



Ontario Health Care Health and Safety Committee Under Section 21 of the Occupational Health and Safety Act

**Guidance Note for Workplace Parties #7
Right to Refuse Unsafe Work**

September, 2014



About This Guidance Note

This Guidance Note has been prepared to assist the workplace parties in understanding their obligations under the *Occupational Health and Safety Act* (OHSA) and the regulations. It is not intended to replace the OHSA or the regulations and reference should always be made to the official version of the legislation.

It is the responsibility of the workplace parties to ensure compliance with the legislation. This Guidance note does not constitute legal advice. If you require assistance with respect to the interpretation of the legislation and its potential application in specific circumstances, please contact your legal counsel.

While this Guidance Note will also be available to Ministry of Labour inspectors, they will apply and enforce the OHSA and its regulations based on the facts as they may find them in the workplace. This Guidance Note does not affect their enforcement discretion in any way.



Health Care Section 21 Committee¹

Guidance Note for Workplace Parties #7 Issue: Right to Refuse

Process

This document has been developed by the management and labour representatives of the Ontario Health Care Health and Safety Committee under Section 21 of the Occupational Health and Safety Act (OHSA) to ensure that appropriate, consistent information is made available to healthcare workplaces, to support them in assessing practice against legislative requirements and recommended good practices.

1. Purpose of this Guidance Note

Health Care *Guidance Notes* are intended for all health care organizations, to provide advice to workplace parties related to legislative requirements and good practices applicable to the prevention of illness and injury to health care workers. Health Care *Guidance Notes* are applicable to all organizations that provide health care, treatment, diagnostic services, personal care and/or supportive services in either health care organizations, community service agencies and emergency medical services.

The *OHSA* requires **all** workplace parties to work together to identify and control health and safety hazards. Occupational health and safety is promoted through partnerships, education and enforcement of the *OHSA*. The goal of occupational health and safety education is to ensure people have appropriate knowledge at all levels of the workplace so that healthcare workplaces and workers are safe.

Although the actual intent of *Guidance Notes* is to assist the workplace parties in achieving compliance and sharing good practices, Ministry of Labour inspectors may use *Guidance Notes* as an additional resource when conducting inspections and investigations. See Appendix B for information on the process and purpose of *Guidance Notes*.

¹ The Ontario Health Care Health and Safety Committee under Section 21 of the *Occupational Health and Safety Act* (the “Health Care Section 21 Committee”) was announced by the Minister of Labour on September 18, 2006. The July 11, 2006 Terms of Reference set out the mandate of the Health Care Section 21 Committee. The Objectives of the Health Care Section 21 Committee is to advise and make recommendations to the Minister of Labour on matters relating to occupational health and safety of all health care workers in Ontario. The scope of the Health Care Section 21 Committee is to review occupational health and safety issues related to health care workers that have provincial impact.

2. Introduction

This *Guidance Note* describes a worker's right to refuse work that he or she believes is unsafe and provides a procedure workplace parties should follow when responding to a health care worker's right to refuse unsafe work.

Health care workers have the right to refuse unsafe work as described by the *Occupational Health and Safety Act* (OHSA). This right has limitations for certain workers including some health care workers, as described below. The right to refuse unsafe work is a key right under the (OHSA). Identifying hazards and finding solutions to eliminate, reduce, or control the risk before it becomes an immediate dangerous condition ought to be the employer's first response, i.e., to protect workers and prevent exposures/injury/illnesses in the workplace.

All workers have obligations under OHSA to report to their supervisors or employers any hazards they are aware of and any contraventions of OHSA or its regulations (OHSA ss.28 (1)(d).

All employers and supervisors have an obligation to take every precaution reasonable in the circumstances for the protection of the worker.

3. Relevant Legislative and Regulatory Provisions

In Ontario, the OHSA establishes the right of workers to refuse work that they believe is likely to endanger without fear of reprisal by the employer. Section 43 of the OHSA establishes the general circumstances in which a worker can refuse. These circumstances are where the worker has reason to believe that:

- Any equipment, machine, device or thing the worker is to use or operate is likely to endanger the worker or another worker;
- The physical condition of the workplace or the part thereof in which the worker works or is to work is likely to endanger the worker;
- Any equipment, machine, device or thing the worker is to use or operate or the physical condition of the workplace or the part thereof in which the worker works or is to work is in contravention of the OHSA or the regulations and such contravention is likely to endanger the worker or another worker; or
- Workplace violence is likely to endanger the worker.

