis of suitability for the job without disability discrimination. No question related to disability shall be asked prior to interview, apart from ensuring disability access. Applicants who are suitable for the job at the time of interview will not be placed at a disadvantage because they have an impairment.

The placing of advertisements
To encourage disabled people to apply for vacancies, adverts will be placed in the disability press and other places where a wider audience can be reached.

Recruitment information will be available in alternative formats, such as large print, Braille and audio, when requested. All advertisements will include a commitment to disability equality and to provide reasonable adjustments as well as a statement on equal opportunities for all.

Interviews
For candidates with particular access requirements, reasonable adjustments should be made and panel members will receive equal opportunities training and education on disability equality.

On employment – reasonable adjustments
A commitment to make reasonable adjustments, as required, on appointment. Examples of reasonable adjustments include:

- Making adjustments to premises
- Allocating some of the disabled person's duties to another person
- Transferring him/her to fill an existing vacancy
- Altering hours of working or training
- Assigning him/her to a different place of work or training
- Allowing for absence during working or training hours for rehabilitation, assessment or treatment
- Giving, or arranging for, training or mentoring (whether for the disabled person or any other person)
- Acquiring or modifying equipment
- Modifying instructions or reference manuals
- Modifying procedures for testing or assessment
- Providing a reader or interpreter
- Providing supervision or other support

Retention
The employer and the union agree that making reasonable adjustments should ensure the retention of the disabled employee without financial loss.

Sickness absence
A commitment that disability related sickness absence shall not be used as part of any criteria for redundancy, disciplinary, promotion, or performance appraisals and nor shall it be used to reduce pay. Such absences shall not be counted towards any 'trigger points' or action levels within any sickness absence management policy.

The employer and the union shall agree on any necessary action or procedures in special circumstances.

Disability leave
A commitment to provide paid disability leave to ensure:

- Sufficient time and help to adjust to changed circumstances
- Paid time off to allow reasonable adjustments to working conditions and arrangements to be made. This leave shall not be recorded as sickness absence
- Counselling and support
- Paid time off for medical appointments

The employer and the union shall agree on a flexible approach that is related directly to the circumstances of individual employees especially in terms of time limits.

Absence for reasons associated with disability will be recorded separately from sick leave, and in no case will disability-related leave be used as part of any criteria for redundancy, disciplinary, promotion, or performance appraisals.

Following on from this a further meeting will be arranged with the employee, the line manager, the Personnel Manager or occupational health staff, the union representative and any other specialists nominated by the union to:

a) Assess the possibility of a phased return to work, if requested

b) Assess the potential for the employee to carry on with their own job

c) Assess any adaptations or training which may be required

d) Where it is agreed, if necessary, alter duties, including working hours or offer alternative job, including, where appropriate, a more senior position without competitive interview

e) Where none of the above apply, recommend alternative action including early/medical retirement, ensuring that this is done in the most beneficial way for the worker and respecting disability rights

Special leave
All those who have a responsibility caring for disabled relatives or dependents, shall be able to make changes to working hours and take reasonable paid time off. Those with caring responsibilities shall be entitled to additional special and compassionate bereavement leave.

Benefits and services
All workers are entitled to work benefits and services without disability discrimination. All facilities, including toilets, rest rooms and canteens, and social facilities and events whether at or away from the workplace, shall be fully accessible and we shall consult with disabled employees, the relevant trade union and disability organisations when alterations are to be made to buildings, IT and telecommunication systems, and other facilities.

For our occupational pension scheme, we shall use the pension provider that offers the best package and seek full actuarial advice and/or medical evidence if a facility cannot be offered due to an employee's disability.

Career development
All workers applying for promotion or training shall be considered on their merit and shall not be discriminated against on the basis of their disability. For the purpose of promotion and training, reasonable adjustments shall be made including alterations to venues for training, provision of accessible materials and providing a signer or induction loop. Where disabled people are under- represented, positive action – for example training and recruitment activity targeted specifically at disabled workers – shall be taken.

Education/training
All Managers and staff shall be made aware of this policy on disability and equality, and education and training courses shall be provided. The union shall be involved, and union representatives, including union equality representatives and disability champions shall be given reasonable paid time off to carry out their responsibilities and for training.

Health & safety
All workers shall have equal access to all health and safety provision.

Safety inspections and risk assessments will include disability and access issues and specific safety requirements of disabled workers.
Health & safety arrangements shall not be used to justify discrimination against disabled people.

Harassment/bullying
The employer aims to provide a safe and supportive environment for all workers. Any harassment or bullying such as taunts, mental and physical abuse, unfair allocation of work, deliberate exclusion from normal workplace conversation or social events, based on a person's disability, will be taken very seriously and regarded as a matter for disciplinary action, in line with the grievance and disciplinary procedures.

Any individual raising a grievance on harassment or bullying shall have the right to be accompanied by their trade union representative.

Confidentiality
Information about an employee's disabled status, including fluctuating or progressive conditions e.g. HIV status, mental health and MS, however obtained, will be kept confidential and will not be disclosed to anyone without the individual's written consent.

- Any breaches of confidentiality by any member of management or individual employee will be treated as a serious offence and subject to disciplinary procedures
- It is recognised that in certain areas of work there are legal requirements related to the public interest and the wording here should be adapted to reflect this

Procedural Agreements
All procedural agreements shall apply equally to all staff, without disability discrimination. In particular, correct procedures for selection for redundancy, disciplinary and grievance shall be followed.

Any worker who believes that they are at a disadvantage due to the failure to implement this Agreement, or any other discrimination based on their disability, should make a complaint, which shall be dealt with fully and sensitively through the existing grievance procedure.

THIS AGREEMENT WILL BE BROUGHT TO THE NOTICE OF ALL NEW AND EXISTING EMPLOYEES AND WILL BE WIDELY CIRCULATED THROUGHOUT THE WORKPLACE TO RAISE AWARENESS, PREVENT DISCRIMINATION AND TO PROMOTE A WORKING ENVIRONMENT OF RESPECT AND DIGNITY FOR ALL.

Signed _____
on behalf of the Union

Signed _____
on behalf of the Employer

NATIONAL AND REGIONAL CONTACTS

Unite Education
https://unitetheunion.org/why-join/member-services/education/training-and-courses

Unite Equalities
www.unitetheunion.org/equalities

Unite Health and safety
https://resources.unitetheunion.org/unite-at-work-bargaining-support/health-and-safety

Unite the union
Tel: 020 7611 2500
www.unitetheunion.org

Regional Contacts

Regional Women's & Equalities Officers

North West	Sharon Hutchinson	0151 559 2004
North East Yorkshire & Humberside	Sue Pollard	0113 236 4830
West Midlands	Maureen Scott-Douglas	0121 553 6051
East Midlands	Jessica Honess (Acting)	01332 548400
London & Eastern	Carolyn Simpson/ George Dodo-Williams	0208 800 4281
South East	Janet Henney	01753 313 820
South West	Karen Cole	0117 923 0555
Scotland	Lorna Glen	0141 404 5424
Ireland	Taryn Trainor	Belfast 028 90 232 381 Dublin +353 (0)1873 4577
Wales	Jo Galazka	02920 394521

Regional Education Organisers and Administrators

East Midlands
Unit 2, Pride Point Drive, Pride Park DERBY, DE24 8BX
Lesley Hoo Ed.Org
Lucy Clark
Email: Education.eastmids@unitetheunion.org
Tel: 01332 548 400

Ireland – Northern Ireland
26-34 Antrim Road, BELFAST BT15 2AA
Davy Thompson Ed.Org
Emma Dougal (Belfast) Tel: 02890 232381
Linda Keenan (Belfast) Tel: 02890 029 414
Email: Education.ireland@unitetheunion org

Ireland – Republic of Ireland
55/56 Middle Abbey Street, DUBLIN 1 D01 X002
Brendan Ogle Ed. Org. Tel: 00353 1 8734577
Sheila Teahan Tel: 00353 1 8980912
Email Education.Ireland@unitetheunion.org

London & Eastern
Ron Todd House, 33-37 Moreland Street,
LONDON EC1V 8BB
Danny Freeman Ed.Org Tel: 020 3617 2717
Margaret Bourne Tel: 020 3617 2716
Carmen Merola
Email: Education.londoneastern@unitetheunion.org

North East/Yorkshire and Humberside
Riverside House, 7 Canal Wharf, LEEDS LS11 5AS
Andy Pearson Ed.Org
Justin Renner Tel: 0113 322 9761
Email: Education.northeastyorks@unitetheunion.org

North West
Merchants Quay, Salford Quays, SALFORD M50 3SG
John Lea Ed.Org
Rachel Bishop Tel: 0161 669 8674
Email: Education.education.northwest@Email:
unitetheunion.org

Scotland
John Smith House, 145/165 West Regent St
GLASGOW G2 4RZ
Jim Aitken Ed.Org
Angela Johnston
Email: Education.scotland@unitetheunion.org
Tel: 0141 375 7050

South East
Unite House, Chalvey Road East, Slough
BERKS SL1 2LS
Rebecca Carr Reg. Ed. & Dev Co-ord.
Tel: 0771 866 8613
Sundus Mahmood Tel: 01753 313 843
Email: Education.southeast@unitetheunion.org

South West
Tony Benn House, Victoria Street, BRISTOL BS1 6AY
Matt Gillett Ed.Org
Graham Gordon Tel: 0117 923 0555
Email: Education.southwest@unitetheunion.org
Tel: 0117 923 0555

Wales
1 Cathedral Road, CARDIFF CF11 9SD
Glyn Conolly Ed.Org
Michelle Jaynes
Email: Education.wales@unitetheunion.org
Tel: 02920 821 258

West Midlands
9-17 Victoria Street, WEST BROMWICH B70 8HX
Lesley Hoo Ed. Org
Clare Dunne Tel: 0121 553 6051 Ext. 1597
Email: Education.westmids@unitetheunion.org

FURTHER INFORMATION

In addition to information in this guide the following resources will provide more specific information on stress, mental health and employment.

Trades Union Congress (TUC)
Tel: 020 7636 4030
www.tuc.org.uk

Acas
Helpline: 0300 123 1100
Text relay service: 18001 0300 123 1100
www.acas.org.uk

Equality and Human Rights Commission (EHRC)
www.equalityhumanrights.com

Equality Advisory & Support Service (EASS)
Commissioned by government and works with the EHRC and other advice organisations.
Tel: 0808 800 0082
Textphone: 0808 800 0084
www.equalityadvisoryservice.com

Health and Safety Executive
Tel: 0300 003 1747
www.hse.gov.uk
HSE Stress Guide and Tools http://www.hse.gov.uk/STRESS/

Mental Health Foundation
Prevention focused mental health charity.
Tel: 020 7803 1100
www.mentalhealth.org.uk

Mind
Mental health charity in England and Wales.
Tel: 0300 123 3393
Text: 86463
www.mind.org.uk

Time to Change
A campaign for reducing mental health-related stigma and discrimination.
Tel: 020 8215 2356
www.time-to-change.org.uk

Samaritans
Helpline: 116 123 (Freephone)
www.samaritans.org

World Health Organisation (WHO)
Mental health in the workplace information sheet
https://www.who.int/mental_health/action_plan_2013/en/

NEGOTIATORS CHECKLIST

Unite reps need to make sure that employers:

- Do not discriminate in recruitment, retention, promotion, sickness absence, redundancy and disciplinary procedures and processes
- Make reasonable adjustments
- Create a supportive and safe environment
- Promote good mental health for all staff
- Raise awareness on mental health problems
- Tackle the causes of work-related stress and mental health issues
- Support staff who are experiencing mental health issues
- Adopt the Health and Safety Executive Management Standards to effectively manage and control work related stress
- Work with shop stewards, safety reps, union equality reps including disability champions to establish best practice and prevent and tackle stress and mental health issues
- Offer occupational health provisions including mental health support
- Have a system in place to support members recovering and returning to work

DIGNITY & JUSTICE
unite
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DISABLED WORKERS

Unite Mental Health Guide for reps and negotiators

www.unitetheunion.org

unitetheunion1 @unitetheunion @unitetheunion Unitetheunion

APPENDIX FOUR

Zero Tolerance - Dignity and  at Work

Dealing with Harassment, Discrimination & Bullying

YOUR GUIDE

Includes Unite Checklist for representing a member who has been harassed or bullied and a Model Agreement

This Guide contains information on:

How to use this guide

- **If you are experiencing harassment, discrimination or bullying**
  See section 1 for information on how Unite can help
- **If you are asked to represent a member complaining of harassment or bullying**
  Use the guidance in section 2 on representing a member, section 3 on the law, section 5 on listening support available, and use the Checklist for Representatives and the HDB(1) Report Form in section 8
- **If you are asked to represent a member accused of harassment or bullying**
  See section 4 on getting the representation right and use the HDB(1) Report Form in section 8
- **If you want to negotiate dignity at work policies**
  See section 6 on the Unite negotiating agenda, section 7 on negotiating a workplace policy, and section 8 for the Unite model agreement

Message from the General Secretary

Winning equality at work is a fundamental principle of trade unionism. Unite – the Union is opposed to all forms of workplace harassment.

Workplace harassment and bullying are some of the most serious forms of discrimination. As part of our commitment to ending discrimination at work and promoting fair and decent workplaces, the union needs to ensure that no member suffers harassment, discrimination or bullying.

The union also has legal obligations. All representatives must make sure they understand how to deal with harassment, discrimination and bullying and follow these guidelines.

Please play your part in ensuring all working men and women are treated with dignity and respect.

Len McCluskey
General Secretary

Introduction

Harassment, Discrimination and Bullying cause untold misery and humiliation to thousands of workers, particularly women, black, Asian and ethnic minorities, disabled workers, LGBT, young and older men and women every year. All Unite – the Union members should be able to turn to the union for advice, support and representation if they are subjected to unwanted, offensive attention, exclusion, verbal or physical abuse and undermining of their capabilities.

Unite representatives need to be fully aware of harassment, discrimination and bullying to deal with it effectively, to provide support to members, and to ensure workplaces where there is zero tolerance of all forms of harassment, discrimination and bullying.

This booklet provides guidance for members and representatives on tackling harassment, discrimination and bullying if it arises, on preventing it from occurring in the first place and on ensuring workplaces where there is dignity and respect for all. For regional back up and support, please see contact details inside the back cover.

Diana Holland
Assistant General Secretary – Equalities

Siobhan Endean
National Officer for Equalities

Collette Cork-Hurst
National Officer for Equalities

ZERO TOLERANCE OF HARASSMENT, DISCRIMINATION & BULLYING

Unite – the Union Rules on Equality

Rule 2.1.6 To promote equality and fairness for all, including actively opposing prejudice and discrimination on grounds of gender, race, ethnic origin, religion, class, marital status, sexual orientation, gender identity, age, disability or caring responsibilities.

Unite Policy

Unite – the Union has an important tradition of representing members who have been harassed, discriminated against and bullied, and clear policy in support of zero tolerance and dignity at work.

Policy calls for:

- **Good workplace policies and procedures to prevent and deal with all forms of harassment, discrimination and bullying.**
- **Recognition for Unite Listening Support Network on harassment, discrimination and bullying.**
- **Community and workplace action on domestic violence, disability hate crime, racist attacks, homophobic and transphobic hate crime, attacks on young people and targetting older people.**

The Unite HDB(1) Report Form at the back of this guide is important for ensuring fair procedures and for monitoring cases of harassment, discrimination and bullying.

Section 1

Harassment, Discrimination & Bullying: A Workplace and Trade Union Issue

What are harassment, discrimination and bullying?

Harassment, discrimination and bullying complaints present some of the most challenging cases for representation at work, including *the union's legal responsibility* to get the case absolutely right. At the workplace, harassment and bullying degrade individuals and create a work environment of fear and intimidation which undermines trade union unity. It can also be a contributing factor to other workplace issues, such as unequal pay, job insecurity, sickness absence and lack of progression. What is important in any definition of harassment is the complainant's perception of the behaviour. If she or he finds the behaviour unwelcome, then that members' case must be treated seriously.

Harassment can take different forms, for example verbal, written, or physical abuse, exclusion, gestures, graffiti, pictures, flags or emblems. It may be a one-off or continuous incident. The impact of harassment needs to be recognised. People suffering harassment need to have confidence they are being listened to and taken seriously.

The legal definition is broadly that harassment is "unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment."

Discrimination means less favourable treatment related to your sex, race, disability, sexual orientation, gender identity, caring responsibilities, age, religion or belief, class, or other personal characteristic. It can affect pay, hours of work, training, promotion and conditions at work.

Bullying is unwelcome behaviour which is offensive, humiliating, abusive and mostly carried out by using unwarranted or invalid criticism. Also by isolating the person and focusing on distorted or fabricated allegations of underperformance and misuse of power. It often includes threats, abuse, teasing and practical 'jokes' which make the recipient feel upset, threatened, humiliated or vulnerable.

Bullying and harassment may be by an individual against an individual (perhaps by a manager or supervisor) or involve groups of people. It may be not always be obvious but it is always unwanted and unwelcome. Bullying and harassment can be face to face or in written communications, email, phone, and automatic supervision methods such as computer recording of downtime from work. Bullying and harassment cause anxiety, humiliation and helplessness. It makes people frightened and demotivated, causes stress, loss of self-confidence and self-esteem and can lead to job insecurity, illness, absenteeism and even resignation. Almost always job performance is affected and relations in the workplace suffer.

What are the different forms of workplace harassment?

Sexual harassment is a form of sex discrimination. It takes place when someone is subjected to unwelcome and unwanted sexual behaviour or other conduct related to gender. It is overwhelmingly women who suffer from sexual harassment, but some men experience it too. Young men and gay men can be particularly vulnerable to this sort of victimisation.

Sexual harassment includes unwelcome behaviour which can range from leering looks and verbal abuse of a sexual nature, displaying pin ups and other sexually suggestive pictures, objects or written materials, unwelcome touching and, in extreme cases, assault and even rape.

Racial harassment is a form of race discrimination. It takes place when someone is subjected to unwelcome and unwanted racial behaviour, or other conduct related to **race, colour, ethnic or national origins**. Racial harassment can range from racial jokes, graffiti, ridiculing or insulting

and name calling because of someone's race or nationality, cartoons or pictures that degrade people of a particular racial or ethnic group, deliberate exclusion from normal workplace conversation or social events and even physical assault.

Harassment of disabled workers and unwanted behaviour based on a person's impairment or condition is disability discrimination. Harassment may be directed at an individual or a group. It can be patronising or offensive comments, inappropriate reference to a person's disability, unwelcome discussion of the impact of disability, communicating with a disabled person via a third party, prejudging a disabled person's capabilities, unwelcome interference with personal aids or equipment, uninvited physical contact, staring, or refusing to work with or exclusion of people with disabilities from social events or meetings.

Harassment related to age is age discrimination and can affect both **young and older workers**. This can take the form of ageist 'jokes', derogatory remarks, bullying, name calling, assumptions regarding the person's ability to learn, offensive remarks, overbearing supervision or unjust criticism, inappropriate initiations for new workers, ignoring views and opinions, exclusion or isolation and setting a person up to fail.

Homophobic bullying and harassment of lesbian, gay and bisexual (LGB) workers is discrimination related to **sexual orientation**. It can include offensive "banter", unwanted sexual references, spreading malicious rumours, verbal abuse, name calling, stereotyping, false allegations of misconduct, actual or threatened unwanted disclosure of sexual orientation, derogatory comments, lack of recognition and excluding same-sex partners from social events, intrusive questioning about a person's domestic circumstances and threatened or actual physical or sexual assault.

Harassment related to Religion or belief is discrimination. It can take the form of offensive comments or 'jokes', refusal to work with a person because of their **religion/belief or non religion/belief**, excluding a person from social events or meetings, making assumptions about a person's religion/belief or non religion/belief, mocking practices associated with particular religions or beliefs, unfair allocation of work and intimidation.

Harassment related to gender identity is a form of discrimination. It is unwanted behaviour against **trans people**. It can happen when a person intends to undergo, is undergoing or has undergone gender reassignment and equally when this is not the case. It can include hostile and intimidating behaviour, demeaning treatment relating to the person's sex and sexual orientation, exclusion from workplace activities, refusal to share toilet and other workplace facilities, taunts, verbal and physical abuse.

Why does bullying occur and what forms does it take?

Bullying may occur for many reasons and anyone may become a target. Bullying may be part of the culture of an organisation. It may be seen as strong management, or even as the effective way of getting things done.

What is increasingly clear is that organisational factors play an important part in whether or not bullying takes place at work. The sorts of workplaces where bullying is more likely to occur are those where there is: an extremely competitive environment, fear of redundancy, envy among colleagues, an authoritarian style of management and supervision, organisational change and uncertainty, lack of training, deskilling, poor work relationships, no clear codes of acceptable conduct, excessive workloads and demands on people and no procedures for resolving problems.

Bullying at work can take many forms: it might be overt and insinuating or it could be more subtle and insidious, gradually wearing the person down over a period of time. It may occur in front of others, who are often too afraid of becoming the next target to do anything to support the bullied person. Very often, however, there are no witnesses and the victim is afraid of taking action.

The most common forms of bullying are: using fear tactics, threats, abuse; ridiculing or belittling, often in front of others, including teasing or 'jokes' to humiliate; using excessive supervision; being excessively critical; constantly taking the credit for the other person's work but never taking the blame when things go wrong; constantly overruling the person's authority or removing whole areas of work responsibility resulting in deskilling.

Other forms of bullying include: setting impossible objectives or constantly changing the work remit without telling the person, and then criticising or reprimanding them for not meeting demands through deliberately withholding information, ostracising, marginalising, excluding, spreading malicious rumours, refusing reasonable requests for leave, training, or blocking the person's promotion.

The Law

Harassment as a form of discrimination is unlawful and employers can be liable for employees who harass others at work. Employers are responsible for protecting their employees' health and safety, and bullying can be raised as an industrial relations issue and as a health and safety issue. Section 3 gives details of the law in cases of harassment and bullying in England, Scotland, Wales, Northern Ireland and the Irish Republic, as well as making reference to European law and International standards.

Criminal charges can be brought against harassers especially in cases of physical assault. In addition, the courts have also awarded damages on the grounds that the employers and supervisors were negligent in their duty to protect an employee.

The responsibility of the union

As well as having a clear moral responsibility to take action on harassment and bullying, the opposition of the union to all forms of harassment and bullying is set out in Rule, as included at the beginning of these guidelines.

The union also has a legal duty to ensure that complaints are taken up and dealt with correctly. These guidelines and the HDB(1) Report Form procedures explained in these guidelines are crucial reading for every shop steward/workplace representative, union equality representative, safety rep and officer.

The union has a legal requirement under equality law in England, Scotland, Wales, N. Ireland, Republic of Ireland and Europe to offer its services without itself discriminating. This is particularly important to take into account where both the complainant and the alleged harasser/bully are members of the union (please refer to section 4 on getting representation right).

How widespread is harassment, discrimination and bullying?

Surveys show just how common harassment and bullying is:

- The TUC survey of safety reps in 2010 found that one in three safety reps identified harassment and bullying as a problem in their workplace that was linked to stress. The survey identified that one fifth of all UK employees have experienced some form of bullying or harassment over the last two years. The survey also reported that the groups most likely to become victims of harassment and bullying are BAEM employees, women and disabled workers. Nearly one third (29%) of Asian employees have experienced some form of harassment or bullying, compared with 18% of white employees. Disabled workers are at least twice as likely to experience one or more forms of harassment and bullying.
- A 2012 study by University of Sheffield and Nottingham University showed that eight out of 10 respondents had experienced cyberbullying – for example receiving an offensive text or email – at least once over the past six months. The researchers also found that the impact of

cyberbullying on workers' mental strain, lower job satisfaction and wellbeing could be higher than that of other forms of bullying. In addition, because of the remote, invisible nature of cyberbullying, people felt less empathy for the victims, and those who were subjected to it were less likely to report it.

- Almost one in 20 workers had suffered violence in the workplace according to ESRC and of those who reported, 13% said assault was a daily experience. Majority of the attackers were customers, clients or members of the public.

Widespread problems of workplace harassment and bullying are backed by the union's own experience. While the number of harassment and bullying incidents reported to the union varies throughout the country, in some regions as many as one or two serious new cases arise every week.

In the past, union members suffering harassment or bullying have been reluctant to report it, partly because of their own embarrassment and partly through a lack of confidence that reporting the incident will improve their situation.

