



Labour

Information on OCCUPATIONAL HEALTH AND SAFETY

4 RIGHT TO REFUSE DANGEROUS WORK

INTRODUCTION

The Labour Program of Human Resources and Social Development Canada administers the *Canada Labour Code*. The purpose of Part II of the *Canada Labour Code*, is to protect your health and safety by preventing accidents and injuries on the job.

One of the basic rights for employees, is the right to refuse work that they believe presents a danger to themselves or another employee.

The right to refuse dangerous work

A worker has the right to refuse to do a job if that worker has reasonable cause to believe that:

- there is a condition at work that is a danger to himself or herself; or
- the use or operation of a machine or thing at work presents a danger to himself/herself or a co-worker; or
- the performance of an activity constitutes a danger to the employee or to another employee.

In addition, Part II of the *Code* provides financial protection to employees who are affected by a stoppage of work when an employee exercises the right to refuse dangerous work.

1. Who has the right to refuse?

Any employee, subject to Part II of the *Canada Labour Code* has the right to refuse dangerous work as long as:

- the refusal does not put the life, health or safety of another person directly in danger; or
- the danger in question is not a normal condition of employment.

2. What is the procedure for refusing dangerous work?

NOTE: The procedure is different for an employee working on a ship or aircraft that is in operation. If you believe that there is a work-related danger, bring it to the attention of the person in charge who will then make a decision on what to do after taking into account the safety of the aircraft or ship.

Part II of the *Code*, which deals with health and safety in the work place, sets out steps for a worker to follow. As long as the worker follows these steps he/she will be protected by the *Code*.

The first step in the procedure is to report the circumstances of the matter to the employer and specify whether the employee intends to pursue the matter under the *Code* or under a collective agreement. Once the method of recourse has been chosen, it cannot be changed unless agreed to by both the employee and the employer.

If the employer agrees that a danger exists he/she must take immediate action to protect employees from the danger. The employer must then inform the work place committee or health and safety representative of the matter and the action taken to resolve it. In this case, the procedure would end here.

However, if the employer feels that there is no danger, or if the situation is not corrected to the employee's satisfaction, then the employee has the right to continue to refuse to work and must now report the circumstances to both the employer and the work place committee or the health and safety representative.

The employer must now investigate the matter in the presence of the employee who reported it and one other person who is:

1. an employee member of the work place committee;
2. the health and safety representative; or
3. if the persons identified in (a) or (b) above are not available, one person from the work place selected by the employee.

(If more than one employee exercises their right to refuse dangerous work and the matters are of a similar nature, those employees may choose, from among themselves, one employee to be present at the investigation).

Following the investigation, should the employer disagree with the employee on the existence of danger or take steps to protect the employees and the employee still believes the danger exists, the employee must inform his or her employer of the continued refusal. The employer will then inform the work place committee or health and safety representative and notify a health and safety officer.

If the employee continues to refuse to work

Before the health and safety officer investigates and decides, the employer has the right to:

- ask the employee to remain at a safe location nearby; or
- ask the employee to do other work, and
- assign alternate work to employees affected by the refusal to work.

The employer cannot assign someone else to do the job that the employee has refused to do unless:

- the other employee is qualified to do the job;
- the other person is informed about the refusal and the reason(s) the employee refused the job; and
- the employer is satisfied that the other employee will not be put in danger.

The health and safety officer will want to know if the employer has tried to resolve the matter and whether or not the refusal to work is being pursued under Part II of the *Code* or under a collective agreement.

On completion of his/her investigation and once the health and safety officer has reached a decision, he or she will immediately give written notification of the decision to the employer and employee.

3. What happens if a Health and Safety Officer decides there is no danger?

Then the employee must return to work. The employee can, however, appeal the health and safety officer's decision of no danger to an appeals officer. While the appeal is in progress, the employee must return to work. An employee who chooses not to go back to work is no longer protected by the *Code*.

