

HEALTH AND SAFETY

SANTÉ ET SÉCURITÉ

Navigating Violence & Work Refusals

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CUPE·SCFP

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:cc/cope



Please note that this presentation is shared with you for general information purposes. The information included in this presentation does not constitute legal advice. If you have any questions about health and safety law, speak to your CUPE National Servicing representative, or CUPE National Health and Safety Specialist.

Veillez prendre note que cette présentation vous est communiquée à des fins d'information générale. Les données qui y sont incluses ne constituent pas un avis juridique. Pour toute question sur la législation en matière de santé et de sécurité, adressez-vous à votre représentant(e) national(e) du SCFP ou à votre spécialiste national(e) de la santé et de la sécurité du SCFP.

Disclaimer

- Nothing in the following presentation is intended to limit CUPE members' right to refuse work that endangers health and safety.
- When in doubt, we encourage members to err on the side of health and safety to protect themselves, their co-workers and to those whom they provide service.



Overview

- Today we will discuss:
 - Why RTR exists?
 - The difference between a complaint and a work refusal under the OHSA
 - Workplace Violence under the OHSA
 - The Work Refusal Process
 - Who has a "limited right to refuse"
 - Proactive strategies to ensure better outcomes with the RTR



Overview

Acronyms

OHS – Occupational Health and Safety

OHSA – Occupational Health and Safety Act

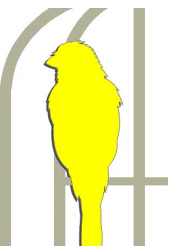
HSR – Health and Safety Representative (Section 8)

JHSC – Joint Health and Safety Committee (section 9)

MLITSD – Ministry of Labour, Immigration, Training and Skills
Development

IRS – Internal Responsibility System

RTR – Right to Refuse



The Four Rights under the OHSA

- The Right to Know
 - Training (education, knowledge, instruction, information) about the hazards in our work and how to carry out the work safely.
- The Right to Participate
 - Participate in the Internal Responsibility System
 - Inform and report employer/supervisor about hazards or dangerous conditions at work.
- The Right to No Reprisal
 - No penalty or discipline imposed for exercising your rights and duties under the OHSA.
- The Right to Refuse Work That Endangers Health and Safety



YOUR FOUR RIGHTS
HEALTH AND SAFETY

ONE
THE RIGHT TO KNOW

Workers have the right to know what health and safety hazards are related to their work. It is an employer's legal obligation to tell workers of any hazards they may encounter, the likelihood of being exposed, and the severity of harm if they are exposed. Additionally, employers must ensure that workers know how to keep themselves safe when they deal with hazards that cannot be avoided.

TWO
THE RIGHT TO PARTICIPATE

Workers have the right to participate in the decision making that impacts their health and safety. This is done by workers selecting a union health and safety representative to discuss health and safety issues with the employer, or by having worker committee members on the Health and Safety Committee. The right to participate also means that workers must report hazards they become aware of to their supervisor, health and safety representative or committee member.

THREE
THE RIGHT TO REFUSE

Workers have the right to refuse to perform work that they believe is unsafe either for themselves or for their co-workers. While procedures and circumstances around the right to refuse may be different between provinces and jurisdictions, just about all workers have the legal right to say no to dangerous work.

FOUR
THE RIGHT TO NO REPRISAL

All jurisdictions have language in their laws that makes it illegal for employers to punish workers when they are following the occupational health and safety laws in good faith. This includes reporting hazards, participating on a committee, and exercising the right to refuse dangerous work. This is an important right because a worker who fears punishment for protecting their health and safety will be less likely to participate in the employer's system.

For more information about your rights or any additional health and safety questions, contact your CUPE Servicing Representative, CUPE National Health and Safety Representative, or visit our website at cupe.ca/health-and-safety

CUPE



Overview – Why s. 43 (OHSA) exists?

