



Employers'
Advisers Office

COVID-19: Refusal of Unsafe Work Participant Handbook

Ministry of Labour

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Employers' Advisers Office (EAO)

The EAO is branch of the Ministry of Labour.

The mandate of the EAO is found under section 352 of the *Workers Compensation Act*. All services are complimentary as the expenses for the Office are paid out of the Worker's Compensation Accident Fund, which is funded entirely by the employers of British Columbia.

The EAO provides independent advice, assistance, representation and education to all employers or potential employers on workers' compensation issues. Advisers are available to discuss workers' compensation claims management, assessments, experience rating, safety or other areas of concern with you, your management staff or your association.

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Toll free fax: 1-855-664-7993 (Canada wide)

Website address: <http://www.gov.bc.ca/employersadvisers>

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Introduction

On March 12, 2020, the World Health Organization (WHO) announced Coronavirus (COVID-19) outbreak a pandemic. A state of emergency was declared in British Columbia six days later. Orders and guidelines from the provincial health officer followed, impacting employers and workers in the province.

WorkSafeBC posted information and guidance on its website, requiring employers to follow the directions of the provincial health officer and the BC Centre of Disease Control to help meet their responsibilities to ensure a safe and healthy workplace.

Concerns about contracting the virus have resulted in a number of workers refusing to work where they believe their employers' efforts have not met the requirements. Our office has received a number of calls from employers uncertain of how to address refusals of unsafe work at this difficult time.

These materials are designed to be used in conjunction with the webinar to help employers and supervisors understand what to do – and what not to do – when faced with a refusal of unsafe work.

COVID-19 employer responsibilities

Employers have a duty to ensure the health and safety of workers at their workplace and places where their work is being done. Employers are obligated to recognize hazards and associated risks and take action to control them. This legal obligation to control risks applies to exposure to the COVID-19 virus.

WorkSafeBC requires employers to follow the orders of the [provincial health officer](#) and the guidance provided by the [BC Centre for Disease Control](#) to develop control measures to prevent worker exposure. These measures include preventing infected or exposed workers, or workers who have travelled internationally, not to come to work for the prescribed number of days. They also include physical distancing of two metres between workers, providing adequate hand-washing facilities and regular cleaning of common areas and surfaces.

Employers are expected to implement control measures in the workplace, which include creating written safe-work procedures, communicating these precautions to workers, and training supervisors and workers to follow them. Regular inspections are also required to ensure workers are adhering to the safe-work procedures.

A written control plan is required to help minimize or eliminate exposure to biological agents, including COVID-19 (regulation [5.2](#)). As with the development of any control plan, WorkSafeBC requires employers to follow the hierarchy of controls. Safeguards or a combination of safeguards are to be selected from the top of the hierarchy, proceeding down the list only when more effective solutions are impracticable. Here is the hierarchy of controls set out by WorkSafeBC as it pertains to the prevention of COVID-19 exposure:¹

1. **Elimination or substitution:** This involves removing the risk of exposure entirely from the workplace. This could involve postponing, re-organizing, or planning work in such a way that workers are not exposed to any risk. Having workers work remotely would be an example of eliminating the risk from the workplace.
2. **Engineering controls:** These are physical changes in the workplace, such as installing plexiglass barriers in a grocery store.
3. **Administrative controls:** This involves altering work practices to minimize exposure, such as minimizing the numbers of customers inside grocery stores, staggering work shifts, making virtual appointments, working from home etc.
4. **Personal protective equipment (PPE):** This last form of protection should only be considered after careful consideration of the previous control measures. Some workplaces have specific requirements for PPE, such as in health care settings.

Employers are to include members of their joint health and safety committee (JHSC) or worker representative when inspecting the workplace and developing control plans for different job tasks. In addition, a process should be in place to allow workers to raise concerns about the risk of COVID-19 exposure with a JHSC member or worker representative.

¹ WorkSafeBC, “Controlling Exposure” in [COVID-19 frequently asked questions](#)

Right to refuse unsafe work

Workers have the right to refuse unsafe work. If a worker has reasonable cause to believe that performing a job or task puts them or someone else at risk of undue harm, they must not perform the job or task. Workers must immediately notify their supervisor or employer, who will then take the appropriate steps to determine if the work is unsafe and remedy the situation.

