

WORK REFUSALS

WORKPLACE

SAFETY ISSUES

COVID-19 & THE

LAW

2020

COVID-19

What Employers Need to Know About Refusals

The World Health Organization (“WHO”) has declared a pandemic as cases of the Coronavirus Disease 2019 (COVID-19) continue to increase around the world and here in Canada. Canadian employers are increasingly dealing with occupational health and safety issues in their workplace. In particular, there has been a number of reported cases of workers exercising their right to refuse unsafe work, one of the most important protections that workers have under occupational health and safety legislation. This article will address that issue. However, this is not legal advice, and employers should not make decisions or take action until they receive legal advice from a competent legal advisor.

WHAT IS THE RIGHT TO REFUSE UNSAFE WORK?

Under the Ontario workplace health and safety statute, the Occupational Health and Safety Act (“OHS”), workers are entitled to refuse to work when they have reason to believe, among other things, that the “physical condition of the workplace”, or the part in which they work, or any equipment, machine, device or thing they use or operate, is likely to endanger them. The worker must advise the employer of the work refusal immediately and the underlying circumstance when they exercise this legal right. The statutory threshold required to justify a work refusal is low. A worker need only have a subjective belief that they may be unsafe at work, which includes many

circumstances related to COVID-19. The specific legal criteria may vary between jurisdictions. In every Canadian jurisdiction, however, the worker does not need to prove they are actually at risk in order to initiate a work refusal and trigger a mandatory investigation by the employer.

WHAT MUST AN EMPLOYER DO IN RESPONSE TO AN UNSAFE WORK REFUSAL?

If a worker exercises their right to refuse unsafe work, an employer must follow the mandatory investigatory requirement outlined in the legislation. In Ontario, this includes internally investigating the situation in the presence of the worker and either (1) a health and safety representative, or (2) a worker representative who is on the joint health and safety committee, or is chosen by the workers based on knowledge, experience and training.

An employer must conduct an internal investigation by recording the circumstances of the work refusal and investigation, resolve it internally, and ensure that any necessary action to remedy the danger is taken. However, if the work refusal is not resolved internally, then the employer must notify the regulator, the Ministry of Labour (“MOL”). Until such time, the worker engaging in the work refusal must generally remain available in a safe place and be paid for their scheduled working time until the situation has been resolved.

If the worker continues to believe they are still endangered despite the employer’s conclusions

to the contrary, the worker may continue the work refusal. At this point, either the worker or employer, or their representatives, must contact the MOL and request a government health and safety inspector to visit the workplace, investigate the continued work refusal and make a determination if there is any “likelihood of endangerment” of the refusing worker.

Throughout this process, the employer is generally entitled to assign alternative work to the refusing worker at the same rate of pay. However, the employer may not assign the work that is the subject of the refusal to another worker unless that other worker has been informed of the work refusal and the reasons given for the work refusal.

If the MOL inspector finds that the circumstance does not meet the statutory threshold required to justify the work refusal, the refusing worker may be ordered to return to work by the employer. If the MOL inspector finds otherwise, however, they will typically order the employer to remedy the hazard relating to the work refusal. Employers should also be aware of the prohibition onreprising against a worker for exercising their right to refuse unsafe work. Under section 50 of the OHSA, reprisal includes engaging in intimidation, coercion, penalization, discipline, suspension, dismissal, or threats of those measures. This related protection applies at all times, including after an inspection.

ARE THERE EXEMPTIONS TO THE RIGHT TO REFUSE UNSAFE WORK?

The right to refuse unsafe work is restricted for prescribed categories of workers, which includes firefighters, police officers, and certain healthcare workers, such as those employed in the operation of a hospital. These workers are not entitled to refuse unsafe work that is (1) inherent in their work or is a normal condition of their employment, or (2)

when their refusal to work would directly endanger the life, health or safety of another person.

Outside of this list of prescribed workers, the right to refuse unsafe work is generally available to all workers, including those designated as “essential services” pursuant to emergency management legislation.

HOW DOES THIS RIGHT TO REFUSE UNSAFE WORK APPLY DURING THE COVID-19 PANDEMIC?

The right to refuse unsafe work has arisen in the context of past infectious disease outbreaks and pandemics. In one case, two airline ticket agents engaged in a work refusal during the Severe Acute Respiratory Syndrome (SARS) outbreak for fear of contracting the illness while interacting with passengers. They insisted on wearing gloves and face masks in order to continue in their roles.

COVID-19 may result in workers exercising their legal right to express concerns to their employer and refusing to do unsafe work. However, the right should not be misused.

WHAT CAN EMPLOYERS DO TO PROVIDE A HEALTHY & SAFE WORKPLACE?

Under the “general duty clause” of the OHSA, and similarly in other jurisdictions, an employer has a general obligation to take reasonable precautions to protect the health and safety of its workers.

In the context of an infectious disease outbreak, an employer could potentially face prosecution for violating the general duty clause by taking insufficient measures to protect workers. An employer can also expect workers to exercise their right to refuse unsafe work based on what they perceive as inadequate protections.

During the COVID-19 pandemic, it is essential that employers implement appropriate protective

measures by following the latest guidance of their municipal and provincial public health agencies, as well as the latest guidance of the Public Health Agency of Canada (“PHAC”). Based on current PHAC guidance these measures should include the following: restricting individuals from the workplace based on the official criteria for recommended or required self-isolation, including returning from travels outside Canada; requiring employees who have even mild COVID-19 symptoms, as recognized by PHAC,⁸ to stay at home, contact public health authorities, and follow their directions; encouraging social distancing to reduce transmission, which may include facilitating remote work arrangements and rearranging the workplace for other workers as practical; promoting good hygiene practices, including frequent hand-washing, avoiding the touching of one’s face with unwashed hands, coughing or sneezing into one’s elbow, and ensuring the regular cleaning of high-touch surfaces throughout the workplace; and consider assessing the health of workers before they enter the workplace by various means, including printed warning signs, interviews and possibly taking workers temperature before they enter the workplace, as has been done in other jurisdictions.

Employers should also be conducting ongoing workplace health and safety assessments, and working with their internal health and safety committees as applicable to keep policies and practices updated. Under occupational health and safety legislation, employers are also generally required to keep workers informed of known workplace risks and hazards, and more broadly provide them with the information necessary to protect their health and safety.

By applying such measures, employers may fulfill their general duty and be better prepared to demonstrate that unsafe work refusals are

unnecessary in their workplace.

