



HANDBOOK

**“UH, OK...”
MEANS
NO.**

**If you're worried about safety on your job site
or workplace, or when asked to do a task,
you have the right to say no.**

PRODUCED
BY THE SERVICE OF
HEALTH AND SAFETY
AT WORK





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The FTQ wishes to thank all of the original authors from multiple affiliated unions who contributed to the production of this handbook from its earliest iterations.

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“If you’re worried about safety on your job site or workplace, or when asked to do a task, you have the right to say no.”

Historical Context

The evolution towards more humane conditions in the workplace was accomplished through courageous actions from men and women who refused to carry out work that could put their health and safety in danger. Why were these actions courageous? Because these insubordinate workers risked severe disciplinary measures, including termination.

What were then termed acts of “insubordination” from workers who simply wished to protect their health and safety have since become an obligation with the adoption of the Act respecting occupational health and safety (AROH) in 1979 and the creation of the Commission de la santé et de la sécurité du travail (CSST).¹

Restrictions for bosses, progress for workers.

Faced with the solidarity shown in spontaneous walkouts or the application of collective agreements that already recognized the right of refusal for workers, some employers bowed: suspension and termination were no longer an option. Corrective measures that had long been demanded were finally applied.

However, not everyone had access to the power relationship and refusal clauses provided by a collective agreement. In addition to protecting the right of refusal, we must ensure that reforms to the 1979 law force employers, with support from unions, to carry out meaningful prevention—in other words, we must **eliminate danger at the source**.

This objective remains our fundamental challenge.

During the late 19th century, working conditions in Quebec were abysmal. Wages were so low that men, women and even children could work from twelve to fifteen hours per day and still only be scraping by. If fatigue, illness or an accident prevented them from working, they were out of luck: either they weren't paid, or they were simply fired.

The Fight for Prevention

When circumstances warrant it, we need to be able to avoid danger. But, if that isn't possible without risking retaliation, employers won't take us seriously. The two go hand in hand.

As a result, our right to prevention in the workplace will not be fully protected as long as the legislature has not extended its recognition of our rights as individuals to the collective exercise of the right of refusal by our unions.

The government has not yielded to this permanent demand first raised by the FTQ in 1979, not even during the reform of the workplace health and safety program in 2020. However, the severity of some risks could well lead to collective actions that resemble those of the past.

The battle for prevention is far from over.

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Handbook Summary

“Uh, OK...”

Not an honest and immediate “yes.” A hesitant “OK.” Expressing doubts. Expressing some concern. The “OK” of an uncomfortable worker faced with a potentially dangerous situation. They don’t want to say yes, but can they really say no?

The answer may well be... yes.

This guide will help you determine whether you can refuse to carry out a task that you consider dangerous by asking the following questions:

What reasons do you have for exercising your right to refuse?

What guidelines should appointed individuals follow to decide if your refusal is well founded?

What procedure should you follow to ensure that the steps presented in the law are followed?

How can you build a good case to prepare for your use of the right of refusal?

What investigation must be carried out as soon as you exercise your right to refuse to work?

Which approach should be envisioned following the application of the right of refusal, when you are called to argue your case in front of your employer, or even before representatives from the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)?

What is the best response if an employer retaliates against those who've exercised their right of refusal?

Are there any other aspects of this issue that should be considered?

Taking Charge

Your health and safety are yours to protect. No one has the right to put them in danger. And yet, on a daily basis, in factories, mines, offices, construction sites and other workplaces, workers like you have their physical and mental health put at risk.

Use the information in this guide to help you take charge of your health and safety.

Employers are too busy worrying about their profits and budgets to worry about workplace accidents or the ongoing harm caused to our health by an unsafe environment. It's up to us to defend our right to physical and mental well-being in the workplace.


The ***Act respecting occupational health and safety*** (AROH) provides us with an effective tool to avoid hazardous situations now, all while improving the state of things for the future. One key element in **the Act is our right to refuse to perform unsafe work**, as provided for in sections 12 to 31.

At the time of writing, workers have made moderate use of the right of refusal, with an encouraging success rate.

This guide explains how the right of refusal works, as provided for by law, in order to make it a more accessible tool for prevention.



1/ Conditions Needed to Exercise the Right of Refusal

 *“A worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical or mental well-being, or would expose another person to a similar danger.” (Section 12)*

1.1/ Who can exercise the right of refusal?

