



Right to Refuse During Pandemics

Policy 24-015 | Effective Date: September 13, 2017

Policy

Legislation

References

Definitions

Purpose

The purpose of this policy is to:

- Provide direction to staff who respond to work refusals in New Brunswick workplaces; and
- Advise workplace parties of WorkSafeNB's principles related to the right to refuse during pandemics.

Scope

This policy applies to every individual in a place of employment covered by the *Occupational Health and Safety Act* or Regulations.

Statements

1.0 General

The *Occupational Health and Safety Act (OHS Act)* is based on the internal responsibility system, which requires all individuals in the workplace to take responsibility for the health and safety of themselves and others.

Employers are responsible to take all necessary measures to ensure the health and safety of their employees. This includes working with employees to:

- Establish Joint Health and Safety Committees (JHSC) or appoint health and safety representatives;
- Identify and use best practices in the workplace; and
- Create health and safety programs to educate employees.

In addition, employees have the right to:

- Know about workplace hazards, including how to identify and protect themselves from those hazards;
- Participate in decisions related to occupational health and safety, free of punishment for their participation; and
- Refuse to perform dangerous work.

2.0 Right to Refuse

When an employee believes that work being performed is dangerous or unsafe, the *OHS Act* requires that workplace parties resolve the situation internally. The Act outlines the specific process and responsibilities for resolving a work refusal. One or all of the following individuals may be involved:

- Employees;
- Supervisors; and
- Joint Health and Safety Committees.

When the situation is not resolved to the satisfaction of the employee, the employee may refer the matter to an Occupational Health and Safety Officer for investigation.

An Officer investigates the situation by gathering and weighing the following information:

- The nature of the refusal;
- The individuals involved;
- Whether the refusal is based on reasonable grounds; and
- If there is non-compliance with the *Act* and/or Regulations.

An Officer's decisions related to the work refusal are communicated to the workplace parties in writing through orders and/or advice. Decisions with respect to work refusals may be appealed to the Chief Compliance Officer, and then to the Appeals Tribunal.

3.0 Right to Refuse During Pandemics

The principles used to manage health and safety in the workplace during a pandemic are the same as during normal working conditions. The internal responsibility for health and safety still applies during a pandemic, and the roles of employees, employers, and WorkSafeNB remain the same.

In addition to these principles, when Officers seek to determine the nature of a work refusal during a pandemic, they also consider the:

- Employee's level of risk of exposure; and
- Extent of precautionary measures the employer has put in place to mitigate the risk of exposure.

WorkSafeNB also recognizes that events such as a pandemic may put additional pressure on workplaces, and may increase the volume of work refusals, resulting in higher demands for Officers to assist in their resolution.

WorkSafeNB helps workplaces prepare for a pandemic, and responds to work refusals during a pandemic, using the following principles.

Principle I - WorkSafeNB emphasizes education and prevention to prepare workplace parties to respond to the impact of a pandemic.

WorkSafeNB is committed to continuously monitoring best practices related to infectious diseases and actively communicating with workplaces to help identify potential hazards, educate employees, and prepare to respond in the event of a pandemic.

WorkSafeNB encourages employers to adopt best practices related to infection control when preparing for the impact of a pandemic. This becomes especially important for workplaces such as health care facilities and emergency response personnel who may experience an increased risk of exposure during a pandemic.

Principle II - WorkSafeNB reinforces the fundamental principle of the internal responsibility system, which requires workplace parties to cooperatively resolve work refusals.

In the event of a pandemic, it will become increasingly important for workplace parties to mitigate risks associated with infectious diseases, and to efficiently and cooperatively address situations of work refusals.

When the normal process for responding to a work refusal is sound, it enables workplaces to function efficiently should a pandemic occur. Therefore, WorkSafeNB continues to emphasize the requirements of the *OHS Act*, which empowers employees, supervisors, and Joint Health and Safety Committees to work cooperatively to resolve work refusals.

Principle III - WorkSafeNB ensures that its staff are trained and equipped to protect themselves when assisting workplaces during pandemics.

Training staff and providing them with appropriate personal protective equipment is an on-going priority of WorkSafeNB. In preparing for a pandemic, WorkSafeNB implements best practices to ensure the health and safety of its staff so they can meet their legislated responsibilities.

Principle IV – During a pandemic, WorkSafeNB prioritizes and allocates its resources to resolving work refusals in workplaces that provide critical infrastructure and services.

WorkSafeNB expects that a pandemic outbreak in the province will create:

- A substantial increase in the volume of work refusals in many workplaces;
- A decrease in the number of Officers available due to personal illness; and
- An increased need to prioritize and resolve work refusals in specified workplaces.

Health and Safety Officers rely on their training and experience to gauge the impact that a work refusal has on the operations of the workplace, on individuals, and on the community. During a pandemic, Officers prioritize the resolution of work refusals in workplaces that are directly involved in:

- Maintaining the health and safety of the general population;
- Providing services to address basic human needs; and
- Providing services that maintain the efficient functioning of the community.

Principle V - The Chief Compliance Officer delegates his/her duties and authority to another Officer, when appropriate, to respond to increased demands associated with a pandemic.

The *OHS Act* requires that the Lieutenant-Governor in Council appoint Health and Safety Officers, with one being designated as the Chief Compliance Officer (CCO). The *Act* also gives the CCO the authority to delegate any or all of his/her powers, duties, authority or discretion to another occupational health and safety officer, in such manner and subject to such terms and conditions as the CCO considers appropriate.

During a pandemic, if the CCO becomes unable to carry out his/her legislative responsibilities, the CCO will delegate his/her powers, duties, authority, and discretion to other Officers.