- It is a fundamental right in OHS legislation
- Part of the IRS
- It empowers a worker to take steps to protect their H&S and those around them
 - Note: It is an individual process
- The right exists only when members have reprisal protection
- Workers don't have to be “right” at any stage in the investigation
- Should be exercised in good faith



Brainstorm

- Why don't workers refuse unsafe work more often?
- Possible answers:
 - Workers are unaware that they have the right
 - Workers are informed they don't have the right
 - Workers are afraid to stand up to their employer (despite reprisal protection)
 - Past experiences with work refusals weren't successful
 - Workers don't know the process



What does s.43.3 (OHSA) say?

At the first stage...

- A worker may refuse to work or do particular work where they have reason to believe that,
 - any equipment, machine, device or thing the worker is to use or operate is likely to endanger themselves or another worker;
 - the physical condition of the workplace or the part thereof in which they work or is to work is likely to endanger themselves;
 - workplace violence is likely to endanger themselves; or
 - any equipment, machine, device or thing to use or operate or the physical condition of the workplace or the part thereof is in contravention of this Act/Regulations and such contravention is likely to endanger themselves or another worker.

See section 43 (3) for the full text



Workplace violence

The definition of WV under the OHSA – see s. 1 for the full text

- A person must apply or attempt to apply
 - physical force against a worker in the workplace
 - that causes or could cause physical injury to the worker
- A statement or behaviour reasonable for a worker to interpret as
 - a threat to exercise physical force against a worker in the workplace
 - that could cause physical injury to the worker
- Your employer can expand this definition to include other acts of violence; e.g., spitting, forms of harassment
- MLITSD inspectors will render a decision in work refusal for WV based on the definition in the OHSA



Workplace violence

- *“For workplace violence to occur, a person must apply, attempt to apply, or threaten to apply physical force against a worker. However, he or she does not need to have the capacity to appreciate that these actions could cause physical harm.*
- *For example, a person may have a medical condition that causes them to act out physically in response to a stimulus in their environment. This would still be considered workplace violence.”*

(MLITSD)

<https://www.ontario.ca/page/understand-law-workplace-violence-and-harassment>



Duties of employers re: Workplace violence

Must have a WV policy. Must be reviewed annually and posted in the workplace.

Must have a WV program to enforce the policy.

- A how-to guide to protect workers.

Assess the risk of Workplace Violence (WV) to identify the measures and procedures needed to protect workers.

Assess the risks of WV and provide written results of the assessment to the JHSC. Must assess the risks that may arise from:

- The nature of the workplace (building, exits, floors, public access, stairwells, parking lot, etc.)
- The type of work (job classifications, job duties, working alone, staffing levels, clients, public interaction)
- Conditions of work (location, hours, shifts, weekends, after-hours, etc.)



Duties of employers re: Workplace violence



An OHS assessment tool identifies what measures and procedures are in place, what's working, and what, if anything, is needed.

E.g., additional support, training, different de-escalation/intervention methods, better means to summon help...



A client's behavioural assessment is not an assessment under the OHSA but can inform the RA and the development of a worker safety plan.



Employer must reassess the workplace as often as necessary to protect workers from WV. (s. 32.0.3)



Duties of employers re: Workplace violence

- If the employer is aware that “domestic violence” would likely expose a worker to physical injury in the workplace, the employer shall take every precaution reasonable for the protection of the worker. (s. 32.0.4)
- A risk assessment is essential for achieving compliance in this section.



