

Navigating The Right to Refuse Unsafe Work

A GUIDE FOR CUPE EDUCATION WORKERS

Canadian Union of Public Employees & Ontario School Board
Council of Unions
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DISCLAIMER

Navigating The Right to Refuse Unsafe Work - A guide for CUPE Education Workers is intended for CUPE Local executive members, bargaining unit presidents, joint health and safety committee members, health and safety representatives and unionized support staff in Ontario's K-12 public school sector.

The following guide is shared with you for general information purposes. It does not replace the Occupational Health and Safety Act, the regulations or other laws, which may change from time to time. Reference should always be made to the current version of the legislation and regulations.

The information included does not constitute legal advice. If you have any questions about health and safety law, speak to your CUPE National Servicing representative or CUPE National Health and Safety Specialist.

The information contained herein is not intended to limit a worker's right to refuse work that endangers health and safety or encourage workers to engage in risky activities at work.

When in doubt, CUPE/OSBCU encourages workers to err on the side of health and safety to protect themselves, their co-workers and those to whom they provide support.



Glossary and Acronyms used in this Guide

Hazard – A hazard is any source of potential damage, harm or adverse health effects on something or someone – Source: [CCOHS](#)

Health and Safety Representative (HSR) – A person selected by the workers or union under section 8 of the *Occupational Health and Safety Act* to perform the functions and powers of a Health and Safety Representative.

Joint Health and Safety Committee (JHSC) – A committee of members selected under section 9 of the *Occupational Health and Safety Act* to perform the functions and powers of a Joint Health and Safety Committee.

Inspector – A person employed by the Ministry of Labour, Immigration, Training and Skills Development to enforce compliance with the *Occupational Health and Safety Act* to support worker health and safety.

MLITSD or MOL – Ministry of Labour, Immigration, Training and Skills Development, sometimes referred to as the Ministry of Labour

OHS – Occupational health and safety

Occupational Health and Safety Act (OHSA) – [Occupational Health and Safety Act R.S.O. 1990 c.1.](#)

Ontario Labour Relations Board (OLRB) – The independent adjudicative tribunal issuing decisions upon its interpretation and determination of the relevant provincial labour-related legislation and jurisprudence.

Regulation – A regulation made under the *Occupational Health and Safety Act*

Worker Representative – A worker member of the Joint Health and Safety Committee or Health and Safety Representative, if any, or union representative with health and safety knowledge.

Worker – Any of the following

- A person who performs work or supplies services for monetary compensation.
- A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
- A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university, career college or other post-secondary institution.
- Such other persons as may be prescribed under the OHSA who perform work or supply services to an employer for no monetary compensation – Source: OHSA

NOTE: Does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program.

Workplace - Any land, premises, location or thing at, upon, in or near which a worker works – Source: OHSA



Workplace violence – Any of the following

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker – Source: OHSA



Introduction

The right to refuse work that endangers health and safety is one of the four fundamental rights afforded to workers under the *Occupational Health and Safety Act* (OHSA). Its purpose is to ensure that, even when the established measures and procedures to protect workers break down, workers can refuse to participate in anything that may endanger themselves or another worker. The right to refuse forms part of the Internal Responsibility System (IRS), which empowers workplace parties to resolve workplace issues on their own. Yet, the right can only exist where workers can refuse without fear of reprisal.

The objective of a refusal, regardless of the type of hazard and level of risk, is always to make work safe and healthy. The refusal must highlight gaps in the workplace OHS system, address non-compliance with the OHSA, and ensure employers take corrective action to improve on, or eliminate, unacceptable risks. Importantly, the refusing worker is not required to be “100% right” at any stage of the refusal. However, the right must be exercised in good faith.

In Ontario, section 43 of the OHSA describes the circumstances and conditions under which a worker can refuse, as well as the process that must be followed. Generally, workers can refuse work in many circumstances, including when working with faulty equipment, in unsafe buildings, or when things, conditions or workplace violence endanger health and safety.

43 (3) A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;
- (b.1) workplace violence is likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or 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.

(OHSA)

See: Appendix A for a flowchart of the work refusal process

Does s. 43 (3) apply to all workers covered under the OHSA?

All workers covered under the OHSA have the right to refuse unsafe work. However, the law sets limits on that right for certain classes of workers, under certain conditions and circumstances. The following describes those who have a “limited right to refuse.”



Section 43 (3) does not apply to workers who generally have a direct duty of care for others
They include:

1. First Responders
2. Corrections staff
3. Workers employed in or servicing facilities providing round-the-clock healthcare and supportive services¹

These workers cannot engage the work refusal process when circumstances are inherent in the worker's work or a normal condition of employment, or where the worker's refusal would directly endanger another person's life, health, or safety.

Teachers also have a limited right to refuse. Under Ontario Regulation 857, a teacher cannot use section 43 *where the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy*. This applies to all persons employed as teachers, as defined in the *Education Act*.

If you are not working as a teacher at your school board, the OHSA does not impose limits on your right to refuse, provided you exercise it in good faith.

