

Your Right to Refuse Unsafe Work

As a front-line worker, you need to be able to protect yourself and your patients, residents and clients from increased risk of harm in the health-care setting. This includes risk of exposure to such hazards as infectious diseases, repetitive strain injuries, violence, etc.

The right to refuse unsafe work is a decision that only a worker can make based on their own belief about their safety in a particular situation. It is also important to understand the standards of practice established by the College of Nurses of Ontario (CNO) and other regulatory bodies when considering a refusal of unsafe work (see page three).

Employers at Ontario health-care facilities are responsible for providing a safe practice setting, where every reasonable precaution under the circumstances is taken to protect ONA members and other workers. See *Occupational Health and Safety Act (OHSA)*, Section 25 (2)(h).

This includes providing the appropriate procedures, equipment, staffing and training for safe and effective infection control, safe patient handling, protection against violence, etc.

Under the *OHSA*, employers are obligated to ensure that all workers are aware of, trained on and current on such

things as hazard information, material safety data sheets, employer policies and procedures, and provincial directives regarding infectious diseases.

While you are protected under the *OHSA*, if you work in a health-care or residential facility, there are limitations on your right to refuse unsafe work.

In the next few pages, this special feature will provide you with information on this right and how it may apply in your workplace.

Statutory Right to Refuse Unsafe Work

In Ontario, the *OHSA* establishes the right to refuse unsafe work without fear of reprisal. Section 43 of the *OHSA* defines the circumstances in which you can refuse unsafe work. For instance, you can refuse unsafe work if you have reason to believe that:

- The physical condition of the workplace or your specific work area is likely to endanger you or others.
- The physical condition of the workplace contravenes the *OHSA* or regulations, and is likely to pose a danger to you or others.
- Any equipment, machine, or device you are required to use or operate is likely to endanger you or another worker.

Section 43 also sets out the procedures to be followed when a worker refuses unsafe work.

Section 50 sets out the complementary right of a worker not to be fired, disciplined, or threatened, etc., for exercising this right.

Statutory Limits on ONA Members' Right to Refuse

For most ONA members, the right to refuse unsafe work is restricted. According to the *OHSA*, restrictions apply to those who work in a "hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility; a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability; or an ambulance service or a first-aid clinic or station," etc.

Under Section 43 (1) of the *OHSA*, you cannot refuse work in a situation that is considered a normal condition of your employment, such as the regular or "inherent" conditions of your handling of patients. Nor would it apply if your work refusal directly endangers the life, health or safety of another person.

However, in some cases, if the situation is outside the normal conditions of your employment, the limitation may not be applied.

An example of this involved an ONA work refusal that arose during the SARS crisis in 2003. An ONA member exercised her right to refuse unsafe work when the employer requested she care for a SARS patient without being fitted with the required N95 respirator.

The Ministry of Labour, Training and Skills Development (MOLTSD) upheld her work refusal and ordered that she not be required to care for a SARS patient until

Considerations for a Right to Refuse Unsafe Work

Most ONA members have a right to refuse to work where unsafe conditions exist and they are not adequately protected. Individual circumstances, such as lack of adequate respiratory protection, need to be addressed at the institutional level and the member will need to make a judgment call, realistically weighing the risks against the patient's need for care. A lack of respiratory protection is a serious matter and, in our opinion, a reason to support a work refusal. For example, a fire fighter would not be sent to enter a burning building without his safety gear and apparatus, nor should an ONA member or front-line worker be sent to care for a COVID-19 positive patient who is coughing and sneezing, without an N95 respirator.

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she was properly fit-tested with an N95 respirator. The employer was ordered to further comply with Section 10 of the *Health Care Regulation* (fit-testing section), and to develop a plan to immediately fit-test all workers.

If you choose to refuse work because adequate protection was not made available to you, ONA believes the limitation set out in the *OHSA* would not apply.

