

The Right to Refuse Unsafe Work

AGENDA

- The Legislation
- Teacher vs Education Worker
- The Ministry of Labour, Immigration, Training and Skills Development (MLITSD)
- Resources & Assistance
- Q & A

Legislation

- Occupational Health and Safety Act (OHSA)
- One (1) of three (3) basic rights for workers
- Must be exercised as an individual worker right, cannot be done by a group or the Union on behalf of a worker

OHSA S. 43

- 43 (3) (b.1) a worker may refuse to do work when they believe workplace violence is likely to endanger himself or herself
- 43 (4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and their H & S rep

OHSA S. 43

- 43 (5) Until the investigation is completed, the worker shall remain in a safe place
- 43 (6) Following the investigation, or any steps taken to deal with the circumstances that caused the worker to refuse to work, the worker has reasonable grounds to believe that workplace violence is likely to endanger them, the worker may refuse work and an inspector shall be notified

OHSA S. 43

- 43 (7) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and a H & S rep
- 43 (8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person

OHSA S. 43

- 43 (9) The inspector shall give their decision, in writing, as soon as is practicable, to the employer, the worker, and the H & S rep
- 43 (10) Pending the investigation and decision of the inspector, the worker shall remain, during the worker's normal working hours, in a safe place that is as near as reasonably possible to their work station and available to the inspector for the purposes of the investigation

OHSA S. 43

- 43 (10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any assigns the worker reasonable alternative work during the worker's normal working hours
- 43 (11) Pending the investigation and decision of the inspector, no worker shall be assigned to work in the part of the workplace being investigated unless the worker has been advised of the other worker's refusal and of his or her reasons for the refusal in the presence of their H & S rep

OHSA S. 43

- 43 (12) The person referred to in subsection (11) must be (b) a health and safety representative
- 43 (13) A person shall be deemed to be at work and the person's employer shall pay them at the regular or premium rate, as may be proper for fulfilling the duties described in subsections (4), (7), (11) and (12)

No Reprisals

50 (1) No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act

Teacher vs Education Worker

- Teachers must follow the *Education Act* and ensure the safety of their students BEFORE exercising their right to refuse unsafe work
- Education workers have an unfettered right to refuse unsafe work

The MLITSD

- The vast majority of s. 43 work refusals in the education sector are downgraded to a complaint
- It's still advisable to do a work refusal where a worker believes it is warranted as it receives priority over a complaint in the MLITSD system

The MLITSD

- The inspector must issue a field visit report (FVR) of their investigation and it can be appealed see s. 61 of OHSA
- Any Bargaining Unit who wishes to appeal a FVR must contact Norm Westbury asap as we only have 30 calendar days to register an appeal with the Ontario Labour Relations Board (OLRB)

Resource Organizations

- Canadian Centre for Occupational Health & Safety (CCOHS) – www.ccohs.ca
- Occupational Health Clinics for Ontario Workers (OHCOW) – www.ohcow.on.ca
- Prevention Link (PL) – www.preventionlink.ca
- **Workers Health & Safety Centre (WHSC) – www.whsc.on.ca**

OSSTF/FEESO Assistance

- Local BU President
- District H & S Officer
- Other Joint Health & Safety Committee (JHSC) members
- Provincial Health and Safety/Workplace Safety and Insurance Act Committee (HS/WSIAC) liaison
- Protective Services Field Secretary (accessed through your local President)

Questions