

OHS Work Refusals – Know the Laws of Your Province



Workers' rights to refuse work that they reasonably believe pose a danger to themselves or other persons is a key element of Canadian OHS laws. But while refusal rights exist in all jurisdictions, there are significant differences in terms of:

- The triggers justifying an OHS work refusal;
- The limitations on worker refusal rights;
- The process that must be followed to initiate, investigate and resolve a work refusal;
- The rules governing reassignment and paying refusing workers during the refusal; and
- Protections for workers who exercise their refusal rights.

Work Refusal Requirements by Jurisdiction

JHSC: refers to the workplace joint health and safety committee.

Safety rep: refers to the workplace health and safety representative.

FEDERAL

Uses the term “qualified” rather than “competent” person,

which is generally defined as one “who, because of his knowledge, training and experience, is qualified to perform” the particular duty that must be done by a qualified person “safely and properly” (*COHS Regs.*, Sec. 1.2)

ALBERTA

“Competent” person defined as one who’s “adequately qualified, suitably trained and with sufficient experience to safely perform work without supervision or with only a minimal degree of supervision” (*OHS Act*, Sec. 1(d))

BRITISH COLUMBIA

Uses the term “qualified” rather than “competent,” which is defined as “being knowledgeable of the work, the hazards involved and the means to control the hazards, by reason of education, training, experience or a combination thereof” (*OHS Regs.*, Sec. 1.1(1))

MANITOBA

“Competent” defined as “possessing knowledge, experience and training to perform a specific duty” (*WSH Regs.*, Sec. 1.1)

NEW BRUNSWICK

“Competent” defined as: a) qualified, because of such factors as knowledge, training and experience, to do assigned work in a manner that will ensure the health and safety of persons; b) knowledgeable about the provisions of the Act and the regulations that apply to the assigned work; and c) knowledgeable about potential or actual danger to health or safety connected with the assigned work (*OHS General Reg.*, Sec. 2)

NEWFOUNDLAND

“Competent person” defined as who is: (i) qualified because of that person’s knowledge, training and experience to do the assigned work in a manner that ensures the health and safety of every person in the workplace, and (ii) knowledgeable about the provisions of the Act and these regulations that apply to the assigned work, and about potential or actual danger to health or safety associated with the assigned work (*OHS Regs.*, Sec. 2(h))

NOVA SCOTIA

“Competent person” defined as one who is: a) qualified because of that person’s knowledge, training and experience to do the assigned work in a manner that ensures the health and safety of every person in the workplace; and b) knowledgeable about the provisions of the Act and regulations that apply to the assigned work, and about potential or actual danger to health or safety associated with the assigned work (*Occupational Safety General Regs.*, Sec. 2(g))

ONTARIO

Refusal Triggers: Workers may refuse work if they have reason to believe that: (a) any equipment, machine, device or thing they’re to use or operate is likely to endanger themselves or another worker; (b) the physical condition of the workplace or part of it where they’re to work is likely to endanger themselves; (c) workplace violence is likely to endanger themselves; or (c) any equipment, machine, device or thing they’re to use or operate or the physical condition of the workplace or part thereof violates the OHS laws in a way likely to endanger themselves or another worker.

Limitations: Work refusal not allowed if: (a) the refusal would directly endanger another person’s life, health or safety; (b) the danger is inherent in work or a normal

condition of the worker's employment; (c) the worker is a police officer, firefighter, correctional officer; or (d) the worker is employed in operating a/an hospital, sanatorium, long-term care home, psychiatric institution, mental health centre, rehab facility, residential group home or facility for persons with behavioural or emotional problems or disabilities, ambulance service, first aid clinic or station, laboratory operated by the Crown, or laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service.