ONA members who work in areas outside of those specified in the *OHSA*, such as public health, Local Health Integrated Networks (LHINs), the community, industry and clinics, have the right to refuse unsafe work; and the limitations set out in the *OHSA* do not apply to them.

Of course, all ONA members in the regulated health professions are bound by their obligations to their regulatory colleges, such as the CNO. (See: *Your Regulatory Body and Unsafe Working Conditions*, pg. 3).

Protection Against Employer Reprisals

Your employer does not have the right to penalize, dismiss, discipline, suspend or threaten to do any of these things to a worker who has used the right to refuse unsafe work process in good faith.

In order to exercise an initial right to refuse unsafe work, you do not need to be correct; you only need to have reason to believe that unsafe circumstances exist.

If you decide to continue your work refusal after the MOLTSD inspector decides conditions are safe, you need to understand that you are taking a great risk. At this stage of the process, if you are disciplined for refusing to return to work, you will need to convince a tribunal that unsafe conditions continued to exist and that the inspector was wrong.

Consult your Local Executive/Bargaining Unit President for advice and assistance if you are disciplined or threatened after exercising your right to refuse unsafe work. Your union reps will in turn consult with your Labour Relations Officer as necessary.

In a case where an ONA member has been unjustly disciplined, ONA may seek arbitration for a violation of the collective agreement or make a complaint to the Ontario Labour Relations Board. In either case, the burden of proof is on the employer.

Steps to Follow for Refusing Unsafe Work Under the Occupational Health and Safety Act

STAGE 1

- 1 Tell your supervisor or employer immediately that you are refusing to work, stop doing the work and explain why. It is important to keep your professional obligations in mind and consider what needs to be done for the safety of the patient in the situation. Ensure you document all the details pertaining to your work refusal.
- 2 Your supervisor or employer must investigate the situation immediately in your presence and in the presence of a worker member of the Joint Health and Safety Committee (JHSC) who must be made immediately available. In a smaller workplace where a JHSC is not required, the employer must make the health and safety representative available. When neither of these is available, the supervisor must investigate with someone selected by your Bargaining Unit with knowledge, experience and training in occupational health and safety matters.
- 3 You must stay in a safe place near your workstation and remain available to the employer or supervisor for the investigation, until it is completed. If the situation has been resolved, you may return to work.
- 4 Following the investigation, you can continue to refuse the work if you have reasonable grounds to believe the work is still unsafe.

STAGE 2

- 1 Your employer, you, or your Bargaining Unit representative must notify an MOLTSD inspector if you continue your work refusal after the workplace investigation. The inspector will investigate, and consult with you and your employer (or designate). The worker representative from Stage 1 will also be consulted as part of the investigation.
- 2 While waiting for the investigation to be completed, stay in a safe place near your workstation, unless your employer assigns some other reasonable work during normal working hours. Until the inspector renders a decision, no other worker shall be assigned to the work you refused unless, in the presence of a worker health and safety representative, that worker is advised of your refusal and the reasons for doing so.
- 3 The inspector must decide whether the work is likely to endanger you or another person. The inspector's decision must be in writing and provided to you, your employer and your worker representative. If the inspector finds the work is not likely to endanger anyone, you will be expected to return to work. If you continue to refuse to work after an inspector has decided the work is safe, and you are disciplined for doing so, you will need to convince a tribunal that the inspector is wrong and will need evidence that unsafe circumstances existed.

Your Regulatory Body and Unsafe Working Conditions

Registered nurses and other regulated health care workers must consider the standards of practice established by their professional regulatory colleges when looking at refusing unsafe work.

Even if in a particular circumstance, you have the right to refuse unsafe work under the OHSA, what will your college do? The various colleges have different statutory considerations when looking at refusals of unsafe work.

For example, as a follow-up to SARS, the CNO developed a new standard, "Refusing Assignments and Discontinuing Nursing Services" (CNO, 2017), which details the guidelines and regulations that registered nurses are obligated to follow when exercising their right to refuse unsafe work. This is also relevant today during the current COVID-19 pandemic.