A Note About Professional Obligations

For workers who belong to regulatory colleges (e.g., College of Early Childhood Educators, Social Workers, Trades, Speech and Language Pathologists and Audiologists), it is important that they also consider their professional obligations and the standards of their college.

Regulatory colleges have standards and guidelines that prohibit activities that result in harm to a person under their care. Members must consider the best possible solution when making decisions about others' (e.g., child, student) best interests, while also maintaining their professional accountability. They are accountable for their own actions and decisions and should not act solely on the direction of others.



Before A Work Refusal

The decision to refuse or not – Assess the situation, assess yourself

The decision to refuse is a personal decision. It can't be made by anyone else. If you are unsure if the circumstance before you will likely endanger health and safety, the following assessment can help with that decision. Remember, at the first stage, the standard is that the worker has a "reason to believe" the work endangers health and safety. You don't have to be 100% right in your assessment of the circumstances.

NOTE: If the situation imminently endangers health and safety, the following assessment may not apply.

Assess the situation

You may want to assess the situation first. The following questions may help you decide to refuse. If you answer yes, you may have a reason to believe that the work endangers health and safety.

- Are you facing a circumstance or condition where a previous injury, illness, near-hit/miss occurred, and the employer has yet to remedy the causes appropriately?
- Do you have unsafe working conditions? Safe working conditions include:
 - Receiving information and instructions necessary to carry out the work-procedures safely.
 - Having protective materials and equipment available and in good condition.
 - Having protective equipment that fits and is appropriate to protect you from the hazard.
- Are you faced with something new, and you aren't aware of the hazards, or haven't received information or instructions on the risks on how to protect yourself?

Are you able to address the situation as a health and safety complaint?

The OHSA gives workers the right and a duty to report unsafe conditions and violations of the OHSA to the employer. Raising the issue as a complaint is usually less confrontational than a work refusal and might start a conversation that leads to a successful resolution. You can always refuse work if the complaint route doesn't yield a quick resolution.

Assess yourself

Next, you may want to assess yourself. If you answer yes to the following questions, you likely have a reason to believe the work endangers health and safety, and you are ready to engage the refusal process.

- Do you believe you or someone else is going to be hurt or suffer long-term injury or illness if work continues?
- Is your belief of injury or illness based on a real and significant possibility?
- Are you able to articulate the danger or risk to your supervisor or the employer?
- Are you able to articulate what you want?
 - **NOTE:** Although articulation of the danger and a solution is not strictly required under s. 43, it will direct those investigating to the problem and consider potential resolutions. Remember, you don't have to be 100% sure that a danger exists.



Exercising your right in good faith

The work refusal should be engaged in good faith. This means avoiding a work refusal for retaliation, sabotage, or frivolous reasons. In these cases, the outcome is unlikely to align with the results you want and may lead to disciplinary action by the employer. You should speak with a steward or union representative before taking action if you are fed up with your employer or dealing with an unpleasant situation.

Important terms in section 43 (3) – “another worker”, “reason to believe” and “likely to endanger.”

Another worker

At the first stage of the work refusal, a worker must have a reason to believe that a circumstance or condition at work is likely to endanger their health and safety, or, in some cases, endanger another worker.

For example, sections 43 (3) (a) (c) describe that a worker may refuse if they have reason to believe that any use or operation of equipment, machine, device or thing is likely to endanger themselves or another worker. However, in circumstances of workplace violence or the physical condition of the workplace (section 43 (3) (b) (b.1)), a worker can refuse if they are at risk, not another worker.

Reason to believe

The term reason to believe is subjective. Yet, it does not mean the employer must give credence to any subjective feeling the worker may be experiencing. Rather, the worker’s concern must be firmly and sincerely felt, and the reasonableness of the refusal must be judged from their perspective and circumstances, bearing in mind all the factors at the time.ⁱⁱ In other words, the worker must be “subjectively honest but objectively reasonable”ⁱⁱⁱ in the circumstances.

Likely to endanger

The term likely to endanger has been interpreted to mean a danger that is “a real or significant possibility”.^{iv} However, the risk or danger need not necessarily be imminent or at the actual time of the refusal. In some situations, it is sufficient that there is a reasonable anticipation of some future danger.^v As such, a worker need not be at the foot of danger or at risk of immediate harm for the work refusal process to begin.

No magic words required

You aren’t required to state a specific phrase to start the work refusal process. Nevertheless, you should properly communicate with the supervisor or employer immediately that you are refusing work because you “feel unsafe” or are “afraid that you or another worker will be hurt.” You can also say that you are refusing to work because of “health and safety.” Saying these phrases should signal to the supervisor or manager that the work refusal process under the OHSA is initiated and thus help avoid the accusation of insubordination. Remember, you don’t have to refuse all work that day – only the task or tasks that endanger health and safety.

