

875—9.12(88) Exercise of any right afforded by the Act.

9.12(1) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, Iowa Code section 88.9(3) also protects employees from discrimination occurring because of the exercise “of any right afforded by this chapter.” Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings. Certain other rights exist by necessary implication. For example, employees may request information from the bureau of occupational safety and health of the division of labor services of the department of workforce development; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

9.12(2) On the other hand, review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to its attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Iowa Code section 88.6(5), or to seek assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Iowa Code section 88.9(3) by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

9.12(3) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or being subjected to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to be exposed to the dangerous condition, the employee would be protected against subsequent discrimination if the following conditions are met:

- a.* The condition causing the employee’s apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury.
- b.* The employee, where possible, first sought to:
 - (1) Eliminate the danger through resorting to regular statutory enforcement channels, unless there has been insufficient time due to the urgency of the situation, or
 - (2) Obtain from the employer a correction of the dangerous condition but was unable to do so.