

Reassigning Work Subject to an OHS Work Refusal – Know The Laws of Your Province



Most jurisdictions require a written response within 30 days of receiving a JHSC recommendation.

Workers' rights to refuse dangerous work would be meaningless if employers could just simply reassign refused work to another worker. Reassignment is permitted, provided that workers are properly notified of the refusal and the reasons for it so they can make an informed decision about whether they want to accept or refuse the work. Here are the reassignment rules in each part of Canada.

OHS Rules on Reassigning Work After a Work Refusal

FEDERAL

(1) Employer may require refusing worker to remain at a safe location near the place of refusal or assign them reasonable alternative work; and (2) Employer may not assign any other employee to use or operate the machine or thing, work in that place that's subject to a work refusal unless: (a) the other employee is qualified for the work; (b) the other employee has been advised of the refusal of the employee concerned and of the reasons for the refusal; and (c) the employer is satisfied

on reasonable grounds that the other employee won't be put in danger (*Can. Labour Code*, Sec. 129)

ALBERTA

(1) Employer may require refusing worker to remain at work site and temporarily assign them to other assignments that they're reasonably capable of performing (*OHS Act*, Sec. 17(6)); (2) Employer may not request or assign another worker to do the work until it determines that the work doesn't constitute an undue hazard to the health and safety of any person or that an undue hazard doesn't exist (*OHS Act*, Sec. 17(10)); and (3) If employer is aware that an OHS officer was notified of the refusal, employer must notify the worker assigned to do the refused work, in writing, of: (a) the first worker's refusal; (b) the reasons for the refusal; and (c) the reason why, in the employer's opinion, the work doesn't constitute an undue hazard to the health and safety of any person or that an undue hazard isn't present (*OHS Act*, Sec. 17(14))

BRITISH COLUMBIA

(1) Employer may temporarily assign refusing worker to alternative work at no loss in pay until the matter is resolved (*OHS Regs*, Sec. 3.13(2)); and (2) Employer must not **require or permit** another worker to do the refused work unless: (a) the matter has been resolved; or the employer, in writing, advises the other worker and their representative of: (i) the refusal; (ii) the unsafe condition reported; (iii) the reasons why the work wouldn't create an undue hazard to the health and safety of the other worker or any other person; and (iv) the other worker's right to refuse unsafe work (*OHS Regs*, Sec. 3.12.1)

MANITOBA

Employer may not request or assign another worker to do refused work unless: (a) the employer advises the other worker, in writing, of: (i) the first worker's refusal, (ii) the reasons for the refusal, (iii) the other worker's right to refuse dangerous work, and (iv) the reason why, in the opinion of the employer, the work doesn't pose a danger to the safety or health of the other worker, another worker or any person; and (b) if practicable, the first worker advises the other worker of: (i) the first worker's refusal, and

(ii) the reasons for the refusal; and (c) the investigation and any remedial actions required have been taken (*WSH Act*, Sec. 43(6))

NEW BRUNSWICK

(1) Employer or supervisor may temporarily reassign refusing employee to perform other acts or work that's 'reasonably equivalent' to the acts or work the employee normally performs, at same pay and benefits, in accordance with any collective agreement that applies (*OHS Act*, Sec. 22); and (2) Employer or supervisor may not assign another employee to perform that act unless that other employee has been advised by the employer or supervisor of: i. the refusal; ii. the reasons for the refusal; and iii. the other employee's own refusal rights (*OHS Act*, Sec. 21)

NEWFOUNDLAND

(1) Employer may reassign refusing worker to other work that's reasonably equivalent to the work they normally do, at same pay and benefits, and the worker must accept the reassignment until they're able to return to work (*OHS Act*, Sec. 45(2)); and (2) Employer may not assign a substitute worker to perform refused work unless substitute worker is informed of the refusal and reasons for it (*OHS Regs*, Sec. 5(3))

