
Health and safety Time for change

*A trade union manifesto
for reclaiming health
and safety at work*



INTRODUCTION

In recent years the consensus on health and safety that has existed almost unbroken since the 1937 Factories Act has begun to break down. Rather than seeing health and safety legislation as a necessary protection for workers, many politicians now claim that it is a “burden on business”.

Over the past few years there has been a number of attempts to reduce the level of legal protection afforded to workers. Even more worrying, the levels of inspection by the enforcing authorities have been cut dramatically, as has expenditure on guidance and support for employers and employees.

This is at a time when health and safety protection is as crucial as ever. Every year over 20,000 people die because of their work. Most die from cancers, lung diseases and heart problems rather than being killed at work, but their deaths are just as tragic, and preventable.

It is not just the number of deaths that is an issue, but the huge number of people made ill or injured through work. Last year 1,800,000 were living with an illness caused by their work. About three quarters of these were injuries to the back, neck, arms and wrists, or depression or anxiety caused by stress at work. Another 115,000 workers were injured while at work to the extent that they needed to take more than three days off work.

Trade unions believe that there must be a sea-change in our attitude to health and safety if we are going to stop this massive health problem that costs the state billions of pounds but which claims the lives of far too many workers.

Trade unions have developed a list of 10 simple measures which we want to see from a future government. If implemented they would have a huge impact in reducing the toll of death, injury and illness which is still an everyday part of working life for so many people.

01 ALL WORKPLACES SHOULD BE INSPECTED REGULARLY BY THE ENFORCING AUTHORITY

Inspections save lives. There is a clear link between inspections and safety levels. As inspections go down, injuries go up. This has been illustrated by three 2012 research studies in the US. TUC research also shows that employers are more likely to make changes in the workplace simply because they know that the workplace might be inspected. Even the HSE’s own research shows that the need to comply with the law is the biggest motivator for employers to change their behaviour.

It is also not true that inspections are a “burden”. Almost 90 per cent of employers who are visited by the HSE say it is a positive experience.

Despite this, in 2012 the government announced: “In future, businesses will only face health and safety inspections if they are operating in higher risk areas such as construction, or if they have an incident or a track record of poor performance.”

The government’s strategy states that there is no need to inspect premises they consider to be “low risk”. However the idea that offices, shops etc. are low risk is a myth that could be exposed simply by looking at the figures. By claiming that these sectors are low risk the government is only looking at injury figures rather than the whole picture. Many of these areas have very high levels of sickness caused by work. For instance postal workers are far more likely to suffer from a back injury because of the loads they have to carry. Supermarkets also have high levels of back pain amongst checkout staff, and injuries from slips. In addition, shop workers face high levels of violence. Workers in education suffer high levels of stress, as do many other public sector workers including many who work in health and social care.

If businesses only face an inspection if they injure or kill someone it is not likely to act as a deterrent. Most employers always think “it will never happen to me.”

► Trade unions want the HSE and local authorities to concentrate their inspection activities on those businesses where inspections will be most effective. However, they want to see more inspections of all businesses and for no business to be exempt from unannounced inspections. This would be the most effective way of ensuring compliance with the law and also giving businesses, and workers, the support they need.

02 THE REGULATIONS ON SAFETY REPRESENTATIVES AND SAFETY COMMITTEES SHOULD BE REVISED TO INCREASE COVERAGE AND EFFECTIVENESS

There are around 150,000 health and safety representatives appointed and supported by trade unions. A DTI paper published in January 2007, *Workplace Representatives: A review of their facilities and facility time*, estimates that safety representatives, at 2004 prices, save society between £181m and £578m each year. It estimates safety representatives prevent between 8,000 and 13,000 workplace accidents and between 3,000 and 8,000 work-related illnesses.

In 1995 a group of researchers found that those employers who had trade union health and safety committees had half the injury rate of those employers who managed safety without unions or joint arrangements. In 2007 researchers once again found lower injury rates in workplaces with trade union representation and the effects were deemed to be significant. By contrast the effect of management alone deciding on health and safety was not significant.

