

# Alberta OHS



## UPDATE 4 – Right to Refuse



**Workers in Alberta will see dramatic and positive changes to health and safety legislation come into effect on June 1, 2018.** With the passage of Bill 30, the Alberta government has overhauled the *Occupational Health and Safety Act* (the Act) for the first time in over 40 years.

To explain the implications for our members and other workers, CUPE's National Health and Safety Branch is highlighting some of the changes members can expect to see with the upcoming changes.

In this edition, we look at the changes to the right to refuse.

### NEW RULES, NEW PROCESSES

Under the existing Occupational Health and Safety laws, the employer dealt with issues of work refusals with the worker who was refusing. Now that workplace committees are mandatory for workplaces with more than 20 workers, the process is changing.

The Act's language has been changed, too. The previous Act said a worker shall refuse dangerous work. It now says a worker may refuse dangerous work. This small but important change removes the onus on workers to bear any blame for not refusing when they lack the knowledge or experience to recognize dangerous situations.

Additionally, there is a new clause under Section 34 that specifically prohibits employers or supervisors to require (or permit) work to be done when they

know of a condition that is dangerous to worker health and safety.

Importantly, when a worker refuses unsafe work, they are entitled to be paid the same wages and benefits as they would normally be paid. This applies even if they are temporarily assigned to alternate work, as long as they are able to participate in the inspection.

### REFUSING DANGEROUS WORK: THE STEPS<sup>1</sup>

1. A worker may refuse to work or to do particular work if they believe there are conditions or tasks that would constitute a danger to their health and safety or to that of another worker or person at the workplace.
2. A worker who refuses shall promptly report the refusal and the reasons to their employer or supervisor.



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**3.** If the employer does not remedy the dangerous condition immediately, the employer shall immediately inspect the danger (when it is safe to do so) with the worker and with one of the following:

- a) a co-chair or a member of the joint worksite health and safety committee;
- b) a health and safety representative;
- c) if there is no committee or representative, or where no committee member or representative is available, another worker selected by the worker refusing to do the work.

**4.** The employer required to inspect the danger shall take any action necessary to remedy any dangerous condition.

**5.** Until the danger is remedied, the worker may continue to refuse work related to the danger.

**6.** On completing the inspection, the employer shall prepare a written report about the refusal, the inspection and actions taken, if any, that does not contain personal information about the worker who refused. The report will be given to:

- a) the worker who refused work under subsection (1);
- b) the joint worksite health and safety committee, or health and safety representative, if one exists.

**7.** If the danger is not remedied after an inspection, the worker who refused – or any person present during the inspection – may file a complaint with health and safety officer of the Alberta government's Labour Department.

**8.** The officer shall investigate the matter and decide whether there is a danger or not.

- a) If they decide that there is a danger, they can take legal action to have the workplace made safe.
- b) If they decide that there is no danger, they shall inform the worker and the work refusal legally ends.

**9.** If the worker is not satisfied with the officer's decision, the worker must legally return to work, but may appeal the report within 30 days.

**Note:** In the middle of a work refusal, another worker may be assigned to do the work if the employer has determined that the work does not constitute a danger to the health and safety of any person or that a dangerous condition does not exist. In addition, the employer must inform the new worker in writing about:

- a) the first worker's refusal;
- b) the reasons for the refusal;
- c) the reason why, in the opinion of the employer, the work does not constitute a danger to the health and safety of any person, or that a dangerous condition is not present; and
- d) the right the worker has to refuse to do dangerous work under this section.

Assigning another worker to the refused task does not end the work refusal, and if the first worker feels that the danger still exists, then an inspector should be called in to make a determination.



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Worker refuses to perform work because it is unsafe.  
Worker reports concern to employer or supervisor.



Employer and worker attempt to make the workplace  
safe enough to perform work.

YES



Employer, worker and H&S committee member  
or rep investigate.



**WORKER STILL BELIEVES WORKPLACE IS UNSAFE**

Employer takes action to make workplace safe.

YES



Employee can continue to refuse. Anyone involved in  
the inspection can call in an inspector to investigate.



Inspector investigates and makes a ruling that either  
there is a danger or there isn't.

**YES. DANGER**



Refusal legally ends but worker can appeal.

**TALK TO YOUR UNION.**

**WORKPLACE  
IS MADE SAFE**



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### RESOURCES AND HELP

CUPE provides many resources for new committees in our Health and Safety Committee Resource Kit ([cupe.ca/health-and-safety-committee-resource-kit](http://cupe.ca/health-and-safety-committee-resource-kit)).

**Do you have additional questions?  
Contact your CUPE National Staff Representative.**

Learn more at [cupe.ca/albertaohs](http://cupe.ca/albertaohs)