Refusals Process: 1. Refusing workers must promptly report circumstances of the refusal to supervisor or employer; 2. Employer or supervisor must "forthwith" investigate in the presence of the refusing worker and a JHSC worker member, safety rep or experienced, trained and knowledgeable worker selected by the union or workers to represent them; 3. Refusing worker must remain in a safe place as near as reasonably possible to their work station and available for the investigation until the investigation ends; 4. If not satisfied with investigation or remedial actions taken, worker can continue refusal in which case somebody must notify the MOL; 5. MOL officer must investigate and issue any orders they think necessary; 6. Refusing worker must remain in a safe place as near as reasonably possible to their work station and available for the MOL investigation until it ends; 7. Worker must return to work if MOL officer finds no danger or after remedial measures ordered by MOL officer are taken.

Reassignment: 1. Pending the MOL investigation and decision, no worker may be assigned to use or operate the equipment, machine, device or thing or work in the workplace or part of the workplace being investigated unless the worker is advised of the other worker's refusal and reasons for it; 2. Other worker must be so advised in the presence of: (a) a JHSC worker member, if possible, a certified member; (b) a safety rep; or (c) a worker who because of their knowledge,

experience and training is selected by the trade union that represents the worker or, if there is no trade union, the workers to represent them.

Protections: 1. Refusing workers are deemed to be at work and their employer must pay them at the regular or premium rate for the time spent in reporting the refusal; 2. Same applies for JHSC members, safety reps, etc., for their time in carrying out their role in the refusals process; 3. No reprisals by employer or its representatives against workers for exercising their refusal rights or roles.

(OHS Act, Section 43)

PRINCE EDWARD ISLAND

Refusal Triggers: Workers may refuse to do an act at their workplace that they have reasonable grounds for believing is likely to endanger their own or another worker's occupational health or safety.

Limitations: None specified other than the requirement that the belief that danger exists be on reasonable grounds.

Refusals Process: 1. Refusing workers must immediately report concern to their supervisor; 2. Supervisor must promptly investigate in the worker's presence and either: (a) take or recommend appropriate remedial action to the employer; or (b) if the supervisor determines there's no reasonable grounds for the refusal, advise the worker to do the refused work; 3. If unsatisfied with the supervisor's resolution, refusing worker may refer the matter to the JHSC or safety rep, or a govt. OHS officer if there is no JHSC or safety rep; 4. Upon receiving the referral, the JHSC, safety rep or officer must promptly investigate and either: (a) recommend appropriate remedial action to the employer; or (b) if they believe there's no reasonable grounds for the refusal, advise the refusing worker to do the work; 5. If the investigation was carried out by the

JHSC or safety rep and the refusing worker is unsatisfied with the resolution, they may refer the matter to an officer; 6. Upon receiving the referral, the officer must promptly investigate and either: (a) order the employer to take appropriate remedial action; or (b) if the officer believes there's no reasonable grounds for the refusal, advise the refusing worker to do the work; 7. Refusing worker must return to work after remedial actions ordered by the officer are taken or after being advised by the officer to return to work because there's no reasonable grounds for refusing.

Reassignment: 1. Pending a work refusal investigation, refusing workers must remain available at the workplace during their normal working hours; 2. Employer may temporarily reassign refusing worker to other reasonably equivalent work at same pay and benefits; 3. Refusing workers who are not reassigned are entitled to same pay and benefits for refusal time as long as the refusal is upheld; 4. Refusing workers not entitled to wages and benefits if refusal is found to be frivolous; 5. Employer must not assign another worker to perform refused work unless the other worker is informed of the refusal, reasons for it and the other worker's own OHS refusal rights.

Protections: Employer and union may not take discriminatory action against workers for exercising their work refusal rights.

(OHS Act, Sections 28 to 30)

QUÉBEC

Refusal Triggers: Workers may refuse to perform particular work if they have reasonable grounds to believe that performing it work would expose themselves or another person to danger to health, safety or physical or mental well-being.

Limitations: Refusal not allowed if it would put the life,

health, safety or physical or mental well-being of another person in immediate danger or if the conditions under which the work is to be performed are ordinary conditions in the worker's kind of work.

