Unresolved Health and Safety Concerns: Guidelines re: When to Call the Ministry of Labour

Action: Raise unresolved health and safety concerns as high as necessary and as quickly as necessary to make workers safe

Introduction

Among their functions, Ministry of Labour (MOL) inspectors are expected to investigate:

1. Internal Responsibility System (IRS) failures and other complaints.
2. Critical and fatal injuries/illnesses.
3. Work refusals/work stoppages.

When the inspector finds sufficient evidence, s/he can enforce the law by issuing orders and/or laying charges under the Occupational Health and Safety Act (OHSA).

This document is designed to assist ONA members with deciding when it is appropriate to call the MOL for help in their workplace.

Who Can Call the Ministry of Labour?

Anyone can call the Ministry of Labour. There is nothing in law prohibiting a worker, union representative/official, or anyone from calling the MOL at any time.

When Should the MOL be Called?

1. When the IRS fails to resolve concerns

Employers, supervisors, workers, Joint Health and Safety Committee (JHSC) members and others must perform their duties as expressed in the OHSA, and may exercise the rights that are outlined. The government established this legal system of “internal responsibility” in hopes that workplace parties would work together to achieve safe and healthy workplaces without formal intervention (see Appendix A for diagram of IRS).

ONA recommends that wherever possible, use the IRS. But don’t let issues drag on.

When:

a. exposure to a serious hazard is imminent or

b. there is prolonged potential or actual exposure to a hazard due to the failure or the sluggishness of the IRS.

- Raise the issue with the employer as high as necessary (e.g. JHSC, director, CEO, Board of Directors) and as quickly as necessary (e.g. phone, e-mail, in person) to protect a worker.
• Work with your Labour Relations Officer (LRO), who will assist in raising the issue within the union as high as necessary and as quickly as necessary to protect a worker (e.g. JHSC, Local Coordinator, specialists, manager, Strategy Team, Board of Directors, Communications and Government Relations Team).
  
  o Consider grieving where appropriate/available, but don’t just rely on the grievance process to save someone from injury/illness. Use the law and the MOL.

When internal workplace efforts to resolve a health and safety concern fail, call the MOL.

2. When an employer fails to notify the MOL of a fatal or critical injury and/or does not permit the JHSC to investigate

The employer is required by sections 51-53 of the OHSA to report critical and fatal injuries to the MOL, the union and the JHSC, and section 9 empowers the JHSC to investigate. When an employer does not comply with these sections, call the MOL.

3. When work refusal reaches “second stage”

When a worker exercises her/his right to refuse unsafe work, the supervisor or employer must immediately investigate in the presence of the worker and a JHSC worker member. (OHSA section 43). If the concern is not resolved and the worker has reasonable grounds that the work continues to be unsafe, the worker can continue to refuse. At this “second stage” of the refusal, the MOL must be notified.

When bilateral work stoppage is not resolved

A certified JHSC member who has reason to believe that “dangerous circumstances” (defined in OHSA section 44) exist may request an investigation by a supervisor, and thereafter by a second certified member. If the investigations do not resolve the concern, the MOL must be notified.

How to Make Your Call to the MOL Effective

Be aware that MOL intake officers often ask a caller if s/he has exhausted the IRS before calling the MOL.

If the caller answers in the negative, some of these officers have been known to refuse to pass on the information or send an inspector. ONA has convinced upper levels of the MOL that the IRS is generally not working in health care facilities and that we need the assistance of the MOL to prod employers to comply with their legal duty to establish functioning Internal Responsibility Systems. If necessary, remind the MOL that because our members have a limited right to refuse unsafe work, and the only thing between her/him and imminent jeopardy may be the MOL, the Ministry long ago committed to responding to our members’ complaints on a “priority complaint basis” (see memo at Appendix B).

Also, the IRS is implicit in the Occupational Health and Safety Act. While it is the preferred process of resolving health and safety concerns, there is nothing in law prohibiting a worker, union representative or anyone from calling the MOL at any time.

For a listing of Ontario Ministry of Labour telephone numbers, see Appendix C.
Worker to Suffer no Reprisals for Calling the MOL

The *Occupational Health and Safety Act* has a section (50) that is intended to protect you from reprisals by your employer when you obey the law or exercise your rights. The Ministry of Labour website says you also cannot be penalized if you provide information to a MOL inspector, follow an order of an inspector, or testify in a legal proceeding. If you think you or your members have suffered a reprisal, you or your members can file a complaint to the Ontario Labour Relations Board (OLRB) or file a grievance. The employer has the onus to prove that they did not act illegally.

Unsatisfactory MOL Decision

When not satisfied with an inspector’s decision, work with your LRO who will assist in your and your union’s efforts to raise the issue within the MOL/government as high as necessary and as quickly as necessary to protect a worker (e.g. MOL manager, director, Assistant Deputy Minister, Deputy Minister, Premier)

- With your LRO, consider appeal of inspector decision (**30-day time limit**) as appropriate.
Appendix A – Internal Responsibility System
Procedure for Resolving Health and Safety Problems

Raise unresolved health and safety concerns as high as necessary and as quickly as necessary to make workers safe. Consult your LRO as needed.
APPENDIX B

MOL Memo Confirming Priority Response to Complaints

-----Original Message-----
From: Savoia, Filomena (MOL)
Sent: Monday, April 25, 2005 4:56 PM
To: Ballanger-Michaud, Candys (MOL); Dennis, Sophie (MOL); Lemire, Brian (MOL); McCloskey, Ed (MOL); Medeiros, Margaret M. (MOL); Pakalnis, Vic (MOL); Tosine, Helle (MOL); Walker, David (MOL)
Cc: Nagalingam, Nax (MOL); Hall, Don (MOL); Deck, Bernie (MOL); U, Dominica (MOL); Medeiros, Margaret M. (MOL); Lynett, Bridget (MOL); Pelosi, Pina (MOL)
Subject: Revisions to Work Refusal Policy
Importance: High

To Directors
Program Managers
Regional Program Coordinators
Field Staff

From: Fil Savoia
A/Director
OHSB

Re: Work Refusals - limited right to refuse

Revisions to the Work Refusal and Complaints Policies are in the process of being finalised. Please be advised that the revised version of the Work Refusal and Complaints Policies will reflect the following policy statement to ensure protection for those workers who have a limited right to refuse unsafe work.

