

Right to Refuse Dangerous Work

Under the Workplace Safety and Health Act, workers have the right to refuse work that they reasonably believe constitutes a danger to their safety and health, or that of another person should they perform the task. There is a legal process that work refusals must follow - the legislation can be found at the end of this document. Below is a summary of the standard process; however, workplaces with collective agreements in place may have additional steps or requirements.

Step 1

Workers must report the work refusal to their supervisor and explain why they believe the work is dangerous. The supervisor and worker work together to assess the risk and resolve the concern. If unsure, it is often helpful to engage human resources or other technical experts during this stage.

Step 2

If the employer and the worker are unable to agree on a resolution, a worker representative from the safety and health committee, or another worker can be brought in to help assess the situation and attempt to resolve the issue.

Step 3

If the situation cannot be resolved and the worker still feels the work is dangerous for them to perform, Manitoba Workplace Safety and Health (WSH) can be contacted to determine whether work can continue. WSH considers the right to refuse a high priority issued and every attempt is made to respond quickly. WSH can be contacted 24 hours per day, 7 days per week at 204-957-7233, or toll free at 1-855-957-7233.

What is Considered Dangerous Work?

It is important to note that a danger to safety and health is different than a risk to safety and health. In order for something to be considered dangerous:

- the hazard is generally unusual to the normal working conditions or tasks, or the health or physical condition of the worker increases the risk; and,
- the hazard is likely to result in a serious injury or illness; and,
- reasonable controls have not been put in place to reduce or eliminate the risk.

Do Workers Continue to Get Paid During a Work Refusal?

During the refusal process, the worker must continue to be paid unless the Director of WSH grants an exemption to the employer. If a Safety and Health Officer from WSH determines the worker can return to work and the worker continues to refuse, the employer is no longer required to pay the worker.

Can Another Worker Be Brought in to do the Work?

It is possible for work to be safe for one person to perform but not another. This may be due to individuals' training, medical conditions etc. If an alternate worker is brought in to do the work of the refusing worker, the alternate must be informed of the work refusal, the reasons for it and why the employer feels the work can continue safely. Where possible, arrangement should be made for the refusing worker and the alternate worker to communicate to ensure the situation is clearly understood by all parties.

Can the Refusing Workers Be Assigned to Other Work?

The refusing worker can be assigned to alternate work during the refusal process.

Guideline for Work Refusals Related to COVID-19

Questions to Consider to Determine the Exposure Risk:

Has someone in the workplace been confirmed to have virus (symptomatic) or very likely exposed to the virus? For example, are co-workers, clients or patients under isolation that was recommended by Public Health?

Is it likely that the workplace is a known or high risk source of the virus? For example, healthcare settings, venues with large crowds, such as cruise ships, airports, arenas etc.

Is the refusing worker likely to be exposed to the virus while performing the work? For example, does the work involve close interaction with many people or happen in a high risk area within the workplace – work in the emergency room versus the work in the maintenance area of a hospital – these have different levels of risk.

Does the worker have a pre-existing medical condition that places them at increased risk of serious illness should they be exposed to the virus? For example, is there a medical note?

If Risk is High, Determine if Appropriate Controls are in Place:

- Does the worker have access to adequate hand-washing or sanitation facilities?

- If required, is appropriate protective equipment such as surgical masks, respirators, face shields or gloves available?
- Is training in place for handwashing, infection control and how to use any required equipment?

Other Common Questions

What do I do if I or one of my staff are sick or just came back from a high risk location?

Contact Health Links at 204-788-8200 or 1-888-315-9257 for advice related to symptoms or self-isolation.

Under the Employment Standards code, a sick worker is entitled up to 3 days of family leave, which is an unpaid, protective leave. If a worker is very ill, they may be entitled to serious injury and illness leave, which is also unpaid protective leave of up to 17 weeks. Serious injury and illness leave generally requires a doctor's note. Employees must give the medical certificate from the physician to the employer as soon as possible. The time frame will depend on individual circumstances, and may change from case to case. Workers cannot be terminated while on a protective leave.

As an employer, can I ask my staff not to come to work?

If you feel it is needed, you are able to make alternate work arrangements, or request your staff not to come to work. Employers should contact the Employment Standards Branch determine if there are other options under the Employment Standards Code.

