

ABSTRACT

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From Docks to Doctor Offices After 9/11: Refusing to Work Under “Abnormally Dangerous Conditions”

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Abstract by Michael J. Barry

The author examines the legal implications of an employee’s right to refuse hazardous work tasks under § 502 of the Labor-Management Relations Act of 1947 (LMRA). Similar employee rights are also examined under a 1977 Department of Labor Rule, and under relevant Occupational Safety and Health Act sections. Section 502 provides for an employee to quit working without the action being deemed a strike within the meaning of the LMRA so long as it is in good faith and in response to “abnormally dangerous conditions.” The author contends that this provision, originally intended to improve work place conditions and mediate labor relations more than half a century ago, can provide the impetus for greater emergency preparedness.

In the expanding definition of who constitutes an emergency provider, the author asserts that larger groups of workers will be called on in response to terrorist actions. In addition to preventing the unfairness that would arise were individuals to face repercussions for their actions or inaction during a crisis, increased expansion and use of § 502 would encourage employers to better equip and prepare employees for disasters, thereby increasing employee willingness to aid and increasing their safety while doing so.

Judicial interpretation of § 502 of the LMRA has been spare and contradictory, however. Tests for determining what constitutes an “abnormally dangerous condition” have been confusing, contradictory, and ambiguous. Additionally, some courts have limited § 502 protections to smaller classes of workers, such as unionized workers or those working under a Collective Bargaining Agreement. The author concludes that rulemaking should be implemented to strengthen and define the scope of § 502 in light of its potential use in the context of emergency preparedness.