

The purpose of Section 43(1) of the Workplace Safety & Health Act is to protect the health and safety of workers by preventing accidents and injuries on the job. One of the basic rights for employees is the right to refuse work that they believe presents a danger to themselves or another employee.

Section 43(1) of the Act states: *“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.”*

“Dangerous” work generally means: work involving safety and health risks that are not normal for the job.

The Right to Refuse Dangerous Work should only be used if:

- ✓ **The internal process for resolving safety concerns failed or the safety concern was not addressed in a timely manner; or**
- ✓ **There is immediate danger.**

Always follow the internal process first before initiating the right to refuse dangerous work process.

Many safety concerns can be resolved with the internal system without initiating the right to refuse process. The internal process for resolving safety concerns involves notifying your supervisor about a hazard or concern or notifying your S&H Committee or rep of a hazard or concern as quickly as possible. All hazards or concerns brought forward must be dealt with as quickly as possible.

For EAs working with students with special needs – initiating the internal process means notifying the Student Support Team responsible for the student’s programming of any hazards or concerns. All hazards or concerns brought forward must be dealt with as quickly as possible.

Using your right to refuse is not a permanent staff reassignment/replacement mechanism. The process is in place to remedy the situation. Once the safety concern has been resolved, the worker needs to return to the student/task/location. The right to refuse dangerous work should not be abused. It is there for the protection of the employees.

A worker has the right to refuse to do a job if that worker has reasonable cause to believe that:

- They have asked the employer to eliminate the danger, and the employer failed to do so; and
- They refused to work in "good faith." This means that they must genuinely believe that there is a condition at work where an imminent danger exists to himself or herself; or
- The use or operation of a machine or thing at work presents a danger to himself/herself or a coworker; or
- The performance of an activity constitutes a danger to the employee or to another employee.

STEP 1 – INITIAL REFUSAL:

- a) The worker may refuse to perform work they believe is unsafe. The worker must report the refusal to their supervisor immediately. They must inform their supervisor that they cannot perform the work unless and until the hazard is corrected. Workers must remain at the worksite until ordered to leave or are re-assigned other duties by their supervisor.
- b) The refusing worker **MUST IN THEIR OWN WORDS AND IN WRITING** document that they are using their right to refuse dangerous work and the reason for the refusal.
- c) The supervisor must immediately notify the union, where applicable, Human Resources Department, the worker co-chair of the Health and Safety Committee and the Divisional S&H Officer by email that a right to refuse has been initiated. Note: This is notification only – it is the responsibility of the Supervisor and the S&H committee worker rep to attempt to resolve the right to refuse at Step 1.
- d) The supervisor and the S&H rep must **IMMEDIATELY** investigate and determine a remedy (control measure) that may include: additional training, guarding, safe work procedures, changes to plans or protective measures for staff, etc., to fix the unsafe condition. The refusal must be dealt with as quickly as possible and cannot wait for any extended period of time to be dealt with. The supervisor can also seek assistance from the Divisional S&H Officer to provide assistance and the school based resource team if the refusal to work involves a student with special needs. Once the unsafe condition has been addressed the issue is considered resolved and the refusal to work has ended.
- e) If the worker feels that the dangerous condition has been dealt with, the worker returns to work and the process is closed.
 - At this point the supervisor is required to document the investigation and corrective measures that were implemented.
 - A copy is kept by the school and a copy is sent to the Divisional S&H Officer.
- f) If the worker feels that the dangerous condition still exists, alternative work is given to the refusing worker. If no work is available, the worker will continue to be paid for the hours they were scheduled to work. Reassigning the refusing worker to another student/task/location is a temporary measure and the worker is expected to return after the completion of the process.
- g) A risk assessment must be done to determine if it is safe for other workers to perform the work/task. Another worker, that is qualified, can be assigned to perform the refused work or task if that worker has been advised by the refusing worker or a Department of Labour Officer of the reasons for the refusal. This can be accomplished by:
 - Inspecting the dangerous condition and initiating remedial action to correct any dangerous conditions that have occurred.
 - Supervisor / employer has advised the other worker in writing of: the first workers refusal, the reasons for the refusal, their right to refuse and why the task does not present a safety and health risk to them.
 - Where practicable, the workers speak to each other directly (face to face, phone, etc.) and the refusing worker advises the alternate worker of the right to refuse and the reasons for the refusal.
 - S&H Officer of Department of Labour explaining the refusal.

