

CANADIAN

SAFETY REPORTER

PUBLISHED BY CANADIAN HR REPORTER

www.safety-reporter.com

THE WORKPLACE SAFETY SOURCE FOR OHS MANAGERS AND HR PROFESSIONALS

NOVEMBER 2010

When can an employee refuse to work and what can be done about it?

QUESTION: When can a worker refuse to work alone and what can the employer do about it?

ANSWER: With slight variations, work refusal is addressed in the health and safety legislation of every Canadian jurisdiction. Generally speaking, a worker may refuse to work if she believes the work is unsafe.

In Alberta, a worker may refuse to perform work where she has “reasonable and probable grounds” to believe there is “imminent danger” to the health and safety of the worker, or that by performing the work it will cause imminent danger to the health and safety of another worker. In British Columbia, the standard is an “undue hazard.”

In New Brunswick, Manitoba and Ontario, a worker must have reasonable and probable grounds to believe the work is “likely to endanger” her safety or the health and safety of another worker. Sometimes these phrases are specifically defined but often they are left to interpretation.

Ontario is the only province where a worker is permitted to refuse to work based on the mere reason to believe completing the work is likely to endanger the worker or another worker.

In other provinces, a worker must have “reasonable and probable grounds” to believe the work is unsafe. In most provinces, a worker may not refuse to work if refusing to work would put her safety, or the safety of another worker, into immediate danger.

In addition, a worker may not refuse to work if the job, by its very



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nature, entails work that is inherently dangerous. In Ontario, this includes police officer, firefighter or worker of a correctional or similar detention facility, group home, long-term care facility or similar residential or rehabilitation centre.

Working alone

As a general rule, a worker may not refuse to work solely because she is working alone.

However, a worker may refuse to do so where working alone is strictly prohibited by provincial health and safety legislation, or working alone creates an additional and specific hazard.

In Manitoba, for example, working alone with explosives is prohibited when engaged in a blasting operation.

In New Brunswick, working alone is prohibited when operating a chain saw, brush saw or clearing saw. The concept of additional and specific hazards is less specific and varies depending on the work.

Whenever an employee refuses to work on account of alleged unsafe conditions, an employer should investigate and determine whether danger does in fact exist.

In some provinces, such as Manitoba, New Brunswick, Ontario, Prince Edward Island and Nova Scotia (at a worker’s option), the employer must perform the investigation in the presence of the worker who refused the work.

In other provinces, the worker is not required to be present during the investigation but may be entitled to a written report of the employer’s findings (Alberta), or may be entitled to be present (with a representative) at a subsequent investigation should the employer’s initial investigation fail to remedy the situation to the satisfaction of the worker (B.C.).

An employer is permitted to assign the refused work to another worker and reassign the worker who refused the work. However, some restrictions apply:

- An employer cannot request or assign the work to another worker unless the substitute worker has been advised of the previous work refusal, the reasons for the refusal and the worker’s rights under the applicable health and safety legislation.
- An employer may not reduce the worker’s compensation while performing substitute work.
- There can be no discrimination or reprisal against a worker for having refused to perform the work.

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