

**Topic: Right to Refuse Work**

**Nova Scotia**

43 (1) Any employee may refuse to do any act at the employee's place of employment where the employee has reasonable grounds for believing that the act is likely to endanger the employee's health or safety or the health or safety of any other person until:

- (a) the employer has taken remedial action to the satisfaction of the employee;
- (b) the committee, if any, has investigated the matter and unanimously advised the employee to return to work; or
- (c) an officer has investigated the matter and has advised the employee to return to work.

(2) Where an employee exercises the employee's right to refuse to work pursuant to subsection (1), the employee shall:

- (a) immediately report it to a supervisor;
- (b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and
- (c) where the matter is not remedied to the employee's satisfaction after the employee has reported pursuant to clauses (a) and (b), report it to the Division.

(3) At the option of the employee, the employee who refuses to do any act pursuant to subsection (1) may accompany an officer or the committee or representative, if any, on a physical inspection of the workplace, or part thereof, being carried out for the purpose of ensuring others understand the reasons for the refusal.

(4) Notwithstanding subsection 50(8), an employee who accompanies an officer, the committee or a representative, as provided in subsection (3), shall be compensated in accordance with subsection (7), but the compensation shall not exceed that which would otherwise have been payable for the employee's regular or scheduled working hours.

(5) Subject to any applicable collective agreement, and subsection (3), where an employee refuses to do work pursuant to subsection (1), the employer may reassign the employee to other work and the employee shall accept the reassignment until the employee is able to return to work pursuant to subsection (1).

(6) Where an employee is reassigned to other work pursuant to subsection (5), the employer shall pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued in the

employee's normal work.

(7) Where an employee has refused to work pursuant to subsection (1) and has not been reassigned to other work pursuant to subsection (5), the employer shall, until clause (1)(a), (b) or (c) is met, pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued to work.

(8) A reassignment of work pursuant to subsection (5) is not discriminatory action pursuant to Section 45.

(9) An employee may not, pursuant to this Section, refuse to use or operate a machine or thing or to work in a place where:

- (a) the refusal puts the life, health or safety of another person directly in danger; or
- (b) the danger referred to in subsection (1) is inherent in the work of the employee.

44 Where an employee exercises the employee's right to refuse to work pursuant to subsection 43(1), no employee shall be assigned to do that work until the matter has been dealt with under that subsection, unless the employee to be so assigned has been advised of:

- (a) the refusal by another employee;
- (b) the reason for the refusal; and
- (c) the employee's rights pursuant to Section 43.

## **Newfoundland**

### **OHS Act**

45 (1) A worker may refuse to do work that the worker has reasonable grounds to believe is dangerous to his or her health or safety, or the health and safety of another person at the workplace:

- (a) until remedial action has been taken by the employer to the worker's satisfaction;
- (b) until the committee or worker health and safety representative has investigated the matter and advised the worker to return to work; or
- (c) until an officer has investigated the matter and has advised the worker to return to work.

(2) Where a worker refuses to do work under subsection (1) his or her employer may reassign the worker to other work that is reasonably equivalent to the work he or she normally performs and the worker shall accept the reassignment until he or she is able to return to work under subsection (1).

(3) Where a worker is reassigned to other work under subsection (2) the employer shall pay the worker the same wages or salary and grant him or her the same benefits the worker would have received had the worker continued in his or her normal work.

(4) Where a worker has reasonably refused to work under subsection (1) and has not been reassigned to other work under subsection (2) the employer shall pay the worker the same wages or salary and grant the worker the same benefits the worker would have received had the worker continued to work, until he or she is able to return to work under subsection (1).

(5) A reassignment of work under subsection (2) is not discriminatory action under section 49.

### **REPORT TO SUPERVISOR**

46 Where a worker exercises his or her right to refuse to work under section 45, or where he or she believes that a tool, appliance or piece of equipment, or an aspect of the workplace is or may be dangerous to his or her health or that of other workers at the workplace or another person at the workplace, the worker shall immediately report it to his or her supervisor.

### **REPORT TO DIVISION**

47 Where a worker has made a report under section 46 and the matter has not been remedied to the satisfaction of the worker he or she shall report it, either in writing or orally, to the division or an officer.

### **DUTY OF WORKER**

48 A worker shall not take advantage of his or her right to refuse to work under section 45 without reasonable grounds.

## **New Brunswick**

### **OHS Act**

#### **EMPLOYEE'S RIGHT TO REFUSE TO DO ANY ACT**

19 An employee may refuse to do any act where he has reasonable grounds for believing that the act is likely to endanger his health or safety or the health or safety of any other employee.

[S.N.B. 2001, c. 35, s. 8]

### **DUTY TO REPORT AND TAKE OR RECOMMEND REMEDIAL ACTION**

20 (1) Any employee who believes that an act is likely to endanger his or any other employee's health or safety shall immediately report his concern to his supervisor, who shall promptly investigate the situation in the presence of the employee.

(2) Where a supervisor finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall take appropriate remedial action or recommend appropriate remedial action to the employer.

(3) Where a supervisor finds the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall advise the employee to do that act.

(4) Where an employee has made a report under subsection (1) and the matter has not been resolved to his satisfaction, he shall refer the matter to a committee or, where there is no committee, to an officer.

(5) Upon receipt of a referral under subsection (4), the committee shall promptly investigate the situation.

(6) Where a committee finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall recommend appropriate remedial action to the employer.

(7) Where a committee finds that the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall advise the employee to do that act.

