



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART V

#### PROTECTION FROM SUFFERING DETRIMENT IN EMPLOYMENT

##### *Rights not to suffer detriment*

#### **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,
  - <sup>[F1]</sup>(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),]
  - (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,

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*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Employment Rights Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

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- 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) <sup>F2</sup> . . . This section does not apply where the detriment in question amounts to dismissal (within the meaning of [<sup>F3</sup>Part X]).

**Annotations:**

**Amendments (Textual)**

- F1** S. 44(1)(ba) inserted (1.10.1996) by S.I. 1996/1513, **reg. 8**
- F2** Words in s. 44(4) repealed (25.10.1999) by 1999 c. 26, ss. 18(2)(a), 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(1)(3), **Sch. 1 Pt. I, Sch. 2 Pt. I** (with Sch. 3 para. 2)
- F3** Words in s. 44(4) substituted (25.10.1999) by 1999 c. 26, s. 18(2)(b); S.I. 1999/2830, art. 2(1)(3), **Sch. 1 Pt. I** (with Sch. 3 para. 2)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 43K(1)(ca) and word omitted by [2013 c. 24 s. 20\(5\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 43K(2)(ba) omitted by [2013 c. 24 s. 20\(6\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 47AA inserted by [2008 c. 25 s. 37](#)
- s. 49C inserted by [2017 c. 16 s. 32\(4\)](#)
- s. 101B inserted by [2008 c. 25 s. 38](#)
- s. 105(4B) inserted by [2008 c. 25 s. 39\(3\)](#)
- s. 108(3)(de) inserted by [2008 c. 25 s. 39\(4\)](#)
- s. 110(3A) inserted by [2002 c. 22 s. 44](#)
- s. 166(5)(d) and word inserted by [S.I. 2017/1205 reg. 2\(2\)\(a\)\(iv\)](#)
- s. 166(8A)-(8C) inserted by [S.I. 2017/1205 reg. 2\(2\)\(b\)](#)
- s. 183(1)(d) and word inserted by [S.I. 2017/1205 reg. 2\(3\)\(a\)\(iv\)](#)
- s. 183(4A)-(4C) inserted by [S.I. 2017/1205 reg. 2\(3\)\(b\)](#)