

WORK REFUSAL PROCEDURE

INTRODUCTION

The Occupational Health and Safety Act gives workers the right to refuse work where they have reason to believe the work is unsafe [s 43]. In June 2010 this right was extended to include workplace violence [s43(3)(b)(1)] as a result of the changes from Bill 168. The OHS Act prescribes a specific procedure to follow for reporting, investigation and resolving work refusals. This document outlines these procedures.

Work refusals can be avoided with a workplace commitment to health and safety and maintaining lines of communication. All workplace health and safety concerns should first be reported to and discussed with the supervisor prior to entering into the formal work refusal process.

When Can a Worker Refuse Unsafe Work?

A worker can refuse to work if he or she has reason to believe that one or more of the following is true:

- Any machine, equipment or tool that the worker is using or is told to use is likely to endanger himself or herself or another worker.
- The physical condition of the workplace or part thereof in which they work or are to work is likely to endanger himself or herself;
- Workplace violence¹ is likely to endanger himself or herself; or
- Any machine, equipment or tool that the worker is using, or the physical condition of the workplace, is in violation of the OHSA or regulations and is likely to endanger the worker or another worker.

Exceptions to Work Refusal

All workers have the right to refuse unsafe work, but this right is limited in some situations. Certain workers who have a responsibility to protect public safety cannot refuse unsafe work:

- if the danger in question is inherent in the worker's work or is a normal condition of their employment or
- when the refusal would endanger the life, health or safety of another person.

These workers include:

- police officers;
- firefighters;
- workers employed in correctional institutions; and
 - i. workers in a hospital, sanatorium, long-term care home, psychiatric institutions, mental health centre or rehabilitation facility
 - ii. workers in other workplaces such as residential group homes or other facilities for persons with physical or mental or developmental disability; ambulance services, first-aid clinics, licensed laboratories or
 - iii. in a laundry, food service, power plant or technical service or facility used in conjunction with one of the above.

¹ Work cannot be refused on the grounds of workplace harassment

PROCEDURE

The Occupational Health and Safety Act sets out specific procedures that must be followed by workplace parties in the event of a work refusal. There are two “stages” for work refusals:

- Stage 1:** Work refusal is resolved internally by workplace parties. Ministry of Labour is not involved in Stage 1 refusals.
- Stage 2:** Work refusal cannot be resolved internally. Ministry of Labour investigates and decides.

Note: Employers are not allowed to dismiss, or threaten to dismiss; discipline or suspend or threaten to discipline or suspend; impose any penalty or intimidate or coerce a worker for exercising their right to refuse unsafe work provided the refusal was done in good faith [s 50].

STAGE 1 REFUSAL

- 1) Upon refusing to do unsafe work, the worker must immediately report the circumstances of the refusal to the supervisor.
- 2) The supervisor should contact the Occupational Health and Safety Department at extension 2225 or 2246 and must contact a worker member² from the joint health and safety committee or a health and safety representative.
- 3) The supervisor must immediately investigate the refusal in the presence of the worker and a worker representative from the joint health and safety committee or a health and safety representative. If these workers are not available, a worker selected because of their knowledge, experience and training should be called.
- 4) The worker representative contacted to participate with the investigation must be made available and must attend the investigation without delay.
- 5) Until the investigation is completed, the refusing worker is to remain in a safe place near as reasonably possible to their workstation and available for the purpose of the investigation.
- 6) Time spent by the workers to participate in the investigation is deemed to be work time and they shall be paid at their regular or premium rate, as may be proper.
- 7) If the refusal is resolved the worker returns to work.
- 8) If the refusal cannot be resolved at this stage, the Ministry of Labour must be contacted and the refusal progresses to Stage 2.

² Preferably a Certified member

STAGE 2 REFUSAL

If, after the investigation and any corrective measures taken, the worker may continue to refuse to work if they have reasonable grounds to believe the work is likely to endanger them.

- 1) The Ministry of Labour must be contacted. Preferably, the supervisor will contact the OHS department (2225/2246) who will in turn notify the Ministry of Labour.
- 2) The Ministry of Labour Officer will investigate the work refusal in the presence of the employer, the worker and a worker representative.
- 3) Pending the inspector's investigation and decision:
 - (i) The worker shall remain, during the worker's normal working hours, in a safe place near as reasonably possible to his/her workstation and available for the purpose of the investigation or;
 - (ii) The supervisor may reassign the worker reasonable alternative work during their normal working hours or;
 - (iii) If reasonable alternative work is not practicable, the supervisor may give the worker other directions.
 - (iv) Another worker may be assigned the work that is being investigated, but the worker must be advised of the other worker's refusal and reasons for it, in the presence of the worker representative.
- 4) The inspector will decide whether the circumstance that lead to the refusal is likely to endanger the worker or another person.
- 5) The inspector's decision will be given in writing, as soon as practical, to the employer, the worker and the worker's representative.

Work Refusal Process