Times have changed though. More and more women and men are now demanding redress.

Unite – the Union is firmly committed to supporting members suffering harassment, discrimination and bullying at work – and to ensure it is stamped out of every workplace.

No laughing matter

Some people think that sexual remarks, for example, 'jokes' and touching are just a bit of fun at work, that racial stereotypes, anti-gay banter or name-calling related to age or disability are only objected to by those with no sense of humour. But where this attention is unwanted, it can cause a great deal of distress, through embarrassment, intimidation, isolation and exclusion.

Our campaign against harassment and bullying is not about stopping social banter between friends but ensuring that all members feel safe and comfortable in their working environment.

Above all, harassment and bullying is about power. It reflects the position of women, black, Asian & ethnic minorities, disabled, LGBT, young and older people in society, which is why harassers and bullies are often line managers, and the victims under their supervision.

But harassment and bullying is also common among employees on the same grade. The effects can be particularly distressing in workplaces in which few women or black, Asian or ethnic minorities work, where part-time, agency and migrant workers face harassment and bullying, where disabled workers are overlooked and LGB workers are not "out" in the workplace, trans workers are targeted, young workers are undermined and older workers are not given the opportunity to develop.

Harassment, discrimination and bullying aim to undermine the person targeted, often leaving them feeling humiliated and lacking confidence. It is not only their work performance that can suffer, but their health and home or social life as well. Their pay rate and the job itself can even be put at risk.

Case A

A college in Nottinghamshire agreed to pay £15,000 compensation and to issue an apology and a positive reference to a disabled worker. The employee who had ME (Chronic Fatigue Syndrome) was sacked from her job as a Disability Co-ordinator.

The College Principal took over her line management and failed to adjust her working hours to accommodate her disability and she was consistently bullied and intimidated by her for a lengthy period until she was forced to take extended sick leave.

For some women, black, Asian and ethnic minorities, and others who have raised harassment issues, life at work becomes so miserable that they may ask for transfers or resign. **No one should ever be forced to do this.**

Some harassment cases come to light as a result of an investigation into disciplinary charges. For example a woman might be disciplined over a trivial work problem after rejecting the sexual advances of a manager.

Unite – the Union is committed to fighting harassment and bullying in all its forms. The union recognises harassment as a disciplinary matter and will support members who experience harassment and bullying by actively pursuing their case through grievance procedures and where necessary, legal proceedings.

Whatever the circumstances, all workers have a right to a working environment which is free from harassment, discrimination and bullying, and they should not be made to feel guilty or embarrassed for exercising those rights.

Section 2

Representing a member suffering harassment, discrimination or bullying

A sympathetic approach

It is important that all representatives are sympathetic to any members complaining about harassment, discrimination and bullying. Representatives should remember that:

- Members in this stressful position are likely to find it difficult to explain the problem clearly and quickly
- It may be extremely embarrassing for the member to reveal specific remarks made about their appearance, name-calling, sexual suggestions, racist abuse and in particular any physical abuse
- A victim may not have even told their family or friends – because of its highly personal nature and fears about whether they will be seen in any way as partly responsible
- The member may need reassuring that the union opposes harassment and bullying

Every representative should be aware of these difficulties. If a member makes a complaint about harassment and bullying, it is crucial that she or he does not become isolated. Representatives should make every effort to ensure a hostile environment does not develop. Please refer to the Checklist for interviewing a member on harassment and bullying, part of the HDB(1) Form at the end of this Guide.

Listening support

In cases of harassment and bullying, it can be important to offer the member the opportunity to speak to a member of the Unite Listening Support Network (please refer to Section 5 for more details). This additional support is complementary to workplace representation, officer support, and legal back up available.

The nature of harassment, discrimination and bullying can mean that cases may go unreported where members do not feel confident or comfortable raising the issue, which is why the Listening Support Network was set up. It is **the union's aim that all women complainants in sexual harassment cases should have the opportunity to talk to a Unite woman representative in the first instance, and that this commitment also applies to black, Asian and ethnic minority members, disabled members, LGBT, young and older men and women members.** The Regional Women's & Equalities Organiser will help identify a member to provide listening support to the complainant from the Unite Listening Support Network.

Case B

A young woman member had been pestered with unwanted attention by the shop manager where she worked. The harassment culminated in a physical assault on the young woman.

She first approached a male union officer but found it too embarrassing to give him the full details. A woman full time officer was called in to overcome this difficulty and get the details of the complaint. The union then took up the young woman's case. Support from other women encouraging her to pursue the case was crucial throughout the lead up to the Tribunal hearing.

Once the Tribunal was under way, the evidence in support of the young woman was overwhelming, leading the Tribunal's chairperson to suggest an out of tribunal settlement. At first the company refused, but on taking legal advice made a four figure offer.

Agreeing a way forward

Confirm that the member does not want or welcome this sort of behaviour and make notes of the reported incident or incidents for your own record.

You should also give the member firm assurances that the matter will be treated in strictest confidence.

Action carried out on his or her behalf – even having a quiet word – must only take place with their full consent.

Procedures for dealing with harassment and bullying, along with their legal rights, should be clearly outlined to the complainant, using the HDB(1) Report Form. Representatives must be certain that the member is willing to pursue the proposed course of action.

The HDB(1) Report Form

This Report Form is very helpful in assisting representatives follow the correct procedures, and as well as a checklist for interviewing the member, it includes a section for the member to sign confirming they are aware of legal deadlines, including the need to raise a formal grievance, and their responsibilities in this regard. Please refer to Section 5 for more details and there is a copy of the form in Section 8.

In any event, you should always advise the complainant to keep **full notes** of incidents involving the harasser or the bully including times, locations, what happened, any witnesses and copies of incriminating emails, texts or letters. These notes may be crucial if further harassment, bullying or victimisation takes place and of course, if a legal case is taken.

You may also need to discreetly ask other workers if they have had similar experiences although you should **get the member's approval** before you do this. Again assure the member that **confidentiality** will be maintained in any of these discussions.

It is important to stress that the representative's strategy in dealing with the harassment depends primarily on how the complainant views the harassment, not on how anyone else would see it.

For example comments about personal relationships and appearance might be extremely distressing to some people but not so serious to others. In particular, a member's gender, cultural background, race, age, sexual orientation, gender identity, disability, or just being new in the job might make some conduct more threatening to them – and those differences might mean they become a target for abuse from harassers or bullies.

Depending on the circumstances, between you it may be decided:

- to pursue the matter informally without reference to the employer

or

- to go straight to the formal grievance procedure

For some incidents of harassment, it may be appropriate to go straight to the formal grievance procedures – or for a physical assault, to advise and help the member to report the incident to the police.

Remember that strict time limits apply for taking discrimination cases up legally and that a formal grievance must be lodged before a legal case can be pursued. (Please refer to Section 3 on the Law and the Unite HDB(1) Form at the end of this Guide: the time limit is three months less one day from the incident, and six months in the Irish Republic).

Informal union action

In some circumstances, the complainant may only wish the harassment or bullying to stop, get an apology and not take any action which involves management.

An informal meeting could be set up either with the alleged harasser or the bully and the representative – or arranged between both the parties and the representatives.

If the member has not explicitly told the harasser or the bully that his or her behaviour is unacceptable, the letter shown below could be used.

The harasser or the bully should be told that his or her behaviour cannot be tolerated, advised that the meeting or conversation is informal but if the harassment or bullying continues it will be followed by more formal procedures.

Dear……

I am writing to complain about what you (did/said) to me (on date/yesterday/this morning when you……

Over the previous months you have ……

I want you to stop this behaviour now/calling me ……

I find this offensive and unacceptable. I am keeping a copy of this letter and I shall take further action if you do not stop immediately.

Yours sincerely,

Example letter

Formal procedures

If these informal measures prove to be ineffective, then the member may decide to pursue the case through the formal workplace procedures. It may be the case that the complainant wants the incident of harassment or bullying pursued formally straight away.

Depending on how clear the case is, the complaint will usually be progressed through the grievance procedure and if upheld, the alleged harasser or the bully will then be subject to the disciplinary procedure.

You should assure the member complaining of harassment or bullying of the union's maximum support throughout the formal procedures.

Try to limit the amount of stress for the member by making sure that both procedures have strict time limits and that the member does not have to endlessly repeat her/his evidence when written submissions could be considered instead.

Remember that the time limit for taking up a harassment case legally is normally three months less one day from the last incident of harassment in Britain and N. Ireland and 6 months in Republic of Ireland. This may differ from the time limits in your established grievance procedure, so it can be necessary to submit the legal claim even while the grievance/disciplinary procedures are not exhausted. If there is a satisfactory outcome from the internal procedures, the legal claim can then be withdrawn. Remember, a formal grievance must be lodged before a tribunal case can be submitted.

The grievance procedure

Using an established grievance procedure is a formal way for a member, supported by the union, to make a complaint to which the employer is obliged to respond and treat seriously.

The member's line manager should be notified of the situation. If possible also consult a manager or personnel officer who has had training in harassment and bullying cases. The employer should nominate an appropriate person from the management team to be responsible for the case.

The employer should fully investigate the case – with the union ensuring that this is carried out fairly, sympathetically and thoroughly. This will normally involve interviewing both parties and witnesses. Depending on the nature of the alleged harassment or bullying, consideration should be given to suspending or relocating the alleged harasser or the bully for the period of the investigation and procedure.

Following the complaint, representatives should be vigilant about further harassment or bullying and any form of victimisation from management such as any changes to the complainant's working practices or experiences of additional work problems, or even disciplinary action against the complainant.

The disciplinary procedure

If the complaint of harassment and bullying is upheld in the grievance procedure, the employer should then start disciplinary proceedings against the harasser or the bully.

If the complainant acts as a witness in a disciplinary procedure, representatives should negotiate a formal right for him or her to be accompanied by a Unite representative throughout the procedure. (please refer to section four for advice if both people are members of Unite).

Either during the procedure or on its outcome, do not agree to:

- the complainant being transferred – unless the member wants a transfer
- the complainant being suspended
- the complainant being forced to continue working with the harasser or the bully

During the procedures, the harassment and bullying should be treated as a disciplinary offence, either as misconduct or gross misconduct. A charge of gross misconduct normally requires the employee to be suspended on full pay. For a lesser incident, the alleged harasser or the bully should be relocated pending the outcome of the procedure.

Case C

An NHS manager suffered 'persistent discrimination and an intimidating environment' when unlike his white colleagues, he was bullied and harassed about his work. His health suffered very badly and although with Unite's support he won a tribunal case including compensation, his aim is that no-one should ever have to suffer as he did.

Section 3

Harassment, Discrimination, Bullying and the Law

Legal responsibilities of Employers

Employers have a duty to prevent harassment, bullying and discrimination and a duty of care towards the whole workforce. Employers are usually responsible for acts of bullying and harassment by their employees. ACAS[1] therefore strongly recommends that all employers should make clear that such behaviour will not be tolerated in the workplace. They also recommend that a statement on the standards of behaviour is used to help avoid the consequences of bullying and harassment such as poor working relationships, low morale, inefficiency and potentially the loss of staff.

Legal rights on Harassment, Discrimination & Bullying

Workers can bring complaints under laws covering discrimination and harassment, health & safety and unfair dismissal. Anti-discrimination law is a day one right, and workers are also covered at interview:

The Equality Act 2010 gives protection against discrimination harassment and victimisation because of the following "protected characteristics":

- Gender
- Pregnancy and maternity
- Race, colour, ethnic or national origin
- Disability
- Sexual orientation
- Age
- Gender reassignment
- Marriage and civil partnership
- Religion or belief and non-religion or non-belief

The Equality Act 2010 also identifies the following as **"prohibited conduct"**:

- **Direct and Indirect discrimination** – on all "protected characteristics"
- **Harassment** – a specific protection related to sex; race; disability including disabled worker's impairment or condition; sexual orientation including harassment related to being a lesbian, gay man, heterosexual or bisexual worker; age, both younger and older workers; gender identity and religion or belief including no religion or belief.
- **Victimisation** – protection for a person who have brought or is suspected to bring proceedings under the Equality Act 2010 or supported/given evidence for another person bringing proceedings under the Act.
- **Third party Harassment** – The Equality Act 2010 gives protection against this form of harassment by eg. customers, clients or visitors related to all protected characteristics.

However despite overwhelming opposition, the Government **repealed the third party harassment** provision under the Enterprise and Regulatory Reform Bill from April 2014. The government said that "it is unfair that employers should be liable for the actions of third parties over whom they have no direct control. Following the repeal there is nothing in the Equality Act 2010 that makes explicit reference to employer liability however, there is protection from Third Party Harassment from the EU Equal Treatment Directive[2].

[1] Labour Relations Agency in Northern Ireland Labour Relations Commission in the Republic of Ireland

[2] The decision of *EOC v Sec of St for Trade and Industry* (2007) suggests that liability for third party harassment may be read into the general harassment provisions of the Act by virtue of the EU Equal Treatment Directive (2002/67) in certain circumstances. The Employment Tribunals President recently remarked that regardless of the repeal of section 40, "the requirements of EU law mandate a form of protection for third party harassment, possibly going beyond the limits imposed by section 40". However the scope of such protection is far from clear and was the original reason the issue was clarified in the Equality Act 2010.

Unite reps can still negotiate for the same steps that courts have identified as being "reasonable" ones to prevent third party harassment including:

- a workplace policy on harassment that include steps to deal with third party harassment;
- Notifying third parties of the policy on harassment;
- Including terms in contracts with third parties;
- Encouraging reporting of incidents of third party harassment; and
- Including third party harassment in workplace complaints procedures.
- **Employment Rights Act** In some circumstances, an employee can claim 'constructive' unfair dismissal, if they are forced to resign due to harassment and bullying at work. There are time limits and service qualifications which can be complicated, therefore because of the different legal rights that may be involved, contact your shop steward, Unite officer and/or Regional Women's & Equalities Organiser, who can ensure legal advice is obtained
- **Health & Safety at Work Act 1974** Under this law, employers are responsible for the health, safety and welfare at work of all employees. This includes creating a working environment free from stress, bullying, violence and harassment. Please refer to the union's Health and Safety Bulletins. For more information visit www.hse.gov.uk
- **Protection from Harassment Act 1997** protects people from conduct amounting to harassment of causing fear of violence.

Law in Northern Ireland

In **Northern Ireland**, protection against discrimination, victimisation and harassment is covered by the following:

Gender – The Sex Discrimination (Northern Ireland) Order 1976, as amended by the Sex Discrimination (Northern Ireland) Order 1988; the Sex discrimination (Indirect Discrimination & Burden of Proof) Regulations (Northern Ireland) 2001; the Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005; the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008 – These laws prohibit discrimination and harassment on the grounds of sex; pregnancy and maternity leave; gender reassignment; being married or being a civil partner.

Race – Race Relations (NI) Order 1997, Race Relations Order (Amendment) Regulations (Northern Ireland) 2009, Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 – these laws prohibit discrimination and harassment on the grounds of race; colour; ethnic or national origins; nationality; belonging to the Irish Traveller community.

Disability – The Disability Discrimination Act 1995 (the DDA) as amended by the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, the Disability Discrimination (Northern Ireland) Order 2006 – these laws prohibit discrimination and harassment against disabled persons.

Sexual Orientation – Employment Equality (Sexual Orientation) Regulations (NI) 2003 prohibits discrimination and harassment on the grounds of sexual orientation. The Equality Act (Sexual Orientation) Regulations (NI) 2006 extend the protection against discrimination to the provision of goods, facilities and services, the management and disposal of land or premises and the provision of education in schools.

Trans – The Gender Reassignment Regulations (NI) 1999 amends the Sex Discrimination (NI) Order 1976 to make it unlawful to discriminate on grounds of gender reassignment in employment and training. The Sex Discrimination (Amendment of Legislation) Regulations 2008 introduced protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services or premises.

Age – The Employment Equality (Age) Regulations (Northern Ireland) 2006 make it unlawful for employers and others to discriminate including harassment and victimisation on grounds of age in the areas of employment, vocational training and further and higher education.

Religion or Belief – The Fair Employment and Treatment Order 1998 as amended by the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) and the Fair Employment and Treatment (NI) Order (2003) – These laws prohibit discrimination and harassment on the grounds of religious belief or similar philosophical belief, and political opinion.

Third party harassment – Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008 protects employees from third party harassment on gender grounds. In Northern Ireland, there is no specific legislation prohibiting third party harassment on any of the other protected grounds.

Law in Republic of Ireland

The Employment Equality Acts 1998-2011 define harassment as any form of unwanted conduct on the nine discriminatory grounds and sexual harassment as any form of unwanted verbal, nonverbal or physical conduct of a sexual nature. In both cases the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, emails, text messages, pictures or other material. It also specifically protects a person being penalised in any way by their employer because they have made a complaint about discrimination under the Equality Legislation.

The Equal Status Act 2000 was amended by the Equality Act 2004, the Disability Act 2005 and the Civil Law (Miscellaneous Provisions) Act 2008. They are known collectively as the Equal Status Acts 2000–2008. The Acts outlaw harassment on nine grounds: gender (including trans identity), marital status, family status, sexual orientation, religion, age, race and traveller community.

What about taking legal action?

Taking a legal case is generally considered to be the **last resort**, when all other avenues have proved ineffective, but because of time limits it is important to be aware of the legal position. Also, the Government has introduced a standard internal 'three-step' procedure for dealing with dismissal, discipline and grievance issues which must be followed before a legal case can be taken. These steps involve a statement (setting out in writing the grounds for action or grievance), a meeting between the parties and the right to appeal. For further information please refer to the *Acas Code of Practice – Disciplinary and Grievance.* Note : Increasingly, government reports are suggesting that early mediation needs to be adopted as the approach.

If the situation is not resolved after following the grievance and disciplinary procedures then you can make a claim to an employment tribunal. You must make sure to keep a record of all incidents and meetings, and be aware of legal time limits if the internal procedures are taking a long time. **In Britain and N. Ireland, the legal application must be made within 3 months less one day of the latest act of discrimination. In Republic of Ireland the deadline is within 6 months.** Our union and others are campaigning for a 6 months deadline overall.

The three-month time limit can be extended in exceptional circumstances, if it is 'just and equitable'. The Tribunal will take into account:

- the reasons for the claim being late
- how late the claim is
- whether the employer is prejudiced
- whether it looks like a good claim

In Britain and N. Ireland, the **Questionnaire procedure**[3] was usefully employed to build up a case of harassment, and sometimes assists in avoiding the need to go to a full legal hearing. In Britain, this provision was **repealed** under the Enterprise and Regulatory Reform Bill in force from April 2014. Question and answer guidance to replace the statutory questionnaire is available from ACAS and the Government Equalities Office.

To collect the necessary information to assist with discrimination, harassment and bullying cases, the following are some helpful alternatives:

1. A "non-statutory" questionnaire can be submitted and employment tribunals might make decisions based on the employer's failure to respond . The act of submitting a "non statutory" questionnaire would be protected under the anti-victimisation provisions (s.27(d)) of the Equality Act 2010.
2. Once tribunal proceedings have started, a "request for additional information" could be submitted to the tribunal if the employer's response is not specific enough. However, there are particular requirements for making such a request.
3. The tribunal judge has the power- on the request of the member, the employer, or his/her own initiative- to order disclosure or inspection of any documents and information.

The Coalition government has introduced the **tribunal fees** and most discrimination claims will cost £250 to lodge and a further £950 to proceed to hearing[4].

Case D

A comment about a woman's breast was ruled as unlawfully discriminatory in a 1994 Employment Appeal Tribunal case. A contract cleaning supervisor was offended by an employee, half her age, who was the son of the company director. Despite her complaint, the company failed to pursue disciplinary action against the employee and the woman resigned. The case showed that a single sexual remark can result in very serious detriment. This principle applies to all forms of harassment.

Further guidance on the law is also available from the Equality and Human Rights Commission (Manchester, London, Cardiff & Glasgow), the Equality Commission (Belfast) and the Equality Authority (Dublin).

European Law

European Directives outlaw harassment on grounds of gender, race, disability, sexual orientation, gender identity, age and religion/belief.

In April 2007, European TUC signed a framework agreement on harassment and violence at work. With this agreement European social partners firmly condemn harassment and violence in all their forms. The agreement aims to prevent, and where necessary, manage problems of bullying and physical violence in the workplace. Companies in Europe are now required to adopt a policy of zero-tolerance towards such behaviour and draw up appropriate procedures. Many signatories have implemented the provisions of this autonomous agreement and will continue to use the framework agreement as a tool to tackle harassment and violence at work.

[3] *Dattan v Chief Constable of West Mercia* (2005 IRLR 327 EAT)
[4] Also the disposable capital test has been introduced. This test will decide whether you are eligible for a Tribunal fee remission based on an assessment of your household disposable capital (for example, your savings and investments).

International Standards

International Labour Organisation core labour standards include non-discrimination alongside no child or forced labour, and the right to union organisation, collective bargaining and equal pay. In November 2006, the founding principles of the International TUC included clear commitments to oppose all forms of discrimination and harassment. Global Union Federations bring together unions from different industries and sectors internationally, and they too have clear commitments to oppose all harassment and discrimination.

United Nations Commission on the Status of Women agreed a resolution at its conference in March 2013 on "the elimination and prevention of all forms of violence against women and girls including at the workplace". For more information please refer to www.un.org/womenwatch

Section 4

Getting Unite Representation Right

What if the harasser or the bully is a member of Unite?

The union is opposed to harassment and bullying and it will give its support to and represent members complaining of harassment and bullying. But if a harasser or the bully is a member of the union, that member is also entitled to representation.

It is important that whilst representing an alleged harasser or the bully, shop stewards/workplace representatives should stick to the facts of the case. Representatives should not make any personal attacks, slanderous accusations about the complainant or irrelevant comments about the complainant's personal life or personal relationships.

What if the complainant and the harasser or the bully are both members of Unite?

The guidelines for the informal union action should be followed as outlined in section 2. If the complainant wants to pursue the case to formal grievance procedure, then two different union representatives should become involved: one representing the complainant and one representing the harasser or the bully.

The complainant should not be represented by a union representative of lower rank than the person representing the harasser or the bully.

In the past, Unite established a precedent for dealing with a harasser or the bully who was also a member of the union. In this case, the evidence of harassment or bullying was overwhelming. The union advised the harasser or the bully of his rights and how to make a Tribunal application, but representation was only on the basis of ensuring the procedures were correctly followed.

What if the harasser or the bully is a Unite member and the complainant is a member of another union?

If there is more than one union in your workplace, you should establish an informal joint union procedure for dealing with an inter-union case of harassment and bullying.

What if the harasser or the bully is a Unite officer or representative?

The union will not tolerate harassment or bullying by one of its representatives. It is against the Rules of the union. The matter should be referred to a more senior officer such as the Regional Secretary or National Officer (who will involve the Regional Women's & Equalities Organiser or the relevant National Officer for Equalities or the Assistant General Secretary for Equalities as appropriate)

What if the harasser or the bully is a member of the public?

Many Unite members work in the service industries, which brings them into close contact with members of the public and clients. A large number of those members are vulnerable to harassment and bullying, especially in the caring professions and other "front line" occupations such as cabin crew, bar staff, bus drivers, bank staff and advice workers.

Employers have legal responsibilities under Equality law to ensure that there is no less favourable treatment at work. In addition, their "duty of care" under Health and Safety law is to ensure that their employees are working in a healthy and safe environment.

If a member is experiencing harassment or bullying from a member of the public, an employer may be failing in their legal duties.

Remind the employer of their legal responsibilities and incorporate an agreed statement in the Equal Opportunities Policy or Dignity at Work Policy which makes it clear that the employer will not tolerate harassment or bullying against any employee during the course of their duties by a member of the public.

Negotiate with the employer to distribute leaflets or display posters with this information in the public areas of your workplace.

It should also be possible to obtain a court injunction and to trace abusive phone calls, texts, social media, emails etc.

Unite membership

If the harasser or the bully is a Unite member, the union may also have a responsibility to take action against the member if the harassment or bullying is proven and the member is in breach of the union's rules (please refer to beginning of these guidelines).

Section 5

The Unite Listening Support Network and HDB(1) Report Form

The Listening Support Network provides personal support through active listening to members suffering harassment and bullying. The support is provided, mainly on the telephone, by Unite members who are trained volunteers called Listening Support Network members.

