



COVID-19

Right To Refuse Unsafe Work

COVID-19 is creating considerable uncertainty in the workplace, especially in situations where employees are unable to work from home and must continue to attend at their employer's worksite every day. In an ongoing effort to keep employers informed of their health and safety related rights and obligations, we have outlined key considerations surrounding an employee's right to refuse unsafe work.

While COVID-19 is a hazard to employees currently working, one that we have not had to deal with before, many other hazards remain in our industry such as working at heights, confined spaces and working with or in close proximity to controlled products, just to name a few. We must continue to monitor all hazards in the workplace and not merely focus all our attention on one. Of course, we must always report/refuse **any** work that has the potential to cause illness, injury or property damage. Physical distancing means maintaining at least 2 metres (6.5 feet) of distance between individuals.

WHAT IS THE RIGHT TO REFUSE TO PERFORM UNSAFE WORK

All workers have a fundamental right to a safe workplace. Occupational health and safety laws within the Province of Newfoundland and Labrador allow an employee to refuse to perform any work when they have reason to believe that their health or safety, or that of other individuals at the workplace, is in jeopardy. In such cases, they may exercise their *right to refuse* in accordance with the process set out in the OHS Act and Regulations.

WHAT IS THE THRESHOLD FOR THE EXERCISE OF SUCH A RIGHT?

The right to refuse unsafe work is a fundamental right of every worker in Newfoundland and Labrador and should not be abused. The Act actually specifies that a worker must not take advantage of this right without reasonable grounds. It should not be used to attempt to solve other, non-health and safety workplace issues. Most work refusals are addressed in the workplace, among the workplace parties. However, if they are not, Provincial OHS Officers have full authority to investigate and order the employer to address the workers' concerns, or alternatively, order the worker to return to work.

CAN AN EMPLOYEE REFUSE TO PERFORM WORK BASED ON THE COVID-19 PANDEMIC?

It is possible that the COVID-19 pandemic may create the basis for a legitimate work refusal. An employee's right to refuse to perform work as a result of COVID-19 will be contingent upon factors including (but not limited to) the following:

- the state of the COVID-19 situation in the worker's particular city/town, region, province and workplace at the time the refusal to work is being exercised;
- the age and health of the specific worker;
- the type of workplace where the worker usually performs his functions;
- the specific field of work and his or her normal duties or tasks;
- the number of workers at the workplace and whether or not physical distancing is possible;
- the measures adopted by the employer to prevent the transmission of COVID-19, including workplace hygiene and personal protective equipment (PPE), where applicable;
- whether or not an employee of the employer has been diagnosed with COVID-19;
- any other factually relevant considerations in assessing whether there is a hazard, a risk, a danger, etc.

In addition, the right to refuse cannot be exercised in absentia, or on behalf of others. A worker must be in the workplace and familiar with the alleged hazards in order to refuse to work.



