

IF YOU BELIEVE YOUR WORKPLACE IS UNSAFE, YOU HAVE THE LEGAL RIGHT TO REFUSE TO WORK

Your legal right to a safe workplace is provided by the Employment Rights Act 1996.

Section 44 of this act says that no-one should lose their job, or suffer loss of pay or any other bad consequence (like being refused a promotion) for either leaving a workplace they believe to be unsafe or refusing to come to a workplace they believe to be unsafe. (The Act can be read here: www.legislation.gov.uk/ukpga/1996/18/section/44)

Under the 1996 Employment Rights Act, someone can say a work is unsafe if there is “serious and imminent risk of danger which they could not be expected to avert.” (It has not yet been tested in court, but you could argue that this also includes the commute to work.)

The coronavirus has killed more than 30,000 people in the UK and is still hospitalising and killing more. Every workplace is at “serious and imminent risk of danger” before we have a vaccine for it, particularly in the absence of protective equipment for staff.

The legal protection in the Employment Rights Act 1996 applies to people who are directly employed by a company (legally called “employees”).

Those not directly employed (“workers,” like self-employed and contract workers) are not directly covered by this particular Act.

However, whatever your employment status, the company responsible for operating the place where you work has a responsibility in law to ensure it is safe. They have a duty of care to you.

This includes the provision of Personal Protective Equipment (PPE) where this is necessary, under the Personal Protective Equipment at Work Regulations 1992, section 2.

An employer should also carry out a risk assessment of the workplace, as demanded by Regulation 3 of the Management of Health and Safety Regulations 1999. You are entitled to ask your employer whether he or she has carried out this risk assessment.

Coronavirus is spread by human contact, so any work involving even minimal contact with other people – such as working in a shop – requires protection. And every workplace should have a risk assessment.

You should not be forced to work anywhere without PPE, or where no risk assessment has been made.

But as an employee, you have the legal right to refuse work if you believe it to be unsafe, even if the employer has provided some PPE and carried out a risk assessment. The law depends on your “reasonable belief” a situation is unsafe, not the employer’s or the government’s claims.

STAY HOME, SAVE LIVES, JOIN A UNION

At present, employers are able to get assistance from government to help with the costs of the lockdown, and employees and some self-employed are entitled to furlough payments from government. Employers have no reason to insist on work being performed when assistance is available.

YOU DO NOT HAVE TO WORK IF YOU BELIEVE YOURSELF AND OTHERS TO BE AT RISK OF CORONAVIRUS

Thanks to the lockdown and people staying home to save lives, the rate of infection in Britain has come down.

But the virus is still present in this country. That means it is still a risk for everyone. No-one should be expected to work in unsafe conditions.

Dismissing an employee for refusing to work in unsafe conditions is classed as “automatically unfair.” An employer is not legally allowed to sack you for this, and a tribunal is legally bound to find in your favour and award damages. (See the employer’s magazine, *People Management*, for details: www.peoplemanagement.co.uk/experts/legal/avoiding-automatic-unfair-dismissal-claims-during-covid-19)

The law is not a magic wand, but it can be used to help you.

A malicious employer might still try to find some other reason for dismissal. They will find this very much harder if many workers on a site, an office, or other building are all refusing to work because of safety concerns.

This means that working with others is important. Talk to other people you work with if you think conditions at your work are not safe – but do so away from work, and do not use company emails to communicate. Phone calls and private WhatsApp groups are much better.

Join a union if you have not already, and talk to your union if you are already a member. They will be able to provide legal and other advice. The Trades Union Congress has details for most unions in Britain (www.tuc.org.uk/join-union), or else take a look at www.iwgb.org.uk, www.uvwunion.org.uk, or www.caiwu.org.uk if you are a cleaner. You should either join a union already present at your company or a union that matches your job.

There are more details about the law on this website, written by an employment law specialist: www.outertemple.com/wp-content/uploads/2020/04/Coronavirus-and-health-and-safety-dismissals_-_A-guide-Gus-Baker-April-2020.pdf

Written and published by workers with legal advice from multiple sources