The recent Löfstedt report into health and safety was very positive about health and safety

representatives and the benefits of involving the workforce; however the government has done nothing to support union representatives. In the public sector, for example, all employers have been asked to review 'facilities time', which is the amount of time that union representatives are allowed off to do their union work. This includes health and safety representatives. The government has said that only the very minimum legal entitlement should be agreed to. This will make it much harder to get people to become health and safety representatives and will also reduce their ability to be effective.

The government also wants to make it harder to take action against an employer if a health and safety representative is victimised. At present a health and safety representative can take the employer to an employment tribunal to challenge what the employer has done, such as victimising them or refusing them time off for training. The government is now introducing a charge on the representative if they take a claim.

► Trade unions believe that there is a need for stronger regulations that require all employers to have safety representatives if they employ more than 10 workers. Larger employers should also have to set up safety committees. Where there are lots of different employers working in one workplace, or if the employer has lots of different small sites, unions should be able to appoint roving health and safety representatives to cover all the workers. There should also be a legal right for health and safety representatives to call in the enforcement authorities if an employer fails to act on their concerns.

03 OCCUPATIONAL HEALTH SHOULD HAVE THE SAME PRIORITY AS INJURY PREVENTION

Far more people are injured or killed as a result of an occupational illness than an injury. Both are preventable but employers and regulators give much more priority to the prevention of injuries in the workplace. There are around 450,000 new cases of industrial illness every year. Of those, over 70 per cent are due to stress, back pain or repetitive strain injury (RSI).

In recent years the HSE intervened many times around issues such as stress, back injuries, RSI and bullying, which had a significant effect in ensuring that employers addressed these problems. However, in the last few years work on this has decreased considerably, or even stopped completely.

Much more priority must be given to this area of prevention, with stronger regulations and enforcement to stop workers being made ill by their work.

In addition workers need access to occupational health advice. This is a necessary part of ensuring the long-term health of workers. Employers need feedback on what may be leading to illness or injury on their premises, while workers need support, advice and, in

some cases, access to specialist services if they get ill or injured. The alternative is that workers are off sick much longer than necessary, come back to work and work in the same conditions that made them ill in the first place, or never return and end up on incapacity benefit for a long period of time.

In addition workers in workplaces where they may be exposed to a particular hazard need regular surveillance.

Unfortunately, very few workers have access to a fully comprehensive occupational service. A 2012 TUC survey showed that even amongst larger private employers and the public service less than half of workers had access to rehabilitation if they were injured or ill, and only 54 per cent had any form of health surveillance. For workers in small companies the position is even worse. It has been estimated that less than 10 per cent of workers have access to a fully comprehensive occupational health service through their employer. Many European countries have much better provision than the UK and several countries place a legal requirement on employers to provide an occupational health service.

► Trade unions want to see strong regulation aimed at preventing stress, musculoskeletal disorders, bullying and violence and greater emphasis on occupational health measures. Unions also believe that all workers should have free access to both health surveillance and comprehensive occupational health provision, either through a public body set up for that purpose or from services provided through the NHS. The savings to the economy by providing this would greatly exceed the cost as it would both reduce sickness absence as well as help prevent people becoming dependent on benefits.

04 THERE SHOULD BE A NEW, LEGALLY BINDING DUST STANDARD

In many workplaces dust is a major problem. However dust can be more than just a nuisance – it can be a killer. Thousands of workers are killed every year because of dust exposure. The most serious health problems caused by dust are cancers of the lungs, throat and nose, and other lung conditions called Chronic Obstructive Pulmonary Disease (COPD) – a condition that includes chronic bronchitis and emphysema. Many dusts also cause asthma and other allergies, rhinitis and even heart disease. Dusts can also be an explosive hazard if they are allowed to build up.

Some of the diseases caused by dust take decades to develop and once symptoms appear it is too late. Often the worker will have left the workplace by the time they develop a cancer or COPD, especially in industries with a high turnover like construction.