- h) If another worker is doing the same work/task the supervisor needs to provide the refusing worker's document (their right to refuse and the reason why) to all workers who will be doing the same work/task.
- i) The supervisor must document on the form the names of other workers who read the document. Those workers must initial that they have read the document.
- j) If another qualified worker, after reviewing the refusing workers documentation, agrees to carry out the work and the work is completed, the matter is considered resolved to the satisfaction of the worker who initiated the work refusal and the right to refuse is completed.

STEP 2 – INVOLVEMENT OF THE DIVISIONAL S&H OFFICER:

- a) The Supervisor notifies the Divisional S&H Officer of the continued refusal.
- b) The Divisional S&H Officer shall perform an inspection/investigation of the dangerous condition in the company of one of the following:
 - The Safety Committee Worker Co-Chair; if not available then
 - A Safety Committee member representing the worker; if not available then
 - A worker chosen by the refusing worker.

The inspection/investigation may involve reviewing the following documents:

- Documented right to refuse report from the worker in Step 1 portion and the investigation by the Supervisor and S&H committee and the recommended corrective actions.
 - Interviewing the refusing worker.
 - Revised plans for refusals involving students with special needs.
 - Safe work procedures.
 - Training records for refusing staff.
 - Existing operational procedures and policies.
 - Any other relevant information, including meeting with the school based resource team.
- c) If the inspection/investigation determines that the dangerous condition still exists, the supervisor must take action to remedy the unsafe/dangerous condition. Once the corrective measures have been put into place the information must be presented to the refusing worker.
 - d) If the worker feels that the dangerous condition has been remedied then the right to refuse is closed. The Divisional S&H Officer documents the investigation. A copy is kept at the school and another is kept by the Divisional S&H Officer. The Divisional S&H Officer will report the findings to the Assistant Superintendent – Divisional Support Services and the Principal (if applicable).
 - e) If the worker believes that the dangerous condition still has not been remedied, he/she may continue to refuse the work. The Divisional S&H Officer will report the findings to the Assistant Superintendent – Divisional Support Services and the Principal (if applicable).
 - f) The worker must remain available and will be assigned to do other work. At this time, and after consultation with the Assistant Superintendent – Divisional Support Services, the

Divisional S&H Officer will call the Workplace Safety and Health Division (Department of Labour) to request an investigation by the Officer. **Note:** at this time any involved party can make this contact.

STEP 3 – INVOLVEMENT OF DEPARTMENT OF LABOUR S&H OFFICER:

a) The Workplace Safety & Health Officer may require:

- An in-person meeting.
- Telephone interviews.
- Submission of pertinent documents.

If an in-person meeting is requested the Officer will notify the Principal and the Principal will notify all other parties to set up the meeting. The meeting will need to take place as soon as possible.

b) The Workplace Safety & Health Officer will:

- Investigate the work refusal.
- Decide whether the work constitutes a danger to the safety or health of worker and determine if there is a hazard.
- Consider the resolution options and recommendations from the supervisor and committee rep.
- Consider the resolution options and recommendations provided by Divisional S&H Officer and determine if the hazard has been controlled.

c) If the Officer decides that the work is not dangerous, the Officer will:

- Inform the employer and the worker of their decision.
- Inform the worker that he or she is no longer entitled to refuse to do the work.

d) If the Officer finds that no hazard exists the worker must return to work as soon as possible. The worker is returned to that specific student/task/location. The worker is reinstated.