Criteria for a work refusal

The following describes the criteria under s. 43 (3) OHSA for which a worker may refuse if they have a reason to believe that work may endanger their health and safety



A worker can refuse to do any work where there is a reason to believe that:

1. *“...the equipment, machine, device or thing the worker is to use or operate is likely to endanger themselves or another worker;*
 - This circumstance may include being directed to
 - Perform a task that produces repetitive strain injuries or musculoskeletal disorders
 - Wear PPE without receiving training on the use, care and limitations of the equipment
 - Wear insufficient or ineffective PPE to protect yourself from the hazard
 - Perform a task alone, where the task requires at least two workers to perform the work safely

2. *the equipment, machine, device or thing the worker is to use or operate or the physical condition of the workplace, contravenes the OHSA or regulations and is likely to endanger themselves or another worker;*
 - This circumstance may include being directed to
 - perform a task using faulty or improperly guarded equipment, machine, device, or thing.
 - Perform a task with something that exposes a worker to hazardous levels of a chemical or biological agent

3. *the physical condition of the workplace is likely to endanger themselves or another worker;*
 - This may include being directed to
 - Perform work in an area with hazardous levels of biological, chemical or physical agents (e.g., noise, asbestos).
 - Perform work in areas that are not structurally sound

4. *workplace violence is likely to endanger them.*
 - This may include being directed to
 - Perform work in the presence of a person who has a history of violent behaviour without receiving information or instruction to protect yourself from a risk of physical injury
 - Performing work with someone with a history of violent behaviour without a means of summoning immediate assistance

See also: Appendix B - Work Refusals and Workplace Violence



The Work Refusal Process

The First Stage – Employer investigation

Sections 43 (3) to 43 (5) of the OHS Act address the first stage of a work refusal, also known as the employer's investigation. The following describes the process.

1. The worker must tell the supervisor or employer that they are refusing the work and indicate the reason. (s.43(3))
2. The supervisor or employer must immediately investigate in the presence of a worker and a worker representative – most often a worker member of the JHSC. (s.43 (4))
3. Pending the completion of the employer's investigation, and any corrective action that may take place, the refusing worker must remain in a safe place near the work area until the investigation is complete. (s 43(5))
4. If the worker is satisfied that the corrective action has resolved their concern, they must return to work. If not, the work refusal process continues.

Notes on the first stage

- The worker must promptly report the refusal to their supervisor. Any delays may endanger yourself or another worker.
- A worker must have a genuine reason to believe, and the likelihood of danger must be based on a real or significant possibility.
- Workers are expected to report their refusal in person and while at work.
- The worker representative can be one of the following:
 - a worker-member of the JHSC, if any; or
 - the HSR, if any; or
 - a representative from the union that represents the refusing worker who is selected by the union because of knowledge, experience and training.
- The worker representative must be made available and attend the employer investigation without delay.
- At this stage, the OHS Act does not grant the employer the right to assign alternative work to the refusing worker.
- At this stage, the OHS Act does not grant the employer the right to reassign the work under investigation to another worker.
- The OHS Act intends for a speedy investigation and resolution at this stage. However, there is no time limit to complete the investigation. Nevertheless, a cursory or superficial investigation is not permitted.
- The investigation and resolution at this stage are under the employer's control. As such, the employer bears any delays in resuming work or continuing to provide service.
- A refusing worker is paid during the first-stage investigation of a work refusal.



- A refusing worker's participation in the investigation is crucial. Be detailed and truthful.

Group refusal

The right to refuse is an individual process; however, more than one worker can refuse under the same circumstances. In this case, each worker must report the refusal to their supervisor or employer and state their reason for believing that the work endangers health and safety. Workers may not be protected from discipline if they collectively or individually refuse to work for solidarity or sympathetic reasons.

The Second Stage – Inspector's investigation

Sections 43 (6) to 43 (12) of the OHS Act address the second stage of a work refusal, also known as the inspector's investigation.

1. The worker continues to refuse after the employer's investigation or any steps taken to address the cause of the refusal. (s. 43 (6))
2. An inspector is called to investigate and issues a decision as to whether the circumstances are likely to endanger. (s. 43 (6) (7))
3. Pending the investigation and decision of the inspector, the worker is to remain in a safe place and available for the investigation. Alternative work may be assigned to the worker at this point. (s. 43 (10) (10.1))
4. Pending the investigation and decision of the inspector, no one can be assigned the work under investigation, unless advised of the worker's refusal and the reasons. The employer is required to advise this person in the presence of the worker representative. (s. 43 (11) (12))
5. The inspector gives their written decision to the employer, the worker and the worker representative. (s. 43 (9))
6. The inspector's decision may include an order or other requirements. A decision, order or lack of an order made by the inspector may be appealed to the OLRB within 30 days. (s. 57, s. 61)
7. Where the inspector determines that the work is not likely to endanger health and safety, the worker must end the refusal.

