

# Health and safety Time for change

*Reclaiming health and safety at work*



## Vulnerable 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 face additional 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.

The Commission on Vulnerable Employment<sup>1</sup> estimate that around two million workers in the UK find themselves in vulnerable employment, which they defined as precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship. This includes significant risks to their health or safety.

There are many and complex reasons for vulnerable work. Much exploitative treatment of vulnerable workers occurs because the law is not strong enough to prevent mistreatment, with employers using gaps in employment protection to treat staff badly. The result is extreme insecurity for workers who do not have contracts of employment, work through agencies, or who have reduced rights because of their immigration status. In addition enforcement agencies do not have the resources, capability or will to address the problems that vulnerable workers face.

### **Migrant workers**

Many migrant workers face no, or very little, increased risk. They speak fluent English, may have worked in the UK for many years and have the same working conditions and security as non-migrant workers. Nevertheless there is no doubt that migrant workers with low English language skills or with vulnerable employment or residency status are at greater risk.

No figures are available on how many migrant workers are killed or injured every year but as migrant workers are found in significant numbers in the agriculture and construction sector, and these have significantly higher risks, it is likely that these would be reflected in any statistics. Unfortunately, given the nature of migrant work, there is significant underreporting of injuries and illness in this area.

In 2006 the HSE published research on the position of migrant workers<sup>2</sup>. It interviewed 200 migrant workers and found that:

- Most had received no, or little, training, even if this was required for the work they do, such as scaffolding or food handling.
- Because many migrant workers only intended to stay in the UK for a limited period of time and their main aim was to make money and then return home they were more likely to work when ill, and if they became ill for a long period would usually return to their country of origin. This was made worse by the widespread denial of sick pay. This meant there was a serious underreporting of illness and injury.
- Many migrant workers worked over 60 hours a week. Often overtime was not paid. There was evidence that long hours were more common in the low paid sectors, especially those that paid less than the minimum wage.
- Very low wages and long hours were more common among undocumented or unauthorised workers who worked under greater fear of dismissal and deportation. This group also had less information about their health and safety rights.
- Around half of these interviewed had difficulties with English, although many tried to hide it from their employer for fear of not getting work. Because they were working long hours and spent most of their time within a migrant community, many migrant workers had no time or opportunity to improve their English.
- Many migrant workers reported discrimination, harassment or racism, either from supervisors or co-workers.
- Women workers were more likely to report that they had received no training, that their health was being compromised by the work they were doing and that they suffered from discrimination.

Other issues that have been raised either by this research or by trade unions working with migrant workers have included:

- Lack of adequate protective clothing
- Lack of welfare provision
- Cultural diversity.

The Gangmasters Licensing Authority (GLA) was set up in the wake of the Morecombe Bay tragedy to provide additional protection to some groups of workers who were considered especially vulnerable, in particular those working in agriculture, the fresh produce supply chain and horticulture industry (such as fruit picking and shellfish harvesting) where there are a large number of migrant workers. In order to operate in GLA sector labour providers must be licensed and must comply with minimum employment, health and safety and tax rules. In recent years the GLA has worked closely with the HSE to raise safety standards in those sectors where the risk of workplace deaths or injuries is high, including agriculture and to ensure that migrant workers are housed in safe conditions. They also work with the HMRC to ensure that workers in GLA sectors are paid at least the national minimum wage.

However the remit of the GLA is limited. It does not cover other sectors with high levels of contracting such as construction, or other areas where abuse of migrant workers is widespread such as hospitality and social care. In a recent consultation the government indicated they plan to scale back on the remit of the GLA, including by removing forestry from its remit. This is despite

the fact that a recent Forestry Regulation Taskforce Report concluded that *'the safety record of the sector is poor with a fatality rate currently 15 times the national average.'*<sup>3</sup> In the future cleaners working on food production lines, volunteers and apprentices placed by Apprenticeship Training Agencies will no longer be protected by the GLA. The GLA is also considering ending automatic inspections for all new licence applicants. The TUC has opposed this move which could lead to up to one in five rogue agencies being licensed.

### **Agency workers**

After years of campaigning by trade unions, from 1 October 2011, agency workers benefitted from new equal treatment rights, including the right to equal treatment on working time after 12 weeks in the same role and the same hirer. However agency workers still suffer significant health and safety problems. Often they do not know who is responsible for their safety, the agency or the employer. Risk assessments are frequently not done or are inadequate. Agencies and hirers often pass the buck on who has responsibility for providing PPE and training can be non-existent.

### **Lone and Homeworkers**

Lone and homeworkers are also very vulnerable. They have little practical protection from the regulators unless something goes seriously wrong as they are not on the regulators radar and reporting of injuries and ill-health is very low. Where a risk assessment is done it is often a general one, yet it is not just the actual work but also the working environment which must be considered. Homeworkers in particular are at risk because they are often considered to be "self-employed" even though there is an employer who controls what they do.

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 be 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 so very few of these employers will have any kind of safety systems in place and are unlikely to report any injuries that take place.

### **Self-employed**

Self-employed people are far more likely to be killed through work than employed workers. There is currently a fatality rate of 1.2 per 100,000 for the self-employed as against 0.5 per 100,000 for employees<sup>4</sup>. Often self-employed people are in the same position as employed workers as they have no control over their working environment as they are working as a contractor, sometimes with other workers, however are often not given the same health and safety protection as employers will claim that it is the self-employed person's responsibility, not theirs. They are also often found in some of the most dangerous industries such as construction.

Often employers claim that their workers are "self-employed", despite them doing work 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 5 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. It claims that it will only effect self-employed people who pose no risk to others, yet if they pose no risk they could not have any duties under the health and safety at work act beyond doing a risk assessment which they will still have to do to find out if they do in fact pose any risk. However what will happen is that many self employed people will think they are exempt when they are not and many employers will think (wrongly) that they can get round the act by making their workers self-employed. All the change will do is increase confusion, uncertainty and risk.

What we now have is huge areas where workers have to put up with reduced protection, either because the law is inadequate or it is not enforced. The Government changes will make this even worse.

***Trade unions would want to see a strengthening of the Gangmasters Licensing Authority with an extension to other areas. However we also need greater resources to 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 working together to ensure that all workers have a safe workplace.***

## **References**

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<sup>1</sup> [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

<sup>2</sup> <http://www.hse.gov.uk/research/rrpdf/rr502.pdf>

<sup>3</sup> *Challenging Assumptions; Changing Assumptions* Report of the Forestry Regulation Taskforce, October 2011 p.8

<sup>4</sup> HSE statistics 2012/13