

course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rule making or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

**§ 1977.12 Exercise of any right afforded by the Act.**

(a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, section 11(c) also protects employees from discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (section 10). Certain other rights exist by necessary implication. For example, employees may request information from the Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Secretary in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

(b)(1) 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 his 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 section 8(f) of the Act, or to seek the 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 section 11(c) by taking action to discipline an employee for refusing to perform normal

job activities because of alleged safety or health hazards.

(2) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself 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 expose himself to the dangerous condition, he would be protected against subsequent discrimination. 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 and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

[38 FR 2681, Jan. 29, 1973, as amended at 38 FR 4577, Feb. 16, 1973]

PROCEDURES

**§ 1977.15 Filing of complaint for discrimination.**

(a) *Who may file.* A complaint of section 11(c) discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

(b) *Nature of filing.* No particular form of complaint is required.

(c) *Place of filing.* Complaint should be filed with the Area Director (Occupational Safety and Health Administration) responsible for enforcement activities in the geographical area where the employee resides or was employed.

(d) *Time for filing.* (1) Section 11(c)(2) provides that an employee who believes that he has been discriminated against in violation of section 11(c)(1) "may, within 30 days after such violation occurs," file a complaint with the Secretary of Labor.

(2) A major purpose of the 30-day period in this provision is to allow the