



Right to Refuse During the COVID-19 Pandemic

A USW District 3 Guide (Western Canada) as of 6 April 2020

Health and Safety: Your Right to Refuse Unsafe Work

These are unprecedented times, and workers are justifiably concerned about their health and safety as well as the health and safety of their families and communities.

This document provides a summary of the current (as of April 6, 2020) legal situation with respect to Health and Safety laws governing workers' rights to refuse unsafe work.

It is important to note that the right to refuse unsafe work is an **individual** right of workers, and not a collective one. That means that if more than one person refuses work on the basis of a health and safety concern, it may be deemed to be an illegal strike, and the union may be liable for damages to the employer for a work stoppage.

If your employer is continuing to operate and you are continuing to work, remember you still have the right to refuse to perform unsafe work under Occupational Health and Safety law.

Especially during a pandemic, all employers have an ongoing obligation to ensure that workers have a safe workplace. Their obligations include applying new directives and orders issued by governments and public health officers in the context of the COVID-19 pandemic, and ensuring that workers are informed about the risks and protections available to them in the workplace.

The Right of Refusal, or The Right to Refuse to Perform Unsafe Work

All workers have a right to a working environment that protects their health and safety. In general, occupational health and safety statutes allow a worker to refuse to perform their work when they have reason to believe that their health, or that of other individuals, is in jeopardy. In such cases, they may exercise their right to refuse unsafe work.

Certain exceptions to the right to refuse unsafe work apply to workers in particular occupations – please ensure that you do not fall under one of these exemptions.

A Worker Refusal to Perform Work Based on the COVID-19 Pandemic

It is possible that the COVID-19 pandemic may create the basis for a legitimate work refusal. The right to refuse to perform work as a result of COVID-19 will depend on many factors including (but not limited to) the following:

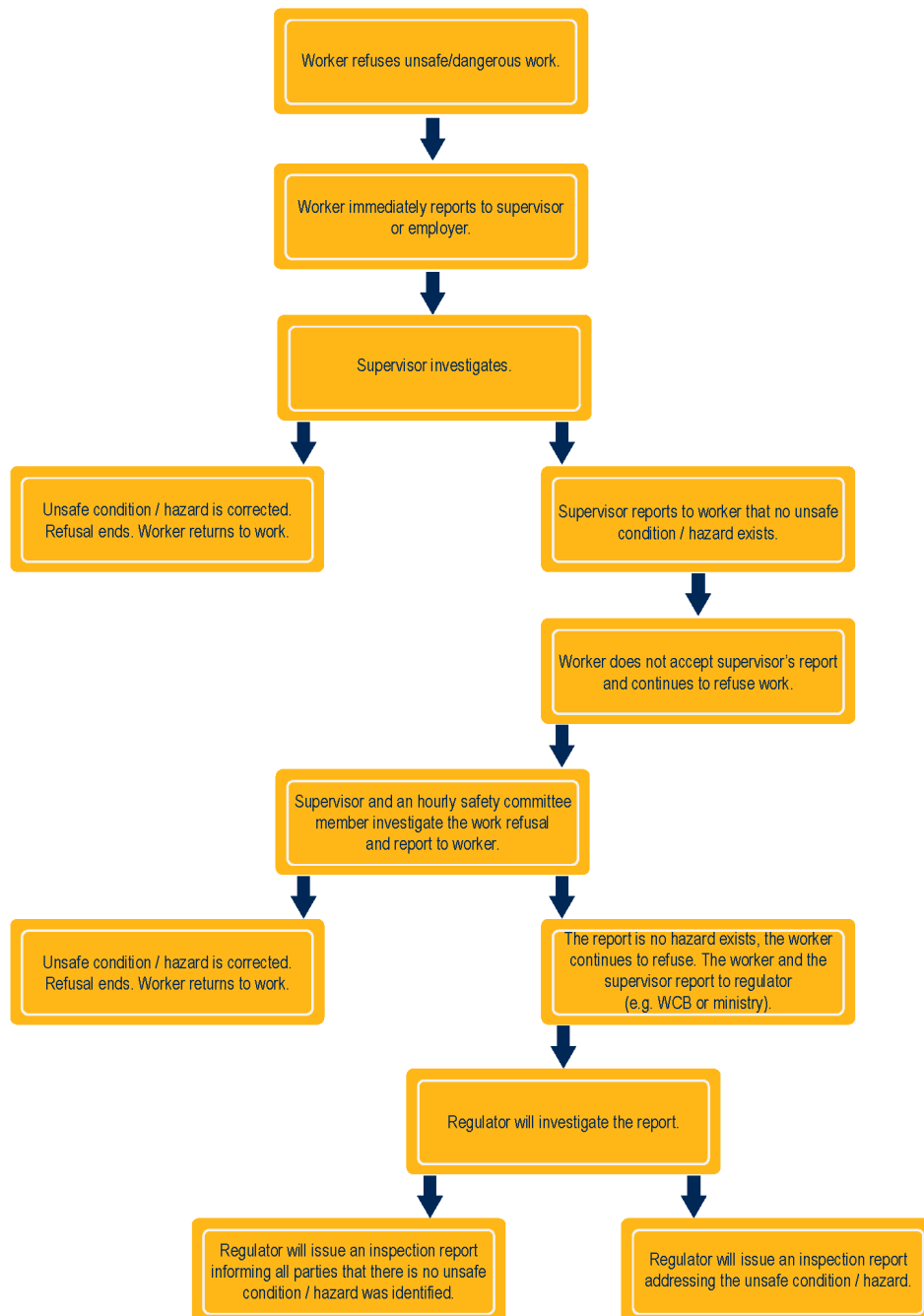
- The state of the COVID-19 situation in the worker's particular city, region, province and workplace at the time the refusal to work is being exercised
- The age and health of the specific worker
- The type of workplace where the worker usually performs their functions
- The specific field of work and their normal duties or tasks
- The number of workers at the workplace and whether or not social distancing is possible
- The measures adopted by the employer to prevent the transmission of COVID-19, including workplace hygiene and personal protective equipment (PPE), where applicable
- Whether or not an employee of the employer has been diagnosed with COVID-19

