

# OHS Work Refusal Policy



## 1. PURPOSE

ABC Company has adopted this Policy to establish a fair and efficient system for investigating and resolving dangerous work refusals promptly and with minimal disruption and without interfering in any way with workers' refusal rights under Part 2 of the *BC Workers Compensation Act* ("Act") and *Occupational Health and Safety Regulations* ("Regulations").

## 2. DEFINITION

For purposes of this Policy:

**"Discriminatory action"** includes any act or omission by ABC Company or a representative of ABC Company that harms a worker with respect to *any* term or condition of employment, including but not limited to suspension, lay-off, dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of workplace location, cuts in wages, changes to work hours, coercion, intimidation, imposition of discipline, reprimand, or other penalty and discontinuation or elimination of the worker's job;

"Discriminatory action" does **not** include temporarily reassigning a refusing worker to alternative work at no loss in pay until the refusal is resolved

## 3. WORKERS' RIGHT TO REFUSE WORK

No person may carry out or cause to be carried out any work process or operate or cause to be operated any tool, appliance or equipment if that person has reasonable cause to believe that doing so would create an undue hazard to any person's health and safety.

## 4. GROUNDS FOR REFUSING WORK

- 01 When Work May Be Refused

As provided in the Regulations, workers are allowed to refuse and not permitted to do

work if they have reasonable cause to believe that doing so would create an undue hazard to the health and safety of:

- Themselves;
- A co-worker; or
- Any other person.
- **Refusal Must Be Based on “Reasonable Cause to Believe”**

Work refusals rights under the law and this Policy apply only where workers have “reasonable cause to believe” danger exists. For their own protection, workers contemplating refusals are urged to assess the situation and proceed only after judging that their judgment in believing an undue hazard exists meets the reasonableness standard, keeping in mind that:

- The safety concern that prompts the refusal must be not only sincere but also reasonable;
- Reasonable is based not on what is in the worker’s own mind but on an objective standard that considers what a reasonable person with the worker’s training and experience would consider an undue hazard;
- Reasonable does not necessarily mean the worker must be right about the undue hazard—only that the concern be based on facts and circumstances that would cause a normally prudent person to be worried.

## **5. WORK REFUSAL PROCEDURE**

Workers must use the following procedure to exercise their refusal rights and duties.

**Failure to follow proper procedure may cause a refusal to be invalid even where it is prompted by the worker’s reasonable cause to believe danger exists.**

### **• 01 Stage 1: Worker to Report Refusal**

Workers who refuse to carry out a work process or operate a tool, appliance, or equipment in accordance with Section 3.12(1) of the Regulations must immediately report to their immediate supervisor or manager that they are engaging in a work refusal and explain the circumstances of the unsafe condition prompting the refusal.

### **• Stage 2: Immediate Response to Refusal by Supervisor or Manager**

Upon receiving the worker’s report of refusal, the immediate supervisor or manager must refrain from disciplining or taking other discriminatory action against the worker and instead immediately investigate the matter and either:

- Ensure that any unsafe condition is remedied without delay; or
- If in the supervisor or manager’s opinion the report of danger is not valid, notify the worker who reported the refusal.

At that point, the refusing worker must either:

- End the refusal and return to work; or
- Continue the refusal if the worker is not satisfied with the action or lack of action taken by the supervisor or manager.
- **Stage 3: Continuation of Refusal after First Investigation**

If the worker opts to continue the refusal, the immediate supervisor or manager must investigate the matter in the presence of the worker who reported the refusal, and

one of the following:

- A worker member of the workplace Joint Health and Safety Committee (“JHSC”);
- A worker selected by a trade union representing the worker; or
- If there is no JHSC or the worker is not represented by a trade union, any other reasonably available worker the refusing worker selects.

**Upon completing the investigation, the immediate supervisor or manager must either:**

- Ensure that any unsafe condition is remedied without delay; or
- Notify the refusing worker if, in the supervisor or manager’s opinion, the report of danger is not valid;

**At that point, the refusing worker must:**

- End the refusal and return to work; or
- Continue the refusal if the worker is not satisfied with the action or lack of action taken by the immediate supervisor or manager.
- **Stage 4: Continuation of Refusal after Second Investigation**

If the investigation under Stage 3 does not resolve the situation and the worker continues the refusal, the supervisor/manager and refusing worker must immediately notify a WorkSafeBC Officer (“Officer”) of the refusal. The Officer must then investigate the refusal without undue delay and issue whatever orders are deemed necessary. The worker must return to work when and if:

- The Officer notifies the worker and ABC Company that an undue hazard does not exist; or
- ABC Company implements all of the remedial measures the Officer orders after determining that an undue hazard does exist.

## **6. ASSIGNMENT OF OTHER WORKERS TO REFUSED WORK**

ABC Company will not require or permit another worker to do the work a worker has refused unless:

- The matter is resolved in accordance with Section 5 above; or
- ABC Company, in writing, advises the other worker and worker member of the JHSC, worker selected by a trade union representing the worker, or if there is no JHSC or the worker is not represented by a trade union, any other reasonably available worker the refusing worker selects of: (i) the refusal; (ii) the unsafe condition reported; (iii) the reasons why the work would not create an undue hazard to the health and safety of the other worker or any other person; (iv) the other worker’s work refusal rights under Section 3.12 of the Regulations.

## **7. NO DISCRIMINATORY ACTION FOR WORK REFUSAL**

No worker will be subject to discriminatory action for engaging in a work refusal or complying with an order issued by an Officer at the end of Stage 4 of the refusal process. ABC Company may temporarily reassign the worker to alternative work until the refusal is resolved as long as the worker suffers no loss in pay as a result of reassignment.

## **8. PRIME CONTRACTORS, CONTRACTORS & SUBCONTRACTORS**

ABC Company will respect the legal refusal rights and duties of the workers of prime contractors, contractors, and subcontractors hired to perform work at an ABC Company worksite and follow or require the prime contractor, contractor, or subcontractor to follow the refusal procedure set out in this Policy in the event such workers engage in refusals while performing the contract work.

Prime contractors hired to control work at an ABC Company worksite will be required to respect the lawful refusal rights of all workers engaged in the work and respond appropriately to any refusals that take place by following either the refusal procedure set out in this Policy or an equivalent procedure that is consistent with the ABC Company procedure and meets the requirements of Sections 3.12 and 3.13 of the Regulations.