

Attention All Building Trades Unions & Local Building Trades Councils

COVID-19 is continuing to cause on going workplace health and safety concerns. Due to the fluid nature of COVID-19 and the potential risks for large on-site contamination and the various government agencies involved there is no one tool or solution to fix the MOL/ Public Health gap that exists.

The Provincial Building Trades along with the Hamilton and Brantford Building Trades Council (HBBT) has worked to develop a protocol along with a tool kit to deal with workplace issues and how to escalate to the Ministry of Labour and Public Health.

We highly recommend that the actions below be followed in consultation with the Provincial Building Trades so we all can be consistent, timely and on point through the COVID- 19 Pandemic.

Infectious diseases on construction projects	<p>General duties of workplace parties</p> <ul style="list-style-type: none"> - It is the responsibility of all workplace parties including constructors, employers and suppliers to ensure compliance with the provisions of the Occupational Health and Safety Act (OHSA) to protect workers from infectious diseases due to inadequate sanitation on construction projects. - Construction employers have duties under the (OHSA) to ensure that every reasonable precaution in the circumstance is taken for the protection of workers (clause 25(2) (h)) of the OHSA. - Employers must report all occupational diseases to the Ministry of Labour and the workplace's Joint Health and Safety Committee (JHSC) as required by Subsection 52(2) of the OHSA. - Employers are also required, by clause 25(2) (a) of the OHSA, to provide information, instruction and supervision to a worker to protect the health or safety of the worker. This includes, and is not limited to, information and instruction and supervision about infectious diseases and associated hazards and health risks. - Constructors must ensure that, in accordance with section 29 of the Construction Regulation (O. Reg. 213/91), toilets, urinals and clean-up facilities are provided or arranged for workers before work starts at a project and that there is reasonable access to them. - Suppliers have a duty under section 31 of the OHSA, to provide toilets and clean-up facilities that are in good condition and that comply with section 29.1 of the Construction Regulation. - In Appendix A we have attached the relevant sections of Construction Regulation (O. Reg. 213/91) that deal with Hygiene <p><u>Section 25 General Duty Clause Occupational Health & Safety Act</u></p> <ul style="list-style-type: none"> - Section 25(1) of the OHSA refers specifically to the regulations and imposes a duty on employers to ensure that the measures and procedures prescribed by the
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<p>Infectious diseases on construction projects</p>	<p>regulations are carried out. <u>However, s. 25(1) does not exhaust employers' duties under the Act.</u> Section 25(2)(h) states the following:</p> <p>Without limiting the strict duty imposed by subsection (1), an employer shall, ...</p> <p>(h) take every precaution reasonable in the circumstances for the protection of a worker;</p> <ul style="list-style-type: none"> - Section 25(2)(h) establishes a duty that has been described as “even more sweeping” than s. 25(1)¹. <u>It is more sweeping because it does not depend on the existence of a specific regulation prescribing or proscribing particular conduct.</u> - Section 25(2)(h) is necessary because the regulations cannot reasonably anticipate and provide for all of the needs and circumstances of the many and varied workplaces across the province. - Investigation and workplace analysis need to go beyond merely determining whether section 25(1) of the OHSA, requiring employers to ensure that the measures and procedures prescribed by the regulations, are being carried out. - <u>Employers are required to comply with s. 25(2)(h) as well as s. 25(1), and the application of s. 25(2)(h) does not depend on compliance with any of the regulations.</u> - Courts have held that regulations cannot “occupy the field”² by displacing statutory authority. Section 25(2)(h) specifically requires that employers take every precaution reasonable in the circumstances for the protection of a worker. - See Appendix B for an example of how section 25 can be used effectively to ensure optimal protection <p><u>Construction Regulation (O. Reg. 213/91), Safe work practices</u></p> <p><u>Water (Section 28)</u></p> <ul style="list-style-type: none"> - Subsection 28 (1) A reasonable supply of potable drinking water shall be kept readily accessible at a project for the use of workers. - Subsection 28 (2) Drinking water shall be supplied from a piping system or from a clean, covered container with a drain faucet. - Subsection 28 (3) Workers shall be given a sanitary means of drinking the drinking water. - Subsection 28 (4) Workers shall not be required to share a common drinking cup to drink water. <p><u>Constructors Toilets: (Section 29)</u></p> <ul style="list-style-type: none"> - Subsection 29(3) The constructor shall ensure,(a) that facilities are provided or arranged for workers before work has started at a project; and(b) that workers at the project have reasonable access to these facilities.
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¹ R. v. Wyssen (1992), 10 O.R. (3d) 193 (C.A.), at p. 198.

