COVID-19: Refusal of UnSafe Work

Employers’ Advisers Office

- Authority under S. 352 of the Workers Compensation Act
- Provides advice, assistance and representation
- Independent from WorkSafeBC
- No charge for service

Rights of a Worker

- Right to Know
- Right to Participate
- Right to Refuse Unsafe Work
COVID-19 – Employer Responsibilities

- Duty to ensure health and safety of workers
- Duty to recognize hazards and take action
- Exposure to COVID-19 may be a hazard at the workplace
- A written plan to minimize/eliminate exposure is required
- Include Joint Committee members or worker rep
- Follow the hierarchy of controls

Hierarchy of Controls

- Elimination or substitution
- Engineering controls
- Administrative controls
- Personal protective equipment (PPE)

Right to Refuse

Occupational Health and Safety Regulation 3.12

4 Steps:
1. Worker reports
2. Employer/supervisor investigates and reports back
3. If worker still refuses, further investigation with worker and worker representative
4. If refusal continues, Board Officer contacted to investigate

Reg. 3.13 - Worker's job protected during process
Scenario and Question

Sam is one of three cooks at a restaurant. The dining room is closed due to COVID-19, but the restaurant is still operating for take-out. Sam has refused to work due to concerns about contracting the virus.

You are Sam’s employer. What do you need to do?

Right to Refuse (Reg 3.12)

Step 1 – Worker Reports

As a worker, you must immediately report the unsafe condition to a supervisor or employer

Polling Question

Sam is refusing to work due to concerns with contracting the virus. Is Sam’s refusal to work reasonable?

- Yes (the refusal is reasonable)
- No (the refusal is unreasonable)
Right to Refuse (Reg 3.12)

Step 2 – Employer/supervisor investigates & reports back
- As a supervisor or employer you must investigate the matter and fix the unsafe condition or procedure (if possible)
- If the supervisor or employer decide the worker’s concern is not valid, report back to the worker

Step 3 – If worker still refuses, further investigation with worker & work representative
- A repeat investigation in the presence of the worker AND a worker representative of the joint committee must be performed
- If there is no joint committee or union, the worker can choose to have another worker present at the investigation

Step 4 – If refusal continues, Board Officer contacted to investigate
- If the matter is not resolved, the worker and supervisor or employer must contact WorkSafeBC
- A board officer will investigate and take steps to resolve the issue
Worker Refusal Record Form

What You Can and Cannot Do During Refusal Process

You can:
- Temporarily assign to alternate work with no loss of pay during the right-to-refuse investigation process (Regulation 3.12(2))

You cannot:
- Lay-off, terminate or make any other type of negative employment action before completing the steps under 3.12 (Regulation 3.13)
- Prohibited Actions – Sections 47 to 50 of the Workers Compensation Act

What if the Worker Refuses to Participate in Step 3?

If the worker does not want to attend the workplace, explore other methods to participate:
- video-conferencing
- teleconferencing
- email
If the Worker Still Refuses to Participate in Step 3

DOCUMENT the following with the worker:

- findings of the Step 2 investigation
- regulatory requirement to participate in Step 3
- procedures offered to ensure the Step 3 investigation is safe
- worker’s refusal to participate in the Step 3 investigation
- Prevention Officer will be contacted

Polling Question

What if Sam has an underlying health condition, or is over 60 years old? Does this change the refusal of unsafe work process?

- Yes
- No

What You May Want to Consider

- Communicate expectations and supports
- Avoid discipline for not coming to work to ensure honesty in illness-reporting
- Revisit your sick leave/vacation policies to encourage workers to stay home if unwell
Other Things You May Want to Consider

- Temporary lay-offs: workshare, sick leave (EI or STD)
- Offer supplemental unemployment benefit (SUB)
- Canada Emergency Response Benefit (CERB)
- BC Emergency Benefit for Workers and other help
- Employment Standards Act – New COVID-19 Leave

Resources

- Employers' Advisers Office
  - TOLL-FREE #: 1-800-925-2233
- www.worksafebc.com
  - COVID-19 frequently asked questions
  - Refusing unsafe work
- BC Centre for Disease Control
- BC Government Orders, Notices & Guidance

Questions?