

OSHA Does Not Back Employee Work Refusals in All Circumstances

By Courtney M. Malveaux

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Since [March 2020](#), workers have expressed elevated concerns about their exposure to COVID-19 on construction sites. As states lift restrictions on construction work, employers should note that the Occupational Safety and Health Administration (OSHA) limits workers' ability to refuse work.

Under the Occupational Safety and Health Act (OSH Act), an employee's right to refuse to perform a task is protected only if all of the following conditions are met:

- The employee has asked the employer to eliminate the danger, and the employer failed to do so.
- The employee refused to work in "good faith." This means the employee must genuinely believe there is a real danger of death or serious injury.
- A reasonable person would agree that there is a real danger of death or serious injury.
- There is not enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

Thus, the OSH Act gives employers ample opportunity to address hazards arising from employee failure to follow OSHA's [COVID-19 Guidance for the Construction Workforce](#), such as failure to use face coverings, follow social distancing requirements, or use EPA-approved [Disinfectants for Use Against COVID-19](#) to sanitize tools or work stations used by multiple employees.

In addition, workers cannot walk off a job site or refuse to work because of a generalized fear of COVID-19. They must have a genuine and reasonable fear of a real danger, not just of a generalized pandemic, but of the specific conditions in their workplace. While employees have a right to report hazards to OSHA without retaliation for doing so, OSHA requires employees to give employers a chance to address hazards.

Employers can avoid or prepare for potential work refusals by working with employees to develop and implement infectious disease and preparedness work plans that consider employees' exposure risks, and that also incorporate recommendations from federal, state, tribal, local, and other territorial health agencies.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 Team](#).

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