² Ontario (Labour) v. Quinton Steel (Wellington) Limited, 2017 ONCA 1006; 2017 12 20

<p>Infectious diseases on construction projects</p>	<ul style="list-style-type: none"> - Subsection 29.1 (0.1) Provide (or make arrangements for) water flush toilets that are connected to a sanitary sewer, or chemical flush toilets that are not connected to a sanitary sewer. - Subsection 29.1 (2-5) Ensure that minimum numbers of toilets as prescribed per number of workers regularly employed at the project are provided, and separate facilities for female workers are provided, unless the facilities are intended to be used by only one worker at a time. - Subsection 29.1(6) provides the number of urinals that can replace toilets if the facilities are only to be used by males. Ensure that facilities are serviced as often as required. (One-week intervals may not be sufficient in warm weather or when larger numbers of workers are present at a project). <p>Clean-up facilities</p> <ul style="list-style-type: none"> - Provide an adequate number of clean-up facilities, as prescribed and ensure that they are equipped with wash basins, with both hot and cold running water where reasonably possible, paper towels and receptacle or a hand dryer. - In cases where it is not reasonably possible to provide running water, it is permissible to use hand cleanser that can be used without water, paper towels (and receptacle) or a hand dryer. <p>Actions if there is a violation</p> <ol style="list-style-type: none"> 1. Always speak directly with the contractor to try and resolve the matter internally on behalf of the affected trades. 2. The workers should remain on site but at a safe location - no member leaves the site. 3. If possible, contact Carmine Tiano (416-899-7913) at this time to go over the scenario before escalating matters. 4. If issue cannot be resolved when contacting the MOL ensure that a file# / Ticket # is requested on the complaint and that an unsafe work stoppage has been filed. 5. If MOL refuses to support the safety issue and won't write orders but you know it is a serious issue you must begin to carefully escalate. You can do any of the following: <ul style="list-style-type: none"> ▪ Bring the issue to the regional MOL Manager . In Appendix C we have provided a chart detailing the regional mangers in various areas. ▪ Contact Carmine Tiano (416) 899-7913 or carmine@ontariobuildingtrades.com so he can contact the Provincial Prevention Office and Minister Monte McNaughton's Office if the Regional MOL is not supportive or the issue is serious enough to warrant further escalation. ▪ Can initiate an appeal under section 61(1) of OHSa contesting the inspector's refusal to write an order. See Ontario Labour Relations Board information bulletin No. 21 "Occupational health and safety act appeals of an inspector's order. http://www.olrb.gov.on.ca/english/infob/infbul21.pdf. ▪ If you chose to initiate an appeal it is recommended that you discuss the matter with legal counsel or contact Carmine Tiano at the Provincial Building Trades prior to proceeding.
<p>Work Refusals</p>	<ul style="list-style-type: none"> - Always speak directly with the contractor to try and resolve the matter internally on behalf of the affected trades. - The workers should remain on site but at a safe location - no member leaves the site. - If possible, contact Carmine Tiano (416-899-7913) at this time to go over the scenario before escalating matters. -

Work Refusals	<ul style="list-style-type: none"> - If issue cannot be resolved when contacting the MOL ensure that a file# / Ticket # is requested on the complaint and that an unsafe work stoppage has been filed. - See Appendix- D on how to initiate a work refusal.
IHSA Labour Management Committee	<ul style="list-style-type: none"> - Raise all issues, especially COVID-19 and infectious disease with committee stakeholders including the IHSA Regional Labour Management Representatives and Contractor Co-Chair. - This has 2 purposes - First it gets the issue put in the IHSA minutes which is reported every month at the Provincial IHSA Section 21 Committee. - Secondly because the Regional MOL Manager sits at the table for the Regional IHSA Labour Management meetings which provides for further opportunity to share our concerns and try and work with MOL for feedback.
Public Health	<ul style="list-style-type: none"> - Contact the Regional Infectious Disease Emergency Response Team in your region. - If public Health is not responsive contact your representative on the City Council to escalate the matter at the City Public Health Department.
Messaging	<ul style="list-style-type: none"> - The key in dealing with the MOL and Public Health is the message that <i>“You are concerned about workers, public safety and stopping a possible outbreak and keeping businesses and the economy open” and the “the last thing we need is an outbreak and another lockdown“....”you are contacting them to help eliminate a possible future workplace outbreak..... the last thing we all need is a major outbreak and back in lockdown, if we are not careful all the businesses might have to close down..... like what is happening in the US.”</i>

