

Work Refusal Policy for Hospital, Long-Term Care, and Home and Community Care Settings

MANUAL: Health and Safety	SUBJECT: Work Refusal	POLICY NUMBER:
EFFECTIVE DATE:	REVISED DATE:	NEXT REVIEW DATE:
POLICY REVIEWERS:		
APPROVED BY:		
SENIOR LEADERSHIP SIGNATURE (e.g., CEO or Executive Director):	JHSC/HSR SIGNATURE:	

Preamble

The Occupational Health and Safety Act (OSHA) provides workers the right to refuse work that they have reason to 'believe' to be unsafe under certain situations. See below.

OHSA section 43(3)

A worker may refuse to work or do particular work where he or she had reason to **believe** that:

- Any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker,
- The physical condition of the workplace or part thereof in which he or she works to be likely to endanger himself or herself,
- Workplace violence is likely to endanger himself or herself, or
- 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 convention is likely to endanger himself, herself or another worker.

There are specific work settings where workers have a limited right to refuse in certain circumstances (OHSA section 43(2)). Some work settings apply to the healthcare sector as outlined below.

OHSA section 43(2)

A person employed in the operation of,

- a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,
- a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,
- an ambulance service or a first aid clinic or station,
- a laboratory operated by the Crown or licensed under the [Laboratory and Specimen Collection Centre Licensing Act](#), or
- a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclauses i-iv.

NOTE: The limitation does not apply to all healthcare workers. For instance, the limitation does not apply to most home and community care workers.

There are two circumstances where workers with limited rights are not permitted to refuse work (OHSA 43(1)).

43 (1) Non-application to certain workers

This section does not apply to a worker described in subsection (2),

- when a circumstance described is inherent in the worker's work or is a normal condition of the worker's employment; or
- when the worker's refusal to work would directly endanger the life, health or safety of another person.

Policy Purpose

The purpose of this policy is to:

- provide direction and guidance to all workplace parties regarding the legislated process for work refusals where workers have reason to believe the work to be unsafe
- highlight the importance of prompt and effective resolution of work refusals that protect workers from harm in the workplace
- Highlight the importance of workers reporting hazards to their supervisor/employer as they become known

Policy Statement

_____ [Organization] understands the legislated right for worker's to refuse unsafe work and any limitations under the OSHA section 43.

_____ [Organization] is committed to the development, implementation and maintenance of a work refusal policy and procedure. All workplace parties should understand and use the internal responsibility system which is the shared responsibility to identify, assess, and control hazards to the ability that they have the power to do so. _____ <Name of Organization> recognizes that as an employer we have ultimate responsibility to protect worker health and safety. It is important that workers promptly report health and safety hazards and incidents to a supervisor or the employer so that they can be addressed.

This policy supports the following:

- Where a worker has reason to believe work to be unsafe, they have the right to refuse work under the law understanding that their right may be limited depending on their circumstances as outlined by the OHSA.
- Where a worker exercises their right to refuse (whether it's a limited right or not), because they had reason to believe the work will endanger them or another worker, it shall occur without reprisal or punishment from the employer.
- That despite limitations placed on healthcare workers in hospitals, long-term care homes, and other types of health care workplaces, if a worker is not provided with the appropriate controls, measures and procedures, protective equipment, training, etc., the limited circumstances in the OHSA may not apply and a worker may be able to refuse unsafe work.
- The employer and supervisors shall take every precaution reasonable under the circumstances to protect the workers, which may include, but is not limited to, investigating reported hazards, complaints, or concerns and putting in place appropriate control measures, procedures and training, as applicable.
- The procedure for the work refusal shall be in compliance with the OHSA.

Policy Scope

This policy applies to all workers in the organization. All workers, including students, volunteers, contractors, and agents of _____ [Organization] are required to comply with this policy and its related procedures.

Glossary of Terms

Competent Supervisor: A “competent person” means a person who,

- a. is qualified because of knowledge, training and experience to organize the work and its performance,
- b. is familiar with the OHSA and the regulations that apply to the work, and
- c. has knowledge of any potential or actual danger to health or safety in the workplace.

Worker: all agents or staff members of the organization (including students, volunteers, and contractors) who can be clinical healthcare workers, allied healthcare workers, managers, administrative personnel, physicians, students, security guards, or any individual who has a working relationship with the healthcare organization.

Workplace Violence: Under the OHSA, workplace violence means:

- a. the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;
- b. an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker; or,
- c. a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

Workplace: any land, premises, location or thing at, upon, in or near which a worker works.

Roles and Responsibilities

Board of Directors

- Take all reasonable care to ensure that the corporation complies with the OHSA and regulations related to work refusal and with any orders and requirements from the MLTSD inspectors, Directors and Minister – including the prohibition of reprisal of workers.

