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## **COVID 19 and RIGHT OF WITHDRAWAL FOR EMPLOYEES**

When working represents a serious and imminent danger to his/her life or his/her health, employees have the right to leave his/her work station or stop executing his/her tasks without the employer's agreement if 2 conditions are met:

- **1st condition = a serious and imminent danger**

There is no definition of serious and imminent danger.

Can be considered as "**serious**" a danger which produces an accident or an illness leading to death or to a permanent or prolonged incapacity.

"**Imminent**" can be defined as any danger likely to occur brutally in a short time.

The assessment is made on a case-by-case basis.

The danger can be **individual** or **collective**.

- **2nd condition = absence of preventive and protective measures put in place by employers**

For instance, if employers are unable or unwilling to provide masks, gloves, or put in place measures to secure employees when performing employees tasks.

Then if these 2 conditions are met, then employees may then exercise their rights of withdrawal and stop working, as long as employers have not put in place appropriate preventive measures.

### **Can employees use their rights of withdrawal?**

The Ministry of Labour, in the past has decided, upon the used of the right of withdrawal in a crisis situation within the framework of the DGT circular n ° 2007/18 of December 18, 2007 relating to the continuity of the activity of the private sector in case of pandemic influenza, as well as in DGT circular n ° 2009/16 of July 3, 2009 relating to the influenza pandemic:

In this type of crisis, the use of right of withdrawal is greatly **limited**, as soon as employers have taken necessary preventive and protective measures, in accordance with the recommendations from the government.

In the event of improper exercise of the right of withdrawal, employees commit a fault liable to disciplinary action.

Whether or not employees used their rights for withdrawal lawfully is left to the employment tribunals' discretion. ("Conseil des prud'hommes")