

Title 09 MARYLAND DEPARTMENT OF LABOR

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

Chapter 20 Occupational Safety and Health

**Authority: Labor and Employment Article, §§2-106(b)(4), 5-212, 5-213, 5-312, and 5-702,
Annotated Code of Maryland**

.05 Protection of Employees Under §5-604 of the Act.

A. Employee Rights. With regard to §5-604 of the Act, the exercise of "a right under this title" includes a right:

- (1) Explicitly provided in the Act, such as the right to participate as a party in an enforcement proceeding;
- (2) Which exists by necessary implication, including the right of an employee to:
 - (a) Request information from the Commissioner, or
 - (b) Be interviewed by an inspector in the course of an inspection or investigation.

B. Refusal to Perform a Job. Although the Act affords an employee no general right to refuse to perform a job because of potential unsafe conditions at the workplace, the protections of §5-604 of the Act apply when:

- (1) An employee:
 - (a) Is confronted with a choice between not performing an assigned task or being subjected to serious injury or death arising from a hazardous condition at the workplace,
 - (b) Has no reasonable alternative, and
 - (c) Refuses in good faith to expose himself or herself to the dangerous condition; and
- (2) The condition causing the employee's apprehension of death or injury is of such a nature that a reasonable individual, under the circumstances then confronting the employee, would conclude that:

(a) There is a real danger of death or serious injury,

(b) There is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular MOSH statutory enforcement channels or to seek the assistance of another public agency which has responsibility in the field of safety and health, and

(c) The employee, if possible, has sought correction of the dangerous conditions from the employer, and has been unable to obtain a correction.

C. Other Refusals. Except in the circumstances detailed in §B(1) and (2) of this regulation, the protections of §5-604 of the Act generally do not apply when an employer disciplines an employee for refusing to perform normal job activities because of alleged safety or health hazards.

D. Complaints. With regard to §5-604(b) of the Act, a "complaint under or related to this title" includes but is not limited to:

(1) A request for inspection under §5-209;

(2) Complaints regarding conditions at the workplace registered with the Commissioner, with a federal, State, or local agency with authority regarding occupational safety and health conditions, or with such an agency that the employee, in good faith, believes has authority regarding occupational safety and health conditions; and

(3) Complaints regarding conditions at the workplace made in good faith to an employer, management supervisor, or other employee serving in a supervisory capacity.