

## Worker health and safety - extending protection from detriment to workers

An Order currently before Parliament to extend s.44 Employment Rights Act 1996 has the potential to significantly impact employers.

17 March 2021

The health and safety of individuals in the workplace has come under increasing scrutiny during the Covid-19 pandemic.

Currently, employees have the right not to suffer a detriment for leaving or refusing to return to work, or taking appropriate steps to protect themselves or others, where they have a reasonable belief that they are in serious and imminent danger which they could not reasonably be expected to avert (s.44 Employment Rights Act 1996). Employees also enjoy protection from unfair dismissal under such circumstances (s.100 Employment Rights Act 1996).

The protection from 'health and safety detriment' is currently confined to employees only. However, an Order is currently before Parliament which proposes to amend s.44 Employment Rights Act 1996 to extend this protection to all workers.

Under the proposed Order, provided that the relevant worker reasonably believes there to be a serious and imminent danger, they would be able to rely on the new protections. However, note that the new Order does not extend the protection from dismissal under s.100 ERA, on the basis that workers do not benefit from protection from unfair dismissal and there should be no obligation to confer protection specifically for health and safety reasons.

Previously, claims relating to the existing 'protection from detriment' provisions have been relatively uncommon. However, this area has increasingly come under the spotlight in recent months during the pandemic, with greater focus on health and safety in the workplace and what courses of action are available to employees if they believe that their employer is failing to provide them with a safe place of work. This has emphasised the discrepancy in the current legislation between the protections offered to employees compared to workers.

If the Order receives approval from Parliament, it will come into force on 31 May 2021. This has the potential to have a significant impact on employers by dramatically increasing the number of individuals who are able to bring such claims against their employer.

We have [previously provided an update](#) on the decision in the case which ultimately prompted this change in the law, by finding that these protections must be extended to workers, under EU law.

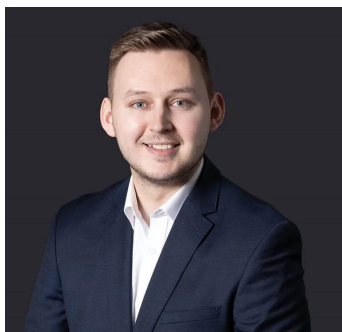
A copy of the Order which is currently before Parliament can be found [here](#).

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