DO WORKERS HAVE TO BE PRESENT TO REFUSE?

Normally, a worker must be present at the workplace and report his/her refusal and reasons for engaging in it directly to a supervisor. But fear of contracting COVID-19 is causing some workers to stay home and refuse coming to work altogether. This is an extension of refusal rights beyond what was contemplated by current OHS rules and whether it will be permitted by OHS administrators, tribunals, courts and arbitrators remains to be seen.

So far, just one agency has weighed in on this issue. In guidance issued at the end of March 2020, WorkSafeNB said that “given the unique circumstances” of the COVID-19 pandemic, it WOULD accept such refusals, provided that the employer agrees to this process. “If all parties agree to this new process then the matter will be addressed through phone calls, emails or other remote means,” according to the agency.

CONCLUSION

The COVID-19 pandemic is a dynamic situation and in many ways unprecedented. Workers are understandably concerned about their safety in the workplace. At this uniquely sensitive time, it is especially important for employers to be visibly proactive in providing a safe workplace to alleviate these concerns and keep their workforce composed. Employers must also be aware of their specific obligations in the context of an unsafe work refusal, and ensure it is handled appropriately and in full compliance with legal requirements.

While the right to refuse unsafe work is always a possibility, that is all the more reason for employers to always have a safe workplace to ensure such refusals are ultimately short-lived.

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COMPLIANCE CHEAT SHEET

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.

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].

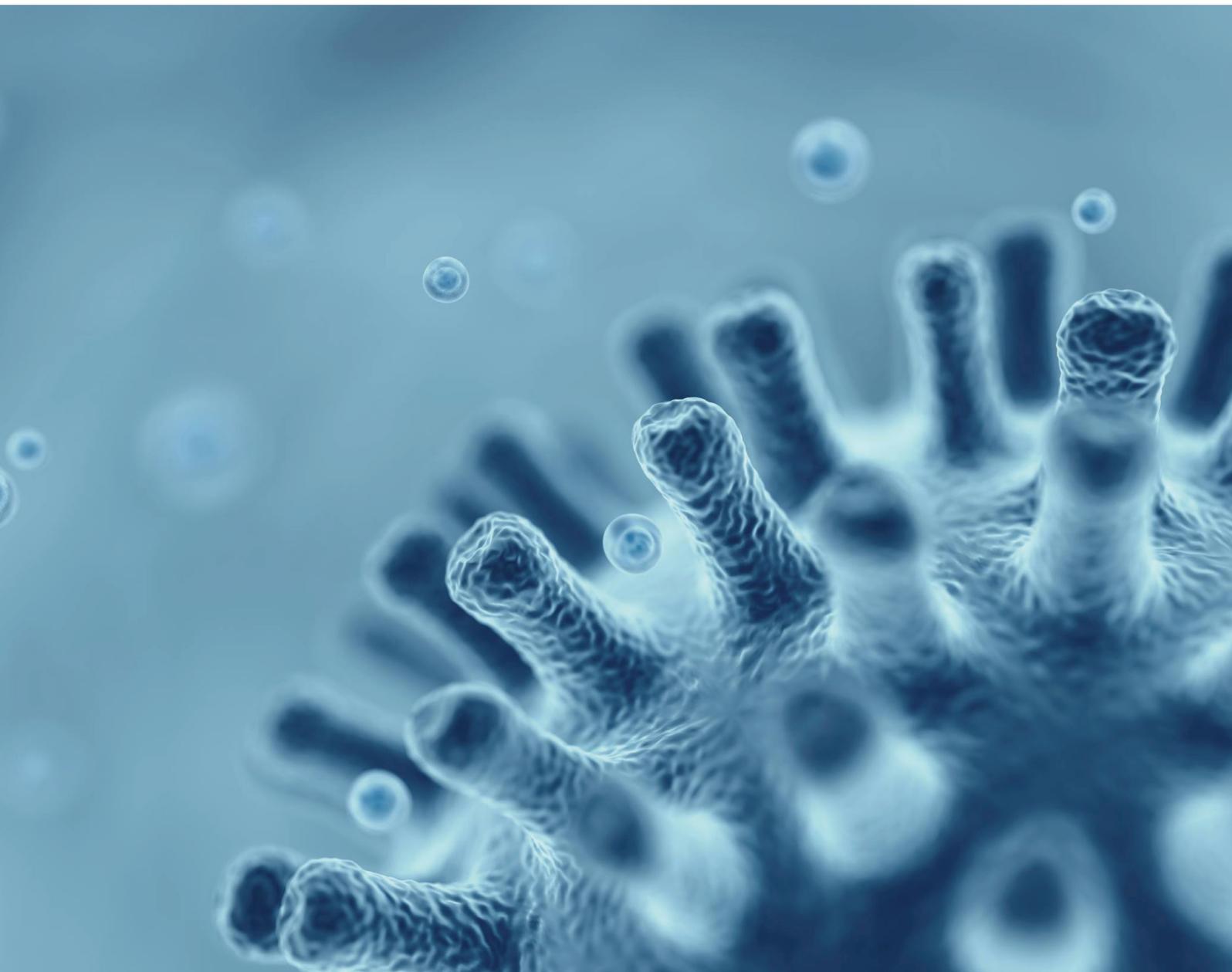
Unusual: Even if the fear is sincere and the danger is real, the refusal may still not be justified if it’s an inherent and normal part of the job. However, workers who do dangerous jobs are allowed to

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:

CONSLUSION OF OHS INVESTIGATION	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.

WHAT ARE REASONABLE GROUNDS FOR REFUSALS?

We all know, or should know, that the right to refuse unsafe work extends to those who have "reasonable" grounds to believe the work to be unsafe.

How then would we deal with people who have phobias since the very definition of a phobia is an irrational (or unreasonable) fear of something?

All work refusals need to be decided on a case-by-case basis. We are unaware of any work refusal cases involving a worker's phobia. However, if the basis for a work refusal is a worker's phobia and that phobia is a component of a diagnosed mental disorder or condition, you may need to accommodate that worker and take that mental condition/phobia into account when investigating the work refusal. It's similar to a worker who refuses work because of an allergy or sensitivity. For example, if a worker refuses work because the task requires the use of latex gloves and the worker is allergic to latex, that refusal would be valid despite the fact that latex gloves may not pose a hazard to anyone else in the workplace.