APPENDIX A

O. Reg. 213/91

HYGIENE

28. (1) A reasonable supply of potable drinking water shall be kept readily accessible at a project for the use of workers. O. Reg. 213/91, s. 28 (1).

(2) Drinking water shall be supplied from a piping system or from a clean, covered container with a drain faucet. O. Reg. 213/91, s. 28 (2).

(3) Workers shall be given a sanitary means of drinking the drinking water. O. Reg. 213/91, s. 28 (3).

(4) Workers shall not be required to share a common drinking cup to drink water. O. Reg. 213/91, s. 28 (4).

29. (1) In this section,

“facilities” means toilet, urinal and clean-up facilities; (“installations”)

“service”, when used as a verb, means to have waste pumped out and to have the facilities replenished where necessary. (“entretenir”) O. Reg. 527/00, s. 1.

(2) REVOKED: O. Reg. 527/00, s. 1.

(3) The constructor shall ensure,

(a) that facilities are provided or arranged for workers before work has started at a project; and

(b) that workers at the project have reasonable access to these facilities. O. Reg. 145/00, s. 15.

(4) Subject to subsections (5) and (6), the facilities shall be located not more than 180 metres, measured horizontally, from the project work area. O. Reg. 142/17, s. 6.

(5) If work is being performed in a tunnel, the facilities shall be located not more than 180 metres, measured horizontally, from the entrance to the tunnel. O. Reg. 142/17, s. 6.

(6) The facilities may be located not more than 3 kilometres from the work area if transportation to the facilities is provided for workers where reasonably required. O. Reg. 142/17, s. 6.

(7) If the project is the construction of a building, the facility shall be located not more than 9 metres, measured vertically, from the level at which work is being performed, in addition to meeting the requirement set out in subsection (4). O. Reg. 142/17, s. 6.

(8) The location of the facilities under subsection (7) may be varied if the arrangement affords reasonable accessibility for workers. O. Reg. 145/00, s. 15.

(9) If the location of the facilities is varied under subsection (8), the constructor shall document in writing the location and the reasons for the variance, and shall provide the document to,

- (a) the joint health and safety committee or the health and safety representative, if any, for the workplace; or
- (b) the workers, if there is no committee or representative for the workers. O. Reg. 145/00, s. 15.

(10) The constructor shall,

- (a) inform workers of the location of the facilities; and
- (b) post the location of the facilities in a conspicuous place at the project if it is practical to do so. O. Reg. 145/00, s. 15.

(11) The facilities shall be serviced, cleaned and sanitized as frequently as necessary to maintain them in a clean and sanitary condition. O. Reg. 145/00, s. 15.

(12) The constructor shall keep at the project for the duration of the project,

- (a) a record of the servicing, cleaning and sanitizing of the facilities; and
- (b) a copy of the document required under subsection (9), if any. O. Reg. 145/00, s. 15.

(13) Facilities that are not under the constructor's control satisfy the requirements of this section only if the constructor has received permission from the facilities' owner for workers to use the facilities. O. Reg. 145/00, s. 15.

29.1 (0.1) In this section,

“non-sewered flush toilet facilities” means water flush toilets or chemical flush toilets that have the features listed in subsection (0.2); (“installations de toilettes à chasse non raccordées à un réseau d’égouts”)

“sewered toilet facilities” means water flush toilets that are connected to a sanitary sewer system and equipped with a trap in accordance with the applicable provisions of the Building Code. (“installations de toilettes raccordées à un réseau d’égouts”) O. Reg. 527/00, s. 2 (1); O. Reg. 142/17, s. 7.