The TUC believes that the current standards used for the assessment of dust exposure in

the workplace are totally inadequate. There is now clear scientific evidence that suggests that the current UK limits for inhalable and respirable dust of 10 mg/m³ and 4 mg/m³ respectively should be much lower. This view is supported by the Institute of Occupational Medicine (IOM), an independent, non-profit organisation that works outside of government to provide unbiased and authoritative advice to decision makers and the public. The IOM has said: “The current British occupational exposure limits for airborne dust are unsafe and employers should attempt to reduce exposures to help prevent further cases of respiratory disease amongst their workers.”

Research done for the HSE in 2006 looked at five kinds of dust, including coal dust, talc and kaolin. Their data suggests that, at present exposure rates, at least 12 per cent of workers could develop significant reductions in their lung function, with profound results for their respiratory health.

► Some European countries have already started reducing their dust limits and trade unions want the UK to follow. The TUC believes that there should be a precautionary standard of 2.5 mg/m³ for inhalable dust (as opposed to the current 10 mg/m³ standard) and 1 mg/m³ for respirable dust (as opposed to the current 4 mg/m³ standard) for all general dust and dusts where there is not a lower workplace exposure limit. The TUC also argues for more enforcement of the standards.

05 WORKERS SHOULD NOT BE EXPOSED TO CARCINOGENS IN THE WORKPLACE

The HSE has estimated there are around 13,500 new cases of cancer caused by work every year, with over 8,000 deaths. This is likely to be an underestimate of the real number because there are many links between work and cancer that are still only suspected but not yet proven. The HSE figures only list those where there is a proven or probable link. The TUC estimates that the true level is likely to be well over 20,000 cases a year with 15,000–18,000 deaths. All occupational cancers are avoidable.

Trade unions have been at the forefront of the campaign against the use of carcinogens in the workplace. Many substances which employers have claimed are safe have only become recognised as dangerous because unions first recognised that workers were dying as a result of exposure, or have campaigned for their ban or control. Examples are asbestos, which kills 4,000 workers every year but which employers claimed was safe right up until the 1980s (and some still claim is safe to this day).

► Where possible that should mean removing carcinogens from the workplace completely, by changing the process or substituting the carcinogen with another material. In some cases that is not practical, but in these cases the worker should be fully protected from exposure. This can be done by enclosing the process, providing protective equipment, installing ventilation, etc. Examples of when a cancer-causing agent may not always be able to be removed, but exposure by a worker to any risk can be reduced, are radiographers and their exposure to radiation, quarry workers to silica and bus mechanics to diesel exhaust.

06 THERE SHOULD BE A LEGAL MAXIMUM TEMPERATURE IN THE WORKPLACE

It is usually accepted that people work best at a temperature between 16°C and 24°C, although this can vary depending on the kind of work being done. If the temperature varies too much from this then it can become a health and safety issue. If people get too hot, they risk dizziness, fainting, or even heat cramps. In very hot conditions the body's blood temperature rises. If the blood temperature rises above 39°C, there is a risk of heat stroke or collapse. Delirium or confusion can occur above 41°C. Blood temperatures at this level can prove fatal and even if a worker does recover, they may suffer irreparable organ damage.

However, even at lower temperatures heat leads to a loss of concentration and increased tiredness, which means that workers are more likely to put themselves or others at risk.

Unfortunately there is no maximum temperature for workers, although the Workplace (Health, Safety and Welfare) Regulations state the temperature inside workplace buildings must be "reasonable". In addition, the approved code of practice to these regulations states that "all reasonable steps should be taken to achieve a comfortable temperature".

► Trade unions want to see a legal maximum temperature for indoor work of 30°C (27°C for those doing strenuous work), so that employers and workers know when action must be taken. It should be stressed that this is intended as an absolute maximum rather than an indication that regular indoor work at just below 30°C would be acceptable. There should also be a legal duty on employers to protect outside workers by providing sun protection, water, and to organise work so that employees are not outside during the hottest part of the day.

