

5.3 Procedure for a Work Refusal

Purpose

Every employee has the right to refuse to do any act which he or she believes is likely to endanger the employee's health or safety or the health or safety of another person, but must follow the procedure for doing so which is set out in section 43 of the Occupational Health and Safety Act. Essentially, the same three level process used for reporting employee health and safety concerns will be used, except that a refusal to undertake work believed to be unsafe will always be regarded as an urgent situation, and all involved parties shall regard the matter as requiring immediate attention.

Procedure

As in the case of reporting a hazard or concern, employees are to exercise their right to refuse unsafe work without fear of reprisal or discriminatory action. Note that Section 45 of the Occupational Health and Safety Act protects persons exercising their Right to Refuse from any discriminatory actions.

Because of the potential seriousness of the situation, the employee should make sure he or she has done everything possible to eliminate or control the problem if this is possible without potential risk. The area should be secured if possible harm might occur to others.

LEVEL 1: Report to a Supervisor or Manager

The first level in exercising the Right to Refuse is for the employee to report the problem to his or her immediate supervisor or manager. The employee should remain in a safe place until the problem is eliminated or controlled to their satisfaction or until they are assigned another task. Note that while the investigation and any remedial action take place, the employee may be assigned to alternate duties.

The supervisor or manager shall investigate the refusal, render a decision, and take any action which may be required to correct the situation or control the hazard.

The supervisor's conclusions must be communicated to the employee who exercised the Right to Refuse. If the supervisor concludes that there is no hazard, or that the hazard is adequately controlled, an explanation must be given and the employee advised to return to work. If the employee is satisfied that the matter has been resolved or accepts the explanation given by the supervisor, then he or she should return to work and the matter is concluded.

If either the employee or the supervisor wishes to document the situation page 1 of 2 of the Hazard/Concern/Unsafe Work Refusal Reporting Form must be completed. A copy of the form may be found at the end of this section.

Where an employee has exercised their Right to Refuse under Section 43 of the Occupational Health and Safety Act, no other employee shall be assigned to do that work unless that employee has been advised of the refusal by another employee, the reason for the refusal, and the employee's right to refuse under Section 43.

LEVEL 11: Formal Referral to the Joint Occupational Health and Safety Committee/Representative

When the hazard or concern has not been remedied to the employee's satisfaction, the employee shall exercise the next level in the Right to Refuse process. The issue is to be documented using Page 1 of 2 of the Hazard/Concern/Unsafe Work Refusal Reporting form, which the employee must forward immediately to the JOHSC or the H&S Representative, as applicable. The JOHSC Chair shall initiate an immediate investigation by the Committee, or where applicable, the H&S Representative shall undertake an immediate investigation.

The employee who has exercised the Right to Refuse must be given the option to accompany the JOHSC or H&S Representative on a physical inspection of the workplace for the purpose of ensuring that others understand the reasons for the refusal.

The JOHSC or H&S Representative may agree with the employee who has exercised the Right to Refuse and will make recommendations to management as to how to correct the problem. If the JOHSC does not find reason to support the Work Refusal, it may unanimously advise the employee to return to work. Note that the H&S Representative does not have the same power as a JOHSC to advise the employee to return to work, but can otherwise participate in the investigation of the situation and advise the Tri-County Regional School Board of remedial action or make other suggestions.

LEVEL 111: Formal Referral to the Occupational Health and Safety Division, Department of Environment and Labour

If the JOHSC cannot agree unanimously that the employee should return to work, and if the problem is not resolved to the employee's satisfaction, the exercise the Right to Refuse will continue.

The JOHSC should contact the Occupational Health and Safety Division of the Department of Environment and Labour (1-800-9LABOUR). An OHS Officer will take the case on a priority

basis and will investigate as soon as possible. If the Officer finds that the task refused is unsafe, he or she will ensure that no one performs the task until appropriate action is taken to remedy the situation. If the Officer cannot find indications that the task is unsafe, or finds that the hazard has been adequately controlled, he or she will advise the employee to return to work. These findings will be confirmed in writing to the employee and the Tri-County Regional School Board.

Note: Consultation with the Occupational Health and Safety Officer

At any stage in the above process, the employee who has refused to perform work that they believe to be unsafe, the Supervisor or Principal to whom the employee has reported the matter, or the JOHSC or H&S Representative to whom the matter has been referred, may consult with the Occupational Health and Safety Officer of the Tri-County Regional School Board. The Officer will act in an advisory capacity, providing advice on the requirements of the Occupational Health and Safety Act and regulations and any applicable standards, hazard control measures, and the proper procedure to follow in resolving the matter.

Hazard/Concern/Unsafe Work Refusal Reporting Form

Person making report: _____ Date: _____

Location: _____ Time: _____

Nature of the Report (circle one): Hazard or Concern Unsafe work refusal

Describe the Situation

Employee's Signature: _____ Date: _____

Were there any injuries? (circle one) No Yes (describe)

Was there any damage? (circle one) No Yes (describe)

Level 1: Reported to Supervisor (circle one) No Yes (Name)

Supervisor's response:

Supervisor's Signature _____ Date: _____

Feedback to Employee? (circle one) No Yes (When)

Employee Satisfied? (circle one) No Yes (Employee Initials)

If the employee is satisfied, the investigation may be closed. The original of this report should be placed on file, and a copy given to the employee. A second copy should be given to the Joint Occupational Health and Safety Committee (JOHSC)/Representative to review at the next meeting. If the employee is not satisfied, the matter must be referred to the Joint Occupational Health and Safety Committee /Representative and proceed to page 2 of this form.

Level 11: Referral to the Joint Occupational Health and Safety Committee/Representative to Investigate

Describe the reason for the referral (why the employee is not satisfied):

Employee's Signature:

Date:

Joint Occupational Health and Safety Committee/Representative response:

Chair's Signature:

Date:

Feedback to Employee: (circle one):

No

Yes (when):

Employee Satisfied? (circle one):

No

Yes (Employee Initials):

If the employee is satisfied, the investigation may be closed. The original of this report should be placed on file, and a copy given to the employee. If the employee is not satisfied, the matter must be referred to the Occupational Health and Safety Division of the Nova Scotia Department of Environment and Labour.

Level 111: Referral to Occupational Health and Safety Division, Department of Environment and Labour

Describe the reason for the referral (why the employee is not satisfied):

Employee's Signature:

Date:

Right to Refuse Flow Chart

