

# Confronting Covid-19

Understanding the Worker Right to Refuse  
**Unsafe *and* Unhealthy Work**  
In Ontario-regulated workplaces

Monday, April 20, 11 am



## An overview

- The worker right to refuse unsafe *and* unhealthy work is a hard-won, fundamental worker right. This presentation will consider:
  - How this right fits in the larger context of worker rights and employer responsibilities
  - Steps in a proper refusal
  - Limits on refusals for some workers
  - Examples of work refusals
  - Current Ontario Ministry of Labour response to work refusals.

**UNDERSTANDING  
THE RIGHT  
TO REFUSE  
UNSAFE  
WORK**

## Ontario focus

- Details set out in this presentation are focused on Ontario's *Occupational Health & Safety Act (the Act)*.
- *The Act* applies to almost every Ontario workplace except those governed by federal law – Part 2 of the *Canada Labour Code*.
- *The Canada Labour Code* applies to sectors with national scope – generally crossing provincial and/or national boundaries.





## The context

- Employers must provide a safe and healthy workplace. It's the law.
- Government inspectors must ensure that they do. It's their job.
- Workers have won three basic rights:
  - 1. The right to know about the hazards they face.
  - 2. The right to participate in eliminating hazards.
  - 3. The right to refuse unsafe work.



## Employer duties

- Under *the Act* employers have the most extensive and significant duties to protect the health and safety of workers.
- They have a general duty to “take every precaution reasonable in the circumstances for the protection of a worker”.
- *The Act* and its regulations also specifically detail several employer duties, including the provision of information, instruction, supervision, and training to workers, their representatives and supervisors.

## Reasonable precautions for COVID-19

- Employers should first examine all the ways in which workers may be exposed to COVID-19.
- Then among other things, the infection control program should consider hygiene and cleaning, plus social distancing measures and other protections to combat potential exposures.
- If personal protective equipment is deemed necessary, great care must be taken in its selection and use.





## Worker right to know

- The employer duty to provide worker information, instruction and training can also be expressed as the worker right to know.
- When it comes to COVID-19, knowing how workers may be exposed and what precautions should be in place, including training on safe use and fit of personal protective equipment is key.

## Worker right to participate

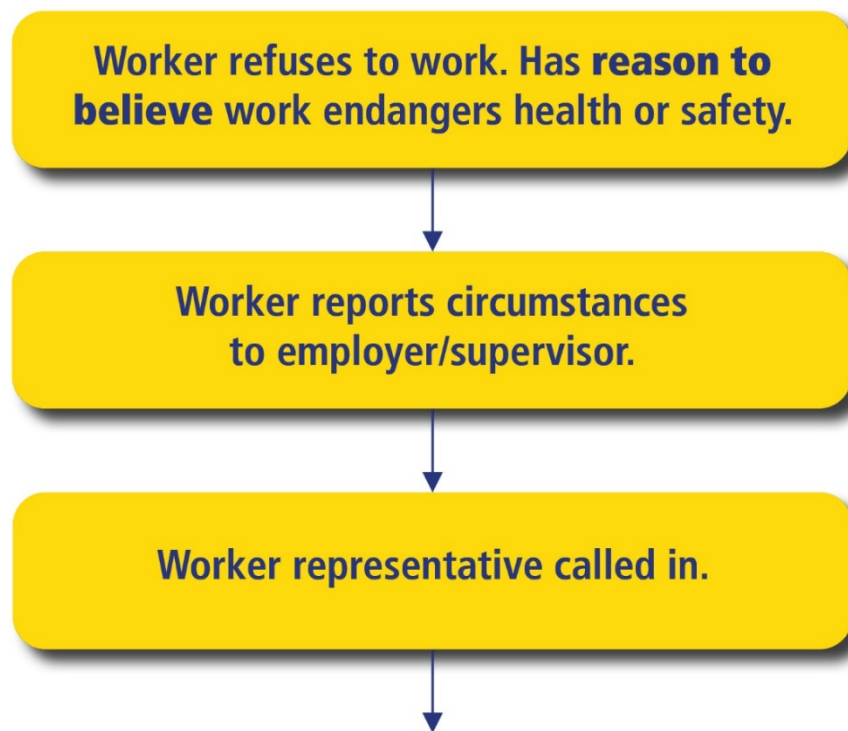
- The worker right to participate is best exercised through worker members on the workplace joint health and safety committee (JHSC) or worker health and safety reps.
- Any assessment of the potential for COVID-19 worker exposures, prevention measures and worker training should be conducted with the full participation of worker JHSC members or worker reps.



# Worker right to refuse



## Steps in a work refusal – Stage 1



- The refusing worker must make it clear this is a refusal according to Section 43 of *the Act*.
- Workplace parties must then follow the refusal process outlined in S. 43.