Notes on the second stage investigation

A worker may continue to refuse after the employer's investigation if they have "reasonable grounds" to believe the work endangers health and safety. Again, a worker need not be 100% correct that the work is unsafe; however, the reasons for refusal must be grounded in objective reasons. It is by this standard that an inspector will determine whether an objective person would find it reasonable that the work will endanger health and safety. An opinion or personal feeling is unlikely to be enough to support your claim. It is recommended at this point that the refusing worker draw evidence that precautionary measures are missing to address the danger or hazard, and that, because of their absence, injury or illness is likely.



While awaiting the inspector's investigation and decision, the employee is to remain in a safe place during normal working hours and be made available for the investigation. The worker can be assigned reasonable alternative work provided it is not punitive.

If an employer or a supervisor wishes to assign another worker to the work under investigation by the inspector, they must advise this worker of the work refusal and the reasons behind it. The notice to this worker is done in the presence of the worker representative. This worker also has the right to refuse after being so advised.

Decision of the Inspector

The inspector must consult the following people before rendering a decision.

- the employer or a person representing the employer
- the refusing worker, and
- the worker representative

Although most inspector investigations are in person, there may be situations in which an inspector investigates the matter by phone. The OHSA does not compel inspectors to use a specific form or procedure during their investigation, except as set out in the OHSA.

Following the consultation, the inspector must decide whether the reasons for the work refusal are likely to endanger. The decision must be in writing and as soon as practicable, i.e., as soon as it is capable of being done or accomplished. The refusing worker, the employer and the worker representative receive a copy of the decision.

Where an inspector finds reasonable grounds exist for a work refusal or any contravention of the OHSA, they will follow up with the workplace parties to ensure they take corrective action. The OHSA grants inspectors sweeping powers to act and may do any of the following:

- stop-work
- put a machine out of order or close off a section of the workplace
- issue a time-based order to comply with the OHSA
- accept a commitment from the employer to comply with the OHSA within a specific time

Where an employer, union, or worker disagrees with an inspector's decision, order, or lack of an order, an appeal can be filed with the Ontario Labour Relations Board. The appeal must be filed within 30 days of the date upon which the inspector concluded their investigation and rendered their final decision. It is important for workers to notify their union representative as soon as possible if they disagree with an inspector's decisions. Your union will have a process to review the inspector's decision.

See: Appendix C Tips for dealing with MLITSD inspectors



Documenting

Many school boards have developed policies and procedures describing steps the workplace parties (the refusing worker, worker representative, and the investigating supervisor) must follow when a worker refuses work. These policies sometimes include a form for the parties to complete at various stages. Regardless of whether a form exists or not, it is crucial to document all aspects of the work refusal. For example:

- Who is involved?
- What is the circumstance?
- When is it happening?
- Where is it happening?
- Why is it happening?
- How can the condition be corrected?
- What was the outcome (employer/supervisor response at stage 1)
- Did the employer impose upon the refusing worker an alternative work assignment?
- Did the employer reassign the work under investigation to another worker?
- Were other people involved?
- Are there witnesses?
- What is the name of the inspector(s) and what did they investigate?
- Who did the inspector talk to?
- What did the inspector ask of the employer/supervisor?
- Is anyone misleading the inspector?

Keep your notes on file. They may be needed in another proceeding, such as an appeal or grievance.

If you are involved in the work refusal, ensure you receive a copy of the field visit report from the inspector and forward a copy to a union representative as soon as possible.

The employer must forward the inspectors report and any accompanying orders to the JHSC and post a copy in the workplace where it will come to the attention of workers.



After the Work Refusal Investigation

Continuing to refuse work after the inspector's investigation

Unless an inspector has directed work to stop or has issued an order for corrective action, the worker must return to work. A worker dissatisfied with the outcome and who continues to refuse at this point may not be protected from disciplinary action by the employer.

Notice of compliance

If an inspector has issued orders, a “notice of compliance” will follow. The notice, completed by an employer and a worker representative, informs the inspector that orders have been complied with and that no follow-up visits are required. A worker representative can indicate on the form if they disagree that orders are complied with.

Payment during a work refusal

Refusing workers are deemed to be “at work” while the employer investigates their refusal. However, once a Ministry inspector is called, the employer can assign the refusing worker to other “reasonable” alternate work during their normal working hours. The work assigned must not conflict with the collective agreement. The employer must pay the worker representatives for the time they spend carrying out their duties during both stages of the investigation. The rate of pay is subject to the terms of their collective agreement.

Reprisals

Your employer or anyone acting on behalf of the employer is prohibited from taking actions against workers for exercising their rights under the OHSA. This protection applies to refusing work that endangers health and safety. The prohibited actions can include any of the following:

- dismissing or threatening to dismiss a worker;
- disciplining, suspending or threatening to discipline or suspend a worker;
- imposing any penalty upon a worker; or
- intimidating or coercing a worker.

The forms of threats, intimidation, and coercion can be subtle. If you suspect a reprisal has occurred, reach out to your steward or union representative to discuss whether a grievance is appropriate.