Guideline [3.12](#) explains the test for determining whether a worker has a “reasonable cause to believe” that an undue hazard exists or would be created, and what constitutes an “undue hazard”:

"Undue hazard"

A "hazard" is identified in Part 1 of the *Regulation* as "a thing or condition that may expose a person to a risk of injury or occupational disease." Further, "undue" is defined by the Oxford dictionary as "unwarranted, inappropriate, excessive or disproportionate." Therefore, a thing or condition that may expose a worker to an excessive or unwarranted risk of injury or occupational disease represents an undue hazard for the purposes of section 3.12 of the *Regulation*.

"Reasonable cause to believe"

The use of the term "reasonable" in "reasonable cause to believe" means that the worker must assess the situation as a reasonable person, taking into account relevant and available information and exercising good faith judgment with respect to the hazard with due regard to the worker's training and experience.

The Guideline also recognizes that what is “reasonable” may be impacted by a worker’s individual vulnerability:

"Reasonable cause to believe" and the susceptible worker

Some workers may have an underlying condition which would lead them to suffer an illness or sustain an injury, even though others would not be affected in the same way. In this so-called "susceptible worker" situation, the "objective" test of whether the worker has reasonable cause to believe the work presents an undue hazard is to be applied in the context of the person's specific health condition.

To uphold a work refusal, there needs to be a clear connection between the undue hazard asserted by the susceptible worker, and his or her health condition. As part of the investigation into the refusal, the employer may ask for confirming evidence of the effect of the hazard on the person's condition. While the evidence is being obtained, the worker should be removed from the condition that the worker asserts is an undue hazard.

With respect to COVID-19, “susceptible workers” would include older persons and persons with specific underlying health conditions, such as diabetes, cardiovascular disease, chronic respiratory disease and cancer. Such workers would understandably have a reasonable

cause to believe the work is unsafe if the employer is not following COVID-19 precautions as prescribed by the provincial health officer and the BC Centre for Disease Control. However, given the highly infectious nature of COVID-19, and an employer's obligation to control hazards in the workplace, any person can report unsafe work if that person believes the employer has not fulfilled its duty to prevent exposure.

What follows are the steps required to be taken when a worker exercises the right to refuse unsafe work.

Refusing unsafe work: A four-step process

Report the unsafe condition or procedure:

1. The worker must immediately report the unsafe condition to a supervisor or employer.
2. The supervisor or employer must investigate the matter and fix it, if possible. If the supervisor/employer decides the worker's concern is not valid, report back to the worker.

If the worker still views the work as unsafe after a supervisor or employer has said it is safe to perform a job or task:

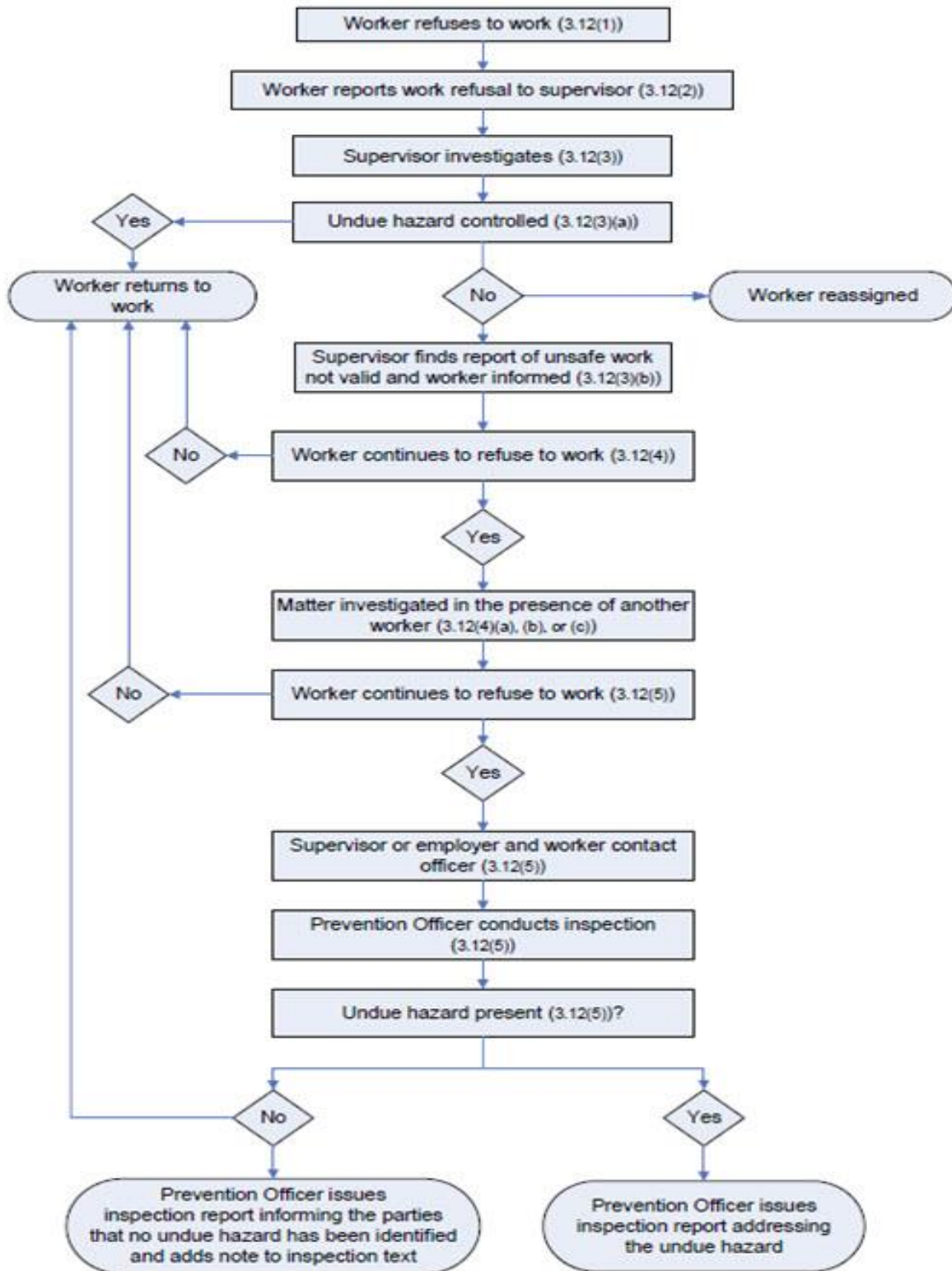
3. The supervisor or employer must investigate the problem and ensure any unsafe condition is fixed. This investigation must take place in the presence of the worker and a worker representative of the joint committee or a worker chosen by the worker's trade union. If there is no joint committee or representing trade union at the workplace, the worker who first reported the unsafe condition can choose to have another worker present at the investigation.

If the worker still views the work as unsafe:

4. The worker and the supervisor or employer must [contact WorkSafeBC](#). A prevention officer will then investigate and take steps to find a workable solution.

Flowchart

Flowchart for Regulation Guideline 3.12

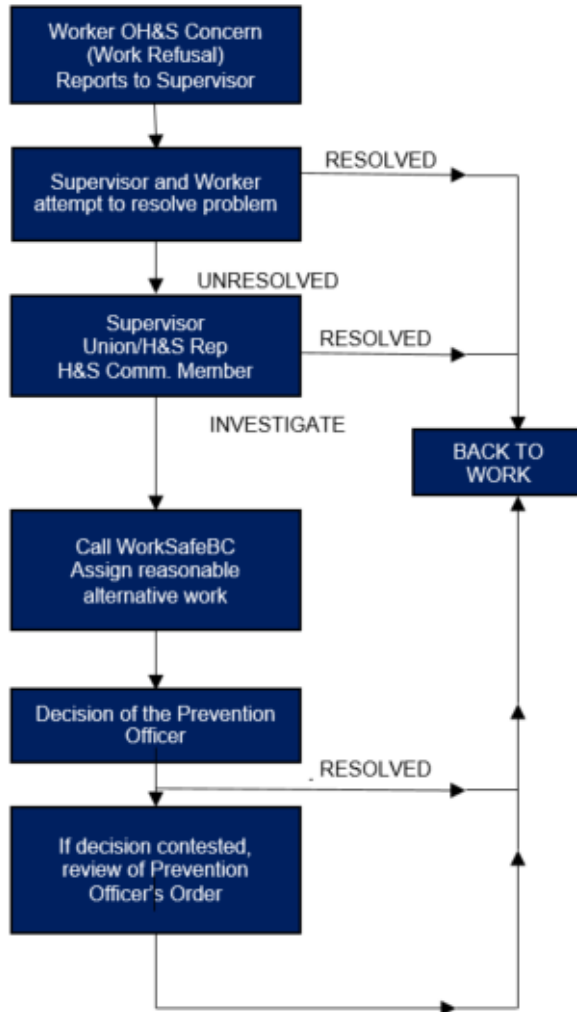


Work Refusal Record Form

Organization: _____ Department: _____ Date: _____
 Time of Work Refusal: _____
 Supervisor: _____ Employer: _____
 OHS Rep: _____