(0.2) The features referred to in the definition of “non-sewered flush toilet facilities” in subsection (0.1) are:

1. The toilets are not connected to a sanitary sewer system.
2. They are equipped with a trap or a positive seal separating stored waste from the bowl.
3. The waste is first flushed from the bowl with water or with water containing chemical additives. Then the waste is deposited into a container and chemically treated sufficiently for the container's maximum capacity. O. Reg. 527/00, s. 2 (1).

(1) Each toilet facility shall meet the following requirements:

1. There shall be a toilet with an open-front toilet seat.

2. There shall be a toilet paper holder and an adequate supply of toilet paper. If the facility is intended for use by female workers, there shall be a disposal receptacle for sanitary napkins.
3. The facility shall afford the user privacy and protection from weather and from falling objects. There shall be a self-closing door that can be locked from inside the facility.
4. The facility shall be,

- i. illuminated by natural or artificial light,
- ii. adequately heated, if that is possible, and
- iii. adequately ventilated.

5. If the facility is intended for use by males only or by females only, it shall have a sign indicating that fact.

6. The facility shall be kept in good repair at all times. O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (2, 3).

(2) Separate toilet facilities shall be provided for male and female workers, unless the facilities are intended to be used by only one worker at a time. O. Reg. 145/00, s. 15.

(3) Sewered toilet facilities or non-sewered flush toilet facilities shall be provided at a project, subject to subsection (4). O. Reg. 145/00, s. 15.

(4) If a project is being carried out in a remote unpopulated area and it is not reasonably possible to provide the toilet facilities required under subsection (3), other types of toilet facilities that come as close as possible to having the features of non-sewered flush toilet facilities shall be provided instead. O. Reg. 527/00, s. 2 (4).

(5) When water flush toilets or non-recirculating chemical flush toilets are provided, the minimum number of toilets required at the project is as follows:

TABLE

Item	Column 1 Minimum number of toilets	Column 2 Number of workers regularly employed at the project
1.	1	1-15
2.	2	16-30
3.	3	31-45
4.	4	46-60
5.	4, plus 1 additional toilet for each additional group of 15 or fewer workers	61 or more

O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (5); O. Reg. 345/15, s. 8 (1).

(6) If the toilets are located in a multiple water flush toilet facility and are intended to be used by male workers, water flush urinals may be substituted for a maximum of two-thirds of the number of toilets required by subsection (5). O. Reg. 145/00, s. 15.

(7) When toilets other than water flush toilets or non-recirculating chemical flush toilets are provided, the minimum number of toilets required at the project is as follows:

TABLE

Item	Column 1 Minimum number of toilets	Column 2 Number of workers regularly employed at the project
1.	1	1-10
2.	2	11-20
3.	3	21-30
4.	4	31-40
5.	4, plus 1 additional toilet for each additional group of 15 or fewer workers	41 or more

O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (6); O. Reg. 345/15, s. 8 (2).

(8) If the toilets are located in a portable single-unit toilet facility intended for use by male workers, there shall be at least one urinal for each toilet. O. Reg. 145/00, s. 15.

(9) Portable urinals equipped with clean-up facilities are permitted in addition to the requirements of this section. O. Reg. 145/00, s. 15.

29.2 (1) Each single-toilet facility shall be provided with its own clean-up facility. O. Reg. 527/00, s. 3.

(1.1) In a multiple-toilet facility at a project, one clean-up facility shall be provided for every two toilets. O. Reg. 527/00, s. 3.

(2) Each clean-up facility shall meet the following requirements:

1. Subject to subsection (3), the facility shall have a wash basin with running water. Both hot and cold running water shall be available if reasonably possible.
2. Soap or hand cleanser shall be provided.
3. Paper towels or a hand dryer shall be provided. If paper towels are provided, there shall be a waste disposal receptacle nearby. O. Reg. 145/00, s. 15.

(3) If it is not reasonably possible to have a wash basin with running water at a clean-up facility, hand cleanser that can be used without water shall be provided instead. O. Reg. 145/00, s. 15.

30. Workers who handle or use corrosive, poisonous or other substances likely to endanger their health shall be provided with washing facilities with clean water, soap and individual towels. O. Reg. 213/91, s. 30.

