

Right to refuse dangerous work

OHS information for employers and workers

This resource provides information for employers and workers about a worker's right to refuse dangerous work and the detailed processes involved.

Key information

- Workers have a right to refuse work that creates a dangerous condition.
- Dangerous conditions involves health and safety hazards not normal to the job.
- Employers and workers are required to work together to remedy the dangerous condition.
- A work refusal does not entitle the worker to abandon the work site unless necessary for health and safety reasons.



A worker has a right to refuse work if they believe on reasonable grounds that there is a dangerous condition at the work site, or that the work is a danger to themselves or others.

Employer and worker obligations should preclude work refusals

Employers have an obligation under section 3(1)(f) of the *Occupational Health and Safety (OHS) Act* to address health and safety concerns raised by workers and other work site parties.

Employers must control any hazards on the work site, under section 9 of the OHS Code.

Workers have an obligation under section 5(e) of the *OHS Act* to report concerns about unsafe or harmful

work site acts or conditions to the employer or supervisor.

Under section 5(a) of the *OHS Act*, workers must use reasonable care to protect their own health and safety, and that of other persons at or near the work site, while they are working. This may require that the worker does not perform the work.

A work refusal is a last resort to address work site dangers. Use other processes available under OHS legislation first.

Addressing dangerous conditions

Alberta Occupational Health and Safety (OHS) considers that dangerous conditions include health and safety hazards that are not normal for the job, or normal hazards that are not properly controlled. For example:

- Unexpected or unusual circumstances where hazards have not been adequately assessed, or controlled - for example, collapse of integral infrastructure resulting in an unsafe physical environment for workers.
- A danger that would normally stop work, such as broken or damaged tools/equipment.
- A situation where the worker risks immediate harm that is not normal for the job.

Harassment, personality conflicts and performance management are not considered dangerous conditions unless the circumstances involve direct threats to the health and safety of that worker.

A dangerous condition is a risk that the refusing worker actually observes or experiences at the work site where the work is to occur. Theoretical,

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anticipated or potential risks are not reasonable grounds for a work refusal – workers should bring these to the employer's attention under the worker's general duty (section 5 of the *OHS Act*).

As well, OHS typically interprets dangerous conditions as systemic dangers that can affect multiple workers. The work refusal process is less compatible with concerns that are unique to one worker. Workers can still address concerns that are specific to themselves through section 5 of the Act.

The work refusal process

Section 31 of the Act describes the steps that workers and employers must follow in the work refusal process. These steps are obligations for both work site parties.

Figure 1 (below) is an overview of the work refusal process and possible outcomes.



Figure 1: Work refusal process overview

Workers: how to report a work refusal

Report the refusal as soon as possible.

- Notify your supervisor, employer or the employer's designate that you are refusing to work due to a dangerous condition.
- Describe the dangerous condition and your reason for the refusal.

Refusing dangerous work does not give you the right to abandon the work site or refuse other work.

- If the employer resolves the dangerous condition immediately, return to work.
- Your employer may give you different work until they remedy the dangerous condition. They may also assign another worker to the work (after informing that worker of the work refusal).
- If the people assigned to carry out a work refusal inspection determine that a dangerous condition does not exist, the employer can instruct you to return to the work.

As the refusing worker, you have a right to be present during the employer's inspection, if it is safe and reasonable for you to be there.

Employers: how to respond to a work refusal

You must remedy an existing dangerous condition immediately if it is reasonable to do so.

If you cannot remedy the dangerous condition, conduct an inspection – providing that it is safe and reasonable to do so. Carry out the inspection in the presence of both the refusing worker and either:

- a health and safety committee (HSC) co-chair or HSC member who represents workers, if there is an HSC, or
- the workers' health and safety (HS) representative, if there is one, or
- if there is no HSC member or HS representative or they are not available, another worker selected by the worker refusing to do the work.

Prepare a written report of the work refusal, the inspection details, and the actions taken to remedy the dangerous condition.