3.12 (2) Worker reports undue hazard to Supervisor/Employer

Describe the hazard(s) _____



No Prohibited Action

When a worker exercises a right to refuse unsafe work, the employer is prohibited from making any decision that negatively impacts the worker's employment.

Regulation [3.13](#) provides:

- (1) A worker must not be subject to a prohibited action as defined in section 47 of the *Workers Compensation Act* because the worker has acted in compliance with section 3.12 or with an order made by an officer.
- (2) Temporary assignment to alternative work at no loss in pay to the worker until the matter in section 3.12 is resolved is deemed not to constitute prohibited action.

Section [48\(a\)](#) of the *Workers Compensation Act* states that an employer cannot take prohibited action against a worker for exercising a right under the regulation. Prohibited action is defined in section [47](#) as any action or inaction that negatively impacts a term or condition of employment or membership in a union, including:

- (a) suspension, layoff or dismissal;
- (b) demotion or loss of opportunity for promotion;
- (c) transfer of duties, change of location of workplace, reduction in wages or change in working hours;
- (d) coercion or intimidation;
- (e) imposition of any discipline, reprimand or other penalty;
- (f) the discontinuation or elimination of the job of the worker.

If the employer takes prohibited action against a worker, the worker may file a complaint with WorkSafeBC. In cases where the worker has been laid off or the worker's employment terminated, remedies allowed under s. 50 include reinstatement and/or the payment of wages the worker would have earned had the prohibited action not occurred.

There are two exceptions to this under the Regulation:

- (1) an employer may temporarily assign alternative work at no loss in pay pending the four-step refusal process, as set out in regulation 3.13(2) above; and
- (2) Where a prevention officer has made a finding that the investigation into a work refusal has not identified an undue hazard, and the worker continues to refuse to return to work.

Many employers are considering temporary lay-offs, reductions in working hours and work-sharing to address the impacts of the pandemic. In some circumstances, these decisions could trigger constructive dismissal risks. Therefore, seeking legal advice prior to implementing any of these decisions is recommended.

Related Law and Policy for Refusal of Unsafe Work²

The tables below list the provisions that are most relevant to the refusal of unsafe work process. Please note that the tables are not intended to identify all legislative and regulatory requirements that apply to your workplace.

Section of Act	Policy(ies) and Guidelines (where applicable)	Description of Requirement
21	P2-21-1 , P2-21-2 and P2-21-3	General duties of employers (includes ensuring worker health and safety and remedying hazardous workplace conditions)
31	P2-31-1	When a joint committee is required
36	None	Duties and functions of joint committee
45	P2-45-1	Worker health and safety representative
46	P2-46-1	Participation of worker representative in inspections
47	P2-47/48/49-1 - Scope	Prohibited action (formerly Discriminatory Action)
48		Worker protection from prohibited action
49	G-P2-49 - Complaint	Complaint by worker respecting prohibited action or failure to pay wages
50	P2-50-1 – Investigation of Complaint P2-50-2 - Remedies G-P2-50(1) – Determining if prohibited action complaint has been settled	Response to complaint

Related Regulation(s) for Refusal of Unsafe Work

Regulation	Guideline	Description of Requirement
3.5	None	Employers to undertake regular inspections
3.9	None	Employers to remedy unsafe or harmful conditions without delay
3.10	None	Reporting unsafe conditions
3.12	G3.12	Refusal of unsafe work

² A revised version of the *Workers Compensation Act* came into effect on April 6, 2020. The revisions do not change the legal effect of the Act; however, they modernize some language and reorganize the numbering to make laws easier to find.

