



**Ontario
Health**

COVID-19 HR Recommendations: Work Refusals Related to COVID-19

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These recommendations have been developed to assist health care organizations to respond to employee work refusals related to COVID-19 pursuant to the *Occupational Health and Safety Act*.

The COVID-19 pandemic is a rapidly evolving situation. This document is designed to offer suggestions and advice to help decision-making; it is not intended to replace or supersede government directives or public health measures. Adapted approaches may be required to address unique, organizational or other exceptional circumstances and conditions.

Context

As the COVID-19 pandemic grows, Ontario is committed to ensuring the health and safety of front-line health care providers.

Employers have an obligation to protect employees from hazards in the workplace as set out in the [Occupational Health and Safety Act \(OHSA\)](#), as well as government regulations and directives from the Chief Medical Officer of Health.

The Act sets out a specific procedure that must be followed in any work refusal. It is important that employees, employers, supervisors, members of joint health and safety committees (JHSCs) and health and safety representatives understand the procedure for a lawful work refusal.

Common Principles

- Health and safety of employees is a top concern amidst the global COVID-19 pandemic. During this time, all parties must place an increased focus on health and safety in order to create a safe working environment for employees.
- All measures taken to prevent the spread of COVID-19 should be done in compliance with requirements under the *Occupational Health and Safety Act* and associated government regulations and public health directives.
- Employees should raise any concerns to their supervisor, joint health and safety committee, and/or health and safety representative. This will help to ensure the employer has considered and taken all reasonable precautions to proactively address the risk of work refusals.
- Where an employee concern or refusal of work arises from a need for accommodation, organizations should initiate the 'expedited process for requesting workplace accommodation' as outlined in the *COVID-19 HR Guidance: Workplace Accommodation for At-Risk Front-Line Health Care Providers* guidance document.
- Where a refusal of work is initiated by more than one employee or a group of employees which results in or has the potential to impact patient care delivery, organizations are strongly encouraged to expedite the engagement of the Ministry of Labour (MOL) within the Proposed Process. This will help ensure MOL is proactively aware of the work refusals and impacts in order to prioritize its resolution.
- Each situation should be assessed and evaluated on its own merit.
- No employee shall suffer any form of reprisal for refusing work he or she believes to be unsafe.

Proposed Process

Where an employee raises a concern or refuses to perform his/her regular job duties, the organization should discuss with the employee the reasoning for such concern or refusal. The organization should work with the employee to remedy the concern and explore opportunities to accommodate the employee or to redeploy where possible (see *COVID-19 HR Guidance: Workplace Accommodation for At-Risk Front-Line Health Care Providers*).

In the event that the employee continues to refuse work, employers should proceed as follows:

First stage:

1. The employee considers work to be unsafe.
2. The employee remains in a safe place and formally reports his/her work refusal to his/her supervisor or employer, as well as employee safety and/or management representatives as appropriate.
3. The employer or supervisor investigates the situation in the presence of the employee and the employee safety representative.
4. Employers should document all information, actions taken, and communication related to the refusal. The employee will continue to be paid while the investigation is conducted.
5. If the issue is resolved, the employee returns to work. If the issue is not resolved, proceed to the second stage

Second stage:

1. With reasonable grounds to believe the work is still unsafe, the employee continues to refuse work and remain in a safe place. A human resources or occupational health and safety representative will contact the MOL.
2. The MOL Inspector investigates in the company of the employee, safety representative and supervisor/management representative.
3. While the MOL investigation is pending,
 - The refusing employee may be offered other work if it doesn't conflict with a collective agreement.
 - Refused work may be offered to another employee, but management must inform the new employee that the offered work is the subject of work refusal. This must be done in the presence of:
 - a member of the joint health and safety committee who represents employees; or
 - a health and safety representative; or
 - a union steward, if the employee is a member of a union
4. The MOL inspector provides a written decision to the employee, supervisor/management representative and safety representative.
5. Changes are made as required or ordered, and the employee returns to work.
6. If the employee still refuses to return to work, the employee's manager will determine appropriate follow up action, as deemed appropriate.