



Consulting Employees on Health and Safety – A guide to the law (8)

Why is Consultation Important?

Consulting employees on Health and Safety matters can be very important in creating and maintaining a safe and healthy working environment. By consulting employees, an employer should motivate staff and make them aware of health and safety issues. Businesses can become more efficient and reduce the number of accidents and work-related illnesses.

By law, employers must consult all of their employees on health and safety matters. Some workers who are self-employed, for example for tax purposes, are classed as employed under Health and Safety law. This leaflet summarises the law which applied to employers and employees onshore in Great Britain. You can find out where to get more guidance on this and on the position for offshore businesses in the reference section towards the end of this leaflet.

What Does Consultation on Health and Safety Involve?

Consultation involves employers not only giving information to employees but also listening to and taking account of what employees say before they make any health and safety decisions.

If a decision involving work equipment, processes or organisation could affect the health and safety of employees, the employer must allow time to give the employees or their representatives information about what is proposed. The employer must also give the employees or their representatives the chance to express their views. Then the employer must take account of these views before they reach a decision.

What Should Consultation Be About?

Consultation with employees must be carried out on matters to do with their health and safety at work, including:

- any change which may substantially affect their health and safety at work, for example, in procedures, equipment or ways of working;
- the employer's arrangements for getting competent people to help him or her satisfy health and safety laws;
- the information that employees must be given on the likely risks and dangers from their work, measures to reduce or get rid of these risks and what they should do if they have to deal with a risk danger.
- the planning of health and safety training; and
- the health and safety consequences of introducing new technology.

How Should Consultation Take Place?

The Safety Representative and Safety Committees Regulations (SRSCR) 1977

If an employer recognises a Trade Union and that Trade Union has appointed, or is about to appoint, Safety Representatives under the SRSCR 1977, then the employer must consult those Safety Representatives on matters affecting the group or groups of employees they represent. Members of these groups of employees may include people who are not members of that Trade Union.

The Health and Safety (Consultation with Employees) Regulations (HSCER) 1995

Any employees not in groups covered by Trade Union Safety Representatives must be consulted by their employers under the HSCER 1996. The employer can choose to consult them directly or through elected representatives.

If the employer consults employees directly, he or she can choose whichever method suits everyone best. If the employer decides to consult his or her employees through an elected representative, then employees have to elect one or more people to represent them.

If the employer's arrangements already satisfy the law then there is no need for change.

Could Employees Suffer as a Result of Taking Part in Consultation?

No, the law protects employees against being dismissed or other action taken against them because they have taken part in health and safety consultation (whether as an individual or a representative). This includes taking part in electing a Health and Safety Representative or being a candidate.

What Help and Training Will Representatives Receive?

The employer must make sure that elected representatives receive the training they need to carry out their roles, give them the necessary time off with pay and pay any reasonable costs to do with that training. The TUC or the Trade Union concerned will offer Trade Union Safety Representatives training. All representatives must be given time off with pay to take part in any training they need.

All representatives must be given reasonable time off with pay and appropriate help and facilities so that they can carry out their role. Candidates for election are also entitled to reasonable time off with pay to carry out their roles.

What Information Should Be Available?

Employees or their representatives must be given enough information to allow them to take a full and effective part in the consultation.

If the employer decides, he or she can consult both the employees and their representatives about a particular issue.

Employers do not have to provide information that they are not aware of, or if it:

- would be against the interests of national security or against the law;
- is about someone who has not given his or her permission for it to be given out;
- would, other than reasons to its effect of health and safety, harm the business; or
- if the employer has got the information in connection with legal proceedings.

How Are The Regulations Enforced?

Health and Safety Inspectors enforce the regulations. If employers do not satisfy the regulations, they will be committing an offence.

If there is a disagreement between employers and employees or their representatives about the consultation arrangements, an agreement should first be attempted through the normal procedures in the organisation. The Advisory, Conciliation and Arbitration Service (ACAS) can become involved, if necessary.

Any employee can apply to an Industrial Tribunal if they feel they have been penalised for taking part in consultation. Representatives who have not received the time off and pay they need to carry out their roles or be trained can also apply.

What is the difference between the roles of Trade Union Safety Representatives and elected representatives of employee safety (representative elected by groups of employees not covered by Trade Union Safety Representatives)?

Under the SRSCR 1977, the roles of Trade Union Safety Representatives are:

- to investigate possible dangers at work, the causes of accidents there and general complaints by employees on health and safety and welfare issues and to take these matters up with the employer;
- to carry out inspections of the workplace, particularly following accidents, diseases or other events;
- to represent employees in discussions with Health and Safety Inspectors and to receive information from those inspectors; and
- to go to meetings of Safety Committees.

The employer must set up a Safety Committee if two or more Trade Union Safety Representatives ask for one.

The separate HSCER 1996 give elected representatives of employee safety the following roles:

- to take up with employers concerns about possible risks and dangerous events in the workplace that may affect the employees they represent;
- to take up with employers general matters affecting the health and safety of the employees they represent; and
- to represent the employees who elected them in consultation with Health and Safety Inspectors.

Employers may choose to give elected representatives extra roles as well.

Which System Applies To Me?

Diagram 1 shows the relationship between the two sets of regulations and how they affect employers and their employees.

If a Trade Union is recognised by the employer then the following will apply:

- That union may appoint Safety Representatives under the SRSCR 1977. The Trade Union letter of notification to the employer must say which groups of employees are being represented by each Trade Union Safety Representative.
- The SRSCR 1977 apply to the employees in these groups (some of whom may not in fact be members of the Trade Union concerned).
- Employers must consult these Trade Union Safety Representatives.

If Trade Union Safety Representatives have not been appointed, are not about to be appointed, or there are employees who are not covered by them, then:

- the HSCER 1996 will apply to the employees in these groups; and
- employers must consult with these employees directly, or through elected representatives in line with the HSCER 1996.