NOVA SCOTIA

(1) Employer may reassign refusing employee to other work, at same pay and benefits and subject to the terms of any applicable collective agreement, and employee must accept the reassignment until they're able to return to work (*OHS Act*, Sec. 43(5)); and (2) No employee may be assigned to do refused work unless the employee assigned is advised of: (a) the refusal by another employee; (b) the reason for the refusal; and (c) the employee's own refusal rights (*OHS Act*, Sec. 44)

ONTARIO

(1) During the work refusal investigation, the refusing worker must remain, during the worker's normal working hours, in a safe place as near as reasonably possible to their work station and available to the inspector for purposes of the investigation (in which case worker is deemed to be at work and entitled to full pay and benefits for the time) unless, subject to the terms of a collective agreement, the employer: (a) assigns the worker reasonable alternative work during the worker's normal working hours or (b) where an assignment of reasonable alternative work isn't practicable, gives the worker other directions in accordance with Sec. 50 of the Act; and (2) During the investigation and pending the finding of an OHS officer, no worker may be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a worker JHSC member or other representative of the worker, the worker is advised of the other worker's refusal and reasons for the refusal (*OHS Act*, Sec. 43)

PRINCE EDWARD ISLAND

(1) Employer may temporarily reassign refusing worker to perform other acts or work that's reasonably equivalent to the

acts or work the worker normally performs, with full pay and benefits; (2) Refusing worker who's not reassigned is also entitled to full pay and benefits for the time if the refusal is upheld; and (3) Employer may not assign another worker to perform refused work unless the employer advises that other worker of the refusal, the reasons for it and of the other worker's refusal rights under the Act (*OHS Act*, Sec. 29)

QUÉBEC

(1) Until a ruling of no danger is made, employer may not have refused work performed by another worker or a person who ordinarily works outside the establishment and the refusing worker is deemed to be at work (*OHS Act*, Sec. 14); and (2) After a finding of no danger, a worker may agree to perform the work that the refusing worker still refuses to do if the worker is notified of the refusal and reasons for it (*OHS Act*, Sec. 17)

SASKATCHEWAN

(1) Employer may temporarily assign refusing worker to alternative work, without loss of pay, while: (a) steps are taken to persuade the worker that the work isn't unduly dangerous; (b) the JHSC investigates; or (c) an OHS officer investigates; and (2) Employer may not request or assign another worker to perform refused work unless employer notifies the other worker, in writing, of: (a) the refusal; (b) the reasons for the refusal; (c) the reason(s) the worker being assigned or requested to perform the work may, in the employer's opinion, carry it out in a healthy and safe manner; and (d) the worker's own right to refuse to perform the work (*Sask. Emp. Act*, Sec. 3-31)

NORTHWEST TERRITORIES & NUNAVUT

(1) During the investigation and pending the determination of danger/no danger, worker must remain in a safe place at or

near the place of the investigation during their normal working hours and with no loss of pay, unless the employer, subject to a collective agreement, assigns the worker to temporary alternative work that the worker is competent to perform; and (2) If investigation finds work poses undue danger, no person may perform the work until: (a) the employer takes steps to eliminate the unusual danger; and (b) the JHSC or delegate of the Chief Safety Officer is satisfied that the unusual danger no longer exists and so notifies the refusing worker (*Safety Act*, Sec. 13)

YUKON

(1) Refusing worker gets full wages and benefits for down time awaiting work refusal but employer can temporarily reassign worker to alternate work (*WSC Act*, Sec. 52); and (2) Employer must not request or assign another worker to perform refused work unless: (a) the employer advises the other worker, in writing, of the: (i) the first worker's refusal to perform the work, (ii) the reasons for the refusal, (iii) the other worker's right to refuse to perform work, (iv) the reason why, in the opinion of the employer: (A) the work isn't unsafe, (B) the refusal would endanger somebody else, or (C) the danger is normal for the type of work; and (b) if the work has been determined to be unsafe, the required actions have been taken to remedy the unsafe work activity or condition (*WSC Act*, Sec. 51)