

Exercising and Responding to Work Refusals in Atlantic Canada

The right to refuse work is exercised as follows

	New Brunswick	Newfoundland And Labrador	Nova Scotia	Prince Edward Island
Step 1	<p>Report to Supervisor</p> <p>The employee must report to their Supervisor their refusal to work and why they believe the work will endanger their health and safety or the health and safety of other employees. The supervisor must investigate the matter in the presence of the employee, and, if they find the work is unsafe, take corrective action(s) to resolve the matter. If the supervisor disagrees with the employee, they should explain their decision to the employee. Employers can reassign the work to another employee but must advise that employee someone else has refused the task.</p>	<p>Report to Supervisor</p> <p>A worker may refuse to do work where the worker has reasonable grounds to believe that the work is unsafe. Where a worker exercises his or her right to refuse unsafe work, the worker shall immediately report it to his or her supervisor.</p> <p>An employer may reassign the employee to other work that is “reasonably equivalent” to the work usually performed by the employee and that if such reassignment is possible, the worker shall accept the reinstatement until they are able to return to their usual work. Where a worker has been reassigned, the employer is required to pay that employee the same wages and salary and confer the same benefits that the employee would have received if still performing their usual work. Where a reassignment is not possible, the employer must still continue to pay the employee their usual remuneration.</p>	<p>Report to Supervisor</p> <p>An employee has a general right to refuse to perform work where that employee “has reasonable grounds for believing that the act is likely to endanger the employee’s health or safety or the health or safety of any other person”: section 43(1).</p> <p>The employee must report the work refusal to their supervisor, who must then investigate the complaint, carry out any remedial action she or he deems necessary, if any, and order the employee back to work. Once an employer receives a work refusal complaint, it may reassign the employee to another position. As mentioned above, it may be difficult to assign an employee to another position that is not exposed to the same risks complained of. Regardless of whether the employee is reassigned, they must be paid their regular wages throughout all steps in the process. Also, throughout all stages of this process, an employer may not assign another employee to perform the work complained of without informing that employee of</p> <p>(a) the refusal by another employee;</p> <p>(b) the reason for the refusal; and</p> <p>(c) the employee’s right to refuse to perform the work.</p>	<p>Referral to Supervisor</p> <p>At the first stage, if a worker has reason to believe that an act is likely to endanger their occupational health and safety or the occupational health and safety of others, the worker is required to immediately report the concern to their supervisor. The supervisor then has an obligation to promptly investigate the situation in the presence of the worker.</p> <p>The investigation should take into consideration items such as the current scientific understanding of COVID-19 and risk, the specific exposure risks presented by the nature of the work, and the particular workplace.</p> <p>If the supervisor finds that the worker has reasonable grounds for believing that an act is likely to endanger their occupational health and safety or the occupational health and safety of others, the supervisor is required to take appropriate remedial action or recommend appropriate remedial action to the Civil Service, as the employer. However, if the supervisor finds that the worker does not have reasonable grounds for believing that an act is likely to endanger the worker’s occupational health and safety of another worker, the supervisor shall advise the worker to do that act.</p>
Step 2	<p>Refer to Joint Health and Safety Committee (JHSC)</p> <p>If the employee is not satisfied with the supervisor’s decision and the workplace has a joint health and safety committee (JHSC), the employee may refer the matter to the JHSC. The JHSC must investigate the matter. If the JHSC disagrees with the employee, they shall advise the employee to do the work. If the JHSC agrees with the employee, they must make recommendations to the employer to take corrective measures to remedy the unsafe situation.</p>	<p>Report to Occupational Health and Safety (OHS) Committee or Workers Health and Safety (WH&S) Representative or Designate</p> <p>Where an employer cannot resolve an issue in the workplace regarding occupational health and safety and there is a refusal to work, the issue shall be referred to the OHS Committee or the WH&S Representative or Designate, as appropriate, and the employer shall notify the OHS Division.</p> <p>Where the referral to the OHS Committee or WH&S Designate is made orally, the employer shall provide the OHS Division with written confirmation of the notification within 5 days of the referral.</p>	<p>Report to JOHS Committee or Representative</p> <p>If the employee is not satisfied with the remedial action taken by their supervisor and continues to refuse the work, they must then report it to their health and safety committee or representative, if any, for a decision. As in step one, the committee or representative must then investigate the complaint, carry out any remedial action she or he deems necessary, if any, and order the employee back to work.</p>	<p>Referral to the Joint Occupational Health and Safety Committee</p> <p>If the worker has made a report to their supervisor and the matter has not been resolved to the worker’s satisfaction, the worker shall refer the matter to the employer’s Joint Occupational Health and Safety Committee. Upon receipt of the referral, the Joint Occupational Health and Safety Committee is required to promptly investigate the matter.</p> <p>If the Joint Occupational Health and Safety Committee finds that the worker has reasonable grounds for believing an act is likely to endanger the worker’s occupational health and safety or the occupational health and safety of another worker, the Occupational Health and Safety Committee shall recommend appropriate remedial action to the Civil Service, as the employer. However, if the Joint Occupational Health and Safety Committee finds that the worker does not have reasonable grounds, the Joint Occupational Health and Safety Committee shall advise the worker to do the act.</p>