Are your instincts telling you, “Watch out! Danger!”?

Anyone who recognizes a situation in their workplace that could present a danger to themselves or another person. Not the union acting on behalf of its members.

While it is possible for many workers to simultaneously refuse to perform dangerous work, they must all believe that a danger exists and individually inform their supervisor.

Here are two examples:

Individual refusal: After noticing that the machine they are operating is defective, a worker stops using it.

Group refusal: Five workers complain of excessive heat in their department and stop working. Each informs their supervisor of their decision.

In other words, no one can make the decision to refuse to carry out a task on behalf of another person.

1.2/ On what basis can someone refuse to carry out a task?

If you have “reasonable grounds to believe that a danger exists,” say “no,” rather than “uh, OK.”

It’s important to act based on your **perception** of the situation. It’s enough to be acting in **good faith** and to have a **reasonable** belief. Remember “**reasonable**” does not mean that subsequent inspections must show that there really was danger.



Moreover, the danger could be towards the person reporting it, or another person: a colleague or comrade, service user, client, or even the boss!

For example:

A worker is assigned to temporarily replace an absent colleague on a machine for which they have received no prior training. It would be dangerous for this worker to operate the machine unless someone else who had received the necessary training could work alongside them to limit the danger.

What reasonable grounds can lead to a refusal?

Based on the opinion of the person in question, the grounds could stem from:

- material factors: equipment with broken parts, excessive noises, etc.;
- previous factors: accident involving the person, accident affecting other workers;
- immediate factors: burning eyes, dizziness, abnormal breathing, etc.

The grounds can also be specific to the worker in question.

2/ How can we determine if the danger is really present?

Once a worker has exercised their right of refusal, others must determine if the situation involves a real danger.

This evaluation involves two parties:

- **the union**, represented by the health and safety officer;
- **the employer**.

In practice, many cases are resolved at this stage, as our demands are immediately met by the employer.

2.1/ The Inspector

Are your fears well founded? An inspector will determine that. However, when in doubt, always err on the side of caution.

The situation may be relegated to the CNESST's inspector, who will then make a decision in accordance with section 19.

Two possible situations can emerge from their analysis:

1. ***"Whether or not a danger exists that would justify the worker's refusal to work" (Section 19)***



The inspector must determine if there is a **real and objective** danger, without casting judgement on the personal motivations of the worker who reported it. Their decision must rest entirely on the nature of the danger in question. Several elements must be considered by the inspector, including:

- the risk of accidents (frequency and probability)
- the severity of a possible accident
- preventative equipment maintenance
- code or regulatory violations
- stressors (gas, chemicals, noise, heat, cold, etc.) and contaminants.

This list is not exhaustive, as the nature of a danger will vary from one workplace to another.

For example:

A school bus driver could refuse to leave the garage with their vehicle if the roadway conditions have been made dangerous by a storm, even if their employer does not have any control over snow clearing or the weather.

Other points:

- The danger does not need to be imminent. If it can be demonstrated that exposure to certain elements (X-rays, gas, noises) has a negative effect on a worker's health over a period of time, the inspector can conclude that there is danger.
- The inspector should not consider risks of material damages or other economic arguments brought by the employer.
- The dangerous situation does not need to be caused or controllable by the employer.




2. "If [...] the refusal to work 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 [...]" (Section 19)

If that is the case, it follows naturally that one must not only consider the danger, but also the particular circumstances of the worker who is exercising their right of refusal. The determining criteria could be:

- a lack of experience or training needed to complete the assigned task;
- the risk of aggravating an existing health problem;
- previous accidents experienced by the worker that limit their ability to perform the task;
- any other personal reason, such as experiencing vertigo in high places or claustrophobia in small spaces.


2.2/ Exceptions to the Right of Refusal

2.2.1 Immediate Danger to Another Person.

-  “[...] if his refusal to perform the work puts the life, health, safety or physical or mental well-being of another person in immediate danger [...]” (Section 13)

Cases that involve this exception are very rare and involve an immediate danger, rather than an indirect or distant risk. For example, cases where a firefighter must enter a burning building in order to rescue people who are trapped.

