HEALTH AND SAFETY MANUAL

A guide to the role of Health and Safety Representatives and how to deal with accidents in the workplace

Bakers Food & Allied Workers’ Union
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Foreword

The BFAWU have been working to produce a comprehensive guide to the role of a Health and Safety Representative and how you should deal with accidents in the workplace.

This manual will provide you with information so that you can understand what your legal rights are and the action that you should be taking to prevent accidents from happening in the workplace.

It aims to give you an overview of the law and what to do when accidents do happen, guiding you through the information that you should collect to help a member to pursue a successful personal injury claim, as well as setting out the procedures for obtaining legal help.

It is crucial that when accidents happen that these are acted upon and a claim is pursued. There is no better way of preventing accidents from happening in the workplace than pursuing claims against employers.

We want to see a proactive approach to accidents in the workplace and an immediate referral to the union for legal advice.

There is a time limit of three years to pursue a claim for compensation. You should ensure that you review all accidents that have happened in your workplace over the last three years and actively encourage members to make claims.
Legal Rights of a Health and Safety Representative

The legal rights of a Health and Safety Representative are governed by the:

- Health and Safety at Work Act 1974
- Safety Representatives & Safety Committees Regulations 1977
- Health & Safety Executives ‘Brown Book’

Summary

- Recognised trade unions have the legal right to appoint workplace Health and Safety representatives
- The Health and Safety Representative has a number of rights.
- The Health and Safety Representative has a legal right to information about accidents and must be given it.
- The Health and Safety representative has the right to the necessary time off work to perform their duties

Safety Representatives & Safety Committees Regulations 1977

Appointing Health and Safety Representatives
In a workplace where a trade union is recognised, a trade union may appoint safety representatives. The employer must be notified in writing by the trade union of the names of the persons and the group(s) of employees they represent.

The Function of the Health and Safety Representative

A Health and Safety representative has the right to:
• Investigate
  o potential hazards
  o dangerous occurrences
  o complaints by any employee he/she represents
    (relating to health, safety or welfare at work)

• Make representations
  o regarding the above investigations
  o on general matters relating to health, safety or
    welfare at work

• Carry out inspections

• Represent union members in consultations at the workplace with inspectors of the HSE and of any other enforcing authority

• Receive information from inspectors

• Attend meetings of safety committees

Inspections

Health and Safety representatives are entitled to inspect the workplace every three months. They are required to give reasonable notice to the employer. More frequent inspections can be arranged with the agreement of the employer.

If an incident/accident occurs the Health and Safety representative may carry out an inspection only when it is safe to do so. They must not disturb or destroy any evidence

The purpose of investigations is to identify measures to prevent a reoccurrence.
Safety representatives are legally entitled to inspect records of accidents that employers have to keep under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations.

Releasing Information

The HSE website states:

“Employers have a responsibility to provide information to all workers that will enable them to participate fully and effectively in any consultation about their health and safety”

Safety representatives must be given information necessary for them to fulfil their function, for example:

- Proposed changes to current working practices which may affect the health and safety at work of their employees
- Technical information about hazards to health and safety and the necessary precautions to prevent or minimise them
- Information on equipment, materials or substances
- The results of any action taken by the employer in the course of checking the effectiveness of their health and safety arrangements

The employer must be given reasonable notice of any request for documents.

Safety Committee

Where at least two safety representatives make a request in writing, the employer must establish a safety committee. They must do so:
• following consultation;
• having notified the work force; and
• no later than three months after the request.
What Action Should I Take in the Workplace?

All Health and Safety representatives should ensure that they are aware of the accidents which are happening in the workplace.

If you have not previously looked at the Accident Book, then you should look at this as soon as possible.

You need to be aware of all accidents that have occurred. You should refer injured members for free legal advice from the BFAWU’s Solicitors.

For the future, you need to continue to be aware of accidents in the workplace.

Make sure that it is the procedure of your employer to inform you about all accidents and to send you a copy of all accident/incident report forms. This can be achieved in a number of ways, but examples would include the following;

a) Ensuring that you are one of the points of contact in the event of an accident

b) The Accident Report form has a box where the injured person agrees for a copy of the form to be sent to you

c) You are, or are notified by, the first aider who would be called in the event of an accident

The other steps that you can take are:

- Make sure that your employer has carried out risk assessments
• Report all complaints about working conditions and relating to any health and safety issue in the workplace to the employer

• Make sure all accidents are reported (even where member does not wish to make a claim) to the employer

• Report all near misses to the employer

• Attend Health and Safety Meetings and obtain and keep copies of all minutes of those meetings

• In the event of an accident, conduct an early and thorough investigation into the cause. This can be as part of your employer’s investigation or independently of it

• Make yourself known/introduce yourself to all members and potential new members in your workplace and tell them about your role and how you can help them

• Encourage potential members to join BFAWU. Members can apply to join BFAWU by:
  
  o Completing the application form – enclosed at appendix 1
  o Going online to www.bfawu.org
  o Members can also telephone 01707260150 to apply for an application form
Risk Assessments

All employers must carry out a risk assessment of the risks to their employees’ health and safety and of risks to anyone else not employed by them but who becomes involved in their business.

