

# Dealing with Work Refusals

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Please note: this presentation is being recorded



# Outline

1. Characterization
2. Statutory Regime
3. Process
4. Minimizing Work Refusals

So your employee has  
refused to perform work

So your employee has  
refused to come to work

# Characterization

- During the ongoing COVID outbreak, assessment of work refusals has been complicated
  - Consider:
    - Disciplinary issue?
    - Accommodation issue?



# Statutory Regime

## *Occupational Health and Safety Act*

- Sets out a specific process for refusing unsafe work
- Employees must indicate that they are refusing to perform work because it is unsafe
  - Expressing concern about safety is not enough



# Statutory Regime

- Does the Act apply?
- Different obligations depending on the number of employees



# Statutory Regime

- General duty under s. 13(1)
  - An employer does not have to eliminate all risks from the workplace



# Statutory Regime

- Section 29 - Some employers are required to have a Joint Occupational Health and Safety Committee
  - At least half of the Committee should be non-managerial employees
- The function of the Committee is to:
  - Identify hazards
  - Investigate workplace safety complaints
  - Advise on workplace policies, practices and required equipment

# Statutory Regime

- Right to Refuse
  - Under Section 43, employees can refuse to do any act “where the employee has reasonable grounds for believing that the act is likely to endanger the employee’s health and safety or the health and safety of another person.”

# Statutory Regime

- What is reasonable?
  - Subjective
  - Objective



# Statutory Regime

- Once an unsafe workplace complaint has been made, the employee is required to attend work
  - May be assigned other duties

# Statutory Regime

- Possible Exceptions
  - If the refusal puts the life, health or safety of another person “directly” in danger;
  - If the danger is inherent in the work of the employee.
    - The employer must show that any associated risk has been mitigated through training and providing adequate protections





# COVID Related Refusals

- Not your typical work refusals
- In the COVID era, some employees may simply refuse to come to work



# Process

1. The employee must report the work refusal to their supervisor.
  - The employee has to indicate that they are refusing unsafe work and set out the reason for the refusal.

# Process

2. The employer should discuss the situation with the employee and respond to their concerns.
  - If the employee is satisfied with the response, the work refusal ends

# Process

3. If the employee is not satisfied with the response, the employee can report the issue to the Committee.
  - The Committee must then investigate the refusal.
  - The employee has the right to accompany the Committee on any inspection of the workplace.
  - The Committee must be unanimous that the task is safe before the employee is required to return
  - The Employer should advise the Committee of any safety measures taken

# Process

4. If the matter is not resolved by the Committee, the employee may report the matter to the Department of Labour.
  - An officer will be sent to investigate the situation

# Minimizing Work Refusals

- Involve the Committee in developing protocols and guidelines for reopening
  - Identify workplace hazards and risks
  - Implement measures to minimize risk
  - Develop appropriate policies and procedures
  - Monitor, assess and respond

# Minimizing Work Refusals

- Perform a hazard assessment through the COVID lens
  - Do a walkthrough for each classification of employee in your workplace
  - Keep in mind the particular considerations for each classification

# Minimizing Work Refusals

- Key Considerations
  - Proximity of employees
  - Duration of contact with others
  - Intensity of contact with others





# Minimizing Work Refusals

- Communication is key
  - If you have a plan, share it with your employees in advance
  - Determine what education/training may be necessary
  - Build confidence with your team
  - Address questions and concerns at the outset

# Minimizing Work Refusals

- Be prepared to justify your decision to return to work
- You must be able to show that your plan is reasonable



# Discriminatory Action

- An employer cannot take discriminatory action against an employee who refuses unsafe work
- Onus is on employer to show the actions were not a result of the work refusal

# Key Takeaways

- Employers must take reasonable steps to provide a safe workplace
- Work refusals must be assessed on an individual basis
- Communication and education are vital steps to engaging your workforce

# Questions?

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