Furthermore, the obligation to accomplish such a task is mitigated by section 2 of the **Charter of Human Rights and Freedoms**:

-  “Every human being whose life is in peril has a right to assistance. Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason.”

However, it’s important to understand that even firefighters are not required to act in every circumstance. For example, if their oxygen mask is defective, they could exercise their right of refusal. In this case, their refusal would not be what endangers the lives of the people trapped, but the fire.

2.2.2 Ordinary Working Conditions

- “[...] or if the conditions under which the work is to be performed are ordinary conditions in his kind of work.” (Section 13)

Here, we’re talking about the way that work is performed, or the method, rather than the work itself.

For example:

A miner’s work necessarily involves dangers to the safety of people who do this work. However, they have the right to ordinary working conditions under which their work is performed, like safety helmets, adequate lighting, ventilation, etc. As such, section 13 indicates that a refusal cannot be justified if all of these conditions are met. These are the conditions that make the work as safe as possible, given the nature of the work.



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A few points to remember:

- “Ordinary” is not synonymous with “habitual, having always existed without critique.” Hazardous conditions that workers have dealt with for years are not automatically acceptable for the future.
- Do not mistake “ordinary” for the standards set by laws and regulations.
- If these provisions are met, the situation may be acceptable. Despite this observation, we should not forget that laws and regulations govern specific situations and do not consider the interactions between two or three different elements.
- Standards for heat, ventilation and noise can be respected when considered in isolation. However, the combination of these three factors creates challenging conditions for workers in a given field.

“Ordinary” should be understood in the context of occupational health and safety standards in line with the objective of the AROH, which strives to eliminate sources of danger. As a result, these ordinary conditions should include a method that seeks to eliminate the risk of accidents or injuries.

Testing for Ordinary Conditions

To allow the inspector to establish whether the conditions are ordinary conditions for the worker’s kind of work as provided for in section 13 of the Act, the following questions must all be answered with a “yes”:


- 1) Is the work carried out according to regulatory or non regulatory standards, such as techniques recognized by the occupational health and safety board and standards in the field?
- 2) Is this a regular task carried out by the worker, for which they received the appropriate training, information and practice, and does the employer ensure they have appropriate supervision?
- 3) Is the danger inherent to the work to be carried out, in the sense that it cannot be eliminated at the source?

If any of those questions are answered with a “no,” the conditions cannot be considered to be ordinary conditions for this kind of work.


3/ How to Exercise the Right of Refusal

Make your life easier by following best practices.


Just like when dealing with grievance and arbitration procedures, it's important to follow the right steps. The procedure starts with a decision made by the worker.

-  ***"A worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical or mental well-being, or would expose another person to a similar danger."* (Section 12)**


The worker must then tell their supervisor that they are refusing to work because they believe the situation to be dangerous:

-  ***"Where a worker refuses to perform particular work, he must immediately inform his supervisor, his employer or an agent of his employer; if none of these persons is present at the workplace, the worker must take reasonable steps to ensure that one of them is informed as soon as possible."* (Section 15)**

In addition, the worker must remain available at their work post:

-  ***"An employer may require a worker who has exercised his right to refuse to work to remain at the workplace and assign him temporarily to other duties that he is reasonably capable of performing."* (Section 25)**

As soon as the supervisor has been informed about the situation, it's important to ensure that they contact the health and safety officer, or, if there is not one, someone designated by the union:

-  ***"On being informed, the supervisor or, as the case may be, the employer or his agent shall convoke the safety representative to examine the matter and the corrective measures he intends to apply."***

***If there is no safety representative or if he is not available, the safety representative is replaced by a representative of the worker's certified association, if any, and if he is available, or if none is available, by any other worker designated by the worker who refuses to perform his work."* (Section 16)**



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While waiting for a binding decision to be made (the inspector's decision, section 20), the employer may not have the work performed by another worker:



“Until an executory decision is rendered ordering a worker to resume work, the employer shall not, subject to section 17 and the second paragraph of section 19, have the work performed by another worker or by a person who ordinarily works outside the establishment and a worker who is exercising his right of refusal is deemed to be at work.” (Section 14)

The **only exceptions** to this principle are presented in **sections 17 and 26** of the Act.

The case of section 17:

This replacement cannot take place without a prior agreement between the health and safety representative, or another person designated by the union, and the employer stating that there is no danger or that the refusal is based on acceptable grounds in the particular case of the worker involved.

