

Retrieval of Personal Belongings and Returning Material to Schools

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OECTA has been advised that a number of school boards are now directing members to enter schools related to the retrieval of personal items for both staff and students.

A large number of members have indicated that they are very concerned for their personal safety (and the safety of their families) due to this direction.

The Association's position is that any protocol for re-entry must:

Be vetted by the Joint Occupational Health and Safety Committee.

Require all individuals entering a school to wear a mask, provided by the employer.

Individuals refusing to wear the mask must be denied entry into the school.

If the school board request you to voluntarily assist with **the retrieval of students' personal items from the schools** we strongly urge you to consider your personal circumstances, any underlying health risks, etc. and the use of personal protective equipment (PPE) before volunteering.

In areas where COVID-19 activity is present, in addition to handwashing and cough etiquette, "use of non-medical masks or face coverings is recommended as an added layer of protection when physical distancing is difficult to maintain," [said Theresa Tam](#), Canada's Chief Public Health Officer, on May 20.

If the school board directs you to enter a school/workplace please note the following:

- Covid-19 is a workplace (biological) hazard.
- There are many hazards within a workplace (eg. chemicals, noise, workplace violence) that may injure or cause illness if not properly identified, assessed and controlled. COVID – 19 is no different.

If the school board directs you to enter a school/workplace please note the following:

- **It is the Association's position that any protocol for re-entry** that does not require all individuals entering a school to wear a mask, provided by the school board, unnecessarily exposes you to a workplace hazard. As such, you have the right to initiate a work refusal and not enter the school.

If the school board directs you to enter a school/workplace please note the following:

- The decision to initiate a work refusal is completely up to each individual.
- Should you choose to do so, please inform your administrator that the work is being refused and contact your local unit immediately for assistance.

If the school board directs you to enter a school/workplace please note the following:

- In accordance with the provisions of the *Occupational Health and Safety Act* the employer and supervisor have a duty to take every precaution reasonable in the circumstances to protect the health and safety of the employees [Section 25(2)(h)]

If the school board directs you to enter a school/workplace please note the following:

- Employers are required to:
 - provide information, instruction and supervision to you to protect your health and safety [Section 25(2)(a)];
 - ensure equipment, materials and protective devices provided by them are maintained in good condition [Section 25(1)(b)];
 - take every precaution reasonable in the circumstances for your protection. [Section 25 (2) (h)]

Q&A - The Right to Refuse Unsafe Work

My local Public Health Office has said that the school board is not required to supply masks for the employees if they maintain the physical distancing requirements. Do I still need to wear a mask?

- Yes. Physical distancing cannot be guaranteed in a school setting.

Q&A - The Right to Refuse Unsafe Work

Do all workers have the right to refuse unsafe work?

- Workers have a right to refuse work where the worker has reason to believe that the work, the situation, or workplace violence is likely to endanger themselves or their co-workers.
- The right to refuse unsafe work applies to all workers other than specified types of workers in specified circumstances.

Q&A - The Right to Refuse Unsafe Work

Do all workers have the right to refuse unsafe work?

- For teachers (as defined in the *Education Act*), the right to refuse unsafe work does not apply where the circumstances are such that the life, health, or safety of a student is in imminent jeopardy.
- However, the employer and supervisor still have a duty to take every precaution reasonable in the circumstances to protect the health and safety of the teacher.

Q&A - The Right to Refuse Unsafe Work

Do all workers have the right to refuse unsafe work?

- Other workers in school boards who are not teachers (e.g., teaching assistants, education assistants, office workers, custodial workers, etc.) also have the right to refuse work when they have reason to believe that the work or the workplace is unsafe or that workplace violence is likely to endanger them.

Q&A - The Right to Refuse Unsafe Work

When can a worker refuse to work?

- A worker can refuse to work if he or she has reason to believe that:
 - any machine, equipment or tool that the worker is using (or is told to use) is likely to endanger himself or herself or another worker [clause 43(3)(a)];
 - the physical condition of the workplace or workstation is likely to endanger himself or herself [clause 43(3)(b)];

Q&A - The Right to Refuse Unsafe Work

When can a worker refuse to work?

- workplace violence is likely to endanger himself or herself [clause 43(3)(b.1)];
- any machine, equipment or tool that the worker is using, or the physical condition of the workplace, contravenes the Act or regulations and is likely to endanger himself or herself or another worker [clause 43(3)(c)].

Q&A - The Right to Refuse Unsafe Work

What happens when a worker refuses unsafe work?

- The worker must immediately tell the supervisor or employer that the work is being refused and explain the circumstances for the refusal [subsection 43(4)].

Q&A - The Right to Refuse Unsafe Work

What happens when a worker refuses unsafe work?

- The supervisor or employer must investigate the situation immediately, in the presence of the worker and one of the following:
 - a joint health and safety committee member who represents workers, if there is one. If possible, this should be a certified member; or

Q&A - The Right to Refuse Unsafe Work

What happens when a worker refuses unsafe work?

- a health and safety representative, in workplaces where there is no joint health and safety committee; or
- another worker, who, because of knowledge, experience and training, has been chosen by the workers (or by the union) to represent them.

Q&A - The Right to Refuse Unsafe Work

What happens when a worker refuses unsafe work?