(8) Where a matter has been referred to a committee under subsection (4) and the matter is not resolved to the satisfaction of the employee, the employee shall refer the matter to an officer.

(9) Upon receipt of a referral under subsection (4) or (8), the officer shall promptly investigate the situation and make his findings known in writing as soon as is practicable to the employer, the employee and the committee, if any, as to whether the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health and safety of any other employee.

(10) Where, on a referral to an officer under subsection (4) or (8), the officer finds that an employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall order appropriate remedial action to be taken by the employer.

(11) Where, on a referral to an officer under subsection (4) or (8), the officer finds that an employee does not have reasonable grounds for believing that an act is likely to

endanger his health or safety or the health or safety of any other employee, the officer shall advise the employee in writing to do that act.

(11.1) Subsections 32(2) and (3) apply with the necessary modifications to advice given in writing by an officer under subsection (11).

(12) Pending any investigation under this section or, if an appeal is taken by an employee against the advice of an officer given under subsection (11), pending the decision of the Chief Compliance Officer, the employee shall remain available at a safe place near his or her work station during his or her normal work hours.

[S.N.B. 2001, c. 35, s. 9;  
2004, c. 4, s. 2]

### **PROTECTION OF EMPLOYEE'S RIGHT**

21 (1) An employee's right under section 19 to refuse to do any act is protected:

- (a) if he has reported his concern to his supervisor under section 20;
  - (i) until remedial action recommended by the supervisor under section 20 is taken by the supervisor or employer to the employee's satisfaction, or
  - (ii) until the supervisor has advised the employee under section 20 to do that act,
- (b) if the employee has referred the matter to a committee under section 20;
  - (i) until remedial action recommended by the committee under section 20 is taken by the employer to the employee's satisfaction, or
  - (ii) until the committee has advised the employee under section 20 to do that act,
- (c) if the employee has referred the matter to an officer under section 20;
  - (i) until remedial action ordered by the officer under section 20 is taken by the employer to the officer's satisfaction, or
  - (ii) until the officer has advised the employee under section 20 to do that act, and
- (d) if the employee has appealed the advice of an officer given under subsection 20(11) to the Chief Compliance Officer, until the decision of the Chief Compliance Officer is rendered.

(2) Where an employee has refused to do an act pursuant to section 19, the employer shall not assign another employee to perform that act unless that other employee has been advised by the employer of such refusal and the reasons therefor and of his rights under this Act.

[S.N.B. 2001, c. 35, s. 10; 2004, c. 4, s. 3]

### **PROTECTION OF EMPLOYEE'S RIGHT**

22 (1) Subject to subsection (2), where an employee has refused to do an act pursuant to section 19 and his right to refuse is protected under section 21, his employer may reassign him temporarily to perform other acts or to other work that is reasonably equivalent to the acts or work he normally performs and the employer shall pay that employee the same wages and grant him the same benefits as he would have received if he had not refused to do the act.

(2) Where a collective agreement is in force, any reassignment referred to in subsection (1) shall be made in accordance with the collective agreement.

### **PROTECTION OF EMPLOYEE'S RIGHT**

23 Where an employee has reasonably refused to do an act pursuant to section 19, his right to refuse is protected under section 21 and he has not been reassigned to do other acts or work under section 22, the employer shall pay that employee the same wages and grant him the same benefits as he would have received if he had not refused to do the act.

## **Prince Edward Island**

### **OHS Act**

28 (1) A worker may refuse to do an act at the worker's workplace where the worker has reasonable grounds for believing that the act is likely to endanger the worker's occupational health or safety or the occupational health and safety of another worker.

(2) A worker who has reason to believe that an act is likely to endanger the worker's occupational health and safety or the occupational health or safety of another worker shall immediately report the concern to the worker's supervisor, who shall promptly investigate the situation in the presence of the worker.

(3) Where a supervisor finds that the worker has reasonable grounds for believing that an act is likely to endanger the worker's occupational health or safety or the occupational health or safety of another worker, the supervisor shall take appropriate remedial action or recommend appropriate remedial action to the employer.

(4) Where a supervisor finds the worker does not have reasonable grounds for believing that an act is likely to endanger the worker's occupational health or safety or the occupational health or safety of another worker, the supervisor shall advise the worker to do that act.

(5) Where a worker has made a report under subsection (2) and the matter has not been resolved to the worker's satisfaction, the worker shall refer the matter to a committee or representative or, where there is no committee or representative, to an officer.

(6) On receipt of a referral under subsection (5), the committee, representative or officer shall promptly investigate the situation.

(7) Where a committee or representative finds that the worker has reasonable grounds for believing that an act is likely to endanger the worker's occupational health or safety

or the occupational health or safety of another worker, the committee or representative shall recommend appropriate remedial action to the employer.

(8) Where a committee or representative finds that the worker does not have reasonable grounds for believing that an act is likely to endanger the worker's occupational health or safety or the occupational health or safety of another worker, the committee or representative shall advise the worker to do that act.

(9) Where a matter has been referred to a committee or representative under subsection (5), and the matter is not resolved to the satisfaction of the worker, the worker may refer the matter to an officer.

(10) On receipt of a referral under subsection (5) or (9), an officer shall promptly investigate the situation and make the officer's findings known in writing, as soon as is practicable, to the employer, the worker and the committee or representative, if any, as to whether the worker has reasonable grounds for believing that an act is likely to endanger the worker's occupational health or safety or the occupational health or safety of another worker.

