

SECTION: HUMAN RESOURCES**NO: HR-HS-13****REFERENCE: HEALTH AND SAFETY****Date:**
November 20, 2020**Next Review Date:**
November 2022

TITLE: REFUSAL TO WORK AND BILATERAL WORK STOPPAGE

1.0 POLICY STATEMENT

- 1.1 The Occupational Health & Safety Act and Part II of the Canada Labour Code (Airport) gives individual employees the right to refuse work if they have reason to believe that it is unsafe to himself/ herself or another worker. A worker who believes that he or she is endangered by workplace violence may also refuse work.

2.0 PROCEDURE

- 2.1 A work refusal is initiated by an individual employee. A work refusal begins when an employee reports the circumstances of the refusal to their Manager.
- 2.2 The Manager must investigate immediately in the presence of the employee and a Worker Representative from the respective Joint Health & Safety Committee (JHSC) who, if possible, is a certified representative, or a union representative. The Employer has a duty to make the Committee member available, and the member has a duty to attend "without delay".
- 2.3 The initial priority is to verify that a work refusal is in progress and to find out why the employee has refused. The Worker Representative from the JHSC then accompanies the Manager, who must then conduct an investigation.
- 2.4 If the Manager agrees that an unsafe condition exists, the Manager resolves the problem and notifies the employee that it is safe to return to work and what steps were taken to resolve the unsafe condition. The employee then returns to work.
- 2.5 If the Manager does not agree that an unsafe condition exists, or continues to exist, and the employee continues to refuse, one of the parties must call a

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Ministry of Labour Inspector (MOL) (for Airport, both of the parties must call a Labour Affairs Officer).

- 2.6 While the MOL Inspector's, or the Labour Affairs Officer's, investigation is in progress, the Manager may assign the refused work to another person. No employee may be assigned the refused work without first being informed that a refusal is in progress and being advised of the reasons for the refusal. The Manager must give this advice in the presence of the Worker Representative from the JHSC who, if possible, is a certified member, or a health and safety representative, or a worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is not trade union, by the workers to represent them. Meanwhile, the employee who refused to work may be asked by the Manager to remain in a safe place nearby or may be assigned to reasonable alternative work.
- 2.7 The Manager, employee, and the Worker Representative are entitled to be present when the MOL Inspector or the Labour Affairs Officer investigates. The MOL Inspector or the Labour Affairs Officer must provide the workplace parties with a written decision as soon as practicable.
- 2.8 The written report includes corrective action, if any, to ensure a safe workplace. The unsafe condition is resolved. The worker returns to work.

3.0 BILATERAL WORK STOPPAGE

- 3.1 Work can only be stopped in "dangerous circumstances".
- 3.2 Dangerous circumstances exist where three (3) conditions are met:
 - a. failure to comply with the Occupational Health & Safety Act or Regulations;
 - b. it poses a danger or hazard to a worker; and,
 - c. any delay in controlling the danger or hazard may seriously endanger a worker
- 3.3 The work stoppage provisions do not apply to a workplace where the hazard is inherent in the work or is a normal condition of employment or where the work stoppage would directly endanger another person.

4.0 STOP WORK PROCEDURE BEGINS WITH A CERTIFIED JHSC MEMBER

- 4.1 Where a certified JHSC member has reason to believe that dangerous circumstances exist, he/she has the right to begin the stop-work process. The Certified Member may learn of dangerous circumstances during an inspection, an incident investigation, or the investigation of a work refusal or a worker complaint.
- 4.2 The Certified Member must advise a Manager that dangerous circumstances exist and request that a Manager investigate the matter. The Manager must do so

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promptly in the presence of the Certified Member who reported the dangerous circumstances.

- 4.3 If the Certified Member believes that dangerous circumstances continue to exist, despite any action taken by the Manager, they may request the Certified Member representing the other workplace party investigate the matter. That second Certified Member must investigate the matter promptly in the presence of the first Certified Member.
- 4.4 If both Certified Members of the Joint Health and Safety Committee agree that dangerous circumstances exist, they may direct the Manager to stop the work that is causing the problem. The Manager must immediately comply.
- 4.5 When action has been taken to correct the problem, either the Certified Members or an Inspector may cancel the stop-work direction.
- 4.6 If the Certified Members cannot agree that dangerous circumstances exist, either can request an Inspector to investigate. The Inspector must investigate and issue a written decision to both Certified Members.

Part II of the Canada Labour Code does not provide for a bilateral work stoppage because there are no certified JHSC members. If a danger exists in the workplace, employees have the right to refuse work individually. An employee does not have the right to direct a Manager to stop work.

5.0 INSTRUCTIONS TO MANAGERS ON EMPLOYEE REFUSAL TO WORK UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT OR PART II OF THE CANADA LABOUR CODE (AIRPORT)

- 5.1 Should an Employee under jurisdiction refuse to work under conditions they believe to be unsafe pursuant of the *Part II of the Canada Labour Code*, follow this procedure:
 - a. Discuss with the employee the reasons for the refusal to work.
 - b. Record those reasons given.
 - c. Arrange for the presence of a "Certified" (if possible) Worker Representative from the respective Joint Health and Safety Committee to accompany you and the employee in an investigation of the complaint.
 - d. Conduct the investigation.
 - e. Discuss with the worker and the Worker Representative from the Joint Health and Safety Committee, your findings, and decision about the situation upon which the complaint is based.

- f. Should you agree with the complainant, re-assign them to other suitable work permitted within the terms of the collective agreement and immediately take the necessary steps to have the situation corrected, or isolated until corrective measures are available.
 - g. Notify **your** Manager and prepare a written report of the complaint.
- 5.2 Should the complainant continue to maintain that the unsafe situation remains after your declaration that it is safe, follow this procedure:
 - a. Keep in mind that the complainant's original "reason to believe" basis for the complaint must now become "reasonable grounds" (good or strong evidence).
 - i. For a complaint under the Occupational Health and Safety Act, immediately notify an Inspector of the Ministry of Labour (1-877-202-0008) of the refusal to work and request their presence for an investigation.
 - ii. Airport: Both the Manager and Worker Representative must immediately notify the Labour Affairs Officer of Human Resources Development Canada (1-800-641-4049) of the refusal to work and request their presence for an investigation.
 - b. Notify your Manager and contact the City Health and Safety Coordinator.
 - c. Surrender your place in the new investigation to your Manager, remain available for response to questions posed by the Inspector OR Labour Affairs Officer.
 - d. Prior to the Inspector OR Labour Affairs Officer's arrival, you may request the complainant to remain at a safe place near their workstation during their normal working hours, unless they are re-assigned to suitable alternate work during such hours, subject to the collective agreement.
 - e. Request that the Worker Representative from the initial investigation be available for the Inspector OR Labour Affairs Officer's investigation.
 - f. You may assign a second employee to the task considered by the complainant to be unsafe provided you first advise the second worker of the complainant's refusal to work and the reasons given for the refusal.
 - g. The complainant is entitled to regular pay during the work refusal investigation.

APPENDIXES:

WORK REFUSAL FLOW CHART

BILATERAL WORK STOPPAGE FLOW CHART

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History			
Approval Date:	January 1, 2003	Approved by:	Council Resolution
Review Date:	April 27, 2011	Approved by:	H & Safety Coordinator
Review/Amendment Date:	October 21, 2013	Approved by:	By-law 4114-2013
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Review/Amendment Date:		Approved by:	

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