This is not an exhaustive list, and each situation must be assessed on the facts. Please contact your staff representative for guidance where needed.

The Process for Refusing Unsafe Work

As a worker, if you have a reason to refuse unsafe work, you are required to inform your supervisor or employer that you are refusing unsafe work. It is important to note you need to use the words **“Refusing Unsafe Work”** or **“Refusing Dangerous Work”** to ensure there is no confusion. You must provide the supervisor with your reason for refusing. This then requires the supervisor or employer to investigate your reasons for refusing and to correct the unsafe condition to your satisfaction. If that does not happen, you can continue to **Refuse**.

Generic Work Refusal Procedure



NOTE: There are different procedures in each jurisdiction. Please refer to the procedures for your province or territory for the correct procedure.

Canada-Wide Regulations Regarding Right to Refuse

Canada Labour Code, Refusal to Work if Danger Part 2, 128 (1) to 131

128 (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that

- (a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;
- (b) a condition exists in the place that constitutes a danger to the employee; or
- (c) the performance of the activity constitutes a danger to the employee or to another employee.

Province-by Province Regulations Regarding Right to Refuse

Alberta, Occupational Health and Safety Act Part 4 Dangerous Work and Discriminatory Action, Section 31 to 36

31(1) Subject to this section and section 5, a worker may refuse to work or to do particular work at a work site if the worker believes on reasonable grounds that there is a dangerous condition at the work site or that the work constitutes a danger to the worker's health and safety or to the health and safety of another worker or another person.

British Columbia, Health, Safety & Reclamation Code for Mines Employee Right to Refuse Work, Section 1.10.1 to 1.10.7

1.10.1 A person shall not carry out any work or operate any equipment, tool, or appliance if he/she has reasonable cause to believe that to do so would create an undue hazard to the health or safety of any person.

WorkSafeBC, Occupational Health & Safety Regulations Refusal of Unsafe Work, Sections 3.12 & 3.13

3.12 (1) A person must not carry out or cause to be carried out any work process or operate or cause to be operated any tool, appliance or equipment if that person has reasonable cause to believe that to do so would create an undue hazard to the health and safety of any person.

Manitoba, Workplace Safety & Health Act Right to Refuse Dangerous Work, Section 43 1-6, 43.1 1-4, 43.2 & 43.3 1-2

43(1) Subject to this section, a worker may refuse to work or do particular work at a workplace if he or she believes on reasonable grounds that the work constitutes a danger to his or her safety or health or to the safety or health of another worker or another person.

**NWT & Nunavut, Safety Act: Right to Refuse
Section 13 1-10**

- (2) A worker may refuse to do any work where the worker has reason to believe that
- (a) there exists an unusual danger to the health or safety of the worker;
 - (b) the carrying out of the work is likely to cause to exist an unusual danger to the health or safety of the worker or of any other person; or
 - (c) the operation of any tool, appliance, machine, device or thing is likely to cause to exist an unusual danger to the health or safety of the worker or of any other person.

**Saskatchewan, Employment Act
Part 3, Division 5, Section 3-31 to 3-37**

3-31 A worker may refuse to perform any particular act or series of acts at a place of employment if the worker has reasonable grounds to believe that the act or series of acts is unusually dangerous to the worker's health or safety or the health or safety of any other person at the place of employment until:

- (a) sufficient steps have been taken to satisfy the worker otherwise; or
- (b) the occupational health committee has investigated the matter and advised the worker otherwise.

**Yukon, Occupational Health and Safety Act
Hazardous Work, Sections 15, 16, 17 & 18**

- 15 (1) A worker may refuse to work or do particular work if the worker has reason to believe that
- (a) the use or operation of a machine, device, or thing constitutes an undue hazard to that worker or any other person; or
 - (b) a condition exists in the workplace that constitutes an undue hazard.

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