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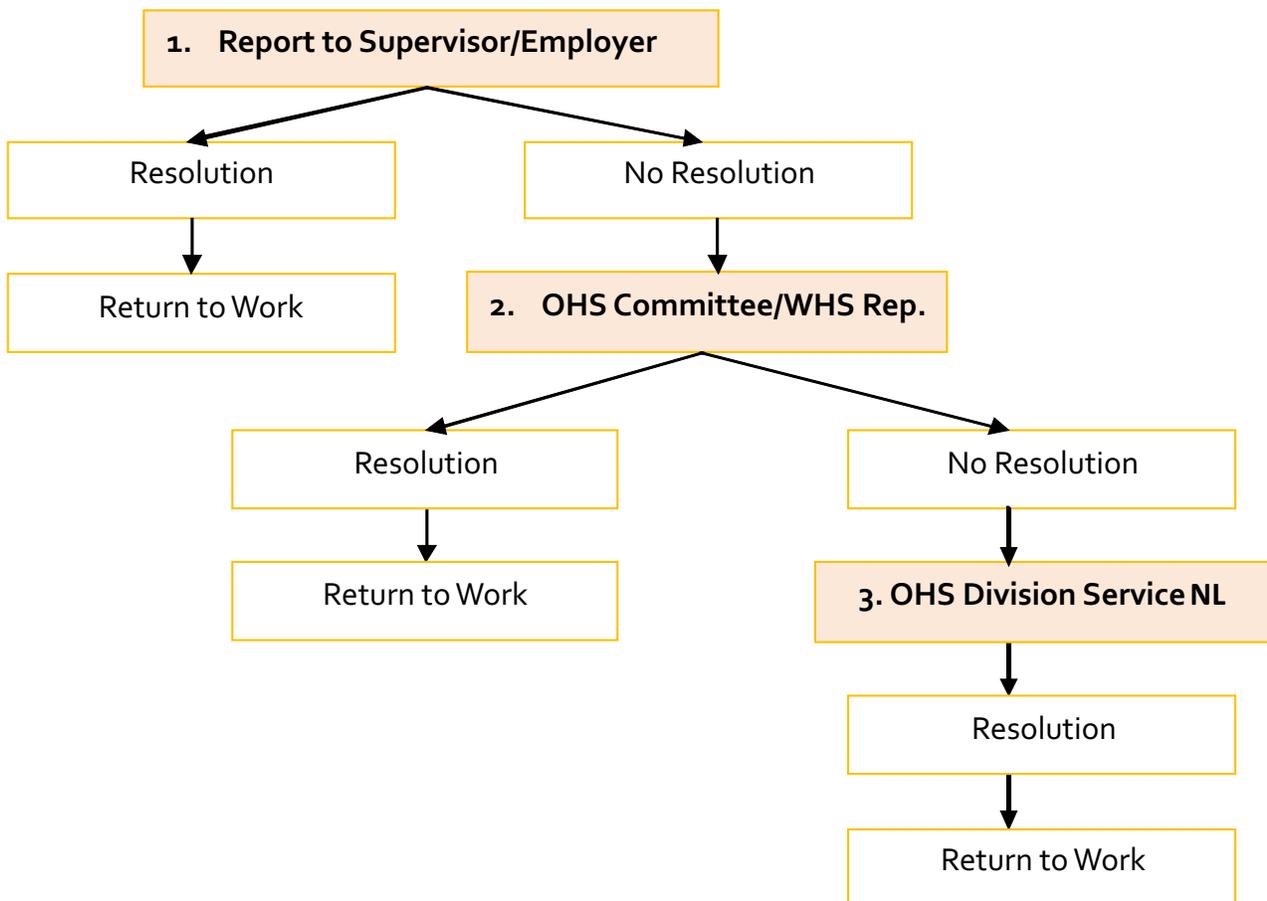
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WHERE A WORKER HAS REASONABLE GROUNDS TO EXERCISE THEIR RIGHT TO REFUSE, THE FOLLOWING THREE (3) STEPS MUST BE FOLLOWED:

STEP 1 – Report immediately to his/her supervisor giving the precise conditions for the refusal to work. If the matter is resolved to the worker's satisfaction by the employer, the worker must return to work. If the matter is not resolved to the worker's satisfaction, the worker reports to:

STEP 2– A member of the Occupational Health and Safety Committee or the Worker Health and Safety Representative for investigation..If the matter is not resolved to the workers satisfaction by the Occupational Health and Safety Committee or Worker Health and Safety Representative, the worker reports to:

STEP 3 – The Occupational Health & Safety Branch of Service NL for information and follow up. An Occupational Health and Safety Officer investigates the matter, and pending resolution, advises the worker to return to work.





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WHAT HAPPENS TO THE EMPLOYEE WHILE THE WORK REFUSAL IS BEING INVESTIGATED?

Employers may ask another worker to perform the work which was refused, but only if the employer informs the replacement worker of the other worker's refusal and the grounds for refusing it. The alternative worker will then have the right to accept or refuse the work in question. The employer may assign the worker who refused, other work that is reasonably equivalent to his/her normal work. In addition, the employer is required to pay the worker the same wages or salary and grant the same benefits as the workers would have received in his/her normal work.

CAN I BE FIRED FOR USING MY RIGHT TO REFUSE?

The NL OHS Act prohibits discriminatory action against a worker for exercising their right to refuse. An employer or union cannot take a discriminatory action against a worker by dismissing him or her or by deducting wages, salary or other benefits, or by taking other disciplinary action against him or her because the worker has reasonably refused to work under their right to do so.

FOR FURTHER INFORMATION

For further information, please feel free to contact:

Newfoundland and Labrador Construction Safety Association:

email: info@nlcsa.com

phone: 709-739-7000 or 1-888-681-SAFE (7233)

To report a work refusal, contact:

Occupational Health and Safety Division, ServiceNL:

Corner Brook: 709-637-2974

Grand Falls-Windsor 709-292-4400

St. John's 709-729-2706

Wabush 709-282-3679

or 1-800-563-5471