

CANADIAN LEGISLATION RELATING TO THE RIGHT TO REFUSE DANGEROUS WORK

Jurisdiction/Legislation

Right to Refuse Dangerous Work

Federal

*Canada Labour Code
(Part II)*

An employee may refuse to work where he/she has reasonable cause to believe that a condition in the workplace constitutes a danger to him/her, or the work constitutes a danger to him/her or another employee¹ (s.128(1)). "Danger" is defined as any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system (s.122(1)). An employee may not refuse to work if the refusal puts the life, health or safety of another person directly in danger, or if the danger is a normal condition of employment (s.128(2)). The master of a ship or the pilot of an aircraft is empowered, having regard to the overall safety of the ship or aircraft, to suspend this right while the ship or aircraft is in operation (s.128(3) and (4)). Where an employee reports to the employer that he/she refuses to perform dangerous work, the employee must inform the employer whether he/she intends to exercise recourse under an applicable collective agreement or Part II of the Code. The selection of recourse is irrevocable, unless the employer and employee agree otherwise (s.122(7)). Unless otherwise provided in a collective agreement or other agreement, employees affected by a stoppage of work arising from the right to refuse or continue to refuse dangerous work are presumed to be at work for the purpose of calculating wages and benefits until work resumes or until the end of their shift or scheduled work period, whichever comes first. The same applies to employees who are due to work on the next scheduled work period or shift, unless they have been given at least one hour's notice not to attend work (s.128.1(1), (2)). The Minister of Labour may, upon the joint application of the parties to a collective agreement, exclude the employees covered by the agreement from the application of the sections of the Code relating to the right to refuse dangerous work for the period during which the agreement remains in force, if he/she is satisfied that the agreement contains provisions that are at least as effective in protecting the employees (s.130). There is protection against dismissal, disciplinary action or other penalty, if acting in accordance with Part II of the Code and a right to complain to the Canada Industrial Relations Board with the burden of proof being on the employer (ss.133, 134 and 147).

Alberta

Occupational Health and Safety Act

A worker may refuse to work where he/she believes, on reasonable and probable grounds, that there exists or will exist conditions of imminent danger for him/her or another worker at the work site¹ (s.35(1)). "Imminent danger" is defined as a danger that is not normal for that occupation, or a danger under which a person engaged in that occupation would not normally carry out his/her work (s.35(2)). A general provision protects workers against dismissal or disciplinary action, including any financial penalty, if acting in compliance with the Act and there is a right to file a complaint with an occupational health and safety officer and, subsequently, to ask that the Occupational Health and Safety Council review the matter (ss.36 and 37).

Jurisdiction/Legislation

Right to Refuse Dangerous Work

British Columbia

Workers Compensation Act (WCA) and Occupational Health and Safety Regulation; Mines Act and Health, Safety and Reclamation Code for Mines in British Columbia (Code); Board means the Workers' Compensation Board

A person may refuse to work where he/she has reasonable cause to believe that the work would create an undue hazard to the health and safety of any person¹ (Reg. s.3.12(1), and Code s.1.10.1). There is protection against dismissal or discriminatory action, including reduction of wages or other penalty, if acting in accordance with the legislation (Reg. s.3.13(1), Mines Act, s.14). Part 3 of the WCA, which does not apply to mines, provides that a worker who considers that discriminatory action has been taken against him/her for refusing to perform dangerous work, can seek redress through the grievance procedure under a collective agreement or by way of a complaint to the Board. In either case, the burden of proof is on the employer (WCA ss.150 to 153). (Note: WCA ss.141 to 149 are not in force.)

Manitoba

Workplace Safety and Health Act

A worker may refuse to work where he/she believes, based on reasonable grounds, that the work is dangerous to his/her safety or health or that of another worker or person¹ (s.43). The worker is entitled to the same wages and benefits that would have been received had he/she continued to work. Workers are protected against dismissal or discriminatory action for refusing to do dangerous work in accordance with the Act, and there is a right to file a complaint with a safety and health officer with the burden of proof being on the employer (ss.42, 42.1).