If my staff stay home, do I have to pay them?

If there is a benefit plan in place, such as paid sick time or vacation entitlements, the employer has the discretion to allow workers to access those benefits.

If no benefits plan exists, staff may explore options for employment insurance benefits. Information can be found at: <https://www.canada.ca/en/services/benefits/ei.html>

RIGHT TO REFUSE DANGEROUS WORK

Excerpt from The Workplace Safety and Health Act

Right to refuse dangerous work

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.

Reporting the refusal

43(2) A worker who refuses to work or do particular work under subsection (1) shall promptly report the refusal and the reasons for it to his or her employer or immediate supervisor, or to any other person in charge at the workplace.

Inspecting dangerous conditions

43(3) If the employer does not remedy the dangerous condition immediately, the person who receives the report of refusal to work, or a person designated by that person, shall immediately inspect the dangerous condition in the presence of the worker and one of the following persons:

- (a) if there is a committee under section 40, the worker co-chairperson of the committee or, if that person is unavailable, a committee member who represents workers;
- (b) if there is a representative designated under section 41, that representative or, if he or she is unavailable, another worker selected by the worker refusing to do the work;
- (c) if there is no committee or representative, another worker selected by the worker who is refusing to work.

Remedial action

43(4) The person required to inspect the dangerous condition shall take any action necessary to remedy any dangerous condition, or ensure that such action is taken.

Worker may continue to refuse

43(5) Until the dangerous condition is remedied, the worker who reported it may continue to refuse to work or do particular work.

Other workers not to be assigned

43(6) When a worker has refused to work or do particular work under subsection (1), the employer shall not request or assign another worker to do the work unless

- (a) the employer has advised the other worker, in writing, of
 - (i) the first worker's refusal,
 - (ii) the reasons for the refusal,
 - (iii) the other worker's right to refuse dangerous work under this section, and
 - (iv) the reason why, in the opinion of the employer, the work does not constitute a danger to the safety or health of the other worker, another worker or any person;
- (b) where practicable, the first worker has advised the other worker of
 - (i) the first worker's refusal, and
 - (ii) the reasons for the refusal; and
- (c) the actions required by subsections (3) and (4) have been taken.

Report of dangerous condition to an officer

43.1(1) If the dangerous condition is not remedied after an inspection under subsection 43(3), any of the persons present during the inspection may notify a safety and health officer of the refusal to work and the reasons for it.

Investigation by officer

43.1(2) On receiving a notice under subsection (1), the officer shall investigate the matter and decide whether the work the worker has refused to do constitutes a danger to the safety or health of the worker or any other worker or person at the workplace.

Order by officer

43.1(3) If the officer decides that the work is dangerous, he or she shall

- (a) make a written report stating the officer's findings;
- (b) make any improvement order under section 26 or stop work order under section 36 that the officer considers necessary or advisable; and
- (c) give a copy of the report and any order to
 - (i) the worker who refused to do the work,
 - (ii) the employer, and
 - (iii) the co-chairpersons of the committee, or the representative.

Decision not to issue an order

43.1(4) If the officer decides that the work is not dangerous, he or she shall, in writing,

- (a) inform the employer and the worker of that decision; and
- (b) inform the worker that he or she is no longer entitled to refuse to do the work.

Worker entitled to be paid despite refusal

43.2 If a worker has refused to work or do particular work under section 43,

- (a) the worker is entitled to the same wages and benefits that he or she would have received had the worker continued to work; and
- (b) the employer may re-assign the worker temporarily to alternate work.

Employer not to make worker work in unsafe conditions

43.3(1) When the employer at a workplace or his or her agent, or the supervisor or another person representing the employer at the workplace in a supervisory capacity, knows or ought to know of a condition at the workplace that is or is likely to be dangerous to the safety or health of a worker, he or she shall not require or permit any worker to do that work until the dangerous condition is remedied.

Employer may remedy dangerous condition

43.3(2) Subject to subsection 43(5), nothing in subsection (1) prevents the doing of any work or thing at a workplace that may be necessary to remedy a condition that is or is likely to be dangerous to the safety or health of a worker.