The purpose of this section is to assist you in reviewing or implementing your employer’s risk assessments.

What is a risk assessment?

- It identifies any hazards and assesses the risk of harm threatened by the hazard
- It identifies the likelihood of an incident / accident happening and the severity of potential harm

The greater the risk and the more severe the potential harm, the greater the obligation is on the employer to act.

What is a risk?

- A measure of the probability of the potential for harm posed by the hazard

What is a hazard?

- An article, substance, machine, installation or situation with the potential to cause harm, such as unguarded machinery or a cluttered work environment
What is harm?

- This is defined as physical injury, death, ill health, property and equipment damage, and any form of associated loss

What is an accident?

- An unwanted, unexpected, unplanned and unanticipated event which results in harm

What is an incident?

- An unwanted, unexpected, unplanned and unanticipated event which does not result in harm – a “near miss”

What steps should my employer take?

- **Look** for the hazard
- **Decide** who might be harmed
- **Evaluate** the risks from the hazards and decide if existing precautions are adequate or if more should be done:
  - Decide whether the risk can be avoided completely
  - Combat risks at source
  - Adapt to technical progression
  - Replace the dangerous by the non-dangerous
  - Give appropriate instructions / training to employees
  - Develop a coherent overall prevention policy
  - Adapt work to the individual employee to reduce risk
- **Record** the findings of all risk assessments
- **Review** the assessment regularly
The Law

This section is intended to provide you with some guidance about the types of claims that could be brought by members when health and safety is breached by the employer.

What types of claim could employees bring?

Employees can bring either a claim for an accident at work or, alternatively, a claim for an industrial disease which was caused by their work.

An accident claim

The date on which the member had an accident at work is clear and injury resulted

A disease claim

A claim where an employee has gradually begun to suffer from symptoms such as a repetitive strain injury or an asbestos-related condition

What time limits apply to claims?

Accidents:

The three year time limit starts to run from the date on which the member has the accident

Disease

The three year time limit starts to run from the date on which the member knew or ought to have known that he or she has a significant injury related to his or her employment
How will a claim succeed?

If there is no legal blame for an accident or condition, then there is no claim. Whether or not there is blame that can be attributed to the employer can be resolved by the BFAWU’s panel solicitors.

In order to succeed, members must prove “on the balance of probabilities” that the accident or injury was more likely than not to be the fault of their employer.

What we need to prove to succeed in a claim

1. That the employer owes a duty of care to an employee
2. That the employer breached the duty of care
3. That the breach of duty caused the injury
4. That the accident or injury was foreseeable

1. Duty of care

It is accepted that an employer owes its employees a duty of care.

2. Breach of duty

There are two sources of law that we can use to show that an employer has breached a duty of care:

- Common law
- Statutory law

Common Law

This is based on law that has built up over the years from previous cases.
It concerns, amongst others, duties to ensure:

- A safe place of work
- Safe plant and equipment
- A safe system of work
- Adequate supervision and instruction
- Competent fellow employees

**Statutory Law – the “6 pack”**

There are a number of statutory provisions that regulate employers. The most significant of these regulations are:

**The Management of Health and Safety at Work Regulations (The Management Regulations)**

These regulations impose the following obligations:

- A duty to assess risks to employees
- A duty to train employees
- A duty to inform employees
- A **duty on employees** to take reasonable care in their work


These regulations impose duties to:

- Risk assess all jobs done by employees involving manual handling
- Avoid manual handling tasks where possible
- Reduce the risk of injury to an employee through manual handling to the lowest level reasonably practicable (if it cannot be avoided altogether)
The Workplace (Health, Safety and Welfare) Regulations (The Workplace Regulations)

These regulations impose duties to:

- Ensure that the workplace is safe to include provisions to cover: ventilation, reasonable temperature, reasonable conditions of floors, adequacy of workstations and seating arrangements

The Provision and Use of Work Equipment Regulations (The Work Equipment Regulations)

These duties state that:

- Work equipment must be suitable for use by the employee
- Work equipment must be inspected and maintained to avoid faults
- Employees should be trained on the use of work equipment

The Personal Protective Equipment at Work Regulations (The PPE Regulations)

This is a last line of defence. These regulations state:

- If a dangerous activity cannot be avoided altogether then the employer must put in place mechanisms and protection for the employee to prevent injury, such as eye protection or gloves.