CNO states that nurses have the right to refuse when 'they believe' that an assignment will subject them or their patient, resident or client to an unacceptable level of risk. Also, nurses are accountable to advocate for their patients' safety, and administrative nurses are accountable to advocate for a quality practice setting.

See the February 2020 CNO Standard magazine for more at: www.cno.org/en/learn-about-standards-guidelines/magazines-newsletters/the-standard/february-2020/novel-coronavirus/

Nurses have the right to refuse assignments they believe will subject them or their clients to an unacceptable level of risk (CNO, 2017). Nurses working in unsafe situations assume a level of risk and may need to determine for themselves if the risk is too high. Personal safety, as well as professional and ethical issues, need to be considered, but as with most ethical choices, there is no single answer that clearly resolves the issue. Nurses must consider their rights, as well as their responsibilities, and use a problem-solving approach.

If you choose to refuse an unsafe assignment, you can still meet professional obligations to your patient, resident or client by informing your employer of why you are refusing, documenting your decision-making process and attempting to provide the employer with enough time to find a suitable replacement.

If the reasons for the refusal are resource- or support-based, following these steps will demonstrate your commitment to a quality practice setting:

1. Assess the situation to determine the problem, the key individuals affected by the problem and the decision needed.
2. Gather additional information to clarify the problem.
3. Identify the safety, professional and ethical issues.
4. Identify who should make the decision (e.g., you alone; you and the Occupational Health and Safety Representative; or you and your college).
5. Identify the range of actions that are possible and their anticipated outcomes.
6. Determine a course of action and carry it out.

This decision-making process can be applied in most unsafe work situations. Using this process also shows a commitment to ongoing reflective practice.

The CNO or your regulatory body could require you to demonstrate that you have taken all available steps to protect yourself before you exercise your right to refuse. Ensure you are documenting every step that you take.

To document the impact of a work refusal on workload, use the Professional Responsibility Workload Report Form (PRWRF) and the process in your collective agreement. Should it be determined that the situation does not represent a work refusal, the PRWRF process would assist you in bringing forth the relevant concerns to your employer.

If there is a complaint or report to the CNO or your regulatory body arising out of your refusal to work, you should contact ONA's Legal Expense Assistance Plan (LEAP) Team Intake for immediate information and advice.

On written notification from the CNO, you will be provided with an advocate to represent you.

Also advise your Bargaining Unit President/Labour Relations Officer who can consult with a Professional Practice Specialist at ONA as needed. Before you speak to the CNO, contact LEAP at 416-964-8833 (toll-free 1-800-387-5580, enter 0) or by email: Leapintake@ona.org.



To find out specifically what your regulatory body says on the right to refuse unsafe work, refer to your specific college's standards of practice. For ONA nurse members, the document you would refer to is the "CNO Standard: Refusing Assignments and Discontinuing Nursing Services," and other relevant standards and practice guidelines, available on the CNO website at www.cno.org.

ONA Guide "My Right to Refuse Unsafe Work"

To find out more about your right to refuse unsafe work, download ONA's Guide "My Right to Refuse Unsafe Work," available on ONA's website at www.ona.org. You can find the guide by going to Member Services -> Publications, Discounts, Forms -> ONA Policy Manual, Guides and Toolkits.

Scenarios: Can I Refuse Unsafe Work?

The following scenarios, based on real workplace situations might prompt a member to exercise her or his right to refuse unsafe work. In each scenario, we provide ONA's view, based on the OHSA and the CNO's professional standards. If you are covered under a regulatory body other than the CNO, please consult with them before refusing any unsafe work.

SCENARIO 1

I have been assigned to care for a COVID-19 patient and after doing my point-of-care assessment (PCRA), I requested an N95 respirator and was denied. Can I refuse to work?

