



A Guide for Employers on

Work Refusals

Your rights and responsibilities when faced
with a work refusal complaint

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PENINSULA



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As businesses reopen during the pandemic and recall staff, there has been a spike in the number of work refusals. In such a scenario, it is important that employers know the Occupational Health and Safety legislation about work refusals in their province.

Under the Canada Labour Code, employees have the right to refuse dangerous work if they have reasonable cause to believe it poses a danger to their safety. COVID-19 is a workplace hazard under the Code.

On what grounds can employees refuse to work?

Under the OHS legislation, an employee can refuse to work in a place that presents a danger to their health and safety. They can also refuse to perform an activity or use machinery that puts their safety at risk.

In the current circumstances, an employee can refuse to return to work if they have reasonable cause to believe they may be exposed to COVID-19 in the workplace. For example, if the workplace does not follow public health guidelines, such as physical distancing, etc. Or if a pre-existing health condition puts the employee at high-risk of COVID-19.

An absence from work is also valid if the employee qualifies for a job-protected infectious disease emergency leave. If the employee's reason for refusal is a disability or any other grounds protected by human rights legislation, then it holds as well.

The employer usually has the right to request evidence to substantiate the basis for the refusal. If the worker is on an infectious disease emergency leave, the employer

can't ask for a medical certificate. But the employer may request for other reasonable evidence, such as proof of recent international travel.

What can employers do in case of a work refusal?

Before recalling staff, employers should conduct a risk assessment in the workplace. They must put necessary health and safety controls in place. Employers should also communicate the safety measures in place to their employees.

If the employee's refusal to work is because of an alleged health and safety concern, an employer should:

- Find out if the employee has any special health condition that may put them at greater risk of COVID-19. If possible, the employer may offer alternatives, such as working from home
- Review the COVID-19 Safety Plan implemented in the workplace
- If working from home is not possible, the employer should explain to the employee why it is so

The employer and employee should work to find a reasonable solution to the employee's concern. If they are unable to do so, they should involve a member of the workplace joint health and safety committee or a worker safety representative. If the issue can't be resolved internally, both parties can request the OHS authority in their province to inspect the workplace.

The worker must be paid while a work refusal complaint is being investigated. Employers cannot take or threaten discriminatory action against a worker for refusing unsafe work.

If the OHS authority finds the workplace to be safe, then the employee's refusal to work cannot hold. The employee must return to work. If the OHS officer orders the employer to implement remedial measures, the employer, too, must comply at once.

If the employee is dissatisfied with the decision of the OHS authority, they can appeal the decision. But they must return to work while they wait for the decision to be reviewed.

Are there any exceptions in exercising the right to refuse unsafe work?

Yes. There are certain exceptions to exercising this right. These include:

- If the worker's refusal puts the life, health or safety of another person directly in danger.
- If the risk in question is part of the job, for example, in case of police officers or firefighters.

What procedures must be followed in case of a work refusal?

While the format of a work refusal procedure is the same across provinces, the specifics vary.

Ontario

The procedure for work refusal in Ontario is listed under section 43 [3] of the OHS Act and consists of two stages.

In the first stage, the employee informs the employer of the work refusal. The employee may also wish to inform the worker safety representative and/or the management representative. The employer conducts an inspection

in the presence of the employee and the worker safety representative. The issue is either resolved or if the worker still believes the workplace to be unsafe, it moves on to the second stage.

In the second stage, the worker or employer, or someone representing them, calls the Ministry of Labour (MOL). The MOL inspector reviews the workplace in the presence of all parties involved. The inspector gives his decision in writing. If the inspector finds the worksite to be safe, the worker must return to work. If the inspector orders any changes, the employer must make those changes in the workplace.

Alberta

Employers in Alberta are obligated under section 3(1) (f) of the *Occupational Health and Safety (OHS) Act* to address health and safety concerns raised by employees. Workers, too, are bound by section 5(e) of the Act to report concerns about unsafe work conditions to their employer.

Unsafe conditions include health and safety hazards "not normal for the job" or expected hazards that haven't been properly controlled.

But the dangerous condition must be a risk that the worker sees or experiences at work. Anticipated or potential risks cannot be reasonable grounds for a work refusal. Though the worker should bring these to the attention of the management as well.

Section 31 of the *OHS Act* describes the work refusal process. The employee notifies the employer of the work refusal and the reason for it. If they can, the employer must at once remedy the dangerous situation. If they cannot, the employer conducts an inspection. This probe is conducted in the presence of the worker and a health and safety committee (HSC) member or a worker safety representative. The employer prepares a report and takes steps to remedy the hazard. A copy of the report is given

to the parties involved. The employee goes back to work.

If the matter can't be resolved internally, both parties can send a work refusal complaint to OHS. The OHS officer will then investigate the matter. Both parties have the right to request a Director review of the officer's decision as per section 70 of the *OHS Act*.

British Columbia

Under section 3.12 of the OHS regulation, BC workers must not carry out any work or use any equipment if they have reasonable cause to believe it will create an undue hazard. The worker must notify their employer. If the employer finds the worker's refusal to be valid, they will at once remedy the hazard. If the employer does not consider the complaint to be valid, they must inform the worker.

If the worker continues to refuse work, the employer must then investigate the matter. The employer must conduct the review in the presence of the worker, a joint health and safety committee representative and a worker selected by the workers trade union.

If the worker still refuses to go back to work, both parties must then notify a WorkSafeBC officer.

When does a work refusal become job abandonment?

In the absence of a reasonable cause for work refusal, an employer may, in certain circumstances, treat the refusal

as job abandonment.

The employer can then end the employment without notice or pay in lieu of notice. But the employer must give the employee a reasonable timeframe to return to work.

Alberta is the only province that specifies a timeframe for returning to work after the employee gets a recall notice. An employer in Alberta may terminate an employment without statutory notice or pay in lieu if the worker does not return to work within seven days of receiving the recall notice.

Learn more

If you have questions about best practices for handling work refusals, our HR and health & safety experts are here to help. Learn more about your employer obligations today, by calling:

1 (833) 247-3652

We've got you covered.

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