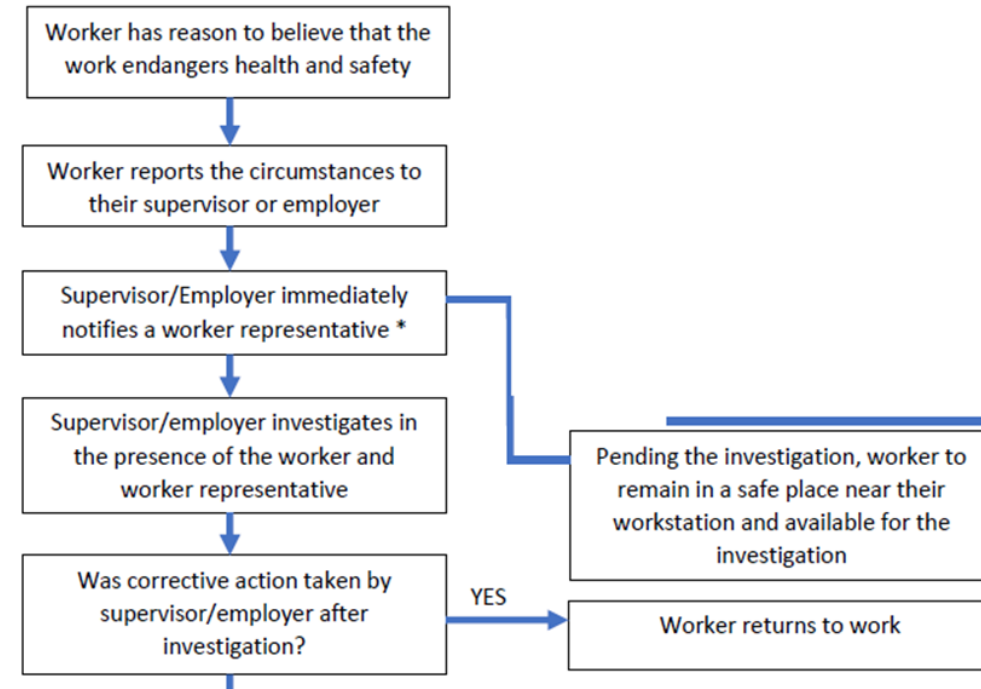
Report, report, report

- Why is it so important to fill out incident/violence forms?
 - Creates a paper trail for the employer/JHSC/H&S inspector
 - Will help demonstrate there are unmet H&S needs
 - No specific program
 - Weak safety plans
 - No risk assessment
 - May help demonstrate there are unmet needs for client
 - Educational/emotional support
 - Support latent WSIB claims
 - Stress, PTSD
 - It is your right!
- Report any barriers to reporting to the Local/JHSC



Work Refusal Process – First Stage

- **First stage** – Employer/supervisor investigation
 - Worker needs a *reason to believe* the work is unsafe (subjective)
 - The likelihood of endangerment must be a "*real or significant possibility*"¹ (objective)
 - Worker must promptly report the circumstance to their employer/supervisor
 - Employer/supervisor shall forthwith investigate the matter in the presence of the worker representative (worker-member of the JHSC, HSR, union steward)
 - This stage is under the employer's control
 - The Act intends for a "*speedy resolution*"² at this stage



¹ Ontario English Catholic Teachers' Association v Dufferin-Peel Catholic District School Board, 2024 CanLII 39679 (ON LRB)