New Brunswick

Occupational Health and Safety Act, WHSCC means the Workplace Health, Safety and Compensation Commission

An employee may refuse to work where he/she has reasonable grounds to believe that the work is likely to endanger his/her health or safety or that of another employee¹ (s.19). Where an employee has reasonably refused to work in accordance with the Act and has not been reassigned to other work, the employer must pay him/her the same wages and grant the same benefits as would otherwise have been received (s.23). General provisions protect employees against dismissal or discriminatory action, including loss of wages, if they act in accordance with the Act, by having the matter dealt with by final and binding arbitration under a collective agreement, or by filing a complaint with the WHSCC which refers it to an arbitrator it has appointed with a possible review of the decision on any ground by the Court of Queen's Bench (ss. 24 to 27).

Newfoundland and Labrador

Occupational Health and Safety Act

A worker may refuse to do work that he/she has reasonable grounds to believe is dangerous to his/her health or safety or that of another person at the workplace¹. Where a worker has reasonably refused to work in accordance with the Act and has not been reassigned to other work, the employer must pay him/her the same wages and grant the same benefits as would otherwise have been received (ss.45, 46). There is protection against dismissal or discriminatory action, including deduction of wages or other benefits, if this right is exercised in accordance with the Act, and a right to use any grievance procedure provided in a collective agreement with respect to discrimination or file a complaint with the Labour Relations Board; in either case, the burden of proof is on the employer (ss.49 to 52).

Jurisdiction/Legislation

Right to Refuse Dangerous Work

Northwest Territories and Nunavut
Safety Act, Mine Health and Safety Act (MHSA) and Mine Health and Safety Regulations

A worker may refuse to work where he/she has reason to believe that an unusual danger exists or is likely to exist to his/her health or safety or that of another person¹ (s.13(2)). "Unusual danger" is defined as a danger that does not normally exist in an occupation, or a danger under which a person engaged in that occupation would not normally carry out his/her work (s.13(1)). The worker must be paid at his/her regular rate of pay during the normal working hours while the investigation is taking place (s.13(8)). In mines, an employee may refuse to work if he/she has reasonable cause to believe that the work or the condition of a work site could endanger the health or safety of any person (MHSA s.18 (1), (2)). There is protection against dismissal, disciplinary measures or discriminatory action, including loss of earnings, if workers exercise the right to refuse dangerous work in accordance with the legislation (s. 22; MHSA ss.19, 20).

Nova Scotia
Occupational Health and Safety Act

An employee may refuse to work where he/she has reasonable grounds for believing that the work is likely to endanger his/her health or safety or that of another person¹ (s.43(1)). The employee may not exercise this right if the refusal puts the life, health or safety of another person directly in danger or if the danger is inherent in the work (s.43(9)). Where an employee has exercised his/her right to refuse dangerous work and has not been reassigned to other duties, the employer must, until the matter is resolved, pay the employee the same salary and grant the same benefits as would otherwise have been received (s.43(7)). There is protection against dismissal or discriminatory action, including reduction in wages and other benefits, where an employee has refused dangerous work in accordance with the Act, through grievance arbitration under a collective agreement or by making a complaint to an occupational health and safety officer, with the burden of proof being on the employer (ss.45, 46).

Ontario
Occupational Health and Safety Act

A worker may refuse to work where he/she has reason to believe that the work is likely to endanger himself/herself or a co-worker¹. Exclusions are specified when dangerous circumstances described in the Act are inherent in the worker's work or a normal condition of the worker's employment or when the worker's refusal to work would directly endanger the life, health or safety of another person (s.43). General provisions protect workers against dismissal or disciplinary action, including any financial penalty, if acting in accordance with the Act, through final and binding arbitration under a collective agreement or by making a complaint to the Ontario Labour Relations Board with the burden of proof being on the employer (s.50).