Employer

- Take every precaution reasonable in the circumstances, for the protection of the workers.
- Consult the JHSC or HSR when developing, establishing, and putting into effect the work refusal policy and procedures and when developing, establishing, and providing information, instruction, and training on the work refusal policy and procedures.
- Provide human and fiscal resources to develop, implement, and maintain a work refusal policy and procedures.
- Ensure supervisors have completed competent supervisor training (including work refusals and reprisals) to understand the health and safety legislation that applies to the areas under their authority and how to recognize and investigate a work refusal or health and safety concern.
- Provide work refusal policy and procedure training to supervisors, workers, and JHSC/HSR members, or others representing the worker (other worker safety representatives).
- Ensure work refusal is included in the JHSC terms of reference and/or HSR roles and responsibilities.
- Encourage workers to promptly report hazards and incidents to their supervisors and/or the employer including workplace violence.
- Annually review and evaluate the work refusal policy and procedures and training in consultation with stakeholders, e.g., JHSC/HSR, etc.
- Assess and implement required quality improvements post work refusal and communicate any changes and improvements to all supervisors, workers, JHSC/HSR, and/or health and safety representatives.
- Enforce the work refusal policy and procedures and ensure no reprisals.
- Promote and encourage a culture of safety.

Supervisor(s)

- Take every precaution reasonable in the circumstances for the protection of workers.
- Be familiar with applicable health and safety legislation.
- Demonstrate occupational health and safety supervisor competency.
- Encourage workers to promptly report hazards and incidents to their supervisor and/or the employer including those related to workplace violence.
- Attend work refusal training and understand responsibilities.
- Ensure workers under their authority attend work refusal training; and understand their responsibilities for reporting hazards and right to refuse unsafe work.
- When a worker appears to be refusing work, clarify whether the worker is refusing work based on their reasons to believe that the work is unsafe, especially when they use alternate words to refuse work (e.g., “I’m not going to do that”).
- Follow the required legislated work refusal steps and this policy when a worker refuses work.
- Communicate and train all workers on any changes in policy, measures or procedures.
- Maintain training records e.g., scope and content, date, length of training, signatures, and evaluation of understanding.
- Promote and encourage a culture of safety, including hazard and incident reporting.

Worker(s)

- Attend work refusal training and complete proof of attendance.
- Follow the work refusal policies and procedures as required, including reporting of work refusal to the supervisor or employer.
- Report all hazards and incidents promptly to their supervisor, including those related to workplace violence.
- Attend the investigation of the work refusal as outlined in the OHSA, during the worker’s normal work hours, and remain in a safe place near their workstation.

Joint Health and Safety Committee (JHSC) / Health and Safety Representative (HSR)

- Be consulted in the development and revisions of the work refusal policies, procedures and training.
- Include work refusal in the JHSC terms of reference or HSR roles and responsibilities.
- Coordinate work refusal training for JHSC/HSR.
- Worker member to represent workers refusing unsafe work and attend and participate in the investigations process.
- Promote and encourage workers to promptly report hazards and incidents to their supervisors and/or the employer, including those related to workplace violence.
- Make recommendations for improvements in writing to the employer as needed.

Occupational Health and Safety Administrator or Delegate(s)

- Oversees the work refusal policy and procedure development, implementation, monitoring and review, in consultation with the JHSC/HSR.
- Ensure internal and external accident/illness, critical injury, fatality notifications are conducted, completed and documented e.g., for employers/supervisors, MLTSD, JHSC/HSR, Trade Unions.
- Develop regular reports to employers/supervisors and JHSC/HSR.
- Communicate with employers/supervisors, workers, and JHSC/HSR about quality improvement changes.

Procedures

The OHSA outlines the work refusal process. Note: If the issue that led to the work refusal is resolved in Stage 1, then Stage 2 does not occur. See below for the procedures for both Stage 1 and Stage 2.

Stage 1

- A worker has reason to believe that workplace violence is likely to endanger them. The worker stops or does not do the work or task based on this belief. The worker reports immediately to their supervisor/ employer that they will not do the work or task and explains why.
- The supervisor/employer immediately makes arrangements for a **worker safety representative** such as a JHSC worker member, HSR, or another worker who because of knowledge, experience and training is selected by the union that represents the worker, or if there is no union, is selected by the workers to represent them to attend without delay (e.g., come right away).

The employer/supervisor may wish to use a work refusal documentation form (per the example provided in Appendix C) to document the work refusal.

- The supervisor/employer investigates in the presence of the worker and worker safety representative. The supervisor/employer must allow the worker safety representative to attend the investigation.

Note: (i) Have a process in place as to how the supervisor/employer will contact the worker safety representative (e.g., call-list). (ii) The worker remains in a safe place nearby as reasonably possible to their workstation and available to the supervisor/employer for the purposes of the investigation.

