

During the COVID-19 pandemic, there may be increased concern about safe working conditions vis-à-vis possible exposure to COVID-19 at work; in particular, among employees who come to the office to perform critical functions.

As the Canada Labour Code (CLC) promotes the spirit of the Internal Responsibility System, where health and safety is a joint responsibility, employers and employees are encouraged to work together to identify hazards and reach early internal resolution as much as possible.

Managing Workplace Concerns

Management should consider taking the following steps to address workplace concerns before they escalate to a potential workplace complaint or work refusal:

- Ask the employee to describe in detail their concerns and any contributing factors (e.g., heard of possible exposure to virus; work surfaces/equipment/tools may be contaminated; and a general concern or belief that they may have been in contact with other potentially affected individuals).
- Consult with Occupational Health and Safety (OHS) staff to discuss the concern and possible mitigations.
- Apprise the employee fully of control measures in place to mitigate risks (e.g., increased cleaning, most employees working from home, informing occupants of positive cases and follow-up specialized cleaning, etc.).
- Involve the employee in discussion about options and solutions; ask what they feel would reduce or eliminate the concern (e.g., teleworking, spot cleaning of tools or equipment, enforcing social distance (two metres) between the employee and others, discussion with OHS employee or member of the OHS committee).
- Take steps to implement all feasible changes to increase the employee's comfort level.
- Discuss the case with senior management to determine what other steps might be taken.
- In collaboration with the employee and OHS staff, engage the workplace committee informally to discuss possible solutions.

Employers are encouraged to leverage departmental resources such as local Workplace Health and Safety Committees (WPHSC), Occupational Health and Safety (OHS) Advisors, and/or the NRCan Wellness Program for concerns related to psychological health and safety.

Health and Safety Requirements

- Under the CLC, employers are responsible for protecting the health and safety of employees at work. They are required to implement measures to prevent the exposure of employees to hazards or potentially hazardous conditions, including exposure while in the workplace to pandemic viral infection that could be harmful to their health or safety.

Employers must:

- identify and assess the risks;
- implement proper controls to mitigate risks through their Hazard Prevention Program;
- provide required personal protective equipment as needed;
- provide education, instruction, training and information; and,
- address workplace complaints and work refusals.

- Under the CLC, employees have three basic rights:
 - the right to know;
 - the right to participate; and,
 - the right to refuse dangerous work, with the definition of danger as “any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered.”

An employee can also make a complaint to their supervisor if they believe, on reasonable grounds, that there has been a contravention to the CLC (section 127) or that there is likely to be an accident or injury to health arising out of, linked with or occurring in the course of employment.

- The CLC contains certain exceptions regarding the right to refuse dangerous work. These exceptions include:
 - if the refusal puts the life, health or safety of another person directly in danger; and,
 - if the danger in question is a normal condition of employment.
- Pregnant and nursing employees have additional provisions regarding the right to refuse dangerous work (Section 132). An employee who is pregnant or nursing may cease to perform her job if she believes that, by reason of the pregnancy or nursing, continuing any of her current job functions may pose a risk to her health or to that of the fetus or child. The employee must consult with a *health care practitioner* of her choice as soon as possible to establish whether continuing any of her current job functions poses a risk to her health or to that of the fetus or child.
- Employees are responsible for following their management’s direction regarding reporting to work and workplace health procedures (Section 126 of the CLC), which outline reasonable expectations for all employees regardless of their position in the organization. Employees’ duties include, among others:
 - Using safety equipment provided to them;
 - Complying with all instructions from the employer concerning the health and safety of employees; and,
 - Cooperating with any person carrying out a duty set out in the CLC.

While at work, employees must also report to the employer any thing or circumstance in a workplace that is likely to be hazardous to the health or safety of employees or other persons granted access to the workplace by the employer.

Mitigating Work Refusals in the Context of COVID-19

The following advice on work refusals stems from the CLC and information provided by the Public Service Occupational Health Program (PSHOP), TBS-OHS and Employment and Social Development Canada-Labour Program. TBS-OHS has confirmed in writing that the Labour Program will be flexible in investigating refusals to work and will work closely with departments to expedite resolution internally before intervening.