Tips for Workers, Worker Representatives and the Union

Tips for workers

- Report and document injuries, unsafe conditions and contraventions of the OHSA
- Immediately alert your supervisor to missing or defective equipment
- Participate fully in the work refusal investigation. Be detailed and truthful
- Support your case with evidence
- Document as much as possible and keep your notes on file

Tips for the worker representative

- Remember, your role is to support and advocate for the refusing member
- At no time are you required to prove to the employer or inspector that the work is or isn't safe
- Avoid interrogating the refusing worker in front of management or the inspector.
- Move away from others if you need to have a difficult conversation with the refusing worker
- Document as much as possible and keep your notes on file
- Make sure the supervisor, employer and inspector follow the process

Tips for the union

- Ensure the employer, the union, and the JHSC have an agreed process for releasing JHSC worker-members at a moment's notice to attend a work refusal investigation. Include the process in the JHSC Terms of Reference or collective agreement
- Ensure CUPE worker representatives and stewards are knowledgeable on the work refusal process and have good interview and note-taking skills
- Educate members on their right to report unsafe conditions and how to refuse work in the circumstances
- Determine whether barriers exist that prevent members from exercising their right to refuse and from reporting hazards and injuries.
- Follow up with members who may have suffered a reprisal for exercising their rights.



Resources

[Occupational Health and Safety Act](#)

[Workplace Violence in School Boards: A Guide to the Law - MLITSD](#)

[Understand the law on workplace violence and harassment - MLITSD](#)

[Workplace Violence Resources – Workers Health and Safety Centre](#)

[Workplace Violence Risk Assessment Toolkit for the Education Sector – Public Services Health and Safety Association](#)

[Reporting workplace violence in Ontario school boards - EDU](#)

[Road map to reporting workplace violence in Ontario school boards: workflow appendices - EDU](#)

[Education Act](#)



APPENDIX A – Work Refusal Flowchart





WORK REFUSAL FLOWCHART
PART V – Section 43 Occupational Health and Safety Act (Ontario)