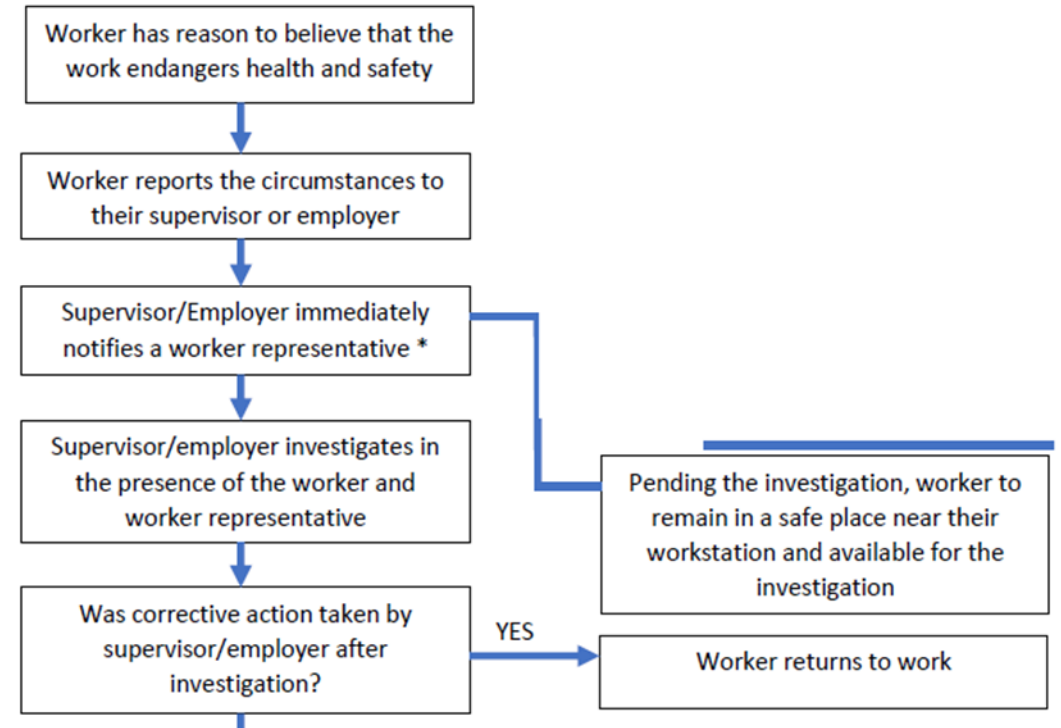
² O.P.S.E.U., Local 234 v. Ontario (Ministry of Labour) 1994 CarswellOnt 5559



Work Refusal Process

Important tips to remember:

- **First stage** – Employer/supervisor investigation
 - Worker must remain in a safe place and be available to participate in the investigation.
 - Employer not permitted to assign the refusing worker alternative work.
 - No one can be assigned the work under investigation.

