

Dealing with Employee Concerns and the Right to Stop Work

- **the following provides some discussion of the legal and practical issues involved**

Dealing with concerns

1 It is, naturally, absolutely right that employees should be involved in developing safe systems and places of work and if they have concerns about safety they should bring them to the attention of their employer. HSE expects there to be adequate consultation by employers in devising safe systems of work etc. In general concerns should be resolved by sound analysis, discussion and agreement on any actions necessary.

2 It is not HSE's responsibility to arbitrate in industrial relations disputes but if we receive complaints about significant risks at work, our general policy is to look into the matters being complained of and see what action – if any – is necessary (to secure compliance with health and safety law and using our enforcement powers if appropriate).

The legal basis

3 There are two relevant pieces of health and safety law.

4 Firstly, section 7, of the Health and Safety at Work etc. Act 1974, in essence, sets out the duty of every employee while at work to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omission at work; and to cooperate as far as necessary to enable a duty or requirement imposed on another party (e.g. the employer) to be performed or complied with. This needs to be read in the context of the other general duties under the 1974 Act directed at employers, persons in control of premises etc.

5 The purpose of section 7 (among other things) is to require employees to look after their general health and safety in the workplace e.g. by wearing protective clothing; to take reasonable care, e.g. in operating cranes; and to cooperate with their employer to enable the employer's responsibilities to be met, e.g. following the safe systems of work which have been laid down.

6 In our opinion, as enforcing authority for the Health and Safety At Work etc. Act 1974, the fact that there is an industrial dispute of some kind would not, in itself, produce a situation in which employees are required to stop work. It is also not the case that each employee should be put in the position where they need to undertake detailed risk assessments taking account of any relevant changed circumstances - rather, it is for the employer to undertake risk assessments; provide adequate training, instruction, supervision etc and systems of work - within the limits of what is reasonably practicable.

7 Secondly, regulation 8 of the Management of Health and Safety at Work Regulations 1999 (made under the 1974 Act) provides that every employer shall establish and where necessary give effect to appropriate procedures to be followed in the event of **serious, imminent and unavoidable danger** to persons at work. The regulation says that the procedures shall enable the persons concerned to stop work and immediately proceed to a place of safety.

8 Both the above provisions give effect to obligations in Article 8 of the health and safety Framework Directive (89/391/EC), where the context is about information and procedures for dealing with danger, rather than circumstances for walking off the job.

9 Section 100 of the Employment Rights Act 1996 provides that is an automatic unfair dismissal to dismiss a person for leaving or failing to return a place of work which he **reasonably** believes to be in circumstances of imminent and serious danger. Section 44 of the same Act seeks to prevent employees being subjected to a detriment, such as stoppage of pay, in a genuine case of serious and imminent danger,

Conclusions

10 If an employee stopped work in circumstances where there was no imminent risk, questions about the fairness of any related dismissal would ultimately be a matter for the Employment Tribunal. Employers and trades unions must seek their own legal advice on these issues - it is not for HSC or HSE to advise in relation to employment rights issues.

11 HSE will deal with complaints which allege that persons are being exposed to imminent and serious risk as part of its operational arrangements.

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