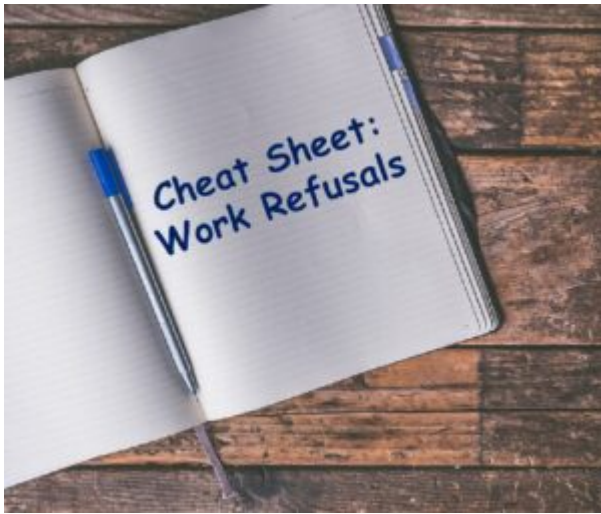


OHS Compliance Cheat Sheet: Work Refusals



What's At Stake: The Dangerous Work Refusal Dilemma

Refusing to perform assigned work is normally an act of insubordination for which a worker can be disciplined. But OHS laws create a special exemption that allows workers to refuse unreasonably dangerous work to protect their own or another person's safety. Disciplining workers for exercising their refusal rights is a form of reprisal or "discrimination" banned by the law. And the dangerous conditions that prompt the refusal may potentially be serious OHS violations that you must immediately address.

On the other hand, work refusals can be highly disruptive and are supposed to be used only as a last resort. That's why refusal rights are subject to strict limitations affecting both the nature of the worker's safety concern and the process of initiating the refusal. If the limitations aren't met, the refusal is invalid and you can discipline the worker for continuing to engage in it.

While it may sound simple, responding to a work refusal and assessing its validity is hard to do, especially in the heat and tension of the moment. Here are the 9 things you need to know to meet that challenge. [Click here](#) for a summary of the work refusal rules in each part of Canada.

1. Which Workers Can Refuse Dangerous Work

Refusal rights cover any worker asked to do a dangerous job or confront a dangerous condition'union or non-union, full-time or part-time, temporary or permanent, paid or volunteer'as long as the danger is real and the proper refusal processes are followed.

2. When a Refusal Is + Is Not Justified

Although rules vary slightly by jurisdiction, a refusal is justified only if:

- The worker's safety concern is sincere;

- The worker is in reasonable danger; and
- The danger isn't normal for the job.

Sincere: First, workers must genuinely believe that they're in danger and not use the refusal as a pretext to get out of an unpleasant assignment. **Example:** Two workers at a meat processing plant refuse to be reassigned to another assembly line claiming that a third co-worker poses a danger to their safety. The supervisor investigates and determines that the workers' real motive is to avoid working with the co-worker because they dislike. A labour arbitrator upholds the decision to suspend them [*Midtown Meats Ltd. v. United Food and Commercial Workers International Union, Local 175*].

Reasonable: Sincerity isn't enough. Workers must also have "reasonable" grounds to believe that work operations, conditions or equipment pose a danger to themselves or others. "Reasonable" is an objective standard that evaluates whether an average person in the same circumstances would consider the operation, equipment or condition dangerous. **Example:** A supervisor sneers and stares at a bus driver for a few seconds before muttering something under his breath and walking away. The bus driver is shaken and genuinely believes his life is in danger. But the Ontario OHS Tribunal upholds the finding of no danger citing the lack of evidence that the supervisor was violent or threatening. The "sneering" incident wasn't a condition that would cause a reasonable person to fear for his life, the Tribunal ruled [*Hassan v. City of Ottawa (OC Transpo)*, 2019 OHSTC 8].

Unusual: Even if the fear is sincere and the danger is real, the refusal may still not be justified if it's an inherent and normal part of the job. However, workers who do dangerous jobs are allowed to refuse work that puts them at abnormal and non-inherent risk. **Example:**

- **Invalid Refusal:** A firefighter refuses to enter a burning building due to risk of fire and smoke inhalation;
- **Valid Refusal:** A firefighter refuses to enter burning buildings because the employer doesn't furnish appropriate PPE and respiratory protective equipment.

