

# Reassigning Work Subject to a Work Refusal to Another Worker



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 at certain stages of the refusal process and subject to certain conditions. There are also rules governing the reassignment of the worker who initiates the refusal. Here's an 8-step Game Plan for ensuring compliance with work refusal reassignments.

## **Step 1. Guard Against Work Refusals that Are Per Se Illegal**

Refusing dangerous work isn't an absolute right. Thus, a work refusal isn't allowed when it would endanger the health and safety of others in the workplace. Example: Attendants responsible for monitoring atmospheric conditions inside a dangerous confined space can't initiate a work refusal if it would mean leaving their post while workers are inside the space.

Refusals are also permissible only for "undue" hazards. Translation: A worker can't refuse work based on dangers that are a normal part of the job. Example: A firefighter can't refuse to enter a burning building due to fears of inhaling smoke. Some jurisdictions, including Ontario, expressly say that refusal rights don't apply to police, firefighting, prison guards, first responders, and other inherently dangerous occupations relied upon to ensure public health and safety.

## **Step 2. Ensure the Work Refusal Is Properly Initiated**

Workers who fear for their safety can't just throw down their shovels and leave the job. They must follow an orderly process to refuse work. The first step is to notify their supervisor or other employer representative that they're exercising their OHS refusal rights and why. If they don't do this, they lose their protections and are subject to discipline.

**Compliance Strategy:** Require workers to complete a written form to report that they're refusing dangerous work and describe the dangers on which their refusal is based. But also keep in mind that such forms are a means to an end and not an end in themselves. Thus, a federal arbitrator upheld a union grievance against a company that suspended a refusal longshore worker for not filling out the required work

refusal form. The company was wrong to conclude that refusing to complete the form rendered the refusal invalid, especially since the worker clearly explained his reasons for refusing verbally [[Pacific Coast Terminals Co. v. Nenad Habus](#), 2025 FCA 152 (CanLII)].

### **Step 3. First Investigate the Refusal**

Confronted with an OHS work refusal, the first inclination of many supervisors and managers is to reassign the refused work to another worker to minimize disruptions. The assumption: The work is perfectly safe and the refusal baseless. The supervisor may ultimately be right. The problem is that acting on such snap judgments may be both illegal and highly dangerous.

**Compliance Strategy:** If the refusal is properly initiated, you must do an investigation. In some jurisdictions, the workplace JHSC or health and safety representative must participate in the investigation.

### **Step 4. Don't Call Refusing Worker Back Until the Investigation Ends**

What happens next depends on what the investigation finds. You're allowed to order the refusing worker back to work:

- If the investigation determines that there's no danger.
- If the investigation determines there really is a danger and you take what you deem to be adequate steps to correct it and ensure the work is safe to perform.

### **Step 5. Provide Proper Written Notification Before Reassigning the Work**

The problem is that the refusing worker may not be satisfied with the findings of your investigation and/or corrective actions. Under OHS laws, workers who still don't feel safe after an initial refusal investigation may continue the refusal by calling in a government OHS official to investigate. At this point, you may ask or require other workers (which we'll refer to as "reassigned workers") to do the refused work, provided that you give them proper notification so they know about the refusal and can make an informed decision about whether to accept the assignment. Such notification should be in writing and, at a minimum, advise the reassigned workers:

- That a worker has refused to perform the work.
- Of the reasons for the first worker's refusal.
- Of the reassigned workers' own OHS rights to refuse the work.

In Alberta, BC, Manitoba, Saskatchewan, and Yukon, the notification must also state the reasons the employer believes that the refused work can be done without endangering the reassigned workers or any other person.

### **Step 6. Provide Reassignment Notification to Third Parties, If Required**

The duty to provide the above reassignment notification applies to not just the reassigned workers at the workplace at the time of the refusal but those assigned to do the work on the next shift after the refusal. Some provinces impose additional notification requirements:

- **In BC**, notification must be provided to not only the reassigned worker but also a worker member of the JHSC, a worker selected by the refusing worker's union, or if there's no JHSC or union, another "reasonably available worker" selected by the refusing worker.
- **In Ontario**, notification must be provided in the presence of a worker member of the JHSC, preferably a certified member, or another person representing the reassigned worker.
- **In Manitoba**, if "practicable," the refusing worker should also provide the reassigned worker notice of the refusal and reasons for it.

## **Step 7: Properly Reassign the Refusing Worker**

You also need to know what to do with refusing workers while they await the outcome of the refusal investigation and completion of any required corrective actions. The 2 basic options:

- Reassign them to reasonably equivalent work in accordance with the terms of the collective agreement if the refusing worker is in a union.
- Require the refusing worker to remain in a safe place near the refusal site so they can be available for the investigation.

## **Step 8: Ensure Refusing Workers Are Properly Paid for Refusal Time**

In most jurisdictions, refusing workers are generally entitled to full pay and benefits for their time in being reassigned at the same rate they'd have received had they not refused. **Exception:** In PEI, workers who aren't reassigned to equivalent work are entitled to pay and benefits only if the refusal is upheld.