An example of such a danger would be a situation in which a worker who suffers from vertigo refuses to climb a ladder to perform a task. In every case, the health and safety representative must be called to the site to review the situation.

The case of section 26:

Criteria:

- as a result of the worker's exercising their right of refusal, at least two other workers are not able to perform their work. (For example, a worker on a production line refuses to do their work, which requires the line to be shut down and at least two other workers, who had not exercised their right of refusal, to stop working)

AND

- the inspector does not appear on the site within six hours of being asked to intervene.


In both cases, an employer cannot replace a worker who has exercised their right of refusal unless:

- the situation is covered under sections 17 or 26;
- the replacement worker has been informed that another worker exercised their right of refusal and their grounds for doing so;

AND

- the worker, having been informed of these facts, freely accepts the task.

The inspector's work becomes necessary when the employer, the health and safety representative (or the person designated by the union) and the worker involved are unable to find a solution to the problem together. Section 18 allows these individuals or the employer to request the intervention of an inspector from the CNESST:

 *“After the situation has been examined, the intervention of an inspector may be required by:*

- 1) the worker, if he maintains his refusal to perform the work;**
 - 2) the safety representative or the person replacing him if he believes that the performance of the work exposes the worker to danger to his health, safety or physical or mental well-being or exposes another person to similar danger; or**
 - 3) the employer or his agent, if he believes that the performance of the work does not expose the worker to danger to his health, safety or physical or mental well-being or does not expose another person to such danger, or that the corrective measures taken have dissipated the danger.”**
-

The role of the inspector is to determine if the danger justifies the refusal to work (section 19). Their decision is final unless someone applies for it to be revised.



“The inspector shall determine immediately whether or not a danger exists that would justify the worker’s refusal to work. They may require the worker to resume their work. He may also prescribe temporary measures and require that corrective measures be taken within such time as he may determine.




If, in the inspector’s opinion, the refusal to work 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, the employer may, notwithstanding section 14, have the work performed by another worker, who may agree to perform it after being informed of the fact that the right of refusal has been exercised, and of the reasons therefor.

The inspector’s decision must be substantiated and recorded in writing. It is transmitted by any appropriate means that provides the inspector with proof that it was delivered to the worker, the safety representative or the person replacing him, and to the employer or his agent.” (Section 19)





“The inspector’s decision may be the object of an application for review and a contestation before the Administrative Labour Tribunal in accordance with sections 191.1 to 193. The inspector’s decision has effect immediately, notwithstanding any application for review.” (Section 20)

Binding Provisions

-  *"An order or decision of an inspector has effect immediately, notwithstanding any application for review." (Section 191)*
-
-  *"Any person who believes he has been wronged by an order or decision of an inspector may apply for review thereof by the Commission in accordance with sections 358.1 to 358.5 of the Act respecting industrial accidents and occupational diseases (chapter A-3.001) within 10 days of being notified of the decision." (Section 191.1)*
-
-  *"Where the review relates to the complete or partial closing of a workplace or to the exercise of the right of refusal, the Commission shall proceed with the review by preference." (Article 191.2)*

Binding Decision

-  *"A decision made by the Commission following an application under section 191.1 has effect immediately, notwithstanding any contestation before the Administrative Labour Tribunal." (Article 192)*
-
-  *"Any person who believes he has been wronged by a decision made by the Commission following an application under section 191.1, may, within 10 days of being notified of the decision, contest it before the Administrative Labour Tribunal. Proceedings brought under this section are heard and decided by preference." (Section 193)*
-

**“UH, OK...”
MEANS NO.**

If you're worried about safety on your job site or workplace, or when asked to do a task, you have the right to say no.

