

Keeping the Lights On: Preventing and Responding to Work Refusals in the Wake of COVID-19

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While some employers have chosen to temporarily suspend operations, or have been ordered to do so, in response to the COVID-19 pandemic, many others, will do their best to remain open for business. Accordingly, it is important that employers who remain open for "business as usual" during the COVID-19 pandemic remember their rights and obligations under the applicable occupational health and safety legislation, including employee work refusals.

Work Refusals in Ontario

Part V of Ontario's *Occupational Health and Safety Act (OHSA)* provide employees with the right to refuse or to stop work where their health or safety are in danger, except for certain types of employees for whom risks to health or safety are inherent in their work, or where their refusal to work would directly endanger the life, health or safety of another person.

All employees not subject to an exception under the *OHSA* may refuse to work or do particular work where they have reason to believe that the physical condition of the workplace and/or the equipment, machine, device or thing they are to use or operate is likely to endanger themselves or another worker. In such circumstances the worker is expected to report to their employee or supervisor immediately, following which the employer or supervisor must investigate.

If, following the investigation and the employer's efforts to remediate the danger, the employee continues to have reasonable grounds to feel unsafe, the employer or someone acting on behalf of either the employee or employer must notify a Ministry of Labour, Training and Skills Development inspector.. The inspector will then attend the workplace to investigate the refusal. Pending that investigation, no worker may be assigned to use or operate the dangerous equipment, machine, device or thing, nor to work in the workplace or part of the workplace being investigated.

If the inspector finds that the circumstance is not likely to endanger the worker or another person, the refusing worker can be directed by the employer to return to work. If the inspector determines that the circumstance is likely to endanger the worker or another person, the employer will be ordered to address the workplace hazard.

Thus, if employers are not proactive, or sufficiently reactive, to workplace dangers introduced by COVID-19, they run the risks ranging from a brief work refusal to an outright suspension of operations.

Practical Tips to Manage and Respond to Work Refusals

An ounce of prevention is worth a pound of cure: The cost of precautionary measures is likely to be far less costly than the disruption of a work refusal or a complete shutdown of the workplace. Employers should follow the direction and guidance of the public health authorities that are applicable to the workplace, including supplying employees with hand sanitizer, disinfectant wipes, and other

cleaning items in order to prevent work refusals from ever becoming an issue. Effective and timely communications to employees informing them of the steps the employer has taken to protect the health and safety of employees will also reduce the risk of a work refusal.

Take work refusals seriously and respond swiftly: A temporary refusal by one employee can, if left unchecked, result in an inspection by the Ministry of Labour, Training and Skills Development during which no employee may be assigned to use the devices or work in the workplace area under investigation. Preventing a work refusal from reaching this stage is essential in order to maintain normal operations. Employers should record the employee's exact nature and concern that gives rise to the work refusal as well as the investigation it undertakes and its attempt to resolve the employee's concern. This information will assist the Ministry of Labour, Training and Skills Development inspector in his or her investigation of the work refusal.

Escalate precautionary measures as the COVID-19 situation develops: Currently, precautionary measures such as keeping hand sanitizer and disinfecting wipes on site and limiting employee's contact with third parties and each other in the workplace may be sufficient for most workplaces. However, as the situation develops, more significant measures may be required in order to prevent employees from developing a reasonable belief that they are unsafe in the workplace. Employers may wish to consider such steps as distributing masks, requesting or requiring that customers pay by card rather than cash, or modifying work hours in order to provide a sufficient sense of safety among workers.

COVID-19 presents an evolving challenge for employers, especially those who choose or are required to remain open throughout the pandemic. For more information on how to respond to COVID-19 in your workplace or organization, please contact any one of our authors.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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