(11) Where, on a referral under subsection (5) or (9), an officer finds that a worker has reasonable grounds for believing that an act is likely to endanger the worker's occupational health or safety or the occupational health or safety of another worker, the officer shall order remedial action to be taken by the employer.

(12) Where, on a referral under subsection (5) or (9), an officer finds that a worker does not have reasonable grounds for believing that an act is likely to endanger the worker's occupational health or safety or the occupational health or safety of another worker, the officer shall advise the worker to do that act.

(13) Pending an investigation under this section, the worker shall remain available at the workplace during the worker's normal working hours.

### **PROTECTION OF WORKER'S RIGHT OF REFUSAL**

29 (1) A worker's right under subsection 28(1) to refuse to do an act is protected:

- (a) if the worker has reported the concern to the worker's supervisor under subsection 28(2);
  - (i) until remedial action recommended by the supervisor under subsection 28(3) is taken by the supervisor or employer to the worker's satisfaction, or
  - (ii) until the supervisor has advised the worker under subsection 28(4) to do that act,
- (b) if the worker has referred the matter to a committee or representative under subsection 28(5);
  - (i) until remedial action recommended by the committee or representative under subsection 28(7) is taken by the employer to the worker's satisfaction, or

- (ii) until the committee or representative has advised the worker under subsection 28(8) to do that act, and
- (c) if the worker has referred the matter to an officer under section 28(5);
  - (i) until remedial action ordered by the officer under subsection 28(11) is taken by the employer to the officer's satisfaction, or
  - (ii) until the officer has advised the worker under subsection 28(12) to do that act.

(2) Where a worker has refused to do an act at the worker's workplace under subsection 28(1), the employer shall not assign another worker to perform that act unless that other worker has been advised by the employer of the refusal and the reasons therefor and of the worker's rights under this Act.

(3) Subject to subsection (4), where a worker has refused to do an act under subsection 28(1) and the worker's right to refuse is protected under subsection (1), the worker's employer may reassign the worker temporarily to perform other acts or to perform other work that is reasonably equivalent to the acts or work the worker normally performs and the employer shall pay the worker the same wages and grant the worker the same benefits as the worker would have received if he or she had not refused to do the act.

(4) Where a collective agreement is in force, a reassignment referred to in subsection (3) shall be made in accordance with the collective agreement.

(5) Where a worker has reasonably refused to do an act under subsection 28(1), the worker's right to refuse is protected under subsection (1) and the worker has not been reassigned to perform other acts or to perform other work under subsection (3), the employer shall pay the worker the same wages and grant the worker the same benefits as the worker would have received if he or she had not refused to do the act, if the worker's refusal is upheld.

(6) Where it is determined that the worker's refusal was for frivolous reasons, the worker shall not be entitled to wages and benefits for the applicable time period.

## **Quebec**

### **Act Respecting Occupational Health and Safety**

12 A worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical well-being, or would expose another person to a similar danger.

13 No worker may, however, exercise his right under section 12 if his refusal to perform the work puts the life, health, safety or physical well-being of another person in immediate danger or if the conditions under which the work is to be performed are

ordinary conditions in his kind of work.

14 Until an executory decision is rendered ordering a worker to resume work, the employer shall not, subject to section 17, and the second paragraph of section 19, have the work performed by another worker or by a person who ordinarily works outside the establishment and a worker who is exercising his right of refusal is deemed to be at work.

15 Where a worker refuses to perform particular work, he must immediately inform his supervisor, his employer or an agent of his employer; if none of these persons is present at the workplace, the worker must take reasonable steps to ensure that one of them is informed as soon as possible.

16 On being informed, the supervisor or, as the case may be, the employer or his agent shall convoke the safety representative to examine the matter and the corrective measures he intends to apply.

If there is no safety representative or if he is not available, the safety representative is replaced by a representative of the worker's certified association, if any, and if he is available, or if none is available, by any other worker designated by the worker who refuses to perform his work.

17 If the worker maintains his refusal to perform the work when his supervisor or, as the case may be, the employer or his agent and the safety representative or the person replacing him are of opinion that no danger exists to justify the worker's refusal to work or that his refusal to work is based on grounds that are acceptable in the particular case of that worker but do not justify another worker's refusing to perform the work, the employer may, notwithstanding section 14, have the work performed by another worker. That other worker may accept to perform the work after being informed that the right of refusal has been exercised, and of the reasons therefor.

18 After the situation has been examined, the intervention of an inspector may be required by:

1. the worker, if he maintains his refusal to perform the work;
2. the safety representative or the person replacing him if he believes that the performance of the work exposes the worker to danger to his health, safety or physical well-being or exposes another person to similar danger; or
3. the employer or his agent, if he believes that the performance of the work does not expose the worker to danger to his health, safety or physical well-being or does not expose another person to such danger, or that the corrective measures taken have dissipated the danger.

19 The inspector shall determine immediately whether or not a danger exists that would justify the worker's refusal to work. He may require the worker to resume his work. He may also prescribe temporary measures and require that corrective measures be taken

within such time as he may determine.

If, in the inspector's opinion, the refusal to work is based on grounds that are acceptable in the particular case of that worker but do not justify another worker's refusing to perform the work, the employer may, notwithstanding section 14 have the work performed by another worker, who may agree to perform it after being informed of the fact that the right of refusal has been exercised, and of the reasons therefor.

The inspector's decision must be substantiated and recorded in writing. It is transmitted by registered or certified mail to the worker, the safety representative or the person replacing him, and to the employer or his agent.

20 The inspector's decision may be the object of an application for review and a contestation before the Commission des lésions professionnelles in accordance with sections 191.1 to 193.

