

WORKERS' LEGAL RIGHTS

Workers' Right to Refuse Unsafe Work

If workers believe a job or piece of machinery could endanger themselves or any fellow worker, they can legally refuse to do the job or work with that equipment.

Workers' Right to Know

Workers have a right to know about hazardous materials or agents in the workplace and measures to be taken to protect the workers from any health effects.

The following questions and answers are taken from "*The Right of Refusal*", a document published by the Commission de la Santé et de la sécurité du Travail du Québec (CSST). These questions and answers reflect the main points outlined in the government Act respecting occupational health and safety (R.S.Q.C.S-2.1).

Under what conditions may a worker refuse to perform specific work?

The Act respecting occupational health and safety grants every worker the right to refuse to perform particular work if they have reasonable grounds to believe that by performing that work, they would expose themselves or another person to danger to their health, safety or physical well-being.

What must a worker do if they refuse to perform specific work?

As soon as they refuse to perform specific work for health or safety reasons, the worker must inform their supervisor or, if the latter is not on the premises, take reasonable steps to ensure they are informed as soon as possible.

- They must indicate immediately to their supervisor on what grounds they refuse to perform the duties assigned to them.
- They must remain at the workplace and agree to do any other duties that they are capable of performing.
- They must comply with the inspector's decision and resume work if so ordered by the inspector or if the latter decides that the danger does not justify the refusal to work.

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What must the employer do?

On being informed, they must convoke the safety representative or, if there is none, a representative of the certified association or, failing this, any other worker designated by the worker exercising the right of refusal.

- They must, with the worker and the safety representative or the person replacing him, proceed to examine the situation and, if necessary, the corrective measures they intend to take.
- Throughout the entire work stoppage period, they continue to pay the worker and, as the case may be, any other workers affected by the work stoppage. They may, however, assign the workers to other duties that they are capable of performing.
- They must allow the safety representative or the person replacing them to exercise the functions thus vested in them and pay them in the same way as if they were performing his regular job.

May the employer replace the worker who is exercising their right of refusal by another worker?

The worker who is exercising their right of refusal may only be replaced by another worker in two specific cases:

- 1) When the employer and the safety representative or the person replacing them, or, as the case may be, the inspector are of the opinion that there is no danger justifying this refusal or that the refusal is based on grounds that are acceptable in the particular case of that worker but do not justify another worker's refusing to perform the work;
- 2) When the exercise of the right of refusal prevents at least two other workers from performing their work and the inspector is not present on the premises more than six hours after their intervention was required.

In above two cases, the employer must inform the worker asked to replace the worker who has refused, that a right of refusal to work has been exercised, and indicate the grounds for refusal. This worker may refuse to replace their co-worker if they also think there is a danger justifying the refusal.

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May the right of refusal be exercised under all circumstances?

No, the right of refusal to work may not be exercised in the following cases:

- When not performing the work puts the life, health, safety or physical well-being of another person in immediate danger;
- When the conditions under which the required duties are to be performed are ordinary for that type of work and no personal condition makes the work dangerous in the particular case of the worker who refuses.

What is meant by “ordinary conditions”?

Conditions are considered ordinary when all the generally recognized measures are taken to eliminate or control a danger and when no personal condition makes the duties dangerous in the particular case of the worker who refuses.

For a working condition to be considered ordinary within the meaning of Section 13 of the Act, you must be able to answer “yes” to each of the following 5 questions:

- 1) Is the work or duty being performed according to the rules of the trade?
- 2) Is the risk under consideration inherent in the job?
- 3) Have all the generally recognized safety measures been taken to deal with this risk or situation?
- 4) Is the equipment in normal operating condition?
- 5) Does the worker’s physical well-being or state of health enable them to carry out this duty without entailing additional danger for themselves or other people?

A distinction must be made between ordinary working conditions and usual working conditions: *a usual working condition is not necessarily an ordinary working condition* within the meaning of Section 13 of the Act.

What is the scope of the inspector’s decision?

The decision of the inspector is executory: it is binding on the parties. They must comply with it immediately, subject to the review power of the chief inspector and the Commission.

When does the *exercise of a right of refusal* end?

The exercise of a right of refusal ends when the parties reach an agreement and the worker resumes work or the inspector requires the return to work.

May an inspector's decision be appealed?

Yes. One of the parties may request a review of this decision by the regional chief inspector.

This request must be made within ten days of receipt of the decision. It may be made orally, but must be confirmed in writing.

After a review application has been made, the regional chief inspector may hold a hearing to hear all the parties before making a decision.

The regional chief inspector's decision must be transmitted in writing and must be substantiated. This decision, like that of the inspector, is executory.

May a chief inspector's decision be appealed?

Yes. Any decision of a chief inspector may be appealed to the Commission (CSST) according to the same process and within the same deadlines as for the appeal of an inspector's decision.

The review application must be submitted to the Commission in writing and must be sent to the *Bureau de révision en matière d'inspection* at the Commission.

This review board consists of two members appointed by the Commission.

For all review applications, the Commission, represented by the members of this board, holds a hearing to hear all the parties.

The hearing takes place in the administrative region concerned.

The Commission's decisions are substantiated and transmitted in writing to the parties and their representatives.

The Commission's decisions are executory: they are final and cannot be appealed.

May the employer take disciplinary action?

No. Disciplinary action may not be taken against the worker or their representative before a final decision is made.

However, within the ten days following a final decision, the employer may take disciplinary action if they feel there has been abuse on the part of the worker.

When is a decision final?

A decision is final ten days after having been received, unless a review application has been made regarding it.

A decision by the Commission is a final decision.

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Does the worker have recourse if the employer takes disciplinary action against him?

Yes. The worker may register a complaint with the Labour Commissioner General or they may choose to have recourse through the grievance settlement procedure.

The complaint must be made in writing within thirty days of the disciplinary action.

In a case connected with a right of refusal to work exercised under the *Act respecting occupational health and safety*, there is a presumption in favour of the worker.

The decision made by the Labour Commissioner or the arbitrator cannot be appealed and is binding on both parties.