The Display Screen Equipment Regulations (The DSE Regulations)

These regulations state that the employer must risk assess the employees’ work station.
Employees can suffer ill health from poor work station organisation, working environments, posture and inappropriate working methods.

3. A link between the breach and the injury

If we are able to prove that the employer has breached one of the above statutory or common law duties, then we must show that there is a link between the breach and the injury which has been caused.

- In accident cases, this is more straightforward, i.e. a missing guard causes a severed finger
- In disease cases, this is more difficult, and the link will generally need to be dealt with by a medical expert

4. Foreseeability

To succeed in a claim we also need to prove that the employer could have foreseen that the injury could have been caused by action or lack of action.

To show this, we look at:

- Reports of previous accidents / near misses
- Risk assessments
- Reports of complaints
What to do in the event of an accident

1. Carry out an early and thorough investigation into the cause of the accident and where possible assist the member in completing the accident/incident report form

2. Ensure that key witnesses (names and addresses) are recorded and kept. Witnesses can be eye witnesses and also witnesses to previous similar accidents and safe working practices

3. Ensure that the accident is recorded correctly in accident reports. Provide as much information as possible as to what happened. The cause of the accident should be recorded. It is perfectly proper for an opinion to be given as to whom or what was to blame for the accident

4. Locate/retain relevant documents. Examples of relevant documents will be accident report forms, risk assessments, RIDDOR forms, health and safety minutes, safe system of work documents

5. Take photographs, if necessary, to provide evidence of the cause of the accident, location, relevant equipment etc. The employer should not refuse permission for you to do this as this is an important part of the investigation.

6. The Health and Safety Representative should ensure that the member is immediately referred for free legal advice about making a claim for compensation.

7. The Health and Safety Representative should keep all documentation regarding the member’s accident as it is likely that this will be requested by the member’s legal advisor at a later stage.
8. It should be remembered that some accidents occur outside the member’s usual place of employment. These accidents should be treated in exactly the same way. A member may suffer an accident whilst not at work. Such accidents should still be referred for free legal advice using the above procedure.

9. For additional information for the various types of accident and the documentation that you should try to collect - refer to Appendix 3
How to make a claim

For all accidents that members are involved in, you should encourage members to pursue a claim.

This will not only help the injured person to obtain compensation, but may also help in persuading your employer to make the workplace safer.

BFAWU - Methods of Making a Claim

- Website – www.bfawu.org
- By Telephone – Call BFAWU direct on 01707 260 150
What happens when a claim is made?

The purpose of this section is to summarise the legal process followed by solicitors once they have received a claim for an accident or disease on behalf of a member.

Please remember that each case is different and that the below is intended only to be a brief outline of the process which would be followed in a typical case. We refer below to cases involving accidents but the process is very similar in disease cases.

- Your member will be contacted by phone on the day the case is received to confirm receipt of their papers and to arrange an appointment to see them, usually face to face at a union office/place of work (where allowed) or at the solicitors office.

- At the first meeting, the solicitors will discuss with the member the circumstances of the accident and the law that will apply to the case. Usually a preliminary indication can be given of whether or not the claim will succeed. This is however not always possible.

- After the meeting, evidence will be gathered. This could include writing to witnesses and trying to obtain any documents relating to the accident, such as the accident report form or any pre-accident risk assessments. A Health and Safety Representative can play a very useful role at this stage in helping to obtain evidence.

- At the same time, the other side (known as the Defendant), are sent a letter of claim. It sets out what happened, why the accident was the Defendant’s fault, gives brief details of the injuries suffered and asks the Defendant to provide copies of relevant documents they have.
• Within 21 days the Defendant must acknowledge receipt and confirm who will be dealing with the matter on their behalf, for example an insurance company or a firm of Solicitors.

• The Defendant then has 3 months to investigate the claim. At the end of that period they must confirm whether or not they admit that the accident was their fault. If they do not accept this, then they should provide copies of all documents in their possession which are relevant to the case. If they refuse to supply such documents, then in certain circumstances we can apply to Court to try to force them to do so.

• Whilst the Defendant is investigating, it may be that we will be obtaining medical evidence to support your member’s case. The exact stage when medical evidence is obtained will vary greatly from case to case and depends on a number of factors, for example whether your member’s treatment is ongoing.