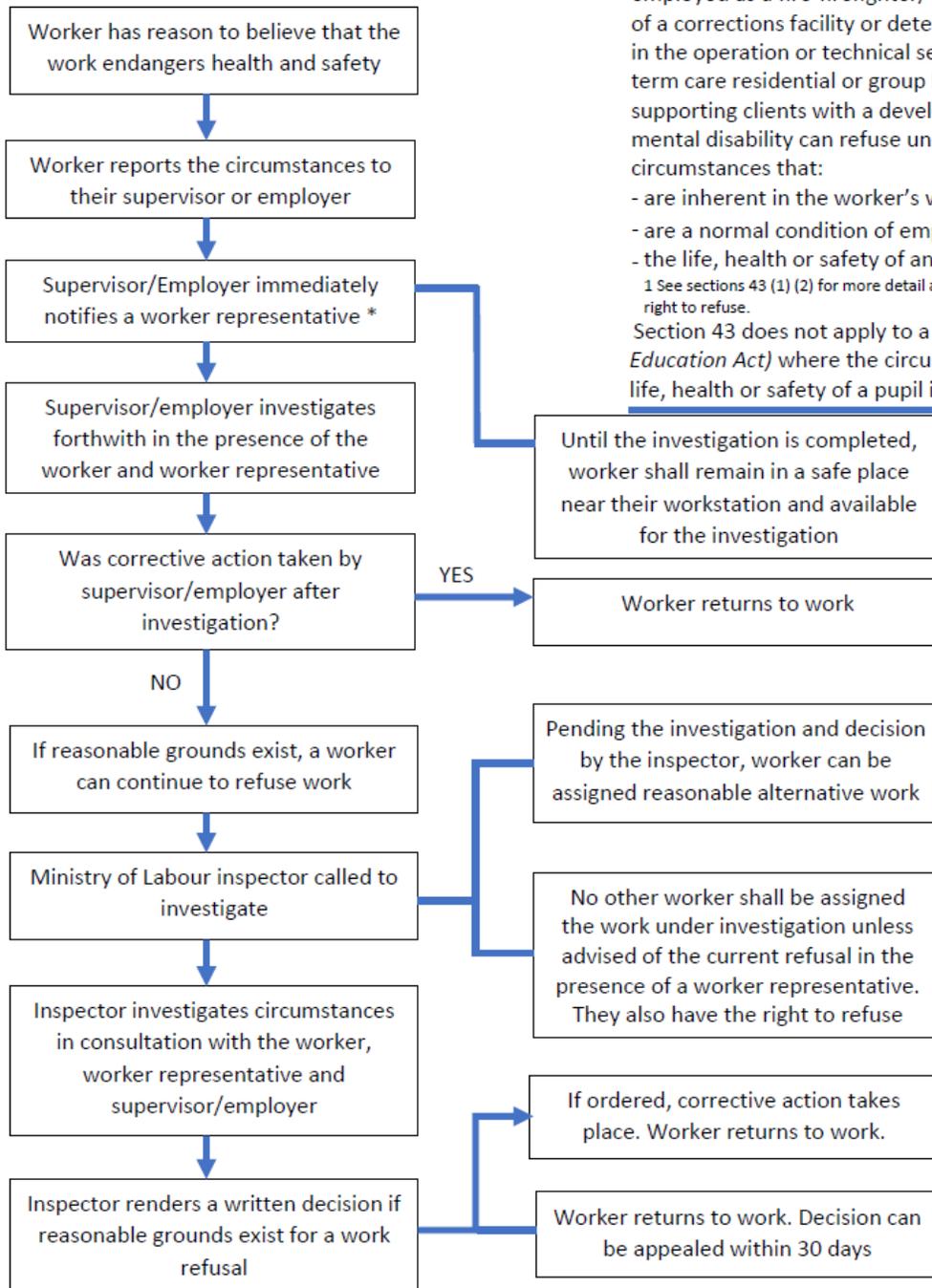
Limited right to refuse unsafe work

Workers¹ who work for or are members of a police force/ employed as a fire-fighter/ employed in the operation of a corrections facility or detention center/ or employed in the operation or technical service to a hospital, long-term care residential or group home, or facilities supporting clients with a developmental, physical or mental disability can refuse unsafe work, except in circumstances that:

- are inherent in the worker's work; or
- are a normal condition of employment; or endanger
- the life, health or safety of another person

1 See sections 43 (1) (2) for more detail and a list of workers with a limited right to refuse.

Section 43 does not apply to a teacher (as defined in the *Education Act*) where the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy.



*Worker representative = Either a worker member of the joint health and safety committee or health and safety representative, if any, or union representative with health and safety knowledge.



APPENDIX B – Tip Sheet for a Work Refusal related to Workplace Violence



Work Refusals and Workplace Violence

Bill 168 came into force in 2010 and introduced workplace violence as a condition where workers may refuse unsafe work. Workplace violence under the OHS Act means:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

The amendments under Bill 168 did not introduce exemptions for K-12 schools. Nor was the process under section 43 changed to address a situation in which a school board employee refused to work due to violence by a student. While Ontario Regulation 857 does set out a prohibition for a “teacher” to refuse unsafe work where the life, health or safety of a pupil is in imminent jeopardy, no such prohibitions are imposed on child and youth workers or educational assistants.

Investigating a work refusal involving a dysregulated student

School administration (principals, vice-principals) should ensure that processes are established so they can investigate a work refusal and ensure compliance with the duties under the Education Act to manage classes and students. Such processes are invaluable in cases when a dysregulated student is accompanied to another room or there is a need to evacuate a classroom during a work refusal. When developing the process, it is important to remember that the duties of principals and teachers under the Education Act are not transferable to non-teaching staff.

When there isn't an immediate threat to staff and students, a principal could investigate a work refusal while also ensuring supervision of the student. In some circumstances, a vice-principal or special education teacher could also observe the student at a safe distance while the principal investigates. The observing teacher or principal can also refuse work as long as the health, safety or life of the student is not in imminent jeopardy.

“For workplace violence to occur, a person must apply, attempt to apply, or threaten to apply physical force against a worker. However, he or she does not need to have the capacity to appreciate that these actions could cause physical harm.

For example, a person may have a medical condition that causes them to act out physically in response to a stimulus in their environment. This would still be considered workplace violence.”

Source: MLITSD



In consideration of the foregoing, it is recommended that staff initiate a work refusal upon arrival at school if the employer/administration has not provided reasonable preventive measures and practicable response procedures when working with an aggressive student with a history of violent behaviour.

Considerations for engaging a work refusal due to workplace violence

The focus of the work refusal must be on the unsafe work conditions, and not solely on the student's behaviours. That means focusing the investigation on how school boards and administration are failing to take the necessary steps to provide a safe work environment. Focusing on the student and their behaviours may hamper the investigation by involving persons with more expertise in student services but possessing little experience in hazard control principles. Although student behaviours and triggers are essential information for a safety plan, the outcome of the investigation is to restore safe work practices and ensure the workplace parties comply with their legal obligations.

Although every circumstance must be determined by the individual worker, the following are conditions in which workers may have a reason to believe workplace violence may endanger their health and safety.

Assigned to an area where there is a likelihood of physical injury from a student with a history of violence without receiving information about how to protect yourself (e.g., triggers, de-escalation techniques, means of summoning assistance, equipment required)	Working with potentially violent students without receiving intervention training (e.g., CPI, NVCI, BMS) or provided equipment that protects you from the particular risks of physical injury (e.g., head strikes, bites, kicks)
Directed to wear personal protective equipment without receiving information and instruction on its use, care and limitations.	Working with a potentially violent student without a reliable and consistent means of summoning immediate assistance.
Wearing PPE, which has limitations due to its size and condition and is unlikely to protect you from the risk of physical injury from workplace violence.	Working with a potentially violent student when there is not an appropriate number of trained staff to implement the safety plan (e.g., responding staff are not trained on de-escalation, containment, restraints).
Failure to remove items from an area that are likely to be used as a weapon.	Safety plans haven't been updated to control a risk identified from previous incidents and injuries.
Inability to perform tasks identified in the safety plan due to a documented medical restriction.	Safety plans haven't been updated to deal with a student who can overpower staff or easily extricate themselves from restraints.



