



Right to Refuse Unsafe Work

Tip Sheet

What are the circumstances listed in the *Occupational Health and Safety Act (OHSA)* for which a worker can refuse to work?

The right to refuse unsafe work is a personal decision of a worker that must be based on their own belief that their work or task will endanger their health and safety.

Section 43, Subsection 3 of the *OHSA* outlines the circumstances for which a worker can exercise their right to refuse unsafe work, where they believe one of the following circumstances exist:

- Any equipment, machine, device or thing the worker is to use or operate is likely to endanger them or another worker. This would include situations where the employer does not have in place the necessary personal protective equipment (including N95 respirators) for health care workers to safely perform their work;
- The physical condition of the workplace or a part of it in which the worker works or is to work is likely to endanger the worker; or
- When one of the two circumstances is in violation of the *OHSA* or its regulations and is likely to endanger the worker or another worker; or
- When workplace violence is likely to endanger the worker.

What are the limitations on a health-care worker's right to refuse unsafe work compared to other workers?

Hospital and long-term care home workers can't refuse when:

- a) A circumstance 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.

There is an exception to this rule. While it is inherent in their job to care for an infectious patient, it's not inherent to care for them without all of the proper Personal Protective Equipment (PPE).

Is refusing to accept unsafe work considered abandonment of the care recipient by regulatory colleges?

There is a distinction between refusing to accept an unsafe assignment, which may trigger a work refusal under the *OHSA*, and abandonment of the patient.

Abandonment occurs when a member has accepted an assignment and discontinues care without:

- The patient requesting the discontinuation;
- Arranging a suitable alternative or replacement service; or
- Allowing a reasonable opportunity for alternative or replacement services.

The discontinuation of professional services could lead to professional misconduct unless the aforementioned conditions have been met.

In the current environment, the right to refuse that we are discussing is related to the inability to be protected and provide safe, quality patient care.

What are the stages in a work refusal?

Stage 1	<ul style="list-style-type: none">• Where a worker believes their work or task will endanger their health and safety, they must immediately report the refusal and circumstances of it to their supervisor or employer and must stop doing the work they are refusing.• Employer or supervisor must investigate in the presence of the worker and the worker's Joint Health and Safety Committee (JHSC) rep or a worker rep chosen by their trade union.• Refusing worker must remain in a safe place as near as possible to their workstation, and remain available to the employer or supervisor for the investigation, until it is completed.• If resolved, the worker goes back to work.• If it's not resolved, the worker can continue to refuse as long as they have reasonable grounds for believing that the circumstances that caused them to initially refuse work continues.
Stage 2	<ul style="list-style-type: none">• The Ministry of Labour (MOL) must be notified and is to come to the workplace to investigate in the company of those same workplace parties from Stage 1.• The worker is to remain in a safe place and be available to the inspector and can be offered other work if it doesn't conflict with the collective agreement.• The inspector will make a decision that the work was either likely to endanger the worker or it wasn't likely to endanger.• If the inspector deems it not likely to endanger the worker, the worker is expected to return to work under the <i>OHSA</i>.
If the employer won't protect you or the MOL won't uphold the work refusal, ONA will look at the facts and: <ul style="list-style-type: none">• Determine if we should file a grievance; and/or,• File an appeal with the Ontario Labour Relations Board appealing the inspector's lack of orders or decision of the inspector; and/or,• Pursue it through the professional practice language if in your collective agreement.	

What are some tips for a successful work refusal?

- Actually stop the work you are refusing.
- When refusing work, let your supervisor and/or the MOL know that once you are protected adequately, you will care for the patient or do the work or task and document it.
- The employer must investigate the refusal. The employer does not get to decide if your right to refuse is limited. That is for the inspector to decide.
- Use your JHSC worker member and ONA Bargaining Unit President to advocate for how the lack of personal protective equipment makes the work unsafe and make the employer comply with the law.
- Any worker can file a complaint with the MOL if the employer is risking their health and safety or won't investigate a work refusal. Remember to contact your ONA JHSC member and Bargaining Unit President for support.

Remember, under the *OHSA*, the employer cannot engage in any form of reprisal including termination or discipline of a worker for refusing unsafe work or for asking them to address a health and safety issue. If they do, immediately notify your Bargaining Unit President.