



SERIOUS AND IMMINENT



DANGER



INTRODUCTION

This pamphlet is designed to give RMT members a better understanding of the law as it relates to 'serious and imminent danger' and the limits of this legislation in relation to Covid -19 (see page 7 for more information).

The Management of Health and Safety at Work Regulations 1999 state that employers must have procedures to be followed "in the event of serious and imminent danger". These procedures are frequently referred to as "worksafe" policies.

There have been many examples of our members using this right to great effect, resulting in improved safety standards in the industries in which RMT organises.

This union recognises that refusal to work is not a form of industrial action so does not require exhaustive balloting procedures. Rather, it is a legal right of individual workers. We understand that due to management pressure, members may find it difficult to exercise their rights, and that support from their union can give them the confidence to do so.

RMT also recognises that when individuals invoke such a policy, this represents an accident that didn't happen - and urges all employers to monitor and investigate uses of such a policy in the workplace just as they would an accident or incident that did occur.

Please email RMT's Health and Safety section at Head Office (healthandsafety@rmt.org.uk), when these procedures are used. RMT will publicise cases where members have successfully used this right.

"Serious and imminent danger" has been included in RMT's training for health and safety representatives so that they understand this legislation.

RMT commits to provide full support for any members whose employer attempts to victimise them for asserting their rights.

A handwritten signature in black ink, appearing to read 'M. Lynch'.

Michael Lynch
General Secretary

September 2022



ADVICE TO RMT MEMBERS ON 'SERIOUS AND IMMINENT DANGER'

In certain circumstances employees are protected by law if they decide that their work situation represents a threat of "serious or imminent danger" and as a result of this belief they remove themselves to a place of safety. Protection is also given to trade union appointed health and safety representatives.

This guide is intended to clarify the law in these cases and is for use of RMT members and health and safety representatives.

ADVICE TO MEMBERS: PROCEDURES FOR SERIOUS AND IMMINENT DANGER AND FOR DANGER AREAS

The Management of Health and Safety at Work Regulations 1999 (the Management Regs), Reg 8, reads as follows:

8 (1) Every employer shall—

- (a) *establish and where necessary give effect to appropriate procedures to be followed in the event of serious and imminent danger to persons at work in his undertaking;*
- (b) *nominate a sufficient number of competent persons to implement those procedures in so far as they relate to the evacuation from premises of persons at work in his undertaking; and*
- (c) *ensure that none of his employees has access to any area occupied by him to which it is necessary to restrict access on grounds of health and safety unless the employee concerned has received adequate health and safety instruction.*

- (2) **Without prejudice to the generality of paragraph (1)(a), the procedures referred to in that sub-paragraph shall—**
- (a) so far as is practicable, require any persons at work who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it;
 - (b) enable the persons concerned (if necessary by taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal) to stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger; and
 - (c) save in exceptional cases for reasons duly substantiated (which cases and reasons shall be specified in those procedures), require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.
- (3) **A person shall be regarded as competent for the purposes of paragraph (1)(b) where he has sufficient training and experience or knowledge and other qualities to enable him properly to implement the evacuation procedures referred to in that sub-paragraph.**

Further protection is offered to employees by the Employment Rights Act 1996 (ERA) as amended which states that Safety Reps have a right not to be subject to any detriment in connection with preventing or reducing risks to health and safety at work. Furthermore, an employee who raises issues that they reasonably believe to be harmful or potentially harmful to health or safety



should not suffer detriment. Also, in circumstances of danger which the employee reasonably believed to be serious and imminent and which he or she could not have been expected to avert, the employee who left or proposed to leave while the danger persisted should not suffer detriment.