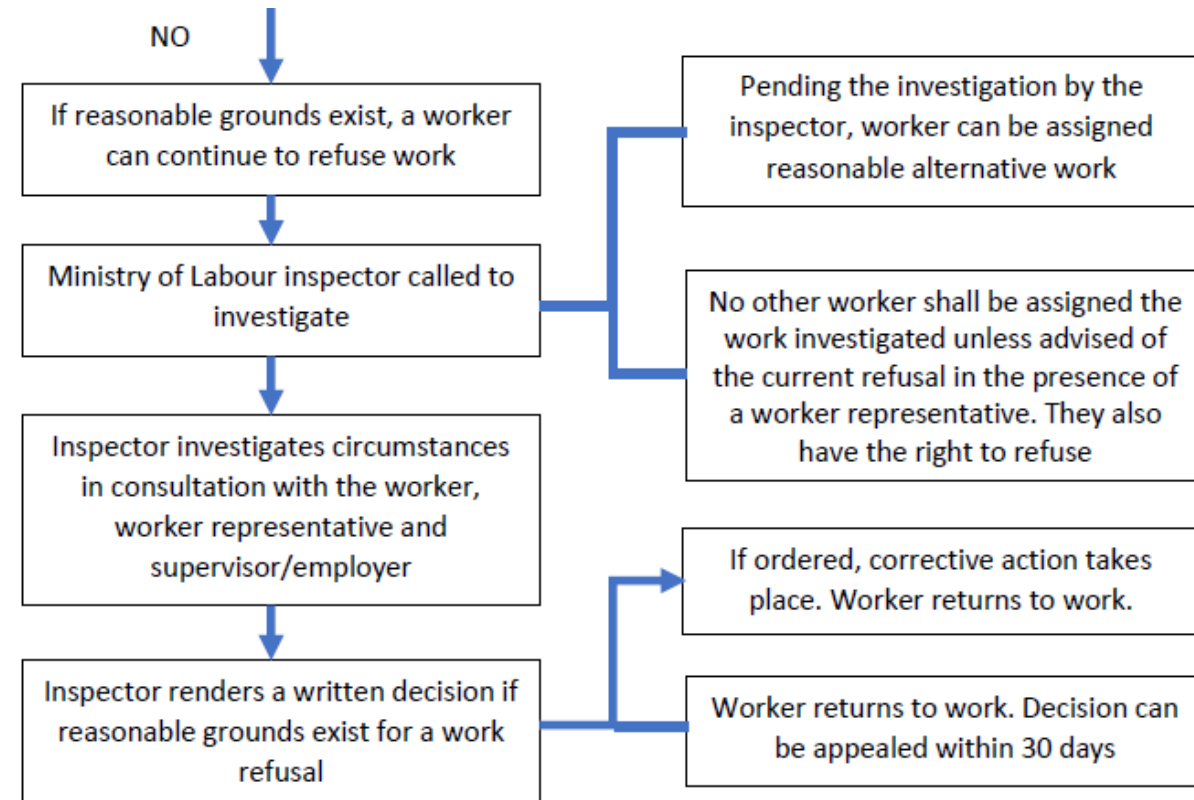


Work Refusal Process

Second stage – Inspector’s investigation

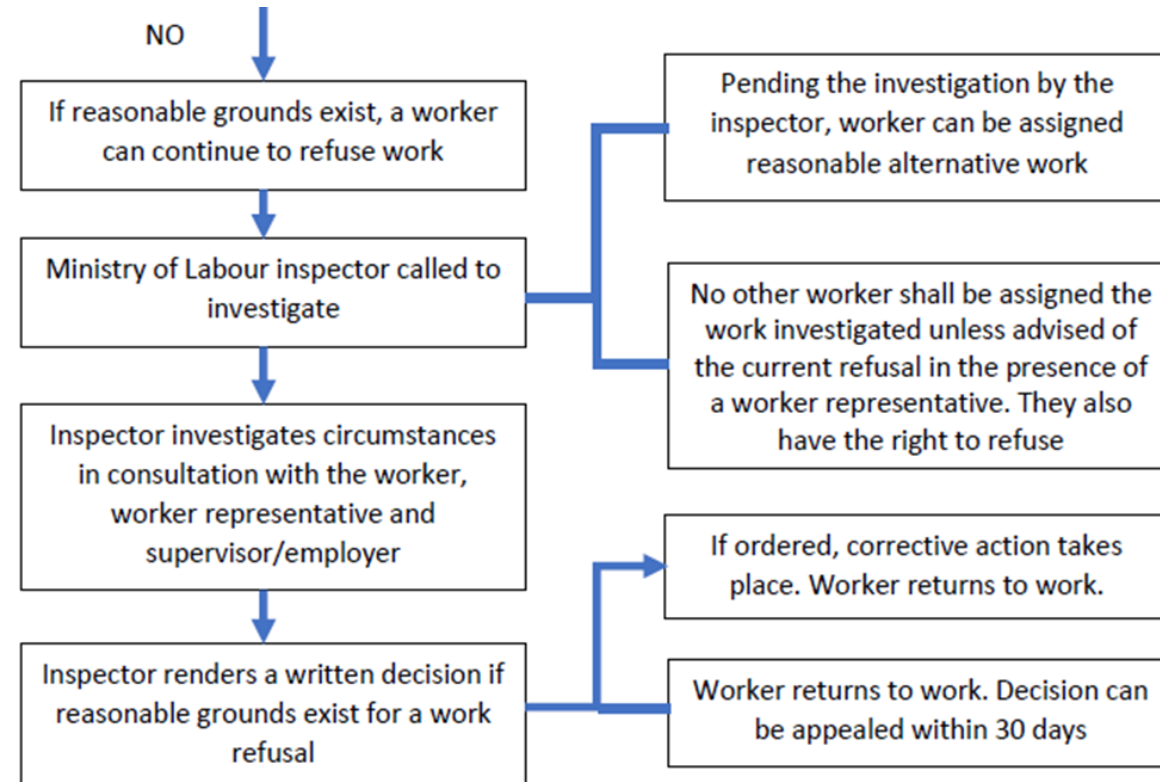
Important to tips to remember:

- Worker needs “reasonable grounds” that the work is unsafe (objective)
- Anyone involved in the 1st stage of investigation can call the MLITSD inspector.
- This stage is out of the employer’s control



Work Refusal Process – Second Stage

- **Second stage** – Inspector’s investigation
 - This stage permits the employer to continue work
 - This stage permits the employer to assign the refusing worker reasonable alternative work
 - JHSC worker-member must be present if the employer assigns the work under investigation to another worker. Onboarding worker has a right to refuse
 - Liability for the employer???