The establishment of Unite's Listening Support Network has three key aims:

1. **Trained Unite members providing other members with support, originally set up for women members to provide support for other women members who have suffered sexual harassment**

   A survey of women's experiences of taking up cases of sexual harassment showed that over 90% of women union members experiencing sexual harassment would have liked to talk to a woman about it and that over 90% had only been given the option of talking to a man. By extending the Network to all harassment and bullying, including black, Asian & ethnic minority members, disabled members, younger, older and LGBT members and men who have suffered harassment, Unite can now ensure this principle is extended to all members who need support.

2. **A formal network available throughout the union**

   Many Unite women and men members support each other all the time especially through difficult times. But setting up a formal network allows the union to ensure that the support network members have proper training for their role and get the assistance necessary from the union. It also allows a proper referral system so that every member can receive assistance if they require it, helping members who feel isolated.

3. **Clear distinction between providing support and providing representation**

   The Listening Support Network also allows Unite to create clear distinctions between the roles and responsibilities of providing personal support and providing representation. Unite – the Union recognises that different skills, approaches and training are needed for each role. Both are crucial, and the union must ensure that it provides both effectively.

The HDB(1) Report Form

The union has a Report Form for recording every incident of harassment, discrimination and bullying. A copy of the form is at the back of this Guide. It includes a Checklist for interviewing a member about harassment or bullying.

Every representative of the union must ensure that they are familiar with this report form, and that they use it and send copies as requested, to their Unite officer, Regional for Women's & Equalities Organiser, as set out on the form.

Section 6

The Unite Negotiating Agenda for Zero Tolerance and Dignity at Work

Prevention is always better than cure. In the case of workplace harassment and bullying there are many policies that the union can pursue in negotiations with the employer.

The employer's legal liability for harassment and bullying provides good ammunition for negotiators in arguing for an effective harassment and bullying policy. Also, managers should encourage positive behaviour by being good role models and actively deal with discrimination, harassment and bullying.

The key principle is to create a working environment where there is dignity and respect and zero tolerance of harassment and bullying.

A clear policy agreement

- Make sure that the equal opportunities policy includes a clear statement that harassment and bullying will not be tolerated and is a disciplinary offence and/or negotiate a separate workplace harassment and bullying agreement, often called a Dignity at Work Policy (please refer to section 7)
- Publicise this agreement using Unite Zero Tolerance posters, leaflets etc around the workplace
- Workers should be given clear guidelines on what to do if they are harassed or bullied
- The potential for harassment and bullying should be considered in the health and safety risk assessment for staff who work in a variety of workplaces
- Precautions must be considered to eliminate or reduce the risk of violence, bullying or harassment e.g. throughout pairing of employees or supplying personal alarms

Training

- Equal opportunities training, including the policy on harassment and bullying should be included on all training courses
- Stress the need for all managers and supervisors to go on training courses to make them more effective in dealing with cases of harassment and bullying and more aware of their responsibilities
- Encourage all Unite workplace and branch representatives to go on a Unite education course that includes training on harassment and bullying cases. You should negotiate paid release for such training with management
- Raise the issue of harassment and bullying at your branch meetings. Suggest a speaker on the subject and promote discussion about the removal of racist graffiti, pin ups or pornographic materials. The most effective way of dealing with harassment and bullying is to create a working environment in which it is not acceptable

Union representation

- Make sure that the union's commitment to preventing all harassment and bullying is promoted through agreed procedures and through eg Unite posters, newsletters
- Negotiate facilities for union equality representatives at the workplace (The Unite's Union Equality Reps Toolkit is available to assist)
- Establish trained Specialist union equality reps to assist in cases of harassment at the workplace who will also need facilities and paid time off

Unite listening support network

- This listening support network is a back up for all Unite members suffering harassment, discrimination or bullying. It has been identified from our experience over many years, that additional listening support can make a vital difference. Please refer to section 5 for more information on the network.

Monitoring Harassment, Discrimination & Bullying – HDB(1) Report Form

- In order for Unite to monitor the problem of harassment and bullying faced by our members, and to ensure we get the representation right, a recording and monitoring procedure has been established. Any case regardless of the process, progress or the outcome, should be reported on the Harassment, Discrimination and Bullying Report Form HDB(1) for monitoring at regional and national levels. The Report Form should be sent to your Regional Women's & Equalities Organiser. Please refer to Section 5 for more information, and Section 8 for a copy of the HDB(1) Report Form.

Section 7

Guidelines for a Harassment and Bullying, Dignity at Work Policy Agreement

A policy agreement is necessary to:

- Reassure members who are being harassed "or bullied that action will be taken
- Gain the confidence of those who might be afraid to seek a solution due to fear of recrimination or ridicule
- Provide a clear commitment by the employer to deal with harassment and bullying – acting as a warning to all employees
- Show that the union takes harassment and bullying seriously

The policy agreement must be widely available to all workers and staff, including agency workers, and publicised to ensure these aims are fulfilled.

A policy agreement should contain:

- A clear definition of different forms of harassment and bullying including examples of behaviour
- A statement of the employer's commitment to tackling and preventing harassment and bullying
- Recognition of the union's commitment to tackling and preventing harassment and bullying
- How harassment or bullying will be dealt with – an outline of the procedures, including trade union representation

Section 8 contains a **Workplace Harassment, Bullying & Dignity at Work Policy Agreement** which can be used as a Model Agreement for negotiations in your workplace.

Further information

For any harassment and bullying at work, contact your shop steward, Unite/workplace representative, Unite officer and/or Regional Women's & Equalities Organiser. Further information is available on the union's web-site www.unitetheunion.org/unite-at-work/equalities/

Please refer to Unite Contact List at the back of this Guide, for details of your Regional Women's & Equalities Organiser

Equality & Human Rights Commission – 020 3117 0235 – www.equalityhumanrights.com

Equality Advisory Support Service (EASS) has replaced EHRC Helpline and can be contacted:
Monday-Friday 9am-8pm and Saturday 10am-2pm
0800 444205 0800 444206 Textphone – www.equalityadvisoryservice.com

Equality Commission for Northern Ireland – www.equalityni.org

The Equality Authority for the Republic of Ireland – www.equality.ie

ACAS – www.acas.org.uk

Acas Helpline can be contacted:
08457 47 47 47 Monday-Friday 8am-8pm and Saturday 9am-1pm
8001 08457 474747 for Text Relay www.textrelay.org

Labour Relations Agency in Northern Ireland – www.lra.org.uk

Labour Relations Commission in the Republic of Ireland – www.lrc.ie

Health and Safety Executive – 0151 951 4000 www.hse.gov.uk

DIGNITY AT WORK

Unite – the Union

MODEL WORKPLACE HARASSMENT, DISCRIMINATION AND BULLYING POLICY

STATEMENT

The Employer and Unite – the Union fully support the rights and opportunities of all people to seek, obtain and hold employment without, harassment, discrimination or bullying.

The Employer's policy is to provide a productive working environment free from harassment, discrimination, intimidation, bullying and victimisation. The employer is committed to ensuring that employees and workers are treated with dignity and respect.

Harassment of an individual, by any employee or worker, whether a colleague or a representative of management, whether employed directly or through an agency or sub-contractor can constitute unlawful discrimination

The Employer recognises their legal responsibilities to prevent harassment related to sex, caring responsibilities, pregnancy, marital status, race, colour, ethnic or national origin, disability, sexual orientation, age, gender identity, religion or belief and trade union membership at the workplace, and to deal effectively and quickly with any complaints that arise.

Furthermore, the Employer is committed to preventing any form of harassment that undermines equality at work, including harassment and bullying related to class, physical characteristics, employment status and harassment or bullying of ex-offenders.

A DISCIPLINARY OFFENCE

Conduct which leads to the harassment or bullying of another employee, is not acceptable. Such conduct will render the individual responsible liable to disciplinary action.

Depending on the level of harassment or bullying, disciplinary action will include formal verbal/written warnings, suspension, relocation and where necessary in the event of gross misconduct, may include dismissal.

DEFINITIONS

Workplace harassment is "unwanted conduct which is related to a relevant protected characteristic and which has the purpose or the effect of violating the worker's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker."[5]

It is regarded as any conduct related to sex, race, colour, ethnic or national origin, disability, age, sexual orientation, gender reassignment, religion or belief, trade union membership, class, employment status, ex-offenders or any other personal characteristic that is **unwanted by the recipient**.

Harassment may be persistent or an isolated incident and may be directed towards one or more individuals. Harassment because of association and perception are also covered by this policy. The source of harassment may be a single work colleague or several colleagues, a supervisor or manager, a contractor or a client/member of the public.

[5] EHRC Employment Statutory Code of Practice

Harassment is detrimental to an effective working environment. It can lead to:

- anger and hostility
- intimidation
- victimisation and isolation
- stress which may result in increased sickness or absenteeism
- prevention of job satisfaction and decline in work performance

Sexual harassment Sexual harassment includes unwelcome behaviour which can range from leering looks and verbal abuse of a sexual nature, displaying pin ups and other sexually suggestive pictures, objects or written materials, unwelcome touching and, in extreme cases, assault and even rape. It is defined as conduct of a sexual nature, or based on sex, towards an individual, which is unwanted by the recipient. This is unlawful under anti-discrimination law.

All forms of race discrimination are unlawful under anti-discrimination law. **Racial harassment** is an act designed to intimidate, ridicule or undermine a person by reason of their race, colour, ethnic origin or nationality. Racial harassment can range from racial 'jokes', graffiti, ridiculing or insulting and name calling because of someone's race or nationality, cartoons or pictures that degrade people of a particular racial or ethnic group, deliberate exclusion from normal workplace conversation or social events and even physical assault.

Harassment of disabled workers can take the form of attempts to undermine or intimidate people because of their mental or physical impairment and includes health issues such as actual or suspected conditions including HIV/AIDS. This is governed by anti-discrimination law. It can be patronising or offensive comments, inappropriate reference to a person's disability, unwelcome discussion of the impact of disability, communicating with a disabled person via a third party, prejudging a disabled person's capabilities, unwelcome interference with personal aids or equipment, uninvited physical contact, staring, or refusing to work with or exclusion of people with disabilities from social events or meetings.

Harassment because of age can undermine both younger and older workers and is unlawful under anti-discrimination law. This can take the form of ageist 'jokes', derogatory remarks, bullying, name calling, assumptions regarding the person's ability to learn, offensive remarks, overbearing supervision or unjust criticism, inappropriate initiations for new workers, ignoring views and opinions, exclusion or isolation and setting a person up to fail.

Homophobic harassment of lesbian, gay and bisexual workers is discrimination because of **sexual orientation** (actual or perceived and it is unlawful under anti-discrimination law). It can include offensive "banter", unwanted sexual references, spreading malicious rumours, verbal abuse, name calling, stereotyping, false allegations of misconduct, actual or threatened unwanted disclosure of sexuality, derogatory comments, lack of recognition and excluding same-sex partners from social events, intrusive questioning about a person's domestic circumstances and threatened or actual physical or sexual assault.

Harassment or discrimination against someone related to their gender identity is also unlawful, under anti-discrimination. It is unwanted behaviour related to gender identity. It can happen when a person intends to undergo, is undergoing or has undergone gender reassignment. It can include hostile and intimidating behaviour, demeaning treatment relating to the person's sex and sexual orientation, exclusion from workplace activities, refusal to share toilet and other workplace facilities, taunts, verbal and physical abuse.

Harassment because of religion or belief and non-religion or non-belief is unlawful under anti-discrimination law. It can take the form of offensive comments or 'jokes', refusal to work with a person because of their religion/belief or non religion/belief, excluding a person from social events or meetings, making assumptions about a person's religion/belief or non religion/belief, mocking practices associated with particular religions or beliefs, unfair allocation of work and intimidation.

EXAMPLES OF HARASSMENT

Physical:

- unnecessary touching, gestures or assault

Verbal:

- unwelcome remarks
- intimate/personal questions, suggestions and propositions
- threats
- abuse or name-calling
- malicious gossip
- 'jokes' or ridicule base on personal characteristics

Non-Verbal:

- offensive literature or pictures
- flags or emblems
- graffiti
- letters, notes, emails and texts
- being ignored or excluded
- differential treatment e.g. unfair allocation of work or enforcement of company rules

No form of harassment is acceptable under any circumstances in the workplace.

BULLYING

Bullying often includes threats, abuse, teasing and practical 'jokes'. It can be defined as persistent, offensive, abusive, intimidating, malicious or insulting behaviour or unfair penal sanctions which make the recipient feel upset, threatened, humiliated or vulnerable, which undermines self confidence and which may cause suffering and stress.

Bullying related to sex, race, disability, age, sexual orientation, gender identity, caring responsibilities, pregnancy and religion or belief may constitute unlawful discrimination. However, bullying in any circumstances will not be tolerated – for example of new or lower grade employees. **Bullying is a form of harassment and will be treated as such under these procedures**. The employer recognises that its civil law duties of care extend to preventing any behaviour which results in physical or psychological injury. The employer will carry out risk assessment which includes employees' exposure to violence and make arrangements including preventive measures. The employer will also provide information and training about tackling bullying and violence at work.

ORGANISATIONAL PROBLEMS AT WORK

The Employer and the Union recognise that organisational problems in the workplace can provide a workplace environment in which harassment or bullying problems can start more easily or worsen a harassment or bullying problem.

The Employer therefore undertakes to examine working conditions and review management practices to prevent harassment and bullying and if complaints of harassment and bullying are raised, with the aim to ensure that the best possible working environment is provided for all.

DUTIES OF SUPERVISORS AND MANAGERS

All supervisors and managers are responsible for eliminating harassment, bullying or intimidation of which they become aware, whether or not is brought formally to their attention. Failure to do so will be considered a failure to fulfil all of their responsibilities.

All supervisors and managers will be advised of their duty and trained on how to comply with this policy.

A minimum of one senior officer of the Employer will receive comprehensive training on the legal responsibilities of the Employer, how to prevent and eliminate harassment and bullying and how to deal with and provide guidance if such cases arise.

DUTY OF EMPLOYEES AND ALL WORKERS

All workers have a duty to comply with this policy and ensure that they treat their colleagues with dignity and respect.

In all induction training for new workers, including agency and migrant workers and work experience/training placements, the joint Equal Opportunities Agreement will be explained, including this agreement on harassment, bullying and dignity at work.

UNION REPRESENTATIVES

All union representatives shall be given sufficient paid time off to provide support and representation to members facing harassment or bullying, and to undertake union and company training on dealing with harassment and bullying cases.

Union Equality Representatives

The employer and the union agree that union equality representatives have an important role to play in preventing harassment and bullying and creating a working environment free from harassment and bullying. It is agreed that a network* of union equality representatives will be established with paid time off and facilities to carry out their role and for training purposes. Such a role may be added to an existing union representatives' role, or provide the opportunity to involve a greater diversity of union representatives. This is particularly important, for example where there are currently no women representatives or other lack of diversity. The union shall provide the names of such elected union equality representatives on their election.

*in smaller workplaces, this may be a single union equality representative

HARASSMENT AND BULLYING COMPLAINT PROCEDURE

Informal action

An employee or worker who believes that he or she has been the subject of harassment or bullying should take steps (either verbally, in writing or through a third party) to inform the harasser or the bully that their behaviour is unwelcome and ask them to stop.

A worker can gain advice and assistance regarding the harassment or bullying from:

- the Employer's officer responsible for dealing with harassment and bullying cases
- their Unite workplace representative and/or full-time officer
- their Unite equality representative and/or Unite Regional Women's & Equalities Organiser

Formal action

Any employee or worker who is being harassed or bullied has the right to complain and pursue the matter in accordance with **the agreed grievance procedure,** using the 'three-step' procedures – involving a statement (setting out in writing the grounds for action or grievance), a meeting between the parties and the right to appeal. If the harassment or bullying is a single incident and is considered serious by the employee or worker, or if the harassment or bullying is persistent, it is advised that the matter is pursued formally. The process is outlined below.

(i) A worker who believes that he or she has been subjected to harassment or bullying should report the alleged act to his or her line manager or personnel manager

(ii) All complaints will be dealt with quickly and in confidence. Strict time limits for the procedure shall be enforced. Employees shall be guaranteed a fair and impartial hearing

Both the complainant and the alleged harasser or the bully shall be entitled to trade union representation throughout grievance and disciplinary procedures

Depending on the nature of the alleged harassment or bullying, consideration will be given to suspending or relocating the alleged harasser or the bully for the period of the investigation and procedure

(iii) If the investigation upholds the complaint, prompt action will be taken to stop the harassment or bullying immediately and prevent its recurrence. If relocation proves necessary, it will normally be the case that the harasser or the bully is relocated and not the complainant

Counselling

In addition to supporting union equality representatives providing listening support, where appropriate, all workers subjected to harassment or bullying shall be entitled to paid time off for confidential professional counselling. This should be arranged either through the employer or by the individual worker. The employer agrees to meet all reasonable costs as well as paid time off from work.

Protection from victimisation

All workers shall be protected from intimidation, victimisation or discrimination for making a complaint or assisting in an investigation into a complaint. Retaliating against an employee for complaining about harassment or bullying, or be a witness in the proceedings, is a disciplinary offence.

HDB(1)

Strictly Private & Confidential

UNITE HDB(1) REPORT FORM FOR SHOP STEWARDS, UNION REPS AND OFFICERS TO REPORT CASES OF HARASSMENT, DISCRIMINATION AND BULLYING IMMEDIATELY

Please use the attached checklist and Unite support form when you interview the member

1. **This is to report that I have been approached about a case of :**

   Harassment ☐ Discrimination ☐ Bullying ☐

   Employer _____

   Branch _____

2. **The case is related to:**

   Sex ☐ Race ☐ Disability ☐ Sexual Orientation ☐ Age ☐ Trans ☐ Religion/Belief ☐

   Other (please give details) _____

3. **I have been approached by:**

   The complainant ☐ The alleged harasser/bully ☐

   Other (please give details) _____

4. **The complainant involved is:** a Member ☐ Non-member ☐

   The alleged harasser/bully is: a Member ☐ Non-member ☐

5. **The date of the alleged harassment, discrimination or bullying was:**

   _____

6. **Action taken** including details of grievance taken through employer's grievance procedure

   _____

   _____

7. **Have you advised the member of the Unite Listening Support Network**

   Yes ☐ No ☐

8. **Proposed future action:**

   _____

   _____

MEMBER'S DECLARATION

I confirm that I have been advised that a 3-month time limit (less one day) applies in a claim to the tribunal and that it is my responsibility to ensure the tribunal time limits are respected (6 months in the Irish Republic). ***I have also been advised that in the United Kingdom it is necessary to raise a grievance through the employer's grievance procedure before entering a claim to a Tribunal.***

*Signed:*_____*(member)* ***Date :*** _____

SIGNED:_____**(Shop Steward/Union Rep/officer)**

NAME: _____

TELEPHONE/MOBILE: _____

EMAIL:_____

ADDRESS: _____

_____

_____

Please now send a copy of this form to:

1. **Your local Unite officer**

2. **National Officers for Equalities:**
   Siobhan Endean
   Collette Cork-Hurst

3. **Your Regional Women's & Equalities Organiser:**

North West	Sharon Hutchinson	0151 203 1907
North East, Yorkshire & Humberside	Sue Pollard	0113 236 4830
Midlands West	Natalia Stepnowska	0121 553 6051
Midlands East	Maureen Scott-Douglas	01332 548 400
South West	Karen Cole	0117 923 0555
South East	Sharon Wentworth	02392 824 514
London & Eastern	Mel Whitter	020 8800 4281
Ireland	Taryn Trainor	Belfast 028 90 232381 Dublin 00353 (0)1 8734577
Scotland	Elaine Dougall	0141 404 5424
Wales	Belinda Robertson	0292 039 4521

Please also refer to
"Unite Guidelines for Dealing with Harassment, Discrimination and Bullying"

Unite HDB(1) Checklist for interviewing member complaining of harassment and bullying		
		✓
1	Ensure a sympathetic approach.	
2	Recognise the importance of listening support, through providing the opportunity to speak to a Unite Listening Support Network member (contact your Regional Women's and Equalities Organiser).	
3	Confirm the confidentiality of the interview.	
4	Confirm no action will be taken without the member's consent.	
5	Make notes of the incidents and dates for your own records.	
6	Explain there are legal procedures to harassment, including the need to first raise a grievance, and a three month time limit from the date of the incident to lodge a case in Britain and Northern Ireland (6 months in The Republic of Ireland). **Ask member to sign the Unite HDB(1) Form declaration.** Send HDB(1) to your Officer, Regional Women's and Equalities Organiser and National Officers for Equalities.	
7	Agree the way forward one or more of the following: ● No action to be taken ● Informal approach by the union ● Formal grievance to be raised ● Legal application to be lodged ● Member to report incident to police	
8	Confirm the union's support for members taking up cases of harassment or bullying and that they should be accompanied by a Unite representative in any investigation or hearings set up.	
9	Explain the union may be requested to provide representation for the alleged harasser/bully (if a Unite member) in a disciplinary hearing. Confirm the absolute confidentiality which applies and that the complainant will not be accompanied by a union representative of a lower rank. Explain the union will not defend harassment or bullying, but will ensure fair treatment in disciplinary procedures.	
10	Remind member to keep full notes of dates, time and places of any incidents relating to the harassment, discrimination or bullying.	
11	Reassure the member that Unite recognises the distress caused by harassment, discrimination or bullying and that you will ensure next steps cause the least additional stress.	
12	Check you have : ● agreed the next steps with the member ● completed Unite HDB(1) form and sent off copies put the member in contact with the Listening Support Network through the Regional Women's and Equalities Organiser.	

UNITE SUPPORT FORM

Member's name	Details of Harassment & Bullying
Date	
HDB(1) Form Completed	**Assistance & Support Offered to Member**
Yes/No	
Copies of HDB(1) form sent off	
Yes/No	
Name of alleged harasser/bully	
Effects felt by member	**Action taken if any**
	Listening Support Network offered to member? Yes/No
Result	

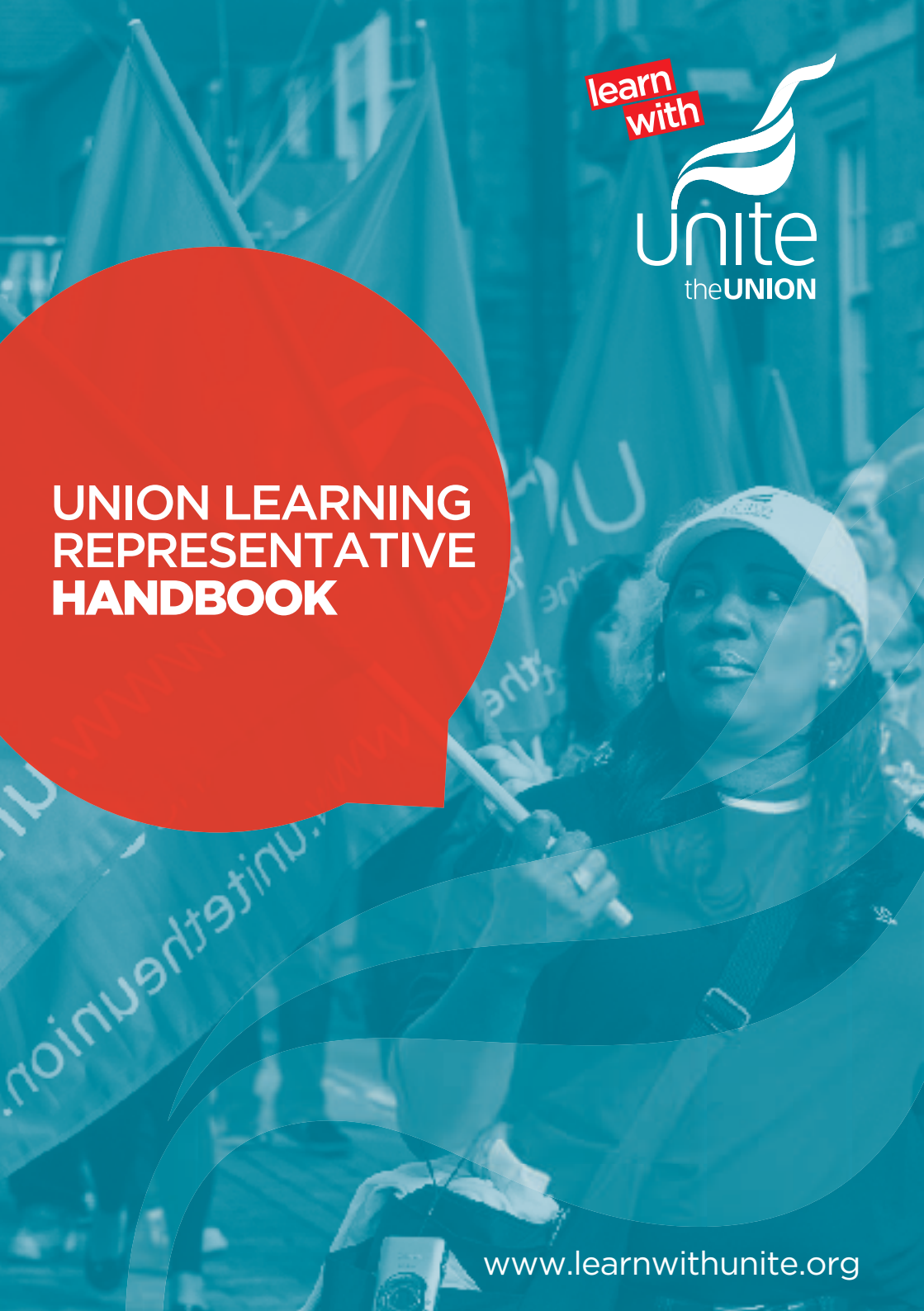
NOTES

NOTES

Respect and Dignity at Work Zone

www.unitetheunion.org
equality@unitetheunion.org
2014

APPENDIX FIVE


learn
with
unite
theUNION
UNION LEARNING
REPRESENTATIVE
HANDBOOK
www.learnwithunite.org

Unite lifelong learning vision: our strategy for growth

Unite will increase the life chances of its members in the workplace and the community using lifelong learning.