The inspector's decision has effect immediately, notwithstanding any application for review.

[1985, c. 6, s. 522; 1997, c. 27, s. 35]

21 – 23 Replaced. [1985, c. 6, s. 522]

24 A final decision applies as long as the circumstances remain unchanged.

25 An employer may require a worker who has exercised his right to refuse to work to remain at the workplace and assign him temporarily to other duties that he is reasonably capable of performing.

26 In cases where the exercise of the right to refuse to work prevents at least two other workers from working, the inspector must be present on the premises not later than six hours after his intervention has been required.

If the inspector is not present within the prescribed time, the employer may, notwithstanding section 14, have the work performed by another worker who agrees to do the work after being informed that the right of refusal has been exercised, and of the reasons therefor.

27 Where several workers refuse to perform particular work by reason of the same danger, their cases are examined jointly and may be the subject of a decision concerning them jointly.

28 Where the exercise of the right of refusal results in depriving of work other workers in the undertaking, these other workers are deemed to be at work for the duration of the work stoppage.

The employer may, however, assign the other workers to other duties that they are reasonably capable of performing or require that they remain available at the workplace

during the whole period thus remunerated.

29 The employer must allow the safety representative or, as the case may be, the person replacing him, to exercise the functions vested in him by sections 16, 18, 21 and 23.

The safety representative or the person replacing him is deemed to be working when he is exercising the functions vested in him referred to in this section.

## **Ontario**

### **OHS Act**

#### **APPLICATION**

43 (1) This section does not apply to a worker described in subsection (2):

- (a) when a circumstance described in clause (3)(a), (b), (b.1) or (c) is inherent in the worker's work or is a normal condition of the worker's employment; or
- (b) when the worker's refusal to work would directly endanger the life, health or safety of another person.

(2) The worker referred to in subsection (1) is:

- (a) a person employed in, or a member of, a police force to which the *Police Services Act* applies;
- (b) a firefighter as defined in [subsection 1\(1\) of the Fire Protection and Prevention Act, 1997](#);
- (c) a person employed in the operation of;
  - (i) a correctional institution or facility,
  - (ii) a place of secure custody designated under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise,
  - (iii) a place of temporary detention under the *Youth Criminal Justice Act*(Canada), or
  - (iv) a similar institution, facility or place,
- (d) a person employed in the operation of;
  - (i) a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,
  - (ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,
  - (iii) an ambulance service or a first aid clinic or station,
  - (iv) a laboratory operated by the Crown or licensed under the *Laboratory and Specimen Collection Centre Licensing Act*, or
  - (v) a laundry, food service, power plant or technical service or facility used in

conjunction with an institution, facility or service described in subclause (i) to (iv).

(3) A worker may refuse to work or do particular work where he or she has reason to believe that:

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;
- (b.1) workplace violence is likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of:

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them, who shall be made available and who shall attend without delay.

(5) Until the investigation is completed, the worker shall remain in a safe place near his or her work station.

(5) Until the investigation is completed, the worker shall remain:

- (a) in a safe place that is as near as reasonably possible to his or her work station;  
and
- (b) available to the employer or supervisor for the purposes of the investigation.

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that:

- (a) the equipment, machine, device or thing that was the cause of his or her refusal to work or do particular work continues to be likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself;

- (b.1) workplace violence continues to be likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself, herself or another worker, the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.

(7) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4)(a), (b) or (c).

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether the machine, device, thing or the workplace or part thereof is likely to endanger the worker or another person.

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person.

(9) The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4)(a), (b) or (c).

(10) Pending the investigation and decision of the inspector, the worker shall remain at a safe place near his or her work station during the worker's normal working hours unless the employer, subject to the provisions of a collective agreement, if any:

- (a) assigns the worker reasonable alternative work during such hours; or
- (b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

(10) Pending the investigation and decision of the inspector, the worker shall remain, during the worker's normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation.

(10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any:

- (a) assigns the worker reasonable alternative work during the worker's normal working hours; or
- (b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

(11) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other worker's refusal and of his or her reasons for the refusal.

(12) The person referred to in subsection (11) must be:

- (a) a committee member who represents workers and, if possible, who is a certified member;
- (b) a health and safety representative; or
- (c) a worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is no trade union, by the workers to represent them.

(13) A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be proper:

- (a) for the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4)(a), (b) or (c); and
- (b) for time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12).

[S.O. 1997, c. 4, s. 84; 2001, c. 9, Sch. I, s. 3;  
2001, c. 13, s. 22; 2006, c. 19, Sch. D, s. 14;  
2007, c. 8, s. 221; 2009, c. 23, s. 4]

#### **DEFINITION**

44 (1) In sections 45 to 48, "dangerous circumstances" means a situation in which:

- (a) a provision of this Act or the regulations is being contravened;
- (b) the contravention poses a danger or a hazard to a worker; and
- (c) the danger or hazard is such that any delay in controlling it may seriously endanger a worker.

(2) Sections 45 to 49 do not apply to:

- (a) a workplace at which workers described in clause 43(2)(a), (b) or (c) are employed; or
- (b) a workplace at which workers described in clause 43(2)(d) are employed if a work stoppage would directly endanger the life, health or safety of another person.

#### **BILATERAL WORK STOPPAGE**

45 (1) A certified member who has reason to believe that dangerous circumstances exist at a workplace may request that a supervisor investigate the matter and the

supervisor shall promptly do so in the presence of the certified member.