The table below summarizes the legislative requirements to protect the health and safety of employees as well as the required steps to follow in response to a refusal to work. These steps aim to address concerns as quickly as possible and ensure that critical work continues to be completed.

Legislative Requirements if Refusal to Work Occurs	Mechanisms to Expedite Resolution
<p><u>Management is required to investigate the refusal right away, in the presence of the employee, where possible.</u></p>	<p><u>Management cannot compel an employee (even those working in “critical” positions) to carry out work activities until it is proven that a danger does not exist.</u></p> <p>The legislative process still applies; <u>management must investigate the situation.</u> NRCan OHS is available to assist in the investigation immediately to strive for a fast resolution.</p>
<p><u>If management determines a danger does not exist and the employee disagrees, the employee can continue to refuse to work</u> until a workplace committee assesses the situation.</p>	<p>The Labour Program understands that full committee participation may not be feasible at this time; it recommends <u>contacting an employee member of the local workplace health and safety committee (co-chair preferably) to investigate.</u></p>
<p><u>If there is still no agreement and the employee continues a work refusal, the matter will escalate to the Labour Program for investigation and decision.</u></p>	<p>The Labour Program recommends that the employee and employer make every attempt to resolve the issue before conducting their investigation. <u>Should an investigation by the Labour Program be required, the employer can assign the work to another employee, if all three conditions of the CLC (129(5)) are met:</u></p> <ul style="list-style-type: none"> (a) the employee is qualified to do the work, (b) the employee knows there is an ongoing refusal, and (c) the employer is satisfied there is no danger. <p>The Labour Program has committed to engage promptly with departments to evaluate continued refusals to work in critical functions.</p>

Whether a work refusal is *justified* and *reasonable* will largely depend on the facts related to the danger and the measures the employer takes to ensure a healthy and safe work environment; these facts and measures, weighed against the potential risk to workers are considered during an investigation.

With respect to the COVID-19 outbreak, NRCan has taken the following measures to protect employees:

- Implemented social distancing practices – reduced work activities that require physical contact between workers and/or members of the public;
- Offered flexible work arrangements to limit contact and increase our remote access capacity;
- Assessed high-risk locations and implemented mitigation controls (e.g., NRCan assessed the risk of its most remote and isolated location, which led to a decision to close the facility);

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- Actively promoted and supported proper hygiene practices recommended by public health authorities as a primary prevention method, such as frequent handwashing. Hand sanitizer stations have been installed in high-traffic areas; sanitation wipes and hand sanitizer have been distributed to many facilities;
- Directed cleaning staff to sanitize high-traffic surfaces and frequently touched objects (doorknobs, elevator buttons, etc.) and to increase the frequency of the daily cleaning schedule;
- Provided on an on-going basis regular communications to all staff and making tools and information readily available (Manager's Guide, Telework and Travel Guidelines, mental health resources and updates);
- Revised Standard Operating Procedures and Protocols to reduce risk to employees (e.g., IT Service Desk Cleaning Protocol); and,
- Regularly reminded employees of the public health directions to reduce risk of transmission such as hand washing and social distancing; sent this information to every employee's email; and prominently placed these instructions on the department's emergency COVID-19 webpage.

Should NRCan be faced with a work refusal situation related to COVID-19, we are confident we have taken proactive steps to limit the spread of COVID-19 and that NRCan has demonstrated due diligence meeting or exceeding the legislative requirements to protect workers in the workplace.

Note 1: There are provisions in the CLC that protect an employee from disciplinary action related to exercising their right to refuse dangerous work (Section 147). Subsequently, an employer may take disciplinary action against an employee who has willfully abused their right to refuse dangerous work, and the onus to demonstrate willful abuse rests with the employer.

Note 2: The right to refuse dangerous work is applicable to issues within the workplace and does not extend to situations where an employee is living with vulnerable or high-risk persons. For these situations, the Treasury Board Secretariat provided guidance, which suggests using leave code 699. Please consult the following link for additional information:
<https://www.canada.ca/en/government/publicservice/covid-19/employee-illness-leave.html>.

For questions and advice on refusals to work, please contact the [Departmental OHS](#) team.