

Health and Safety Briefing

Member Safety During Covid-19 Outbreak

Issue #1

Introduction

This is an unprecedented time and the health and safety (H&S) of members and employees is at the forefront of the crisis requiring a response from Unite representatives and activists.

We need to address:-

- (a) The immediate crisis and ensure all workers are working in safe environment
- (b) The longer term, so our structures have H&S not as an add-on but part of our core organising.

The H&S Representative is a statutory role and they have a number of key rights:

Key one is having the right to say 'No' to unsafe working practices and environment, and having the power to do something immediately!

Some Regulations Summarised



- **Health and Safety at Work Act (HASAWA) 1974, Section 7**
All employees have to take reasonable care for their own health and safety and the health and safety of others in the workplace.
- **Management of H&S at Work Regulations 1999 – Regulation 8** Enables staff to stop work and immediately proceed to place of safety if you believe you are exposed to serious, imminent and unavoidable danger. Being exposed to Covid-19 would meet the above criteria.
- **Employment Rights Act 1996 (Section 44 & 100)** Workers can leave or propose to leave workplace if they believe they are in serious and imminent danger. Again, potential exposure to Covid-19 would meet this criteria.
- **Management of H&S at Work Regulations 1999 – Regulation 4** Management have a duty to consult and share Risk Assessments with Safety reps.

If an employer fails to meet their obligations under these regulations, the incident can and should be reported to the Health and Safety Executive (HSE). This can be done online:

<https://www.hse.gov.uk/>

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The HSE has the powers to enforce compliance, issue fines and in the case of serious breaches, close a business for failure to comply with H&S legislation.

Health and Safety representatives therefore have the power to walk members out of a workplace without having to go through lengthy, bureaucratic and deliberately challenging strike procedures, but the justification must be robust.



Successful Challenges in relation to Covid-19

There have been some good examples where the legislation has been used in Covid-19 related cases to secure good wins for members for improved protections:

- Teams in **CNWL (Health Trust)** wrote to management stating that they were asserting their rights under Sections 44 & 100 of Employment Rights Act because workplace wasn't safe. Their concerns were addressed with 24 hours.
- Refuse Collectors in **Newham, Thurrock, Haringey** and parking wardens in **Hackney** all sent letters to council asserting the same rights and the right under Regulation 8 (Mgt of H&S at work regs 1999) and again within 24 hours their issues were resolved.

Asserting workers' rights under H&S regulations are effective, and we have seen some very quick wins. Taking action in your workplace also shows members that Unite cares about their welfare and that we are working on their behalf.

However, the key remains being organised. The letters and threats to assert rights will only ever be effective if we are organised and we know members will take action when asked. We need to give them that confidence by informing them of their rights and sharing some of the successes above.

Immediate Actions:

If you have an immediate threat to yours and colleagues' health and safety, there are immediate steps you can take after consulting members:

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- Send the Unite Housing Workers' Branch template letter (at the end of the briefing) to inform them that you believe they are breaching the current guidelines.
- Set a deadline and walk out if the employers still fail to take any remedial actions.
- Take pictures of the workplace which demonstrate that it's not safe if possible, as that will be useful evidence in any case that comes about.
- Demand a health and safety assessment and a strategy for remedying any risks that are identified.
- Contact your Regional Officer and Branch Officers to advise them of what is happening so that they can marshal further support.

Organising for the Long Term

This leads to second longer term issue of getting structures right for future crises. Some thoughts on how we can do this include:

- Educate members on importance of H&S. It's not a boring jobsworth, killjoy issue – as we see today it's a life or death issue and we underestimate its importance at our peril.
- Where we have H&S reps give them confidence to enforce their rights. Encourage them to escalate H&S issues to senior managers, report breaches to the HSE, launch a newsletter and communications to members encouraging them to raise issues, and follow them up. After the lockdown, the emphasis has to be on face-to-face meetings as this is the surest way of engaging members which is where the true power resides, but platforms such as Zoom and Skype enable video-conferencing in the meantime.
- Share successes and victories to help build confidence.
- Recruit and train H&S reps and create a network of H&S reps across the sector, developing the use of social media, Whatsapp and other resources.

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Conclusion

No-one foresaw Covid-19 but it presents an opportunity to improve structures and highlight importance of H&S. Let's use this opportunity, let's hold employers to account, let's organise around the issue so PPE is available not just now but for whenever it is required going forward. Let's demand to see the Risk Assessments. We need to use this as an opportunity to organise now and for the future.

TEMPLATE LETTER TO EMPLOYER IN BREACH OF CURRENT ADVICE

Dear Executive

We write on behalf of our membership at [INSERT] We have been advised by our membership that operation at your (site/factory/workplace/premises) is systematically failing to follow the current government advice on health and safety in the current COVID 19 pandemic.

We believe that by requiring employees to attend their place of work when you are failing to operate a safe system of work and putting our members in imminent and serious danger you may be materially breaching a number of terms of our members' contracts of employment.

In particular, we believe that such a course of action would constitute both a failure to provide a suitable working environment, and engaging in conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence. We will be providing our members with advice as to their options in line with this.

The risk to our members of either contracting COVID-19 and becoming ill themselves; or of contracting the virus and transmitting it to a member of their households is evidently dangerous. This danger has the potential to be extremely serious and in some cases deadly. Our members reasonably believe that the risk of contracting COVID-19 at their place of work and subsequently transmitting it to members of their households and/or service users is one that is serious and imminent. Consequently the protections of sections 44 and 100 of the Employment Rights Act are engaged. We have taken advice from external solicitors and they will advise our membership in respect of the protections afforded to them should you not act immediately.

There are steps that any employee can reasonably be expected to take in order to avert this danger. They are well publicised and absolutely necessary. We urge you to do so and do so immediately. Should you fail to do so we as a Union will consider utilising injunctive proceedings to compel you to do so.

Yours sincerely