- We will guarantee the high standard and quality of all our flexible learning opportunities.
- We will use lifelong learning to develop our members so that they will be able to reach their full potential within our organisation.
- We will bring flexible learning opportunities into the heart of communities.
- We will be the most progressive trade union organisation, able to create sustainable and innovative alternative education models.
- We will use lifelong learning to enhance ongoing employment opportunities to our members through our member retention strategy.
- We will measure the success of lifelong learning through our activities delivered within our strategy for growth.

Contents

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1 INTRODUCTION

Congratulations on becoming a Union Learning Representative (ULR). You have taken on one of the key workplace roles within Unite, vital in supporting our members.

This handbook is a quick reference tool to be used in your day-to-day activities, more information and ongoing support is available from your Regional Learning Organiser.

Roles and responsibilities

A ULR's roles and responsibilities may include:

- working with other union reps raising Unite's profile through learning
- Increasing awareness of the benefits of learning
- providing advice and guidance on learning to fellow workers
- ensuring equality in learning
- identifying and promoting learning opportunities
- identifying and addressing barriers to learning
- conducting learning surveys to identify employees' needs and interests
- forwarding details of course and individual learning outcomes to your Learning Organiser
- compiling and submitting learning case studies
- supporting young workers in formal training such as Apprenticeships

> **"The beautiful thing about learning is that nobody can take it away from you"**
> B.B. King, musician

- addressing meetings of employees on learning opportunities
- negotiating paid time off for employees to learn
- negotiating redundancy support training
- promoting the value of training and learning among local management
- promoting education for workplace reps, safety reps and members.

When you are elected as a ULR, your Regional Officer /Branch Secretary/ Convenor/Senior Rep (as appropriate) will inform your employer in writing and notify them you are requesting paid time off to attend training for your role.

New ULR checklist:

- Is there a learning committee and when does it meet?
- Is there is a learning agreement and is it fit for purpose?
- Are there effective communications in place?
- What other union committees are there and how can you work with them?

Your legal rights as a ULR

The Employment Act 2002 sets out the statutory rights of ULRs in organisations that recognise trade unions. ULRs have a number of formal functions that can be performed and for which paid time off from their normal duties should be given:

- analysing learning and training needs
- providing information and advice about learning
- arranging learning or training
- promoting the value of learning
- consulting the employer about such activities
- undergoing training for their ULR role.

Union members are also entitled to time off to use the services of ULRs, although there is no legal requirement on the employer to pay them for this.

Facilities for ULRS

In addition to time off, your employer should provide following as a minimum requirement to you as a ULR:

- arrangements for confidential consultation with the members you represent
- use of a desk to prepare paperwork
- access to secure facilities for storing correspondence
- access to a computer with the provision of an email account and access to the organisation's intranet and the internet
- access to internal and external telephones
- access to duplicating, printing and fax facilities
- a notice board on which to display learning information
- reasonable time off work for trade union members (and non-members) to access the services of a ULR where it is not possible for practical reasons for meetings to take place outside normal working hours
- access to appropriate information such as policy documents and approved codes of practice, copies of relevant statistics.

Although how to become a ULR can vary, in general Unite supports the principle of the regular election of all reps, including ULRs. Where there is a variation from this practice, it should always be discussed with the local Regional Officer and Convenor.

2 OVERCOMING BARRIERS TO LEARNING

Training and development

As a Unite ULR, you will receive high quality training to become proficient in:

- listening
- interviewing
- presenting and providing information
- problem solving
- record keeping
- maintaining confidentiality
- negotiating
- motivating people
- leading and organising.

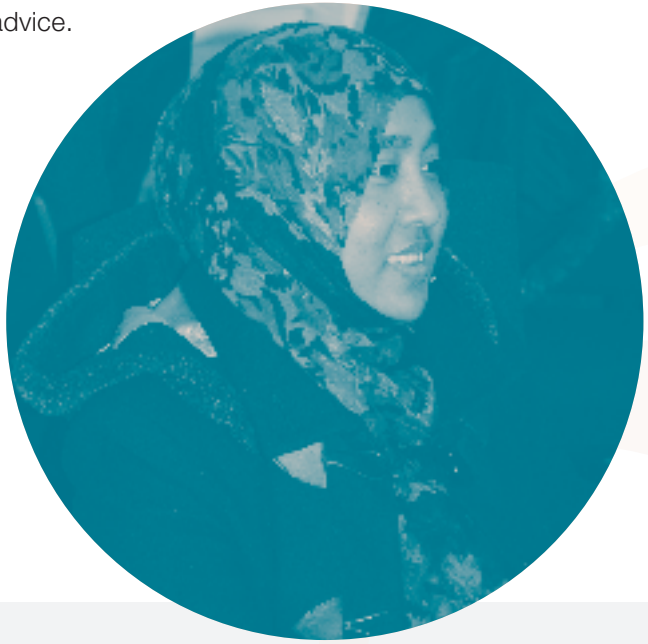
Unite's Union Learning Reps: Stage 1 offers initial training to develop the basic knowledge and skills needed for the role.

Unite's Union Learning Reps: Stage 2 provides further core training as a ULR, developing a deeper knowledge and skills, such as working with management, learning providers and other organisations.

Ongoing development

Unite is committed to ensuring that ULRs, as with all our union reps, have the opportunity to develop in the role. This could be through taking formal qualifications in Information, Advice and Guidance (IAG), LearnWithUnite IT courses or perhaps teaching qualifications. The union also aims to see ULRs develop and take on other roles within Unite, such as workplace rep or equality rep. Speak to your Union Learning Organiser who will be happy to give you more information and advice.

The relationship between the ULR and the member is central to the success of the learning process. You need to respect and value the member and put yourself in their shoes.



There are many things that will affect an individual's attitude to learning:

- their past experience of learning
- their perceptions of their own abilities
- whether they have the right information and are able to interpret it effectively
- financial incentives
- the time they have available; support from their employer.

Whether or not a member decides to make a commitment to learning will depend on:

- their level of interest and motivation
- the amount of free time they have available, other domestic commitments
- shift patterns
- financial commitments (requiring them to work additional hours, or hold down more than one job)
- geographical mobility (whether they can actually get to learning opportunities that take place outside of the workplace).

> **"My mother said I must always be intolerant of ignorance but understanding of illiteracy"**
> Maya Angelou, writer

Above all, many members do not commit themselves to learning because they have a low expectation of their abilities and skills. As a ULR, building confidence in members about the value and benefits of learning will be as important as providing the right information.

People's additional needs

An Individual's additional need is not always obvious. As a ULR you need to be aware that some people do have other needs, spot them as quickly as possible, and handle them sensitively and positively.

Examples are:

- physical disability
- hearing or sight impairment
- mental health issue
- learning disability (which may well be disguised and manifest itself in resistance to the idea of learning)
- poor written or communication skills
- English not being the first or main language.

Access to learning

Any structure for workplace/ community learning should provide ease of access for members in a wide variety of occupations. In particular, it should enable members to:

- enter at a level appropriate to their current state of learning
- learn at a pace suitable for them
- receive recognition for their efforts
- use a variety of routes and ladders for progression, where desired
- evelop an enthusiasm for, and confidence in, learning.

Creating opportunities

With the increasing pace of technological change, learning plays an important role in providing a route out of poverty and closing the opportunity gap.

It also enables people to take an active part in society. Investment in knowledge and skills brings direct economic benefits both to the learner, employer and to society as a whole.

Affective inequality refers to the unequal access people have to care and support and the unequal distribution of burdens of care among people. This requires more recognition and equal distribution of the responsibility for care so that its influence on lifelong learning is as positive as possible.

Effective equality highlights the importance for learning of feeling valued, being appreciated and having a sense of belonging. It requires respect and recognition for the responsibilities of care that are borne by many in relation to children, elderly people, those who are ill and those with disabilities. It also requires that relationships of trust and care be fostered between tutors, management, unions, union learning reps and employees throughout the process of learning.

People involved in workplace learning can:

- deliver awareness-raising and equality training in the workplace so that management and others are supportive and encouraging of those wishing to deal with unmet Functional Skills needs
- use relationships of trust between union officials and members to support and encourage those who may wish to learn but are fearful
- take the unequal burdens of care carried by many into consideration when organising provision
- organise support groups for learners and boost confidence by celebrating achievements

"Education is the most powerful weapon you can use to change the world"
Nelson Mandela, statesman

- provide support and training for ULRs and allow them the resources to meaningfully carry out their 'caring' role
- ensure that in turn there is a support structure for the ULR whose mediating role may sometimes be burdensome.

Cultural inequality refers to the unequal value and recognition given to different individuals and groups of people. In the context of learning, cultural inequality raises issues of recognition and respect for difference and different needs within the educational systems.

Cultural equality requires that learning accommodates the full range of needs of individuals and groups, irrespective of class, race, gender, physical and mental capacity, sexual orientation, family status or religious or belief in urban and rural environments.

The promotion of equality requires taking a respectful view of diverse beliefs and cultures and ensuring that diverse learning needs are considered in all aspects of workplace provision.

People involved in workplace learning can:

- ensure respect for difference and diversity in learning styles and paces
- listen to the expressed needs of learners
- make provision for those with special resource needs e.g. large print text
- attempt to accommodate cultural differences in the content of learning materials
- celebrate diversity through skilled group facilitation.

Political Inequality refers to the unequal distribution of power, representation and 'voice' given to different individuals and groups. It requires a widening of participation in policy and decision-making structures and openness to partnership, dialogue and accountability.

People involved in workplace learning can:

- create quality workplace learning partnerships that ensure that all voices and viewpoints are equally represented
- consult widely and accessibly
- evaluate all aspects of the programmes and respond actively to feedback
- ensure that all aspects of delivery are respectful of adults and that hierarchical attitudes to learning are not imported into the workplace
- work to create learning content that is empowering of learners and promotes egalitarian goals in a democratic manner.

These inequalities are rarely present individually but are often intricately interwoven and complex in the way they impact on individuals, families, organisations and communities.

Equalities in learning

Recognising the diversity of adult needs and aspirations and the way these are influenced by factors such as race, class, gender, sexual orientation, age, nationality, religion, language or disability, is one of the fundamental principles of our front-line advice and guidance activities.

ULRs need to be able to communicate effectively and be aware of:

- the negative impact of inequality, discrimination and stereotyping
- how these factors can reinforce previous negative experiences
- how these factors can prevent people from engaging in the advice & guidance process.

"If the purpose for learning is to score well in a test, we've lost sight of the real reason for learning"
Jennie Fulbright,
US Science Educator

Prejudices and stereotyping

ULRs will need to recognise their own prejudices and tendency to stereotype by ensuring that they:

- recognise the rights of every individual to fair and even-handed information and advice
- recognise the influences that cultural factors may have on choice and development
- offer realistic, relevant and appropriate opportunities and facilities
- avoid patronising, stereotyping or fitting people into pre-conceived boxes
- seek to provide a friendly and culturally diverse ethos and environment that immediately informs members that they are welcome and recognised.

Positive attitudes to diversity

ULRs should promote diversity and encourage positive attitudes towards it. We all need to make learning and training inclusive for everyone in the workplace, who might include:

- part-time workers, fixed-term contract workers, shift workers, agency workers, atypical and disadvantaged workers
- migrant workers
- workers with disabilities and/or learning difficulties
- workers of all ages – we're never too old to learn: for example, 'silver surfers' can use the internet to develop their hobby interests, keep in touch with their families, etc.
- Black, Asian and minority ethnic (BAME) workers
- women workers.

There may be different reasons why certain diverse groups and individuals find it hard to learn and it is for ULRs to try and meet the learning needs of these people.

Equality Act 2010

A new Equality Act came into force on 1 October 2010. The Act simplifies, strengthens and harmonises the previous legislation to provide Britain with a new discrimination law that protects individuals from unfair treatment.

Equality & diversity training

Unite is founded upon principles of dignity and respect, with equality, justice and fairness at its heart. It is an important part of a ULR's development to fully understand equality and diversity and to encourage equality and diversity training as part of their own progression and development.

3 DELIVERING OUR VISION

"Reading is not a duty, and has consequently no business to be made disagreeable"
Aneurin Bevan, Labour Minister of Health 1945–51

Our vision for learning with Unite is to provide the best possible match between potential learners and the learning opportunities available to them. You can read the vision at the front cover of this handbook.

We aim that learners:

- have the confidence, enterprise, knowledge, creativity and skills they need to take a full part in economic, social and civic life
- demand a high quality learning experience that learning providers deliver
- have their knowledge and skills recognised, used and developed to best effect
- are given the information, guidance and support they need to make effective learning decisions and transitions
- have the chance to learn, irrespective of their background or current personal circumstances.

As a Unite ULR it is essential that you can empathise and communicate easily with all the members you speak to. Discrimination, for whatever reason, and however unintended, is a disabling experience that undermines members' confidence, motivation and rights.

LearnWithUnite

Unite offers a range of help, support and qualifications to members, both workplace and community based, through a blended approach of guided and online learning. **www.learnwithunite.org** is Unite's very own virtual learning platform that is dedicated to supporting our members and activists, through the provision of quality online learning opportunities.

LearnWithUnite gives us a platform to cover a wide range of learning needs:

- It allows us to strike a balance between informal or accredited, job-related or wider learning.
- It allows us to centrally manage and devolve learning to regions and/or branches by giving them their own pages.
- It allows us to forge strong partnerships and alliances with other providers.

This in turn gives us leverage to determine a bargaining strategy to press the employer for:

- more Apprenticeships, with better pay and conditions and higher quality training
- funding for learning centres
- action on equality, prioritising skills for those who have least e.g., the low-paid, Black Asian and minority ethnic (BAME) or women members
- stronger agreements that include raising employer investment in learning
- improved ULR facility time
- stronger joint bargaining, rather than just consultation, through a formalised training committee.

This is the starting point for all ULRs to guide members to. It is a key area for developing organising, which can be a valuable recruitment tool as the majority of courses are free to members. ULRs should also promote the platform for online learning with members, employers and providers and

> **"I am always doing that which I cannot do, in order that I may learn how to do it"**
> Pablo Picasso, artist

encourage their learning committees to endorse it. ULRs should endeavour to give all reps and branch committee members the coaching, confidence and skills required to access, use and promote online learning. The platform also contains a resource bank to assist and update you and your other reps and is also a great networking tool.

However, if we are looking to develop online learning for strategic purposes, it is important we use this resource in a positive and constructive way and do not make it a barrier for members.

Some of the courses currently on offer include:

- Initial assessments (ESOL, ITQ)
- ESOL, Entry Levels 1 to 3
- Online basics (a taster for novice users)
- An Introduction to ICT (ITQ Level 1 Award) course
- An Introduction to ICT Part 2 (ITQ Level 2 Certificate) course
- The Level 3 Award in ITQ.

Alternative Education Model (AEM)

Alternative education, also known as non-traditional education or educational alternative, includes a number of approaches to teaching and learning distinct from those offered by mainstream or traditional education. Educational alternatives are rooted in a number of philosophies differing from those of mainstream education. Although some alternatives have political, scholarly or philosophical orientations, others were begun by informal associations of teachers and students dissatisfied with some aspects of mainstream education. Educational alternatives vary, but usually emphasize small class sizes, close relationships between students and teachers and a sense of community. Unite's approach is known as the Alternative Education Model (AEM).

UMWEP

The United Migrant Workers Education Programme (UMWEP) has evolved to help Unite members, migrants and vulnerable workers improve their basic communication and ICT skills at work and in their communities. It exists to help people who struggle on a daily basis to settle down in a new society that has received them within the frame of a new language and a new culture with different traditions and ways of life.

UMWEP is a non-profit organisation. UMWEP implements the AEM, whose methodology and pedagogical concepts apply realistically to the true education needs of our learners.

UMWEP understands that education is for all ages and social class categories and is a universal human right, not a profitable business as it is seen and exploited today in the official, conventional stream of education. That is why the Programme is an alternative proposal for those migrant and vulnerable workers excluded from formal education.

The Programme is based entirely on volunteer tutors who agree with the education concepts and are committed to give some of their free time to help other people.

Functional Skills

For the purposes of this handbook we have used the terminology Functional Skills, which reflects current usage in England. Functional Skills used to be known as Skills for Life.

Functional Skills is about developing skills in maths, English and ICT, but focuses on teaching learners how to apply these skills in everyday contexts and situations. For example, the government is putting more emphasis on functional maths, which focuses on problem-solving, and gives learners practical strategies for applying and transferring skills in everyday situations. Functional Skills provide

"Unintelligent people always look for a scapegoat"
Ernest Bevin,
TGWU General Secretary
and Cabinet Minister 1940–51

a single route to achievement from Entry Level to Level 2 for all learners.

Assessment
Assessment is increasingly delivered onscreen, although paper-based assessments are still available from awarding bodies. A further review of Functional Skills is due in early 2016 which may introduce changes.

Entry Level 1 is the first level of attainment with a full qualification on offer; followed by Entry Level 2; and Entry Level 3. Level 1 Functional Skills qualifications are generally regarded as equivalent to GCSE grades D-G, and Level 2 an equivalent attainment level to GCSE grades A*-C.

Qualification Standards
Each level of the skills incorporates and builds on previous levels; therefore for each skill you can view the individual standards as well as progression grids.

ESOL

Britain in the 21st century is becoming an increasingly diverse society, with migrants from the former Eastern Bloc countries as well as from more distant places such as Somalia, Afghanistan and Iraq. Courses in English for Speakers of Other Languages (ESOL) can help migrants overcome obstacles to finding work and taking part in wider society.

How can ESOL help Unite?
Developing English language skills not only benefits the individuals concerned (making them more employable, for example) but will give added value to the union as the extra confidence of having a good grasp of English could potentially encourage individuals to take a more proactive role within the union. Many migrants, for whom English is not their first language, who become fluent in English are becoming trade union activists. Moreover, trade union activists with bi-lingual or multi-lingual skills are extremely well placed to act as intermediaries when it comes to things like sorting out workplace grievances, for example, if a group of migrant workers are having difficulty putting their case to management.

From a strictly trade union perspective, such bi-lingual or multi-lingual activists are strongly placed to become effective organisers and recruiters in ethnically diversified workplaces. They can not only communicate but also empathise with migrant workers and stress to them the benefits of being members of a major union such as Unite.

IAG

As Unite ULRs spearhead Unite's Learning Organising Strategy in workplaces, they are expected to impart information, advice and guidance in the workplace in order to engage workers back into learning.

As a ULR, you will often come across the acronym IAG and will be involved in its delivery. Traditionally, IAG tended to be called 'careers advice', which also included educationally related advice and guidance. A definition of these IAG elements can be offered as follows:

- Information: a printed hand-out or a reference to a website.
- Advice: This could take the form of a ULR offering a suggestion on how to use some printed information to best effect.
- Guidance: typically this is a skilled intervention by a qualified guidance practitioner. Guidance may take the form of an interview or group session led by a qualified person. An action plan may result from this process. ULRs are increasingly assuming IAG roles within workplaces on completion of relevant training.

ULRs can gain IAG qualifications as an opportunity to develop and gain recognition for their skills at a range of levels and in a variety of contexts as part of their Continuous Professional Development (CPD).

“Education is not the filling of a pail, but the lighting of a fire”
WB Yeats, poet

Good information, advice and guidance is:

- putting the needs of the member at the centre of the process
- ensuring equal support and access to all members regardless of gender, race, culture, sexual orientation, religion, disability, age or status of employment
- understanding the needs of diverse groups of people and how to work with them
- developing up-to-date information and knowledge of local learning provision, including key contact names and contact details
- building up a good knowledge of other specialist advice, guidance and assessment provision locally
- knowing about all in-house online learning opportunities available on LearnWithUnite platform
- knowing when to refer people on to external organisations or agencies
- giving learners the appropriate help and tools to make their own informed decisions, and not simply telling them what they should do.

Signposting and referrals

The terms ‘signposting’ and ‘referral’ are used inconsistently. However, signposting is used most often to describe situations in which members are made aware of the services of another adviser or provider at an early stage of the process - similar, in practice, to information giving. Referral tends to be used when clients are directed towards a different adviser or service to facilitate further progress, after an initial exploration of the needs as presented.

See information about the new IAG record pad on page 27.

Individual Learning Plan

An individual learning plan (ILP) should be kept for every learner as this sets out the learner’s plan to learn, a timetable for learning, ways of learning and resources required. ILPs are compiled, reviewed and developed in consultation with the learner by the tutor/teacher delivering the course.

An Individual Learning Plan will:

- record the learner’s contexts and goals, what they want to learn and how they want to learn it
- include a record of initial discussions about learning and of assessments carried out
- identify issues that may affect a learner’s access to provision and strategies for dealing with them
- set measurable goals so that the learner’s progress can be assessed
- provide a reminder for the learner of what the learning will involve
- encourage reflection on the effectiveness of learning
- be developed over several sessions with a learner
- focus on the individual’s learning goals.

As you support your learners and potential learners, targets are important and they need to be SMART:

- **SPECIFIC:** having a clear idea of what your aim is
- **MEASURABLE:** being able to check if progress has been made
- **ACHIEVABLE:** realistic and can be broken down into steps
- **RELEVANT:** to the person, their goals and the time they have available
- **TIME-BOUND:** identifying dates (short- or long-term), including steps and a plan to check progress.

Setting targets can help members to:

- develop problem-solving skills
- take ownership of planning their future
- be realistic about what they can achieve
- break goals down into manageable actions
- identify resources needed to take plans forward
- check on own progress and adjust plans if necessary.

4 PUTTING EVERYTHING INTO ACTION

"Live as if you were to die tomorrow. Learn as if you were to live forever"
Mahatma Gandhi

In your ULR training you covered the importance of learning surveys and how to prepare and carry one out. Survey examples, which can be adapted as needed, are available from your Union Learning Organiser.

Learning surveys

How to survey

1 Map your workplace so that you know what questions to ask, and can plan how you will distribute your survey.

2 The basic information you will need is:

- Names and contact details of people interested in courses.
- What do people want to learn? What level?
- When is an appropriate time to learn?
- Can you get time off?
- What are people's shift patterns?
- Which time slots are best?

3 You can also ask other questions that will tell you more about your workplace or help you with union organising targets. These can be questions about age, gender, union membership and so on.

4 Ensure you let people know that the information given will be treated in confidence.

Ask your Union Learning Organiser what model survey templates are currently available.

Distributing your survey

Your survey should be distributed as widely as possible, with an effective way to collect the finished surveys. If you are able to, go around the workplace personally, talking to people, handing out surveys and then collecting them again.

Some other distribution methods include:

- holding an Open Day and inviting employees to fill in the survey on the day
- putting a survey on desks or work areas, with a box for people to put them in
- distributing the survey by email
- creating an online survey and sharing the link
- a combination of the above.

