

HR Work Refusal Reassignment Requirements – Know The Laws Of Your Province



A worker's OHS right to refuse dangerous work would be meaningless if employers could just simply reassign the worker refuses to another worker. Accordingly, OHS laws allow for reassignment only if reassigned workers are properly notified of the refusal and the reasons for it so they can make an informed decision about whether they want to accept or refuse the work. There are also requirements for reassigning the workers who initiate the refusal while the refusal is being investigated. While substantially similar, provincial refusal reassignment rules also vary in terms of:

- What must happen before refused work can be reassigned.
- The notification employers must provide to workers before asking or requiring them to do work that another worker has refused.
- The employer's rights to reassign the refusing worker.
- Whether refusing workers are entitled to be paid for their refusal time.

Here are the work refusal reassignment rules in each part of Canada.

FEDERAL

- The employer may require the refusing worker to remain at a safe location near the place of refusal or assign them reasonable alternative work while the work refusal is being investigated (*Can. Labour Code, Sec. 129(5)*).
- The employer may not assign any other employee to use or operate the machine or thing or work in that place that's subject to a work refusal unless:
 - The other employee is qualified for the work.
 - The other employee has been advised of the refusal of the employee concerned and of the reasons for the refusal.
 - The employer is satisfied on reasonable grounds that the other employee won't be put in danger (*Can. Labour Code, Sec. 129(5)*).

ALBERTA

- The employer may require a worker who properly initiates a work refusal to

- remain at the work site and temporarily assign the worker to other work that the refusing worker is reasonably capable of performing (*OHS Act*, Sec. 17(6)).
- Such a temporary assignment of a refusing worker isn't deemed a disciplinary action for purposes of triggering the worker's reprisal rights as long as it involves no loss in pay (*OHS Act*, Sec. 17(7)).
- The employer may not request or assign another worker to do the refused work until it determines that the work doesn't constitute an undue hazard to anybody's health and safety or that an undue hazard doesn't exist (*OHS Act*, Sec. 17(10)).
- If an OHS officer is brought in and finds that there's no undue hazard but the worker notifies the officer that the worker has exercised the right to continue the refusal anyway, the employer must upon becoming aware of the refusing worker's notification, advise any other worker that it assigns to do the work, in writing, of:
 - The first worker's refusal.
 - The reasons for the refusal.
 - The reason why, in the employer's opinion, the work doesn't constitute an undue hazard to the health and safety of any person or that an undue hazard is not present (*OHS Act*, Sec. 17(14)).

BRITISH COLUMBIA

- If a worker properly initiates a work refusal, the employer must not require or permit another worker to do the refused work unless:
 - The matter has been resolved in accordance with the refusals process listed in the OHS Regs.
 - The employer has, in writing, advised the other worker (and, if applicable, (x) a worker JHSC member, (y) a worker selected by a trade union representing the refusing worker, or (z) if there's no JHSC or the worker isn't in a union, any other reasonably available worker the refusing worker selects) of:
 - The refusal.
 - The unsafe condition reported by the refusing worker.
 - The reasons why the work wouldn't create an undue hazard to the health and safety of the other worker or any other person.
 - The right of the other worker to refuse unsafe work (*OHS Regs*, Sec. 3.12.1).
- A worker must not be subject to "prohibited action" for properly refusing work (*OHS Regs*, Sec. 3.13(1)).
- Temporary assignment of the refusing worker to alternative work at no loss in pay until the matter is resolved isn't considered prohibited action (*OHS Regs*, Sec. 3.13(2)).

MANITOBA

- When a worker has properly initiated a work refusal, the employer may not request or assign another worker to do the work unless:
 - The employer has advised the other worker, in writing, of:
 - The first worker's refusal.
 - The reasons for the refusal.
 - The other worker's right to refuse dangerous work.
 - The reason why, in the employer's opinion, the work doesn't constitute a danger to the safety or health of the other worker, another worker or any person.

