803 KAR 2:220. Refusal to work when dangerous condition exist.

RELATES TO: KRS 338.121(3)(a)

STATUTORY AUTHORITY: KRS 338.051, 338.061

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.

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 an employee is confronted with a choice between not performing assigned tasks or being subjected to death, serious injury, or illness arising from a dangerous condition at the workplace, the employee may refuse in good faith to expose herself or himself to the dangerous condition.

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

(3) Additionally, the employee, if possible, shall have sought corrective action from her or his employer and was unable to obtain correction of the dangerous condition.

(4) If an employee in good faith refuses to expose herself or himself to a dangerous condition at the workplace, the employee shall not be subjected to subsequent discrimination by the employer.

(5) The provisions of this administrative regulation shall not apply if an employee acted unreasonably or in bad faith.

(9 Ky.R. 89; eff. 8-11-1982; Recodified from 803 KAR 2:190, eff. 4-19-84; TAm eff. 8-9-2007; TAm eff. 9-8-2011; 47 Ky.R. 2684; 48 Ky.R. 815; eff. 11-30-2021.)