- The right to refuse is closed.
- The Officer's ruling is final and is binding.
- The worker and supervisor sign the Department of Labour report.
- A copy is posted on the S&H Committee bulletin board and another copy is kept with the investigation. An additional copy is sent to the Divisional S&H Officer.

e) If the Officer decides that the employer has not adequately addressed the safety concern, the Officer will:

- Write an improvement order or a stop work order (dangerous condition).
- The employer has a timeline for the completion of the improvement order.

f) The employer is responsible for the completion of the order in the set time provided and the Officer must be notified when the order has been completed. The Officer may also choose to do an inspection to ensure that the condition has been remedied and that the employer has complied with the improvement order. The refusal will not be closed until the Officer has received proof that the requested work has been done.

g) If a stop work order is issued, work cannot be resumed until the Officer is satisfied that the employer has remedied the unsafe condition. The Officer may perform an inspection to ensure that the employer has complied. After the right to refuse case is closed, the Officer

will send their report to the Principal and to the Divisional S&H Officer. The refusing worker must also be given a copy of the report from the Principal.

RESPONSIBILITIES: SUPERVISOR/EMPLOYER

- To ensure the right to refuse steps are followed as required until the refusal is resolved for all parties.
- Ensure that the refusal is dealt with immediately and that the safety concern is immediately addressed.
- Ensure that a risk assessment is completed; that other workers doing the same work are provided with the refusing worker's documentation; and they have read the reason for the refusal.
- To ensure the Workplace Safety and Health Committee worker co-chair or worker representative will make reasonable effort to attend any work refusal investigation in order to provide assistance in resolving the safety and/or health concern in a timely manner.

OTHER CONSIDERATIONS:

- Reassigning the refusing worker to another student/task/location is not the end of the process. This is only a temporary reassignment and the worker is expected to return after the completion of the process.
- Right to refuse is not a staff reassignment/replacement mechanism. The process is in place to provide reasonable time to remedy the situation. Once the safety concern has been resolved, the worker is returned to the student/task/location.
- Once the process is initiated, all the steps must be taken until either the refusing worker or the Department of Labour Officer closes it and the worker is reinstated. Every case must be closed.
- The entire process should not take long to resolve, the safety concern must be dealt with immediately. All cases should be closed within one (1) week.
- **Discriminatory Action Against Worker Prohibited:**
 - *No employer, union or person acting on behalf of an employer or union shall take or threaten discriminatory action against a worker for refusing to do dangerous work under Section 43, Workplace Safety and Health Act.*
- **Wages:**

If the worker has exercised the right to refuse dangerous work the worker is entitled to the same wages and benefits he/she would have received had the worker continued to work.

 - The employer may re-assign the worker to other students/task/location to replace the hours lost. Replacement hours can be scheduled any time within the pay period.
 - The worker must remain available for other assignments within their stated availability.

If you have any questions regarding this process or other safety concerns, please contact the Divisional S&H Officer at 204-488-1767 ext. 1292.

Work Refusal Flow Chart



Employee has reason to believe work is likely to endanger himself / herself or others

Employee promptly reports circumstances to immediate supervisor (or alternate).

1.0 Supervisor & S&H Committee worker rep inspect/investigate the matter in the presence of the refusing employee.



No

Yes

Disagreement: employee continues to refuse because they believe they have "reasonable grounds"

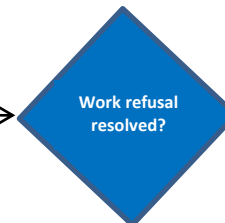
Agreement and resolution.

- Employee remains in a safe place unless assigned reasonable alternate work or given other directions pending investigation decision.
- Another qualified employee may be assigned to perform work that the first employee has refused, provided the supervisor informs them of the refusal and that of the employee's right under the Act.

If another worker accepts to carry out the work and the work is completed, the matter is considered resolved to the satisfaction of the worker who initiated the work refusal and the right to refuse is completed. No further action will be taken by a Dept. of Labour Officer with respect to the work refusal.



2.0 Matter is referred to the Divisional S&H Officer for inspection/ investigation



Yes

No

SAFE return to work.

3.0 Matter is referred to the Dept. of Labour Officer for investigation.

Officer finds employee has reasonable grounds.

No

Advises employee to return to work.



Yes

Issues order to employer to correct unsafe situation.

Orders completed by employer.