

Work Refusal Process

Section 3.12 of the OHS Regulation ("Regulation") states:

- 1) A person must not carry out or cause to be carried out any work process or operate or cause to be operated any tool, appliance or equipment if that person has **reasonable cause to believe** that to do so would create an **undue hazard** to the health and safety of any person.
- 2) A worker who refuses to carry out a work process or operate a tool, appliance or equipment pursuant to subsection
 - a. must immediately report the circumstances of the unsafe condition to his or her supervisor or employer.
- 3) A supervisor or employer receiving a report made under subsection (2) must immediately investigate the matter and
 - a. ensure that any unsafe condition is remedied without delay, or
 - b. if in his or her opinion the report is not valid, must so inform the person who made the report.
- 4) If the procedure under subsection (3) does not resolve the matter and the worker continues to refuse to carry out the work process or operate the tool, appliance or equipment, the supervisor or employer must investigate the matter in the presence of the worker who made the report and in the presence of
 - a. a worker member of the joint committee,
 - b. a worker who is selected by a trade union representing the worker, or
 - c. if there is no joint committee or the worker is not represented by a trade union, any other reasonably available worker selected by the worker.
- 5) If the investigation under subsection (4) does not resolve the matter and the worker continues to refuse to carry out the work process or operate the tool, appliance or equipment, both the supervisor, or the employer, and the worker must immediately notify an officer, who must investigate the matter without undue delay and issue whatever orders are deemed necessary.

There must be an objective basis for a continued refusal for unsafe work. The goal of the process set out in sections 3.12(2) through (5) is to establish whether there is an objective, or reasonable, basis for the refusal and if so, to determine how to remedy the situation.

A worker must not be subject to discriminatory action as defined in section 150 of Part 3 of the Workers Compensation Act because the worker has acted in compliance with section 3.12. 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 discriminatory action.

"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.

"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*.

"Workplace Violence"

The attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury.

☐ This work refusal process and definitions have been reviewed with the employee

Work Refusal Report

Date of refusal

Time

Location

Employee Name

Employee #

Position

Type of work refusal

☐

Work process

☐

Equipment, tool machinery operation

Name of Supervisor completing investigation

Title

Date of investigation

Time of investigation

If Workplace Violence, complete this section. If not, proceed to next section.

The work process being investigated involved:

☐

Student

☐

Staff

☐

Parent

☐

Unknown person

☐

Other

If student:

PEN#

Age

Ministry Designated

If non-student:

Name (if known)

Background

Investigation

Before proceeding with this investigation, review the [Work Refusal Process](#) with the employee

- 1) Did the employee immediately report the circumstances of the unsafe condition to the Administrator or Manager?**

☐ Yes ☐ No

If yes, Supervisor name

Date reported

Time reported

If no, explain

- 2) Who specifically is at risk of an injury or occupational disease**

☐ The employee reporting the unsafe condition

☐ Other person(s) Provide name(s)

- 3) Was an investigation conducted by the Supervisor receiving the report?**

☐ Yes ☐ No Supervisor Name Investigation Date

- 4) Describe the work process/circumstance/condition that may expose the employee or other person to an excessive or unwarranted risk of injury or occupational disease**

- 5) Provide the specific hazard(s)/reason(s) for invoking a refusal of unsafe work (include the circumstances, conditions and/or series of events leading up to the refusal)**

- 6) Was the worker directed by a Supervisor perform this specific work process or task?** Yes No

If yes, name of Supervisor

Title

Injury Risk Assessment

What is the worker's assessed injury risk level of the performing the work process or task

- ☐ Hazard A – A condition or practice that has the potential for causing loss of life/body part, life threatening occupational disease and/or extensive loss of structure, equipment, or material.
- ☐ Hazard B - A condition or practice with the potential for causing a serious injury, occupational disease, or property damage.
- ☐ Hazard C - A condition or practice with a probable potential for causing a non-disabling injury or non-disruptive property damage.
- ☐ No Hazard– The condition or practice is not likely to result in an injury or property damage

Worker Training and Education (qualifications, training, etc. that has prepared the employee for this work)

Worker Experience (time in current role, years of experience, etc.)

Are there control measures already in place to minimize the risk(s)? (ie: worker training, safety plans, safe job procedures, etc.) ☐ Yes ☐ No ☐ NA

If yes, describe

Were the control measures /safe job procedures followed? ☐ Yes ☐ No ☐ NA

If no, explain

Conclusion

Taking into account all relevant and available information and exercising good faith judgment with respect to the hazard with due regard to the worker's training and experience, in your opinion is there an objective, or reasonable, basis for the refusal?

☐ Yes ☐ No

If yes, continue to next section. If no, provide reasons below and inform worker who filed the report

Corrective measures to be taken to eliminate or minimize risk

Who will act?

By what date

Who will act?

By what date

Who will act?

By what date

If this investigation fails to resolve the matter and the employee continues to refuse to carry out the work, the Administrator or Manager must investigate the matter in the presence of the employee who made the report and in the presence of either a worker representative from the Site Joint Health and Safety Committee or a worker selected by the employee's Union. **Worker is to be assigned to alternative work without loss of pay if there is a delay in the [Work Refusal Continuation Investigation](#) (next section)**

Work Refusal Continuation Investigation

Name of Supervisor completing investigation

Title

Name(s) of Worker Representative or Union Representative

Investigation Date

Time

1) Review Work Refusal Investigation and outcome with the employee and Worker/Union Representative(s)

2) What is the objective/reasonable basis for the continuation for refusal of work?

3) What remedy is being sought and why? (what needs to happen to have the employee return to work)

4) Is the remedy reasonable/doable given the objective basis of the refusal, the nature of the work condition(s) and/or the circumstances? Yes No

If no, continue to question 5

If yes, does the employee agree to return to work once the remedy is implemented? Yes No

Date remedy will be implemented Time

Will the employee need to be temporarily assigned to alternative duties while remedy is implemented?
Yes No

5) If the employee and Supervisor can not agree on a remedy to the situation, both the employee and the Supervisor must immediately contact a WorksafeBC officer who will investigate the matter