What is the limited right to refuse? [s. 43 (1) & (2)]

- Applies to:
 1. A class of workers at a particular workplace; **and**
 2. under particular circumstances or conditions.



What is the limited right to refuse – Class of Workers

Class of workers

1. Generally, applies to:

- A. First Responders
- B. Corrections staff
- C. Workers employed in or servicing round-the-clock facilities providing healthcare and supportive services

See s. 43 (2) for the full list

2. Under O.Reg. 857, it applies to all persons who are employed as teachers as defined in the Education Act.

- Section 43 does not apply to a teacher *where the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy.*



Limited right to refuse – Class of workers in particular workplaces

- First responders include:

1. Police, or person employed to which the *Police Services Act* applies
2. Firefighters, including volunteers
3. Persons employed in the operation of a paramedic service
 - includes communication and dispatch centers, logistics staff



- Corrections workers include:

- Persons employed in the operation of a correctional facility, a place of secure custody or temporary detention for young offenders, or similar institution, facility or place.



Limited right to refuse – Health care workers

- Person employed in the operation of round-the-clock healthcare-related and supportive service workplaces:
 - Hospital
 - Residential group home or facility for persons with
 - behavioural or emotional problems or
 - developmental, physical or mental disabilities
 - “Psychiatric institution” or mental health centre
 - Rehabilitation facility – e.g., reactivation centre
 - A laboratory operated by the Crown or licensed laboratory and specimen collection center
 - A person employed in the operation of laundry, food service, power plant or technical service (trades), or facility /service used in conjunction with the above facility, institution or service



Limited right to refuse – Particular circumstances or conditions

2. If the class of workers in particular workplaces applies, s. 43 does not apply:

- a. In a circumstance inherent in the worker's work; **or**
- b. A normal condition of employment; **or**
- c. Where the worker's refusal would directly endanger another person's life, health or safety.



Limited right to refuse – Meaning of inherent

- Definition of inherent:
 - Cambridge dictionary: “existing as a natural or basic part of something”
 - Collins dictionary: “the necessary and natural parts...”
- Caselaw interpretations:
 - Situations that are not inherent in the worker’s work are an “unusual occurrence”¹ when an established routine “departs from that established norm.”²
 - “...in circumstances where the existing and established practices of the institution are likely to endanger a worker” and haven’t been resolved through the IRS.³

1. *Maplehurst Detention Centre* [1994]

2. *Ibid*

3. *O.P.S.E.U. v. Ontario (Ministry of Solicitor General & Correctional Services)*, [1998]; see also *Dowling v. Hamilton-Wentworth Detention Centre*, 2012



Limited right to refuse – Meaning of normal condition of employment

- Normal conditions include “*established and prevailing working conditions.*”¹
 - E.g., safe work practices and conditions common and accepted in the industry
- Disagreeing with your employer’s safe practices and conditions at this point does not bypass the limited right to refuse
- Where there is a dispute, an inspector will need to decide if the work is inherent or a normal condition of employment²
- The test is objective

1 O.P.S.E.U., Local 234 v. Ontario (Ministry of Labour) 1994 CarswellOnt 5559

2 O.P.S.E.U. v. Ontario (Ministry of Solicitor General & Correctional Services), [1998];



Limited right to refuse – Directly endanger the life, health or safety of another person

- The Act does not define the words life, health or safety
- Terms are not defined well in caselaw
- The term “endanger” has been interpreted to mean circumstances that are “more than a mere probability” or “a substantial risk for health and safety” ¹

¹ Hardwall Construction Ltd v Carpenters’ United Brotherhood of Carpenters and Joiners of America, 2011