- Ensure the report does not include any personal information.
- Give the worker and the HSC member/HS representative a copy of the report.

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During the work refusal process, you may assign the refusing worker temporary alternative work.

If you determine there is no dangerous condition, you may instruct the refusing worker to resume work or assign another worker to the work.

- If you assign another worker you must advise them of the work refusal, including:
 - the reason for the refusal,
 - why you believe the work is not dangerous, and
 - their own right to refuse dangerous work.

Differences of opinion should be handled internally; however, a complaint can be filed with OHS when a resolution between the work site parties can't be reached.

Work refusal complaints

The role of OHS

The OHS Contact Centre (see page 4) can give you more information about the work refusal process, and is the first point of contact for making a work refusal complaint with OHS.

You may submit a work refusal complaint to OHS if:

- you are a worker or any other person present during the dangerous condition inspection, and
- you believe that the dangerous condition is not remedied.

Submitting a work refusal complaint

When OHS receives a work refusal complaint, a Contact Centre advisor will first determine if the employer and worker have met their obligations:

- Did the worker notify the employer of their dangerous work refusal?
- Is there a work stoppage at the work site?
- What did the employer do to address the situation?
- Did the employer prepare and distribute a work refusal inspection report?

If work site parties have not met their obligations, the advisor will help clarify the requirements. The caller is then provided with an assignment number and this

publication, and the file is assigned to an OHS officer.

Stage 1: work refusal investigation

The OHS officer verifies – by phone or attending the work site - that the work site parties have worked through their internal resolution process and met their legal work refusal obligations.

- If the officer determines that section 31 obligations (for example, an inspection in the presence of a worker representative) have not been met, the expectation falls on the employer to follow through.
 - The officer may issue orders if they determine non-compliance.
 - In some cases, if an employer is willing to revisit the decision in their work refusal inspection report, the officer can work with the parties to resolve the complaint.
- If the officer determines that section 31 obligations have been met and the worker still disagrees with the employer's decision, the officer starts Stage 2 of the investigation. The employer's decision must be final before the officer will start Stage 2.

Stage 2: work refusal investigation

The officer investigates to determine if a dangerous condition exists at the work site.

The officer may ask for information and documents to help answer these questions and/or speak to individuals who can help support the investigation.

Conclusion of the investigation

After the officer has made a decision, they provide a contact report to the refusing worker, the employer, HSC or HS representative and any other person who filed the complaint. This contact report documents the investigation findings.

- If a dangerous condition does not exist, the officer informs the refusing worker they are no longer entitled to refuse the work cited in the work refusal.
- If a dangerous condition exists, the employer must take immediate action to remedy the dangerous condition.

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- When the employer resolves the dangerous condition, the officer informs the worker they are no longer entitled to refuse the work.

If appropriate, the officer may issue orders or take other proportionate enforcement action where there is non-compliance.

The officer advises the parties involved of their right to request a Director review of their decision as per section 70 of the *OHS Act*. If any enforcement actions have been taken, the officer will also advise the parties of the relevant review or appeal options.

For more information

Do You Know How to Refuse Dangerous Work? (PTR008) (Poster)

<https://ohs-pubstoreuat.labour.alberta.ca/ptr008>

Request for Director review of an OHS officer's order or decision (LI047)

ohs-pubstore.labour.alberta.ca/li047

Contact us

OHS Contact Centre

(Complaints, questions, reporting serious incidents)

Anywhere in Alberta

- 1-866-415-8690

Edmonton & surrounding area

- 780-415-8690

Deaf or hearing impaired:

- 1-800-232-7215 (Alberta)
- 780-427-9999 (Edmonton)

Online Reporting Service

(PSIs, mine or mine site incidents)

psi.labour.alberta.ca

Website

alberta.ca/OHS

Get copies of the *OHS Act*, Regulation and Code

Alberta Queen's Printer

qp.gov.ab.ca

Occupational Health and Safety

alberta.ca/ohs-act-regulation-code.aspx

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