Think about your workplace, and the resources you have, including time off. What would be the most appropriate way for you to distribute your survey? Sometimes it helps to give people an incentive to fill in the survey. Ask your employer if they will contribute a gift voucher or book token, and hold a prize draw for a winning participant.

Review

Once you have the completed surveys, you will need to collate and evaluate the information gathered. Recorded results should be kept on file for a reasonable time, and make sure this and the learning surveys themselves are stored securely. You will need to consider next steps such as discussing with union colleagues, contacting learning providers and meeting with management. Keep your members informed.

"Nine-tenths of education is encouragement"
Anatole France, writer

Social media

Social media is extensively used in today's society but care should be should be taken when using it. If you use the Unite logo on social media applications, such as Facebook or Twitter, anything posted will reflect on Unite.

Many workplaces will have their own IT usage policies and ULRs should ensure that they know if their company uses one and that they and their learners adhere it at all times. ULRs should be aware that they need to comply not only to their own company's rules but Unite's too.

Extract from Unite's Privacy at Work policy
Email and internet are now in general use in most work places and indeed is encouraged by the government. Most employers now expect their workers to be familiar with electronic communication and to be able to use the internet for business purposes.

However the monitoring of web access and email content is also prevalent and there have been a number of cases where employees have been dismissed for inappropriate use of the systems. In April 2005, Unite lodged a complaint with the Information Commission on behalf of staff at the Association of Head Teachers concerning the unauthorised and possibly unlawful monitoring and interception of employee's emails.

As stated earlier, secret monitoring of email and internet use is unlikely to be justified by the employers, unless there are extreme circumstances. However, employers will want to protect themselves from legal liability if employees send defamatory or offensive emails using the company system. They will also want to limit internet use, not only to restrict time spent on non-work activities, but also so they are not liable for the harassment of other staff caused by the display and downloading of pornographic or offensive material.

The Data Protection Code advises employers who wish to monitor their employees' use of electronic communications, including telephone, fax, voicemail, internet access and email, should establish a policy on their use and communicate it to their staff. The policy should inform staff that their email and internet use will be monitored and ensure that they know what is considered acceptable use and what is not. In a claim where the employer's written policy allowed staff to make 'limited and reasonable' personal use of email, a number of employees successfully claimed unfair dismissal following their dismissals for abuse of the email system because it was unclear what 'limited and reasonable' meant and different managers applied the policy in different ways (Lang v SPDataserve Ltd ET 103200).

ACAS guidance on social media, defamation, data protection and privacy
Social media can be a valuable tool for organisations, but carries with it responsibilities. They include determining who in the organisation can publicly say what, use information and access it. Also, employers have to give good reason for tracking employees' use of social media.

Key points from the ACAS guidance:

- Defamation: Employees posting damaging or libellous comments about a company or its products or publishing sensitive commercial data. Also, employers divulging protected personal data: for example, giving away details of salary, political or religious beliefs or disciplinary records.
- Managing the organisation's reputation: Employers may be keen for employees to promote the organisation's brand on social media, but not at the cost of making unwelcome posts.
- Reacting to negative comments: An employer's response to comments about the company on social networking sites should be proportionate to the perceived issue.

- Monitoring employees' use of social media: An employer must determine correctly whether its reasons for supervising staff use are justified under the data protection laws.
- Information about employees: Employers should be aware that an employee has the right to access details kept about them, such as sickness and disciplinary records, appraisal reviews and general personnel files.

ULR interview checklist

Introduction

Interviewing people is an integral part of the role of a ULR, for example when identifying individuals' needs or conducting a learning survey.

Before the interview

- Where and when will the interview take place?
- How long you will need?
- What might you discuss?
- What information will you require?

During the interview

- Explain the reason for the interview.
- Stress the confidentiality of any information received.
- Be aware of your body language and that of the interviewee.
- Use eye contact and face the person in a relaxed manner.
- Give them your full attention and actively listen.
- Be objective and avoid making assumptions.
- Use appropriate questions and do not monopolise the conversation.
- Keep the discussion on track.

Clarifying and summarising

- Help to identify individual needs.
- Check and correct possible misunderstandings.
- Highlight key points and identify next steps.

Recording the interview

ULRs are encouraged to keep records for each learner interview but bear in mind the requirements for data protection. The results of interviews and surveys can be shared in various formats to learning committee, branch reps, but remember to respect confidentiality of members. A carbonated IAG record pad was introduced in mid 2015 for use by ULRs. Please contact your Union Learning Organiser or Regional Learning Manager for a supply.

Making presentations

As part of your ULR role you may need to make presentations.

Preparation

- Do as much research as possible before presenting proposals to management or your branch, ensuring figures or data are accurate and up to date.
- Style is not as important as ensuring you get your message across.
- PowerPoint, smart board flipchart, video or paper hand-outs can all be used.
- Practice and rehearse: make sure you do not run over time as this may prevent you getting the desired outcome.
- If using technology, ensure you have a back-up plan.
- Think of questions that may be asked and have responses ready.

Delivery

- Arrive in plenty of time.
- Speak in a friendly tone making eye contact with your audience.
- Keep to time limits.
- Encourage interaction.
- Do not be distracted by people texting or tweeting.

"Why should society feel responsible only for the education of children, and not for the education of all adults of every age?"
Erich Fromm, critical theorist

"Let us pick up our books and our pens. They are our most powerful weapons"
Malala Yousafa, feminist & Nobel Prize Winner

5 STRATEGY FOR GROWTH

Negotiating skills

If as a ULR you have responsibility to take part in negotiations on learning, you should plan and prepare thoroughly. Ideally you will be negotiating as part of a team of union representatives, and remember both sides are of equal status. Clarify what you can negotiate with other reps at work, your Learning Organiser and your Unite full-time officer.

Develop a negotiating strategy

- Know what members want.
- Draw up an agenda and be clear about your aims.
- Check and be clear on your facts and anticipate management's response.

Work as a team

- Listen carefully and ask questions.
- Do not be side-tracked.
- Seek agreement on principles before discussing details.
- Seek clarification to avoid misunderstanding.

Closing negotiations

- Have you raised all the issues that you wanted to discuss?
- Do you fully understand the proposals that management are making?
- Are you convinced that management fully understand your proposals?
- Get agreement in writing and be clear on implementation and timescales.
- Be ready to challenge and submit amendments to the minutes of meetings.

The way we talk to members, potential members and activists has an impact on their understanding of why Unite exists and how we work. It is important that we are clear about the message that we send out.

An organising union

- An organising union is member-led: everyone plays their part in ensuring the union is active in every workplace.
- Members pay a subscription to become actively involved: they understand the importance of learning and working together.
- Members are trained and encouraged to work collectively to campaign for improved opportunities for learning and other issues.
- The union is proactive: it gives members the power to take up, challenge and resolve issues themselves; non-members are recruited around these issues and this philosophy.

About Unite

Unite is a modern trade union for the 21st century, democratic and responsive to members' needs. Unite's structure is one in which members are encouraged to get involved and have their say.

"We must learn to live together as brothers or perish together as fools"
Martin Luther King, Jr., civil rights activist

Unite is a member-led union, with 1.4 million members, who work in every area of private, public and not-for-profit work.

Unite covers Britain and Ireland but also has members as far away as Gibraltar and Germany and at any time will have members working in all parts of the world.

Unite is a union based on the need to organise workers to secure success at the bargaining table. We recognise that 100 per cent active membership gives us an opportunity to win for workers. Our Unite workplaces must be strong and active to be able to develop a voice for workers.

Organising is about:

- developing leaders
- taking action
- power
- thinking strategically.

The role of the ULR

Every Unite rep has a role to play in building the union locally. An essential part of this is communicating effectively with members and non-members alike. As a ULR, you will have opportunities to talk to your colleagues about their learning needs. You may talk to members who otherwise may not have very much contact with the union. This is a great opportunity to talk to them about their concerns at work, about the union and to get them to do something or (if they are not a member) to join the union.

Planning your communications
Before talking to members or potential members, plan your approach taking into consideration the following:

- How much time do you have?
- What impression do you want to give potential members of Unite?
- What you want to achieve with them and what it is practical to achieve.
- Do you want them to join the union, or do something like go to a meeting, distribute a leaflet or talk to their colleagues about something?
- Do you know who they are and where they're going to be working?
- What about follow-up? Who will do it and when?

Helpful hints about communications

1 When asking questions, it's best to use open questions (those that cannot be answered with 'yes' or 'no').

Open questions are useful when you need to:

- gather information
- build the conversation
- explore issues.

2 Write down some open questions you can ask before you meet with people.

3 Closed questions (those that can only be answered with 'yes' or 'no') should only be used when you need to:

- confirm information you have been given
- gain commitment to join the union or participate in an activity
- bring the conversation to a close.

4 Liaise with other branch officials: tell them what you are doing – even if they don't ask – and make sure you know what they are doing to avoid duplication.

Increasing our visibility
Visibility is a vital factor when organising workers. Visibility can take the form of marketing material at the workplace, in newspapers and magazines aimed at workers, as well as in the actual trade union presence in the workplace, along with campaigning efforts in general.

- Take photos and video footage of learning as it happens in the workplace and use them for branch newsletters and promotional videos as they will promote further learning in your workplace.
- Ensure everyone is fully aware of the union role in learning: make screensavers using the Unite logo or message, include Unite in log-ins, passwords, etc,
- Make sure LearnWithUnite is the brand name in your learning centre.
- Ensure that you have a supply of the latest edition of the 'Learn with Unite' case study booklets to use as a marketing and recruitment tool.

Unite's learning agenda

ULRs and union officials provide support and advice to help members win on learning in the workplace.

The union cannot be separated from the workplace, as members and management understand that the workers are the union; the union is directly associated with learning and increasing skills of members.

The LearnWithUnite team works to create flexible, quality learning opportunities within the workplace and communities. We support members in their personal development, improving employment prospects and quality of life while enhancing the union's strategy for growth.

We have a vast amount of experience and knowledge in being able to identify and create flexible learning opportunities for members and potential members, which enables them to embark on a learning journey of their choice.

"Education is freedom"
Paulo Freire, educator

What we do
As a team, we develop educational opportunities that support the diversity of our society, both in the workplace and the community.

We ensure that learning is available, accessible and inclusive for all, allowing all who wish to join us the chance to grow and reach their full potential.

How we do it
We utilise a number of strategies to deliver our commitment to learning:

- recruiting and training ULRs to promote learning in the workplace
- collaborating with local education providers to ensure high quality learning, support and progression in English, maths and ICT to higher education
- building free community learning initiatives, using community members to facilitate learning programmes through Unite's alternative education model.

6 RESOURCES

Online resources

Alison
Free online courses
www.alison.com

Apprenticeships
0800 015 0400
www.gov.uk/topic/further-education-skills/apprenticeships

British Dyslexia Association
Support and resources for dyslexic learners **www.bdadyslexia.org.uk**

Campaign for Learning
Runs Learning At Work Week
www.campaign-for-learning.org.uk

Equality & Diversity Forum
Network of national organisations committed to progressing equalities
www.edf.org.uk

Floodlight (Course Search)
Covers 40+ UK towns; cities and regions **www.floodlight.co.uk**

Learn My Way
Free online digital skills
www.learnmyway.com

LearnWithUnite
Your union's own learning portal with a range of resources and courses including ESOL
www.learnwithunite.org

Move On
Campaign to improve adult literacy and numeracy
www.move-on.org.uk

National Careers Service
Provides IAG on learning, training and work opportunities. 0800 100 900
nationalcareersservice.direct.gov.uk

National Extension College
10% discount for union members on distance learning opportunities
0800 389 2839 **www.nec.ac.uk**

Quick Reads
Publishes annual collection of short novels for emergent adult readers
www.quickreads.org.uk

Reading Ahead
Useful reading initiative for workplaces
www.readingahead.org.uk

Sector Skills Councils & Bodies (Directory)
Independent, employer-led organisations that help shape the learning opportunities available to Unite members.
http://fisss.org/sector-skills-council-body/directory-of-sscs/

Unionlearn
Helps ULRs inform, advise and guide their learners
www.unionlearn.org.uk/supportinglearners

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7 10 STEPS TO SUSTAINABLE WORKPLACE LEARNING

"Education is a human right with immense power to transform"
Kofi Annan, former UN Secretary-General

The following checklist helps to ensure that a workplace organised for learning is effective and sustainable, and works with the full involvement of Unite, the employer and provider(s). The following steps are seen as building blocks to establish a sustainable learning culture and embed learning and training into collective bargaining in the workplace. Steps 1 to 4 need to be taken first before learning takes place to ensure sustainability.

1. Elect Union Learning Representatives (ULRs)

- Unite elects an agreed number of ULRs.
- Unite notifies the employer, the regional officer (RO) and the learning organiser / project worker of the names and locations of new ULRs.

2. Train ULRs through Unite or TUC

- Initial five-day Induction course within six months of ULR election.

3. Establish a learning committee

- Use the Unite Model Learning Agreement to facilitate discussion on the learning committee terms of reference especially roles and responsibilities; how often to meet, etc., as well as time off.
- Set up a workplace learning committee to include all ULRs; senior management (including training manager/HR); senior workplace rep (if not also a ULR); learning organiser; education providers.

4. Revive or negotiate a learning agreement

- Check with learning organiser if a learning agreement has already been signed either nationally, locally or other sites.
- Use the Unite model learning agreement as a basis for negotiation.
- Include time off for learners; get agreement before learning starts.
- Learning agreements should be negotiated through normal procedures and signed by the RIO or director of education.

5. Run a learning needs survey

- This is not a training needs analysis. It gives an idea of the sort of learning that employees want and their availability.
- The agreed survey to be organised and conducted by the ULRs.
- Collate results with your regional learning organiser.
- Education providers to be invited to the learning committee to discuss their offer.
- Information shared and possibilities discussed by the learning committee.

6. Keep members informed through leaflets, posters, etc.

- Use learning to recruit and develop Unite organisation at the workplace.
- ULR to report back to workplace union committees and branches on current learning, ensuring learning and training is embedded into the union structure and the workplace collective bargaining structures.

7. Facilitate ULR progression

- ULRs trained in Unite follow-on modules and updates, especially the ULR Stage 2, Information Advice and Guidance (IAG) and Functional Skills.
- Progress through using the www.learnwithunite.org online resource and inducting new learners.

8. Support learners

- ULRs to encourage learners and support those accessing learning opportunities organise promotional events, etc.
- ULRs to publicise and hold monthly surgeries for members to discuss and access learning.
- ULRs to record and collect

information on learners, including Equality & Diversity statistics.
- ULRs to promote local, regional and national learning initiatives e.g. Learning at Work Week; World Book Day; Family Learning; Quick Reads; etc.

9. Set up a union learning centre
- Endeavour to set up a Unite learning centre in the workplace to offer e-learning and taught courses.
- ULRs to pilot initial courses and then support learners.

10. Keep the union informed
- ULRs to submit learner activities regularly to Unite for Union Learning Fund (ULF) purposes.
- ULRs to keep branch/workplace reps committee / RIO and learning organiser informed of learning activities.
- Attend regional ULR Forums, Unite networking events to keep updated on learning initiatives.
- Case studies to be developed and publicised through Unite.

YOUR UNION LEARNING ORGANISER:

Name

Email

Mobile

"I do not want art for a few, any more than education for a few, or freedom for a few"
William Morris, artist

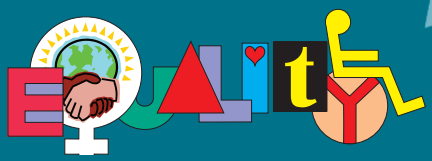
www.learnwithunite.org

APPENDIX SIX

ACTIVITY 26: - Family Friendly Rights

Updated 2015

unite the UNION



and Family Rights

Parents and carers employment rights, pay and best practice policies at work

YOUR GUIDE

This Guide contains information on:

1. Introduction

"This guide is for Unite members and shop stewards/workplace representatives. It outlines key rights at work, and suggests how Unite can help workers get and build on their full rights.

Families come in all shapes and sizes and regardless of what a family looks like Unite believes that:

- *No parent or carer should be left to struggle alone*
- *Children must be at the heart of family policy*
- *Family policy should aim to provide a secure, healthy environment for children to grow and develop, as well as to ensure that parents and carers are fully supported in childbirth and in raising children*
- *Equality between men and women should be at the heart of family policy*

Unite condemns the government cuts which hit families hard, and increase poverty and inequality.

Unite continues to campaign at work and in the community for decent pay, social justice, an end to poverty and for fairness for all families."

Diana Holland
Assistant General Secretary
Transport – Equalities – Food

"Job security and financial security during pregnancy and after child birth is a major concern for many women. Pregnancy discrimination in employment is unlawful; however, despite the legal framework more than 40,000 women lost their jobs last year. Unite members get a better deal as we negotiate better terms for maternity and paternity leave, pensions, and redundancy winning you more than the legal minimum, and Unite is campaigning for a better framework of statutory rights.

This guide provides you with an overview of your rights at work, the payments that you are entitled to, where to get help if you need it and examples of best practice Unite has negotiated with employers, which can be negotiated with your employer."

Siobhan Endean – National Officer for Equalities

Please remember that the rights contained in this guide are the legal minimum. Check if Unite representatives have negotiated better provisions in your workplace than these minimum legal requirements. To find out more about family rights, confidential advice and representation, please contact your shop steward/ workplace representative, Regional Unite Officer and/or Regional Women's & Equalities Organiser.

The details on social security payments, tax credits, and qualifying earnings are normally changed every April. The information given here is correct for April 2015/16. To check the current rates, please go to **www.gov.uk** and Unite Equalities **www.unitetheunion.org/unite-at-work/equalities**

Unite aims for Family Friendly Policies for ALL

- Take immediate steps to reduce the high rates of pregnancy discrimination to enable pregnant women and new parents to retain their jobs and have the confidence to exercise their maternity and parental rights at work
- Increase the flat rate of Statutory Maternity Pay, Statutory Paternity Pay, Maternity Allowance and Statutory Shared Parental Pay to at least equal the National Minimum Wage
- Statutory maternity, paternity, parental leave and pay – a day one right
- The right to flexible working and not just to request it – a day one right
- Return to the same job, pay and grade after returning from maternity or shared parental leave – a day one right
- Increasing the pay for paternity leave and shared parental leave for fathers – a day one right
- Paid time-off to attend antenatal appointments, pre-adoption meetings, appointments for IVF treatment and meetings and appointments for surrogate parents, for both parents/nominated carers – a day one right
- Paid and sufficient parental leave for children under 18 – a day one right
- Maternity Allowance should be treated as earnings from employment, for the purposes of Universal Credit, to ensure similar treatment to Statutory Maternity Pay and other work-related payments
- Assist low to medium income families with the costs of each new baby, by reinstating the Sure Start Maternity Grant for second and subsequent children
- Provide support for low-income women during pregnancy to ensure a healthy diet. Increase Healthy Start payments by 14.5% which is the increase in the cost of food since the benefit was last uprated in 2010
- Universal right to free or affordable childcare
- Child benefit, at a decent a level, for all families and for all the children in the family
- Decent rights for carers including paid time-off

Between 2010 and 2015 the Conservative, Liberal Democrat Coalition cut rights and support, and the Conservative government elected in 2015 has pledged to continue with these devasting cuts.

Cuts suffered 2010-2015 under ConDem Coalition

Cuts to tax credits hurts families

- £1m cut to Child Tax Credit and abolishing the 'baby element' and not introducing the Toddler Element
- Cuts to Working Tax Credit making families over £3,000 a year worse off
- Loss of 8.2% of income for working lone parents as result of tax credit cuts
- 10% reduction in the amount of eligible childcare costs paid by tax credits
- Increase in the hours eligibility for couples claiming Working Tax Credit to 24 hours
- Up-rating Child Tax Credit and Working Tax Credit by 1%
- Up-rating the Basic and 30-hour elements of tax credits by 1%

Cuts to pregnancy and maternity benefits

- Abolition of the £190 Health in Pregnancy Grant
- Limit to the £500 Sure Start Maternity Grant to first child
- Lack of upgrade for statutory maternity pay

Cuts to childcare

- Cuts to Sure Start funding
- Child benefit frozen with further cuts in 2013
- 24.7% cut to nursery and pre-school education

New rights won 1997-2010 under Labour government

- Rights to maternity leave and pay more than doubled from 18 weeks to 39 weeks and from £55.70 to £124.88 a week
- Paid maternity and adoption leave was extended to 9 months
- For the first time there was a legal right to paid time off for fathers and adoptive parents
- Improvements to the right for parents and carers to request flexible working arrangements, including part-time working
- An extension of the rights to unpaid parental leave
- Optional keeping in touch days (KIT) was introduced
- Additional financial help for families through the tax credit system

2. Rights for new parents

a. New mothers

Maternity leave

All pregnant employees[1], including surrogate mothers, are entitled to 52 weeks' maternity leave made up of 26 weeks' Ordinary Maternity Leave (OML) and 26 weeks' Additional Maternity Leave (AML), regardless of length of service or number of hours worked and regardless of the size of the employer, bringing the entitlement to one full year. Whether this is paid or not depends on your level of earnings and length or service (see below).

Republic of Ireland – You are entitled to 26 weeks maternity leave together with 16 weeks additional unpaid maternity leave which begins immediately after the end of maternity leave.

Notice and timing of leave

You must give your employer notice of your intention to go on maternity leave no later than 15 weeks before the baby is due. You can change the date by giving at least 28 days' notice before the new date or the old date, whichever is the earliest. If this is not reasonably practicable (for example if the baby is born early).

You can start maternity leave at any time after the 11th week before the baby is due, up to the day it is born. You must take at least 2 weeks of the leave (4 weeks for factory workers) after the baby is born. This is known as Compulsory Leave[2].

Republic of Ireland – You must give your employer at least four weeks' written notice of your intention to take maternity leave and you must also provide your employer with a medical certificate confirming the pregnancy. If you intend to take the additional 16 weeks' maternity leave you must provide your employer with at least four weeks' written notice. Both notices can be given at the same time.

Antenatal care

Pregnant women are entitled to reasonable paid time off (at the normal hourly rate) for antenatal care, including any antenatal, parent craft or relaxation classes that a health professional has recommended you attend as well as time needed to travel to your clinic or GP. You may need to show proof of appointment and proof of pregnancy (such as the MATB1) to your employer.

The father or the partner is entitled to unpaid time off work to attend up to two antenatal appointments. The maximum amount of time off work that you can take for each appointment is 6 hours and 30 minutes.

A 'partner' is a spouse, civil partner or someone who lives with and is in a long-term relationship with the pregnant woman. This right extends to intended parents of a child in a surrogacy arrangement if they expect to be entitled to and intend to apply for a parental order in respect of that child.

All employees have this right from day one. Agency workers qualify for this right if they have been in the same role for the same hirer for 12 weeks or more.

[1] England, Wales, Scotland and Northern Ireland.

[2] England, Wales, Scotland and Northern Ireland.

Your employer can ask you for a signed declaration stating:

- the date and time of the appointment
- that you qualify for the right as the expectant father or partner of the pregnant woman
- that the appointment is made on the advice of a doctor, midwife or nurse.

Your employer cannot ask you for the appointment card because this is the property of the pregnant woman.

The right is to time off work to attend an appointment if the pregnant woman wishes you to be there. It is not a right to attend an appointment. Antenatal appointments are about monitoring the health and well-being of the mother and unborn baby and it is up to the pregnant woman to decide who she wants to accompany her to the appointment.

Northern Ireland – Currently, fathers do not have a right to time off for antenatal appointments.

Republic of Ireland – You are entitled to take paid time-off from your employment to attend antenatal appointments (this also includes some antenatal classes).

Sickness during pregnancy

If you are off work sick for pregnancy-related reasons at any time in the 4 weeks before the baby is due, then the employer can count that as the start of maternity leave, although they do not have to do this. All pregnancy related sickness absence must be recorded separately. This is very important at times when management refer to sickness absence for discrimination or redundancy.

Union membership

When you are on maternity/adoption/paternity leave, and on less than half salary or not working, you are entitled to pay reduced union subs. Please contact your union official or branch to arrange this.

Key negotiating aims on maternity leave

- All women employees to be entitled to one year maternity leave on full pay from day one. It may be necessary to negotiate towards this in gradual stages, for example, initially negotiating for all women to get 39 weeks leave on full pay from day one (please refer to "Examples of good practice" section)
- A sympathetic , non-discriminatory, flexible leave and sickness absence for parents who lose their baby/partner and have a premature or sick baby
- Workers on temporary and fixed term contracts to be entitled to all the benefits negotiated
- The employer should undertake to provide adequate cover during leave.

