



# “I’m Not Doing That!”: The Right to Refuse Unsafe Work Under Occupational Health and Safety Legislation in Alberta and British Columbia

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Occupational Health and Safety legislation contains a right to refuse dangerous or unsafe work, but not all work will meet this high threshold.

Since the beginning of the COVID-19 pandemic, employers have seen numerous workers exercising their right to refuse unsafe or dangerous work.

Under occupational health and safety legislation, employers are required to provide a safe workplace for their employees. This means using all reasonably practicable means to reduce workplace hazards. The right to refuse dangerous work is a fundamental right of workers; however, it is a high threshold to establish. This means that not all allegations that the work is dangerous will be established. Further, Alberta and British Columbia both have specific processes that must be followed when a work refusal is initiated.

## Alberta Right to Refuse

In Alberta, workers have the right to refuse to work entirely or to do particular work if they have *reasonable grounds* for believing that there is a dangerous condition at the workplace or that their work will constitute a danger to the worker’s (or another person’s) health and safety.

If a worker wants to refuse to work, the employer and worker must follow the process below:

1. The worker must promptly report the refusal and the reasons for the refusal to the employer or the worker’s supervisor.
2. The employer must remedy the dangerous condition immediately.
3. If the employer does not remedy the dangerous condition immediately then the employer must inspect the dangerous condition with the worker present when this does not create a danger to health and safety. One of the following other individuals must also be present: (a) the worker co-chair of the joint work site health and safety committee (if there is one); (b) the health and safety representative (if there is one); (c) if there is no committee or representative then another worker selected by the worker who is refusing to do work.

4. When the inspection is taking place, the employer must either itself, or through someone else, take any action necessary to remedy any dangerous condition.
5. If the dangerous condition is not remedied then the worker may continue to refuse to do the work to which the dangerous condition may relate.
6. The employer cannot assign or request that another worker does the work that was refused until the employer has determined that the work does not constitute a danger to the health and safety of any person or that a dangerous condition does not exist.
7. If an employer assigns another worker to do the work, the employer shall advise that worker, in writing, of: (a) the first worker's refusal; (b) the reasons for the refusal, (c) the reason why, in the opinion of the employer, the work does not constitute a danger to the health and safety of any person or that a dangerous condition is not present; and (d) that worker's right to refuse to do dangerous work under this section.
8. Once the inspection is completed, the employer must prepare a written report of the refusal to work, the inspection, and any actions taken. This report must not contain any personal information related to the worker who refused the work. The report must be given to the following people: (a) the worker who refused work; (b) the joint work site health and safety committee, if one exists; and (c) the health and safety representative, if one exists.

It is important to note that if the dangerous is not remedied after an inspection is completed then the worker who refused to perform the work or any person present during the inspection may file a complaint with an officer. This means that employers should treat work refusals seriously and make genuine attempts to remedy any dangerous conditions.

## British Columbia Right to Refuse

In British Columbia, workers are not required to carry out any work or use any equipment if they have reasonable cause to believe that doing so would create an undue hazard to the health and safety of any person.

If a worker wants to refuse work, the worker and the employer must follow the process below:

1. A worker must immediately report the circumstances of the unsafe condition to his or her supervisor or employer.
2. A supervisor or employer receiving the report must immediately investigate the matter and either: (a) ensure that any unsafe condition is remedied without delay, or (b) if in his or her opinion the report is not valid, must inform the person who made the report.
3. If this procedure does not resolve the matter and the worker continues to refuse to carry out the work process or operate the equipment, the supervisor or employer must investigate the matter in the presence of the worker who made the report and in the presence of: (a) a worker member of the joint committee; (b) a worker who is selected by a trade union representing the worker, or (c) if there is no joint committee or the worker is not represented by a trade union, any other reasonably available worker selected by the worker.
4. If the investigation does not resolve the matter and the worker continues to refuse to carry out the work or use the equipment, both the supervisor, or the employer, and the worker must immediately notify a WorkSafeBC officer.
5. The WorkSafeBC officer will then investigate the matter without undue delay and issue whatever orders are deemed necessary.

## General Recommendations

Workers may try to exercise a right to refuse work during the COVID-19 pandemic. Whether or not those refusals will be justified is dependent upon the facts of each specific case. Some factors which should be considered are:

- The type of workplace in which the worker works (for example, exposure to many people vs. working alone);
- Whether the employer is able to control the hazards associated with COVID-19 through engineering, administrative, or personal protective equipment controls (“PPE”);
- Whether the worker is normally exposed to similar risks that COVID-19 presents;
- The kind of work the worker normally completes;
- The likelihood that the worker will come into contact with members of the public, co-workers, contractors, or customers who are sick with COVID-19;
- The geographic location of the worker and the amount of cases of COVID-19 present in that geographic region (for example, rural centres may not be as impacted as urban centres);
- The worker’s own risk factors including their age and underlying health conditions;
- The travel history of the worker and his or her co-workers;
- Whether another employee has been diagnosed with COVID-19 or has symptoms consistent with COVID-19; and
- If there are any legislative exemptions that apply to this particular workplace.

Some steps an employer may take to eliminate, reduce, or protect workers against the workplace hazard of COVID-19 include:

- Encouraging remote work as much as possible;
- Providing masks, gloves, face shields, eye wear, or other PPE;
- Increasing the frequency that the workplace is cleaned, particularly in high-risk areas such as doorknobs, elevator buttons, hand rails, and washrooms.
- Ensuring employees who have cold and flu-like symptoms do not attend the workplace;
- Ensuring that workers or guests who have travelled do not attend the workplace;
- Limiting guests to the workplace;
- Requesting that the workers and guests share details of recent travel;
- Providing hand sanitizer, wipes, soap, and water to workers;
- Providing tissue boxes and encouraging use of the same;
- Providing disposable cutlery, cups, mugs, and plates for worker use;
- Refusing to accept cash and not handling customers’ debit or credit cards;
- Installing physical barriers between the worker and the public (for example, glass shields at a checkout counter or line markings representing appropriate social distancing measures); and
- Creating a rotating shift schedule; and
- Anything else that will minimize the hazard of COVID-19.

Employers must continue to pay employees during the work refusal process, although they can be assigned temporary duties while the process is ongoing. Additionally, employers cannot retaliate against employees who raise good faith concerns about refusing to work. This means they cannot be terminated, have their compensation reduced, have their hours reduced, be suspended, be disciplined, be demoted, or have other retaliatory or discriminatory actions taken against them.

Navigating a work refusal can be a complicated and intimidating process. As each case will turn on its own facts, employers are encouraged to contact experienced counsel to provide case-specific advice.

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