

Is Fear of Catching an Infectious Illness Valid Grounds for a Work Refusal?



There's been a disturbing spike in reported cases, outbreaks and suspected outbreaks of infectious illnesses across the country, such as H5 avian influenza, whooping cough, measles, and salmonella. Adding to the effect is that seasonal flu season is in high gear. The current sickly environment is the perfect breeding ground for work refusals by individuals who fear catching a disease if they come to work. I've unearthed no fewer than [9 such cases](#) from Canada, starting well before COVID involving fear of SARS, hepatitis B, gastrointestinal infection, and Ebola.

Question: Guess how many of these cases actually found the worker's refusal justified?

Drum roll, please. . .

Answer: 2. In the other 7 cases, the court or tribunal ruled that the worker's fears of being infected at work were unfounded, due to:

- Lack of scientific evidence showing that the worker's job duties created inordinate risks of exposure; and/or
- The fact that the refusing worker's employer had implemented appropriate and reasonable measures to guard against the risk of infection.

You can really get a good sense of how the rules work by comparing a couple of the actual rulings with similar situations but different outcomes.

Worker Loses COVID Work Refusal

Situation: The first case is a brand-new federal ruling that began as the COVID threat was receding when Elections Canada (EC) implemented a new hybrid return-to-work policy. Although he had been working at the office during the pandemic, a worker was worried that the return of workers who had been working from home would increase his risks of contracting COVID. So, he initiated a work refusal. As required by OHS law, EC did an internal investigation and concluded that there was no imminent danger. Dissatisfied with the investigation's results, the worker exercised his right to have the JHSC and a government official investigate the situation. The JHSC and government OHS investigator agreed that there was no imminent danger and that EC's health measures were adequate. Relying on these findings, EC's Head of Compliance determined that the worker's refusal was "frivolous" and his COVID concerns "speculative." But the worker refused to back down and took the relatively rare step of taking his work refusal all the way to federal court.

Ruling: The Federal Court not only rejected the worker's appeal but ordered him to pay \$2,000 in legal costs.

Reasoning: The Court found that the Head's decision to order the worker to return to work, while not written as comprehensively as it could have been, was nevertheless reasonable and in line with the evidence showing that EC's measures to prevent COVID infection—including social distancing, requiring workers to stay home when they were sick, masking, hand hygiene, cleaning, rapid testing, and vaccination—were in line with public health guidelines and sufficient to guard against any "danger" triggering the right

to refuse under OHS laws.

[*Juzda v. Canada \(Attorney General\)*](#), 2025 FC 63 (CanLII)

Worker Wins Ebola Work Refusal

Situation: A pair of paramedics initiated a work refusal contending that the ambulance company they worked for didn't provide the training and equipment necessary to protect them against risk of Ebola infection. The Québec Commission de la santé et de la sécurité du travail (CSST) (as it was called back then) sent an inspector to investigate the refusal.

Ruling: The CSST inspector concluded that the paramedics had valid grounds for refusing work.

Reasoning: The CSST inspector agreed that the paramedics weren't sufficiently protected from exposure to Ebola and ordered the ambulance company to implement the following measures to address their concerns:

- Implement a disinfection strategy;
- Furnish exposed workers appropriate protective clothing; and
- Train workers on wearing this special uniform.

Demers Ambulances, CSST, October 2014 (unreported case)

Takeaway—Protecting Your Company Against Infectious Illness Work Refusal Risks

These cases suggest that workers who initiate OHS work refusals due to fears of infectious illness lose way more often than they win. Even so, safety coordinators and supervisors must resist the temptation to dismiss these refusals out of hand, bearing in mind that OHS laws require

employers to perform an investigation of properly initiated work refusals to determine whether workers' safety fears are justified and real danger exists. The key questions to ask in carrying out an infectious illness refusal investigation include:

- How is the illness transmitted?
- Is the refusing worker vulnerable to such transmission, for example, by working near people who are infected with diseases transmitted by human contact?
- Are the refusing worker's infection risks "undue," that is, different from and greater than those all people in the community face?
- Are adequate measures in place to address the refusing workers' concerns?

Bottom Line: The more of the following steps you take to safeguard workers against infection, the harder it will be for workers to justify an infectious illness work refusal:

- Educating exposed workers about the illness and how it's transmitted;
- Encouraging workers to get [vaccinated](#), if safe and effective vaccinations against the illness are available;
- Implementing [basic hygiene measures](#), such as providing soap, hand sanitizers, and paper towels and keeping sinks and surfaces that people touch (such as doorknobs) clean;
- Regularly [disinfecting](#) contaminated surfaces and equipment;
- Furnishing and training exposed workers how to use necessary PPE and protective clothing and equipment; and
- Following public health guidelines for containing the disease.