Maternity pay

You can claim Statutory Maternity Pay (SMP)[3] any time from the beginning of maternity leave, for a maximum of 39 weeks. It is paid by the employer through the normal pay procedures. The amounts (as at April 2015/2016) are as follows:

- For the first 6 weeks – 90% of average pay (calculated on gross earnings in the 8 weeks or two months before the end of the 15th week before the baby is due, reflecting any increases)
- After 6 weeks – basic rate of £139.58pw (from April 2015, previously £138.18pw) for a further 33 weeks (or 90% of salary if that is less)

To **be eligible**, you must:

- have worked for the same employer continuously for 26 weeks by the 15th week before the week the baby is due
- earn on average at least £112pw, before tax, (from April 2015, previously £111pw) which is the lower earnings limit for National Insurance payments in the 8 weeks prior to the 15th week before the baby is due; and
- have given your employer the correct evidence and notice

For more information please refer to the Premature Births and Stillbirth/miscarriage/termination sections.

Republic of Ireland – Maternity benefit is paid to women who are on maternity leave from work and covered by social insurance (PRSI). The benefit has been taxable since the 1st July 2013 for all Claimants. If you are employed you must have at least 39 weeks PRSI paid in the 12 month period before the first day of your maternity leave. If you are self-employed you must be in insurable employment and have 52 weeks PRSI contributions paid at Class S in the relevant tax year.

Extra maternity benefit from the union

If you have been paying the Enhanced rate, the slightly higher level of subs, then you are entitled to receive maternity/adoption/paternity benefit of £12.80pw (2014) from the union for up to 10 weeks of your maternity/adoption/paternity leave.

Maternity allowance

If you do not qualify for SMP you may be able to claim Maternity Allowance (MA) from the local Jobcentre Plus or your employer.

The amount of MA paid depends upon eligibility and you can claim this as soon as you have been pregnant for 26 weeks and payments can start 11 weeks before the baby is due. The latest you can apply is three months after the date you stop work as MA can only be backdated for a maximum of three months.

You can either receive MA for:

- **39 weeks** at £139.58pw[4] (from April 2015, previously £138.18pw) (or 90% of average earnings if that is lower) if you have been employed or self-employed for 26 weeks out of the 66 weeks before the baby is due, and earned on average at least £30pw. The 26 weeks do not have to be continuous or with the same employer.

[3] England, Wales, Scotland and Northern Ireland.

[4] Northern Ireland – There is no cap on 90% of average weekly earnings for the first 6 weeks.

OR

- **14 weeks** at £27pw if for at least 26 weeks in the 66 weeks before your baby is due you are the spouse or civil partner of a self-employed person or help in their business.

If you are employed, you will need to ask your employer for form SMP1 (explaining why you do not qualify for SMP). You should also give your employer notice to start your maternity leave by the 15th week before your baby is due.

Maternity Allowance won't affect your tax credits but it will affect some other benefits you might be receiving.

Premature birth

Maternity leave and Pay – If your baby is born after your Maternity Pay Period (MPP) has started your Statutory Maternity Pay (SMP) will not be affected. You can still get SMP for the full payment period as if the baby had been born when it was due.

If your baby is born before your MPP has started but after the qualifying week you must, if reasonably practicable, tell your employer of the birth within 21 days. Your SMP, if you qualify, will now start on the day after the birth and will last for up to 39 weeks.

If your baby is born before or during the qualifying week then within 21 days of the birth, you must give written evidence that you were away from work because of your baby's birth e.g. birth certificate. You must also still provide your employer with medical evidence of the date the baby was due to be born. They can be provided together on part B of the maternity certificate (form MATB1) issued by your doctor or midwife. Your employer may agree to extend the 21 days to 13 weeks.

You qualify for SMP if you would have been continuously employed for 26 weeks by the 15th week before the week the baby is due had it not been for the baby's early birth and satisfy the earning rule for SMP. The period over which the earnings rule is applied and your average weekly earnings are calculated will be the 8 weeks that end with the Saturday before the birth of your baby.

If you would qualify for Maternity Allowance and your baby is born after your Maternity Allowance Period (MAP) or 14 week period has started, nothing will change.

If your baby is born before your MAP or 14 week period was due to start, your MAP or 14 week period will start from the day after the birth.

Statutory Paternity Pay – If your baby is born early you must tell your employer of the date the baby was due and the actual date of birth and by completing the form SC3, as soon as possible. You also must tell your employer when you want to take your Ordinary Paternity Leave and Ordinary Statutory Paternity Pay (OSPP) and whether you will take in 1 or 2 consecutive weeks. You can take your leave any time between the actual date of birth and the end of an 8 week period running from the Sunday of the week the baby was originally due.

The normal rules for Additional Statutory Paternity Pay apply.

Late births

If your baby is born later than the week in which it was due, your MAP or 14 week period will not change if it has already started. If you continue to work beyond the date your baby is due and you give birth, your MAP or 14 week period will start the day following the day your baby was born.

If your baby is born later than the week in which it was due, and after your MPP had started, your SMP is not affected. Your MPP remains the same. However, if you are incapable of work when your MPP ends, you may be able to get Statutory Sick Pay from your employer or Employment and Support Allowance from Jobcentre Plus.

Stillbirth/miscarriage/termination

After the 24th week of pregnancy, rights to leave and SMP are the same as if the baby had been born alive. If it occurs before the 24th week you will not be entitled to maternity leave or pay.

You should take sick leave for as long as your GP signs you off sick. Sick leave for a miscarriage may be protected in the same way as sick leave for a pregnancy related illness, if so you are not limited in how much you can take and it must be recorded as such and does not count towards your sickness record. Even if it is not protected in the same way, employers have to treat you fairly without sex discrimination and case law suggests that it is unlawful to dismiss someone for an absence directly caused by miscarriage.

If you have a stillbirth, or if your baby is born alive but later dies, even after a few seconds, rights to leave and SMP remains. If you are entitled to MA, but have not yet claimed it, you should claim it as soon as you can. If you have claimed MA but are not yet receiving it you must let Jobcentre Plus know.

If you are already on maternity leave you do not have to take any action, but if the birth happens before you intended to start maternity leave, or before you gave notice of maternity leave to your employer, your maternity leave will start the day after the birth and you will need to inform your employer as soon as you can. You are entitled to Child Tax Credit and Child benefit, if you meet the other conditions, for the period from the birth until eight weeks after the baby's death. You may be entitled to some Working Tax Credit, or you may be able to claim Income Support for 15 weeks after your pregnancy ends, if you meet the other conditions.

If you return to work within 6 months of the birth then you are entitled to the same health and safety rights as other women who have given birth within the last six months.

Fathers or partners will also still be entitled to take Paternity Leave. This leave must be completed within 56 days of the birth. However, if the baby was born early the leave must be completed within the period from the actual date of birth to 56 days after the expected week of birth.

You can still make a claim for Child tax credits within 3 months of the birth. If you are already getting tax credits, you continue to receive it for up to 8 weeks following the death.

Means tested benefits

If you have not paid enough NI contributions or earned enough to be eligible for either SMP or Maternity Allowance, you may be able to claim means tested benefits from the local Jobcentre Plus.

Sure Start maternity grant

This is a lump-sum payment to new or expectant parents, worth £500 for a new baby. You can claim anytime up to 11 weeks before the due date or three months after giving birth or adopting a baby.

To **qualify**, this must be your first child and you must get one of these benefits:

- Income Support
- income-based Jobseeker's Allowance
- income-related Employment and Support Allowance
- Pension Credit
- Child Tax Credit at a rate higher than the family element
- Working Tax Credit that includes a disability or severe disability element
- Universal Credit

If you already have children under 16, you can only get a grant if you're expecting a multiple birth.

You may also be able to get a grant if you're adopting or becoming a surrogate parent.

You will be entitled to the grant if you meet the other conditions and you have a stillbirth after the end of the 24th week of your pregnancy, or if the baby dies very soon after birth.

Child Benefit

This is a tax free benefit to help parents with the costs of child(ren) rearing. You will receive this for every child from birth until they are at least 16 years old. Child Benefit is paid to the person/people responsible for a child. The Bounty Pack given to new parents in hospital includes a Child Benefit claim pack or you can get it by calling the Child Benefit helpline on 0300 200 3100. You must claim Child Benefit within three months of your baby's birth or you could lose out on some benefit.

Healthy Start scheme

If you're pregnant or have a child under 4, the Healthy Start scheme can help you buy basic foods like milk or fruit. If you qualify you'll be sent one voucher worth £3.10 (2015) each week (2 vouchers per week if you have a child under 1). You can also get coupons to swap for vitamins for yourself and your child.

For more information please ask your midwife or health visitor.

NHS prescriptions and dental care

You are entitled to free prescriptions and dental care including check-ups and treatments during pregnancy and for 12 months after giving birth. Your child is also entitled to this until they are at least 16 years old. Please ask your doctor or midwife for more information.

Key negotiating aims on maternity pay

- Increase the amount of maternity pay towards 100% of pay. For the first 6 weeks this only means an additional cost to the employer of 10% of salary, as 90% is reimbursed by the government (for small employers this is 103%). For the next weeks, the government reimburses SMP
- Increase the amount of weeks' leave covered by maternity pay – start by arguing for a percentage of average pay or flat rate
- No obligation to pay back contractual maternity pay if the employee does not return to work. If this is currently not the case, check the sick pay policy, and if it is more generous this could be used to argue for a change in rules on maternity pay
- If the employer tops up Statutory Sick Pay more than they top up maternity pay, negotiators could argue that maternity pay ought to be at least as much as SSP
- Ensure that pay reaches the threshold at which national insurance starts, or members' benefit and pension positions may suffer

Rights during maternity leave

Whilst a woman is pregnant or on maternity leave she is **protected from dismissal or other unfavourable treatment** regardless of hours worked or length of service, and whether she is on a permanent or a temporary contract. If you are dismissed, or selected for redundancy, (or also if you are turned down for a job you have applied for) for a pregnancy and childbirth-related reason this will automatically count as unfair and as sex discrimination.

During **Ordinary Maternity Leave**, all contractual rights (except pay) must be maintained and accrued, for example pension rights, holiday entitlement, job opportunities that become available, company car, travel passes, mobile phone (unless these are solely for business use) and any other perks such as gym membership etc. When calculating the SMP, employers should take into account any pay increase between the beginning of the 15th week before the woman's due date and the end of the maternity leave period.

For women on **Additional Maternity Leave**, your contract also continues during this additional period, but you have no automatic rights to most contractual benefits (aside from statutory rights e.g. redundancy) in this time.

If a **redundancy**[6] situation arises whilst you are on ordinary or additional maternity leave, you are entitled to be offered a suitable alternative vacancy (if one exists), on terms and conditions that are at least as favourable as before. Please contact your Officer for advice.

If the employer goes out of business whilst you are on maternity leave, you can claim SMP and redundancy from the government (and should contact your union official regarding this). If the employer changes whilst you are on leave, SMP remains the responsibility of the original employer.

Sickness after maternity leave

If you are sick when your maternity leave ends then your employer's normal sickness procedures applies. Any period of sickness absence starts from the date you would have returned to work. If you are off sick for a long time and you there is a potential case of dismissal then your pregnancy related absences (including pregnancy related illness) should be ignored and you should not be treated less favourably. Please contact your Officer about this.

Key negotiating aims on rights during maternity leave

- All women taking their maternity leave entitlement (OML or AML) to have the right to return to the same job, at the same hours if they wish
- The employer should ensure that clear and accessible information is made available to parents regarding their rights and obligations. They should also ensure that they keep parents on leave informed as to any important developments in the workplace including any vacancies that arise (which they should be allowed to take up on their return, if successful in applying)
- In special circumstances, for example multiple births or problems concerning the health of the child (including fertility treatment, miscarriages and terminations), disabled child and postnatal depression an extension to the leave period may be granted, without the employee needing to use up their sick leave. Of course all such situations must be treated confidentially by the employer
- All contractual benefits, particularly holiday and pension accrual, to be maintained and accrued during Additional Maternity Leave as well

Returning to work

Women on **ordinary maternity leave** have the right to return to the same job, on the same terms and conditions, after the 26 weeks leave regardless of the size of the employer.

Women on **additional maternity leave** have the right to return to the same job, unless it is not reasonably practicable, in which case you have the right to return to a similar job on terms and conditions that are at least as favourable as if you had been at work.

[6] Section 10 – Maternity and Parental Leave etc. Regulations 1999. Republic of Ireland – Section 27 of the Maternity Protection Act 1994.

If you decide **not to go back to work** after the birth of the baby, this does not affect your right to SMP or MA, since you qualified for this before you went on leave. If you are undecided you should keep your options open. If you decide not to return at the end of maternity leave, you only need to give the notice as required in your contract as if you were resigning.

If you want to return to work on a part-time basis or with **different hours** or working arrangements, your employer has a legal duty to consider your request seriously – see 'Flexible Working' section.

You also have the right to **optional** Keeping in Touch (KIT) Days. These are designed to ease women back into work if they wish. It enables a woman to work for up to 10 days by mutual agreement during her maternity/adoption leave period without losing a week's Statutory Maternity Pay (SMP) or Statutory Adoption Pay (SAP). KIT days can be worked at any time during the leave period, except the first two weeks after childbirth. You and your employer can agree on the days you wish to work.

You must be paid for KIT days, but the level of pay needs to be agreed by you and your employer. This pay should not be less than the SMP/SAP rate. If you want to stay off work after your OML or AML you will lose your right to return to work, unless your contract says otherwise. For more advice please contact your shop steward/workplace representative and refer to "Key negotiation aims on returning to work".

Notice

The employer is responsible for notifying you of your expected return date, rather than the other way round. You only have to notify your employer if you intend to return to work **before the end of your full maternity leave entitlement**, whether that is 26 or 52 weeks. In this situation you must give 56 days' notice of the date you intend to return to work.

Key negotiating aims on returning to work

- Rights to flexible working if women want to return on reduced hours, part-time or job share basis. Also a right to return to the original contract after an agreed period of flexible working
- Commitment to refresher training where necessary (particularly after extended leave). This should not be assessed and should be in agreement with the worker
- Paid time off for post-natal clinics or parenting classes
- Some larger companies allow unpaid childcare career breaks of up to 5 years
- A guarantee that Keeping in Touch (KIT) days will be paid – a full day's pay for working a full KIT day
- A guarantee that no pressure will be placed on the women to come in for KIT days
- Agree with the employer the nature of the work that can be undertaken during KIT days

Shared Parental Leave (SPL)[7]

Shared parental leave and pay is available to parents who qualify, if your baby was due or you adopted a child on or after 5 April 2015 (until 4 April 2015 fathers may get Additional Paternity Leave instead).

[7] England, Wales, Scotland and Northern Ireland.

SPL is available to eligible parents who have a baby or who adopt a child. SPL means that the mother can choose to share her maternity or adoption leave and pay with her partner if the partner is also eligible for SPL. You can choose how much of the leave each of you will take and you can suggest a flexible pattern of leave to your employer, although they do not have to agree flexibility.

SPL must be taken within the baby's first year (or within 1 year of adoption). A maximum of 50 weeks leave can be shared between parents from 2 weeks post birth (4 weeks for factory workers) 39 weeks of which are paid (37 weeks of the statutory shared parental pay and 2 weeks of statutory maternity pay). If you opt for SPL then maternity rights are curtailed meaning that you or your partner end maternity or adoption leave or pay (or Maternity Allowance) early. There is no extra entitlement for multiple births.

Your terms and conditions of employment are protected during SPL and you have the same redundancy rights as others in the workplace.

Notice period

You must give at least 8 weeks' notice of any SPL you wish to take. If the child is born more than 8 weeks early, this notice period can be shorter.

You can book SPL in up to 3 separate blocks instead of taking it all in one go, even if you aren't sharing the leave with your partner. Your employer can agree to more blocks of leave. Your employer can also let you split each block into several shorter periods of work and leave.

If your partner is eligible for SPL, you can take leave at different times – or both at the same time.

You must give your employer at least 8 weeks' notice before you want to begin a block of leave. You can amend the agreed leave pattern with notice.

If either parent dies and the other parent is taking, or is entitled to SPL then they will continue to be eligible. Any SPL that was due to be taken by the deceased parent may be transferred to the other parent if the other parent is eligible for SPL.

Should it be necessary for the other parent to take a further period of SPL or to vary pre-agreed leave then notice may be given as soon as is reasonably practicable if eight weeks' notice cannot be given. If they have already given three notices to take leave they must be allowed to submit one further notice to book/amend SPL.

It is good practice for your employer to confirm they have received and accept your notifications.

To be **eligible** you must share care of the child with:

- your husband, wife, civil partner or joint adopter
- the child's other parent
- your partner (if they live with you and the child)
- AND you must:
- have been employed continuously for at least 26 weeks by the end of the 15th week before the due date (or by the date you are matched with your adopted child)
- be employed by the same employer while you take SPL

For your partner to be eligible they must, during the 66 weeks before the baby is due:

- have been working for at least 26 weeks (they don't need to be consecutive)
- have earned at least £30pw on average in 13 of the 66 weeks

They can be employed, self-employed or an agency worker.

Starting Shared Parental Leave

You or your partner can only start SPL once the child has been born or adopted. The mother or adopter must have either:

- ended any maternity or adoption leave by returning to work
- given 'binding notice' (a decision that can't normally be changed) to their employer of the date when they plan to end any maternity or adoption leave
- ended maternity pay or Maternity Allowance

The mother or adopter must give notice to their employer (at least 8 weeks) to end maternity or adoption pay, or to Jobcentre Plus to end Maternity Allowance.

You can start SPL while your partner is still on maternity or adoption leave as long as they've given binding notice to end it.

What you must do

You must give your employer written notice of your entitlement to SPL, including:

- your partner's name
- start and end dates for maternity or adoption leave
- the total amount of SPL available and how much you and your partner intend to take
- confirmation that you're sharing childcare responsibility with your partner

You must also include a signed declaration from your partner stating:

- their name, address and National Insurance number
- that they satisfy the qualifying requirements for SPL
- that they agree to you taking SPL

Your employer has 14 days if they want to ask for:

- a copy of the child's birth certificate
- the name and address of your partner's employer

You must provide this information within 14 days.

Cancelling the decision to end maternity or adoption leave

The mother or adopter may be able to change their decision to end maternity or adoption leave early if both:

- the planned end date hasn't passed
- they haven't already returned to work

One of the following must also apply:

- you find out during the 8-week notice period that neither of you is eligible for SPL or Statutory Shared Parental Pay
- the mother or adopter's partner has died
- the mother tells her employer less than 6 weeks after the birth (and she gave notice before the birth)

Statutory Shared Parental Pay (ShPP)

ShPP is available to parents who qualify, if your baby was due or you adopted a child on or after 5 April 2015 (until 4 April 2015 fathers may get Additional Paternity Leave instead)

ShPP must be taken within the baby's first year (or within 1 year of adoption). If the mother or adopter curtails their entitlement to maternity/adoption pay or maternity allowance before they have used their full entitlement then Shpp can be claimed for any remaining weeks. The amounts are £139.58pw (from April 2015) or 90% of your average weekly earnings, whichever is lower.

To **be eligible** a parent must:

- have worked for your employer under a contract of employment for at least 26 weeks by the 15th week before the expected week of childbirth or the 'matching week' in case of adoption
- have earned an average salary of the lower earnings limit of £112 for the 8 weeks' prior to the 15th week before the expected due date or matching date
- The other parent in the family must meet the employment and earnings test

You will also qualify for ShPP if either:

- you qualify for Statutory Maternity Pay or Statutory Adoption Pay
- you qualify for Statutory Paternity Pay

AND

- have a partner who qualifies for Statutory Maternity Pay or Maternity Allowance or Statutory Adoption Pay

What you must do

You must give your employer written notice of your entitlement to ShPP, including:

- your partner's name
- start and end dates for maternity or adoption leave and pay
- the total amount of ShPP available and how much you and your partner intend to take
- confirmation that you're sharing childcare responsibility with your partner

You must also include a signed declaration from your partner stating:

- their name, address and National Insurance number
- that they satisfy the qualifying requirements for ShPP
- that they agree to you taking ShPP

Your employer has 14 days if they want to ask for:

- a copy of the child's birth certificate
- the name and address of your partner's employer

You must provide this information within 14 days.

Returning to work after Shared Parental Leave

You are entitled to return to the same job if your combined leave period (comprising of maternity/paternity/adoption and shared parental leave) totalled 26 weeks or less.

If the leave is more than 26 weeks, or is the last of 2 or more consecutive periods of statutory leave including a period of unpaid parental leave exceeding four weeks (i.e. more than 26 weeks leave or have more than 1 period of leave), you have the right to return to the same job unless it is not reasonably practicable, in which case you should be offered a suitable and appropriate job on terms and conditions that are no less favourable.

Shared parental leave in touch (SPLIT) days

You and your partner can both work up to 20 days during SPL. These are called 'shared parental leave in touch' (or SPLIT) days.

These days are in addition to the 10 'keeping in touch' (or KIT) days already available to those on maternity or adoption leave.

Republic of Ireland – Parents can take parental leave from employment in respect of certain children. On the 8th March 2013 the European Union (Parental Leave) Regulations 2013 increased the amount of parental leave available to each parent per child from 14 weeks to 18 weeks. Additional rights are presently under consideration in the new Family Law Bill which will cover carer's leave, parental leave, maternity leave and adoption leave.

This Legislation has not been passed at the time of publication.

Key negotiating aims on shared parental leave and pay

- All contractual maternity leave, pay and benefits to be maintained unless it is going to be enhanced
- Match contractually enhanced pay and benefits during SPL (please refer to "Key negotiating aims on maternity pay"). This is particularly of low cost for organisations employing large numbers of women
- Make ALL fathers'/partners' leave a day one right
- The employer should actively promote SPL to fathers in their workforce

Health & safety

Regulations[8] state that employers must carry out risk assessments and keep employees informed of the outcome. If any women of childbearing age are employed, this must specifically aim to eliminate hazards to pregnant women and their unborn child, women who have recently given birth (within the last 6 months, and including situations where the woman has miscarried or had a stillborn baby after the 24th week) and breastfeeding mothers (regardless of whether any employees are in this situation at the time). Examples of hazards may include:

- Lifting heavy loads
- Working in confined spaces
- Working at unsuitable workstations
- Working in extreme temperatures
- Exposure to shocks or vibration
- Working in stressful or violent conditions
- Working with lead and other toxic substances including radioactivity

[8] Management of Health and Safety at Work Regulations 1999.

If the hazards are unavoidable in your current job, your employer must offer you suitable temporary alternative work/shift on terms and conditions no less favourable than your current one. If there is no suitable alternative work, you must receive full pay and contractual rights, while suspended on medical grounds. Employers also have a duty[9] to provide suitable rest facilities for pregnant women and nursing mothers, ideally including a place to lie down and near toilet facilities.

Please also refer to factsheet on pregnancy and health and safety.

Key negotiating aims on pregnancy and health and safety

- Policy to make explicit that pregnancy is not to be equated with sickness
- Facilities for breastfeeding mothers to safely express and store milk

b. New fathers & partners of new mothers

Ordinary paternity leave or maternity support leave

New fathers are entitled to up to 2 weeks (consecutive or one week at a time) paternity leave during the 8 weeks following the birth. This is known as **ordinary paternity leave (OPL).** This also applies to couples who adopt – whichever parent has taken maternity leave, the other will be entitled to paternity leave, regardless of gender. This leave will be paid at a rate of £139.58pw (from April 2015, previously £138.18pw) (or 90% of average weekly earnings if that is less) providing they earn at least £112pw (from April 2015, previously £111pw)[10].

There is only one period of leave available even for multiple births.

Please Note – Additional Paternity Leave and Pay will no longer be available for babies due after 5 April 2015.

The same protections from dismissal or unfavourable treatment apply to paternity leave as to maternity leave.

To **be eligible**, you must:

- expect to share responsibility for the child's upbringing with the mother – i.e. be the mother's partner (male or female), not necessarily the biological father
- have worked for your employer under a contract of employment for at least 26 weeks by the 15th week before the expected week of childbirth or the 'matching week' in case of adoption
- give notice by the 15th week before the due date or the 'matching week' in case of adoption, including the dates you wish to take leave. (The dates can be varied by giving 28 days' notice, where reasonably practicable to do so)
- give your employer a completed self-certificate form. Please refer to www.gov.uk for the forms (www.nidirect.gov.uk in Northern Ireland and www.gov.ie in the Irish Republic).

