

**1051.2 DUTY OF WORKER: WHEN REQUIRED TO WORK IN UNSAFE PREMISES**

When a worker by direction of his or her employer is required to work on an unsafe premises in carrying out his or her employment, you must consider the reasonableness of the employee exposing himself or herself to the particular risk. The reasonableness of the worker's conduct is to be determined in the light of the utility of going to work at the designated place of employment, and performing work in the usual manner, even though there was a possibility that the premises might be unsafe. In such situations, a worker has a duty to exercise the same degree of care for his or her own safety that an ordinarily prudent worker would exercise under the same or similar conditions.

**COMMENT**

This instruction and comment were approved in 1977. The comment was reviewed without change in 1989. Editorial changes were made in 1992 to address gender references in the instruction. No substantive changes were made to the instruction.

"In determining the contributory negligence of an employee who nevertheless proceeds to work in an unsafe place, a special factor is injected, *i.e.*, the reasonableness of the employee exposing himself to the particular risk, the test being whether he was contributorily negligent, determined in the light of the utility of going to work at his usual place of employment, and performing work in the usual manner, even though there was a possibility that the premises might be unsafe." McCrossen v. Nekoosa Edwards Paper Co., 59 Wis.2d 245, 246, 208 N.W.2d 148 (1973).

Commenting on Meyer v. Val-Lo-Will Farms, 14 Wis.2d 616, 111 N.W.2d 500 (1961), the court stated ". . . whether the conduct of an injured person constituted contributory negligence was affected by the fact that the person attempted to be so charged was a workman at his place of employment. . . 'This fact may bear upon the reasonableness of their exposing themselves to the particular risk' [Meyer, at page 622] . . . [This case] by implication indicated that, when a jury is called upon to determine the contributory negligence of an employee who nevertheless proceeds to work in an unsafe place, that was a fact which the jury should consider." [McCrossen, at pages 255-56]

"[I]n a safe-place action, . . . the employee's contributory negligence is less when his act or omission has been committed in connection with the performance of his duties. . . [I]t may be more reasonable to assume certain risks in the employment situation than in other situations. Conduct constitutes negligence if the risk of

harm involved is of such magnitude as to outweigh what the law regards as the utility of the act or the manner in which it is done." Young v. Anaconda Am Brass Co., 43 Wis.2d 36, 46, 47, 168 N.W.2d 112 (1969).