07 THERE SHOULD BE INCREASED PROTECTION FOR VULNERABLE AND ATYPICAL WORKERS

There are a large number of workers who are more vulnerable for a variety of reasons. They may need extra or different protection. European regulations recognise the specific needs of young workers and pregnant women, but other groups that may be more at risk include migrant workers, domestic workers, some disabled workers, home workers, lone workers and people on short-term contracts. With the exception of domestic workers, all these groups are covered by the same legislation as other workers but often the laws do not meet their specific needs or are not applied properly.

In the case of migrant workers, they often have no knowledge of their rights, have no permanent contracts and have little access to trade unions. There is a special agency that was set up to provide additional protection for some groups of workers that were considered especially vulnerable, the Gangmasters Licensing Authority, but that only covers workers in the fresh produce supply chain and horticulture industry (such as fruit picking and shellfish harvesting) where there are a large number of migrant workers. Unfortunately the powers of the GLA are limited and they do not cover other sectors with high levels of contracting or abuse of migrant workers.

Often vulnerable workers are hidden from the regulators. The business may be unregistered and the employer may pay the workers in cash. There may be no written contracts and often the workers work very long hours and are paid below the minimum wage. Experience tells us that employers who ignore the law on employment issues are just as likely to ignore the law on health and safety. Very few of these employers will have any kind of safety systems in place and are unlikely to report any injuries that take place.

Other employers claim that their workers are 'self-employed', despite them working for them on a long-term basis. This may be for tax or employment law reasons but many employers also refuse to take responsibility for the safety of these people. If all their employees are categorised as self-employed the employer does not even have to do a written risk assessment as this is only a requirement where there are five or more workers. The government is now planning to remove some self-employed people completely from the coverage of the Health and Safety at Work Act.

Workers have to put up with reduced protection, either because the law is inadequate or it is not enforced.

► Trade unions would want to see a strengthening of the Gangmasters Licensing Authority with an extension to other areas. However, greater resources must also be given to enforcing employment rights for vulnerable groups, with a joined-up approach, so that those who enforce the minimum wage, working time and health and safety regulations co-operate to ensure that all workers have a safe workplace.

08 THERE SHOULD BE A LEGAL DUTY ON DIRECTORS

Many people would be surprised to know that although there is a positive duty on employers such as companies and public bodies to ensure, as far as is reasonably practicable, the health, safety and welfare of all his employees, there is no such duty on directors of companies.

Most prosecutions for breaches of health and safety laws are against employers. In the case of most workplaces, the employer is not an individual but a company or public body. So the prosecution is of the body. In some cases individual managers are also prosecuted, but in most cases the prosecution is of the company or organisation that is the employer.

However that organisation really only exists as a piece of paper. You cannot put a company or local authority in jail if it kills someone. Also it is not companies that make decisions – individuals do.

The present law means, in effect, that a director can only be prosecuted for something they have done, or if they have neglected to carry out a duty. This means that while it may be possible to prosecute a director who is given responsibility for health and safety or who has specific duties that relate to safety as part of their role, directors who choose to take on no responsibility cannot be prosecuted unless you

can show that they specifically did something which contributed to a death or injury. This is more likely to be able to be demonstrated in small organisations where directors have a day-to-day involvement in operational issues, than in large organisations where the role of directors is seen as strategic.

If a death takes place a director can be prosecuted for manslaughter, but only if they are shown to have been criminally negligent. Such prosecutions are extremely rare and, again, can usually only be used against directors of small companies.

According to HSE figures, 35 per cent of companies have boards that never have health and safety on the agenda of their board. This is despite eight years of voluntary guidance stating that they should do so. Additionally, only 31 per cent of boards set targets for health and safety. This is another recommendation within the voluntary guidance.

The current law means that if a board of directors refuses to have any involvement in health and safety, however bad the record of the company, there is almost nothing that can be done to force them to take responsibility beyond disqualification (which is almost never done).