Working without a specific safety plan to address situations where a violent student has eloped and staff are expected to pursue, contain or restrain the student outside the school building.	Safety plans do not address new or quickly changing behaviours, or where the unpredictable behaviours continually expose workers to workplace violence.
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When possible, you should continually raise issues of workplace violence with administration as they occur. Reporting incidents and injuries is a right and your duty under the OHSA, and it helps create a paper trail. It also creates an opportunity for your supervisor or the employer to take initial corrective action. Document if administration is debriefing with those involved, investigating occurrences, dealing with the root cause of incidents and injuries, and following up with staff. Blaming the worker must be avoided.

Resolving matters may include involving members of the JHSC and the union/bargaining unit. Previous incidents can also be relied on to justify that similar incidents could repeat unless new or revised measures and procedures appropriate to the circumstances are implemented. An inspector called to investigate a work refusal will be more encouraged to write orders if the workers have reported incidents and have documented a lack of action from administration or management.

Notes on refusals related to workplace violence

- The OHSA does not describe a safety plan or its contents
- An inspector investigating a refusal is unlikely to issue an order requiring an employer to:
 - ensure a specific number of staff are employed at the workplace
 - purchase or provide a particular type or brand of PPE to protect a body part.

APPENDIX C – Tip Sheet for Dealing with MLITSD Inspectors



Tip sheet for dealing with inspectors from the Ministry of Labour, Immigration, Training and Skills Development (MLITSD)

Introduction

The OHSA is built on a philosophy that employers and workers are best placed to resolve work hazards and dangers. The concept of this internal responsibility system works best when the workplace parties meet or exceed the minimum requirements under the OHSA and regulations. When the parties aren't able to reach a consensus on the minimum standards in the law or on how to resolve a workplace hazard, one of the parties may seek the intervention of the MLITSD. Involving the MLITSD is often an effective strategy for advancing workers' safety rights at the workplace. Inspectors are also called to investigate the circumstances of a fatality or critical injury, as well as a work refusal or stoppage. In any case, there are important considerations to keep in mind to ensure a successful outcome.

Resolve the dispute internally, if possible

Unless the circumstances of a health and safety dispute are imminent, the MLITSD might not intervene unless the workplace parties have exhausted the internal responsibility system. You should allow the employer to resolve the dispute or have the health and safety committee or representative raise the issue and put forth a 21-day recommendation. Based on your employer's response, you will be in a better position to determine if an inspector should be called.

Documentation

Make sure you have all the information to support your claim before calling in your complaint. The document can include:

- first aid/accident/near miss reports
- notices of incidents, occurrences or occupational illness
- WSIB claims information
- inspection records
- minutes from health and safety committee meetings
- 21-day recommendations
- emails, memos, letters
- previous MLITSD field visit reports

You can also gather resources from reliable sources, including CUPE Health and Safety, Worker's Health and Safety Centre, Occupational Health Clinics for Ontario Workers, Institute for Work and Health, and the Center for Research and Excellence (MSD and Occupational Disease)



*Always maintain privacy and confidentiality with any personal information provided to you.

Roles and Powers of an Inspector

Inspectors are part of the MLITSD's organizational structure and are tasked with enforcing compliance with specific statutes and regulations. A branch of the MLITSD includes inspectors assigned solely to occupational health and safety enforcement. Although inspectors have some autonomy, they are guided by internal operating procedures. An inspector can provide resources and guidance to the joint health and safety committee and its representatives, and assist the workplace in reaching consensus.

As provincial offences officers, they are authorized to conduct proactive workplace inspections without a warrant (except for a private residence or dwelling). They also conduct investigations into complaints, work refusals or stoppages, incidents involving fatalities or critical injuries, and notices of occupational illness.

When conducting inspections or investigations, the inspector has a broad range of powers, including, but not limited to:

- speaking with workers (without the presence of a supervisor/employer)
- observing the work and taking photographs
- using, operating or examining any machinery, equipment or device
- examining or requiring the employer to produce any plans, reports, or records
- conducting tests of any chemical/biological agent or thing

When a contravention of the OHSA or the regulations is observed, an inspector may:

- Stop work and barricade off an area of the workplace
- Issue an order to the employer, supervisor, owner, or other workplace party to comply with the OHSA or the regulations
- Require an employer to obtain a certificate from a professional engineer that the building or part thereof is up to code or safe from structural collapse
- Refer a matter to the OLRB where a worker has alleged a reprisal under section 50
- Issue "on the spot" tickets (\$200-\$500) to workers and supervisors for not complying with the OHSA or the Regulations
- Order the employer to establish a joint health and safety committee in a workplace with fewer than 20 workers
- Order workplace inspections more frequently
- Order the employer to assess or reassess the risks of workplace violence
- Order the employer to ensure an investigation into a complaint of workplace harassment is conducted by an impartial person (e.g., an external third party)



Making a complaint

In Ontario, a complaint with the MLITSD can be made over the phone or in writing. The central call center for making a health and safety complaint is 1-877-202-0008.

