

Health and safety in the workplace

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Please note: the information contained in our legal updates are correct as of the original date of publication

The Government guidance is clear that as a result of the coronavirus, anyone who can work from home should do so. But there are plenty of jobs that cannot be undertaken from home and there have already been press reports of employees raising concerns over the enforcement of the 2-meter distance rule in some workplaces, or the availability of items such as hand sanitiser or protective equipment. In such circumstances, employees concerned about their health (or the health of their household members) may choose to vote with their feet and either leave work, or refuse to attend again until the issues are resolved.

There is existing legislation in place which protects employees from either being subjected to a detriment or being dismissed (including being selected for redundancy) because they have left work, are proposing to leave work, or are refusing to return to work in circumstances of danger which the employee reasonably believes to be serious and imminent, and which the employee could not reasonably be expected to avert.

Employees are also entitled to take appropriate steps to protect themselves (or others) from the danger. This could potentially include steps taken to protect more vulnerable household members. What steps are appropriate will be judged by all the circumstances of the case, including the employee's knowledge and the facilities and advice available to him at the time. Clearly, any protective measures put in place by the employer, and whether the employee is acting in line with reputable guidance (rather than, for example, gossip or social media speculation) will be relevant.

Whether the threshold of serious and imminent danger is met will be fact specific in every case. However, it is important to note that the requirement is for the employee to reasonably believe the danger to be serious and imminent – the employer does not have to agree with that assessment. Given the threat level associated with the coronavirus pandemic, and the extent of the isolation and distancing guidance issued to date, it is not hard to imagine that a Tribunal would be sympathetic to an employee who reported that the measures advised by the Government were not being adhered to.

"Danger" can also occur due to the actions of other employees. For example, an employee who is refusing to self-isolate when displaying the recognised symptoms of coronavirus could be perceived to be significant danger to other employees.

Workers may also raise protected disclosures where they reasonably believe that the health and safety of any individual has been, is being or is likely to be endangered. Workers are protected from being subjected to a detriment or dismissed because they have raised a protected disclosure.

Employers will need to be alive to the concerns raised by employees/workers and ensure that if there are any health and safety issues that arise, these are dealt with swiftly and effectively. They should ensure that the minimum precautions advised by the Government are adhered to and that steps are taken to minimise any risks caused by the particular premises, work methods or job roles. Where required, appropriate protective equipment should be provided, and employees/workers should be both trained properly on its application and use, and monitored for compliance. Any employees/workers who are displaying the recognised symptoms of coronavirus should be instructed to leave the workplace and self-isolate – with further action taken if they continue to refuse to adhere to this instruction.

Employers who are faced with employees who have left, are threatening to leave, or refusing to attend work as a result of health and safety concerns will need to act cautiously and may wish to consider seeking legal advice before taking action.

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