

When Is Unhealthy Indoor Air Quality Grounds for a Work Refusal



IAQ is legitimate grounds for a refusal when the worker's health and safety concerns are reasonable.

The right to refuse dangerous work is the worker's final line of defence, to be used only as a last resort when all other means of separating the worker from danger fail. Because work refusals are so disruptive, they're generally allowed only when the worker's health and safety concerns are reasonable. Reasonableness is easier to assess when the hazard is something physical and tangible, like a defective piece of safety equipment or a fast-moving machine. But things get trickier when refusals are based on something intangible and hard to measure, like the workplace's indoor air quality (IAQ).

IAQ REFUSAL IS JUSTIFIED

WHAT HAPPENED

Seven office workers refused to work because of exposure to second-hand smoke from their coworkers. Their concern wasn't unfounded'after all, 60% of the 125 workers in the workplace were smokers. Six of the workers returned after the employer rearranged the desks in the main office to segregate non-smokers from smokers. But the seventh continued the refusal

after contending she was still exposed to second-hand smoke from a nearby office. As a result, she got a 3-day suspension. But the Ontario Ministry of Labour (MOL) investigator found the refusal justified and the employer was charged with 2 OHS violations for mishandling the refusal.

DECISION

The Ontario Court of Justice agreed with the investigator and convicted the employer on both charges.

EXPLANATION

The worker's concerns of being exposed to risk of lung cancer or heart disease were supported by 'compelling' scientific evidence of the dangers of cigarette smoke, the court noted. In addition, the MOL had warned the employer to do something about the problem after the worker made similar complaints 3 years earlier. But in spite of all this, the employer took no real measures to deal with the second-hand smoke problem, choosing instead to discipline the worker 'as a warning' to other workers who might be contemplating initiating their own refusal. (**Note:** Under current Ontario law, it's illegal for workers to smoke in an indoor workplace. But while the smoking rules have changed, the method the court used to evaluate the legitimacy of the refusal is still valid and could be used in other IAQ refusal cases.)

[R v. de Havilland Canada Ltd., [1991] O.J. No. 2396]

IAQ REFUSAL IS NOT JUSTIFIED

WHAT HAPPENED

Two workers refused to work, claiming that they were sick from exposure to freon gas in the workplace. Over 3 years, there had been 5 incidents involving freon leaks from the building's A/C system. The workers also claimed that their exposure to

freon was worsened by the fact that not enough outdoor air was being added to the indoor air to meet safety standards. Both complained of light-headedness, dizziness and headaches. A federal OHS investigator concluded that there was no danger to the workers and that the IAQ was safe. So, the workers appealed.

DECISION

The federal appeals officer upheld the investigator's decision that the refusals were unjustified.

EXPLANATION

The appeals officer noted that the investigator had conducted an extensive, 3-month investigation into the refusals. And that investigation reasonably concluded that the IAQ in the building didn't pose a hazard to the workers. Of the 5 incidents involving the A/C system, only 2 involved freon leaks in the building. And neither of those incidents exposed workers to dangerous levels of freon. In addition, sufficient outdoor air was being added to the indoor air flow. Also, tests of the indoor air indicated that its quality was good. Lastly, the officer pointed out, no other workers had complained about the quality of the air in the building. The court concluded that the indoor air quality was safe and thus the workers' refusals weren't justified.

[Willan v. Canada (Human Resources Development), [2005] C.L.C.A.O.D. No. 20]

THE 5 THINGS YOU NEED TO GUARD AGAINST IAQ WORK REFUSALS

The moral of the story is that IAQ is legitimate grounds for a work refusal to the extent the worker's health and safety concerns are reasonable. And while the above cases deal with chemical agents, the same reasoning applies equally to

biological agents like the infectious illnesses. On a general basis, you need 5 things to minimize the risk of IAQ work refusals at your workplace:

1. Knowledge of [the OHS IAQ standards of your jurisdiction](#);
2. An [analysis](#) of what you must do to comply with those requirements;
3. A written and effectively implemented general [housekeeping and sanitary workplace policy](#) that addresses IAQ; and
4. A regimen for performing [IAQ inspections](#); and
5. A [policy and procedure for investigating and addressing worker IAQ complaints](#) so that they don't turn into work refusals.