



Right to Refuse (District 6: Ontario and Atlantic Canada)

A USW District 6 Guide (Ontario and Atlantic Canada) in the Context of COVID-19 (as of March 31, 2020)

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 March 31, 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.

Is your workplace still operating because it has been deemed an essential service?

See the Ontario [List of Essential Workplaces](#) for a list of businesses that have been deemed by the government of Ontario as essential. If it is not an essential business, and you are not a worker that is essential to the operation of that workplace, then you should not be compelled to work.

If you are continuing to work, here are the key elements of determining whether workers can exercise their right to refuse to perform unsafe work under Occupational Health and Safety law.

It is important to note that 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.

What is the right of refusal, or right to refuse to perform unsafe work?

All workers have a right to a working environment that protects their health and safety. In general, the OHS Act allows 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.

In Ontario, the right to refuse unsafe work arises where there is a “danger”. The *Occupational Health and Safety Act, R.S.O. 1990, c. O.1*, section 43 outlines the following circumstances that would trigger a worker's right to refuse:

A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;*
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;*

(b.1) workplace violence is likely to endanger himself or herself; or

(c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker. R.S.O. 1990, c. O.1, s. 43 (3); 2009, c. 23, s. 4 (2).

For federally regulated employers, the *Canada Labour Code* sets the threshold at the existence of a danger:

Refusal to work if danger

- ***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.*

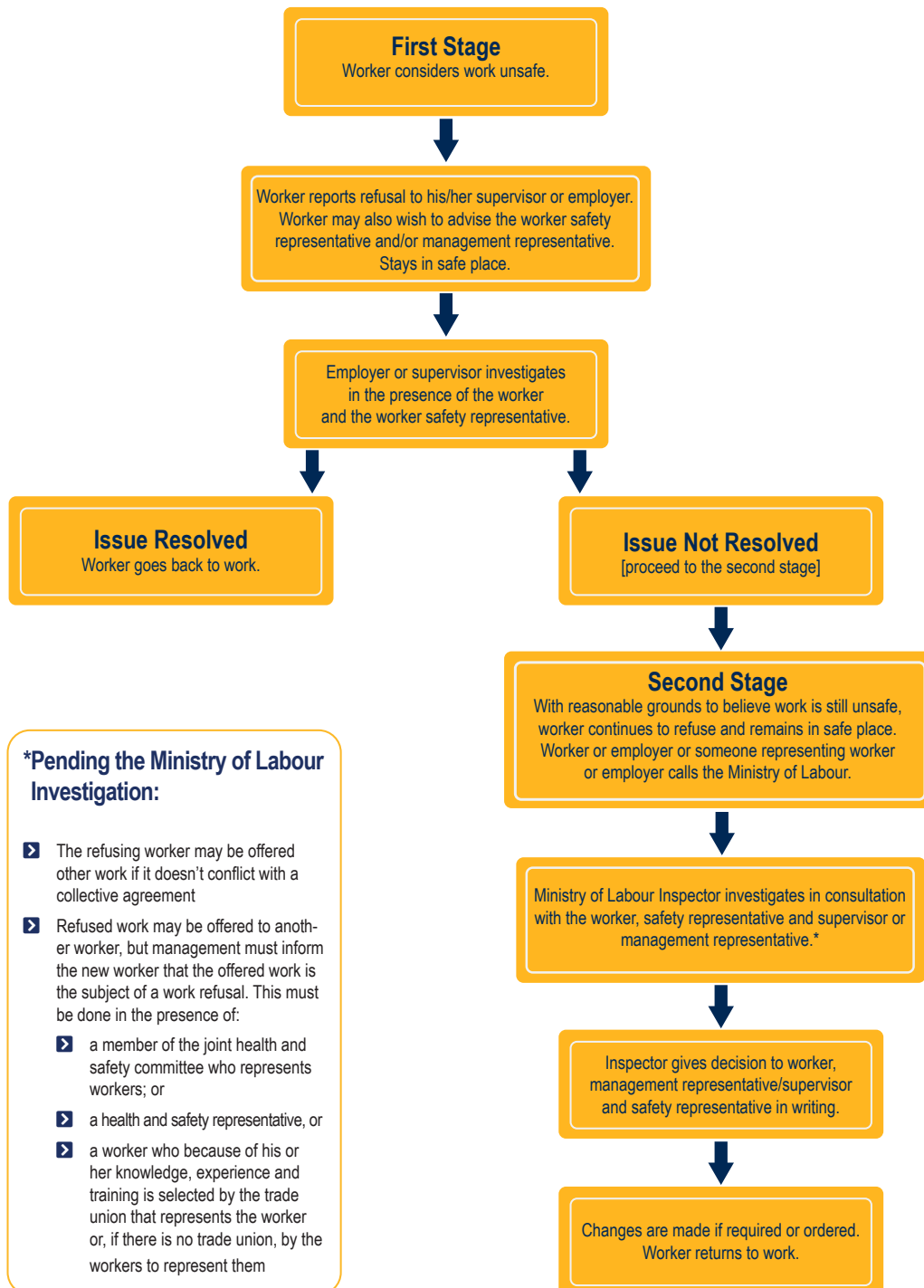
What procedure is to be followed?

