

WAC 296-360-150 Discrimination because of exercise of right afforded by WISHA—Refusal to work in an unsafe condition. (1) Review of WISHA and examination of the legislative history discloses that, as a general matter, WISHA grants no specific right to employees to walk off the job because of potential unsafe conditions at the work place. A hazardous condition that may violate WISHA will ordinarily be corrected by the employer, once brought to its attention. If the employer does not correct a hazard, or if there is a dispute about the existence of a hazard, the employee normally can ask the division to inspect the work place pursuant to RCW 49.17.110, or can seek help from other public agencies that have responsibility for safety and health. Under such circumstances, an employer would not violate RCW 49.17.160 by disciplining an employee who refuses to work because of an alleged safety or health hazard.

(2) Occasions arise, however, when an employee is confronted with a choice between not performing assigned tasks or subjecting him- or herself to serious injury or death arising from a hazard at the work place. If the employee, with no reasonable alternative, refuses in good faith to expose him- or herself to the dangerous condition, he or she is protected against subsequent discrimination.

(3) An employee's refusal to work is protected if he or she meets the following requirements:

(a) The refusal to work must be in good faith, and must not be a disguised attempt to harass the employer or disrupt the employer's business;

(b) The hazard causing the employee's apprehension of death or injury must be such that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury; and

(c) There must be insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.

(4) As indicated in subsection (3), an employee's refusal to work is not protected unless it is a good faith response to a hazardous condition. To determine whether an employee has acted in good faith, the division will consider, among other factors, whether the employee:

(a) Asked the employer to correct the hazard;

(b) Asked for other work;

(c) Remained on the job until ordered to leave by the employer;

or

(d) Informed the employer that, if the hazard was not corrected, the employee would refuse to work.

The lack of one or more of these factors shall not necessarily preclude a finding of good faith if other factors do establish good faith. The division will also consider whether the employer knew that the hazard could cause serious injury or death, or that the hazard was prescribed by a specific safety standard promulgated under WISHA or any other law that relates to the safety and health of a place of employment.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-150, filed 11/13/80.]