- If practicable, the refusing worker has advised the other worker of the refusal and the reasons for it.
- The actions required by Secs. 43(3) (investigation of the refusal) and 43(4) (implementation of corrective actions, if necessary) of the Act have been taken (*WSH Act*, Sec. 43(6)).
- If a worker properly initiates a work refusal:
 - The worker is entitled to the same wages and benefits that they would have received had they continued to work.
 - The employer may re-assign the worker temporarily to alternate work (*WSH Act*, 43.2).

NEW BRUNSWICK

- If an employee properly exercises work refusal rights, the employer or supervisor may not assign another employee to do the work the worker refused unless that other employee has been advised by the employer or supervisor of the refusal, reasons for the refusal and the employee's own OHS refusal rights under the Act (*OHS Act*, Sec. 21(2)).
- If an employee has refused to do an act and the employee's right to refuse is protected, the employer or supervisor may reassign the refusing employee temporarily to perform other acts or other work that's reasonably equivalent to the acts or work the employee normally performs at the same wages and benefits that the employee would have received had they not refused (*OHS Act*, Sec. 22(1)).
- Any reassignment must be made in accordance with the collective agreement in force, if any (*OHS Act*, Sec. 22(2)).
- If an employee has reasonably refused to do an act, the employee's right to refuse is protected and the employee has **not** been reassigned to do other acts or work in accordance with Item #2 above, the employer must still pay the refusing employee the same wages and benefits that they would have received if they had not refused to do the act (*OHS Act*, Sec. 22(3)).
- A reassignment order in accordance with Item #2 is not considered a discriminatory action or reprisal (*OHS Act*, Sec. 24(2)).

NEWFOUNDLAND & LABRADOR

- The employer may reassign a worker that properly initiates a work refusal to other work that's reasonably equivalent to the refusing worker's normal work and the refusing worker must accept the reassignment until they're able to return to work (*OHS Act*, Sec. 45(2)).
- The employer must pay the worker who is reassigned the same wages or salary and the same benefits the worker would have received had they continued in their normal work (*OHS Act*, Sec. 45(3)).
- Where a worker has reasonably refused to work and has **not** been reassigned to other work, the employer must pay the worker the same wages or salary and the same benefits the worker would have received had they continued to work, until the worker is able to return to work (*OHS Act*, Sec. 45(4)).
- A reassignment of work isn't a discriminatory action banned by the Act (*OHS Act*, Sec. 45(5)).

NOVA SCOTIA

- The employer may reassign an employee who properly initiates a work refusal to other work and the employee must accept the reassignment until the employee is able to return to work (*OHS Act*, Sec. 43(5)).
- When such a reassignment occurs, the employer must pay the employee the same wages or salary and grant the same benefits as would have been received had the employee continued in the employee's normal work (*OHS Act*, Sec. 43(6)).
- The employer must also pay the refusing employee the same wages or salary and grant the same benefits as would have been received had the employee continued to work if it doesn't reassign the refusing employee (*OHS Act*, Sec. 43(7)).
- A reassignment of work in accordance with Item #1 above is not an illegal reprisal (*OHS Act*, Sec. 43(8)).
- Where an employee exercises the right to refuse to work, no employee may be assigned to do that work until the matter is properly dealt with, unless the employee to be assigned has been advised of:
 - The refusal by another employee.
 - The reason for the refusal.
 - The employee's own refusal rights (*OHS Act*, Sec. 44).

NORTHWEST TERRITORIES

- Refusing workers must remain in a safe place at or near the place of the refusal investigation during their normal working hours unless the employer, subject to the provisions of a collective agreement, if any, assigns the worker to temporary alternative work that the worker is competent to perform (*Safety Act*, Sec. 13(7)).
- Refusing workers must be paid at their regular rate of pay during the normal working hours they spend at the place of the refusal investigation or in performing alternative work (*Safety Act*, Sec. 13(8)).
- The Act doesn't address employer's rights and duties with respect to reassigning the refused work to another worker while the refusal investigation is pending.