COVID-19 WORK REFUSAL

What Employers Need to Know About the Right to Refuse Unsafe Work

There has been a growing number of reported cases of workers exercising their right to refuse unsafe work related to COVID-19 pursuant to occupational health and safety legislation. For example:

- about a dozen Toronto Transit Commission (TTC) workers collectively refused to work at a TTC streetcar facility based on concerns over the adequacy of the deep cleaning of streetcars; [1]
- around 166 workers at an automotive assembly plant in Windsor initiated a one-day work refusal in response to a worker being placed under self-quarantine because of potential “secondary” exposure to COVID-19. [2]

In both cases, an Ontario Ministry of Labour inspector determined that the work refusal did not meet the necessary criteria, and the refusing workers were required to return to work. More of these work refusals can be expected as the COVID-19 pandemic continues to unfold.

This bulletin discusses the responsibilities of employers under occupational health and safety legislation when faced with a refusal to work based on unsafe work. These responsibilities are also subject to obligations in any collective agreement in

unionized workplaces. While the focus is on Ontario law, many of these principles will generally apply in most other provinces. In all cases, the specific statutory language should be consulted.

WHAT IS THE RIGHT TO REFUSE UNSAFE WORK?

Pursuant to the Occupational Health and Safety Act (“OHSA”), workers in Ontario are entitled to refuse to work when they have reason to believe, among other things, that the “physical condition of the workplace”, or any equipment, machine, device or thing they use or operate, is likely to endanger them. The statutory threshold to justify a refusal of unsafe work will vary between jurisdictions. In every jurisdiction, however, the worker does not need to prove they are actually at risk in order to initiate a work refusal.

The right to refuse unsafe work is more restricted for prescribed workers, which typically includes firefighters, police officers and certain healthcare workers. These workers are generally not entitled to refuse unsafe work (1) that is inherent in their work or is a normal condition of their employment, or (2) when their refusal to work would directly endanger the life, health or safety or another person.

WHAT MUST AN EMPLOYER DO IN RESPONSE TO AN UNSAFE WORK REFUSAL?

Should a worker exercise their right to refuse

unsafe work, an employer must follow the investigatory and reporting process outlined in the legislation. This includes:

- internally investigating the situation (typically in the presence of the refusing worker and a health and safety representative or worker representative);
- recording the circumstances of the work refusal and investigation; and
- ensuring any necessary action to remedy the danger is taken.
- If a worker continues to refuse to work, a government health and safety inspector must be notified and will visit the workplace to investigate the continued work refusal. If the inspector finds the statutory threshold to justify the work refusal is not met, the refusing worker will be expected to return to work. If the inspector finds otherwise, they will typically order remedial measures.

HOW DOES THIS APPLY DURING A PANDEMIC?

Not surprisingly, the right to refuse unsafe work has arisen in the context of other infectious diseases.

In one case, two airline ticket agents engaged in a work refusal during the SARS outbreak for fear of contracting the illness while interacting with passengers. They insisted on wearing gloves and face masks in order to continue in their roles.

The conclusion reached by the employer, and in the subsequent health and safety investigation under the governing federal Canada Labour Code ("CLC"), was that no "danger" existed as required by the CLC to justify the work refusal. Their conclusion was based on guidance by public health authorities, including the World Health Organization and Health Canada. This finding was upheld on review by the federal labour relations board.

In another case, two officers working at a government services centre near an airport refused to work unless their employer provided them with masks and gloves. Some of the clients they interacted with were directly arriving from countries where SARS was known to be prevalent. Although the employer permitted them to wear masks and gloves during these interactions, the employer insisted they procure this equipment themselves, resulting in the work refusal.

The findings of the CLC investigator, which were upheld on appeal, were that the employer appropriately relied on Health Canada guidance that the positions were at low risk because of their limited contact with the public. Moreover, the use of protective equipment at issue was not necessary given this low risk, and clients arriving from the airport were being subject to SARS-related controls. Accordingly, the threshold for "danger" under the CLC was not met.

Although the decisions in these cases are based on their particular legislation and particular facts, they offer some general guidance for employers on their obligations in the context of a pandemic.

WHAT CAN EMPLOYERS DO TO PROVIDE A SAFE WORKPLACE?

Under the "general duty clause" of the OHSA, and similarly in other jurisdictions, an employer has a general obligation to take reasonable precautions to protect the health and safety of its workers. In the context of a pandemic, an employer can also expect workers to exercise their right to refuse unsafe work based on what they perceive as inadequate protections.

In the two work refusal cases described above, the employers were credited for following the guidance of public health authorities in developing their workplace protection policies. Doing so helped

support their position that they were providing adequate protections and a sufficiently safe workplace that did not justify work refusals.

During the COVID-19 pandemic, it is essential that employers implement appropriate protective measures by following the latest guidance of their municipal and provincial public health agencies, as well as the latest guidance of the Public Health Agency of Canada (“PHAC”). Based on current PHAC guidance, these measures should include the following:

- restricting individuals from the workplace based on the official criteria for recommended or required self-isolation, including returning from travels outside Canada;
- requiring employees who have even mild COVID-19 symptoms, as recognized by PHAC, to stay at home, contact public health authorities, and follow their directions;
- encouraging social distancing to reduce transmission, which may include facilitating remote work arrangements and rearranging the workplace for other workers as practical; and
- promoting good hygiene practices, including frequent hand-washing, avoiding the touching of one’s face with unwashed hands, coughing or sneezing into one’s elbow, and ensuring the regular cleaning of high-touch surfaces throughout the workplace.

CONCLUSION

The COVID-19 pandemic is in many ways an unprecedented situation. At this time, it is especially important for employers to be proactive in implementing public health guidance and taking reasonable precautions to alleviate workers’

concerns. Employers must also be aware of their specific obligations in the context of an unsafe work refusal, and ensure such refusals are appropriately handled in full compliance with occupational health and safety legislation.

NOTES

[1] Oliver Moore, “Coronavirus concerns prompt TTC disruption as handful of workers refuse to work”, *Globe and Mail* (12 March 2020), online: “Coronavirus concerns prompt TTC disruption as handful of workers refuse to work”

[2] “Production back up at Windsor Assembly after employees refuse work amid COVID-19 concerns”, *CBC News* (13 March 2020), online: “Production back up at Windsor Assembly after employees refuse work amid COVID-19”

SOURCE: <https://www.fasken.com/en/knowledge/2020/03/19-covid-19-work-refusals-during-the-pandemic/>

SCORECARD

Work Refusals for Fear of Getting an Infectious Illness

The OHS laws clearly allow workers to refuse work when they have “reasonable” cause to fear serious injury or illness to themselves and/or others. As with all work refusals, the supervisor who receives the refusal must make a determination about whether the worker’s concerns are reasonable. Unfortunately, that’s easier said than done. OHS

statutes and regulations don’t go into details or specifics about what makes a refusal reasonable. The only official source to go for guidance are the cases in which a court or arbitrator had to apply the principles to real-life refusals. Here’s a rundown of the 8 cases where that actually happened.