(2) The certified member may request that a second certified member representing the other workplace party investigate the matter if the first certified member has reason to believe that dangerous circumstances continue after the supervisor's investigation and remedial actions, if any.

(3) The second certified member shall promptly investigate the matter in the presence of the first certified member.

(4) If both certified members find that the dangerous circumstances exist, the certified members may direct the constructor or employer to stop the work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing.

(5) The constructor or employer shall immediately comply with the direction and shall ensure that compliance is effected in a way that does not endanger a person.

(6) If the certified members do not agree whether dangerous circumstances exist, either certified member may request that an inspector investigate the matter and the inspector shall do so and provide the certified members with a written decision.

(7) After taking steps to remedy the dangerous circumstances, the constructor or employer may request the certified members or an inspector to cancel the direction.

(8) The certified members who issued a direction may jointly cancel it or an inspector may cancel it.

(9) In such circumstances as may be prescribed, a certified member who represents the constructor or employer shall designate a person to act under this section in his or her stead when the certified member is not available at the workplace.

#### **DECLARATION AGAINST CONSTRUCTOR, ETC.**

46 (1) A certified member at a workplace or an inspector who has reason to believe that the procedure for stopping work set out in section 45 will not be sufficient to protect a constructor's or employer's workers at the workplace from serious risk to their health or safety may apply to the Board for a declaration or recommendation described in subsection (5), or both.

(2) Repealed. [S.O. 1998, c. 8, s. 53]

(3) The Minister is entitled to be a party to a proceeding before the Board.

(4) Subsections 61(2) to (3.13) and subsection 61(8) apply, with necessary modifications, with respect to applications under this section.

(5) If the Board finds that the procedure for stopping work set out in section 45 will not be sufficient to protect the constructor's or employer's workers at the workplace from serious risk to their health or safety, the Board:

- (a) may issue a declaration that the constructor or employer is subject to the procedure for stopping work set out in section 47 for the period specified; and
- (b) may recommend to the Minister that an inspector be assigned to oversee the health and safety practices of the constructor or employer at the workplace on a full-time or part-time basis for a specified period.

(6) In making a finding under subsection (5), the Board shall determine, using the prescribed criteria, whether the constructor or employer has demonstrated a failure to protect the health and safety of workers and shall consider such other matters as may be prescribed.

(7) The decision of the Board on an application is final.

(8) The employer shall reimburse the Province of Ontario for the wages, benefits and expenses of an inspector assigned to the employer as recommended by the Board.

[S.O. 1998, c. 8, s. 53]

#### **UNILATERAL WORK STOPPAGE**

47 (1) This section applies, and section 45 does not apply, to a constructor or an employer:

- (a) against whom the Board has issued a declaration under section 46; or
- (b) who advises the committee at a workplace in writing that the constructor or employer adopts the procedures set out in this section respecting work stoppages.

(2) A certified member may direct the constructor or employer to stop specified work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing if the certified member finds that dangerous circumstances exist.

(3) The constructor or employer shall immediately comply with the direction and shall ensure that compliance is effected in a way that does not endanger a person.

(4) After complying with the direction, the constructor or employer shall promptly investigate the matter in the presence of the certified member.

(5) If the certified member and the constructor or employer do not agree whether dangerous circumstances exist, the constructor or employer or the certified member may request that an inspector investigate the matter and the inspector shall do so and provide them with a written decision.

(6) After taking steps to remedy the dangerous circumstances, the constructor or

employer may request the certified member or an inspector to cancel the direction.

(7) The certified member who made the direction or an inspector may cancel it.

[S.O. 1998, c. 8, s. 54]

### **ENTITLEMENT TO INVESTIGATE**

48 (1) A certified member who receives a complaint that dangerous circumstances exist is entitled to investigate the complaint.

(2) The time spent by a certified member in exercising powers and carrying out duties under this section and sections 45 and 47 shall be deemed to be work time for which the member's employer shall pay the member at the regular or premium rate as may be proper.

### **COMPLAINT RE DIRECTION TO STOP WORK**

49 (1) A constructor, an employer, a worker at the workplace or a representative of a trade union that represents workers at the workplace may file a complaint with the Board if he, she or it has reasonable grounds to believe that a certified member at the workplace recklessly or in bad faith exercised or failed to exercise a power under section 45 or 47.

(2) A complaint must be filed not later than 30 days after the event to which the complaint relates.

(3) The Minister is entitled to be a party to a proceeding before the Board.

(3.1) Subsections 61(2) to (3.13) and subsection 61(8) apply, with necessary modifications, with respect to complaints under this section.

(4) The Board shall make a decision respecting the complaint and may make such order as it considers appropriate in the circumstances including an order decertifying a certified member.

(5) The decision of the Board is final.

## **Manitoba**

### **OHS Act**

#### **RIGHT TO REFUSE DANGEROUS WORK**

43 (1) Subject to this section, a worker may refuse to work or do particular work at a workplace if he or she believes on reasonable grounds that the work constitutes a danger to his or her safety or health or to the safety or health of another worker or

another person.

(2) A worker who refuses to work or do particular work under subsection (1) shall promptly report the refusal and the reasons for it to his or her employer or immediate supervisor, or to any other person in charge at the workplace.

(3) If the employer does not remedy the dangerous condition immediately, the person who receives the report of refusal to work, or a person designated by that person, shall immediately inspect the workplace in the presence of the worker and one of the following persons:

- (a) if there is a committee under section 40, the worker co-chairperson of the committee or, if that person is unavailable, a committee member who represents workers;
- (b) if there is a representative designated under section 41, that representative or, if he or she is unavailable, another worker selected by the worker refusing to do the work;
- (c) if there is no committee or representative, another worker selected by the worker who is refusing to work.