APPENDIX B Example: Section 25 (2)(h)

July 16, 2020

To: Hon. Monte McNaughton
Minister of Labour, Training and Skills Development
14th Floor, 400 University Avenue
Toronto, ON - M7A 1T7

Dear Minister McNaughton, our office was recently contacted by Mr. Mark Ellerker, Business Manager of the Hamilton-Brantford Building and Construction Trades Council, regarding an incident at the “Woodward Waste Water Treatment Facility.” The incident involved ten workers who were required to use the same water cooler during a recent heat wave. The water cooler was a high-frequency touch surface.

The situation was akin to using a food buffet line, which under the Emergency Management and Civil Protection Act are not prohibited during the COVID-19 pandemic . To make matters worse, the cooler was being washed and filled from a slop sink where they dumped buckets and mops.

The Ministry of Labour, Training and Skills Development (MLTSD) was contacted and an inspector promptly visited the site and did not find any violations or write any orders, even though the practice was not acceptable under Public Health measures. After the inspector visited the site, the employer bowed to pressure from the workers and agreed to provide bottled water to them.

Having provided a brief overview of these events, this brings us to the underlining objective of this letter, which is to point out that a narrow reading of regulations is not sufficient to protect health and safety, especially in the middle of the COVID-19 pandemic. From all accounts, the inspector took a prescriptive reading of the employer’s duty to provide “fresh water.” Ontario Regulation 213/91 “Construction Projects” section 28; with respect to the employer’s duty to provide “fresh drinking” water states that:

28. (1) A reasonable supply of potable drinking water shall be kept readily accessible at a project for the use of workers. O. Reg. 213/91, s. 28 (1).

(2) Drinking water shall be supplied from a piping system or from a clean, covered container with a drain faucet. O. Reg. 213/91, s. 28 (2).

(3) Workers shall be given a sanitary means of drinking the drinking water. O. Reg. 213/91, s. 28 (3).

(4) Workers shall not be required to share a common drinking cup to drink water. O. Reg. 213/91, s. 28 (4).

As mentioned, the inspector, after attending the site, made a determination that the employer did not breach his obligations under Regulation 213/91. Respectfully, it is our position that the inspector did not properly look at the applicable regulation and determine whether the employer fulfilled his duty in accordance with the *Occupational Health and Safety Act* (OHSA). By this, we mean that regulations are not expected to displace statutory authority specifically, s. 25(2)(h) of OHSA.

It is our position as a starting point, that OHSA is public welfare legislation – legislation designed specifically to protect workers – and administrative tribunals and courts have consistently instructed that it must be interpreted generously, not narrowly or technically, in order to allow it to achieve this purpose.

We acknowledge that OHSA and the regulations cannot be interpreted to apply to every possible workplace scenario. However, OHSA establishes duties that are particularized by workplace-specific regulations which separately govern construction, mining, and industrial workplaces. As stated above, the workplace was covered under Ontario Regulation 213/91, specific to “Construction Projects.”

Section 25(1) of the OHSA refers specifically to the regulations and imposes a duty on employers to ensure that the measures and procedures prescribed by the regulations are carried out. **However, s. 25(1) does not exhaust employers’ duties under the Act.** Section 25(2)(h) states the following:

Without limiting the strict duty imposed by subsection (1), an employer shall, ...

(h) take every precaution reasonable in the circumstances for the protection of a worker;

Section 25(2)(h) establishes a duty that has been described as “even more sweeping” than s. 25(1)³. **It is more sweeping because it does not depend on the existence of a specific regulation prescribing or proscribing particular conduct.**

Section 25(2)(h) is necessary because the regulations cannot reasonably anticipate and provide for all of the needs and circumstances of the many and varied workplaces across the province. In this particular scenario with the water cooler, when the inspector attended the site, the error/misinterpretation, was that the inspector only focused on whether the employer satisfied his duties under section 28 of Ontario Regulation 213/91 “Construction Projects.”

The investigation and workplace analysis should have gone beyond merely determining whether section 25(1) of the OHSA, requiring employers to ensure that the measures and procedures prescribed by the regulations, was being carried out.

As mentioned, **employers are required to comply with s. 25(2)(h) as well as s. 25(1), and the application of s. 25(2)(h) does not depend on compliance with any of the regulations.** Courts have held that regulations cannot “occupy the field”⁴ by displacing statutory authority. Section 25(2)(h) specifically requires that employers take every precaution reasonable in the circumstances for the protection of a worker.