NUNAVUT

- Refusing workers must remain in a safe place at or near the place of the refusal investigation during their normal working hours unless the employer, subject to the provisions of a collective agreement, if any, assigns the worker to temporary alternative work that the worker is competent to perform (*Safety Act*, Sec. 13(7)).
- Refusing workers must be paid at their regular rate of pay during the normal working hours they spend at the place of the refusal investigation or in performing alternative work (*Safety Act*, Sec. 13(8)).
- The Act doesn't address employer's rights and duties with respect to reassigning the refused work to another worker while the refusal investigation is pending.

ONTARIO

- During and until the completion of the initial investigation of the refusal, the refusing worker must remain:
 - In a safe place that's as near as reasonably possible to their work station.
 - Available to the employer or supervisor for the purposes of the investigation (*OHS Act*, Sec. 43(5)).
- Pending the investigation and decision of the MOL inspector called in to investigate a continuing work refusal, the worker must remain, during their normal working hours, in a safe place that's as near as reasonably possible to their work station and available to the inspector for the purposes of the investigation (*OHS Act*, Sec. 43(10)).
- **Exception:** Item #2 above doesn't apply if the employer, subject to the terms of a collective agreement, if any:
 - Assigns the worker reasonable alternative work during the worker's normal working hours.
 - Where an assignment of reasonable alternative work is not practicable, gives other directions to the worker, subject to the ban on taking reprisals against the worker for exercising their refusal rights (*OHS Act*, Sec. 43(10.1)).
- Pending the investigation and decision of the MOL inspector investigating a continuing refusal, no worker may be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or part of the workplace being investigated unless the worker has been advised of the other worker's refusal and of their reasons for the refusal, in the presence of:
 - A JHSC member who represents the workers and, if possible, is a certified member.
 - A health and safety representative.
 - A worker who because of their knowledge, experience and training is selected by the trade union that represents the worker or, if there is no trade union, by the workers to represent them (*OHS Act*, Sec. 43(12)).
- The Act doesn't address whether a worker is entitled to be paid while refusing work but MOL guidelines state that "the Ministry is of the view that the worker is at work during the first stage of a work refusal and is entitled to be paid at his or her appropriate rate" (MOL, *Guide to the OHS Act*, Part V: Right to refuse or to stop work where health and safety in danger, Item 9).

PRINCE EDWARD ISLAND

- Refusing workers must remain available at the workplace during their normal working hours pending a work refusal investigation (*OHS Act*, Sec. 28(13)).
- The employer must not assign another worker to perform an act at the workplace that another worker has refused unless it has advised that assigned worker of the refusal, the reasons for the refusal, and the assigned worker's own refusal rights under the Act (*OHS Act*, Sec. 29(2)).
- Where a worker has refused to do an act under subsection 28(1) and the worker's right to refuse is protected in accordance with the criteria for a protected refusal listed in Sec. 29(1) of the Act (the "Protected Refusal Criteria"), the employer may temporarily reassign the worker to perform other acts or perform other work that's reasonably equivalent to the worker's normal work at the same wages and benefits the worker would have received had they not refused to do the act, subject to the terms of any applicable collective agreement (*OHS Act*, Sec.

29(3)).

- Where: (x) a worker has reasonably refused to do an act, (y) the worker's right to refuse is protected under the Protected Refusal Criteria and (z) the worker has not been reassigned to perform other acts or to perform other work, the employer must pay the worker the same wages and benefits as the worker would have received if they had not refused to do the act, if the worker's refusal is upheld (*OHS Act*, Sec. 29(5)).
- However, the worker is not entitled to wages and benefits if it's determined that the refusal was for frivolous reasons (*OHS Act*, Sec. 29(6)).
- A reassignment under Item #3 above is not considered an illegal discriminatory action (*OHS Act*, Sec. 30(2)).

