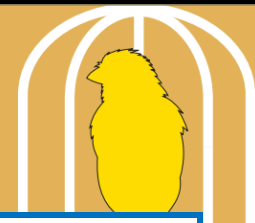


Refusing Unsafe Work

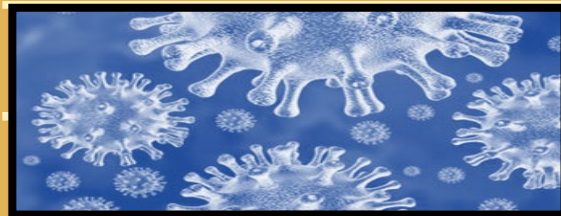


COVID-19 and the Right to Refuse Unsafe Work in BC Frequently Asked Questions

The right to refuse unsafe work is one of the three basic health and safety rights achieved by the labour movement, along with the right to know about the hazards in your workplace, and the right to participate in workplace health and safety decisions. While procedures and circumstances around the right to refuse may vary from province to province, just about all workers have the legal right to a healthy and safe workplace that allows (and in some provinces obligates) them to protect their own safety by refusing to perform work that they believe has the potential to harm themselves or others at the worksite.

Sections of legislation which refer to the right to refuse work in each jurisdiction

British Columbia
Workers' Compensation Act, Occupational Health and Safety Regulation
Section 3.12 and 3.13



| Questions | Answers and Additional Information |
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| <p>What is the process for the Right to Refuse in BC?</p> | <p>Workers in BC have the Right to Refuse work if they believe it presents an undue hazard. This is one of 4 health and safety rights in BC. Employers need to consider work refusals on a case-by-case basis.</p> <p>The Right to Refuse process in BC is contained in Section 3.12 of the Occupational Health and Safety Regulations (BC) and Section 3.12 of the non-mandatory Guidelines (BC) which interpret the Regulations. Workers have a legal obligation to report unsafe conditions as per Section 116 of the BC <i>Workers Compensation Act</i> and Section 3.10 of the Regulations. Employers should adhere to both the precautionary (when an activity raises threats of harm to human health or the environment, precautionary measures must be taken even if cause and effect relationships are not fully scientifically established) and to due diligence (requires taking all reasonable steps to protect workers from harm based on the level of judgment and care that a person would reasonably be expected to do under the circumstances).</p> |

What are the tests for the Right to Refuse?

The Regulations state that:

“Section 3.12(1) states that "A person must not carry out or cause to be carried out any work process or operate or cause to be operated any tool, appliance or equipment if that person has reasonable cause to believe that to do so would create an undue hazard to the health and safety of any person."

The Guidelines that interpret the Regulations state that:

“Undue hazard”

A ‘hazard’ is identified in Part 1 of the *Regulation* as ‘a thing or condition that may expose a person to a risk of injury or occupational disease.’ Further, ‘undue’ is defined by the Oxford dictionary as ‘unwarranted, inappropriate, excessive or disproportionate.’ Therefore, a thing or condition that may expose a worker to an excessive or unwarranted risk of injury or occupational disease represents an undue hazard for the purposes of section 3.12 of the *Regulation*.

"Reasonable cause to believe"

The use of the term ‘reasonable’ in ‘reasonable cause to believe’ means that the worker must assess the situation as a reasonable person, taking into account relevant and available information and exercising good faith judgment with respect to the hazard with due regard to the worker's training and experience.”

“Reasonable cause to believe’ and the susceptible worker

Some workers may have an underlying condition which would lead them to suffer an illness or sustain an injury, even though others would not be affected in the same way. In this so-called ‘susceptible worker’ situation, the ‘objective’ test of whether the worker has reasonable cause to believe the work presents an undue hazard is to be applied in the context of the person's specific health condition.

To uphold a work refusal, there needs to be a clear connection between the undue hazard asserted by the susceptible worker, and his or her health condition. As part of the investigation into the refusal, the employer may ask for confirming evidence of the effect of the hazard on the person's condition. While the evidence is being obtained, the worker should be removed from the condition that the worker asserts is an undue hazard.”

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| | <p>Factors that may be considered in the COVID-19 context include:</p> <ul style="list-style-type: none"> -the state of the COVID-19 containment situation in the worker’s particular city, region, province and workplace at the time the refusal to work is being exercised -the age and health of the specific worker -the type of workplace and type of work -the duties or tasks performed -the number of workers at the workplace and whether or not social distancing is possible -the measures adopted by the employer -if the worker has been diagnosed with COVID-19 or SARS-CoV-2 -whether the worker or the circumstances fall in one of the legislative exceptions to the right to refuse unsafe work |
| <p>Can Employers discipline or retaliate against workers for refusing unsafe work?</p> | <p>No. Section 150 of the BC <i>Workers Compensation Act</i> and Section 3.13 of the Regulations prohibit discriminatory action because the worker has acted in compliance with Section 3.12 or with an order made by a WorkSafeBC officer such as a Prevention Officer.</p> |
| <p>Can Employers ask other workers to perform the unsafe work?</p> | <p>No. If an Employer asks another worker to perform the same work that has been refused, the Employer must advise the other worker that there is a Right to Refuse unsafe work refusal occurring and what any potential hazards and risks might exist.</p> |
| <p>What if a worker disagrees with the decision of the Employer and / or WorkSafeBC?</p> | <p>The decision of the Employer is reviewable by the WorkSafeBC Prevention Officer or other officer, as part of the Right to Refuse process.</p> <p>The decision of the Prevention Officer is appealable (usually within 45 days of the decision).</p> |
| <p>Can workers prospectively refuse to perform work?</p> | <p>It is dependent on the specific circumstances as per the above. The key tests are is there a reasonable cause to believe there is an undue hazard?</p> |

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| <p>Can groups of workers refuse unsafe work?</p> | <p>It is circumstance dependent as per the above. Is there a reasonable cause to believe there is an undue hazard?</p> |
| <p>What else should Employers be doing to proactively ensure the health and safety of workers?</p> | <p>Employers must take all necessary precautions and due diligence to minimize the risks of COVID-19 transmission. Does the Employer have a current Health and Safety Program including a Joint Health and Safety Committee or Worker Representative? Has the Employer conducted Risk Assessments? Does the Employer have a current Exposure Control Plan? Is Personal Protective Equipment being provided as required?</p> |
| <p>Where can additional information be found?</p> | <p>See the CUPE National website at https://cupe.ca/; https://cupe.ca/refusing-unsafe-work-step-step-guide; and https://cupe.ca/health-and-safety-committee-resource-kit.</p> <p>See the CUPE BC OHS Committee website at https://www.cupe.bc.ca/occupational health and safety committee.</p> <p>See WorkSafeBC at https://www.worksafebc.com/en/health-safety/create-manage/rights-responsibilities/refusing-unsafe-work; https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-guidelines/guidelines-part-03#F9437EF9868C4322BF4394FA043EEA79 and https://www.worksafebc.com/en/resources/health-safety/checklist/due-diligence-checklist?lang=en</p> |