Our concern is that if inspectors do not go beyond simply looking at strict compliance with s. 25(1), a limited interpretation seriously undermines the purpose of the OHSA which is to ensure the health and safety of workers – and is antithetical to the generous interpretation that the law requires.

Section 25(2)(h) establishes a standard, rather than a rule, the requirements of which are tailored to suit particular circumstances. Essentially, employers must take every precaution reasonable in the circumstances in order to protect workers. Therefore, when assessing the requirement to provide ‘fresh drinking water as

³ R. v. Wyssen (1992), 10 O.R. (3d) 193 (C.A.), at p. 198.

⁴ Ontario (Labour) v. Quinton Steel (Wellington) Limited, 2017 ONCA 1006; 2017 12 20

prescribed by section 28 of Ontario Regulation 213/91 “Construction Projects,” employers must undertake a risk assessment taking into consideration the circumstances, as they are.

In our view, considering the infectious nature of COVID-19 and the high possibility of spread resulting from unsanitary conditions, it does not follow that employers need do only as little as is specifically prescribed in the regulations. There may be cases in which more is required, in which additional safety precautions tailored to fit the distinctive nature of a workplace are reasonably necessary according to s. 25(2)(h), in order to protect workers.

Something that at times is lost when looking at OHSA, and in particular section 25(2)(h) which mandates that the employer “takes every reasonable precaution,” is that OHSA mirrors the “precautionary principle”.

An important recommendation of the Commission of Inquiry chaired by Justice Archie Campbell in the wake of the SARS outbreak in 2003 – an outbreak of a virus related to COVID-19 – is that the precautionary principle is to be put into action in order to prevent unnecessary illness and death. As explained by Justice Campbell, **this principle applies where health and safety are threatened even if it cannot be established with scientific certainty that there is a cause and effect relationship between the activity and the harm. The entire point is to take precautions against the as yet unknown.**

Considering Justice Campbell’s conclusion, we are requesting that your office reaffirm with inspectors and employers, that when looking at whether employers are fulfilling their obligations, especially in relation to COVID-19, OHSA must be interpreted generously, not narrowly or technically, in order to allow it to achieve this purpose.

There needs to be clear direction to workplaces that it is not sufficient for employers to minimally comply with a workplace’s requirements under any given OHSA regulation, but rather, that employers must also consider whether there are further precautions that should or could be taken to protect worker safety in order to fulfill employer duties under section 25(2)(h) of the OHSA.

Please feel free to contact me directly if you would like to discuss this issue further.

Kindest Regards,



Patrick J. Dillon
Business Manager & Secretary Treasurer,
Provincial Building and Construction Trades Council of Ontario

APPENDIX C Ministry of Labour Training Skills Development (MLTSD) Contact List

Area Identified	MLTSD Region for this area	Director & Contact Information
Central Ontario	Central East & Central West depending on exact location	Stephen McDonald – Director, Central West Region Cell: 416-705-3063 Dorothy Holster – Director, Central East Region Cell: 416-729-1741
Eastern Ontario	Eastern	Sandra Lawson – Director, Eastern Region Cell: 613-290-5513
Essex & Ken	Western	Chris Plouffe – A/Director, Western Region Cell: 519-476-2875
Hamilton & Brantford	Western	Chris Plouffe – A/Director, Western Region Cell: 519-476-2875
London	Western	Chris Plouffe – A/Director, Western Region Cell: 519-476-2875
Niagara – Haldimand	Western	Chris Plouffe – A/Director, Western Region Cell: 519-476-2875
North Eastern	Northern Region or Eastern Region depending on exact locations	Sandra Lawson – Director, Eastern Region Cell: 613-290-5513 Margaret Cernigoj – Director, Northern Region Cell: 807-629-9808
North Western	Northern Region or Western Region depending on exact locations	Chris Plouffe – A/Director, Western Region Cell: 519-476-2875 Margaret Cernigoj – Director, Northern Region Cell: 807-629-9808
Quinte St Lawrence	Eastern	Sandra Lawson – Director, Eastern Region Cell: 613-290-5513
Sarnia	Western	Chris Plouffe – A/Director, Western Region Cell: 519-476-2875

Waterloo Wellington Dufferin & Grey	Western	Chris Plouffe – A/Director, Western Region Cell: 519-476-2875
Parry Sound	Northern	Margaret Cernigoj – Director, Northern Region Cell: 807-629-9808
North Bay	Northern	Margaret Cernigoj – Director, Northern Region Cell: 807-629-9808
Timmins	Northern	Margaret Cernigoj – Director, Northern Region Cell: 807-629-9808
Kirkland Lake	Northern	Margaret Cernigoj – Director, Northern Region Cell: 807-629-9808
Sudbury	Northern	Margaret Cernigoj – Director, Northern Region Cell: 807-629-9808
Sault Ste Marie	Northern	Margaret Cernigoj – Director, Northern Region Cell: 807-629-9808

APPENDIX D: When Can I Refuse Work and What is the Process to Refuse Work?