ONTARIO

The process for work refusals in Ontario are contained in this flowchart from the Ministry of Labour : https://www.labour.gov.on.ca/english/hs/pubs/liveperformance/gl_live_refuse.php

See the next page for a flowchart of the Procedure for a Work Refusal.

Procedure for a Work Refusal



The general steps that need to be followed by workers are:

1. The worker should report the circumstances of and reasons for the work refusal to employer or supervisor as soon as possible.
2. The employer or supervisor must investigate the refusal of the worker forthwith. They should do so in the presence of the worker and a member of the worker's health and safety committee or a health and safety representative or another worker who is selected by the worker's union or workers in the workplace because of their knowledge, experience and training.
3. The employer must then investigate and determine whether the right to refuse unsafe work is justified or not, and advise the worker of its decision and the reasons for it.
4. If the employer says they believe the work is safe or take steps to ensure the worker's safety, then the worker has to return to work.
5. However, if the worker has **reasonable grounds** to believe that the work is still unsafe, they can continue refuse to work. The employer or the worker must then notify the Ministry of Labour.
6. A Ministry of Labour Inspector will investigate the work refusal in consultation with the worker and the employer.
7. The Ministry of Labour Inspector will decide whether the work is likely to endanger the worker or some one else and give a decision in writing to the worker and the employer as soon as practical.
8. If the Ministry of Labour Inspector decides that the work is not likely to endanger the worker or any one else, the worker is expected to do the work.
9. If the Ministry of Labour Inspector decides that the work is unsafe, the Inspector will direct the Employer to take steps to make the work safe. Once the Employer has taken these steps, the worker is expected to do the work.
10. The order from the Inspector can be appealed to the Ontario Labour Relations Board.

NEW BRUNSWICK

As a worker in New Brunswick, you have the legal right to refuse unsafe work, according to Section 19 of the *Occupational Health and Safety Act, SNB 1983, c O-0.2*:

Employee's right to refuse to do any act

19 *An employee may refuse to do any act where he has reasonable grounds for believing that the act is likely to endanger his health or safety or the health or safety of any other employee.*

Workers in New Brunswick can legally refuse unsafe work through the following steps:

1. *Notify your supervisor about your concerns, and refuse the unsafe work.*
2. *The supervisor must investigate the situation in your presence, and take appropriate action or recommend action to the employer.*
3. *If the matter has not been resolved to your satisfaction, refer it to the joint health and safety committee, who will investigate the situation.*

4. *If the matter is still not resolved to your satisfaction by the committee, or your workplace doesn't have a committee, you can refer the matter to a government occupational health and safety officer.*
5. *The officer will investigate and order remedial action. The written findings will be given to you, the employer, and the committee. If you are not satisfied with the direction of the officer, you may appeal the finding to the Chief Compliance Officer (CCO). The refusal can continue until a ruling is made by the CCO.*