No Work Refusals that Endanger Somebody Else

Six jurisdictions' Fed, AB, NS, ON, QC, YK' also ban work refusals if they'd endanger another person's health and safety.

Don't confuse refusals that endanger third parties with refusals on behalf of third parties. The former, which isn't allowed, is a situation where the refusal itself poses a danger, e.g., refusing to serve as attendant during a confined space entry; the latter, which is allowed, is a situation where the refusing worker isn't in danger but a third party is, e.g., a forklift operator's refusal to drive a machine due to the threat of running over another worker.

3. How the Refusal Begins

Workers can't just pack up and go home. They must immediately notify their supervisor or employer that they're engaging in a work refusal and explain their health and safety concerns. Although it's not specifically required, it's a good idea to have workers complete a written notice as part of a larger form you can use to track the refusal. Click [here](#) for a Model Work Refusal Tracking Form you can adapt.

4. The Initial Investigation Stage

After receiving notification of the refusal is the point in the process that you're most likely to get into hot water. Typical scenario: Supervisors lose their cool, dismiss the workers' concerns and order them immediately back to work without an investigation. Of course, this rush to judgment is a blatant OHS violation. **Example**: A production line worker engages in a work refusal and invokes his right to have the workplace health and safety representative investigate. Believing the worker's safety concern to be "totally ridiculous," the supervisor flatly refuses and orders him back to work. When the worker persists, the supervisor suspends him for 2 days. The Ontario arbitrator upholds the worker's grievance, ruling that the supervisor didn't follow the refusal procedures required by the OHS law [*Lennox Industries (Canada) Ltd. v. United Steelworkers of America, Local 7235*].

Rule: Once workers let you know they're refusing, the supervisor or other person who receives the notice must take immediate action. The options:

- Correct the health and safety hazard that prompted the worker to engage in the refusal; or
- Investigate the situation and determine if there is a danger and, if so, how to correct it.

Most jurisdictions require that this initial investigation be done in the presence of the refusing worker and:

- A worker member of the workplace joint health and safety committee (JHSC), if there is one;
- The workplace health and safety representative, if there is one; or
- If there's no JHSC or health and safety representative, another worker chosen by the workers at the workplace to be present for work refusal investigations.

5. The Initial Investigation Findings

The initial refusal investigation must take place immediately and reach 1 of 2 conclusions:

- Danger + corrective actions taken or needed; or
- No danger + corrective actions unnecessary.

The worker now has a decision to make: Accept the corrective actions taken or no danger determination and return to work or continue the refusal.

6. The OHS Officer Investigation

If the worker opts to continue the refusal, the worker or employer must notify the provincial OHS regulatory agency of the refusal and ask it to intervene. Upon receiving notification, the agency sends an official to investigate the situation and issue whatever orders he/she believes are necessary to resolve the situation. Possible outcomes:

OHS Investigation Conclusion	Workers' Option(s)
Danger exists + corrective measures needed	Worker must end refusal + return to work when employer implements required measures

No danger exists	Worker must end refusal + return to work immediately
------------------	--

7. The Possibility of a Court Appeal

Although it doesn't happen very often, workers who are still unsatisfied at this point still have one more card to play: Appeal the OHS investigator's findings to a court or OHS or labour tribunal (depending on the jurisdiction).

8. What Happens to the Worker during the Refusal

Time spent during a refusal counts as work time for which the refusing worker is entitled to full pay and benefits. Most jurisdictions also stipulate that employers can reassign the worker to reasonable alternative work during the refusal. In 6 jurisdictions'ON, PE, QC and the 3 territories'workers must remain at or near their normal workstation and make themselves available to the employer or investigators during the refusal.

9. What Happens to Other Workers during the Refusal

Most jurisdictions allow the employer to assign somebody else to do the refused work, provided that it determines that there's no danger and that it notifies the other worker:

- That the refusing worker has refused to do the work;
- Of the health and safety concerns cited by the refusing worker; and
- Of the worker's own rights to refuse dangerous work under OHS laws.

Under federal OHS law, workers affected by stoppages, including those on the next shift, caused by the work refusal are entitled to full pay and benefits for their time and can be reassigned to suitable temporary work while the refusal continues.