CASE	GROUND	OUTCOME	EXPLANATION
Caverly v. Canada (HRSD)	HRSD worker fears getting SARS from immigrants	Refusal Invalid	Worker not exposed to infection risk, but HRSD should have done a better job of addressing concerns
Chapman v. Canada (Customs and Revenue Agency)	Customs agent fears getting SARS from new Asian immigrants	Refusal Invalid	Custom agents don’t encounter individuals with SARS; even if they did, they can’t get it from proximity to infected individuals
Cole v. Air Canada	Air Canada ticket agents fear getting SARS from Asian passengers	Refusal Invalid	Medical evidence shows SARS isn’t transmitted by proximity to infected individuals; airline adequately addressed SARS concerns
Hogue-Burzynski v. VIA Rail Canada	Railroad crew members fear getting intestinal virus from sick passengers on previous trip	Refusal Invalid	Railway took steps to minimize risk and workers had to accept that risk as part of their job
Swan River Valley Hospital (Re)	Hospital workers fear getting Hepatitis B	Refusal Invalid	Not reasonable to require hospital to vaccinate all workers, especially when they didn’t demand vaccination in collective bargaining

CASE	GROUND	OUTCOME	EXPLANATION
Walton v. Treasury Board	Prison guard fears getting Hepatitis B from inmates	Refusal Valid	Fear of being doused with waste bucket is reasonable given that Hepatitis B is spread via contact with feces, urine and semen
Unreported	Quebec paramedics fear getting Ebola from patients	Refusal Valid	Employer didn't have ample infection control measures in place
Unreported	Ontario paramedics fear getting Ebola from patients	Refusal Invalid	Risk of paramedics actually being exposed only hypothetical
Swan River Valley Hospital (Re)	Hospital workers fear getting Hepatitis B	Refusal Invalid	Not reasonable to require hospital to vaccinate all workers, especially when they didn't demand vaccination in collective bargaining
Walton v. Treasury Board	Prison guard fears getting Hepatitis B from inmates	Refusal Valid	Fear of being doused with waste bucket is reasonable given that Hepatitis B is spread via contact with feces, urine and semen
Unreported	Quebec paramedics fear getting Ebola from patients	Refusal Valid	Employer didn't have ample infection control measures in place
Unreported	Ontario paramedics fear getting Ebola from patients	Refusal Invalid	Risk of paramedics actually being exposed only hypothetical

BRIEFING

Is Fear of Coronavirus Infection Valid Grounds for a Work Refusal?

Don't be surprised if one of your workers engages in a work refusal out of fear of catching coronavirus from a co-worker, client or member of the public. While it might seem overly dramatic, such a refusal may be justified, especially if the individual to which the worker is exposed has recently traveled to China or another high-risk area. Result: Dismissing the worker's fears out of hand can get you into serious trouble under OHS laws. Here's what you and your supervisors need to know to properly handle coronavirus-related work refusals.

WHAT THE OHS LAWS SAY—AND DON'T SAY

The OHS laws allow workers to refuse work when they have "reasonable" cause to fear serious injury or illness to themselves or others. As with all work refusals, the supervisor who receives the refusal must take it seriously and overcome the temptation to engage in knee-jerk rejection and order workers back to work before making a determination about whether their concerns are reasonable and an immediate danger exists.

Unfortunately, that's easier said than done. The OHS statutes and regulations don't go into details or specifics about what makes a refusal reasonable. To find out what reasonable means, you need to look at the actual cases in which a court or arbitrator had to apply the principles to real-life refusals. Although there haven't yet been any reported cases

on coronavirus refusals, there have been several cases involving refusals related to other infectious illness outbreaks like H1N1, SARS, hepatitis B (Hep B) and Ebola. Of course, supervisors aren't likely to know about any of these cases. So, it's up to you to debrief them on the cases to ensure they're prepared to deal with coronavirus-related refusals. Here's how to do that.

HOW TO BRIEF YOUR SUPERVISORS

First, be sure that supervisors understand that they must do their own investigation of each work refusal and make an appropriate decision based on their findings. Explain that knowing how courts and arbitrators across Canada have ruled on other infectious illness work refusals will help them make legally sound determinations when dealing with coronavirus refusals by their own workers.

The next point to make is that as long as the proper investigation procedures are followed, infectious illness-based work refusals fail much more often than they succeed. In other words, it's extremely difficult for a worker to prove that risk of infection poses an immediate danger. Thus, the Insider found 9 cases where a court or arbitrator had to decide whether an employee's infectious illness work refusal was reasonable. The worker lost all but 2 of these cases.

The 5 Questions to Ask

But the significance of the cases isn't just the outcome but the approach courts and arbitrators used to assess whether the worker's fear of immediate danger was reasonable. The 5 questions the tribunals asked are the ones you want your own supervisors to consider in making their own determination in dealing with a worker's coronavirus-based work refusal.

1. How Is the Infection Transmitted?

One of the key issues in determining the reasonableness of infectious illness refusals is how the illness is transmitted. Thus, for example, during the SARS outbreak, there were a number of refusal cases brought by workers who feared contracting the disease by working near individuals who'd recently arrived from Asian countries where SARS had reached pandemic levels. Employers in 3 cases were able to shoot down the refusals in arbitration by relying on reports from the World Health Organization (WHO) and other medical evidence showing that SARS isn't spread by being in proximity to an infected individual.

Refusal Fails: Two Air Canada ticket agents at Pearson Airport in Toronto refused to work near passengers arriving from Hong Kong unless they could wear surgical masks and gloves, because they were afraid of getting SARS. Citing the WHO report, the federal arbitrator upheld Air Canada's determination that the agents weren't at high risk of contracting SARS and didn't need PPE [Cole v. Air Canada].

Refusal Succeeds: Each morning, a prison guard had to escort 3 inmates from their toilet-less isolation cells, waste bucket in hand, to a washroom. The guard was afraid that the inmates would toss the contents of their waste buckets at him and he'd contract Hep B. The federal arbitrator found the

refusal valid based on scientific evidence showing that Hep B is transmitted through contact with feces, urine and semen [Walton v. Treasury Board].