Procedures

Tell your supervisor. *ARQ, art. 15*

The supervisor must immediately call for the prevention representative or, if there is none, a person designated by the worker exercising their right of refusal, to review the situation. *ARQ, art. 16*

Until a decision has been made, the employer may not have another worker carry out the work. You are available for work and must be paid accordingly. *ARQ, art. 14*

If there is no agreement between the prevention representative and the employer's representative, or if you maintain your right of refusal, the inspector may be requested, either by the worker, the prevention representative or the employer. *ARQ, art. 18*

The inspector shall determine immediately whether or not a danger exists that would justify your refusal to work. *ARQ, art. 19*

If the inspector believes that your refusal to work is justified and orders the employer to correct the situation, the employer can require that you remain at the workplace and temporarily assign you to other tasks that you are reasonably capable of performing. *ARQ, art. 20*

The inspector's decision has effect immediately. They may also have the employer take temporary measures and require that corrective measures be taken within such time as the inspector may determine. *ARQ, art. 19 and 20*

Request for Review

If you are dissatisfied with the inspector's decision, you can apply for a review by the Commission de normes, de l'équité, de la santé et de la sécurité du travail (CNESST) within ten days of being notified of their decision. *ARQ, art. 19.1*

If no request for review has been made by that deadline, the inspector's decision is final.

No Sanctions

The employer cannot terminate, suspend, apply disciplinary measures or reprisals upon, or impose any other sanction on a worker due to their choice to exercise the right of refusal. *ARQ, art. 20*

To learn more about your rights, contact:

- Your health and safety representative
- Your union

PREVENTION REPRESENTATIVE
REPRÉSENTANT À LA PRÉVENTION

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The FTQ published—and still makes available—a tool to help improve our understanding of the right of refusal in the form of a poster showing all the steps required to exercise the right of refusal. The text of this poster is reproduced below, with some additional details.

You have the right to refuse to perform unsafe work

If you believe that the work you've been asked to do puts your health, safety or that of another person in danger... (Section 12)

Procedure

- 1) Tell your supervisor. (Section 15)
- 2) The supervisor must immediately call for the prevention representative, or, if there is none, another person designated by the worker exercising their right of refusal, to review the situation. (Section 16)
- 3) While waiting for a binding decision to be made, the employer may not have the work performed by another worker, and you are deemed to be at work. (Section 14)

The CNESST Inspector

- 4) If there is no agreement between the prevention representative and the employer's representative, or if you maintain your right of refusal, the inspector may be called by: 1) the worker, 2) the prevention representative or 3) the employer (Section 18)
- 5) The inspector shall determine immediately whether or not a danger exists that would justify your refusal to work. (Section 19)



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The Inspector's Decision

If the inspector believes that you are correct and they impose corrections to be made by the employer, your employer can require that you remain at the workplace and temporarily assign you to other tasks that you are reasonably capable of performing without any loss of pay. (Section 25)

OR

If, in the inspector's opinion, there is no danger justifying your right, they can require you to resume your work and still impose corrections to be made by the employer. (Section 19)

Binding Provisions

An order or decision of an inspector has effect immediately, notwithstanding any application for review. (Section 20)

Request for Review

If you are unsatisfied with the inspector's decision, you can apply for a review by the CNESST within 10 days of being notified of the decision. (Section 191.1)

If no request for review is made by that deadline, the inspector's decision is final.

Where the review relates to the complete or partial closing of a workplace or to the exercise of the right of refusal, the CNESST shall proceed with the review by preference. (Section 191.2)

Binding Decision

A decision made by the CNESST following an application for review has effect immediately, notwithstanding any contestation before the ALT. (Section 192)

Contestation before the ALT

Any person who believes they have been wronged by a decision made by the CNESST following an application for review may, within 10 days of being notified of the decision, contest it before the Administrative Labour Tribunal (ALT). (Section 193)

No Sanctions

No employer may lay off, dismiss, suspend or transfer a worker, practise discrimination or impose any other penalty on them on the grounds that the worker exercised the right of refusal. (Section 30)

The best way to understand the situation is by drawing a parallel with the procedure presented in your collective agreement.



"UH, OK..." MEANS NO.

| Right of Refusal | Standard Grievance Procedure |
|---|---|
| 1. The worker decides if they should refuse to carry out a task. | 1. The worker decides if their rights under the collective agreement have been violated. |
| 2. They alert their supervisor that they are exercising their right of refusal. | 2. They then go to their union and ask to file a grievance. |
| 3. The supervisor contacts the health and safety representative or someone designated by the union to discuss the matter. | 3. The union meets with the supervisor or immediate superior to discuss the matter. |
| 4. If no agreement is made, the case is passed to the inspector so that they can evaluate the situation. | 4. If no agreement is made, a grievance is filed and sent to the director of personnel. |
| 5. If the inspector's decision is not satisfactory, the matter is transferred to the CNESST. | 5. If the response from the employer is not satisfactory, the grievance is transferred to an arbitration panel. |
| 6. If the decision from the CNESST is not satisfactory, the matter is transferred to the Administrative Labour Tribunal. | |

Of course, there are differences between the two procedures.

