

MANUAL OF ADMINISTRATION

TOPIC: HEALTH AND SAFETY	SUBJECT: Work Refusal	Code: HS250
		Date of Issue: Nov 2003
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PURPOSE: To ensure that employees are aware of their rights and to ensure compliance with the Health and Safety Act, Section 43.

The Occupational Health and Safety Act gives employees “the right to refuse to perform work they believe is unsafe”.

Employees have the right to refuse work they believe is dangerous to either their own health and safety or that of another employee.

However, this right has limitations for certain workers which include Avenue II employees. As stated in the Act, Section 43 (1), Certain workers cannot refuse unsafe work if the danger in question is a normal part of the job or if the refusal would endanger the life, health or safety of another person. Section 43(2)(d)(ii) this includes employees who support individuals with behavioural or emotional problems or a physical, mental or developmental disability, at their residence, place of employment or in the community.

PROCEDURE: An employee can refuse to work if he or she has reason to believe that one or more of the following is true:

1. Any equipment, machine, device or thing that the worker is to use or operate is likely to endanger himself, herself or another worker (section 43(3)(a)).
2. The physical condition of the workplace or the part thereof in which he or she works, or is to work, is likely to endanger himself or herself (section 43(3)(b)).
3. Workplace violence is likely to endanger himself or herself (section 43(3)(b.1)).
4. Any equipment, machine, device or thing he or she is to use or operate, or the physical condition of the workplace, or the part thereof in which he or she works, or is to work, is in contravention of this act or the regulations and such contravention is likely to endanger himself, herself or another worker (section 43(3)(c)).

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Employees exercising their right must immediately report to their Director, Manager/On Call that they are refusing to perform unsafe work and/or clearly state that this is a work refusal under the Occupational Health and Safety Act.. The steps in refusing work are detailed as follows:

STAGE 1:

1. Worker believes that work is unsafe.
2. Worker immediately informs their Director/Manager/On Call that work is being refused and why. Worker remains in a safe place.
3. The Director/Manager/On Call investigates in the presence of the worker and a worker member of the Joint Health & Safety Committee or another worker (because of knowledge, experience and training) who is selected by the union to represent them. If possible, the designated certified worker member of the Joint Health and Safety Committee should be called to represent the worker.
4. If resolved, worker returns to work. If not resolved, worker refuses to work because he or she has reasonable grounds to believe the work is unsafe. Worker remains in safe place. Refusal goes to stage 2.

STAGE 2:

5. Worker has reasonable grounds for believing that work continues to be unsafe.
6. Employer (or someone acting on behalf of the employer or worker) notifies the Ministry of Labour Inspector. The worker remains in a safe place, or following notification, may be assigned other duties by the employer.
7. The Ministry of Labour Inspector investigates in the presence of the Worker, the Employer, the Health and Safety Committee member or worker's representative.
8. The Ministry of Labour Inspector comes to a decision and gives his decision in writing to the Worker, the Employer and the Health & Safety Committee Member.

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Procedures to resolve a refusal to work under Ontario's OHSA:

