



THE RIGHT TO REFUSE DANGEROUS WORK

Health and safety in the workplace

The Health and Safety in Employment Act 1992 aims to promote the health and safety of everyone at work and of other people in or around places of work. To achieve this, it requires people who are responsible for work and those who do the work to take steps to ensure their own health and safety and that of others. The Act also recognises that employees have a valuable contribution in making workplaces safe.

■ Refusing work that endangers health and safety

As part of an employee's general responsibility to ensure their own health and safety, every employee has a right under the Act to refuse to do any work that they believe is likely to cause them serious harm.

■ FAQs

Below are the answers to some frequently asked questions, which illustrate how the Act applies when an employee intends to exercise their right to refuse to carry out dangerous work.

Q: In what circumstances can an employee refuse to carry out work?

A: An employee may refuse to perform any work that they believe is likely to cause them serious harm.

Q: What happens next?

A: The employee must, as soon as possible, let their employer know of their refusal to work. Together, you or your representatives should discuss the problem in an effort to resolve it.

Q: Can an employee continue to refuse to carry out work?

A: An employee may continue to refuse to carry out that work if, after discussing the matter with their employer in an attempt to resolve it, the problem is still not resolved and the employee still believes on reasonable grounds that the work is likely to cause them serious harm.

Q: How can we determine whether reasonable grounds exist?

A: Reasonable grounds exist if, for example, a health and safety representative believes that the work an employee is required to do is likely to cause them serious harm and advises them accordingly.

You may wish to seek advice from:

- a Health and Safety Representative
- expertise within the organisation, such as health and safety managers, engineers, and scientists;
- expertise outside of the organisation, such as advisers who are part of a union, or employer or sector organisations;
- health and safety inspectors.

Q: If we continue to disagree that particular work is likely to cause serious harm, who can we approach to help resolve the issue?

A: In the first instance, you (and your representatives if necessary) should continue to work together in good faith to identify the cause of a problem and attempt to resolve it yourselves. If, however following this process the problem is not resolved by discussion, either party may:

- contact the Department's Labour Group contact centre on 0800 20 90 20. The centre can provide information and advice, or refer you to a local office of the Department for more specialised information or mediation
- seek mediation assistance from the Department's mediation services or you may both agree to get a private mediator.

Q: What is the situation for employees who carry out work that, by its nature, is likely to cause serious harm?

A: Some work, by its nature, carries a high degree of risk of personal injury or other types of serious harm. Employees who carry out such work may refuse that work only if the understood risk of serious harm has materially increased in a given situation, in other words, if the risk of harm has become significantly more likely than usual.

Q: If an employee refuses to carry out dangerous work, can their employer get them to carry out other work?

A: Yes. An employee who refuses to do work because it is likely to cause serious harm must do any other work that their employer reasonably requests, as long as the work is within the scope of the employee's employment agreement.

■ Further information

This information is a guide only and may not be accurate for all situations. It should not be used as a substitute for legal or other expert advice.

For further information, call 0800 20 90 20, or visit www.dol.govt.nz