Answer

OHSA: In this circumstance, ONA believes the MOLTSO should support your work refusal. While an infectious agent like COVID-19 may be expected in a health-care workplace, it is not inherent in your work (especially after conducting your PCRA, as per Directive #5) that you work in an area where an infectious agent is present, without being protected by the appropriate personal protective equipment – at minimum, an N95 respirator.

CNO: ONA believes the CNO should support your work refusal. Nurses have the right to refuse work where unsafe conditions exist and they cannot be adequately protected through infection control measures, i.e. provision of an N95 respirator when providing care to a COVID-19 patient. According to the CNO, nurses can withhold services if they: 1. Provide an appropriate rationale; 2. Notify the employer of the risk/protection concerns when infection control is inadequate; 3. Hand over the care responsibilities for assigned patients/clients/residents to the supervisor. When nurses withhold patient care services, careful decision-making is required. Be sure to document the situation carefully step-by-step. In the event the CNO becomes involved, all circumstances pertaining to the situation will be considered on an individual case-by-case basis.

SCENARIO 2

I am a community care nurse. We are not provided with cell phones or other means of communicating. I am to drive to a remote area to provide care to a recovering surgical patient.

The home is located five kilometres down a dirt road. I was there last week in good weather. The road is narrow and not well kept and I had some difficulty keeping the car on the road. The weather forecast today calls for freezing rain. I believe it is not safe for me to visit this patient this afternoon. I have expressed my concerns to my supervisor who simply tells me to drive carefully. Can I refuse to work?

Answer

OHSA: ONA believes the MOLTSO would uphold your work refusal. Unlike hospital and home workers, LHIN, community, health unit and industry and clinic workers are not identified among those who have a limited right to refuse unsafe work under Section 43(1) (2) of the OHSA. As such, if you have reason to believe the physical conditions of the workplace are likely to endanger you, you can legally refuse to work. In this case, you have personal knowledge of the physical condition of the road, and in good weather, you experienced difficulty. The weather forecast of freezing rain gives you reason to believe you will most likely be endangered.

CNO: Nurses need to demonstrate a problem-solving approach when making decisions about refusing an assignment. The CNO will only support a refusal if you can demonstrate how the situation was solved/resolved (e.g. telephone call to local municipality to see if the road will be sanded by the afternoon, telephone call to the patient's family to see if someone would be with the patient in the afternoon and if they would be comfortable with you doing a phone visit).

SCENARIO 3

I work in a psychiatric ward and my colleagues and I have been subject to abuse in the past in one form or another. I have approached my

employer with my concerns, yet nothing further has been done to protect my health and safety. Tonight, I must care for a violent patient by myself as we are short-staffed and I have reason to believe I will be injured. I have requested security to be present on the unit for the shift and the request was denied by the manager. Can I refuse to work?

Answer

OHSA: Despite knowing the risks associated with nursing and violence, the MOLTSO would not necessarily uphold a work refusal. They could argue that the right to refuse language in the OHSA is rooted in “the physical condition of the workplace.” So something physical in the workplace must pose a hazard for the MOLTSO to find that a worker can refuse to work. With such an interpretation, it appears the MOLTSO would not support a work refusal unless/until the aggressor threatens a worker with a physical object. ONA disagrees. We believe you may exercise your right to refuse; however, because of your regulatory body, you must do so carefully.

Even if the MOLTSO downgrades your work refusal to a complaint, the MOLTSO may still issue orders if they find that measures, procedures, training and equipment (e.g. such as personal panic alarms that can summon immediate assistance when violence is occurring) are not in place to protect the safety of workers. In cases where the hazard is clear, such as your panic button does not exist or work or security equipment is not functioning properly, and you have reason to believe you will be injured, we believe that it is clearer that the MOLTSO would uphold the work refusal.

CNO: ONA believes solo nursing on a potentially violent psychiatric unit puts both the nurse and other patients at risk. Therefore, the CNO should support you. You would need to notify your employer of your concerns, advocate for quality patient care, request additional staffing and document the situation. Give the employer as much notice as is possible so other arrangements can be made for patient care.