(4) The person required to inspect the workplace shall take any action necessary to remedy any dangerous condition, or ensure that such action is taken.

(5) Until the dangerous condition is remedied, the worker who reported it may continue to refuse to work or do particular work.

(6) When a worker has refused to work or do particular work under subsection (1), the employer shall not request or assign another worker to do the work unless the other worker has been advised by the first worker, or by a safety and health officer, of the first worker's refusal and the reasons for it.

[S.M. 2002, c. 33, s. 34]

#### **REPORT OF DANGEROUS CONDITION TO AN OFFICER**

43.1 (1) If the dangerous condition is not remedied after an inspection under subsection 43(3), any of the persons present during the inspection may notify a safety and health officer of the refusal to work and the reasons for it.

(2) On receiving a notice under subsection (1), the officer shall investigate the matter and decide whether the work the worker has refused to do constitutes a danger to the safety or health of the worker or any other worker or person at the workplace.

(3) If the officer decides that the work is dangerous, he or she shall:

- (a) make a written report stating the officer's findings;
- (b) make any improvement order under section 26 or stop work order under section 36 that the officer considers necessary or advisable; and

- (c) give a copy of the report and any order to;
  - (i) the worker who refused to do the work,
  - (ii) the employer, and
  - (iii) the co-chairpersons of the committee, or the representative.

(4) If the officer decides that the work is not dangerous, he or she shall:

- (a) inform the employer and the worker of that decision; and
- (b) inform the worker that he or she is no longer entitled to refuse to do the work.

[S.M. 2002, c. 33, s. 34]

### **WORKER ENTITLED TO BE PAID DESPITE REFUSAL**

43.2 If a worker has refused to work or do particular work under section 43:

- (a) the worker is entitled to the same wages and benefits that he or she would have received had the worker continued to work; and
- (b) the employer may re-assign the worker temporarily to alternate work.

[S.M. 2002, c. 33, s. 34]

### **EMPLOYER NOT TO MAKE WORKER WORK IN UNSAFE CONDITIONS**

43.3 (1) When the employer at a workplace or his or her agent, or the supervisor or another person representing the employer at the workplace in a supervisory capacity, knows or ought to know of a condition at the workplace that is or is likely to be dangerous to the safety or health of a worker, he or she shall not require or permit any worker to do that work until the dangerous condition is remedied.

(2) Subject to subsection 43(5), nothing in subsection (1) prevents the doing of any work or thing at a workplace that may be necessary to remedy a condition that is or is likely to be dangerous to the safety or health of a worker.

## **Saskatchewan**

### **OHS Act**

23 A worker may refuse to perform any particular act or series of acts at a place of employment where the worker has reasonable grounds to believe that the act or series of acts is unusually dangerous to the worker's health or safety or the health or safety of any other person at the place of employment until:

- (a) sufficient steps have been taken to satisfy the worker otherwise; or
- (b) the occupational health committee has investigated the matter and advised the worker otherwise.

24 Where there is no occupational health committee at a place of employment or where the worker or the employer is not satisfied with the decision of the occupational health committee pursuant to clause 23(b):

- (a) the worker or the employer may request an occupational health officer to investigate the matter; and
- (b) the worker is entitled to refuse to perform the act or series of acts pursuant to section 23 until the occupational health officer has investigated the matter and advised the worker otherwise pursuant to subsection 25(2).

25 (1) Where an occupational health officer decides that the act or series of acts that a worker has refused to perform pursuant to section 23 is unusually dangerous to the health or safety of the worker or any other person at the place of employment, the occupational health officer may issue a notice of contravention in writing to the employer requiring the appropriate remedial action.

(2) Where an occupational health officer decides that the act or series of acts that a worker has refused to perform pursuant to section 23 is not unusually dangerous to the health or safety of the worker or any other person at the place of employment, the occupational health officer shall, in writing:

- (a) advise the employer and the worker of that decision; and
- (b) advise the worker that he or she is no longer entitled to refuse to perform the act or series of acts pursuant to section 23.

26 Where a worker has refused to perform an act or series of acts pursuant to section 23, the employer shall not request or assign another worker to perform that act or series of acts unless that other worker has been advised by the employer, in writing, of:

- (a) the refusal and the reasons for the refusal;
- (b) the reason or reasons the worker being assigned or requested to do the act or series of acts can, in the employer's opinion, carry out the act or series of acts in a healthy and safe manner; and
- (c) the right of the worker to refuse to do the act or series of acts pursuant to section 23.

## **Alberta**

### **OHS Act**

#### **EXISTENCE OF IMMINENT DANGER**

35 (1) No worker shall:

- (a) carry out any work if, on reasonable and probable grounds, the worker believes that there exists an imminent danger to the health or safety of that worker;
- (b) carry out any work if, on reasonable and probable grounds, the worker believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site; or
- (c) operate any tool, appliance or equipment if, on reasonable and probable grounds, the worker believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site.

(2) In this section, "imminent danger" means in relation to any occupation:

- (a) a danger that is not normal for that occupation; or
- (b) a danger under which a person engaged in that occupation would not normally carry out the person's work.

(3) A worker who:

- (a) refuses to carry out work; or
- (b) refuses to operate a tool, appliance or equipment pursuant to subsection (1) shall, as soon as practicable, notify the worker's employer at the work site of the worker's refusal and the reason for the worker's refusal.