2. Does the Refusing Worker Work with or near People who Are Infected?

It appears that a person can get coronavirus infection by being in close proximity to infected individuals. Thus, supervisors will have to consider whether this is actually the case with the refusing worker.

Refusal Fails: A federal arbitrator nixed an airport customs agent's refusal to work unless he would wear PPE as his job involved little to no contact with newly arrived passengers from SARS-infected parts of Asia [Chapman v. Canada (Customs and Revenue Agency)].

Refusal Fails: Theoretical possibility of treating a patient with Ebola wasn't enough to justify the refusal of 2 Ontario paramedics who couldn't prove they'd have actual exposure.

3. Are the Workplace Infection Hazards "Undue"?

Applying the above cases to coronavirus is tricky because it seems clear that you can contract coronavirus from being in contact with an infected individual. In fact, coronavirus appears to be more contagious than SARS, Hep. B and other previous outbreak illnesses. And that would make being in a workplace or any environment where multiple individuals are located near each other inherently risky. But that's not enough. To justify a work refusal under OHS laws, the workplace condition or operation must pose an undue hazard, i.e., one that's different from and greater than what would exist in the community.

Refusal Fails: BC OHS Review Officer upholds finding of no danger in case involving refusal of

2 pregnant teachers concerned about catching H1N1 influenza. "While I acknowledge the workplace would be characterized as a higher risk environment, these risks were neutralized by the control measures in place" and the lack of evidence that the workers were specifically susceptible nor that being in the workplace was any riskier than being in the community [Review Reference #: R0112820, Oct. 21, 2010].

4. Are the Worker's Fears Sincere?

Courts and arbitrators will dismiss coronavirus-related work refusals if there's evidence that workers are abusing their refusal rights and their fears of contracting the illness aren't sincere. By the same token, they'll also take into account any physical characteristics that make the individual worker particularly susceptible, e.g., a weakened immune system.

5. Are Adequate Measures Already in Place to Address the Worker's Concerns?

A key factor in any work refusal case is what, if anything, the employer has already done to address the hazard and whether those measures are adequate. Evidence that the employer is stonewalling will almost always tip the case in the worker's favour. Conversely, employers "score points" by being able to show that they took steps to address the worker's concerns.

Refusal Fails: Federal arbitrator strikes refusals of HRDC workers scared of getting SARS from Asian immigrants they might encounter on the job, citing the measures the agency had taken to reassure and protect workers, including providing educational materials about SARS and holding daily briefings on the local and regional health situation [Caverly v. Canada (Human Resources Development)].

Refusal Fails: A railroad crew refused to board a train for a scheduled trip after learning that 28

passengers from the previous trip had contracted a gastrointestinal virus. According to the arbitrator, the company had taken the steps necessary to manage the risk, such as thoroughly scrubbing down the cars, sanitizing the washrooms and keeping the crew informed [Hogue-Burzynski v. VIA Rail Canada].

Refusal Succeeds: Québec CSST (as it was called at the time) upheld the refusal of 2 paramedics citing the employer's failure to implement adequate measures and PPE to protect workers from Ebola.

TAKE 9 MEASURES TO MINIMIZE INFECTIOUS ILLNESS RISKS

End your briefing by providing a checklist of measures that address concerns giving rise to a coronavirus- or other infectious illness-based work refusal. Explain that the more of the following measures that are in place at the time of refusal, the harder it will be for the worker to justify the refusal as reasonable:

1. Educated workers about coronavirus and how it's transmitted;
2. Encouraged workers to get vaccinations or provided vaccinations in-house (currently, there is no coronavirus vaccine available);
3. Kept workers updated on illness-related developments in the workplace and community, e.g., by posting regular updates on the company's website;
4. Took basic hygiene measures, such as providing soap, hand sanitizers and paper towels and keeping sinks and surfaces that people touch (such as door knobs) clean;
5. Posted signs, posters and notices reminding workers to wash their hands properly, use cough etiquette, keep social distances, etc.;
6. Adopted work practices that promote social

distance, such as using conference calls instead of face-to-face meetings;

7. Screened workers and visitors entering the workplace for signs of transmittable illness;
8. Furnished PPE to workers exposed to infection risks; and
9. Managed cases of infection at work, including telling those suspected of having an illness to go home immediately and monitoring which workers get infected, where they work, etc.

FAQ

Answers to 10 Frequently Asked Questions

One of a worker's key rights under the OHS laws is the right to refuse unsafe work. Proper handling of refusals is challenging because you must not only determine whether the worker's fear is reasonable but also follow the procedures spelled out for refusals in the OHS laws while doing so.

Mishandle a work refusal and your company could be liable for a safety offence or wrongful termination. To help you avoid that situation, here are answers to 10 of the most frequently asked questions (FAQs) about work refusals.

10 WORK REFUSAL FAQs

WHO CAN INITIATE A WORK REFUSAL?

Any worker—full- or part-time, temporary or permanent, new or experienced—can initiate a work refusal provided he has valid reasons for doing so.

WHEN CAN A WORKER REFUSE SAFE WORK?

Although the standard for refusals varies slightly by jurisdiction, the focus is generally on whether the worker has "reasonable" grounds or cause to believe that the work or equipment poses an undue or unusual hazard or danger to himself or others. In determining whether the worker's grounds are reasonable, consider whether an average worker, with the same level of training and experience, using normal and honest judgment, would agree that the work or equipment poses an unacceptable hazard.

In addition, a worker's fear must be sincere. If the refusal is just a pretext to get out of an unpleasant task or avoid working with someone the worker dislikes, it isn't valid.

Example: Two workers at a ham processing plant separately refused to be reassigned to another assembly line because they disliked a third co-worker. They claimed that working with that co-worker raised health and safety issues. The supervisor suspended them each for one day after concluding that the two workers' real motive was to avoid working with the disliked co-worker and that they were only citing safety as a pretext. A labour arbitrator upheld this decision [Midtown Meats Ltd. v. United Food and Commercial Workers International Union, Local 175].

Note that there are limits on a worker's right to refuse unsafe work. For example, a worker generally may not refuse work if doing so would endanger someone else or if the danger is a normal part of the job, such as the risk of exposure to fire for a firefighter. (See the chart below for the limits on work refusals in each jurisdiction.)

IS A REFUSAL JUSTIFIED IF THE WORK IS ONLY DANGEROUS TO THAT WORKER?

