Administrative Procedure 409

Right to Refuse or Stop Work Where Health or Safety in Danger

All employees have the right to refuse to work when they have reason to believe their Health or Safety is in danger. The Occupational Health & Safety Act is specific about the requirements to be followed when a worker indicates that they are refusing to work. A worker must notify their supervisor if they are refusing to do work. If a worker indicates that they are refusing to work, the Principal/Supervisor needs to determine if the refusal meets the criteria defined by section 43(3) of the Occupational Health & Safety Act.

1. Right to Refuse – Section 43(3) Occupational Health and Safety Act

1.1. A worker may refuse to work or do particular work if they have reason to believe that:

a) Any equipment, machine, device or thing the worker is to use or operate is likely to endanger themself or another worker;

b) The physical condition of the workplace or part thereof in which they work or are to work is likely to endanger themself;

c) Workplace violence is likely to endanger themself;

d) Any equipment, machine, device or thing (the worker) is to use or operate or the physical condition of the workplace or part thereof in which they work or are to work is in contravention of the OHSA or the applicable regulations and as such the contravention is likely to endanger themself or another worker.

2. Steps to Follow When Work Refusal Initiated

2.1. When a worker states that they are initiating a work refusal, the Principal/Supervisor should clarify this by asking the following question:

a) "Are you exercising your right to refuse work based on an immediate danger as identified in Section 43(3) of the Ontario Health and Safety Act and AP 409?"

b) In determining next steps, the Principal/Supervisor may attempt to work with the employee and/or the Joint Health and Safety Committee member with respect to the refusal.

2.2. If the nature of the refusal meets the above requirements, the Principal/Supervisor must:

a) Immediately contact the Occupational Health & Safety Coordinator, the Superintendent of Human Resources, or designate, and indicate they are dealing with a work refusal. The Occupational Health & Safety Coordinator will coordinate an investigation with the Principal/Supervisor and site Joint Health and Safety Committee member without delay.

b) Document the work refusal including, but not limited to, the worker's complaint, time, date, relevant information, and any outcome of the refusal.

c) Notify the Superintendent of Education/immediate Supervisor.

d) Take the necessary steps to ensure the safety of students and employees.

Pending the investigation, the worker (complainant) must stay in a safe place and be available to the investigator. The worker may be assigned other work while the work refusal is being investigated. If another worker is asked to work in the worker/complainant's place, the worker should be informed of the work refusal.

2.3. If the nature of the work refusal does NOT meet the requirements above in a), b), c) or d), then the incident does not constitute a legitimate work refusal situation, in which case, the worker (complainant) should be informed that the work refusal was not proper and therefore be instructed to return to work.

2.4. For support and/or assistance, the Occupational Health & Safety Coordinator, and/or the Superintendent of Human Resources, or designate, should be contacted.

2.5. If the worker engaged in a refusal to work that meets the requirements in a), b), c) or d) above, then steps should be taken to rectify the situation so that it is deemed safe to return to work. Once the steps are taken, the worker (complainant) should be informed of the steps taken and directed to return to the work area. If the worker continues to refuse to work, the Union, the worker or the employer should contact the Ministry of Labour.

3. Teachers Right To Refuse Work

3.1. As per O.Reg. 857, Teachers under the Occupational Health and Safety Act, a teacher cannot refuse to work where the circumstances are such that the life, health, or safety of a pupil is in imminent jeopardy.

Legal References:

Ontario Occupational Health & Safety Act

Related Procedures:

Violence in the Workplace