(4) On being notified under subsection (3), the employer shall:

- (a) investigate and take action to eliminate the imminent danger,
- (b) ensure that no worker is assigned to use or operate the tool, appliance or equipment or to perform the work for which a worker has made a notification under subsection (3), unless;
  - (i) the worker to be so assigned is not exposed to imminent danger, or
  - (ii) the imminent danger has been eliminated,
- (c) prepare a written record of the worker's notification, the investigation and action taken; and
- (d) give the worker who gave the notification a copy of the record described in clause (c).

(5) The employer may require a worker who has given notification under subsection (3) to remain at the work site and may assign the worker temporarily to other work assignments that the worker is reasonably capable of performing.

(6) A temporary assignment under subsection (5), if there is no loss in pay, is not disciplinary action for the purposes of section 36.

(7) If a worker who receives a record under subsection (4)(d) is of the opinion that an imminent danger still exists, the worker may file a complaint with an officer.

(8) An officer who receives a complaint under subsection (7) shall prepare a written

record of the worker's complaint, the investigation and the action taken and shall give the worker and the employer a copy of the record.

(9) A worker or an employer who receives a record under subsection (8) may request a review of the matter by the Council by serving a notice of appeal on a Director of Inspection within 30 days from the date of receipt of the record.

(10) After considering the matter, the Council may by order:

- (a) dismiss the request for a review; or
- (b) require the employer to eliminate the imminent danger.

(11) An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court may make any order, including the awarding of costs, that the Court considers proper.

(12) An appeal under subsection (11) shall be made by way of originating notice within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.

(13) The commencement of an appeal under subsection (11) does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.

## **British Columbia**

### **PROCEDURE FOR REFUSAL**

3.12 (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 (1) 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 occupational health and safety committee;
- (b) a worker who is selected by a trade union representing the worker; or
- (c) if there is no occupational health and safety 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.

### **Federal Sector**

128 (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that:

- (a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;
- (b) a condition exists in the place that constitutes a danger to the employee; or
- (c) the performance of the activity constitutes a danger to the employee or to another employee.

(2) An employee may not, under this section, refuse to use or operate a machine or thing, to work in a place or to perform an activity if:

- (a) the refusal puts the life, health or safety of another person directly in danger; or
- (b) the danger referred to in subsection (1) is a normal condition of employment.

(3) If an employee on a ship or an aircraft that is in operation has reasonable cause to believe that:

- (a) the use or operation of a machine or thing on the ship or aircraft constitutes a danger to the employee or to another employee;
- (b) a condition exists in a place on the ship or aircraft that constitutes a danger to the employee; or
- (c) the performance of an activity on the ship or aircraft by the employee constitutes a danger to the employee or to another employee, the employee shall immediately notify the person in charge of the ship or aircraft of the

circumstances of the danger and the person in charge shall, as soon as is practicable after having been so notified, having regard to the safe operation of the ship or aircraft, decide whether the employee may discontinue the use or operation of the machine or thing or cease working in that place or performing that activity and shall inform the employee accordingly.

(4) An employee who, under subsection (3), is informed that the employee may not discontinue the use or operation of a machine or thing or cease to work in a place or perform an activity shall not, while the ship or aircraft on which the employee is employed is in operation, refuse under this section to use or operate the machine or thing, work in that place or perform that activity.

(5) For the purposes of subsections (3) and (4):

- (a) a ship is in operation from the time it casts off from a wharf in a Canadian or foreign port until it is next secured alongside a wharf in Canada; and
- (b) an aircraft is in operation from the time it first moves under its own power for the purpose of taking off from a Canadian or foreign place of departure until it comes to rest at the end of its flight to its first destination in Canada.

(6) An employee who refuses to use or operate a machine or thing, work in a place or perform an activity under subsection (1), or who is prevented from acting in accordance with that subsection by subsection (4), shall report the circumstances of the matter to the employer without delay.

(7) Where an employee makes a report under subsection (6), the employee, if there is a collective agreement in place that provides for a redress mechanism in circumstances described in this section, shall inform the employer, in the prescribed manner and time if any is prescribed, whether the employee intends to exercise recourse under the agreement or this section. The selection of recourse is irrevocable unless the employer and employee agree otherwise.

(8) If the employer agrees that a danger exists, the employer shall take immediate action to protect employees from the danger. The employer shall inform the work place committee or the health and safety representative of the matter and the action taken to resolve it.

(9) If the matter is not resolved under subsection (8), the employee may, if otherwise entitled to under this section, continue the refusal and the employee shall without delay report the circumstances of the matter to the employer and to the work place committee or the health and safety representative.

(10) An employer shall, immediately after being informed of the continued refusal under subsection (9), investigate the matter in the presence of the employee who reported it and of:

- (a) at least one member of the work place committee who does not exercise managerial functions;
- (b) the health and safety representative; or
- (c) if no person is available under paragraph (a) or (b), at least one person from the work place who is selected by the employee.

(11) If more than one employee has made a report of a similar nature under subsection (9), those employees may designate one employee from among themselves to be present at the investigation.

(12) An employer may proceed with an investigation in the absence of the employee who reported the matter if that employee or a person designated under subsection (11) chooses not to be present.

(13) If an employer disputes a matter reported under subsection (9) or takes steps to protect employees from the danger, and the employee has reasonable cause to believe that the danger continues to exist, the employee may continue to refuse to use or operate the machine or thing, work in that place or perform that activity. On being informed of the continued refusal, the employer shall notify a health and safety officer.