With the ever evolving nature of the COVID-19 crisis, a number of questions have been raised with respect to the right of employees to refuse to work.

Under the *Occupational Health and Safety Act*, a worker may refuse work where “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.” When a worker exercises the right to refuse work, the worker must immediately report the circumstances to the worker’s employer who is required to undertake an investigation into the work refusal. During the employer’s investigation, the worker must remain in a safe location as reasonably close to work as possible and be available to participate in the employer’s investigation into the work refusal.

If, after the employer’s investigation has concluded, the worker has reasonable grounds to believe that “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”, the worker may continue to refuse to work and an inspector from the Ministry of Labour must be contacted to investigate the matter. The worker must remain in a safe location as reasonably close to the workplace as possible during the Inspector’s investigation. Upon the conclusion of the Inspector’s investigation, he/she will issue a decision on the work refusal.

In addition, special provisions under the *Occupational Health and Safety Act* exist to address a situation in which a “dangerous circumstances” exist in the workplace. A “dangerous circumstance” is defined as a situation in which there is a contravention of the *Occupational Health and Safety Act* or its regulations, the contravention poses a hazard or danger to a worker and the danger or hazard is such that a delay may seriously engage a worker. Where such circumstances are present, a certified member(s) of the workplace health and safety committee may raise such concerns with the employer and, in some cases in accordance with the *Occupational Health and Safety Act*, direct that the work giving rise to the dangerous circumstance be stopped pending an investigation by an Inspector.

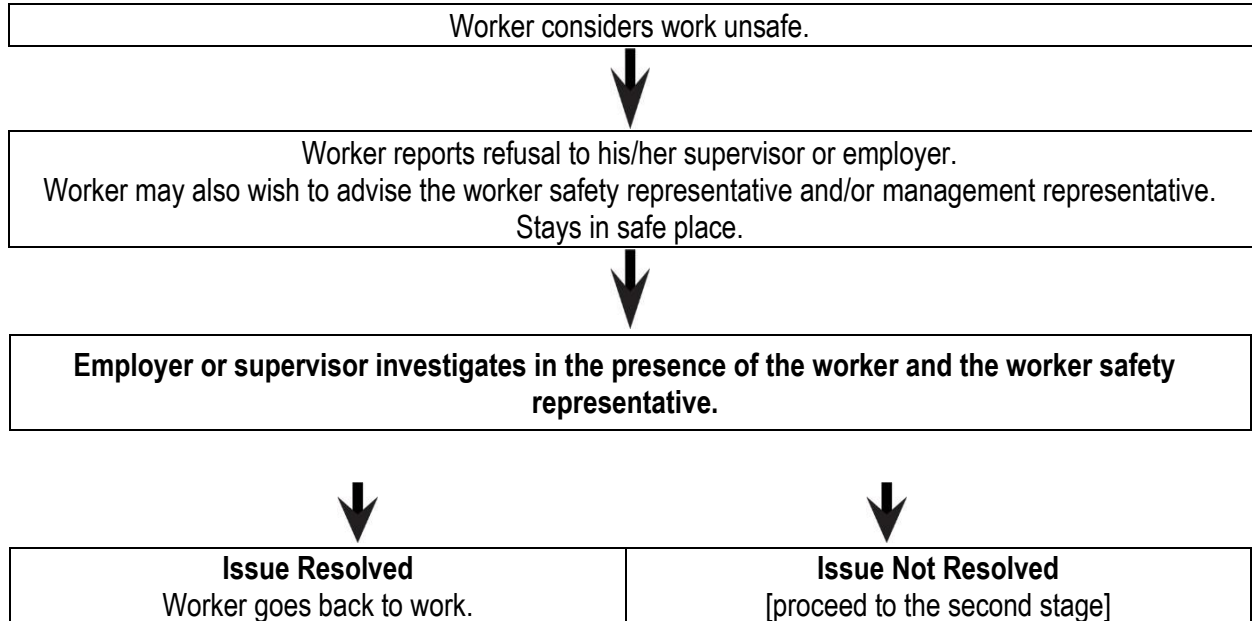
It is imperative to note that the right to refuse work under the *Occupational Health and Safety Act* does not extend to all types of employment. For instance, employees employed in connection with the operation of a hospital or similar type of health care institutional are not permitted to refuse work. Further, workers are not permitted to refuse work where doing so “would directly endanger the life, health or safety of another person”.