As an interim policy, all complaints and work refusals, including complaints of workplace violence from workers with a limited right to refuse unsafe work, must be investigated on a priority complaint basis.

Please advise all appropriate staff accordingly.

Thank you

cc: Helle Tosine, ADM, Operations
Ontario Ministry of Labour Telephone Numbers

Established in 1919 to develop and enforce labour legislation, the mission of the Ministry of Labour (MOL) is to advance safe, fair and harmonious workplace practices that are essential to the social and economic well-being of the people of Ontario.

Through the Ministry’s key areas of occupational health and safety, employment rights and responsibilities, labour relations and internal administration, the Ministry’s mandate is to set, communicate and enforce workplace standards while encouraging greater workplace self-reliance. A range of specialized agencies, boards and commissions assist the Ministry in its work.

Ministry of Labour Main Office – Toronto
Occupational Health and Safety Branch
505 University Ave., 19th Floor
Toronto, ON M7A 1T7
Tel: 1-877-202-0008
Fax: (416) 326-7761
Website: www.labour.gov.on.ca

Ministry of Labour Health and Safety Contact Centre
There is a new toll-free number to call anywhere in Ontario – 1-877-202-0008 – to report workplace health and safety incidents or unsafe work practices, critical injury, fatality or work refusal. You can also call if you suspect unsafe work practices or for general inquiries.

The number operates 24 hours a day, seven days a week.

MOL Regional Offices
To report fatalities and critical injuries during day-time hours, contact the number for the region applicable to you. To report fatalities and critical injuries after hours (after 5 p.m. on weekends or holidays), call toll-free 1-877-202-0008.

Northern Region

**North Bay**
101 McIntyre St. W.,
2nd Floor,
North Bay, ON P1B 2Y5
Tel: (705) 497-5234
Toll-free: 1-877-717-0778
Fax: (705) 497-6850

**Timmins**
Ontario Government Complex
Complex D Wing
5520 Highway 101 E.
South Porcupine,
ON P0N 1H0
Tel: (705) 235-1900
Toll-free: 1-800-461-9847
Fax: (705) 235-1925

**Sault Ste. Marie**
70 Foster Dr., Ste. 480
Sault Ste. Marie,
ON P6A 6V4
Tel:(705) 945-6600
Toll-free: 1-800-461-7268
Fax: (705) 949-9796
Sudbury
159 Cedar St., Suite 301
Sudbury, ON P3E 6A5
Tel: (705) 564-7400
Toll-free: 1-800-461-6325
Fax: (705) 564-7437

Thunder Bay
435 James St. S., Suite 222
Thunder Bay, ON P7E 6S7
Tel: (807) 475-1691
Toll-free: 1-800-465-5016
Fax: (807) 475-1646

Western Region

Hamilton/Halton/Brant
Ellen Fairclough Building
119 King St. West
Hamilton, ON L8P 4Y7
Tel: (905) 577-6221
Toll-free: 1-800-263-6906
Fax: (905) 577-1200

London/Sarnia
217 York St., 5th Floor
London, ON N6A 5P9
Tel: (519) 439-2210
Toll-free: 1-800-265-1676
Fax: (519) 672-0268

Kitchener-Waterloo
155 Frobisher Dr., Unit G213
Waterloo, ON N2V 2E1
Tel: (519) 885-3378
Toll-free: 1-800-265-2468
Fax: (519) 883-5694

Niagara
301 St. Paul St., 8th Floor
St. Catharines, ON L2R 7R4
Tel: (905) 704-3994
Toll-free: 1-800-263-7260
Fax: (905) 704-3011

Windsor
4510 Rhodes Dr., Suite 610
Windsor, ON N8W 5K5
Tel: (519) 256-8277
Toll-free: 1-800-265-5140
Fax: (519) 258-1321

Central Region

Central Region Office
5001 Yonge Street, Suite 1600
North York, ON M7A 0A3
Tel: (647) 777-5005
Fax: (647) 777-5010

Central Region West
1110 Stellar Drive, Unit #102
Newmarket, ON L3Y 7B7
Tel: (905) 715-7061
Toll-free: 1-888-299-3138
Fax: (905) 715-7140

Eastern Region

Ottawa
347 Preston St.,
Tower III, 4th Floor
Ottawa, ON K1S 3J4
Tel: (613) 228-8050 or
Toll-free: 1-800-267-1916
Fax: (613) 727-2900

Kingston
Beechgrove Complex
51 Heakes Lane
Kingston, ON K7M 9B1
Tel: (613) 545-0989
Toll-free: 1-800-267-0915
Fax: (613) 545-9831

Peterborough
300 Water Street North
3rd Floor, South Tower
Peterborough, ON K9J 8M5
Tel: 705-755-4700
Toll-free: 1-800-461-1425
Fax: (705) 755-4724