Steps 4, 5 and 6 of the right of refusal process take place before external parties who render a binding decision. For the grievance procedure, these steps take place internally and involve an agreement between the two parties.

However, some similarities remain, and as we'll see in the next chapter, this becomes all the more evident when it comes to preparing the investigation.



4/ The Pre-Investigation

Help your union help you.

The reasons that may lead a worker to exercise their right of refusal vary widely, but one thing remains the same: in the event of a refusal, the union will always be called to argue the soundness of the decision to refuse before the employer and, often, before CNESST representatives.

In fact, it's common for workers to contact their union delegate to learn more about their rights before they take action under section 12 of the Act.

It's important to be **prepared** to advise our members and argue their case with management or with the CNESST.

We should always be ready

While unplanned and unexpected events can lead a worker to refuse to work, in many cases they are forced to make that choice by factors that are **known in advance**.

It's important to properly analyze those known factors so we can present them at the right moment. Don't forget that the meeting between the employer and the health and safety representative must take place immediately following a refusal to work, according to section 16. At that point, there's no time to investigate previous situations.

Where to start?

The obligation to help us build our case—and properly advocate for our members' rights—falls on every member of every department. The full structure of the union, starting with the delegates all the way up to the General Assembly, must be mobilized to action.



The Spirit of the Pre-Investigation

The right of refusal is enshrined in the AROH, which also provides guidelines for how we should build our case, starting with section 2:



“The object of this Act is the elimination, at the source, of dangers to the health, safety and physical and mental well-being of workers.

This Act provides mechanisms for the participation of workers, workers’ associations, employers and employers’ associations in the realization of its object.” (Section 2)

As such, it is important to document any situation or factor that serves to demonstrate that our workplace involves risks to our health, safety or physical and mental well-being. We should understand the right of refusal as one of the “mechanisms [...] in the realization of [the Act’s] object.”

Likewise, section 9 creates a fundamental right:



“Every worker has a right to working conditions that have proper regard for his health, safety and physical and mental well-being.” (Section 9)

This right is further upheld by section 46 of the **Charter of Human Rights and Freedoms**:



“Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.” (Section 46)

Of mention as well are sections 10 (right to training) and 51 (employer’s obligations).

Lastly, it’s important to always remember that occupational health and safety has two primary axes:

- 1) eliminating workplace accidents;
- 2) completely eliminating occupational diseases.

Signs that help us detect danger

Are you the first person to point out the danger?

4.1/ Risks of a workplace accident

a) Previous accidents in the department

Among other factors, we should note:

- the frequency;
- the nature and severity;
- the likely cause;
- the identification of victims and equipment;
- changes made since the accident;
- etc.

b) Previous accidents involving a third party

Section 12 allows workers to stop working if they believe they could inflict harm on any person, which certainly includes our colleagues, but also extends to the general public. If previous accidents involved clients or service users, it's important to take note and review the same factors we would for an accident involving a worker.

c) Training and Information

Section 10 creates an obligation that employers must respect:



"In accordance with this Act and the regulations, the worker is entitled, in particular,

- 1.** *to training, information and counselling services in matters of occupational health and safety, especially in relation to his work and his work environment, and to receive appropriate instruction, training and supervision;*
- 2.** *to receive the preventive and curative health services relating to the risks to which he may be exposed, and his wages for the time spent in undergoing a medical examination during employment prescribed for the application of this Act and the regulations."*

It follows that we should ask if:

- we have been trained, informed and advised on health and safety as it relates to our work and workplace;
- we receive appropriate supervision from a manager trained in the skill.



d) Equipment Maintenance

The following should be noted:

- whether the equipment is maintained in good order;
- the frequency of verifications;
- the frequency of repairs;
- partial or complete breakages;
- the presence or absence of safety guards;
- the age of the equipment.

e) Adherence to Codes and Methods

Employers are subject to several regulations and baseline health and safety standards. In addition to codes that may be specific to your field (for example, radiation standards for hospital workers), other regulations affect workers more broadly.