Only workers have the right to refuse work when appropriate and in accordance with the *Occupational Health and Safety Act*. The Union does not have the legal right to do so. However, members with specific concerns related to work refusals may contact their Union Representative for further information and guidance.

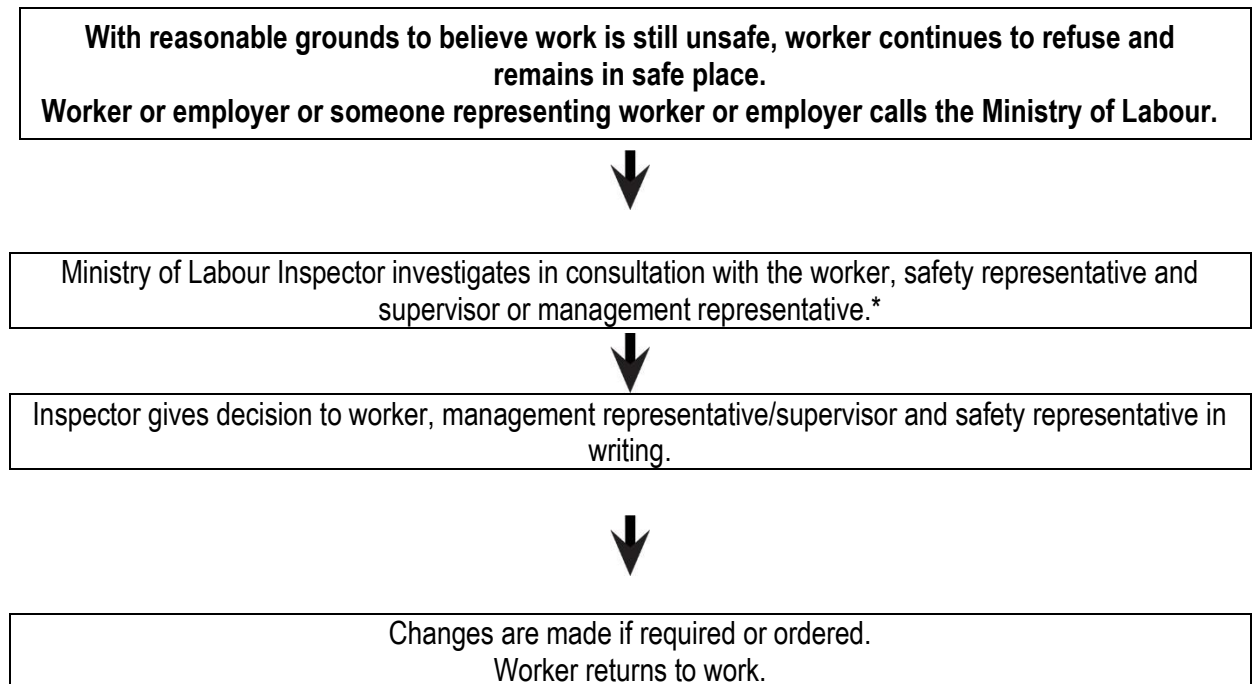
It is also important to note that under the *Occupational Health and Safety Act*, employers have the obligation to take all reasonable steps to ensure a healthy and safe workplace.

Procedure for a Work Refusal

First Stage



Second Stage



Pending the Ministry of Labour investigation:

- The refusing worker may be offered other work if it doesn't conflict with a collective agreement
- Refused work may be offered to another worker, but management must inform the new worker that the offered work is the subject of a work refusal. This must be done in the presence of:
 - a member of the joint health and safety committee who represents workers; or
 - a health and safety representative, or
 - 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