

Information Sheet

Health & Safety: Rights at Work

Health and Safety Management

The **Management of Health and Safety at Work Regulations 1999** reinforce the general health and safety duties on employers set out in the **Health and Safety at Work Etc Act 1974**. They also introduce duties aimed at improving health and safety management and encouraging a more systematic and better organised approach to health and safety.

The 1999 regulations require every employer to make a suitable and sufficient assessment of:

- a. the health and safety risks that employees are exposed to whilst at work; and
- b. the health and safety risks that persons who are not in their employment might be exposed to, because of, or in connection with, the work they are undertaking.

The regulations require every employer to make sure that there are arrangements in place to cover health and safety and, in particular, to put into practice measures that follow from a

risk assessment. These arrangements should not be a separate part of management, they should be integrated with the management system for all other purposes. What these arrangements are will depend on the size and nature of the activities being carried out at work, but the approved Code of Practice advises that these should comprise:

- > Planning
- > Organisation
- > Control
- > Monitoring and review.

All employees must be given, by the employer, clear and relevant information about a number of health and safety matters, including:

- > the risks to their health and safety, identified by a risk assessment;
- > the preventative and protective measures that have been taken; and
- > the procedures that have been adopted where employees are working in situations presenting serious and imminent danger.



The regulations say that every employer, when giving work to employees, must be reasonably sure that the demands of the job do not exceed the employee's ability to carry out the work without risk to him or herself or others. In coming to this decision, employers should take into account the employee's capabilities, knowledge, experience and level of training. If extra training is needed it should be provided.

Sensible Risk Management

In 2006 the Health and Safety Executive (HSE) launched a set of principles of sensible risk assessment.

Sensible risk management **IS** about:

- > ensuring that workers and the public are properly protected;
- > enabling innovation and learning, not stifling them;
- > ensuring that those who create risks manage them responsibly and understand that failure to manage significant risks responsibly is likely to lead to robust action;
- > providing overall benefit to society by balancing benefits and risks, with a focus on reducing significant risks – both those which arise more often and those with serious consequences; and
- > enabling individuals to understand that as well as the right to protection, they also have to exercise responsibility.

Sensible risk management **IS NOT** about:

- > reducing the protection of people from risks that cause real harm;
- > scaring people by exaggerating or publicising trivial risks;
- > stopping important recreational and learning activities for individuals where the risks are managed;
- > creating a totally risk-free society; and
- > generating useless paperwork mountains.

Health and Safety Employment Rights

The **Employment Rights Act 1996** introduced amendments to existing employment legislation in order to protect employees who are dismissed or subjected to some other "*detriment*" at work (such as a change of duties, a transfer, demotion or blocked promotion). This protection applies regardless of length of service and is available in the following circumstances:

- a. the dismissal or detriment arises from the employee carrying out health and safety activities;
- b. the dismissal or detriment arises from the employee's actions as a health and safety representative or member of the safety committee;
- c. the dismissal or detriment arises from the employee taking steps to bring health and safety concerns to the employer's attention other than those noted above;



- d. the employee is dismissed or subject to other detriment after leaving the workplace in circumstances of serious and imminent danger; and
- e. the employee is dismissed or subject to other detriment after taking other appropriate steps, apart from leaving the workplace, to protect him or herself and others from serious and imminent danger at work.

So, regardless of length of service or hours of work, employees are now specifically protected against being dismissed, selected for redundancy or subjected to any other detriment for taking certain types of action on health and safety grounds, as listed above. The protection also applies if the employee is proposing to take any of these steps. **Where there is a dismissal, it is automatically unfair.**

The 1996 act does not define “*detriment*”, but it is generally defined as meaning “putting at a disadvantage”. The detriment must be substantial and it must be capable of being seen as a detriment by reasonable people.

Constructive Dismissal

Employment tribunal awards for health and safety dismissals are generally larger than for ordinary unfair dismissals in that there is a minimum Basic Award (currently £6,203) which is increased each year; and, there is no limit on the Compensatory Award. The purpose of the legislation is to deter employers from penalising employees who take action to ensure that proper health and safety standards are maintained at work.

Pregnant Employees

Employers are required to assess risks to pregnant employees and, following the risk assessment procedure set out in the 1999 regulations, employers must then put in place protective and preventive measures. In addition, in certain circumstances, a failure to carry out a risk assessment may constitute sex discrimination and may constitute a repudiatory breach of contract.

If a pregnant employee is working in an environment where a risk to her health and safety exists, she has the right to be suspended on full pay if there is no alternative risk-free employment that can be found. If in these circumstances she is dismissed, the dismissal is automatically unfair.

If you have any concerns about health and safety issues in your workplace, please contact Voice for further advice.