• At the same time, we will be collating details of the financial losses and expenses (sometimes known as “special damages”) which your member has incurred and we always advise them to keep receipts and wage slips.

• If the Defendant denies liability for the accident, we will review the case. We will advise your member of whether we feel he or she has sufficient prospects of success to recommend starting Court proceedings. At this stage, we will also finish compiling all of our evidence. For example, we may chase a witness who has not replied or try to obtain any missing documents. If at the end of this process, we feel that your member does not have reasonable prospects of success, we will advise them not to pursue the matter further.
• However, if we feel that there are reasonable prospects then, before starting Court proceedings, your member’s file will be seen by a barrister to prepare a document known as the “Particulars of Claim”. In addition, the medical evidence and the schedule of financial losses should ideally be complete, although if treatment is ongoing, this is not always possible.

• Once Court proceedings have been started, they are “served” on Defendant. They then have 28 days to provide their Defence to the claim.

• From then on, cases can take very different paths and it is harder to give any more than the most general of guidelines.

• The Court will usually set a timetable for steps to be taken prior to a final hearing. These steps usually include the exchange of documents and witness statements, and the provision for parties to put questions to the medical experts. In higher value cases, the Defendants are often given permission to obtain their own medical evidence.

• In some cases, a Court will hold a preliminary hearing some months before the date set for the final hearing to see whether there is a chance of settling the case.

• However, if a case does not settle then it may go to Trial. Your member and any witnesses supporting his or her case will give evidence and can be questioned by the Defendant’s barrister. Any witnesses for the other side will give their evidence and can be questioned by your member’s barrister. In higher value cases, the medical experts will also be present to give evidence.
The barristers will then sum up the case and the Judge will decide who has won and, if your member has been successful, will decide how much compensation to award.

We hope the above is a useful summary of the process followed in a typical case. Please remember that the exact details will vary from case to case and each individual member will of course be given appropriate advice relating to their own case as it progresses.
What can you do about Occupational Stress and/or bullying and harassment in the Workplace?

Brendan Barber of the TUC stated that:

“Excessive workplace stress is easily preventable if employers follow the HSE’s management standards, and the key to changing behaviour is a strong regulatory framework supported by support, education and enforcement.”

As a Health and Safety representative you can help to avoid stress in the workplace by:

- Referring your employer to the Health and Safety Executive Guidelines for Managing Stress in the Workplace

- Reviewing your employer’s stress policies and, if there is no policy in place, work with your employer to implement a policy to protect employees
• Ensuring that your employer considers the risks to employees by carrying out risk assessments

• Encouraging your employer to tackle risks at source – if there are issues creating stress for employees, try to resolve these with the employer in the first instance

• Making sure that the employer takes account of the individual – some individuals may be more vulnerable to stress so ensure that any risk assessment highlights this

• The employer must remove hazards if possible – where it is possible to work collectively to remove problems that are causing stress, aim to do so

• If the risk remains, ensure that your employer controls the risk/ exposure and protect the employee.

If you cannot avoid stress in the workplace or you are unable to resolve the issues:

• Encourage members to explain to employers the damage that is being done to their health. If an employer is not on notice to the risk of an employee being at risk of suffering from a “recognised psychiatric condition” (over and above the usual definition of stress and anxiety), then a claim cannot succeed

• Ensure that your member seeks advice and support from their GP and / or Occupational Health Department
Criminal Injuries Compensation Claims

If your member is assaulted at work then they may be able to claim compensation from the Criminal Injuries Compensation Authority (CICA). They may also be able to claim compensation from their employer and against the person who assaulted them, but the latter is a claim that would not usually be successful as the assailant may well not have the money to pay compensation and experience has shown that in a claim against an individual, even where a Judgment is obtained, compensation is unlikely to be paid.

CICA CLAIM

An application form must be submitted within 2 years of the incident. Your member will qualify for compensation if they have been injured as a result of a crime of violence and they satisfy the minimum qualifying criteria which are that the injury that they have suffered qualifies for an award of compensation of £1,000 or more. The incident must also be reported, preferably to the police, but at least to the employer or other appropriate authority.

It should be noted that compensation cannot be received twice for the same incident/injury but members should be advised in respect of all potential claims
Useful addresses and publications

WEBSITES:-

- The Health and Safety Executive – www.hse.gov.uk
- British Standards – www.bsigroup.com
- TUC – www.tuc.org.uk
- BFAWU - www.BFAWU.org.uk

BOOKS:-

- Hazards at Work – Organising for Safe and Healthy Workplaces – TUC – ISBN 978 1 85006 806 8