For example, the **Regulation respecting occupational health and safety**. This regulation sets standards on the following elements:

- air quality;
- ventilation;
- heating;
- temperature constraints;
- lighting;
- noise;
- health standards;
- various provisions;
- overall state of the site;
- means of evacuation and fire protection;
- machine safety precautions;
- hand tools and portable power tools;
- materials handling and transportation
- maintenance and repair work, hazardous work;
- dangerous substance and radiation protection measures;
- worker transportation

f) Safety Code for the construction industry

This regulation, which applies in priority to the construction industry, also allows workers in other sectors, including the municipal or hydroelectric sectors, to learn about the standards that apply to their work.

For example:

- worker transportation
- ladders and stepladders
- scaffolding
- excavations and trenches
- materials handling and transportation
- work taking place near an electric line
- use of explosive actuated tools
- work on roads and highways

You should ask yourself:

- if you have copies of all relevant regulations;
- if these regulations are followed
- what is the severity and frequency of any violations.

g) Are work procedures and methods safe?

It's important to analyze:

- the organization of work;
- handling of heavy objects;
- the pace of work;
- movements;
- space for working;
- break times.

h) Previous processes: have we already discussed a problem among ourselves?

Were any prior shortcomings exposed to the employer through written complaints? What measures were taken in response? Do the minutes from the health and safety committee mention it?



i) Personal Protective Equipment

While the goal is to eliminate danger at the source, we are aware of the continued presence of personal protective equipment, such as hearing protection, helmets, safety belts and goggles. It should be asked if:

- the need for this equipment could be eliminated by removing the danger at the source;
- the equipment is in working order;
- it is replaced when it becomes worn out;
- it respects the relevant codes and regulations;
- it is effective.

4.2/ Risks of Occupational Diseases

This refers to noise, dust, poor work organization, non-ergonomic workstations, chemicals, etc. that undermine our mental and physical health year-round. While these may not necessarily cause accidents, they are often the cause of birth defects, industrial cancers, hearing problems and other pathologies.

Certain symptoms can help us determine whether these situations can arise even if they only appear after several years of exposure.



What are these symptoms?

a) These signs come from the workers themselves and include:

- frequent headaches;
- stomach aches;
- frequent colds;
- back pain;
- nerve disorders;
- depression;
- hearing loss;
- eye fatigue;
- stress;
- etc.

Are other workers in the same department experiencing the same symptoms?

b) Factors arising from the workplace itself

How is the working environment organized?

- the building;
- individual workspaces;
- lighting;
- heat;
- ventilation;
- noise;
- etc.

What dangerous materials and contaminants do we work with?

- the components of these products;
- radiation;
- odours;
- vibrations.



5/ Investigation following a Refusal

Write down anything you think is relevant!

We just discussed the importance of a pre-investigation to help our members decide if it makes sense to exercise their right of refusal, provide proof to the employer, and justify the grounds for refusal to the CNESST.

It's important to note that all relevant information should be documented at the moment of refusal. In practice, this means recording all of the same facts that were mentioned in the pre-investigation step, but in relation to the immediate situation:

- previous accidents;
- a lack of training or supervision;
- dangerous materials;
- poorly maintained equipment;
- code or regulation violations;
- risk of occupational diseases;
- etc.

Tools needed for a good investigation

The effectiveness of our investigation will determine the strength of our case. As such, it's important to:


- record every detail surrounding the refusal;
- document the names of everyone involved and any witnesses;
- if possible, take photos of the site.
- Photos taken with a phone are especially useful, because they can immediately be shown to the inspector
- This also prevents any "small" changes made by management before the arrival of the inspector; and
- in the case of exposure to extreme temperatures, it's a good idea to record the temperature with a thermometer and document the results. Make sure to sign them. This prevents a situation in which the inspector arrives late and the temperature has returned to normal.



6/ Justifying a Refusal to the Employer and the CNESST

This is your chance to explain why you exercised your right of refusal.

6.1/ Meeting with the Employer

 *“On being informed, the supervisor or, as the case may be, the employer or his agent shall convoke the safety representative to examine the matter and the corrective measures he intends to apply.*

If there is no safety representative or if he is not available, the safety representative is replaced by a representative of the worker’s certified association, if any, and if he is available, or if none is available, by any other worker designated by the worker who refuses to perform his work.” (Section 16)

It is true that the right of refusal is an individual right that is triggered by a personal decision made by one or more workers. However, once the process is underway, the union resumes its normal role of defending its members’ interests.