No magic words required

- No magic words are required to engage a work refusal.
- However, you should report to your supervisor that you are refusing a particular work or task for health and safety reasons...
 - Under the OHSA
 - Because it's unsafe
 - Because I'm afraid I'll be hurt
- Saying these phrases will help avoid accusations of insubordination
- You don't need to refuse all work that day, just the task or part of the job that endangers your health and/or safety

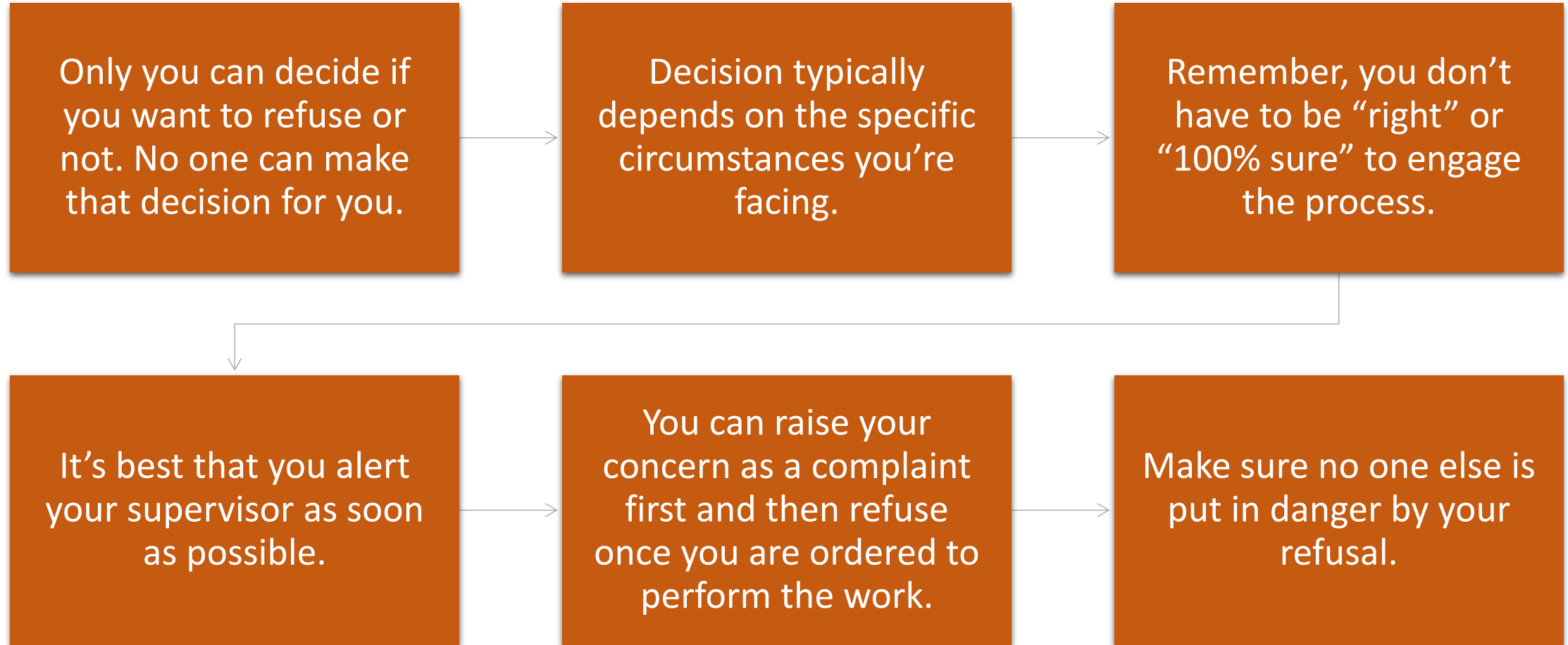


Difference between a H&S Complaint and a Work Refusal

- The OHSA imposes a duty on workers to report:
 - The absence or defect in any equipment or protective device of which they are aware and which may endanger themselves or another worker
 - any hazard or contravention of the OHSA of which they know
 - work in a manner that may endanger themselves or another worker (s. 28 OHSA)
- If, after reporting the hazard, the supervisor/employer directs the work to continue, the worker is in a better position to engage the work refusal process
- If the hazard is corrected, they should still follow up with the JHSC/Local



To refuse or not -



To refuse or not: Assess the situation



Have previous injuries or near-misses occurred?