In most cases, the basis for a work refusal is a condition or circumstances that would pose a danger to any worker—not just the worker making the refusal. For example, working in a

confined space without the appropriate respiratory protection would be dangerous for any worker.

But a work refusal may still be valid if the condition or circumstance the worker is complaining about poses a danger only to him.

Example: A very tall driver refused to drive a small armoured truck because his position in the seat left little room to manoeuvre and made it hard for him to reach the controls. The employer dismissed his refusal, arguing that the truck was in good shape and didn't pose a problem for the other drivers. A health and safety officer ruled that making the tall driver drive a small truck posed a danger to him and thus his refusal was justified [Garda du Canada Inc. v. Syndicat National des Convoyeurs de Fonds].

So don't dismiss a work refusal if the danger posed is unique to a particular worker. Instead, investigate the refusal like any other refusal and determine whether it was reasonable for that specific worker to refuse to do that specific work. If so, the refusal is justified and you should take steps to accommodate the worker. For example, if a pregnant worker refuses to use a particular chemical because it poses a risk to her unborn child—even though other non-pregnant workers have no problems using that chemical—either let her use a different chemical to perform that job or reassign her to work that doesn't involve the use of or exposure to that particular chemical.

CAN A REFUSAL BE BASED ONLY ON UNSAFE EQUIPMENT?

Although many work refusals are based on concerns about the safety of machinery and equipment, such as the lack of a machine guard or defective PPE, they can be based on other kinds of safety concerns. For example, courts have upheld refusals based on fears of:

Violence: For example, the resident of a group

house had the habit of standing outside and shouting threats at her postal carrier. And on one occasion, she threw a clipboard at the carrier's head. So the carrier refused to deliver mail to the house. The arbitrator ruled that the carrier's fears of violence were reasonable and upheld her refusal [Caldwell v. Canada Post Corp.];

Heat stroke: For example, a federal arbitrator ruled that a railroad cook could refuse to work in an un-air-conditioned and poorly ventilated kitchen in the summer [LeBlanc v. VIA Rail Canada Inc.]; and

Illness: For example, a prison guard initiated a work refusal based on fears of getting Hepatitis B. Each morning, he had to escort three inmates from their toilet-less isolation cells, waste buckets in hand, to a washroom. He was afraid that the inmates would toss the contents of their waste buckets at him. An arbitrator ruled that the guard's refusal was valid because scientific evidence showed that Hepatitis B is transmitted through contact with feces, urine and semen [Walton v. Treasury Board].

WHAT SHOULD AN EMPLOYER DO WHEN A WORKER REFUSES UNSAFE WORK?

Don't rush to judgment and dismiss a worker's refusal as laziness or insubordination. Writing a refusal off as frivolous and ordering the worker back to work without an investigation is likely to lead to liability.

Example: When a production line supervisor and a worker got into an argument, the worker became so upset that his hands started to tremble. So he refused to work and asked for the company's elected safety representative to investigate the refusal. The supervisor said no, believing the refusal was "totally ridiculous." When the worker persisted, the supervisor suspended him for two days. So the worker filed a grievance. An Ontario arbitrator upheld the worker's grievance, ruling

that the supervisor should have taken the refusal seriously and followed the procedures required by law [Lennox Industries (Canada) Ltd. v. United Steelworkers of America, Local 7235].

So when a worker initiates a work refusal, you should do the following:

- Notify the appropriate parties. Make sure that you notify anyone you're required to notify of a work refusal. For example, the OHS law may require you to notify the JHSC or health and safety representative, the worker's union representative and/or a government OHS inspector. In some jurisdictions, these parties must participate in or be present during the initial investigation of the refusal; in others, these parties are only notified after the investigation if the worker continues the refusal despite a finding that the work was safe.
- Investigate the refusal. The OHS laws require you to investigate all workplace refusals, no matter how absurd or ridiculous they may appear. This investigation should be done immediately or promptly. The nature and extent of the investigation will depend on its circumstances. For example, if a worker refuses to work because he says his PPE isn't working properly, you might examine that PPE, speak to other workers who recently used it and check any inspection records for the PPE. But a refusal based on fears that a certain task poses the risk of musculoskeletal injury may be more complicated to investigate and even require bringing in an expert.
- Take appropriate steps based on outcome of investigation. If your investigation reveals that the refusal was, in fact, justified, you're

now on notice of the presence of a safety hazard and thus must take steps to protect workers from that hazard, such as providing the worker with adequate PPE that's in good working condition or repairing a broken machine. If your investigation concludes that the refusal wasn't justified, you should explain your findings to the worker and instruct him to do the work in question.

WHAT ROLE DOES THE GOVERNMENT PLAY IN REFUSALS?

A Workers won't always be satisfied with the results of your investigation into a refusal. For example, they may dispute your conclusion that the work is safe or challenge the fixes you implemented as inadequate. If a worker persists in his refusal, the government will have to get involved. You'll have to notify the agency responsible for enforcing the OHS laws, which will generally send an inspector to investigate the refusal.

CAN YOU REASSIGN THE WORKER DURING A WORK REFUSAL?

A Yes, you generally can reassign a worker to another job until his refusal is resolved. The worker should be reassigned only to work he's reasonably capable of doing and shouldn't lose pay or other benefits if assigned to a job that normally pays a lower wage. But note that the worker should—and, in fact, may be required to—participate in the investigation into his refusal. So reassigning him may not always be practical.

MUST YOU PAY A WORKER DURING A WORK REFUSAL?

A The OHS laws require you to pay a worker while his refusal is being investigated, whether he's doing reassigned work, participating in the investigation or simply waiting for its outcome. But in some jurisdictions, if the refusal is found to be frivolous,

you don't have to pay the worker and, in fact, the worker may have to repay any wages paid for the period of the refusal. Failing to pay a worker exercising his refusal right may result in a safety violation.

Example: A customs officer refused to work because of safety concerns. A health and safety officer investigated the work refusal and ultimately determined that there was no danger. So the officer returned to work. But the employer refused to pay him for the time during his refusal. A Board ruled that the employer had violated the Canada Labour Code and ordered it to pay the officer any lost wages and benefits [Ferrusi v. Treasury Board (Canada Border Services Agency)].

CAN YOU ASSIGN ANOTHER WORKER TO DO THE REFUSED WORK?

To keep production from slowing down, you may be tempted to assign another worker to do the job that's the subject of the refusal. But OHS laws limit your ability to reassign this work to another worker. That's because if the refusal is valid, you're unnecessarily exposing the replacement worker to a hazard.

