UK Employment Tribunal rules against worker who refused to return to work over COVID safety concerns

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A UK Employment Tribunal in Manchester has ruled against a worker who claimed she was discriminated against by her employer for refusing to go into work in July last year due to the threat of COVID-19.

Neither the woman nor her employer have been named. She advanced a case based on Section 10 of the Equality Act 2010 which bars employers from taking any action against employees based on their religion or philosophical beliefs.

Her statement to the tribunal explained, "On 31 July 2020 I took the decision not to return to the workplace on the grounds of health and safety. I had reasonable and justifiable health and safety concerns about the workplace surrounding Covid-19, and I was also very worried about the increasing spread of the virus. I had a genuine fear of getting the virus myself, and a fear of passing it on to my partner (who is at high risk of getting seriously unwell from Covid-19)."

She continued, "[My employer] told me that he would not be paying me, and he said 'I do not accept you had a reasonable belief that returning to work would put you or your husband in serious and imminent danger'.

"I then had my wages withheld and I suffered financial detriment.

"I claim this was discrimination on the grounds of this belief in regard to Coronavirus and the danger from it to public health. This was at the time of the start of the second wave of Covid-19 and the huge increase in cases of the virus throughout the country."

These justified concerns and responsible actions will resonate with the experience of millions across the UK and internationally, as will the employer's callous response. In January, the Health and Safety Executive (HSE) reported it had dealt with 97,000 workplace COVID safety cases throughout the pandemic, of which just 0.1 percent resulted in an improvement or prohibition notice. Not a single employer had been prosecuted.

In February, the *Observer* revealed that over 3,500 workplace outbreaks had been reported over the course of the pandemic, none of which resulted in inspectors closing the site. In June last year, the *i* newspaper exposed the fact that the HSE had "paused all proactive inspections at this time to reduce any risk posed to our own staff and to members of the public" by COVID.

The HSE states that 37,723 COVID cases which the employer believed may have been caused by exposure at work were reported to Enforcing Authorities between April 2020 and November 2021. The real figure is undoubtedly orders of magnitude higher, with countless stories of employers refusing to acknowledge the spread of COVID-19 in their workforces. In multiple depots, offices and warehouses, safety concerns led to wildcat walkouts.

Mark Leach, the Employment Judge for the North West Region, acknowledged that "Fears about the harm being caused by Covid-19 are weighty and substantial" and that "The fear of contracting Covid-19 and the claimant's requirement to take steps to avoid harm to herself and others, is serious and important."

However, he held that this did not meet the full criteria for a philosophical belief as argued by the worker.

Leach ruled that the worker's decision was "a reaction to a threat of physical harm and the need to take steps to avoid or reduce that threat. Most (if not all) people, instinctively react to perceived or real threats of physical harm in one way or another… A fear of physical harm and views about how best to avoid or reduce a risk of physical harm is not a belief for the purposes of section 10."

He added that her actions were "about the claimant herself and the protection of herself and her own steps to

protect others (principally her partner). The claimant does not rely on a belief in wider terms than this".

The judgement in this case in fact underscores any workers' right to refuse to work under section 44 of the Employment Rights Act 1996, "in circumstances of danger which the worker reasonably believed to be serious and imminent and which he or she could not have been expected to avert". In these conditions, the Act states that the worker "has the right not to be subjected to any detriment" if they "left" or "refused to return to his or her place of work".

As Leach accepts, the Manchester worker's position "can also be described as a widely held opinion based on the present state of information available that taking certain steps, for example attending a crowded place during the height of the current pandemic, would increase the risk of contracting Covid-19 and may therefore be dangerous. Few people may argue against that."

But the corporate media are using the outcome of the tribunal, hinging on the question of what constitutes a philosophical belief, to "prove" the opposite conclusion and propagandize that workers have no legal right against being forced to labour in unsafe conditions.

Jonathon Ames, legal editor of the *Times*, headlined his article reporting the case, "Back-to-office ruling is boost for bosses". He wrote, "while it does *not set a wider technical legal precedent*, the judge's decision is likely to give bosses greater confidence when encouraging staff back to traditional workplaces when restrictions are eased next year." [emphasis added]

This book compiles the most critical programmatic statements, polemics, scientific analyses, interviews, and news articles published by the World Socialist Web Site on the COVID-19 pandemic. It is a social and political chronology of this world historic event based on a Marxist and Trotskyist perspective.

He concluded the article with a reference to the employers' "dismay" at the current work-from-home guidance in place since December 13.

The *Daily Mail* trumpeted, "Why you CAN'T refuse to go to work if you are afraid of catching Covid: Staff wary of the virus cannot use it as a reason to stay away from the office, employment tribunal rules".

Such reporting is meant to demoralise workers wanting to fight against unsafe workplaces, encourage the most brutal policies on the part of employers and create a political climate in which the same verdict can be delivered on Section 44 claims. These are political priorities for the ruling class as the Omicron variant surges and opposition grows in the working class to the policy of "learning to live with the virus".

The consequences will be broadly felt. Workers being denied the right to refuse to enter dangerous workplaces will spur ongoing efforts to victimise families for refusing to enter unsafe schools. Many parents, including leading SafeEdForAll (Safe Education for All) campaigner Lisa Diaz are already facing punitive fines and prosecution.

These dangers highlight the immense importance of the campaign being waged by London bus driver David O'Sullivan against his victimisation by bus operator Metroline.

O'Sullivan was sacked this February having asserted his Section 44 rights and refused to come into work in January, encouraging his colleagues to do the same, after the London Bus Rank-and-File Committee uncovered evidence of a serious outbreak at his Cricklewood garage. There have so far been 73 deaths due to COVID of London bus drivers.

The *World Socialist Web Site* has described the campaign as a test case for the rights of workers. Commenting on its significance earlier this month, O'Sullivan explained, "Omicron is now ripping though the population of London and the entire world, with the capital's hospitals at breaking point. Yet the Johnson government, backed by the Labour Party, rejects any serious public health measures to eliminate the virus and save lives. My campaign is spearheading a fightback."

O'Sullivan will appear at Watford Employment Tribunal on January 13. He is appealing for support to complete the final leg of a £20,000 crowdfund to take forward his case.