Republic of Ireland – There is no provision for statutory paternity pay however, you may be entitled to parental leave.

[9] Workplace (Health, Safety and Welfare) Regulations 1992 (the Workplace Regulations).

[10] England, Wales, Scotland and Northern Ireland.

Key negotiating aims on paternity/maternity support leave

- **All** employees regardless of length of service, hours worked and employment status to be entitled to 2 weeks paternity/maternity support leave on full pay. Start by arguing for a percentage of average pay or a flat rate. This provision should apply to employees regardless of gender or sexual orientation. It can also apply to a grandparent who is a nominated carer.
- Maximum flexibility around when paternity leave can be taken – aim for any time within 1st year of birth with shorter notice periods
- Fathers or nominated carers should also be entitled to attend antenatal care with their partner or relative, on full pay
- A longer paternity leave with no service requirement
- All employees should be entitled to APL-style leave regardless of the employment status of their partner
- Flexibility in APL-style leave, to allow parents to have time off together at any time in the child's first 12 months
- Entitlement to special extended leave in cases of premature, disabled or multiple-births, partners with postnatal depression, or partners who die or are seriously Incapacitated within the first year of the child's life

c. New Adoptive parents[11]

Adoption leave

Adoption rights extend to employees who adopt a child (under the age of 18). One adoptive parent is entitled to adoption leave. If you have a partner, he/she is entitled to paternity leave and pay (if they meet the criteria as outlined above). You are entitled to leave from the date your child starts living with you or up to 14 days before this date. Your partner may also be entitled to Shared Parental Leave and Pay if you have adopted your child on or after 5 April 2015.

Qualifying employees are entitled to 52 weeks' adoption leave made up of 26 weeks' **ordinary adoption leave** and 26 weeks' **additional adoption leave.** All adoptive parents are entitled to adoption leave, regardless of length of service or number of hours worked and regardless of the size of the employer. Whether this is paid or not depends on your level of earnings and length of service.

Since 5 April 2015, statutory adoption pay has been enhanced for the first six weeks to 90% of average earnings, followed by 33 weeks at the basic rate of £139.58pw for a further 33 weeks or 90% of salary, if that is less.

Before 5 April 2015, adoption leave would have been paid for 39 weeks at the basic rate only, which was then £138.18pw or 90% of average weekly earnings, if that was less.

As with maternity leave, 13 weeks' of the additional adoption leave.

The same protections against dismissal and detriment apply as with ordinary and additional maternity leave, above.

There is no extra entitlement for multiple adoptions.

[11] England, Wales, Scotland and Northern Ireland.

To **be eligible** employees must:

- have adopted a newly placed child (for exceptions see below) through an approved adoption agency in the UK or overseas
- have worked continuously for their employer for 26 weeks prior to the notification of the child being placed
- notify their employers of their intention to take leave, and proposed dates, within seven days of being matched with a child. (The dates can be varied if the employee gives 28 days' notice)
- provide a copy of the 'matching certificate' from the adoption agency

Your employer must confirm within 28 days your leave start and end dates.

If you wish to return to work before the end of the adoption leave period, then you must give 8 weeks' notice.

Since 5 April 2015, adoption leave has become a "day one" right (previously this required 26 weeks' service). Also, the main adopter is able to take paid time off for up to five adoption appointments. The secondary adopter is entitled to take unpaid time off for up to two appointments. Some surrogate parents will become eligible for adoption leave as well.

If you are adopting from overseas, the conditions are the same except you must:

- sign the SC6 Form if you're adopting a child with your partner which confirms you're not taking paternity leave or pay;
- have 'official notification' (permission from a UK authority) that you can adopt from abroad; and
- tell your employer the following-

  (1) the date of your 'official notification' and the expected date the child arrives in the UK (within 28 days of getting the notification);

  (2) the actual date the child arrives in the UK (within 28 days of that date); and

  (3) how much leave you want and when you want the leave to start (giving 28 days' notice)

You can work up to 10 keeping in touch days (KIT) during your adoption or additional paternity leave (APL).

Exceptions
You don't qualify for Statutory Adoption Leave or Pay if you:

- arrange a private adoption
- become a special guardian or kinship carer
- adopt a stepchild
- adopt a family member

If you're not eligible your employer must give you the SAP1 form explaining why you can't get statutory adoption pay. You may also be able to get support from your local council.

Republic of Ireland – You are entitled to 24 weeks adoption leave. You are also entitled to take 16 additional weeks unpaid adoption leave after your adoption leave ends. Your right to adoption leave means you have a right to a period of leave from your employment without pay. If you have enough PRSI contributions you may qualify for adoption benefit which is paid by the Department of Social Protection while you are on adoption leave.

Key negotiating aims on adoption leave

- Paid time off to attend all pre-adoption appointments otherwise negotiate for flexibility to be allowed for adoptive parents to be able to use their pay and leave entitlement to cover pre-adoption meetings, appointments etc.
- Rights for foster parents
- Where maternity terms are better than adoption terms, aim for the policy to state that it will follow the maternity policy

3. Rights for all working parents and carers

a. Parental leave[11]

Parents of all[12] children under 18 are entitled to 18 weeks (unpaid) parental leave, per child, up to their 18th birthday. Each parent is entitled to take 4 weeks per year for each child, unless other arrangements are agreed with the employer.

Parental leave should be taken in blocks of a week or multiples of a week, unless you have agreed a different arrangement with your employer, or your child is disabled.

Your terms and conditions and employment rights are protected during parental leave. You have the right to return to the same job if the leave is for 4 weeks or less, or otherwise to the same or similar job.

To **be eligible**, you:

- must have completed 1 years' continuous employment with their employer to qualify
- may need to provide evidence e.g. birth or adoption certificate
- may need to give 21 days' notice, though this may be varied
- must have or expect to have parental responsibility

How to take leave

It is preferable for leave to be flexible especially regarding how much leave has to be taken at once.

[11] Republic of Ireland – Parents can take leave from employment in respect of certain children.

[12] From 5 April 2015, parental leave became available to parents of all children up to 18 years old, regardless of whether they are adopted or birth children, or whether they are disabled or not.

Where there is no agreement in place, the **'default'** scheme allows for you to take parental leave a week at a time, but if your child is on Disability Living Allowance (DLA) or Personal Independence Payment (PIP), you can take parental leave a day at a time.

The employer may postpone the requested leave for up to 6 months if the business would be 'particularly disrupted' by the leave at that time. But they cannot postpone the leave if you apply to take parental leave immediately after maternity/paternity/adoption leave OR if it means you would no longer qualify for parental leave.

Key negotiating aims on parental leave

- Rights to parental leave to be awarded **from day one** of employment
- Parental leave to be allowed within 8 years of child's birth, or older
- Aim for full pay for parental leave, building up from a reduced rate (flat rate or percentage) – this should be as favourable as the maternity pay policy
- Parental leave to be available in blocks from a minimum of half a day (not one whole week), up to the full 13 weeks in one year
- !t may be taken on a part-time basis, so working hours are reduced for a specific length of time, or start/finish times changed
- Parental leave to be available with no, or minimum notice
- Parental leave to be made available to all those with caring responsibilities including adult relatives and friends
- Contribution towards childcare costs through facilities, subsidised places or allowances. Where childcare vouchers are offered, this should be in addition to pay rather than as "salary sacrifice". If vouchers are taken in place of salary, at least aim to have them treated as notional salary for the purpose of pension contributions
- Employers should only postpone parental leave in exceptional circumstances – aim for a maximum postponement of 3 months

b. Time off for dependants

All employees have the right to 'reasonable' (unpaid) time off work at short notice to help dependents in an emergency. You should give your employer as much notice as is possible of your leaving and return dates. You do not have to provide proof for the reasons of time off.
A **dependant** could be a spouse, partner, child, parent, grandchild or someone who depends on you for care. It could also be anyone who relies on you for assistance in an emergency e.g. neighbours. Types of **emergencies** include illness, injury (including mental distress), accident, assault, childbirth, incidents at school, and breakdown in care arrangements. You are entitled to reasonable time off to deal with the emergency and it depends on the situation.

Key negotiating aims on time off for dependants

- A minimum of 10+ days paid family leave with wide scope and definition of caring responsibilities
- Existing rights to paid bereavement, compassionate and/or paternity leave must not be undermined so keep time off arrangements separate unless the overall package of rights improves

c. Flexible working[13]

All employees now have the right to request flexible working, not just those who care for dependants, provided you have at least 26 weeks' service – for example, a change to hours, times of work, to allow working from home, flexi-time or term time working.

You have the right to make one application per year for flexible working.

Your employer must consider this application seriously, in a 'reasonable manner'and give good reasons if they reject it. Examples of dealing with requests in a 'reasonable manner' would include assessing the advantages and disadvantages of the application, holding a meeting with you to discuss the request and offering an appeal process.

Your employer can refuse an application if they have a good business reason for doing so, but there are legal protections if your employer doesn't handle a request in a reasonable manner, wrongly treats your application as withdrawn or rejects an application based on incorrect facts, an employment tribunal claim should be considered.

Some employees have also successfully used the Equality Act 2010[14] to argue that refusal to allow part time or flexible working hours, for example, in the case of London Underground v Edwards (1995/1998) is indirect sex discrimination as it affects women much more than men. If you are thinking of using the Equality Act 2010 you should contact your local union representative or official for advice.

To **be eligible** you must:

- have been continuously employed by the same employer for at least 26 weeks; and
- not have made a previous application in the last 12 months

You are protected against dismissal, victimisation or any other detriment for requesting flexible working or because you helped someone else to do so.

Procedure

Apply in writing. Your employer must then meet with you to discuss. You may take a colleague to the meeting with you (we suggest your shop steward/workplace rep).

Your employer must then write to you within 3 months (or longer if agreed with you) with their response. If your request is agreed, your contractual terms and conditions has to be changed accordingly. If your request is refused, your employer must write to you with their business reasons for the refusal. You no longer have a statutory right to appeal but being offered an appeals process shows that your employer is handling the request in a 'reasonable manner'. To appeal you must follow your appeal's procedures.

You may complain to an Employment Tribunal if your employer:-

- didn't handle the request in a 'reasonable manner'
- wrongly treated your application as withdrawn
- dismissed or treated you poorly because of your flexible working request, e.g. refused a promotion or pay rise
- rejected an application based on incorrect facts

You cannot complain to an Employment Tribunal only because your flexible working request was rejected.

[13] England, Wales, Scotland and Northern Ireland.

[14] Sex Discrimination (Northern Ireland) Order 1976.

NOTE: If accepted, the change in hours becomes a permanent change to the employee's contract unless it is agreed otherwise with the employer (e.g. temporary change or a trial period). Therefore, parents need to think carefully before making a request under the "right to request flexible working" regulations.

Republic of Ireland – There is no statutory provision for a right to flexible working however, a code of practice on access to part-time working was introduced in 2006 as best practice for employers to have policies on improving access to part-time work.

Key negotiating aims on flexible working

- The right to flexible working rather than the right to request it
- Right to request should extend to a broader definition
- A policy should make a commitment to consider the request positively, and only refuse in exceptional circumstances
- Employers to consider request for flexible working more than once a year
- When a request is accepted it should not become a permanent change unless it is specifically asked by the employee

d. Rights of carers

Caring for older relatives and dependents is increasingly part of many workers' lives. Rights for carers have been introduced and the union is campaigning and negotiating to build on these. Carers of adults have the legal right to request flexible working (which has now been extended to all employees with the requisite service) and to time off in emergencies.

- **Right to request Flexible working** – if you are an employee with 26 weeks continuous employment at the date you make an application and you have not made a previous application in the last 12 months (as above).
- **The right to time off in emergencies** -– also known as time off for dependants.
  1. A dependant could be mother, father, son, daughter, parent or anyone who lives with you or someone who relies on you for assistance if they fall ill or are injured
  2. An emergency could be:
     - o A disruption or breakdown in care arrangements
     - o The death of a dependant
     - o If a dependant falls ill or has been assaulted
     - o To make longer term arrangements for a dependant who is ill or injured (but not to provide long term care yourself)

Republic of Ireland – Carer's benefit is a payment made to ensure that people who leave the workforce to care for a person(s) in need of full time care and attention. You can obtain a carer's benefit for a total period of 104 weeks for each person being cared for.

Key negotiating aims for carers

- Policy for carers to cover all employees with a broad definition of dependents. Currently those people who care for friends or neighbours or some relatives are not included. The legal definition can exclude vulnerable groups, including migrant workers who may have no relatives in the UK and the growing number of men estranged from their families after divorce. Lesbian and gay people may also lose out, as they are more likely than other communities to rely on friends rather than blood relatives for mutual support and care.
- Carers to be eligible for time off for dependents and parental/carers leave on terms which are as good as for parents of young children
- 13 weeks leave on full pay at short notice. Start with a minimum of 10 days paid leave
- Right to change your working hours e.g. right to transfer off shift work and to refuse overtime

e. Tax credits

There are three main types of financial support available for working people with children. Both are claimed on a single form available from the Inland Revenue.

Child tax credit

To be eligible for child tax credit you must be responsible for a child under 16 or under 20 and in approved education or training. Child tax credit is payable directly to the main carer (usually the mother). You don't need to be working to claim Child Tax Credit. You get money for each child that qualifies and it would not affect your Child Benefit. Only one household can get Child Tax Credit for a child.

You may get **disabled-child element** of Child Tax Credit if your child gets DLA or is registered blind (or was within 28 weeks of your tax credits claim) or you may get severely-disabled-child element if your child gets the highest rate Care component of DLA. You still qualify if DLA stops because the child goes into hospital.

You can get tax credit for 20 weeks if your child leaves education or training before they're 18 and:

- registers with their local careers service, Connexions or local authority support service (or the Education and Library Board in Northern Ireland or similar careers organisation in the European Economic Area, Norway, Switzerland, Iceland or Liechtenstein)
- joins the Armed Forces

Your child must be 16 or 17, work less than 24 hours a week and not get certain benefits (e.g. Income Support).

If your baby is born but dies afterwards, please refer to the the stillbirth/miscarriage/termination section.

Working tax credit

Working tax credit is paid to parents earning lower incomes (and also to some single people without children and disabled people). It tops up your income to a higher level depending on your age, hours of work, income and other circumstances.

If your baby is born but dies afterwards, please refer to the stillbirth/miscarriage/termination section.

Working tax credit (childcare element)

You could get help with your childcare costs while you're working. This could be up to £175pw (from April 2015, previously £175pw) for 1 child and up to £300pw for 2 children or more. The amount depends on your income and how often you pay for childcare. Costs are available to families who pay registered or approved childcare, work the right number of hours for childcare tax credits. This must be claimed as part of the working tax credit claim. You can get these tax credits until the Saturday after 1 September following your child's 15th birthday (16th if they're disabled).

You can claim for childcare provided by a relative if they're a registered childminder and they care for your child outside your home. In Wales and Northern Ireland, you can claim for childcare provided by a relative who's approved under a home childcare providers scheme. However, you can only claim if they care for your child outside your home and they care for at least one other child that isn't related to you. To see if you are entitled please check with the Inland Revenue.

Republic of Ireland – A tax credit system does not apply. A child benefit previously known as Children's Allowance is payable to the parents or guardians of children under 16 years or under 18 years if the child is in full-time education.

f. Rights for part time, temporary, agency and contract workers

Part time workers[15] are entitled to all the benefits paid to full time workers. They are eligible for full statutory maternity, paternity and adoption leave and pay providing they meet the other criteria.

Agency and temporary staff may be entitled to SMP and other statutory payments from their agency if they have worked for their agency continuously for 26 weeks (not necessarily full time) before the 15th week before the baby is due. Entitlement to other family friendly rights depends on whether the worker has the status of "employee" or of "worker". Usually, agency and temporary workers do not count as "employees" and therefore they have no automatic right of entitlement to maternity, paternity or adoption leave, parental leave, paid time off for antenatal care, emergency time off for dependents, to be suspended on full pay or given alternative employment on health and safety grounds, or to request flexible working.

As an **agency worker**[16], you may be entitled to statutory maternity pay but you can't get statutory maternity leave.

Your hirer will need to make an adjustment if it is reasonable. If it is not reasonable then your agency should offer you suitable alternative work, if available. You should be paid at least the same rate until the end of the assignment. If there is no suitable work the agency must pay you at the same rate for the length of the terminated assignment. If the end date is not known, the agency must pay you for what would have been the likely duration of the terminated assignment.

After 12 weeks in the same job you can get paid time off including travel time to go to antenatal appointments or classes if you cannot reasonably arrange them outside working hours.

If you are discriminated on grounds of pregnancy you might be able to take your case to an Employment Tribunal.

[15] England, Wales, Scotland and Northern Ireland.

[16] England, Wales, Scotland and Northern Ireland.

It is worth checking the contract with the agency and the policies of the employer as these may give better rights or they may (more unusually) give the worker the status of "employee" of the agency.

Occasionally someone in this situation might be able to rely on the Equality Act 2010[17] to get family friendly rights, particularly around the area of health and safety, as this law covers all workers.

Workers on fixed term contracts generally do count as "employees" and are therefore entitled to all the rights in this guide. However, the length of the contract and the timing of maternity leave would have an impact on rights and advice needs to be obtained.

Workers on zero hour contracts are covered by some employment legislation including the Equality Act 2010[18] but are not covered by others, notably those relating to maternity and paternity leave and pay.

Republic of Ireland – Employees on fixed term contracts have broadly similar rights to those on open ended contracts. The majority of employees work under open ended contracts of employment. Those employed on fixed term or specified purpose contracts are protected by Protection of Employees (Fixed Term) Act 2003 however, this legislation does not apply to agency workers placed by a temporary work agency.

There is additional legal protection for agency workers however they do not have all the same employment rights as permanent workers.

g. Parents in surrogacy arrangements

If you are having a child through surrogacy then the surrogate will be the legal mother of any child they carry. The woman who gives birth is always treated as the mother in UK law, and will have the maternity rights. She has the right to keep the child – even if they are not genetically related. However, parenthood can be transferred by parental order or adoption.

If neither you nor your partner is related to the child, or you're single, adoption is the only way you can become the child's legal parent.

You or your partner won't be entitled to maternity leave, paternity leave or statutory adoption leave if you use a surrogate. However, you could qualify for parental leave if you have worked for your employer for at least a year and you have an Adoption Order or you are named on the child's birth certificate and you have or expect to have parental responsibility.

Since 5th April 2015, parents in a surrogacy arrangement who are entitled to and intend to apply for a Parental Order under the Human Embryology and Fertilisation Act 2008 have been able to take adoption, paternity leave and pay (birth and adoption), if each parent is eligible (see above).

For babies due on or after 5th April 2015, eligible parents will also be entitled to take shared parental leave for a year from the birth.

h. Egg, sperm and embryo donation

If you're an egg, sperm or embryo donor, you could be the legal parent of any child born from your donation. This depends on whether or not you have donated through a Human Fertilisation and Embryology Authority (HFEA) licensed clinic.

[17] Sex Discrimination (Northern Ireland) Order 1976.

[18] Sex Discrimination (Northern Ireland) Order 1976.

Donation through a licensed clinic would mean that you will not be the legal parent and therefore have no legal obligation to any child(ren) born from your donation. However, using an unlicensed clinic to donate sperm will make you the legal father.

Under UK law, when you give birth to a child you are considered to be the legal mother, even if you have used donated eggs or embryos.

If you receive donated eggs, sperm or embryos through a licensed clinic then you will be the legal parent of the child(ren).

You do not need to tell your employer that you are donating but as you need to take time-off work you might consider it, depending on how sympathetic your employer is.

For more information please visit HFEA website.

4. Arguments for family rights and examples of good practice

Family rights have only advanced because of campaigning by trade unions and other organisations. Although family rights were transformed by the previous Labour government further changes are essential and Unite will continue to be part of this campaign.

Whilst there have been positive developments, there are still areas that must be improved, particularly:

- To get workers the maximum benefits from their first day of employment
- To get rights for all workers particularly those working on zero hours, temporary, fixed term, bogus employment, precarious work and other casualised work.
- To get paid leave, instead of unpaid leave
- To get leave paid at a higher rate e.g. Living wage
- To cover as broad a possible range of family relationships/type of dependents (including care for other relatives or friends who do not live at the same address as you)
- To allow for more paid leave and/flexibility in special circumstances such as disabled children or parents, stillbirths, miscarriages, terminations, fertility treatment and multiple births
- To have shorter notice requirements and fewer restrictions on the timing and "blocks" of leave in all circumstances

The introduction of new laws also gives a good opportunity for Unite representatives to negotiate enhanced rights, whether or not the employer already provides for more than the minimum legal rights. Negotiators should first of all find out from members what their priorities are.

Even if there does not seem to be many problems at work relating to family friendly policies, they should still be on the bargaining agenda. It is a good idea to raise issues with employers before problems arise, as they may well be more willing to agree good policies when there is no immediate prospect of having to implement them (for example if there are currently few women of childbearing age in the workplace).

It is especially important to include family friendly policies as part of any negotiation where the employer is seeking to change working hours, perhaps because they are hoping to provide a more round-the-clock service. It is always important to include at least one family friendly aim each time there are negotiations on wages or conditions, and negotiate towards improvements in small steps if necessary.

The case for family friendly rights:

The benefits to employees are clear-

- More time and support for parents to bring up children, particularly whilst they are young/still breastfed
- Less stress and anxiety about childcare arrangements breaking down – particularly important, given that there is still a lack of adequate childcare provision in many areas
- More money to bring up children – which means better chances for those children
- Family friendly policies may be negotiated separately, or as part of wider work-life balance policies which can assist all workers, not just those with families – for example to balance working with the need for a flexible pre-retirement period or with pursuing further study

Employers are increasingly recognising the benefits to themselves from implementing family friendly policies, including:

- Improved loyalty and commitment from workers
- Improved motivation and productivity
- Improved staff retention /lower turnover – leading to cost savings. The CIPD estimates that recruiting new employees costs on average around £4,500
- Lower rates of absenteeism and easier to manage sickness policies
- Improved corporate image and recruitment and a workforce that is more reflective of our diverse society and its customer base
- More equality of opportunity so that staff can be retained and promoted according to merit, not caring responsibilities

Cost

Employers are reimbursed some family friendly costs, for example, they are reimbursed at least 92% of the costs of Statutory Maternity and Paternity Pay. Small employers are also able to claim back all the SMP plus some compensation (103%). It could be argued that this money should be put back in to further improving provisions for parents.

Actual costs of many measures (e.g. shared parental leave, paternity and adoption leave) will be low – for example, TUC has estimated that two in five new fathers would not qualify for shared parental leave and half of new dads do not take their full entitlement of two weeks statutory paternity leave, these increase to three in four for low income dads.

Key negotiating aims

When negotiating enhanced family rights, negotiators should aim to get the employer to agree to at least some of the recommendations in the key negotiating aims boxes in each section of this guide. Points in each section are listed roughly in order of priority (the number one priority being to ensure that all employees are in a position to benefit from the rights, from day one of employment).

Examples of good practice

Unite has been negotiating for maternity/paternity/parental rights for many years. The following are some good practices and policies in our organised workplaces:

Maternity – winning for Unite members

Ford, Rolls Royce Motor Cars, Jaguar/Landrover there are 52 weeks maternity leave at full basic pay.

Mondelez workers receive 18 weeks maternity leave on full pay.

Save the Children Fund workers are entitled to 21 weeks maternity leave on full pay.

Eaton Electric workers receive 26 weeks full pay maternity leave.

Bank of England first 18 weeks are on full pay and then workers receive 26 weeks of maternity leave on full pay.

BP Oil Drivers (Logistics contract) workers receive 16 weeks on full pay from day one.

First Capital Connect workers receive 12 weeks on full pay.

Meggitt Aircraft Braking Systems workers receive 20 weeks on full pay.

Passenger Transport Executives first there are 6 weeks at 90% and then 12 weeks at 50% plus SMP.

East Midlands Airport workers first receive 6 weeks at 90% and 20 weeks at 50% plus SMP

Usborne Publishing first 10 weeks on full pay and then 10 weeks at 50% including SMP

Paternity – winning for Unite members

Michelin workers receive 10 days leave on full pay

Leyland Trucks there are 5 days leave at 100%

Air France workers receive 5 days leave on full pay

NJIC Knitting Industries workers receive 10 days on full pay

Greater Anglia (Maintenance) there are 10 days at 100%

Sainsbury's Retail workers receive 10 days on full pay

Greencore (Wisbech, Cambs) first there are 5 days at 100% followed by 5 days statutory pay and a baby bonus of £125.

