

How to Deal with a COVID-19 Related Work Refusal

Happy New Year from People First! There is a lot to look forward to in 2021; however, we are not quite finished dealing with the impact of COVID-19 in the workplace. One place employers may feel this continued impact is with regard to managing COVID-19 related safety concerns and work refusals. Under the Canadian Workplace Safety and Health legislation, employees have the right to refuse work that they *reasonably* believe constitutes a danger to their safety and health, or that of another person should they perform the task. Work refusals can become a little trickier in the COVID-19 environment. This month's article has been provided by one of our partner firms, **1Life Workplace Safety Solutions**. It acts as a guideline with some helpful tips to support employers through a COVID-19 Work Refusal situation.

What We're Reading:

The *Canadian Centre for Occupational Health and Safety* has produced several 'kits' online for employers to access with regard to COVID-19 Health and Safety Planning. Particularly relevant are their [Risk Assessments and Control Plans](#) which provide information regarding: physical distancing, engineering and administrative controls, cleaning and disinfecting, hand hygiene and respiratory etiquette, use of PPE, wearing non-medical masks or facial coverings, and how to monitor if these controls are working.

Pre-emptive Measures

First thing's first, it is important as an employer to be prepared and have a defined process in place:

1. Ensure that you have performed the required COVID-19 risk assessment for your workplace and developed a workplace-specific pandemic plan.
2. Train employees on the facts surrounding COVID-19. For example, WHO is really at risk, WHAT is the probability and severity and HOW they can keep themselves safe. Also, educate on WHAT your business is doing to keep employees safe.
 - a. From a neuroscience perspective, never-ending exposure to dramatized news distorts reality and makes the problem bigger and scarier than it is. In this case, knowledge is power.
3. If employees are able to be as effective working from home, consider giving them the choice. Having some semblance of control helps people to better manage stress and anxiety.
4. Communicate, communicate, communicate! Good communication upfront can head off a lot of issues before they blow up into a work refusal.
5. Continually revise your Pandemic Control Plan as conditions and government directives change. Train and communicate with employees accordingly.

What is Considered Dangerous Work in a COVID-19 World?

An employee's right to refuse dangerous work is protected by law. The employee may not be disciplined for exercising their right to refuse if it is done in good faith. They are entitled to the same wages and benefits that they would have received had the refusal not taken place.

It is key to note that a danger to safety and health is different than a risk to safety and health. In order for a task or environment to be classified as dangerous:

- The hazard is generally unusual to the normal working conditions or tasks, or the health or physical condition of the employee increases the risk.
- The hazard is likely to result in a serious injury or illness.
- Reasonable controls have not been put in place to reduce or eliminate the risk.

Questions to Determine the Exposure Risk of COVID-19

1. Has someone in the workplace been confirmed to have the virus or very likely to have been exposed to the virus? For example, are employees, clients or patients under isolation that was recommended by Public Health?
2. Is it likely that the workplace is a known or high-risk source of the virus? For example, healthcare settings or venues with large crowds such as cruise ships, airports, arenas etc.
3. Is the refusing employee likely to be exposed to the virus while performing the work? For example, does the work involve close interaction with many people or happen in a high-risk area within the workplace – work in the emergency room versus the work in the maintenance area of a hospital – these have different levels of risk.
4. Does the employee have a pre-existing medical condition that places them at increased risk of serious illness should they be exposed to the virus? For example, is there a medical note?

If the Risk is High

Determine if Appropriate Controls are in Place:

- Does the employee have access to adequate handwashing or sanitation facilities?
- If required, is appropriate protective equipment such as surgical masks, respirators, face shields or gloves available?
- Is training in place for handwashing, infection control and how to use any required equipment?

Steps to Take When Dealing with a COVID-19 Work Refusal

Step 1- Employees must report the refusal to their supervisor and explain their beliefs as to why the work is dangerous. The supervisor and employee assess the risk and remedy if possible. If the employee is satisfied, document and complete.

Step 2- If the employer and employee are unable to resolve the concern, a workplace safety and health co-chair investigate in an attempt to remedy the situation. If the employee is satisfied, document and complete.

Step 3- If the situation still cannot be resolved and the employee still feels the work is dangerous, the Workplace Safety and Health regulator should be contacted to investigate, where they will render a decision.

Note: It's a good idea to ensure that your Workplace Safety and Health Committee is trained in their responsibilities and confident to handle work refusal and other investigations.

Commonly Asked Questions

Do employees continue to get paid during a Work Refusal?

- During the refusal process, the employee must continue to be paid unless the Director of Workplace Safety and Health grants an exemption to the employer. If a Safety and Health Officer determines the employee can return to work and the employee continues to refuse, the employer is no longer required to pay the employee.

Can another employee be brought in to do the work?

- It is possible for work to be safe for one person to perform but not another. This may be due to the employees' training, medical conditions, etc.
- If an alternate employee is brought in to complete the task of the refusing employee, the alternate employee must be informed of the work refusal, the reasons for it and why the employer feels the work can continue safely.
- Where possible, arrangements should be made for the refusing employee and the alternate employee to communicate to ensure the situation is clearly understood by all parties.

1Life Workplace Safety Solutions is a dedicated group of Safety Professionals, Software Developers, and support team, passionate about your workers going home safe at the end of every workday. 1Life has developed proprietary safety solutions, including mySafetyAssistant, to help small- to medium-sized businesses develop, implement and sustain effective workplace safety and health management efficiently and cost-effectively. Click [here](#) to learn more about what 1Life Workplace Safety Solutions can offer your organization.

Looking to up your HR Game?

Have you made it to the end of this article and are now thinking – I, or the person in charge of HR at my organization, could use a more in-depth look at the best practices in Human Resources and people management?? People First HR Services has partnered with The University of Winnipeg PACE to create a unique Advanced Human Resource Certificate Program to advance the skills of mid-level HR professionals.

Become a leader in people management with the only CPHR accredited program of its kind in Manitoba. Led by industry experts in a live, online format, earn your certificate in only eight weeks.

Registration is now open for the next session starting January 28, 2021.

For full details and access to registration, please click the following link:

<https://pace.uwinnipegcourses.ca/executive-training/advanced-certificate-people-management>