Refusals Process: 1. Refusing worker must immediately notify their supervisor, employer or agent of the employer; 2. Upon being informed, the supervisor, employer or agent must convoke the safety rep (which, in Quebec, may be a safety rep or a designated member of the JHSC) to examine the matter and proposed corrective measures; if the safety rep is unavailable or doesn't exist, supervisor, employer or agent must convoke with another worker designated by refusing worker; 3. CNESST may be called in if after the initial investigation if: (a) the worker maintains the refusal; (b) the safety rep believes that the work endangers the health, safety or physical or mental well-being of the worker or another person; or (c) the employer or its agent believes that the work doesn't expose the worker or another person to danger to health, safety or physical or mental well-being; 4. If refusal prevents 2 or more workers from working, CNESST must investigate within 6 hours; 5. CNESST must immediately determine whether there's grounds for the refusal and either: (a) order remedial measures; or (b) order the worker to return to work; 6. CNESST's decision is subject to appeal; 7. Refusals by 2 or more workers for the same alleged danger must be dealt with jointly.

Reassignment: 1. Employer may require refusing worker to remain at the workplace and temporarily assign them to other duties that they're reasonably capable of performing; 2. General Rule: Employer must not have refused work performed by another worker or a person who ordinarily works outside the establishment while the refusing worker is deemed to be at work until a decision is rendered ordering the worker to resume work; 3. Exception: Employer may have another worker perform the work as long as it notifies that other worker of

the refusal and the reasons for it if the worker continues the refusal after either: (a) A supervisor, employer or agent's initial finding of no danger or determination that the refusal is justified for that particular worker but wouldn't justify a refusal by another worker, or (ii) A finding by CNESST that the refusal is acceptable for that particular worker but the circumstances don't justify refusal by another worker; 4. Other workers in the undertaking who can't work due to a refusal are deemed to be at work for the duration of the work stoppage at full pay and benefits but may be reassigned or required to remain available at the workplace.

Protections: 1. Employer may not dismiss, suspend, transfer, penalize, discriminate or take reprisals against workers for exercising their refusal rights; 2. However, employer may, within 10 days after a final decision, dismiss, suspend, transfer or penalize workers if they abuse their refusal rights.

(OHS Act, Sections 12 to 30)

SASKATCHEWAN

Refusal Triggers: Workers may refuse to do an act(s) at their workplace that they have reasonable grounds to believe is likely to endanger their own or another person at the place of employment's occupational health or safety.

Limitations: None specified other than the requirement that the belief that danger exists be on reasonable grounds.

Refusals Process: 1. Right to refuse ends when: (a) sufficient steps are taken to satisfy the refusing worker otherwise; or (b) the JHSC investigates the matter and advises the worker there's no danger; 2. If there's no JHSC or the refusing worker or employer aren't satisfied with the JHSC's decision, the worker or employer may ask a govt. OHS officer to investigate during which time the worker may continue the

refusal; 3. If the OHS officer finds unusual danger it may order the employer to take appropriate remedial action; 4. If the OHS officer finds no unusual danger they must, in writing, advise the employer and workers of the decision and advise the worker that they're no longer entitled to refuse to perform the work, in which case the worker must return to work.

Reassignment: Employer must not ask or assign another worker to perform refused work unless it advises the other worker, in writing, of the refusal, reasons for it and the other worker's own OHS refusal rights.

Protections: Employer may not take discriminatory action against workers for exercising their work refusal rights.

(*Sask. Employment Act*, Part III, Division 5)

NORTHWEST TERRITORIES & NUNAVUT

Refusal Triggers: Workers may refuse to do any work where they have reason to believe that: (a) there's an unusual danger to their health or safety; (b) carrying out the work is likely to cause an unusual danger to their own or any other person's health or safety; or (c) the operation of any tool, appliance, machine, device or thing is likely to cause an unusual danger to their own or another person's health or safety.

Limitations: Refusals justified only for "unusual danger," defined as: (a) a danger that doesn't normally exist in that particular work; or (b) a danger under which a person engaged in that work "would not normally carry out his or her work".