(14) An employer shall inform the work place committee or the health and safety representative of any steps taken by the employer under subsection (13).

[S.C. 2000, c. 20, s. 10]

### **EMPLOYEES ON SHIFT DURING WORK STOPPAGE**

128.1 (1) Unless otherwise provided in a collective agreement or other agreement, employees who are affected by a stoppage of work arising from the application of section 127.1, 128 or 129 or subsection 145(2) are deemed, for the purpose of calculating wages and benefits, to be at work during the stoppage until work resumes or until the end of the scheduled work period or shift, whichever period is shorter.

(2) Unless otherwise provided in a collective agreement or other agreement, employees who are due to work on a scheduled work period or shift after a shift during which there has been a stoppage of work arising from the application of section 127.1, 128 or 129 or subsection 145(2) are deemed, for the purpose of calculating wages and benefits, to be at work during their work period or shift, unless they have been given at least one hour's notice not to attend work.

(3) An employer may assign reasonable alternative work to employees who are deemed under subsection (1) or (2) to be at work.

(4) Unless otherwise provided in a collective agreement or other agreement, employees who are paid wages or benefits under subsection (1) or (2) may be required by the employer to repay those wages and benefits if it is determined, after all avenues of redress have been exhausted by the employee who exercised rights under section 128 or 129, that the employee exercised those rights knowing that no circumstances existed

that would warrant it.

[S.C. 2000, c. 20, s. 10]

**INVESTIGATION BY HEALTH AND SAFETY OFFICER**

129 (1) On being notified that an employee continues to refuse to use or operate a machine or thing, work in a place or perform an activity under subsection 128(13), the health and safety officer shall without delay investigate or cause another officer to investigate the matter in the presence of the employer, the employee and one other person who is:

- (a) an employee member of the work place committee;
- (b) the health and safety representative; or
- (c) if a person mentioned in paragraph (a) or (b) is not available, another employee from the work place who is designated by the employee.

(2) If the investigation involves more than one employee, those employees may designate one employee from among themselves to be present at the investigation.

(3) A health and safety officer may proceed with an investigation in the absence of any person mentioned in subsection (1) or (2) if that person chooses not to be present.

(4) A health and safety officer shall, on completion of an investigation made under subsection (1), decide whether the danger exists and shall immediately give written notification of the decision to the employer and the employee.

(5) Before the investigation and decision of a health and safety officer under this section, the employer may require that the employee concerned remain at a safe location near the place in respect of which the investigation is being made or assign the employee reasonable alternative work, and shall not assign any other employee to use or operate the machine or thing, work in that place or perform the activity referred to in subsection (1) unless:

- (a) the other employee is qualified for the work;
- (b) the other employee has been advised of the refusal of the employee concerned and of the reasons for the refusal; and
- (c) the employer is satisfied on reasonable grounds that the other employee will not be put in danger.

(6) If a health and safety officer decides that the danger exists, the officer shall issue the directions under subsection 145(2) that the officer considers appropriate, and an employee may continue to refuse to use or operate the machine or thing, work in that place or perform that activity until the directions are complied with or until they are varied or rescinded under this Part.

(7) If a health and safety officer decides that the danger does not exist, the employee is not entitled under section 128 or this section to continue to refuse to use or operate the machine or thing, work in that place or perform that activity, but the employee, or a

person designated by the employee for the purpose, may appeal the decision, in writing, to an appeals officer within ten days after receiving notice of the decision.

#### **WHEN COLLECTIVE AGREEMENT EXISTS**

130 The Minister may, on the joint application of the parties to a collective agreement, if the Minister is satisfied that the agreement contains provisions that are at least as effective as those under sections 128 and 129 in protecting the employees to whom the agreement relates from danger to their health or safety, exclude the employees from the application of those sections for the period during which the agreement remains in force.

[S.C. 2000, c. 20, s. 10]

#### **COMPENSATION UNDER OTHER LAWS NOT PRECLUDED**

131 The fact that an employer or employee has complied with or failed to comply with any of the provisions of this Part may not be construed as affecting any right of an employee to compensation under any statute relating to compensation for employment injury or illness, or as affecting any liability or obligation of any employer or employee under any such statute.

[S.C. 2000, c. 20, s. 10]

#### **Pregnant and Nursing Employees**

##### **CEASE TO PERFORM JOB**

132 (1) In addition to the rights conferred by section 128 and subject to this section, an employee who is pregnant or nursing may cease to perform her job if she believes that, by reason of the pregnancy or nursing, continuing any of her current job functions may pose a risk to her health or to that of the foetus or child. On being informed of the cessation, the employer, with the consent of the employee, shall notify the work place committee or the health and safety representative.

(2) The employee must consult with a qualified medical practitioner, as defined in section 166, of her choice as soon as possible to establish whether continuing any of her current job functions poses a risk to her health or to that of the foetus or child.

(3) Without prejudice to any other right conferred by this Act, by a collective agreement or other agreement or by any terms and conditions of employment, once the medical practitioner has established whether there is a risk as described in subsection (1), the employee may no longer cease to perform her job under subsection (1).

(4) For the period during which the employee does not perform her job under subsection (1), the employer may, in consultation with the employee, reassign her to another job that would not pose a risk to her health or to that of the foetus or child.

(5) The employee, whether or not she has been reassigned to another job, is deemed to continue to hold the job that she held at the time she ceased to perform her job functions and shall continue to receive the wages and benefits that are attached to that job for the period during which she does not perform the job.



**Comments**

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