



COVID-19: Refusal of UnSafe Work




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Employers' Advisers Office

Employers' Advisers Office

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



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Rights of a Worker

- Right to Know
- Right to Participate
- Right to Refuse Unsafe Work

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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

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Hierarchy of Controls

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



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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

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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?

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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

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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)

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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

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Right to Refuse (Reg 3.12)

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

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Right to Refuse (Reg 3.12)

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

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Worker Refusal Record Form

Work Refusal Record Form

Employer: _____ Date: _____
 Location: _____ Employee: _____
 Title: _____
 3.12(2) Worker must comply based on Supervisor's Refusal

Worker Refusal Record

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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*

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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

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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

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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

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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

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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](#)

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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](#)

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Questions?



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