Step 3	<p>Refer to WorksafeNB</p> <p>If the employee or the employer disagrees with the decision of the JHSC, or if there is no JHSC, the employee or employer can refer the matter to WorkSafeNB officer, who will investigate the matter. If the officer agrees with the employee, the officer will issue order(s) to rectify the matter; if the officer disagrees with the employee, the officer will advise that the employee perform the work.</p>	<p>Report to OHS Division or Officer</p> <p>If, after the worker reports the matter to his or her supervisor the worker feels that the matter has not been remedied to his or her satisfaction, the worker may report, either orally or in writing, to the OHS Division or an OHS officer.</p>	<p>Report to OHS Officer</p> <p>If the employee is still not satisfied with the action taken under step two and continues to refuse the work, the employee must then report the work refusal to the Occupational Health and Safety Division of the Department of Labour and Advanced Education. OHS Officers have broad powers of investigation and both employers and employees are obligated to cooperate in such investigation. These powers of investigation typically allow for an investigation of the workplace, taking photographs and videos, interviewing witnesses, and ordering production of records and documents. An employee member of the JOSH Committee and an employer representative have the right to accompany the OHS Officer during the investigation of the workplace.</p>	<p>Referral to OHS Officer</p> <p>If the Joint Occupational Health and Safety Committee has not resolved the matter to the satisfaction of the worker, the worker has the ability to refer the matter to an Occupational Health and Safety Officer.</p> <p>After receiving a referral, the Occupational Health and Safety Officer is required to investigate situation and provide their findings in writing to the employer, worker, and Joint Occupational Health and Safety Committee regarding whether the worker has reasonable grounds for believing that an act is likely to endanger the worker’s occupational health and safety or the occupational health and safety of another worker.</p> <p>If the Occupational Health and Safety Officer finds that the worker has reasonable grounds, the Occupational Health and Safety Officer shall order for remedial steps to be taken by the employer. However, if the Occupational Health and Safety Officer finds that a worker does not have reasonable grounds, the Occupational Health and Safety Officer shall advise the worker to do that act.</p>
Step 4	<p>File Appeal</p> <p>If the employer or employee disagrees with the WorkSafeNB officer’s decision, they can file an appeal to WorkSafeNB’s Chief Compliance Officer. The parties have 14 days to file an appeal.</p>	<p>Return to Work</p> <p>Finally, the worker shall return to work if and when (i) remedial action has been taken by the employer to the worker’s satisfaction; (ii) the occupational health and safety committee or representative has investigated the matter and has advised the worker to return to work; or (iii) an OHS Officer has investigated the matter and has advised the worker to return to work.</p>	<p>Return to Work</p> <p>Following their investigation, OHS Officers will issue a decision, which require changes to the workplace in order to make the work safe and advise the employee to return to work. OHS Officer decisions are appealable to the Nova Scotia Labour Board.</p>	<p>File Appeal</p> <p>It is important to note that the employer does have the ability to appeal an Occupational Health and Safety Officer’s order to the Director of Occupational Health and Safety. On the conclusion of the appeal, the Director may affirm the order, rescind the order or make a new order based on his or her findings.</p>
Additional Information	<p>Throughout the work refusal process, the employee who made the refusal shall remain available at a safe place near at or near their workstation during normal working hours while their concerns are being investigated. If the employer does not have other safe work to provide the employee during the work refusal process, they nonetheless are required to continue to pay the employee.</p> <p>A report of a right to refuse work based merely on the fear of contracting COVID-19 will likely be rejected if an employer is complying with the directives of the Chief Medical Officer and has put measures in place to address the risk of COVID-19.</p>	<p>Employees who exercise their right to refuse unsafe work are protected from discriminatory action or reprisals from the employer. In other words, the employer shall not retaliate against an employee for either refusing to perform unsafe work.</p> <p>Discriminatory action includes, but is not limited to: deducting wages, salary or benefits, or dismissing the employee.</p>	<p>The onus is primarily on the employee to escalate their complaint through all steps of the process. As such, steps two and three may not occur if the employee fails to carry their complaint forward. Neither employers nor unions may take discriminatory action against an employee for refusing to perform work under the NSOHSA.</p>	<p>The Director’s decision may also be appealed to the Workers Compensation Board within 30 days of the date of the Director’s decision. The Workers Compensation Board will appoint an arbitrator to determine the matter. On the conclusion of the appeal, the arbitrator shall make a written decision either affirming the order, rescinding the order or making a new order based on their findings. The arbitrator’s decision is final and binding on the parties to the appeal and on the Workers Compensation Board.</p> <p>Throughout the process outlined above the worker has the obligation to remain available for work at their worksite, and the Employer has the right to reassign the worker to alternate work. The employer is required to pay the employee their regular wages during the process, whether the employee is reassigned or not.</p>