

# Reassigning Work Subject to a Work Refusal to Another Worker



You can't just make a different worker do a job that another worker has refused

While workers' right to refuse dangerous work is an essential safety protection, it can also be highly disruptive to work operations. Work refusals must be investigated, and any problems identified must be corrected before the work can resume. Even if you believe that the refusal is baseless and the work is totally safe, there are steps you must take before reassigning the refused work. Here's a look at the refusal reassignment requirements and how to comply with them.

## What's At Stake

Unlike in most industrialized countries where employers bear responsibility for just about everything, OHS laws in Canada are based on an Internal Responsibility System theory in which all stakeholders, including workers, work collectively to ensure workplace health and safety. In such a system, the right of workers to refuse work they consider unduly dangerous is the ultimate backstop to be resorted to only when all else fails. That's why OHS laws impose limits on refusal rights. Thus, refusals are allowed only when:

- The refusing worker's fears of danger are reasonable;
- The refusal doesn't put the health and safety of others in danger'thus, for example, a confined space attendant can't initiate a work refusal while workers they're responsible for monitoring are inside the space;
- The danger prompting the refusal is undue for the particular job'thus, for example, a firefighter can't refuse to enter a burning building due to fears of inhaling smoke (unless the refusal is due to the employer's failure to furnish the necessary respiratory protection); and
- Workers properly notify their supervisor or employer of their work refusal and reasons for it.

Once a work refusal is properly initiated, the employer must investigate and determine if an undue danger exists. If so, it must take appropriate corrective actions to remedy the danger. Workers can also choose to continue their refusal if they're dissatisfied with the outcome (that is, they dispute the finding of

no danger or adequacy of corrective actions taken), in which case, a government OHS investigator will probably have to intervene.

Of course, all of this takes time. So, it might be tempting for employers to simply ask another worker to do the refused work, especially when the employer firmly believes that the refusing worker's concerns are completely off base. However, simply plugging in another worker like this would defeat the purposes of work refusals, not to mention put the replacement worker in potential danger.

## Employer Duty to Provide Notice to Reassign Refused Work

That's why OHS laws impose limits on reassignment of work subject to a work refusal. Employers may not ask or require (or, in BC, even permit) another worker to perform work subject to a work refusal unless they provide the worker notification of the refusal. Notification rules vary slightly by jurisdiction:

### Reassignment Rules in Northwest Territories & Nunavut

Northwest Territories and Nunavut are the only jurisdictions that don't expressly address what employers must do to reassign work subject to a work refusal to another worker.

## 1. Who Must Provide Notification

In most jurisdictions, the employer must provide notification of the work refusal.

Exceptions:

- In New Brunswick, notification can be provided by either the employer or a supervisor; and
- Nova Scotia, Ontario and Québec say the other worker must receive notification but don't specify who must provide it.

## 2. Who Must Receive Notification

Notification of the work refusal must be directed to the worker that has been asked or ordered to perform the refused work, including workers on the next shift after the refusal. Additional requirements:

- **In BC**, notice must be provided to not only the worker but also a worker member of the JHSC, worker selected by the refusing worker's union, or if there's no JHSC or union, another 'reasonably available worker' selected by the refusing worker;
- **In Ontario**, notice must be provided in the presence of a worker member of the JHSC, preferably a certified member, or another person representing the worker being asked or ordered to do the work; and
- **In Manitoba**, if 'practicable,' the refusing worker should also provide the worker being asked or required to do the refused work notice of the refusal

and reasons for it.

### 3. What Form Notification Must Be In

Notification of refusal must be in writing. **Exceptions:** Federal, New Brunswick, Newfoundland, Prince Edward Island and Qu bec require that the worker be notified of the refusal but don't specify who must provide notification.

### 4. What Information Notification Must List

The point of the notification is to make the proposed replacement worker (which we'll refer to as the 'second worker') aware that another worker (the 'first worker') has refused the work and why so they can make an informed decision about whether to accept the assignment. The information the notification must list varies slightly by jurisdiction, including:

- The fact that the first worker has refused to perform the work (all jurisdictions);
- The reasons the first worker refused to perform the work (all jurisdictions);
- The fact that the second worker also has the right to refuse to perform the work (BC, MB, NB, NS, PEI, SK, YK); and
- The reasons the employer believes that the refused work can be done without endangering the second worker or any other person (AB, BC, MB, SK, YK).

## Reassignment of Refusing Worker

Last but not least, you need to know what to do with refusing workers while they await the outcome of the investigation and completion of any required corrective actions. The two basic options:

- Reassign them to reasonably equivalent work in accordance with the terms of the collective agreement if the refusing worker is in a union;
- Require the refusing worker remain in a safe place near the refusal site so they can be available for the investigation.

In either case, refusing workers are entitled to full pay and benefits for their time. **Exception:** In PEI, workers who aren't reassigned to equivalent work are entitled to pay and benefits only if the refusal is upheld.

## Bottom Line

Reassignment rules and protections from reprisals apply, regardless of the work refusal's ultimate outcome. However, there's also a big caveat to keep in mind. The worker must initiate the refusal properly and provide the supervisor or employer notice of refusal required by OHS laws. If not, the work refusal isn't protected by OHS laws and you can treat it as plain old insubordination.