Refusals Process: 1. Workers must promptly report the circumstances of the refusal to their employer or supervisor; 2. Employer or supervisor must, without delay investigate the report and take steps to eliminate the unusual danger in the presence of the refusing worker and a union rep or another worker the refusing worker selects; 3. Employer or supervisor

must notify refusing worker of the investigation and steps taken; 4. If the refusing worker is unsatisfied, they may continue the refusal in which case employer, supervisor or worker must notify the JHSC or, if there is no JHSC, a govt. OHS officer; 5. Upon being notified, the JHSC or OHS officer must investigate in the presence of the employer and refusing worker and decide if there's an unusual danger; 6. If unusual danger is found, nobody may perform the work until: (a) the employer takes steps to eliminate the unusual danger, and (b) the JHSC or OHS officer is satisfied that the unusual danger no longer exists, in which case the JHSC or OHS officer must notify the refusing worker of its conclusion in writing; 7. The refusing worker or employer may appeal the decision of the JHSC to an OHS officer but the decision of the OHS officer is final.

Reassignment: 1. Pending the JHSC or OHS officer investigation and decision or an appeal, the refusing worker must remain in a safe place at or near the place of the investigation during their normal working hours unless the employer assigns the worker to temporary alternative work that the worker is competent to perform; 2. No express limits on assigning refused work to another worker.

Protections: Refusing workers must be paid at their regular rate of pay during the normal working hours they spend at the place of the investigation or in performing alternative work.

(*Safety Act*, Section 13)

YUKON

Refusal Triggers: 1. Workers may refuse to perform work that they believe on reasonable grounds to be unsafe; 2. For work to be considered unsafe the work activities or work conditions must be likely to endanger the worker or another person's health and safety.

Limitations: Work refusal not allowed if: (a) the refusal would directly endanger another person's health and safety and appropriate control measures are in place; (b) the conditions under which the work is to be performed are ordinary conditions in that kind of work and appropriate control measures are in place (we'll refer to (a) and (b) collectively as "refusal exceptions").

Refusals Process: 1. Workers must immediately report the refusal and reasons for it to their employer, immediate supervisor or any other person who is in charge at the workplace; 2. The person who receives the report must immediately investigate and either: (a) without delay, take any action necessary to remedy any unsafe work activity or condition, or ensure that such action is taken; or (b) inform the worker if they think: (i) the work is not unsafe, or (ii) any of the refusal exceptions applies; 3. If the worker continues to refuse to perform the work, the person to whom the worker reported the refusal must: (a) investigate the matter again in presence of the refusing worker and: (i) a trained JHSC worker member, (ii) a safety rep, or (iii) if the JHSC member or safety rep don't exist or aren't available, another worker selected by the refusing worker; and (b) without delay, take any action necessary to remedy any unsafe work activity or condition, or ensure such action is taken; 4. If worker still continues to refuse, employer must report the refusal and reasons for it to the Yukon Workers Compensation Health & Safety Board ("Board"), which must have an officer promptly investigate the matter and determine whether or not: (a) the work is unsafe; and (b) any of the refusal exceptions apply; 5. If officer finds that work is unsafe, they may make any order that they determine to be necessary; 6. If officer finds that the work is not unsafe or that a refusal exception applies, they must notify the refusing worker that the refusal is no longer justified; 7. Refusing worker must return to work after the ordered remedial measures are made or the Board notifies them that the refusal is unjustified.

Reassignment: 1. Refusing workers are entitled to the same wages and benefits they'd have gotten had they continued to work and employer may temporarily reassign them to alternate work; 2. Employer may not assign or ask another worker to perform refused work unless: (a) It notifies the other worker in writing of: (i) the refusal, (ii) reasons for it, (iii) the other worker's own OHS refusal rights, (iv) the reason.

the employer believes the work is not unsafe or a refusal exception applies; and (b) If the refused work has been determined to be unsafe, the required actions have been taken to remedy the unsafe work activity or condition.

Protections: Employer, union or person acting on behalf of the employer or union may not take reprisals against workers for exercising their work refusal rights.

(Workers Safety & Compensation Act, Part 3, Division 5)