So don't assign a replacement worker to do refused work until you've conducted a preliminary investigation of the refusal and determined that no danger exists. If you don't believe the work is unsafe but the worker continues to refuse, then you can assign the refused work to another worker but only if you:

- Are reasonably sure the replacement worker won't be exposed to imminent danger;
- Tell the replacement worker about the work refusal and the reason for it; and
- Allow the replacement worker to also refuse to do the work in question.

CAN YOU DISCIPLINE A WORKER FOR REFUSING TO WORK?

Employers may want to discipline a worker on the spot for refusing work, particularly if it looks like the refusal is frivolous or that the worker's fear is a pretext. But disciplining workers for exercising their right to refuse unsafe work is an illegal reprisal and will expose the company to liability. In fact, with new reprisal rules in Ontario, disciplining workers for refusals is even riskier in that province. (At OHS Insider.com, you can download a special report—Discipline & Safety: The "Reprisals" Challenge and How to Overcome It—that'll tell you how to protect your company from reprisal claims.)

In addition, an employer who fires a worker over a work refusal could also be liable for wrongful dismissal, which could result in the employer having to pay the worker termination notice, lost benefits and various kinds of damages.

However, the protection against reprisals for exercising the right to refuse unsafe work ends when both the employer and OHS officials have concluded that the work is safe. At that point, if the worker continues to refuse, you may then discipline him.

BOTTOM LINE

Handling work refusals is one of the trickiest aspects of a safety coordinator's job. Failing to follow the proper procedures or not investigating a refusal at all can lead to OHS violations and wrongful termination lawsuits and undermine workers' confidence in the company and its commitment to worker safety. So it's important that you periodically review refusal basics so you can help your company avoid these consequences.

SAFETY TALK

Your Right to Refuse Dangerous Work

Here's a Safety Talk to give your workers explaining their OHS right to refuse dangerous work, including: i. When a refusal is justified; and ii. How the refusal process works.

WHAT'S AT STAKE?

You may be called on to do a job that you believe is unduly dangerous, such as working on a roof without fall protection or operating a machine with a broken safety device. In these situations, you have the right to refuse the work in the interest of health and safety. But you can also get into big trouble if you don't follow the rules. Here's what you need to know to properly exercise your refusal rights.

WHEN YOU CAN REFUSE WORK

You're allowed to refuse work under 4 conditions:

Condition 1. You Sincerely Believe There's a Danger

You can refuse work if you honestly believe that it would pose a danger to your own or another person's health and safety, like a co-worker. What you can't do is cry wolf and try to use your refusal rights to get out of a job you know isn't dangerous.

Condition 2. Your Belief Is Reasonable

Your health and safety concern must also be "reasonable." In other words, the hazard must be one that an average, everyday worker would consider dangerous. For example, a driver who genuinely believed his supervisor wanted to kill him

lost his refusal case because there was no evidence that the supervisor actually was violent or posed any physical threat to the driver.

Condition 3. The Danger Is Unusual

Work refusals don't apply to dangers that are a normal part of a job. For example, a firefighter can't refuse to enter a burning building because she's afraid of getting burned. But she could refuse to drive a fire truck with defective brakes.

Condition 4. The Refusal Doesn't Endanger Anybody Else

Refusals aren't allowed if they endanger the health and safety of another person. For example, a worker serving as an attendant outside a confined space that co-workers have entered (and where nobody is available to take his place) can't refuse work if it would mean deserting his post.

WHAT HAPPENS NEXT: HOW THE REFUSAL PROCESS WORKS

You can't simply put down your tools and go home; you must follow the proper refusal procedures. Here's what you need to know about the refusal process.

Stage 1: Notification

First, you must immediately notify your supervisor or another company official that you're making a refusal and explain why you think the work is dangerous.

Stage 2: First Investigation

The supervisor may be able to fix the problem right on the spot so that you can end your refusal and get back to work. If that's not possible, the supervisor or somebody else will investigate the refusal in the presence of another worker. You also have the right to be present during the investigation. If not, you must stay at or near your workstation in case the investigators need you. You get pay and benefits for your time. The company may also have the right to reassign you to comparable work while the refusal process unfolds.

Stage 3: Notification of Investigation Findings

After the investigation ends, the supervisor or a company official will notify you of its findings. There are 2 basic possibilities:

- There's no danger and it's safe for you to return to work; or
- There was a danger but it's been or will be corrected.

If you're satisfied with those findings, you can end your refusal and return to work (if corrective actions are needed, you can return once they're taken).

Stage 4: Government OHS Official Investigation

If the initial investigation no-danger finding or corrective actions aren't enough to end your health and safety fears, you can take things to the next stage by notifying a government OHS official of the refusal. Upon getting this notification, an official will then come to the workplace and do his/her own investigation to determine if there's a danger and, if so, what the company must do to fix it. The investigator will let you know one way or the other.

FINAL POINT

The OHS investigation is the end of the road for

most refusals. But, if you're still unhappy and concerned about safety, you can continue the refusal by appealing to a court or special OHS tribunal. At that point, the refusal becomes a legal case that the lawyers must handle.

QUIZ

The first thing you should do if you decide to refuse dangerous work is immediately notify your supervisor

True

False

Workers have valid grounds to refuse work as long as they sincerely believe they're in danger even if those fears are totally unreasonable.

True

False

A worker must end a refusal and return immediately to work if the initial investigation concludes that there's no danger.

True

False

An airline pilot and co-pilot can engage in a work refusal mid-flight if they fear that the cockpit contains toxic gases.

True

False

Workers who refuse work are entitled to full pay and benefits for their time during the refusal process.

True

False

ANSWERS: T, F, F, F, T

Model Policy On Work Refusal

One of a worker's main rights under the OHS laws is the right to refuse unsafe work. It's important that employers properly handle work refusals and follow the procedures spelled out in the OHS laws while doing so. In addition, workers need to know when they can refuse unsafe work and how to do so. Plus, supervisors and JHSC members need to understand their roles in the refusal process. That's why employers should have a work refusal policy.

Adapt this model work refusal policy for your OHS program, collective agreement (if any) and the work refusal requirements and procedures in the OHS laws in your jurisdiction. (Note that the model policy is based on Alberta's requirements.) Review the policy with all employees and supervisors.

OHS managers in any part of the country can adapt this Model Policy for use at their own workplace.