Age UK workers receive 10 days leave on full pay.

Bank of England workers receive 10 days paternity leave on full pay and if the mother takes less than 26 weeks' leave, father will get 100% paid leave for any unused weeks. The remaining 13 weeks are paid at the statutory rate.

West Berkshire Council workers receive 5 days at 100% and the Maternity Support Leave of one week on normal pay may be granted to 'nominated carer' for the mother, if mother not supported by a partner or other person at time of birth.

Devro (Scotland) after 1 year service the 10 day paternity leave is paid at full pay + shift pay. For workers with under a year's service, this is paid at £150 per week.

City & Guilds of London Institute workers receive 20 days paternity leave at 100%.

The Argus (Newsquest Media Group) the first 2 weeks are fully paid and the next 8 days are paid at 90% of pay.

BBC (staff) workers receive 10 days on full pay and additionally, all full-time (pro-rata for part-timers) employees are eligible to take up to and extra 5 days Partner Support Leave when their partner gives birth.

Shared parental leave – winning for Unite members

Lloyds banking group – workers receive full salary for seven weeks then half pay for 20 weeks then 12 weeks statutory maternity pay – available for sharing between parents.

Unilever – workers receive 100% pay for the first 26 weeks and then enhanced pay for up to 39 weeks depending on working hours on return from leave.

Barclays – enhanced shared parental pay for up to 6 weeks at normal pay which will be reduced by any enhanced Barclays maternity, adoption or paternity pay already received.

5. Further information

Further advice can be obtained from your Regional Women's & Equalities Organiser.

North West
0161848 0909

North East/Yorkshire and Humberside
0113 236 4830

West Midlands
0121553 6051

East Midlands
01332 548400

South West
0117 923 0555

London/Eastern
020 8800 4281

South East
02392 824 514

Ireland
Belfast 028 90 232 381
Dublin +353 (0) 1873 4577

Scotland
0141 404 5424

Wales
02920 394521

The following organisations can advise you further on your rights to family friendly working:

- Unite Equalities, can provide advice and also copies of the Model Agreement on Family Rights and the Women's Health, Safety and Well-Being Guide – 020 7611 2500
- TUC Know your rights – (www.tuc.org.uk)
- Equality and Human Rights Commission – 020 7832 7800 (www.equalityhumanrights.com)
- Department for Business, Innovation and Skills – (www.gov.uk/government/organisations/department-for-business-innovation-skills)
- Arbitration, Conciliation and Advisory Service Helpline – 0300 123 1100 (www.acas.org.uk)
- Working Families – 020 7253 7243 (www.workingfamilies.org.uk)

The following organisations can also advise on specific issues:

- Tax Credit – 0345 300 3900, Textphone: 0345 300 3909 (www.inlandrevenue.gov.uk/taxcredits)
- Health & Safety Executive – 0300 003 1747 (www.hse.gov.uk)
- Family and Childcare Trust (for childcare issues) – 020 7940 7510 (www.familyandchildcaretrust.org)
- Labour Research Department (help for negotiating) – 020 7928 3649 (www.lrd.org.uk)
- Broken Rainbow (provides support and advice for LGBT people who experience domestic violence) – 0800 999 5428 (www.brokenrainbow.org.uk)
- Abortion Rights – 020 7923 9792 (www.abortionrights.org.uk)
- Maternity Action – 020 7253 2288 (www.maternityaction.org.uk)
- Bliss (provides advice and information for parents who have premature or sick babies) – 020 7378 1122, Helpline 0500 618140/Text Relay 018001 0500 618140 (bliss.ritdns.com)

Legal advice on non-work-related issues can also be obtained from Unite 24 hour legal helpline on 0800 709 007.

If you are not already a member of the Unite and would like to join, please call 0207 611 2500 for more information or visit Unite's website www.unitetheunion.org.

6. Appendices

Appendix 1
European comparisons

MATERNITY LEAVE PROVISIONS IN THE EU

Country	Explanation	Duration	Payment
Bulgaria	45 days obligatory	58.57 weeks	90%
Poland	Obligatory 14 weeks	26 or 52 weeks	Either 100% of full pay for 26 weeks or 80% for 52 weeks
Greece		17 weeks (8 weeks before the birth)	100%
Austria	Obligatory	16 weeks (8 weeks before the birth)	100%
France	Obligatory	16 weeks	100% (a ceiling applies in the private sector)
Italy	Obligatory	20 weeks (at least 4 weeks before the birth)	85%, 80% for home helps, self-employed workers and agricultural temporary workers
Germany	Obligatory 8 weeks after the birth	14 weeks	100%
Lithuania		18 weeks (10 weeks before the birth)	100% up to a ceiling
Luxembourg	Obligatory	16 weeks (8 weeks before the birth)	100% up to a ceiling
The Netherlands	Obligatory	16 weeks (4-6 weeks before the birth)	100% up to a ceiling
Malta		18 weeks	100% for 14 weeks, the rest at a flat rate
Portugal	Obligatory 45 days following the birth	120 days (150 if shared)	100% for 120 days (150 if shared) or 80% for 150 days (83% for 180 days if shared)
Slovakia	Obligatory	34 weeks (6-8 weeks before the birth)	65% up to a ceiling
Slovenia	Obligatory 15 days	105 days (4 weeks before the birth)	100% up to a ceiling
Spain	Obligatory 6 weeks	16 weeks	100% up to a ceiling
UK	**Obligatory 2 weeks after the birth**	**52 weeks (50 weeks can be shared)**	**90% – 6 weeks, flat rate for 33 weeks or 90% of salary if that is less (37 weeks if shared)**

Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union – study for FEMM Committee

PATERNITY LEAVE PROVISIONS IN THE EU

Country	Explanation	Duration	Payment
Slovenia		90 days	100% of full pay up to a ceiling, for 15 days, 75 on a flat-rate
Lithuania		28 days	100% up to a ceiling
Portugal	10 are obligatory in the first month	20 days	100%
Belgium	3 days are obligatory	10 days	100% for 3 days, 82% for 7 days
Bulgaria		15 days	90%
Denmark	To be taken during the maternity leave	10 days	100%
Estonia		10 days	100%
Finland	18 days can be taken during maternity leave	54 days	75% up to a ceiling for 30 days if taken after maternity and parental leave; 70% up to a ceiling for 24 days if it is taken during leave
France	To be taken in the first 4 months	11 days	100% (up to a ceiling in the private sector)
Hungary	To be taken in the first 2 months	5 days	100%
Poland		2 weeks	100%
Spain		11 days	100% up to a ceiling
Sweden		10 days	80% up to a ceiling
UK		2 weeks	Flat-rate or 90% of average weekly earnings if that is less

Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union – study for FEMM Committee

PARENTAL LEAVE PROVISIONS IN THE EU

Country	Duration	Payment
Czech Republic	156 weeks	70% of full pay
Estonia	156 weeks	100% up to a ceiling for 435 days, then a flat-rate until the 3rd birthday
Finland	158 days	75% up to a ceiling for 30 days, then 70% up to a ceiling
Denmark	32 weeks/parent	100%
France	156 weeks until the 3rd birthday	Flat rate per household
Bulgaria	26 weeks	Paid (90% of previous earnings)
Croatia	6 months, up to 3 months for fathers	100%, 50% after the first 6 months
Germany	156 weeks until the child is 3	67% for the first 12 months, can be extended to 14
Lithuania	156 weeks for under 3s	1) 100% up to a ceiling until 1st birthday 2) 70% up to a ceiling until 1st birthday and 40% until the 2nd one
Latvia	78 weeks/parent	70%, available only to one parent
Greece	1) 4 months per parent – private sector 2) 2 years per parent – public sector	1) Unpaid 2) Unpaid (3 months 100% when there are three or more children)
Italy	1) 6 months per parent – private sector maximum of 10 months	1) 30% for under 3s unless low paid 2) Public sector-100% for the first 30 days
Poland	34 months	Flat rate payment
Romania	Two options with a monthly allowance until the 2nd birthday	85% up to ceiling and incentive pay for returners
Sweden	480 days per family	77.6% for 390 days, 90 days at a flat rate
UK	**18 weeks per parent per child**	**Unpaid**

Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union – study for FEMM Committee

COUNTRIES WITH WELL PAID, FATHER ONLY LEAVE IN EUROPE

Country	Leave (weeks)	Payment	Take up by fathers
Denmark	34[17]	100% of full earnings (ceiling applies)	100% of full pay up to a ceiling, for 15 days, 75 on a flat-rate
Iceland	13[18]	80% (ceiling applies)	100% up to a ceiling
Norway	12	100% (ceiling applies)	100%
Sweden	10[19]	80% (ceiling applies)	100% for 3 days, 82% for 7 days
Finland	9	70-75% (ceiling applies)	90%
Portugal	4	100%	100%
Belgium	2	100% for first 3 days, then 82% (ceiling applies)	100%
Estonia	2	100% (ceiling applies)	In 2008, 50% took leave (up from 14% when unpaid in 2006 and 2007). In 2013 after payment was re-introduced, 38% took leave.
France	2	100% (ceiling applies)	62%
Poland	2	100%	17% in 2011 a year after it was introduced
Slovenia	2	90% (ceiling applies) and 100% for low paid	80% plus 20% take additional fathers' parental leave days that are paid at low flat rate
Spain	2	100%	74% of eligible fathers
Greece	0.3[20]	100%	n/a

Adapted from Moss, P. (2014) International Review of Leave Policies and Research 2014. http://www.leavenetwork.org/lp_and_r_reportss/

[17] Two weeks' paternity leave plus fathers have an entitlement to 32 weeks' parental leave, separate from mothers' entitlement to 32 weeks' parental leave. However, the pay for the parental leave is a family entitlement to 32 weeks' full pay. So the right to 32 weeks' well paid leave for fathers is a mix of an individual and shared entitlement. Denmark could therefore come top or much further down the table if the parental leave was discounted because it isn't strictly a 'father only' entitlement.

[18] Entitlement is to 3 months' leave which has been converted into 13 weeks

[19] Entitlement to 10 days' paternity leave and 60 days' parental leave, this has been converted into a total of 10 weeks' leave based on a calendar week

[20] Entitlement is 2 days' leave converted to 0.3 calendar weeks

FINANCIAL INCENTIVES FOR FATHERS TO TAKE SHARED LEAVE

Country	Incentive	Take up by fathers
Sweden	Tax free 'Gender Equality Bonus' of €5 for each day they use the parental leave equally	In 2012, 56% of parents were eligible for the bonus
Italy	Families get an extra month of parental leave (paid at 30% of earnings) if father takes at least 3 months	11% of parental leave users are men.
Germany	Family entitlement to 12 months' parental leave paid at 67% of earnings and if fathers take at least 2 months' leave the family gets a bonus of extra 2 months' paid leave	29.3% of fathers now take at least 2 months of the family entitlement. Before the financial incentives were introduced only 3.3% of fathers took leave.
France	Increased financial payment if both parents take some leave	n/a
Croatia	Transferable parental leave fully paid for 6 months but if both parents use then payments is for 8 months	0.3% of fathers take any of the leave and account for only 2% of leave that is taken.
Austria	Extra bonus month of childcare benefit if both parents apply to take some of the family entitlement to paid parental leave	n/a

Adapted from Moss, P. (2014) International Review of Leave Policies and Research 2014. http://www.leavenetwork.org/lp_and_r_reportss/

Appendix 2
Giving notice for maternity leave and pay

Sample letter – giving notice for maternity leave and pay

To be sent to your employer no later than the end of the 15th week before the week in which the baby is due.

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: notice for maternity leave and pay – [insert your National Insurance Number]

I am writing to inform you that I am pregnant and wish to take maternity leave.

My expected due date is **[insert the date]**.

I have enclosed my MAT B1 certificate which confirms my due date.
[OR – I will provide you with my MAT B1 certificate signed by my doctor or midwife which confirms my due date, when I receive it].

[I would like to take (insert the number) days'/weeks' annual leave from [insert the date] to [insert the date], and then start my maternity leave and pay on [insert the date].]

I qualify for 52 weeks' maternity leave and intend to start my maternity leave on **[enter date]**. If I want to change this date, I will give you at least 28 days' notice.

Please let me know if I qualify for maternity pay and the amount I will receive. If I am not entitled to SMP, please send me the SMP1 form so that I can claim Maternity Allowance.

I intend to return to work on **[insert the date]**. However, I understand that you will write to me to confirm the date that I am due back. If I want to change the date of my return to work, I understand that I must give you at least eight weeks' notice.

I look forward to hearing from you.

Yours sincerely

[insert signature]

[insert your name]

Appendix 3
Pregnancy and health and safety

Sample letter – pregnancy and health and safety

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: Pregnancy risk assessment – [insert your National Insurance Number]

I am writing to confirm that I am pregnant and my baby is due on the **[insert the date]**.

I understand that as I have now informed you of my pregnancy I have the right to a personal and specific risk assessment as set out in the Management of Health and Safety at Work Regulations 1999.

I also understand that you should regularly review my initial assessment as my pregnancy progresses, to take into account possible risks that may occur during the different stages of my pregnancy.

I would like to ask you to arrange a meeting with myself **[and my union representative – if you have one]** as soon as possible to conduct a risk assessment.

Looking forward to hearing from you.

Yours sincerely

[insert signature]

[insert your name]

Appendix 4
Changing return date of maternity leave

Sample letter – changing return date of maternity leave

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: changing return date of maternity leave – [insert your National Insurance Number]

As per our previous correspondence prior to starting my maternity leave I informed you that I would return on **[insert the date]**.

However, I want to now change my return date to **[insert the date]. (OR, I have decided that I will take all my 52 weeks maternity leave and my return date will now be [insert the date].]**

I look forward to hearing from you with confirmation of the above.

Yours sincerely

[insert signature]

[insert your name]

Appendix 5
Giving notice for adoption leave and pay

Sample letter – giving notice for adoption leave and pay

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: notice for adoption leave and pay – [insert your National Insurance Number]

I am writing to inform you that I intend to take adoption leave and claim my statutory adoption pay.

I was matched for adoption on **[insert the date]** and I am expecting **[insert the name of the child]** to be placed with me on **[insert the date]**.

I have enclosed/attached a copy of my matching certificate which informs you of the adoption agency's name and address, my name and address, and confirms the date our child is expected to be placed with us and the date I was informed about this.

[I would like to take [insert the number] days'/weeks' annual leave from [insert the date] to [insert the date], and then start my adoption leave and pay on [insert the date].]

I qualify for 52 weeks' adoption leave and intend to start this leave on **[insert the date]**. If I want to change this date, I will give you at least 28 days' notice.

Please let me know if I qualify for adoption pay and the amount I will receive. If I am not entitled to SAP, please send me the SAP1 form.

I intend to return to work on **[insert the date]**. However, I understand that you will write to me to confirm the date that I am due back. If I want to change the date of my return to work, I understand that I must give you at least eight weeks' notice.

I look forward to hearing from you.

Yours sincerely

[insert signature]

[insert your name]

Appendix 6
Notification of paternity leave

Sample letter – notification of paternity leave

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: notification of paternity leave –[insert your National Insurance Number]

My **[wife/partner]** is expecting a baby and I will have joint responsibility for the upbringing of the child.

I'm applying to take paternity leave to support my **[wife/partner]** and care for our child.

The expected date of birth of our baby is **[insert date]**.

[I intend to start my paternity leave the day my baby is born, whenever this occurs, and to receive my paternity pay from this date].

OR

[I intend to take [one week's/two weeks'] paternity leave from [insert the date] to [insert the date].]

I look forward to hearing from you with confirmation of the above.

Yours sincerely

[insert signature]

[insert your name]

Appendix 7
Notification to change the start date of paternity leave

Sample letter – notification to change the start date of paternity leave

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: notification to change the start date of paternity leave – [insert your National Insurance Number]

I am writing to inform you that though I previously notified you that I wished to take **[one week's/two weeks']** paternity leave from **[insert the date]** to **[insert the date]**.

I now wish to vary these arrangements. Instead of the above, I would like to take [one week's/two weeks'] paternity leave from [insert the date] to [insert the date].

[The expected date of birth of our baby is [insert the date].]

OR

[The matching date for the adoption of our child is [insert the date] and I am expecting our child to be placed with us on [insert the date].]

I look forward to hearing from you with confirmation of the above.

Yours sincerely

[insert signature]

[insert your name]

Appendix 8
Notification of breastfeeding

Sample letter – notification of breastfeeding

You will need to talk to your employer about where you can express milk and when. Where you express your breastmilk will depend on where you work and where there is a fridge available for the safe storage of that expressed milk.

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: notification of breastfeeding – [insert your National Insurance Number]

I am writing to inform you that at the time I return to work I will be breastfeeding my baby.

[If your job involves risks such as working with dangerous substances, excessive stress or doing long hours, then it might help to back up your own letter with a letter from your doctor or Health Visitor confirming that your working arrangements are putting your ability to breastfeed at risk and therefore the health of your baby].

It would be helpful to discuss where and when I would be able to express milk. Also, the availability of a fridge for the safe storage of expressed milk.

I look forward to hearing from you with confirmation of the above.

Yours sincerely

[insert signature]

[insert your name]

Appendix 9
Notification of parental leave

Sample letter – notification of parental leave

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: notification of parental leave – [insert your National Insurance Number]

I am writing to inform you that I will be taking [insert the number of weeks or days] weeks'/days' parental leave.

My leave will begin on **[insert the date]** and will end on [insert the date].

The leave requested relates to my child due on **[insert the date] OR** born on **[insert the date]** OR adopted on **[insert the date] [and who has been awarded disability living allowance/PIP, if applicable]**.

[I have enclosed/attached a copy of the birth certificate/adoption papers].

I look forward to hearing from you with confirmation of the above.

Yours sincerely

[insert signature]

[insert your name]

Appendix 10
Requesting flexible working

Sample letter – requesting flexible working

[Your name]

[Address]

[Date]

[Employer's name]

[Address]

Dear **[name of HR contact/manager]**

Re: requesting flexible working – [insert your National Insurance Number]

I am making this request under section 80F Employment Rights Act 1996.

[I have not previously made a request under section 80F Employment Rights Act 1996].

OR

[I have previously made a request under section 80F Employment Rights Act 1996 on [Date].]

My current working pattern is **[insert your working pattern]** (**note** – there is no requirement to explain your current working pattern but it might be helpful to do so). I would like my new working pattern to be **[insert the working pattern you are requesting]**

I think the effects the new pattern would have on the business would be **[insert the effect you think the requested change would have on your employer]**.

I think these effects could be dealt with by **[insert how, in your opinion, any such effect might be dealt with]**.

I am making this request in order to **[insert your reason]** (**note** – while there is no requirement to do so, the ACAS guidance suggests that employees should state if their request is made in relation to the Equality Act 2010. It may help an employer decide your application if they understand the reasons behind it.)

I would like the new working pattern to come into force on **[insert the date]** for **[insert the duration, if applicable]** (**note** – this is a permanent change to your terms and conditions unless agreed otherwise).

I look forward to hearing from you.

Yours sincerely

[insert signature]

[insert your name]

Equality and family rights

unite
the UNION

APPENDIX SEVEN

March 2015

Code of Practice 1

CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES

inform advise train work with you

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Foreword

The Acas statutory Code of Practice on discipline and grievance is set out at paragraphs 1 to 47 on the following pages. It provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace. The Code does not apply to dismissals due to redundancy or the non-renewal of fixed-term contracts on their expiry. Guidance on handling redundancies is contained in Acas' guide 'Handling small-scale redundancies – a step-by-step guide' and in its advisory booklet 'How to manage large-scale redundancies'.

The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid before both Houses of Parliament on 16 January 2015. It comes into effect by order of the Secretary of State on 11 March 2015 and replaces the Code issued in 2009.

A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Tribunals will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code. This means that if the tribunal feels that an employer has unreasonably failed to follow the guidance set out in the Code they can increase any award they have made by up to 25 per cent. Conversely, if they feel an employee has unreasonably failed to follow the guidance set out in the Code they can reduce any award they have made by up to 25 per cent.

Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible employers and employees should consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation but could be an internal mediator, so long as they are not involved in the disciplinary or grievance issue. In some cases, an external mediator might be appropriate.

Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve an issue. However, where an issue cannot be resolved informally then it may be pursued formally. This Code sets out the basic requirements of fairness that will be applicable in

most cases; it is intended to provide the standard of reasonable behaviour in most instances.

Employers would be well advised to keep a written record of any disciplinary or grievances cases they deal with.

Organisations may wish to consider dealing with issues involving bullying, harassment or whistleblowing under a separate procedure.

More comprehensive advice and guidance on dealing with disciplinary and grievance situations is contained in the Acas booklet, 'Discipline and grievances at work: the Acas guide'. The booklet also contains sample disciplinary and grievance procedures. Copies of the guidance can be downloaded from the Acas website at www.acas.org.uk/discipline.

Unlike the Code employment tribunals are not required to have regard to the Acas guidance booklet. However, it provides more detailed advice and guidance that employers and employees will often find helpful both in general terms and in individual cases.

The Code of Practice

Introduction

1. This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

   - Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.
   - Grievances are concerns, problems or complaints that employees raise with their employers.

   The Code does not apply to redundancy dismissals or the non-renewal of fixed-term contracts on their expiry.

2. Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.

3. Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code.

4. That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

   - Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.

- Employers and employees should act **consistently**.
- Employers should carry out any necessary **investigations**, to establish the facts of the case.
- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.
- Employers should allow an employee to **appeal** against any formal decision made.

Discipline

Keys to handling disciplinary issues in the workplace

Establish the facts of each case

5. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

6. In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.

7. If there is an investigatory meeting this should not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right may be allowed under an employer's own procedure.

8. In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.

Inform the employee of the problem

9. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

10. The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.

Hold a meeting with the employee to discuss the problem

11. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.

12. Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this.

Allow the employee to be accompanied at the meeting

13. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

    - a formal warning being issued; or
    - the taking of some other disciplinary action; or
    - the confirmation of a warning or some other disciplinary action (appeal hearings).

14. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

15. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, a

worker should provide enough time for the employer to deal with the companion's attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

16. If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

17. The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

Decide on appropriate action

18. After the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing.

19. Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a written warning. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning.

20. If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.

21. A first or final written warning should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale). The employee should be told how long the warning will remain current. The employee should be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a final

warning. For instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.

22. A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

23. Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.

24. Disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence, gross negligence or serious insubordination.

25. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.

Provide employees with an opportunity to appeal

26. Where an employee feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and ideally at an agreed time and place. Employees should let employers know the grounds for their appeal in writing.

27. The appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case.

28. Workers have a statutory right to be accompanied at appeal hearings.

29. Employees should be informed in writing of the results of the appeal hearing as soon as possible.

Special cases

30. Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

31. If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.

Grievance

Keys to handling grievances in the workplace

Let the employer know the nature of the grievance

32. If it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.

Hold a meeting with the employee to discuss the grievance

33. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received.

34. Employers, employees and their companions should make every effort to attend the meeting. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.

Allow the employee to be accompanied at the meeting

35. Workers have a statutory right to be accompanied by a companion at a grievance meeting which deals with a complaint about a duty owed by the employer to the worker. So this would apply where the complaint is, for example, that the employer is not honouring the worker's contract, or is in breach of legislation.

36. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

37. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain time frame. However, a worker should provide enough time for the employer to deal with the companion's attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

38. If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

39. The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

Decide on appropriate action

40. Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they are not content with the action taken.

Allow the employee to take the grievance further if not resolved

41. Where an employee feels that their grievance has not been satisfactorily resolved they should appeal. They should let their employer know the grounds for their appeal without unreasonable delay and in writing.

42. Appeals should be heard without unreasonable delay and at a time and place which should be notified to the employee in advance.

43. The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case.

44. Workers have a statutory right to be accompanied at any such appeal hearing.

45. The outcome of the appeal should be communicated to the employee in writing without unreasonable delay.

Overlapping grievance and disciplinary cases

46. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Collective grievances

47. The provisions of this Code do not apply to grievances raised on behalf of two or more employees by a representative of a recognised trade union or other appropriate workplace representative. These grievances should be handled in accordance with the organisation's collective grievance process.

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