PROTECTION FROM SUFFERING DETRIMENT IN EMPLOYMENT

The ERA part V, section 44 reads as follows:

Rights not to suffer detriment

- (1) *An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that-***
 - (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,*
 - (b) being a representative of workers on matters of health and safety at work or member of a safety committee-*
 - (i) in accordance with arrangements established under or by virtue of any enactment, or*
 - (ii) by reason of being acknowledged as such by the employer, the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,*
 - (ba) The employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in*

an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),

- (c) *being an employee at a place where—*
 - (i) *there was no such representative or safety committee, or*
 - (ii) *there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,*
- (1A) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that—**
 - (a) *in circumstances of danger which the worker reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, he or she left (or proposed to leave) or (while the danger persisted) refused to return to his or her place of work or any dangerous part of his or her place of work, or*
 - (b) *in circumstances of danger which the worker reasonably believed to be serious and imminent, he or she took (or proposed to take) appropriate steps to protect himself or herself or other persons from the danger.*
- (2) For the purposes of subsection (1A)(b) whether steps which a worker took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.**



- (3) *A worker is not to be regarded as having been subjected to any detriment on the ground specified in subsection (1A)(b) if the employer shows that it was (or would have been) so negligent for the worker to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.***
- (4) *This section does not apply where the worker is an employee and the detriment in question amounts to dismissal (within the meaning of Part X).***

So, if an employee leaves, or proposes to leave, or (while the danger persists) refuses to return to his or her place of work (or any dangerous part of it) in circumstances of danger which s/he reasonably believed to be serious and imminent, and which s/he could not reasonably have been expected to avert, or s/he takes, or proposes to take, “appropriate steps” to protect himself, herself or other persons in circumstances of danger which s/he reasonably believes to be serious and imminent, they should not be subjected to any detriment.

COVID-19

The Employment Tribunals have taken a reluctant approach to include issues of Covid-19 within the meaning of serious and imminent danger. Recent case law has established that although the law says that it is automatically unfair to dismiss someone who leaves work or refuses to return in circumstances of danger which they reasonably believe to be ‘serious and imminent’, the Employment Appeal Tribunal has held that it was not automatically unfair to dismiss an employee who refused to return to work during the first lockdown because of concerns about the risks posed by Covid-19.

EMPLOYERS PROCEDURES

The Management of Health and Safety at Work Regulations and the Employment Rights Act place a duty on employers to have in place procedures for workers to follow for circumstances of serious or imminent danger, sometimes known as worksafe procedures. They must set out what steps employees must take in such circumstances and should as a minimum address the following points:

- the nature of the risk and how to react
- procedures to cover risks going further than those due to fire and bombs
- additional duties of persons with specific tasks such as shutting down a plant, or who have had training in controlling an emergency event. Such employees should have appropriate preventive measures available to them
- the role, duties and authority of the competent persons nominated to implement the detailed actions
- specific duties of employers under health and safety regulations which address specific emergency situations
- information on when and how procedures are to be implemented, so that employees have adequate time to evacuate to a place of safety.

Work should only be resumed after an emergency if no serious danger remains. Entry to areas where serious danger remains may be necessary in exceptional cases, and in such situations special protective measures should be taken.



Appropriate external contacts should be in place to ensure that there is adequate first aid, emergency medical care and rescue work provision. In places where there are several employers, one employer may arrange contacts on behalf of all the employers. Contacts with external services should be recorded, reviewed and revised as required. Employees should be provided with information on the emergency arrangements, including the identity of the staff nominated to help during an evacuation.

In the case of the employee who believes himself/herself to be in serious and imminent danger and who on that account quits work, they must genuinely believe the danger to be serious and imminent. If he/she cannot reasonably avert the danger then they are entitled to take themselves out of harm's way.

In circumstances of danger which the employee reasonably believes to be serious and imminent, the employee may also take appropriate steps to protect themselves and others from the danger. This includes situations in which the employee genuinely and reasonably believes that there is a serious and imminent danger to others, including members of the public.

Whether or not the steps which an employee takes to protect him or herself or others from danger are 'appropriate' will be judged by reference to all the circumstances including, in particular, the employee's knowledge and the facilities and advice available at the time.



Members Helpline,
Freephone 0800 3763706

www.rmt.org.uk