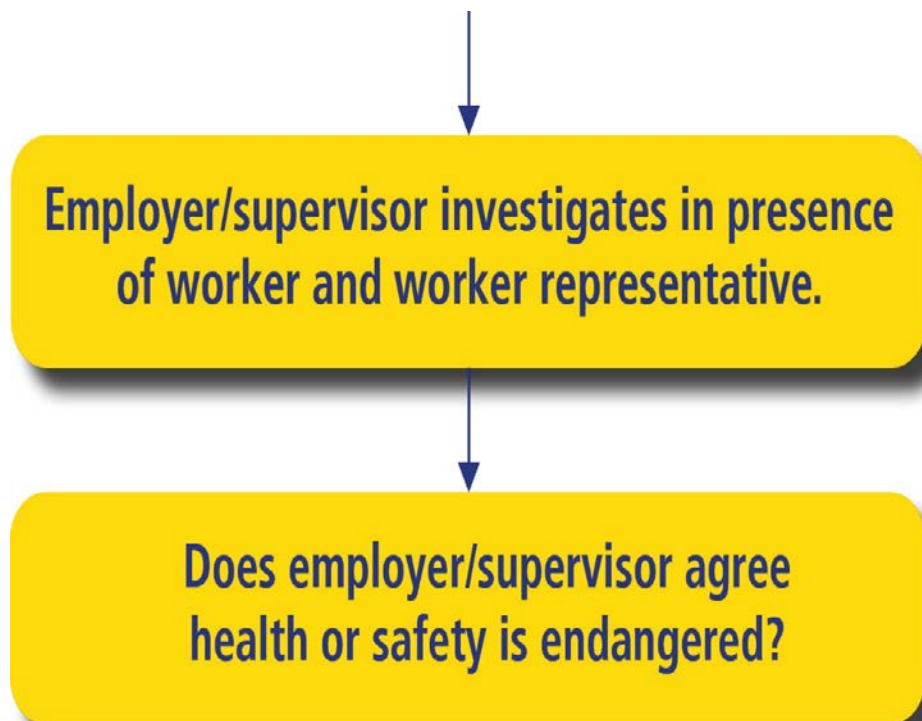
## A word on “reason to believe”

- Under *the Act* a worker may refuse if they have a reason to believe any of the following are likely to endanger them:
  - any equipment, machine, device or thing the worker is about to use or operate; the physical condition of the workplace, and workplace violence.

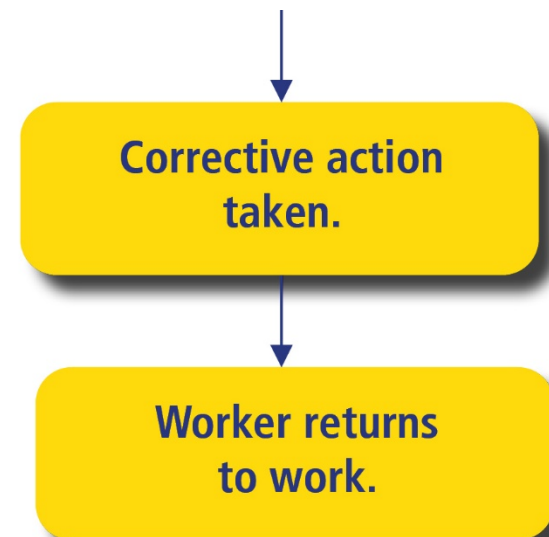
A worker may also refuse if they have reason to believe the equipment, machine, device or thing they are about to use may endanger another worker.

At this stage, reason to believe can just be a “gut feeling.”