QUÉBEC

- Until an executory decision is rendered ordering a refusing worker to resume work, the employer may not have the work performed by another worker or by a person who ordinarily works outside the establishment and the worker exercising the right of refusal is deemed to be at work (*OHS Act*, Sec. 14).
- **Exception 1: Reassignment Allowed:** If the refusing worker continues the refusal after the initial investigation finds no danger or that the refusal is justified by the refusing worker but not another worker, the employer may have the work performed by another worker (*OHS Act*, Sec. 17).
- The reassigned worker may accept to perform the refused work after being informed that the right of refusal has been exercised, and the reasons for the refusal (*OHS Act*, Sec. 17).
- **Exception 2: Reassignment Allowed:** If the refusing worker continues the refusal after a CNESST inspector finds no danger or that the refusal is justified by the refusing worker but not another worker, the employer may have the work performed by another worker (*OHS Act*, Sec. 19).
- The reassigned worker may accept to perform the refused work after being informed that the right of refusal has been exercised, and the reasons for the refusal (*OHS Act*, Sec. 19).
- An employer may require a worker who has exercised their right to refuse to work to remain at the workplace and temporarily assign them to other duties that they're reasonably capable of performing (*OHS Act*, Sec. 25).
- **Exception 3: Reassignment Allowed:** If a work refusal prevents at least 2 other workers from working and a CNESST inspector has been called in but doesn't arrive within 6 hours, the employer may have the work performed by another worker who agrees to do the work after being informed that the right of refusal has been exercised, and of the reasons for the refusal (*OHS Act*, Sec. 26).
- If a work refusal results in depriving other workers in the undertaking of work, these other workers are deemed to be at work for the duration of the work stoppage and the employer may assign them to other duties that they're reasonably capable of performing or require them to remain available at the workplace during the whole period thus remunerated (*OHS Act*, Sec. 28).
- Special rules apply to protective re-assignment under *OHS Act*, Chapter III, Division I, § 3.

- Special rules apply to protective re-assignment of pregnant workers under *OHS Act*, Chapter III, Division I, § 4.

SASKATCHEWAN

- If a worker has properly initiated a refusal to perform an act or series of acts, the employer may not request or assign another worker to perform that act or series of acts unless that other worker has been advised by the employer, in writing, of:
 - The refusal and the reasons for the refusal.
 - The reason or reasons the worker being assigned or requested to perform the act or series of acts may, in the employer's opinion, carry out the act or series of acts in a healthy and safe manner.
 - The worker's own rights to refuse to perform the act or series of acts (*Sask Employment Act*, Sec. 3-34).
- The general ban on taking discriminatory action against workers in reprisal for exercising refusal or other OHS rights doesn't prevent an employer from temporarily assigning a refusing worker to alternate work, while:
 - Steps are being taken for the purposes of Section 331(a) of the Act to satisfy the worker that the refused work is not unusually dangerous to health or safety.
 - The JHSC is conducting an investigation of the refusal in accordance with Section 331(b) of the Act.
 - The health and safety representative is conducting an investigation of the refusal in accordance with Section 332(a) of the Act (*Sask Employment Act*, Sec.3-1(1)(i)).
- The Act doesn't address the pay rights of refusing workers who are temporarily reassigned in accordance with the above.

YUKON TERRITORY

- When a worker properly initiates a work refusal, the employer must not request or assign another worker to perform the work unless:
 - The employer advises the other worker, in writing, of:
 - The first worker's refusal to perform the work.
 - The reasons for the refusal.
 - The other worker's right to refuse to perform work.
 - The reason why, in the opinion of the employer: (A) the work is not unsafe, or (B) a circumstance referred to in Sec. 47(3) of the Act applies.
 - If the work has been determined to be unsafe, the required actions have been taken to remedy the unsafe work activity or condition (*WSC Act*, Sec. 51).
- If a worker exercises the right to refuse to perform work:
 - The worker is entitled to the same wages and benefits that they would have received had they continued to work.
 - The employer may temporarily reassign the worker to alternate work (*WSC Act*, Sec. 52).
- A temporary work reassignment under paragraph (b) of Item #2 above is not considered an illegal reprisal (*WSC Act*, Sec. 53(2)).