

Ask The Expert: Do Work Refusals Have to Be In-Person?



QUESTION

Is a worker allowed to initiate a work refusal without actually showing up for work?

ANSWER

Normally, no; but for COVID-19, maybe.

EXPLANATION

Normally, workers must be present at the workplace and report their refusal and reasons for engaging in it directly to a supervisor. But fear of contracting COVID-19 is causing some workers to stay home and not go to work altogether. This is an extension of refusal rights beyond what was contemplated by current OHS rules and whether it will be permitted by OHS administrators, tribunals, courts and arbitrators remains to be seen.

So far, just one agency has weighed in on this issue. In guidance issued at the end of March 2020, WorkSafeNB said that “given the unique circumstances” of the COVID-19 pandemic, it

WOULD accept such refusals, provided that the employer agrees to this process. "If all parties agree to this new process then the matter will be addressed through phone calls, emails or other remote means," according to the agency.