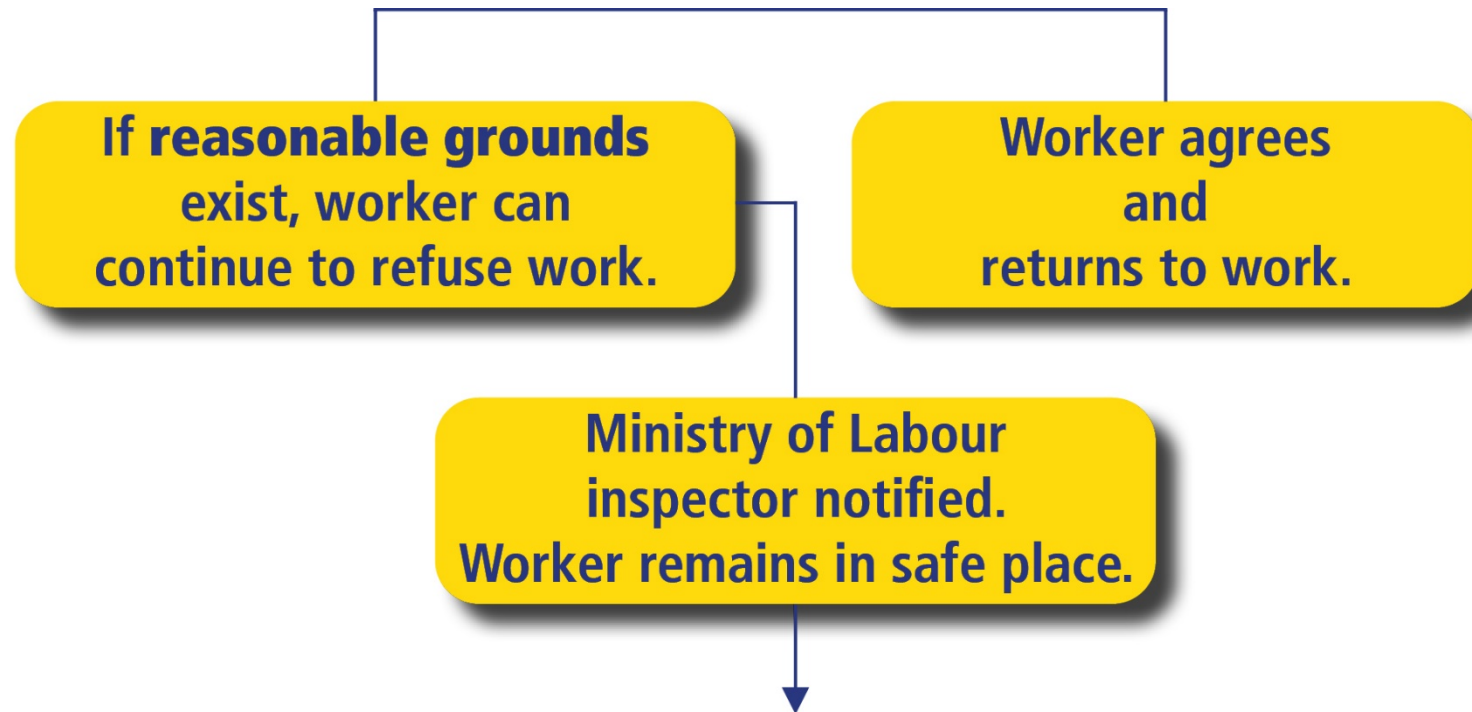
## Stage 1 (continued)



- Yes, employer agrees the worker is endangered.



## No. Employer disagrees worker endangered If worker persists – Stage 2 begins





## A word on “reasonable grounds”

- Once a work refusal progresses to Stage 2 and a Ministry Inspector is notified, the worker must act on more than a “gut” feeling.
- The worker must supply “reasonable grounds” for their continued refusal.
- In other words, the worker must relate some objective information for the continued refusal.
- This does not mean however, the information has to be correct.



## While awaiting a Ministry decision

- The right to refuse unsafe work is an individual right to refuse.
- However, *the Act* includes important safeguards in circumstances where the employer wishes to reassign the work which is the subject of the worker refusal.

Worker may be assigned reasonable alternative work.



No other worker shall be assigned work in question unless advised of the current refusal in the presence of a worker representative. They also have the right to refuse.

## Stage 2 (continued)

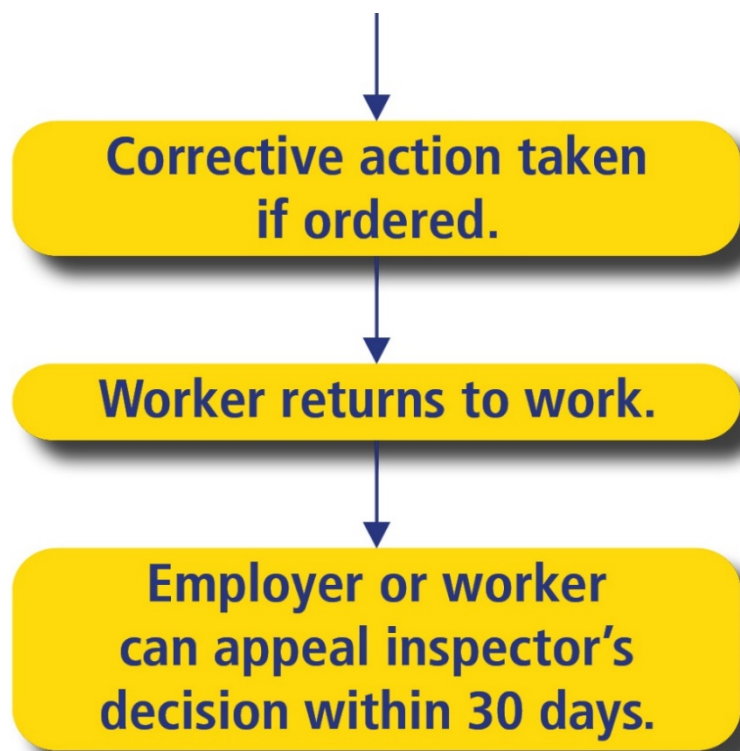
Inspector investigates the refusal and consults with worker, employer/supervisor and worker representative.