Uncorrected actions following a near miss or an injury/incident requiring medical assistance or causing lost-time support a worker's belief that unsafe conditions exist.



Do you have safe working conditions?



Are you trained to carry out the work procedures safely?
Are you trained on the use of equipment and devices?
Is the equipment available and in good condition?



Generally, inspectors will not evaluate the adequacy of measures and procedures to determine if they provide a reasonable level of safety.



To refuse or not: Assess yourself

- Ask yourself...
 - Are you afraid that someone will likely be hurt? ✓
 - Are you able to articulate what the problem is? ✓
 - Are you able to articulate what you want? ✓
- Avoid refusing if...
 - You are just looking for revenge 
 - Fed up with the situation 
- If you are fed up with a situation, consider talking to the supervisor, JHSC/Local, or call in a complaint to the MLITSD



What to do during a work refusal

Stage 1

- Start documenting
 - Who is involved? What is the circumstance? When is it happening? Where is it happening? Why is it happening? How can the condition be corrected?
 - What was the outcome (employer's response)
 - Did the employer assign the work to another work?
 - This is not permitted at the first stage.
- Make sure the employer has completed the first stage investigation



What to do during a work refusal

Stage 2

- Continue documenting
- Is the inspector showing up to investigate?
 - If they are consulting over the phone, find out why?
- Fully participate in the investigation



What to do after the work refusal

- If the inspector has not found reasonable grounds for a work refusal:
 - Ask them for a written decision.
 - Ensure the inspector is investigating the underlying concern.
 - Continue documenting.
 - Get the field visit report.
- If the inspector stops work or issues an order:
 - Get the field visit report.
 - Don't sign the Notice of Compliance until the employer has fully complied with the order.
 - Continue documenting.



Proactive Strategies for the Union

- Find out if your local/bargaining unit representatives/stewards are familiar with the process for refusing work?
- Find out if all CUPE JHSC worker reps are familiar with the process for refusing work?
- Do they know how to advocate on behalf of CUPE members and non-CUPE members?
- Is there a process for the employer to inform the CUPE JHSC rep/local when a member refuses?



Resources

- CUPE National Workplace Violence Prevention Kit
 - <https://cupe.ca/violence-prevention-kit>
- CUPE National Refusing Unsafe Work Fact Sheet
 - <https://cupe.ca/refusing-unsafe-work-its-your-right>
- CUPE National Mental Health Toolkit
 - <https://cupe.ca/mental-health-toolkit>
- MLITSD Understand the law on workplace violence and harassment
 - <https://www.ontario.ca/page/understand-law-workplace-violence-and-harassment>



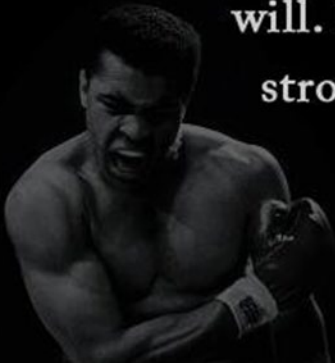
Resources

- Health Care - Violence, Aggression & Responsive Behaviours Toolkit
 - <https://workplace-violence.ca/>
- Health Care - Work Refusal and Workplace Violence Toolkit
 - <https://workplace-violence.ca/tools/work-refusals/>
- Workplace Violence in School Boards: A Guide to the Law
 - <https://www.ontario.ca/document/workplace-violence-school-boards-guide-law>



Champions aren't made in gyms. Champions are made from something they have deep inside them - a desire, a dream, a vision. They have to have last-minute stamina, they have to be a little faster, they have to have the skill and the will. But the will must be stronger than the skill.

-Muhammad Ali



THANKS
FOR
LISTENING

Merci
pour
l'écoute

Questions?

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