

Thirteen years of enforcement: why is noise at work still a problem in engineering in SME's in the West Midlands?

As a result of a European Directive and major campaigning by unions and other interest groups, the Noise at Work Regulation came into effect on 1st January 1990. Since then unions and employer organisations have achieved a lot for their members, who are subjected to high levels of noise, but there is a long way to go especially for those workers in Small to Medium Enterprises (SME's), who are predominately not trade union organised and very rarely use the employer organisations as a source for information.

There has been an informal agreement within the European Union on a new European Directive '*Physical Agents (Noise) Directive, which is time-tabled to be on the UK statute book in 2005*. This will put greater emphasis on the assessment of noise in the workplace and reducing the noise action levels. This will have dramatic effects for SME's.

It is well documented that where a workplace is trade union organised an employee is 50% less likely to be involved in a health and safety incident (Ref). It is also well documented that the hardest employers to regulate or organise for health and safety are SME's (Ref). These companies are normally run on very tight margins with lean workforces, thus time is at a premium. Health and safety is not just about complying with regulations, it is about continually organising and budgeting for safety within all structures of the organisation. This takes time and has a certain cost element to the company. Moreover safety at the workplace is a behavioural issue, it is about the behaviour of senior management, middle management and workers, and thus it is about some form of interaction between all levels of the company. What better way to create interaction, than to set-up a safety committee and use this committee to action health and safety initiatives.

Most of the benefits from the reduction of noise in the workplace have come from larger workplaces, especially those which are trade union organised. One of the reasons given for this is that the health and safety structure within larger companies involves all levels of the company. For example the commitment of top management to make noise levels of the machine a factor in its purchase and use, when buying new machinery. Middle management and workers could ensure that the acoustic equipment installed is always used and of course the position of the machine should be considered so that the minimal amount of workers will be within hearing range. Thus the focus placed on reducing noise at source should be the company's main focus – not the use of Personal Protective Equipment (PPE). The use of PPE is the last resort. Moreover it is incumbent upon the company to assess and reduce the noise on a continuous basis. Unfortunately this is very difficult for SME's to achieve as in general their health and safety structures are less defined and financial margins are more likely to be tighter than their larger counterparts.

It has been argued that one of the ways SME's could be helped is 'to extend the effective representation of union members by trained safety reps, whether in recognised workplaces or not'. This can be achieved by roving safety reps. **Roving Safety Representatives** are individuals competent in health and safety, and representation who have a right to effectively represent groups and individuals in workplaces other than their own. This requires some form of reasonable right of access to workplaces¹.

¹ Kirby, P. 'roving safety reps: reaching workplaces other reps don't' **TUC**, September 2002

This could be based on the **fundamental right to health and safety representation**. Re *vit*alsing health and safety reinforces the principle of representation, and the Employment Relations Act 1999 provides for some outside assistance. Legislating only for grievance cases is not consistent with modern proactive health and safety legislation or HSE guidance.

Current relevant legislation

Employment Relations Act, 1999 (ERA99)

This Legislation provides for the right to be accompanied where a worker is required or invited to attend a disciplinary or grievance 'hearing'. This right is for the individual worker, not workers collectively (and not specifically for Trade Unionists). Agency and Home Workers are explicitly included. The use of the word 'hearing' is meant to indicate that this need not be a formal occasion.

Regulation 13(4) defines a 'hearing' as something that could result in:

- C a formal warning;
- C the taking of some other action in respect of a worker; or
- C the confirmation of a warning.

Regulation 13(5) defines a 'grievance' as: 'A hearing which concerns the performance of a duty by an employer in relation to the worker'.

Duties could cover contractual, common-law or statutory duties.

Note: the right is to accompany rather than to represent. However, the person accompanying has the right to address the hearing and also has the right to confer with the worker.

The worker chooses the person who is to accompany him or her, but the person chosen must be:

- C employed by a Trade Union as an Official, or
- C an official of a Trade Union whom the Union has reasonably certified in writing as having the experience or training necessary to act as a worker's companion, or
- C another of the employer's workers.

So where an employer fails to comply with health and safety legislation they could be subject to a grievance. The Union could then advise a member or worker that a Safety Rep could be provided to assist at a hearing. There is no requirement that the Safety Rep should be employed at the particular workplace where the grievance is to be heard.

Since the ERA99 grants only individual rights, and focuses on grievances (as opposed to proactive health and safety management), it does not allow the full range of a true roving Safety Rep's functions. But it does go some way towards

achieving that, and in particular provides for access to the workplace and representation in circumstances where a worker has serious concerns for their safety. Large companies and employer federations could help by promoting good health and safety adoption schemes, whereby good practice is passed down from the large company to its smaller suppliers. This could be an opportunity for large engineering companies in the Birmingham and West Midlands Region, coupled with their GMB Safety Representatives in the form of Roving Safety Reps to help the supply-chain SME's to implement the new Noise Regulations and help eradicate the blight of hearing loss.