

Safety Reps and GDPR

Some employers are using the General Data Protection Regulations (GDPR) to try to stop union health and safety representatives from getting access to information to which they are legally entitled.

The 1977 Safety Reps and Safety Committee (SRSC) Regulations are very clear about what safety reps are entitled to. Regulation 7 basically states that employers “have to make available to safety representatives the information.....necessary to enable them to fulfil their functions.” There is an exception for information that relates specifically to an individual unless they have consented.

The HSE Code of Practice to the Regulations lists what information is covered, and it is pretty comprehensive. It states:

Code of Practice 7

(from Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500), as amended)

“The Regulations require employers to make any information they are aware of available to safety representatives that is necessary for them to fulfil their functions. Such information should include:

- (a) information about the plans and performance of their business and any changes proposed where they affect the health and safety at work of their employees;
- (b) technical information about health and safety hazards and precautions needed to eliminate or minimise them, regarding machinery, plant, equipment, processes, systems of work and substances in use at work, including any relevant information provided by consultants or designers or by the manufacturer, importer or supplier of any article or substance used, or proposed to be used, at work by their employees;
- (c) information the employer keeps relating to the occurrence of any accident, dangerous occurrence or notifiable industrial disease and any statistical records relating to such accidents, dangerous occurrences or cases of notifiable industrial disease;
- (d) any other information specifically related to matters affecting the health and safety at work of their employees, including the results of any measurements taken by the employer or people acting on their behalf in the course of checking the effectiveness of their health and safety arrangements;
- (e) information on articles or substances which an employer issues to homeworkers.”

Unite is aware that some employers are saying that the GDPR restricts what information they can supply. Examples of this include refusing to hand over information from accident report forms - instead saying they will just give quarterly reports - or instructing their auditor to stop sharing their safety audits with safety representatives on the

grounds they contain some personal data. This is nonsense. These employers are making no attempt to gain consent for sharing the information or, if consent is withheld, anonymising the information.

This appears to be a deliberate attempt to stop union representatives getting information they need. Just giving general information with no detail makes these reports utterly useless, as the health and safety representative can't properly investigate unless they know who the member is.

GDPR does not change the information that can be given to union health and safety representatives in the least. Both the SRSC Regulations and the 1998 Data Protection Act already restricted personal information being given out, which is why employers had to anonymise it or get the permission of the individual. In fact, the official accident report form published by the HSE has a box asking the person to consent to the information going to the safety representative.

The HSE has responded to questions about GDPR and information for safety reps.

"The Government Legal Department advise that the implementation of the EU General Data Protection Regulation should not adversely impact safety representatives carrying out their functions within the Safety Representatives and Safety Committees Regulations. Employers are required to provide documents and information requested by safety representatives under Regulation 7 as before ."

In other words, if an employer is now refusing to give over information, either they should not have been giving it out before, or they are using the GDPR as an excuse.

This means that legally safety representatives can still get all the information that they need. If an individual is mentioned, that individual can be asked to give consent or the name can be withheld. Information on any injuries, near misses or occupational diseases can still be given to representatives, as can any audit or other reports or the results of investigations.

If employers do try to restrict information or claim that GDPR somehow supercedes the SRSC Regs they should be asked where in the GDPR it says that they should not provide the information covered in Regulation 7 of the SRSC Regulations. Furthermore their attention should be drawn to the legal view from HSE.

This does not mean that GDPR will not affect safety representatives. When handling personal data, including membership information, or details of any other issues that reps are handling, the information needs to be kept securely. For electronic information, many representatives use their employer's system and they usually follow the security standards operated by the employer, but if reps are keeping their own information it must follow the requirements of the new regulations. Unite has published separate advice to workplace representatives on GDPR.

The rules apply to paper-based information as well as electronic information. Regulation 5(3) of the SRSC Regulations requires employers to give "such facilities as the safety representative may reasonably require" for safety inspections. Regulation 4A2 of the SRSC Regulations gives safety reps considerable powers to demand facilities to enable them to carry out their functions effectively. That means that, at the very least, health and safety representatives can demand a locked filing cabinet and any other secure facilities they need to keep data secure. In more modern practice such facilities are very likely to include access to computer equipment and email.