3.13	Referred to in G3.12	Repercussions for exercising right to refuse are not allowed; however, temporary assignment to alternative work pending resolution is allowed
5.2	None	Employer to implement procedures to minimize or eliminate the risk of exposure to biological agents (including having written procedures in place)

Resources

[Employers' Advisers Office](#)

Call our toll-free number: 1-800-925-2233, Mon-Fri, 8:30-4:30

[WorkSafeBC](#)

- [COVID-19 frequently asked questions](#)
- [Staying safe at work](#)
- [What employers should do](#)
- [Industry information](#)
- [Refusing Unsafe Work](#)
- [Refusing Unsafe Work - Meeting Guide](#)
- [Refusing Unsafe Work - Posters](#)
- [Safety Inspections Workbook](#)

For “Preventing exposure to COVID-19 in the workplace: A guide for employers”, see pages 13-14 below.

COVID-19 Information

- [BC Centre of Disease Control](#)
- [Orders from the Provincial Health Officer](#)
- [BC Self Assessment Tool](#)

Government Assistance

- [Employment Standards Act – New COVID-19 Leave](#)
- [BC COVID-19 Action Plan](#)
- [Canada Emergency Response Benefit \(CERB\)](#)

Preventing exposure to COVID-19 in the workplace

A guide for employers

Orders from the provincial health officer (PHO) and guidance to employers and businesses provided by the BC Centre of Disease Control represent the minimum standard that employers must meet, to comply with obligations to ensure worker health and safety. To address health and safety concerns in the workplace raised by COVID-19, ask yourself the following questions:

- 1 How are you telling your workers about COVID-19 (i.e. exposure to COVID-19 in your workplace)?
- 2 Do you have a system in place where workers (including joint health and safety committee representatives and worker representatives) can inform you of concerns relating to being exposed to COVID-19 in the workplace? Find out if there are any specific tasks that concern them (e.g. tasks that involve interacting with others).

Identifying exposure hazards and developing measures to control exposure

- 3 What are you doing to prevent your workers from being exposed to COVID-19?
 - Have you done a walk-through of your workplace, to identify specific conditions or tasks that may increase the risk of exposure of your workers to COVID-19?
 - Have you asked your workers (including your joint committee or worker representative) where potential exposures may occur and how they think exposures can be controlled?
- 4 Have you developed controls that will eliminate or minimize the risk of exposure?
 - What are those controls?
 - Have you put them in place?
 - How are they working (are they effective)?
 - How do you know how they are working?

Controlling the number of people on site

- 5 How are you controlling the number of workers and other people at your workplace?
 - Do all your workers need to come to work? Can some work from home? (Learn about [Health and safety responsibilities when working from home.](#))
 - Can you stagger shifts, to reduce the numbers present at one time?
 - Are you ensuring there is adequate cleaning between shifts?
 - Can you prioritize the work that needs to be done at the workplace to help your business operate as close to normal under the circumstances? This will require a determination of core work and where it can safely and productively be performed.

- 6 If you have workers who need to come to the workplace, how are you ensuring the following steps are being taken to reduce their risk of COVID-19 exposure? Different workplaces will have different needs but the following steps are a good start:
- Position workers to allow for physical distancing. Keep 2 metres distance between workers and customers, clients, and other workers.
 - Provide soap and water or hand sanitizers and encourage workers to wash their hands frequently.
 - Enhance cleaning and disinfecting of the workplace, particularly high-contact items such as door handles, faucet handles, keyboards, and shared equipment (e.g., photocopiers).
- 7 How are you checking and tracking whether the above steps are being taken?

Prohibition of workers who are sick and those returning from outside Canada

- 8 What are you and your supervisors and managers doing to prohibit the following workers from coming to work?
- Workers who are displaying symptoms (e.g., fever, cough, sore throat, sneezing), whether or not the illness has been confirmed as COVID-19.
 - Workers who have travelled internationally. It is mandatory for all travellers returning to Canada to self-isolate for 14-days.
 - Workers who live in the same household as a confirmed or clinical COVID-19 case who is self-isolating, or who have been exposed to a confirmed COVID-19 infected person and advised by 811 (public health) to self-isolate.
- 9 How are you communicating these messages to your managers, supervisors, and workers?
- 10 What are you doing to track and communicate with workers who fall into one of the above categories?

For more information about preventing workplace exposure to COVID-19 visit [worksafebc.com](https://www.worksafebc.com) and the [BC Centre of Disease Control](https://www.bccdc.ca/).

March 31, 2020