To make a written complaint, see <https://www.ontario.ca/page/filing-workplace-health-and-safety-complaint>

Make sure to state the nature of your health and safety concern. If you know the section of the OHS Act or the regulation that is in violation, include it in your report. Provide your name and contact information so the inspector knows who to contact during their investigation.

You have the right to make a complaint anonymously, but it isn't recommended. When an anonymous complaint is made, the inspector may choose to speak only with the employer or supervisor during the investigation, without fully understanding the worker's concern.

Work refusal and work stoppages

Inspectors are called in to investigate the circumstances of a refusal to work that endangers health and safety, or investigate whether dangerous circumstances are present to stop work. In both cases, an internal process must be followed before calling an inspector.

When a worker refuses under the OHS Act, they must first provide their supervisor or employer with a reason why they believe the work endangers health and safety. The employer/supervisor must investigate the circumstances in the presence of a worker member of the health and safety committee or representative. If the investigation by the employer or supervisor fails to resolve the matter, an inspector is called in to determine if the work is likely to endanger health and safety.

During a work stoppage, a certified worker member of the JHSC can request that the employer or supervisor stop work if the certified member has a reason to believe that "[dangerous circumstances](#)" exist (s. 44 of the OHS Act). If the employer/supervisor disagrees that dangerous circumstances exist, a certified employer member of the JHSC may be called to investigate. If a dispute continues, either party may call an inspector to resolve the matter.

Investigations into fatalities, critical injuries, or occupational illness

The MLITSD must be notified immediately of a workplace fatality or critical injury in the workplace. An inspector will be summoned to the workplace to conduct an investigation. One or more designated worker-members of the JHSC or the HSR has the power to conduct an investigation, and one of those persons may inspect the place where the incident occurred.



An inspector may choose to investigate a notice of occupational illness under section 52 (2) of the OHSA.

Who can accompany an inspector during a physical inspection of the workplace?

Under section 54(3) of the OHSA, an employer must afford one of the following people the opportunity to accompany an inspector during a physical inspection of the workplace.

- a JHSC member representing workers or the HSR, if any, **or**
- a worker selected by the union, if any, because of knowledge, experience and training, to represent it or them

The above-noted section of the OHSA typically does not apply during an inspector's investigations into a critical injury, fatality, work refusal or work stoppage. During these investigations, there is a process already set out in the OHSA for worker representative involvement.

What to do when the inspector arrives to investigate or makes an unscheduled inspection at the workplace?

- Introduce yourself if you are a member of the JHSC, or the HSR or the person who made the complaint to the MLITSD
- Do not hinder, interfere or obstruct the inspector during their investigation/inspection.
- Be truthful when the inspector asks you questions
- Provide the inspector with copies of your documentation
- If necessary, request to speak with the inspector alone
- Make sure to put all of your hazard concerns and recommendations before the inspector. This is important if the inspector doesn't write an order
- Review the inspector's field visit report. Point out any errors or omissions before signing it
- Make sure the employer shares the field visit report with the JHSC or the HSR. Send a copy to your union.
- Make sure the employer posts the field visit report and any orders a place that will come to the attention of workers (e.g. health and safety board).

What to do if the inspector issues an order?

- Ensure the timelines for compliance with the order are respected
- Sign the compliance form that the employer has fully complied with the order(s). If you disagree that compliance has been achieved, make a note on the form before signing or decline to sign it



- Communicate with the inspector if the employer falls back on compliance with the order or violation
- Contact a union representative for additional assistance

What to do if the inspector does not issue an order?

- A workplace party aggrieved by an inspector's decision, or their issuance or non-issuance of an order, can appeal to the labour board within 30 days of the decision or the issuance or non-issuance of an order. Ensure the inspector completes their investigation before appealing.
- Contact the union to determine if the lack of orders or orders that don't go far enough should be appealed.

Endnotes

ⁱ See s. 43 (1) (2) OHSA for a full list of workers and workplaces

ⁱⁱ *Douglas and Canadian Corps of Commissionaires (Hamilton) (Re)*, [1995] O.L.R.B. Rep. May 601.

ⁱⁱⁱ *General Motors of Canada Ltd. and C.A.W., Loc. 222 (Sellers) (Re)*, [1997] O.L.R.B. Rep. March/April 223.

^{iv} *Ontario English Catholic Teachers' Association v Dufferin-Peel Catholic District School Board, and A Director under the Occupational Health and Safety Act*, 2024 CanLII 39679 (OLRB) see also *Toronto Elementary Catholic Teachers / Ontario English Catholic Teachers Association v. Toronto Catholic District School Board*, 2017 CanLII 37597 (ON LRB)

^v *C.A.W., Local 1973 and Ministry of Labour (Re)*, [1995] O.O.H.S.A.D. No. 1 (Muir)