NEWFOUNDLAND AND LABRADOR

As a worker in Newfoundland and Labrador, you have the legal right to refuse unsafe work, according to Section 45 of the *Occupational Health and Safety Act, RSNL 1990, c O-3*:

Right to refuse to work

45. (1) *A worker may refuse to do work that the worker has reasonable grounds to believe is dangerous to his or her health or safety, or the health and safety of another person at the workplace*

- (a) *until remedial action has been taken by the employer to the worker's satisfaction;*
- (b) *until the committee or worker health and safety representative has investigated the matter and advised the worker to return to work; or*
- (c) *until an officer has investigated the matter and has advised the worker to return to work.*

The steps to legally refuse unsafe work:

1. Notify your supervisor or employer at the worksite, and state your reason for refusal if you have reasonable grounds to believe that your work, safety or health or that of your coworkers is in danger.
2. If you are not satisfied with the remedy, ask the occupational health and safety committee or the worker health and safety representative to investigate.
3. If the matter is still not resolved to your satisfaction, you can report your concerns to the government's Occupational Health and Safety Division or an officer, either in writing or orally.
4. After a ruling is made, legally you must return to work, but may appeal the order within 7 days.

You cannot be discriminated against through dismissal, discipline, or reduction of either wages or benefits for complying with the legislation, according to section 49 of the Act.

NOVA SCOTIA

The right to refuse unsafe work for workers in Nova Scotia is found in section 43 of the *Occupational Health and Safety Act S.N.S. 1996, c. 7*.

43. Right to refuse work and consequences of refusal

43(1) *Any employee may refuse to do any act at the employee's place of employment where the employee has reasonable grounds for believing that the act is likely to endanger the employee's health or safety or the health or safety of any other person until*

- (a) *the employer has taken remedial action to the satisfaction of the employee;*

- (b) *the committee, if any, has investigated the matter and unanimously advised the employee to return to work; or*
- (c) *an officer has investigated the matter and has advised the employee to return to work.*

The steps to refuse unsafe work for workers in Nova Scotia are:

1. If the worker has reasonable ground for believing that an act is likely to endanger themselves or the health and safety of another worker, they may refuse to do that work by first reporting it immediately to a supervisor.
2. If the matter is not resolved to the satisfaction of the worker, they can report it to their Joint Occupational Health and Safety Committee member or representative, who may take steps to try to resolve the issue.
3. If the issue is still not resolved to the worker's satisfaction, they should report it to the Occupational Health and Safety Division of Nova Scotia Labour and Advanced Education.
4. An Officer will conduct an investigation into the health and safety work refusal and determine whether or not the worker should return to work or whether the refusal needs action in order to be resolved.

Workers who exercise their rights to refuse unsafe work are protected against retaliation or discrimination by employers for doing so under section 45 of the Occupational Health and Safety Act.