► Trade unions want a new general duty on directors, under the Health and Safety at Work Act, backed up with an Approved Code of Practice which spells out exactly what directors should do. This new duty would be the biggest driver yet in changing boardroom attitudes towards health and safety.

09 HEALTH AND SAFETY SHOULD BE A SIGNIFICANT FACTOR IN ALL PUBLIC SECTOR PROCUREMENT

Over the years there have been a number of attempts to use public sector procurement as a way of ensuring that all contractors comply with appropriate health and safety standards. For instance, in construction all clients are meant to follow the Office of Government Commerce guidance on the subject. In addition, many local authorities and other public bodies make health and safety a requirement for contracts. Unfortunately in practice this seems to be having little effect in improving health and safety performance across public sector projects. Recent research by the HSE suggests that, in many projects, not even the minimum requirements are being met and even where they are, little is done to monitor outcomes and performance.

The public sector should be a major force in setting best practice and driving up standards in areas such as health and safety. This is not happening. Even when assurances are given on health and safety, once the contract is agreed there is little evidence that significant

steps are taken to ensure that the contractor is complying with the requirements. In addition, most tendering processes simply ask for the legal minimum rather than seeking to get good practice. In the very few cases where health and safety has been a significant part of a process significant gains have been made. The best example was the Olympic Park construction project where high standards of health and safety were not only built into the contracts but the client ensured that they were met rather than depending on the contractors to deliver. As a result the London games had the best health and safety record of any modern Olympics. An added advantage was that the experience of delivering safely was learned by the contractors working on site.

Given the number and value of public sector contracts, public procurement could be a major way of raising standards throughout a range of industries such as construction, waste and recycling, catering and IT. This would help reduce deaths, injuries and illnesses.

► Trade unions want new regulations ensuring that all public contracts, not only in construction, have high health and safety standards built into them and that the client should be required to monitor performance throughout the life of the contract. Those contractors who consistently fail to meet the standards should not be allowed to compete for any public sector work until such time as they have systems in place to deliver safely.

10 THE UK GOVERNMENT SHOULD ADOPT, AND COMPLY WITH, ALL HEALTH AND SAFETY CONVENTIONS OF THE ILO

The International Labour Organisation sets international standards on a range of issues, including health and safety. ILO Conventions are agreed by representatives of the world's governments, employers and workers at an annual meeting in Geneva. The standards provide a basic minimum for labour standards across the world and are an important means of ensuring that countries ensure a certain level of protection for workers. There are about 180 of these Conventions covering major issues such as freedom of association, child labour, forced labour and discrimination. Many of them relate to health and safety either generally or in a specific sector.

These conventions are international treaties, which, if they are ratified by member countries, become binding on these countries. They are different from EU regulations, which must apply in all EU member states and which can be enforced by the European Commission. However, once a country has ratified a convention, a complaint can be made to the ILO if it does not implement it.

You would therefore expect that industrialised countries like Britain would not only try to

ensure they meet these basic standards, but would go well beyond them. There should therefore be no difficulty in Britain ratifying all the conventions that are agreed by the ILO.

Sadly that is not the case and the UK government has refused to ratify a number of Conventions. Among the Conventions that have not been ratified are ones on asbestos, dock safety, construction, agriculture, chemicals, home work, mining and domestic workers. It has also refused to ratify treaties on inspections, occupational health provision and even the general convention on health and safety.

By refusing to ratify these international obligations it is saying that it is not willing to guarantee UK workers the basic rights that have been agreed internationally. If British legislation does not provide basic protection unions cannot make a complaint to the ILO (in the way that they can make a complaint to the European Commission if the UK government refuses to comply with a European Regulation). Equally importantly it gives a message to the developing world that these standards are not important.

► Trade unions believe that the UK government should show its commitment to health and safety by ratifying all ILO conventions on health and safety and once it has done so, should review UK law to make sure that it is fully complying.