



Procedure Name	Number of Pages	Date(s) of Amendment
Refusal to Work	1 of 3	
<b>Cross Reference</b>		
Health and Safety Policy		
Workplace Incident/Accident Reporting and Investigation Procedure		
<b>Related Forms</b>		
Incident/Accident Investigation Report		

**Procedure**

1. This procedure provides a process to be followed when workers exercise their right to refuse to work when they have reason to believe that the work is likely to endanger themselves or another worker.
2. The Occupational Health and Safety Act (OHSA) gives workers in Ontario the right to refuse work when they have reason to believe that the work is likely to endanger them or another worker.
3. The right applies when any machine, equipment, device, or the physical condition of the workplace is believed to be unsafe, or where a provision of the OHSA is being contravened and is likely to be a danger to a worker.

Under Section 43(3) of the OHSA, a worker may refuse to work where he or she has **reason to believe** that:

- a) any equipment, machine, device or thing he or she is to use or operate is likely to endanger himself or another worker;
- b) the physical condition of the workplace or the part thereof in which he/she works or is to work is likely to endanger himself or herself; or
- c) any equipment, machine, device, or thing he/she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

**Reason to believe** is a gut feeling or fear. It does not require any other evidence. Therefore, the worker does not have to prove that a danger exists. No penalty can be applied if the worker is wrong. The fact that someone genuinely fears for her or his health or safety is reason enough to refuse unsafe work.

4. The right to refuse must be exercised in the workplace by the worker who has reason to believe that work is likely to endanger self or another worker. A work refusal cannot be made in advance of reporting for work or on behalf of another worker. The law clearly gives the right to refuse to individuals rather than groups. However, members of a group can each refuse to work if they are exposed to the same hazard at the same time.
5. When a worker exercises her/his right to refuse work, the OHSA sets out a process that must be followed to ensure that the possibility of danger is fully investigated. No worker may be penalized because she/he has exercised her/his rights under the OHSA. There is an expectation that any worker who exercises her/his right to refuse unsafe work is acting in good faith based on a reasonable concern regarding her/his own safety or the safety of another worker(s).
6. Work Refusal Steps:
  - a) The employee must refrain from performing the particular activity and report the situation immediately to her/his Supervisor, stating that she/he is refusing to work and why.
  - b) The Supervisor must investigate immediately following the Workplace Incident/Accident Reporting and Investigation Procedure for a Near Miss (no Loss) accident type. The investigation should take place in the presence of the refusing employee and a worker member of the Joint Occupational Health and Safety Committee (JOHSC). If the Supervisor agrees that the situation is hazardous, corrective action is taken and normal work activities can be resumed. The Workplace Incident/Accident Investigation Report should be completed.
  - c) If an agreement cannot be reached, and the employee has reasonable grounds to believe that the work is still unsafe, then the Ministry of Labour shall be notified. The Ministry of Labour Inspector (the Inspector) shall investigate the work refusal in the presence of the employer, the employee, and the JOHSC member and forward a written decision to the Employer. The Workplace Incident/Accident Investigation Report should be completed.
  - d) Until the investigation is complete, the employee may refuse to perform that specific task, although the employee will be expected to carry out other reasonable alternate job duties, without reprisal.
  - e) Pending the Inspector's investigation, no other worker can be assigned

the refused work without being advised of the refusal and the reasons for the refusal. This must take place in the presence of a member of the JOHSC, if possible, a certified member, a health and safety representative or a worker selected by the union or by the workers if there is no union.

- f) The Inspector will decide whether the machine, device, thing, or the workplace or a part of the workplace, is likely to endanger the worker or another person. The Inspector will give a decision in writing "as soon as is practicable" to each of the three parties who participated in the investigation. The decision is usually made at the time and site of the refusal. Sometimes the Inspector may require more technical assistance in order to make a decision. If the decision is that no danger exists, the person refusing returns to work. If the Inspector decides a danger exists, he or she will issue orders to resolve it.
  - g) A worker may not continue to refuse the work if the Inspector has decided the situation is "not likely to endanger."
7. The Inspector's decision can be appealed to the Ontario Labour Relations Board by any party within 30 days.
8. It is an offense for an employer to dismiss, threaten to dismiss, discipline, suspend (or threaten to discipline or suspend), impose any penalty, intimidate, or coerce the worker.

If disciplined, the worker may file a complaint with the Ontario Labour Relations Board (or the matter can be taken to arbitration under a collective agreement). In an inquiry by the Ontario Labour Relations Board, the burden of proof is on the employer to prove the reprisals were taken because of an improper refusal to work. For this reason, the proper procedure for refusing unsafe needs to be followed.