WORK REFUSAL POLICY

Adapt this model work refusal policy for your OHS program, collective agreement (if any) and the work refusal requirements and procedures in the OHS laws in your jurisdiction. (Note that the model policy is based on Alberta's requirements.) Review the policy with all employees and supervisors.

Purpose

To ensure the health and safety of all employees, [insert name of company] ("the Company") has developed this work refusal policy to outline when an employee may refuse work they feel is unsafe and the procedures the Company will take when a refusal is made. Any employee who refuses to perform their duties because of a legitimate safety concern will not face any reprisal because of this action.

Scope

The Work Refusal Policy applies to the Company, its employees, vendors, visitors and clients who are on the Company's premises or acting on behalf of the Company at all times and without exception.

Definitions

Imminent Danger: Under Sec. 35(2) of Alberta's *Occupational Health and Safety Act*, "imminent danger" is defined in relation to any occupation as:

- a. A danger that is not normal for that occupation; or
- b. A danger under which a person engaged in that occupation would not normally carry out the person's work.

General Guidelines

All workers have the legal right to refuse unsafe work that either puts them in imminent danger, requires them to perform work they have not been properly trained to do, or with safety hazards that could reasonably be avoided with proper safety equipment, procedures or necessary repairs.

Sec. 35(1) of Alberta's *Occupational Health and Safety Act* states that no worker shall:

- a. Carry out any work if, on reasonable and probable grounds, the worker believes that there exists an imminent danger to the health or safety of that worker;
- b. Carry out work if, on reasonable and probable grounds, the worker believes that it will cause to exist an imminent danger to the health and safety of that worker or another worker present at the work site; or
- c. Operate any tool, applicant or equipment if, on reasonable and probable grounds, the worker believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site.

The Company takes the health and safety of our employees very seriously. No worker who refuses work that he/she deems to be unsafe will be subject to reprisals in the form of discipline, dismissal, threats of dismissal, penalties or suspension.

Work Refusal Procedure

In the event of work being refused or stopped, the following actions are required:

Worker

1. The worker must immediately inform the supervisor, or an appropriate designate, of a work refusal with an explanation of the circumstances he/she believes put him/her in danger.
2. The refusing worker must remain in a safe place near the workstation and available to the supervisor or the Company for the purposes of investigation until an investigation has been completed. If the situation is resolved at this point, than the worker will return to work.
3. Should the worker deem the situation to no longer be dangerous, the worker will return to work.
4. In the event that a worker is unsatisfied with the results of the investigation, he/she may continue to refuse the work provided he/she has reasonable grounds to base his/her refusal on. In the event of a continued refusal, the worker should file a complaint with an Occupational Health and Safety Alberta officer. An investigation by an Government Inspector shall be conducted. Please refer to the Continued Work Refusal Section below for more information.

Supervisor/Employer Representative

1. The supervisor or employer representative must investigate the situation immediately and resolve the issue in the presence of the worker and if there is such, one of the following:
 - a. A Joint Health and Safety Committee (JHSC) member who represents the worker;
 - b. A JHSC representative; or
 - c. Another worker who has been chosen by his or her peers (or union) to represent the workers.
2. The supervisor or employer representative should interview the worker and complete a work refusal form to ensure sufficient information has been collected in order to conduct a proper investigation. Following the investigation, immediate steps must be taken to correct any problems or issues discovered.
3. The supervisor should ensure that no other worker is assigned to use or operated the tool/equipment or perform the work for which the work refusal was made until the investigation has been completed and any resolutions have been implemented.
4. When the investigation has been completed, the Company will prepare a written report detailing the nature of the refusal, the investigation that took place and the actions taken, if any. A copy of the final written report will be given to the worker who originally made the refusal.
5. In the event that a worker is unsatisfied with the provided resolution and continues to refuse work, an Occupational Health and Safety Alberta office will be notified and a request for an investigation must be made. Please refer to the continued work refusal section below for more information.
6. The supervisor or employer representative may assign other reasonable work during the worker's normal work hours for a worker who has refused work. The worker will receive no loss of pay or reprisal for refusing unsafe work.

Continued Work Refusal

In the event that a worker continues to refuse work:

1. The worker, employer or a representative of either must notify an Occupational Health and Safety Alberta officer. They can be reached at the toll free number 1-866-415-8690.
2. In the event that the inspector concurs that the work is unsafe and is satisfied that the worker has legal rights to refuse the work, the inspector may either direct a solution or come to the workplace to investigate the continued refusal. If there is a worker JHSC member, health and safety representative or union representative, the inspector will consult with them as part of the investigation.
3. Pending an investigation and a decision from the Inspector, no worker will be assigned to use or operate the machine, equipment, or tool, or work in the workplace or the workstation being investigated, unless, (in the presence of a JHSC member, representative or another worker who has been chosen by his/her peers (or union) to represent the workers) that individual has been advised of the previous worker's refusal and their reasons for the refusal and there is no risk of imminent danger.
4. While waiting for the inspector's investigation to be completed, the worker must remain in a safe place near the workstation, unless the employer assigns some other reasonable work during normal working hours. In the event that the worker is covered by a collective agreement, any provision in the collective agreement that covers this situation will apply.
5. The inspector will determine if the work is likely to endanger the worker or any other person. If the work is found to be unlikely to endanger anyone, the refusing worker will be expected to return to work. If the worker continues to refuse to return to work following the confirmation the assignment/work is safe, continued refusal to return to work may be considered insubordination and disciplinary action may be initiated.
6. If the work is concluded to be unsafe, the Company will implement all necessary changes or precautions as recommended by the officer as require to remove the threat of danger from the position, tools, machines or equipment.

Payment for Refused Work

- A refusal of unsafe work, up to the point the Occupational Health and Safety Officer rules the job is safe or a solution to address the complaint is initiated, allows the worker entitlement to payment at his/her appropriate rate.
- A person acting as a worker representative during a work refusal is paid at either the regular or the premium rate, whichever is applicable.
- The Company is not required to continue payment in the event that refused work has been inspected and a safe ruling has been made and a written decision has been issued by an Occupational Health and Safety Officer.

Signatures

I have read and understand the terms and conditions of this policy. I agree to adhere to this policy and will ensure that employees working under my direction adhere to this policy. I understand that if I violate this policy, I may face disciplinary action, up to and including, termination of employment.

Employee signature: _____ Date: _____

Supervisor or manager signature
on behalf of the Company: _____ Date: _____

Contact Info



1.800.667.9300



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