

How to use your right to refuse – a three phase process

Phase 1 – Refusal

Worker: Identifies a situation, hazard, or condition in their workplace that they believe is likely to endanger their health and safety or the health and safety of another person. Worker exercises their right to refuse and immediately removes themselves to the closest safe location and reports the refusal to their supervisor. The worker should also inform their local of the refusal so they can monitor the situation and obtain assistance from CUPE National as needed.

Note: When reporting the refusal, the worker should state they are exercising their right to refuse under the *Occupational Health and Safety Act* and put same statement in writing as soon as possible. This is their statement of refusal and should be as short and to the point as possible.

Supervisor: Attempts to remedy the situation, this means they should control the hazard that the worker has reported. This may mean removing or replacing a piece of equipment, instructing the client to remove a person, substance, or animal from the home or even providing additional staff or resources. It does not mean attempting to convince the worker their refusal is unnecessary

Worker: If satisfied, the supervisors actions resolved the hazard. The situation is resolved. If the worker(s) who refused is not satisfied, this is now a continued refusal and moves to Phase 2.

Phase 2 – JOHS Committee Investigation

Employer: Assembles the Joint Occupational Health and Safety Committee to investigate the validity of the work refusal. The committee should be provided with the workers statement of refusal along with any documentation the employer produced during their efforts to resolve the refusal at Phase 1.

Note: There must be enough committee members present to have quorum (as established in the committee's rules of procedures).

JOHS Committee: Reviews the available information and requests any additional data the members need in their deliberations. Based on the available information the committee can make recommendations to the employer (to resolve the hazard that led to the refusal). The committee's primary role is to recommend.

Note: If the committee **unanimously** decides the situation is not a danger, the process ends here and the worker may no longer exercise their right to refuse. This is a weakness of our legislation as it allows no appeal or other recourse for the worker. For this reason, unanimous decisions of the committee should be avoided.

Employer: Decides if they agree with any recommendations the committee has made.

Worker: If any preventive measures were taken as a result of the committee's recommendations, the worker again decides if they are satisfied that the hazard has been mitigated or removed. If they are satisfied the process ends here. If they are not satisfied the process now moves to Phase 3.

Phase 3 – Department of Labour Investigation

Worker or Employer: Contacts an OHS Officer with the Department of Labour. The officer will come to the workplace to investigate.

OHS Officer: Conducts an investigation into the validity of the work refusal.

Note: The worker who has refused may elect to accompany the officer on their investigation and is entitled to continue being paid for this time even if it removed them from other duties.

OHS Officer: Decides if a danger exists or not. If the officer agrees with the workers, they will give orders to the employer to remedy the hazard. If they do not agree with the worker, then the refusal process has ended and the worker can no longer refuse and enjoy the protection of the *Occupational Health and Safety Act*.

Important Considerations

- The worker must continue to be paid for the time they would have worked if not for the refusal. There can be no loss of wages or benefits.
- Discriminatory action against a worker who has exercised their rights under the *Act* is strictly prohibited. If a worker feels they are facing repercussion for using their right to refuse they should document everything and have their local executive contact their CUPE National Servicing Representative.
- The employer may assign other workers to perform the work that is being refused but must first inform that worker of the ongoing work refusal and the stated reasons for it.
- The employer may assign alternate work to the worker who exercised their right to refuse while the process is ongoing.