Written decision to employer/supervisor, worker and worker representative.



## Stage 2 conclusion



- Not all work refusals will be investigated in person as this legal process suggests.
- Ministry often chooses to investigate work refusals by phone.
- Especially now with increased volumes.

## Reprisals are unlawful

- *The Act* says an employer cannot discriminate against you, discipline you, or fire you for exercising your rights under the *Act*, including the right to refuse.
- But all these things can and do happen.
- Union workers who experience a reprisal should contact their union.
- Non-union workers can contact the Office of the Worker Advisor, or the Workers Health and Safety Legal Clinic.

## Right to Refuse -- limitations

- All workers have the right to refuse. However, certain workers may not refuse work when:
  - “a circumstance ... is inherent in the worker’s work or is a normal condition of the worker’s employment”
  - “the worker’s refusal to work would directly endanger the life, health or safety of another person.”
- The Act specifies the following workers are affected by these limitations:
  - Police officers, fire fighters and workers employed in the operation of a correctional or detention facility ...





## Limited Right to Refuse (continued)

- Other affected workers include:
  - Workers employed in a hospital, sanatorium or nursing home, residential group home, ambulance or first aid service, provincial laboratory or workers providing the following services in these facilities:
    - Laundry, food service, power plant or technical service

**Note:** Teachers must also ensure students are safe before initiating a work refusal.



## Limited rights do not mean no rights

- Regardless, these limitations do not negate the employer's legal responsibility under *the Act* to take all reasonable precautions to protect the worker. Again, this means assessing the workplace for hazards and ensuring workers are properly protected from them.
- When safeguards are not in place this group of workers can still refuse in some circumstances.



## Examples

- “An ambulance officer [Paramedic] could not refuse to aid an accident victim because a dangerous circumstance exists at the accident site. The work refusal could directly endanger the health and safety of the accident victim.
- “However, an ambulance officer [Paramedic] could refuse to go out on a routine transfer or non-urgent call if the ambulance vehicle had a safety defect, or if the officer was not provided with equipment to do the job safely.” – OPSEU Guide to the Act



## Examples (continued)

- “An experienced medical lab technologist could not, in the course of regular work, refuse to handle a blood sample from a patient with an infectious disease.
- “But the technologist could refuse to test for a highly infectious virus where proper protective clothing and safety equipment are not available.”
  - Attributed to Ministry of Labour in ONA Guide to the Right to Refuse

## Actual refusals upheld

- During SARS outbreak in 2003 Ontario Nurses' Association member refused work when assigned to care for a SARS patient without being properly fitted with the required N95 respirator.
- Ministry of Labour upheld refusal, orders fit testing for the refusing worker and a plan to immediately fit test all workers in the facility.
  - Ministry of Labour report to SARS Commission and ONA Guide to Right to Refuse

## Actual refusals upheld?

- Ontario correctional officers refused unsafe work in various facilities when faced by suspected and confirmed cases of COVID-19 amongst inmates, and without the benefit of adequate precautions.
- Conditions don't allow for social distancing.
  - The response? Canadian Press reports, “the ministry ... allowed the guards to protect themselves,” OPSEU also bargained screening of guards and visitors for symptoms. Corrections policies changed to reduce prison inmate numbers. Story vague on which ministry responded and whether orders were written.

## Ministry of Labour enforcement activities during COVID-19

- No clear, publicly-released statistics or criteria for inspectors determining work refusals.
- Ministry statement reminds workplace parties of:
  - “Employer obligations to protect workers from hazards as set out in [the Act] and the directives coming from the Chief Medical Officer of Health.”
  - Worker rights including the right to refuse
  - Their Health and Safety Contact Centre
  - Possible stop-work orders from the Ministry.



## Need further help?

- Working during COVID-19 and concerned your employer is not taking reasonable precautions for your health and safety? You can contact:
  - Your union representative if you belong to a union
  - A worker health and safety rep in your workplace
  - Ministry of Labour Health and Safety Contact Centre: 1-877-202-0008 (Instead of refusing, you can call with a complaint. And anonymously if need be.)
  - Office of the Worker Advisor: 1-855-659-7744
  - Workers Health & Safety Legal Clinic: 1-877-832-6090

# WHSC worker rights resources

**WORKING DURING THE COVID-19 CRISIS?**

*Your rights were never more important.*

**Learn more at**  
**[www.whsc.on.ca/Resources/For-Workers](http://www.whsc.on.ca/Resources/For-Workers)**

Workers Health  
& Safety Centre



# TRAINING ▶ THE RIGHT THING. THE RIGHT WAY.



## Thank you! To learn more still...

