

New OHS Work Refusal Reassignment Laws Take Effect in BC



Responding to work refusals in BC just got trickier.

While the right to refuse dangerous work is an essential safety protection, it can also be highly disruptive. Responding to a work refusal just got trickier for employers in BC, thanks to new OHS regulations that took effect on August 22, 2022. Here's a look at the new BC rules and how to comply with them.

OHS Work Refusal Response, 101

Once a worker properly initiates an OHS work refusal, you must investigate and determine if an undue danger really exists. If so, you must take appropriate corrective actions to remedy the danger. Workers may also continue their refusal if they're dissatisfied with the outcome, meaning a government OHS investigator will probably have to intervene.

Of course, all of this takes time. So, it might be tempting to simply assign another worker to do the refused work, especially when you believe that the refusing worker's concerns are off base and the work is perfectly safe. However, strict restrictions apply.

New BC Reassignment Rules

While they just took effect in BC, the new OHS rules for reassigning refused work are similar to requirements in most other jurisdictions. Under new OHS Regs. Section 3.12, employers may not require or even permit another worker to do refused work unless either: i. the refusal is resolved; or ii. the employer provides proper written notification of the refusal so they can make an informed decision about whether they want to perform it.

Alternative 1. The Refusal Is Resolved

A refusal is considered resolved if:

- A supervisor or employer investigates the refusal and determines that an undue hazard either doesn't exist or has been properly remedied;
- If the refusal continues, the supervisor or employer investigates the refusal in the presence of: (a) a worker member of the JHSC; (b) a worker selected by the refusing worker's union; or (c) if there's no JHSC or union, another 'reasonably available worker' selected by the refusing worker (which we'll refer to collectively as the 'worker's rep'); or

- If the refusal continues, the supervisor or employer notifies a WorkSafeBC officer who then investigates the refusal.

Alternative 2. The Employer Provides Written Notification

If the refusal isn't resolved, the employer can't reassign the refused work to another worker, including workers reporting in shifts after the refusal occurs, unless it gives the worker and the worker's rep written notification of:

- The refusal;
- The unsafe condition the refusing worker reported in providing notice of the refusal;
- The reasons why the employer believes the work wouldn't create an undue health or safety hazard; and
- The other worker's own right to refuse unsafe work (under Section 3.12 of the OHS Regs.).

WorkSafeBC Guidance

Guidance from WorkSafeBC lists examples of written notice as including one or a combination of:

- Email, text messages and other electronic communications, logbooks or other paper records;
- Paper records, such as forms or a logbook; and/or
- Messages on a white board or other worker communication board or collaboration forum.