FEDERAL EMPLOYEES

Federal sector

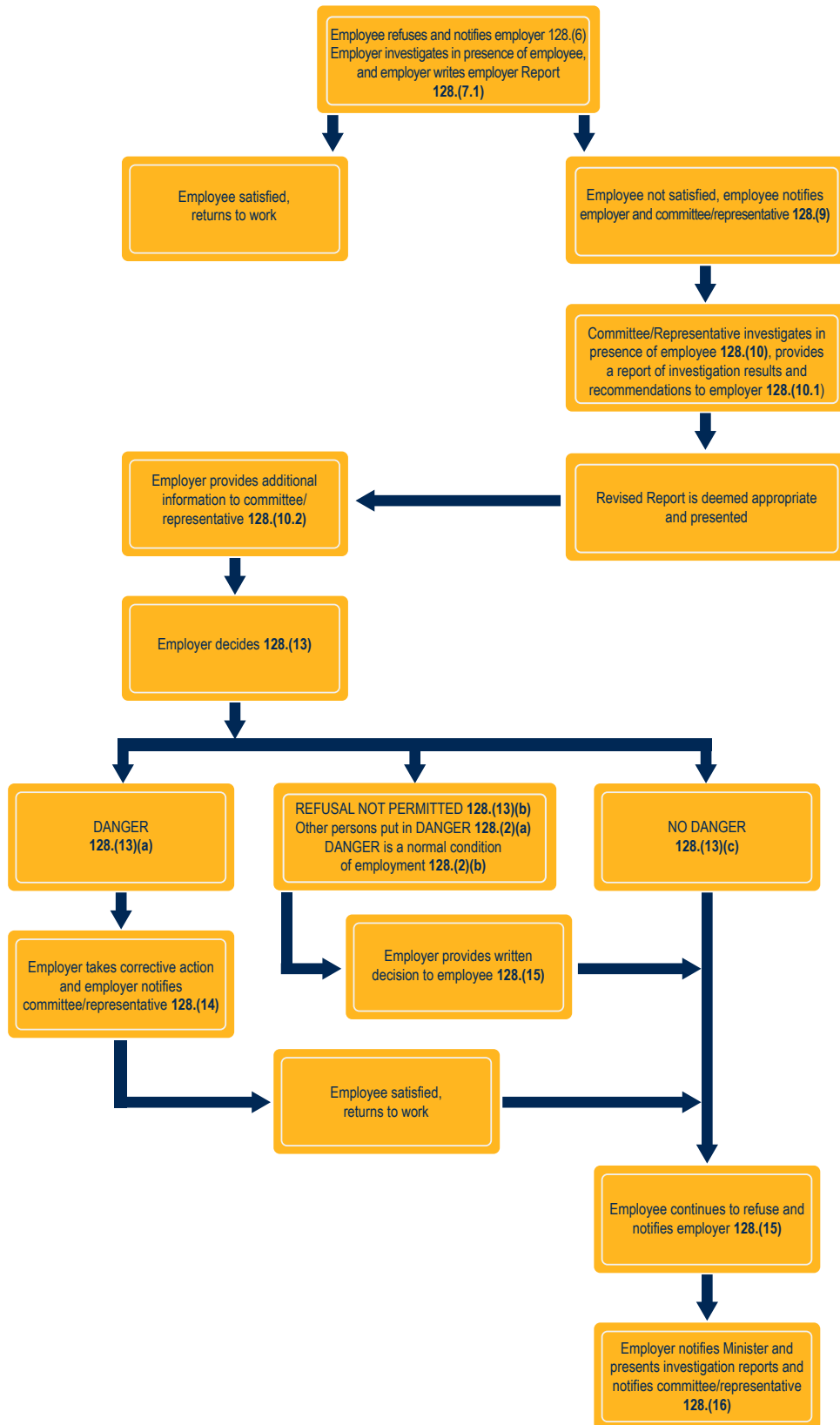
As a worker in the federal sector you have the legal right to refuse unsafe work, according to Section 128 in Part II of the *Canada Labour Code*, when there are reasonable grounds to believe performing an activity is dangerous to you or another person's health and safety. Exceptions exist for workers on ships and aircraft in operation, according to section 128(3-5) of the code.

The steps to refuse unsafe work are:

1. Notify your employer at the worksite that you are refusing work because you don't think it is safe, and state your reason for refusal. Your employer must take action to protect you, and notify the workplace committee of the issue and the action taken to resolve it.
2. If you are not satisfied with the remedy, continue to refuse work and report the circumstances to your workplace committee representative.
3. The employer must immediately investigate the matter with you and a member of the workplace committee.
4. If the matter is still not resolved, a government health and safety officer must be contacted. The officer must investigate with you, your employer, and a worker member of the workplace committee or representative. The officer must notify you of any recommendations in writing.
5. You cannot legally continue to refuse the work even if you are not satisfied with the officer's decision, but you have ten days after receiving the decision to appeal in writing to an appeals officer.

Here is a flowchart for the Federal work refusal process:

Federal Work Refusal Process



Can a worker refuse 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 his functions;
- the specific field of work and his or her 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.

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