- The refusing worker must remain in a safe place that is as near as reasonably possible to his or her workstation, and remain available to the employer or supervisor for the purposes of the investigation, until the investigation is completed [subsection 43(5)].
- Although not stated as such in the Act, this interval is informally **known as the “first stage” of a work refusal. If the situation is resolved at this point, the worker will return to work.**

Q&A - The Right to Refuse Unsafe Work

What if the refusing worker is not satisfied with the result of the first stage investigation?

- The worker can continue to refuse the work if he or she has reasonable grounds for believing that the circumstances that caused the worker to initially refuse work continue [subsection 43(6)].
- At this point, the “second stage” of a work refusal begins.

Q&A - The Right to Refuse Unsafe Work

What happens if a worker continues to refuse to work?

- If the worker continues to refuse to work after the completion of **the employer's investigation, the worker, the employer or someone** acting on behalf of either the worker or employer must notify a Ministry of Labour inspector.
- The inspector will come to the workplace to investigate the refusal in consultation with the worker and the employer (or a representative of the employer).

Q&A - The Right to Refuse Unsafe Work

What happens if a worker continues to refuse to work?

- If there is a joint health and safety committee member, a worker health and safety representative or a worker selected by the **worker's trade union or, if there is no trade union, by the workers** to represent the worker, they will also be consulted as part of the **inspector's investigation [subsection 43(7)]**.

Q&A - The Right to Refuse Unsafe Work

What happens if a worker continues to refuse to work?

- While waiting for the MoL **inspector's investigation to be completed**, the worker must remain in a safe place that is as near as reasonably possible to his or her workstation and available to the inspector for the purposes of the investigation,
 - unless the employer assigns some other reasonable alternative work during normal working hours or gives other directions to the worker where an assignment of reasonable alternative work is not practicable [subsections 43(10) and (10.1)].

Q&A - The Right to Refuse Unsafe Work

What happens if a worker continues to refuse to work?

- The MoL inspector must decide whether the circumstance(s) that led to the work refusal is likely to endanger the worker (or another person).
- **The inspector's decision must be given, in writing, to the worker, the employer, and the worker representative, if there is one.**

Q&A - The Right to Refuse Unsafe Work

What happens if a worker continues to refuse to work?

- If the inspector finds that the circumstance is not likely to endanger anyone, the refusing worker is expected to return to work.
- If the inspector finds that the circumstance(s) is likely to endanger the worker or another person, the inspector will typically order the employer to remedy the hazard.

Q&A - The Right to Refuse Unsafe Work

Can another worker be asked to do the work that was refused?

- Yes. While waiting for the MoL inspector to investigate and give a decision on the refusal, the employer or supervisor can ask another worker to do the work that was refused.
- The second worker must be told that the work was refused and why.

Q&A - The Right to Refuse Unsafe Work

Can another worker be asked to do the work that was refused?

- This must be done in the presence of a committee member who represents workers, or a health and safety representative, or a worker representative chosen because of knowledge, experience and training [subsections 43(11) and (12)].
- The second worker has the same right to refuse the work as the first worker.

Q&A - The Right to Refuse Unsafe Work

Is a worker paid while refusing to work?

- The Ministry of Labour is of the view that the worker is at work during the first stage of a work refusal and is entitled to be paid at his or her appropriate rate.
- A person acting as a worker representative during a work refusal is paid at either the regular or the premium rate, whichever is applicable [subsection 43(13)].

Q&A - The Right to Refuse Unsafe Work

Can an employer discipline a worker for refusing to work?

- No. The employer is expressly prohibited from penalizing, dismissing, disciplining, suspending, or threatening to do any of these things to a worker who has obeyed or sought enforcement of the OHSA [subsection 50(1)]. [Reprisals by the employer prohibited.](#)
- The *Occupational Health and Safety Act* (OHSA) prohibits employers from penalizing workers in reprisal for obeying the law or exercising their rights.

Q&A - The Right to Refuse Unsafe Work

Can an employer discipline a worker for refusing to work?

- Under [section 50 of the OHSA](#), an employer cannot:
 - dismiss (or threaten to dismiss) a worker
 - discipline or suspend a worker (or threaten to do so)
 - impose (or threaten to impose) any penalty upon a worker, or
 - **intimidate or coerce a worker...**

Q&A - The Right to Refuse Unsafe Work

Can an employer discipline a worker for refusing to work?

- because a worker has:
 - followed the OHSA and regulations
 - exercised rights under the OHSA, including the right to refuse unsafe work
 - asked the employer to follow the OHSA and regulations.

Q&A - The Right to Refuse Unsafe Work

What happens when a Ministry of Labour Inspector finds that there are hazards in the workplace?

- Under OHS Act Section 57 (6) Where an inspector makes an order under subsection (1) and finds that the contravention of the Act or the regulations is a danger or hazard to the health or safety of a worker, the inspector may:
 - order that any place, equipment, machine, device, article, thing, process, or material shall not be used until the order is complied with;

Q&A - The Right to Refuse Unsafe Work

What happens when a Ministry of Labour Inspector finds that there are hazards in the workplace?

- order that the work at the workplace as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection;
- order that the workplace where the contravention exists be cleared of workers and isolated by barricades, fencing, or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is removed. R.S.O. 1990, c. O.1, s. 57 (6).