

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)

803 KAR 2:220. Refusal [~~Employees' refusal~~] to work when dangerous condition[~~conditions~~] exist.

RELATES TO: KRS 338.121(3)(a)

STATUTORY AUTHORITY: KRS 338.051, 338.061[~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes requirements regarding employee refusal to work when a dangerous condition exists [~~The Commissioner of the Department of Workplace Standards has the authority and responsibility for promulgating administrative regulations necessary to accomplish the purposes of this chapter. The function of this administrative regulation is to afford employees the right to refuse to be exposed to dangerous conditions without subsequent employer discrimination~~].

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

(2) "Employer" is defined by KRS 338.015(1).

Section 2. Employee Refusal to Work. (1) ~~If/When~~ [~~Where~~] an employee is confronted with a choice between not performing assigned tasks or being subjected to death, ~~or~~ **[or]** serious injury, ~~or illness~~ arising from a dangerous condition at the workplace, ~~the~~ [~~such~~] employee may refuse in good faith to expose herself or himself [~~himself/herself~~] to the dangerous condition.

(2) The condition causing the employee's apprehension of death, serious injury, or serious illness [~~or injury~~] **shall**[~~must~~] be of **[such]**a nature that a reasonable person under the same or similar circumstances [~~then~~] confronting the employee would conclude [~~that~~] there is a real danger of death, serious injury, or serious illness [~~or serious injury~~] and [~~that~~] there is insufficient time, due to the urgency of the situation, to eliminate the danger through [~~resort to~~] regular statutory enforcement channels.

(3) Additionally, [~~In addition in such circumstances,~~] the employee, ~~if/where~~ **[if/where]** possible, **shall**[~~must~~] [~~also~~] have sought corrective action from her or his [~~his/her~~] employer [,] and was [~~been~~] unable to obtain [~~a~~] correction of the dangerous condition.

(4) [~~(2)~~] ~~If/When~~ **[if/when]** an employee in good faith refuses to expose herself or himself [~~himself/herself~~] to a dangerous condition at the workplace, the employee [~~he/she~~] shall not be subjected to subsequent discrimination by the employer.

(5) ~~The~~ [~~(3) Provided, however, that the~~] provisions of this administrative regulation shall not apply if an [~~it is found that the~~] employee acted unreasonably or in bad faith.

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