

6.0 RIGHTS OF WORKERS

Individual workers have three basic rights. They can use these rights to protect their health and safety. Workers have:

- The right to know
- The right to participate
- The right to refuse.

6.1 The Right to Know

The right to know provides workers with a wide range of information about workplace hazards. This includes the right to be trained, supervised, and informed about potential hazards. Both employer and the Joint Health and Safety Committee have a responsibility to communicate with workers. The right to know was expanded by WHMIS.

6.2 The Right to Participate

All workers have the right to identify workplace health and safety hazards and recommend solutions through their supervisory and/or the Joint Health and Safety Committee. Certified members of the joint committee expanded this right.

6.3 The Right to Refuse Unsafe Work

Refusal to work

The Occupational Health and Safety Act (OHSA) states:

“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).

Extracted from the OHSA - Report of refusal to work (OHSA s43)

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them, who shall be made available and who shall attend without delay. R.S.O. 1990, c. O.1, s. 43

(5) Worker to remain near workstation.

(6) Until the investigation is completed, the worker shall remain in a safe place near his or her workstation. R.S.O. 1990, c. O.1, s. 43 (5).

Refusal to work following investigation

(7) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

(a) the equipment, machine, device or thing that was the cause of the refusal to work or do particular work continues to be 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 continues to be 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 continues to be likely to endanger himself, herself or another worker, the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof. R.S.O. 1990, c. O.1, s. 43 (6).

Investigation by inspector

(8) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4) (a), (b) or (c). 2001, c. 9, Sched. I, s. 3 (11).

Decision of inspector

(9) The inspector shall, following the investigation referred to in subsection (7), decide whether the machine, device, thing or the workplace or part thereof is likely to endanger the worker or another person. R.S.O. 1990, c. O.1, s. 43 (8).
Idem

(10) The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4) (a), (b) or (c). R.S.O. 1990, c. O.1, s. 43 (9).

Worker to remain at a safe place pending decision

(11) Pending the investigation and decision of the inspector, the worker shall remain at a safe place near his or her work station during the worker's normal working hours unless the employer, subject to the provisions of a collective agreement, if any,

(a) assigns the worker reasonable alternative work during such hours; or

(b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker. R.S.O. 1990, c. O.1, s. 43 (10).

Duty to advise other workers

(12) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other worker's refusal and of his or her reasons for the refusal. R.S.O. 1990, c. O.1, s. 43 (11).

Idem

(13) The person referred to in subsection (11) must be,

(a) a committee member who represents workers and, if possible, who is a certified member;

(b) a health and safety representative; or

(c) a worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is no trade union, by the workers to represent them. R.S.O. 1990, c. O.1, s. 43 (12).

Entitlement to be paid

(14) A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be proper,

(a) for the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4) (a), (b) or (c); and

(b) for time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12). R.S.O. 1990, c. O.1, s. 43 (13).

6.4 SUMMARY OF THE WORK REFUSAL PROCESS CHART

FIRST STAGE

Worker considers work unsafe



Worker refuses to work.
Reports concern immediately to supervisor, site rep., management rep.
Stays in safe place.



Supervisor investigates with Health and Safety Officer and certified worker representative.



Issue Resolved
Worker goes back to work.

Issue Not Resolved
[proceed to the second stage]



SECOND STAGE



With reasonable grounds to believe work is still unsafe, worker continues to refuse and remains in safe place.
Supervisor or management rep. calls MOL.



Worker may be offered other work if it doesn't conflict with relevant collective agreement.



Refused work may be offered to another worker, but must be done in presence of refusing worker.

Management must inform new worker that the offered work is subject of a work refusal.



MOL Inspector investigates in company of workers, Health and Safety Officer, supervisor, management rep. and certified worker representative.



Inspector gives decision to worker, management rep./supervisor, Health and Safety rep. and Certified Work Rep. in writing.



Changes are made if required or ordered
Worker returns to work