4. How can an appeal be made to an Appeals Officer?

You have ten (10) days after receiving the health and safety officer's decision to ask an appeals officer for a review. This appeal must be made in writing. You may contact the Labour Program's district or regional office in your area to obtain the most current address for the appeals officer.

The appeals officer will review the situation and either:

- vary, rescind or confirm the decision that no danger exists; or
- issue direction(s) as the appeals officer considers appropriate.

5. What happens if a Health and Safety Officer decides there is danger?

Then the health and safety officer will give a direction in writing to the employer to correct the situation. In addition, the health and safety officer may issue a direction to the employee(s) involved.

6. How is a request for the review of a Health and Safety Officer's direction initiated?

Any employer, employee, or trade union that feels aggrieved by a health and safety officer's direction has thirty (30) calendar days from the date the direction was issued to ask the nearest Human Resources and Social Development Canada, Labour Program office for an appeals officer to review the direction. This request must be made in writing. You may contact the Labour Program's district or regional office in your area to obtain the most current address for the appeals officer.

The appeals officer can either vary, rescind or confirm the health and safety officer's direction or issue their own direction as they consider appropriate.

The decision of an appeals officer is final. However, you can appeal a decision of an appeals officer in accordance with the *Federal Court Act*.

It is important for the employer to know that

- unless otherwise ordered by an appeals officer, while a direction is being reviewed, the employer must still comply with the direction; and
- until your employer has complied with the direction, you don't have to do the job in question.

7. Can an employer take action against an employee for refusing to do dangerous work?

The *Canada Labour Code* gives the employee the right to complain to the Canada Industrial Relations Board (the Board) or, if a public servant, the Public Service Labour Relations Board (PSLRB), (formerly the Public Service Staff Relations Board (PSSRB)) about improper dismissal, lay off, suspension or other penalty.

The *Code* now allows an employer to only take disciplinary action against an employee who misuses or abuses their right to refuse dangerous work.

The employee may request from the employer, the reasons for any disciplinary action taken. Once such a request has been made, the employer must provide written reasons to the employee within fifteen (15) **working** days.

An employee has ninety (90) calendar days from the time of such an action to make a complaint to the Board. In order to be protected by the *Code*, you must have followed the procedure laid out in the *Code*.

If an employee complains to the Board that undue disciplinary action has been taken because of having exercised their right to refuse dangerous work, it will be up to the employer to prove that this is not so.

The Board will make the final decision to resolve the situation. However, the employee can appeal the Board's decision to the Federal Court.

REMEMBER

It is very important to follow the procedure when the employee refuses to do dangerous work.

In order to exercise the right to refuse, you must have reasonable cause to believe that a condition at work is a danger to you or that the use of a machine or thing at work presents a danger to you or to another employee.

The right to refuse dangerous work should not be abused. It is there to protect the employee.

If you have any questions about the right to refuse dangerous work or other matters related to your health and safety in the work place, contact the Human Resources and Social Development Canada, Labour Program office closest to you.

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Refusal to work 128. (1)

Report to employer 128. (6)

Settled. The employer shall take immediate action and inform the work place committee of the matter and the action taken to resolve it — 128. (8).

Not settled. Continued refusal — 128. (9). The employee shall report to the employer and to the work place committee.

The employer shall investigate in the presence of the employee and one member of the committee, or if no person is available, one person selected by the employee — 128. (10).

Continued refusal to work — 128. (13). The employee shall inform the employer. The employer shall notify a health and safety officer and inform the work place committee or the health and safety representative — 128. (14).

Investigation by the health and safety officer — 129. (1) in the presence of the employer, the employee and one employee member of the work place committee.

Decision as to whether danger exists. Written notification — 129. (4).
Directions in writing — 145. (2) as mentioned in 145. (1) and (1.1).

Appeal decision: 10 days — 129. (7).
Appeal direction: 30 days — 146. (1).
Complaint received as a result of disciplinary action: 90 days — 133. (2).

Abuse of right to refuse.
Repayment — 128.1 (1) and (4).
Disciplinary action — 147.1 (1).

On request, an Appeals Officer may adjourn a direction — 146. (2).