- The supervisor/employer makes corrective actions as determined in the investigation.
- If the worker agrees that the situation is remedied, the worker returns to work or does the task. If the worker has reasonable grounds to believe that workplace violence continues to be unsafe, they continue to refuse to work and **Stage 2 begins**.

Stage 2

The worker continues to refuse the work or task because they believe with reasonable grounds (i.e., more evidence than a belief) that workplace violence continues to likely endanger them.

- The worker, worker safety representative, or supervisor/employer calls the Ministry of Labour, Training and Skills Development (MLTSD) and explains the circumstance (e.g., *a worker has refused work; supervisor/employer investigated; worker continues to refuse work based on their belief that the work continues to be unsafe*).

Note: *During the investigation and the worker's regular working hours, the worker stays in a safe place and as near as reasonably possible, and is available to the MLTSD inspector should the inspector have questions.*

- A MLTSD inspector investigates in consultation with the worker, worker safety representative, and employer/supervisor.

Note: *While awaiting decision from the MLTSD investigation:*

- a. The worker may be offered other work if it doesn't conflict with a collective agreement;
 - b. Refused work may be offered to another worker, but the employer must inform the new worker that the offered work is the subject of a work refusal and the reasons for the refusal. This must be done in the presence of:
 - i. a JHSC worker member/HSR, or
 - ii. a worker because of his/her knowledge, experience and training selected by the union to represent the refusing worker. If there is no union, a worker safety representative chosen by workers to represent them.
- The MLTSD inspector provides a written decision to the worker, worker safety representative, and supervisor/employer about whether the workplace violence circumstance is likely to endanger the worker.

Possible outcomes are as follows:

- a. The MLTSD deems the circumstance is not likely to endanger the worker.
 - The worker returns to work or does the task.
- or**
- b. The MLTSD deems the circumstance is likely to endanger the worker and orders a corrective action(s) with specified timelines.
 - The supervisor/employer posts orders as required under the OHSA.
 - The supervisor/employer implements controls and corrective actions by the timeline as per the legal orders.
 - The supervisor/employer delegates a person responsible for following-up on the MLTSD orders whom follows-up as required.
 - The supervisor/employer informs the worker, worker safety representative of the order compliance completion. The worker safety representative signs off on the order completion.
 - The signed order completion is sent to the MLTSD. The supervisor/employer maintains a copy of the document.
 - The worker returns to work or does the task.

For Both Stages

Once the workplace violence hazard has been corrected, the supervisor/employer does the following:

- Documents the work refusal on a Work Refusal Documentation Form (See toolkit Appendix C), for due diligence purposes.
- Updates the workplace violence risk assessment (reassesses risk) and the workplace violence prevention program and policy, in consultation with the JHSC/HSR.
- Communicates the new control measures and corrective actions, policy and procedural changes, and/or quality improvement to all workplace parties that could be affected, including workers and JHSC/HSR.
- Trains workers on any changes or improvements to the work refusal policy, or other measures and procedures.

Communication

The employer, supervisor, or other (e.g., occupational health and safety administrator) communicate the work refusal policy and procedures and any changes to all workers and JHSC/HSR. Reporting workplace violence hazards will be promoted proactively to encourage ongoing reporting.

Training

All workers will be provided work refusal information, instruction, and training as required in the OHSA and new workers will be provided work refusal training at the time of new hire orientation. All workers will be provided periodic reviews at department training. Training records will be maintained by Human Resources and/or supervisor. Work refusal training will also be provided as part of competent supervisor training and JHSC/HSR training.

Training will include:

- Work refusals policy and procedures
- Roles and responsibilities
- Promoting safety at work and reporting hazards promptly

Evaluation

The employer will evaluate and review the work refusal policy, measures, and procedures annually and revise as necessary in consultation with the JHSC/HSR and other workplace parties as per organizational or workplace policy. Approved changes and quality improvements will be implemented according to an implementation plan and communicated and trained to supervisors and workers in a timely manner.

Relevant Additional Policies and Procedures to Reference

- Work refusal documentation form
- Incident and hazard reporting
- Hazard and incident investigation
- Competent Supervisor
- JHSC Terms of Reference and HSR Roles and Responsibilities

Also review collective agreement(s), if any, regarding work refusal provisions.

References

- [Occupational Health and Safety Act](#)
- [Health Care Residential Facilities Regulation](#)
- [MLTSD Procedure for a Work Refusal](#)
- [MLTSD Guide to the Occupational Health and Safety Act: Part V Right to refuse or to stop work where health and safety in danger](#)
- [Workplace violence prevention in health care: A guide to the law for hospitals, long-term care homes and home care](#)
- [Ontario Health Care Health and Safety Committee Under Section 21 of the OHS Act Guidance Note for Workplace Parties #7 - Right to Refuse Unsafe Work](#)
- PSHSA's Workplace Violence website - www.workplace-violence.ca