Section 43 also sets out the procedure for workplace parties to follow when a worker refuses unsafe work. Section 50 prohibits an employer from intimidating, coercing, penalizing, disciplining suspending or dismissing or threatening to discipline, suspend or dismiss a worker because the worker has exercised the right to refuse unsafe work.

A complete list of applicable sections of the OHSA related to work refusals can be found in *Appendix A*.

4. Statutory Limits on Health Care Workers' Right to Refuse

Some workers such as health care workers employed in certain workplaces² specified under OHSA clause 43(2)(d), have limitations on their right to refuse work they believe is unsafe. Generally speaking, health care workers in facilities such as hospitals and long term care facilities have a limited right to refuse while those who work in the community may not have the same limitations on their right to refuse unsafe work.

Health care workers in certain workplaces (see paragraph above) have the right to refuse work that they believe is likely to endanger except:

- (a) when a circumstance (where a worker could otherwise refuse work – see list above) is inherent in the worker's work or is a normal condition of the worker's employment; or
- (b) when the worker's refusal to work would directly endanger the life, health or safety of another person.

Here is one example to explain the limitation:

An experienced medical lab technologist could not, in the course of his or her regular work, refuse to handle a blood sample from a patient with an infectious disease.

But the technologist could refuse to conduct the test for a highly infectious virus where the appropriate controls such as protective clothing, training, and engineering controls are not made available.

Potential exposure to infectious agents might be inherent in the workplace for a medical lab technologist, but working without the proper health and safety controls, measures and procedures is not "inherent" or a normal condition of that worker's employment.

Only those workers at health care related workplaces mentioned under clause 43(2)(d) of the OHSA have a limited right to refuse. Certain workers at workplaces in the health care sector that are not listed under clause 43(2)(d), such as home care and community workers, do not have limitations on their right to refuse unsafe work. Other provincial legislation may apply. For example, a worker who exercises his or her right to refuse work and who is a health professional subject to the *Regulated Health Professions Act, 1991* should also be aware of statutory obligations that they may have as members of their respective regulatory bodies.

²(d) a person employed in the operation of,

- (i) a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,
- (ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,
- (iii) an ambulance service or a first aid clinic or station,
- (iv) a laboratory operated by the Crown or licensed under the Laboratory and Specimen Collection Centre Licensing Act, or
- (v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclause (i) to (iv). R.S.O. 1990, c. O.1, s. 43 (2); 1997, c. 4, s. 84; 2001, c. 13, s. 22; 2006, c. 19, Sched. D, s. 14; 2007, c. 8, s. 221.

5. Reporting a hazard

All workers have obligations under OHSWA to report to their supervisors or employers any hazards they are aware of and any contraventions of OHSWA or its regulations (OHSWA s. 28(1)(d)). When a worker identifies a health and safety hazard, he/she must report that hazard to their supervisor. Workers are expected to take this step, before initiating a work refusal. If the supervisor cannot or will not resolve the concern in a timely fashion and the worker believes the hazard is likely to endanger himself, herself or another worker, then the worker may consider initiating a work refusal under s.43 of the OHSWA.

6. Procedure for Work Refusals

First Stage:

- The worker must immediately tell the supervisor or employer about the circumstances of the refusal. The worker should document the details pertaining to the work refusal.
- The worker does not actually have to say they are refusing work under the OHSWA for it to be considered a work refusal under the OHSWA. Supervisors/employers should be alert to situations where a worker reports he/she will not do specific work due to occupational health and safety concerns. These situations might be a work refusal under the OHSWA and must be investigated immediately and before the work can be reassigned.
- The supervisor or employer must investigate the situation immediately, in the presence of the refusing worker and a worker representative from the Joint Health and Safety Committee (if any), health and safety representative (if any in workplaces with 6 to 19 workers) or another worker chosen by the union, or where there is no union, chosen by the workers, because of her or his knowledge, experience and training (hereinafter referred to as the worker representative).
- It is good practice in situations where workers are working in clients' homes, for the union(s) in that workplace to select worker representative(s) who can be made available and are able to attend work refusals in person without delay. Where there is no union, workers should select representatives accordingly. It is a good practice in home care workplaces, for employers and/or supervisors to request a list of those pre-selected representatives who can be called upon to attend work refusals in person without delay.
- The refusing worker must remain in a safe place that is as near as reasonably possible to the worker's work station and remain available to the employer or supervisor for the purposes of the investigation, until the investigation is completed.
- In situations where a worker is working in a client's home at the time of the work refusal, the worker must remain in a safe place. This may be inside or outside of the client's home, depending on the nature of the hazard. The worker must remain available to the employer or supervisor for the purposes of the investigation, until the investigation is completed.

- If the situation is resolved after the employer or supervisor and worker representative have completed their investigation, the worker will return to work.

Second Stage:

- If the worker has reasonable grounds to believe that the work is still unsafe following the supervisor/employer's investigation, answers and/or corrective measures then the worker can continue to refuse.
 - ◇ **Example:** a cleaner in a hospital reports that a small utility room smells strange and her eyes started to burn within a few minutes of entering the room. She calls her supervisor and tells her that she is afraid to re-enter the utility room to perform her usual tasks. When the supervisor and worker representative investigate with the refusing worker, the supervisor and worker representative agree there is an unusual smell but only the worker rep experiences eye irritation. The supervisor speculates that maybe there was an earlier spill of some sort that was cleaned up since they can't see the source of the odour. She doesn't think the hazard is serious and asks the worker go back to work in the room. The worker continues to refuse because her eyes are irritated and watering and she thinks that something in the room is causing her symptoms. The Ministry of Labour must now be called immediately.
- Where the worker continues to believe the work is unsafe, the employer, refusing worker, or the worker representative, must then notify the Ministry of Labour (MOL). An MOL inspector will come to the workplace to investigate the refusal in consultation with all three parties.
- While waiting for the MOL inspector's investigation to be completed, the worker must remain in his or her safe place as described above, unless the employer (subject to any collective agreement) assigns some other reasonable work during the worker's regularly scheduled working hours. If no such work exists, subject to section 50 of the OHS Act (no reprisals), the employer can give other directions to the worker.
- While waiting for the MOL inspector to complete his/her investigation, no other worker shall be assigned to do the work that has been refused unless, in the presence of the worker representative, the second worker has been advised of the first worker's refusal and of his or her reasons for the refusal. This must be done in the presence of a committee member who represents workers and, if possible, who is a certified member; a health and safety representative; or the worker chosen because of his/her knowledge, experience and training by the union (if any) or the other workers.
- The inspector must decide whether the work is likely to endanger the worker or another person. The inspector's decision must be given, in writing, to the refusing worker, the employer and the worker representative. If the inspector finds that the work is not likely to endanger anyone, the refusing worker will normally return to work as soon as practicable.

No Reprisals

- The supervisor/employer is prohibited under section 50 of the OHSA from penalizing, dismissing, disciplining, suspending or threatening to dismiss, discipline or suspend a worker who has exercised his/her right to refuse unsafe work in good faith. Note that to exercise an initial right to refuse, the worker does not need to be correct; she or he only needs to have “reason to believe” that unsafe circumstances exist (See Appendix A for additional resources).



Appendix A Legislation and Guidelines

Statutes and Regulations

Occupational Health and Safety Act, R.S.O., 1990 c.0.1
OHSA Part V – Right to Refuse Section 43
OHSA Part VI – Reprisals by Employer Prohibited Section 50

Occupational Health and Safety Awareness and Training (O. Reg. 297/13)
http://www.e-laws.gov.on.ca/html/source/regs/english/2013/elaws_src_regs_r13297_e.htm

Ministry of Labour Publications

A Guide to the Occupational Health and Safety Act
http://www.labour.gov.on.ca/english/hs/pdf/ohsa_g.pdf

Ministry resources on Reprisals
<http://www.labour.gov.on.ca/english/hs/topics/reprisal.php>

A Guide to [OHSA](#) Requirements for Basic Awareness Training
http://www.labour.gov.on.ca/english/hs/pubs/training_guide/index.php

Health and Safety Training for workers and supervisors
<http://www.labour.gov.on.ca/english/hs/training/index.php>

- [Health & Safety at Work - "Prevention Starts Here" Awareness Poster](#)
- [Worker Health and Safety Awareness in 4 Steps](#)
- [Supervisor Health and Safety Awareness in 5 Steps](#)

Other Information

Web sites of the various healthcare unions, employers, associations and Health and Safety Associations (HSAs) also have additional information, including documents that outline a step-by-step process to help the workplace parties comply with requirements in the OHSA. Some organizations provide on their websites examples and/or templates for written recommendations that can be tailored to the needs of individual workplaces.



Appendix B Health Care Section 21 Committee³ Process and Purpose of Guidance Notes

Process

This document has been developed and reviewed by the management and labour representatives of the Ontario Health Care Health and Safety Committee appointed under Section 21 of *the Occupational Health and Safety Act* (OHS) to ensure that appropriate, consistent information is made available to health care workplaces, to support them in assessing practice against legislative requirements and recommended good practices.

Purpose

Health Care *Guidance Notes* are intended for all healthcare organizations, to provide advice to workplace parties related to legislative requirements and good practices applicable to the prevention of illness and injury to health care workers. Health Care *Guidance Notes* are applicable to all organizations that provide healthcare, treatment, diagnostic services, personal care and/or supportive services in either healthcare organizations, community service agencies and emergency medical services.

The intent of *Guidance Notes* is to assist the workplace parties in achieving compliance and sharing good practices. *Guidance Notes* are also intended to assist other parties who play decision-making roles that ultimately impact occupational health and safety (OHS) in the health care sector.

Although the actual intent of *Guidance Notes*⁴ is to assist the workplace parties in achieving compliance and sharing good practices, Ministry of Labour inspectors may use *Guidance Notes* as an additional resource when conducting inspections and investigations.

³ The Ontario Health Care Health and Safety Committee under Section 21 of the *Occupational Health and Safety Act* (the “Health Care Section 21 Committee”) was announced by the Minister of Labour on September 18, 2006. The July 11, 2006 Terms of Reference set out the mandate of the Health Care Section 21 Committee. The Objective of the Health Care Section 21 Committee is to advise and make recommendations to the Minister of Labour on matters relating to occupational health and safety of all health care workers in Ontario. The scope of the Health Care Section 21 Committee is to review occupational health and safety issues related to health care workers that have provincial impact

Health Care Guidance Notes have been prepared and approved by the Members of the Health Care Section 21 Committee.

The Committee membership includes:

Members for Organized Labour:

- Unifor <http://www.unifor.org/>
- Canadian Union of Public Employees (CUPE) <http://www.cupe.on.ca>
- Ontario Federation of Labour (OFL) <http://www.ofl.ca>
- Ontario Nurses' Association (ONA) <http://www.ona.org>
- Ontario Public Service Employees Union (OPSEU) <http://www.opseu.org>
- Service Employees International Union (SEIU) <http://www.seiu.org>

Members for Employers:

- Ontario Association of Community Care Access Centres (OACCAC) <http://www.ccac-ont.ca>
- Ontario Association of Non-Profit Homes and Services for Seniors (OANHSS) <http://www.oanhss.org>
- Ontario Community Support Association (OCSA) <http://www.ocsa.on.ca>
- Ontario Home Care Association (OHCA) <http://www.homecareontario.ca>
- Ontario Hospital Association (OHA) <http://www.oha.com>
- Ontario Long Term Care Association (OLTCA) <http://www.oltca.com>

Additional resources include:

Observers:

- Public Services Health and Safety Association (PSHSA)
- The Ministry of Health and Long-Term Care (MOHLTC)
- The Ministry of Community and Social Services (MCSS)

Facilitator:

- The Ministry of Labour