Prince Edward Island
Occupational Health and Safety Act, WCB means the Workers Compensation Board

A worker may refuse to work where he/she has reasonable grounds to believe that an act is likely to endanger his/her health or safety or that of another worker¹ (s.28). Where a worker has reasonably exercised his/her right to refuse dangerous work in accordance with the Act and has not been reassigned to other duties, the employer must, until the matter is resolved, pay that worker the same wages and grant the same benefits as would otherwise have been received (s.29(5)). Workers are protected against discriminatory action, dismissal and penalties when acting in accordance with the Act; and there is a right to use the arbitration procedure under a collective agreement or to complain to the WCB. In the latter case, if all the required steps to resolve the complaint have been exhausted, the WCB refers the complaint to an arbitrator it appoints (ss.30 and 31)).

Jurisdiction/Legislation

Right to Refuse Dangerous Work

Quebec

An Act respecting occupational health and safety;
CSST means Commission de la santé et de la sécurité du travail
(Occupational Health and Safety Commission)

A worker may refuse to work if he/she has reasonable grounds to believe that the performance of that work would expose him/her to danger to his/her health, safety or physical well-being, or would expose another person to a similar danger¹. However, this right may not be exercised if the refusal puts the life, health, safety or physical well-being of another person in immediate danger or if the conditions under which the work is to be performed are ordinary in this kind of work. The worker is deemed to be at work while exercising his/her right to refuse in accordance with the Act. There is protection against dismissal, discriminatory action or reprisals, unless the worker abused the right to refuse (ss. 12 to 31), and the worker has the right to use the grievance procedure under a collective agreement or to submit a complaint to the CSST. The burden of proof is on the employer to establish another good and sufficient reason for taking the action. The CSST's decision is subject to review by the Commission des lésions professionnelles (Occupational Injury Commission) (ss. 227 and 228).

Saskatchewan

Occupational Health and Safety Act, 1993

A worker may refuse to work where he/she has reasonable grounds to believe that the work is unusually dangerous to his/her health or safety or that of any other person at the place of employment¹ (s. 23). There is protection against dismissal or discriminatory action, including loss of wages, for acting in accordance with the Act. A complaint of discriminatory action may be made to an occupational health officer. In any prosecution or other proceeding under the Act, the burden of proof is on the employer (ss. 27 and 28).

Yukon Territory

Occupational Health and Safety Act

A worker may refuse to work where he/she has reason to believe that the work constitutes an undue hazard to that worker or any other person or a condition exists in the workplace that constitutes an undue hazard¹ (s.15(1)). This right may not be exercised if the life, health, safety, or physical well-being of another person is put in immediate danger or if the conditions under which the work is to be performed are ordinary for that kind of work (s.15(5)). The worker must be paid at his/her regular or premium rate, as the case may be, while the matter giving rise to the refusal is being investigated until a decision is rendered by a safety officer (s.16(6)). There is a general prohibition against dismissing a worker or taking any disciplinary or discriminatory action against him/her because he/she has acted in accordance with the Act (s.18).

NOTE

1. Typically, the following steps are taken when an employee refuses to perform dangerous work. The refusal must be reported to the employer or supervisor who investigates the matter; in certain jurisdictions, the investigation must be carried out in the presence of the employee and a worker representative in the workplace. If the employer or supervisor finds that the employee is not justified to refuse to work or corrective actions have been taken, and the employee continues in his/her refusal, the matter is referred to a government-appointed safety officer or inspector who investigates the circumstances of the refusal (in some jurisdictions, the matter may be referred to a health and safety committee, if one exists, prior to any referral to a safety officer or inspector). A safety officer or inspector can order appropriate remedial actions to be taken by the employer and decide whether the refusal is justified or not. If the safety officer or inspector finds that the danger perceived by the employee does not exist or no longer exists, the employee is no longer justified under the law to continue to refuse to carry out the work. In general, the employee can appeal the decision of a safety officer or inspector, but the decision is not suspended during the appeal process. Usually, the law specifies that while the circumstances giving rise to a refusal to perform dangerous work are being investigated, the employer may assign the employee reasonable alternative work, and may not designate another employee to do the work, unless he/she has been informed of the refusal and the reasons for it.