Section 44 - Employment Rights Act 1996

Although you have probably never heard of it, Section 44 Employment Rights Act 1996 could be considered the corner stone of the UK's Health & Safety at Work legislation

Here's why:

Section 44. provides employees with the means to contest the adequacy and/or suitability of safety arrangements without fear of recriminations (e.g. getting sacked or transferred) or suffering detriment (e.g. loss of wages).

Section 44. provides employees with the 'right' to withdraw from and to refuse to return to a workplace that is unsafe. Employees are entitled to remain away from the workplace (e.g. stay at home) if - in their opinion - the prevailing circumstances represent a real risk of serious and imminent danger which they could not be expected to avert.

Section 44. entitles employees to claim for 'Constructive Dismissal' and (unlimited) compensation in the event that an employer fails to maintain safe working conditions.

Section 44. means employees don't have to wait until they (or someone else) suffer injury before they can take action to get suitably safe working conditions.

Section 44. leaves employees with no excuse whatsoever for tolerating unsafe working conditions and acts as a deterrent against an employer either deliberately or carelessly devoting inadequate resources to the protection of safety in their workplace.

Section 44. cautions employees against taking risks

Section 44. clarifies the circumstances in which an employee should take "appropriate action" to withdraw/remove themselves from danger.

See Section 44.1(d) and Section 44.1(e) below:

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

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Section 44. clarifies that it is the employee's opinion that counts

Section 44.2 makes it clear that it's what the individual employee taking the action believes that counts -

Section 44.2 For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

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If everyone knew about Section 44

Knowing about Section 44. would immediately emancipate employees from the misconception that they have to tolerate unsafe working conditions. It (as the law always intended) empowers them with the legal means to insist on - and get - appropriate safety standards.

If, every employee was made aware of Section 44, safety standards would improve dramatically - and quickly!

If employers knew that their employees knew about Section 44, they'd know that unless they provided a suitably safe working environment, their staff could withdraw their labour and remain off work - on full pay - until the shortcomings are remedied.

The threat of this happening would be sufficient to encourage most if not all employers to invest more appropriately.

But, hardly anyone has heard about Section 44 (yet)

Despite its significance and the fact that it has been law for more than a decade, hardly anyone is aware of Section 44 Employment Rights Act or how it relates to Health and Safety at Work.

The HSE won't tell you!

The HSE have denied responsibility to inform the public about Section 44!

Below is what Steve Vinton at the HSE's Innovative Engagement Unit wrote in response to a question I put on the absence of information on Section 44.

"HSE does not have responsibility for the Employment Rights Act 1996. It is therefore not appropriate for HSE to provide guidance on employment rights legislation. However, as part of the range of advice and information that HSE provides on the Workers Web Page of its website, we are looking at the possibility of including something on Section 44 in relation to the Public Interest Disclosure Act 1998 (which stems from the Employment Rights Act 1996) and whistleblowing. We will be taking advice from HSE solicitors on the legal implications of the above prior to updating the Workers Page early next year."

The statement from the HSE ignores the fact that Section 44 is titled "Health and Safety Cases".

The HSE's reluctance to inform the public about Section 44 conflicts directly with HSE's declaration in March 2003 to - "Seek proactively to identify the information which people need and strive to provide it" and to "Share what we know" and it is also inconsistent with the HSE's statement on openness.

So, why aren't they telling?

Is there a Government policy to keep people in the dark?

Yes! For compelling proof: Click here

No one can deny its existence!

Section 44 is sitting there as an Act of Parliament, in black and white.

Click Here

How fast people will find out is uncertain

There is no way now of stopping people finding out about Section 44 or controlling how fast they find out. And, when they do, lots of them are going to be very angry at the way they have been kept in the dark and exploited. And, more and more of them are going to claim their right to a safe way of working.

There is the potential for serious and widespread disruption!

In the UK, practically every security officer could justifiably remain OFF WORK, ON FULL PAY for as long as it takes their employer to implement a safe system of working, or until an Employment Tribunal can be convened and a decision reached about the adequacy/inadequacy of the safety measures (min 3 months).

Nurses and midwives could do the same. So too, could most Teachers, Social Workers, Air Line Cabin Crews, Bus Drivers, Railway Service workers, Benefits Agency workers, even the Clergy!

It's an option which many people would find attractive. Isn't it?

What are you going to do now?

Winston Churchill said "Man will occasionally stumble over the truth, but most of the time he will pick himself up and continue on."

Please do the right thing Sign the Petition and tell others!

Employment Right Act 1996

Section 44 Health and Safety Cases

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that —

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee —

(i) in accordance with arrangements established under or by virtue of any enactment, or

(ii) by reason of being acknowledged as such by the employer, the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

(c) being an employee at a place where -

i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) An employee is not to be regarded as having been subjected to any detriment on the ground specified in subsection (1)(e) if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) Except where an employee is dismissed in circumstances in which, by virtue of section 197, Part X does not apply to the dismissal, this section does not apply where the detriment in question amounts to dismissal (within the meaning of that Part).

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NOTE: The right not to be subjected to a detriment (including dismissal) for ‘asserting a statutory legal right’ is also expressed in Section 29 of the Trade Union Reform and Employment Rights Act 1993. Under Section 29, the protection applies where an employee has made a claim to enforce a right, or has alleged that the employer has infringed their right in some way. It doesn’t matter that no right has actually been infringed. Neither does it matter whether or not the employee actually had any 'right'. The key point is whether the employee, acting in good faith, asserted to have a relevant statutory right.