

# THE RIGHT TO REFUSE UNSAFE WORK

## What is the right to refuse?

- All workers have the right to refuse work they believe may endanger their health and safety. **Sec. 43, Sub. 3**

## Under what conditions can a worker refuse unsafe work?

- A worker can refuse to work where he or she has “reason to believe” that any equipment, machine, device, or thing is likely to endanger himself, herself, or another person, or if the physical condition of the workplace or workplace violence is “likely” to endanger himself or herself. **Sec. 43, Sub. 3(a)(b)(b.1)**
- Workers have the right to refuse unsafe work when the hazard is a violent or potentially violent person. However, workers described in Sec. 43, Sub. 2 continue to have a limited right to refuse unsafe work. Their refusal cannot endanger the life, health or safety of another person and the refusal cannot be because of a hazard considered to be a normal or inherent part of their job. **Sec. 43, Sub. 3(b.1)**
- Workers can also refuse where any of these is in contravention of the Act or regulations, and this contravention endangers their health and safety. **Sec. 43, Sub. 3(c)**
- Conditions do not have to be immediately life-threatening for a worker to refuse.

## THE PROCEDURE TO REFUSE UNSAFE WORK

### What are the procedures for refusing unsafe work?

- Workers, supervisors, employers, and inspectors must adhere to the following procedures:

### First Stage:

1. The worker must report the circumstances of the refusal to the supervisor. The worker must remain in a safe place that is as near as reasonably possible to his or her workstation and available to the employer or supervisor for the investigation. The worker is considered to be at work during all stages of the refusal and cannot be reassigned during the first stage of the refusal.
2. The supervisor must make available a union appointed representative or worker committee member and investigate the circumstances in the presence of the worker and the representative. **Sec. 43, Sub. 4**
3. The supervisor must give the worker an answer as to whether it is safe or unsafe. If the worker is satisfied that the work is safe, then the worker should return to work and the matter is considered resolved.

### Second Stage:

1. If the worker has “reasonable grounds” to believe that the work is still unsafe despite the supervisor’s answers or corrective measures, then the worker can continue to refuse, and a Ministry of Labour inspector must be called in to investigate. The refusing worker, the worker representative or the employer can call the inspector. **Sec. 43, Sub. 6**
2. When the Ministry of Labour receives a call requesting that an inspector come to a workplace because of a work refusal, the Ministry staff will attempt to decide over the phone whether the work refusal meets their criteria of a valid refusal. In workplaces such as healthcare facilities, developmental services facilities or correctional facilities, inspectors frequently determine over the phone that the circumstances are a normal or inherent part of the job and that the worker does not have the right to refuse. In these cases, even if the MOL inspector makes that decision and

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downgrades the work refusal to a complaint, workers and their representatives must insist that the inspector come to the workplace to investigate and to assist.

In other cases, the inspector may determine over the phone that the parties involved have not completed Stage 1 of the refusal. If you and the employer believe that you have exhausted all attempts to resolve the issue, insist that the inspector come to the workplace.

3. The Ministry of Labour inspector must investigate “in consultation” with the worker, the supervisor, and the worker’s representative. Union representatives and workers should insist that the inspector come to the workplace to investigate. **Sec. 43, Sub. 7**

If the inspector will not attend, both the union representative and worker must insist that they be present for any telephone conversations between the employer and the inspector. Do not let the employer present their description of the situation without either the union and or worker input.

4. After the inspector’s investigation is completed, the inspector must give a written decision as to whether the work is likely to endanger. **Sec. 43, Sub. 8 and 9**
5. If the worker disagrees with the inspector’s decision, an appeal can be filed within 30 days with the Ontario Labour Relations Board for a ruling. **Sec. 61**

**Note:** Prior to June 2001, inspectors had a legal duty to investigate a work refusal “in the presence” of the worker and her/his representative. Now, however, the Act states that the investigation can take place in “consultation” with the parties. However, current MOL policy states that when an inspector decides over the phone that a work refusal has met MOL criteria as a valid refusal and attempts to resolve it internally have been exhausted, an inspector will be sent to the workplace.

## Can refused work be reassigned to another worker?

- Yes, during Stage 2 of the refusal. But the employer must advise this worker that the work has been refused and the reasons for the refusal. This must be done in the presence of a worker member of the joint committee, a health and safety representative or a worker selected by the union. This worker can also refuse if he or she believes the job is unsafe. **Sec. 43, Sub.11**

## Does the worker have to be correct?

- What does “reason to believe” and “reasonable grounds to believe” mean?
- In order to legally refuse to work, the law requires only that a worker have a reasonable belief. A mountain of evidence is not needed. **Sec. 43, Sub. 3**

## Can a supervisor put off or refuse to investigate or send the worker home?

- No. The supervisor must investigate immediately in accordance with the procedure.
- If the supervisor refuses, workers should call a ministry inspector immediately and indicate what has taken place. **Sec. 43, Sub. 4**

## Do workers have a right to be paid during an investigation of a work refusal?

- Yes. The refusing worker and his/her representative are entitled to payment during all stages of a refusal. **Sec. 43, Sub. 13**
- During the second stage of the refusal, the law allows the employer to give undefined “other directions” to the worker should no other work be available. Should this result in any loss of pay, benefits or layoff, the employer must prove that this was not a reprisal which is forbidden by the Act. **Sec. 43, Sub. 10(b); Sec. 50**



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## Can a worker continue to refuse if the inspector rules that the work is not likely to endanger?

- The Act is silent on this question and thus full protection is not clearly provided. Generally, the worker returns to work and any dissatisfaction handled through the appeal process.
- The Ontario Labour Relations Board has ruled in a few cases that since this is not forbidden by the Act, a worker would have the right to continue to refuse to work if the inspector's decision was not knowledgeably and independently based. These instances would be rare.
- Continuing a work refusal in this circumstance must be carefully considered. Workers are advised to consult their union staff representative on this issue.

## Can an injured or susceptible worker refuse to perform unsafe work?

- Yes. The injured or susceptible worker has a right to refuse unsafe work under Section 43 (3) of OHS Act.
- The right to refuse applies to a disabled or susceptible worker and not just the average healthy worker.
- The employer has a duty to make appropriate safety provisions that address your medical limitations. While the inspector will not rule specifically on whether an accommodation is appropriate, he/she will determine whether work is likely to endanger a disabled or susceptible worker.