First, there is the meeting between the health and safety representative (or someone designated by the union) and the employer. Every effort should be made to resolve the conflict at this stage, as it’s the only step of the procedure in which our consent must be obtained. Armed with our pre-investigation file, the health and safety representative (or person designated by the union) begins by analyzing the immediate facts of the refusal. During this time, the worker is available for work in accordance with section 96.



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Additionally, they must:

- ensure that the worker clearly indicated their decision to invoke their right of refusal to their supervisor (section 15);
- ensure that the worker remains available at their work post (section 25).
- They must argue the case for refusal, keeping in mind:
- the goal of the law (elimination of danger at the source) (section 2);
- the reasons provided by the worker;
- the actual causes of the danger;
- prior factors identified in the pre-investigation.

If an agreement can be made with the employer that the worker approves of, it's wise to confirm it in writing.

If no agreement is made, it's time to call for an inspector (section 18). The CNESST's inspection service is available 24 hours a day. The main phone line is 1-844-838-0808, option 1. An on-call inspector is usually available to respond to urgent situations.

6.2/ Meeting with the Inspector

The inspector must inform us of their presence as soon as they arrive onsite. This is an important step in the procedure. Don't forget that this determines:

- whether the worker must go back and carry out the task they considered dangerous (section 20);
- which corrections must be made to eliminate the dangerous situation (section 182);
- whether or not the danger exists (section 19).

The inspector has a great deal of power, including:

- the right to stop all work or close a workplace if they consider it to be dangerous (section 186);
- the right to call on witnesses and question them (section 160);
- the right to visit the site, take photos and access a wide variety of relevant documents (sections 179 and 180)

They can also get help from the many technical experts at the CNESST and elsewhere to analyze the danger. It's important to ensure that the inspector does not neglect the full scope of their powers. However, the inspector has no knowledge:

- of previous cases that help determine whether danger exists. These are elements found in the pre-investigation file.
- of the original situation, if they arrive several hours later, as it may have changed. Herein lies the importance of a good investigation (see chapter 5);
- about the health status of the worker involved.

It is our job to be the eyes and ears of the inspector and ensure they can make a fully informed decision that considers all the facts at hand. Do not count on their good will. Even if they are acting in good faith, their effectiveness is sometimes a measurement of our vigilance!

Once the inspector's substantiated and written decision has been submitted (section 19), either of the parties has the right to apply for a review by the CNESST.

6.3/ Review before the CNESST

At this stage, evidence, including supporting documents, is required. This meeting is an administrative review and not a hearing.

The burden of proof falls on the person who applied to bring the case to review. To succeed, it's important to:

- make full use of all evidence produced during the pre-investigation and investigation;
- try to make sure that the meeting takes place on site or near the job site so that it's possible to visit;
- use all available union resources.



7/ Disciplinary Measures

Are you exposing yourself to disciplinary measures?

In theory, workers who exercise their right of refusal cannot be punished by disciplinary measures. The sole and unique exception would be cases in which a person exercised this right in an abusive way.



“No employer may dismiss, suspend or transfer a worker, practise discrimination or take reprisals against him or impose any other penalty on him on the ground that the worker exercised the right contemplated in section 12.

However, the employer may, within the 10 days following a final decision, dismiss, suspend or transfer the worker or impose another penalty on him if the worker abused his right.” (Section 30)

Note: Section 31 protects the health and safety representative in the same way.

The employer **must** respond within ten days of a final decision (from the inspector, the administrative review or the Administrative Labour Tribunal, whichever applies).

7.1/ Contesting a disciplinary measure

There are two possible avenues: you can contest the measure by filing a complaint with the Tribunal or by filing a grievance in accordance with your collective agreement.

7.2/ What is a disciplinary measure?

A disciplinary measure could be a layoff, a dismissal, a suspension, a transfer, a discriminatory measure or any other measure that seeks to punish a person who exercised their right of refusal.

The law protects workers from any discriminatory or disciplinary measures following the exercise of their right of refusal or any other function protected by the law (see section 227).

The only requirement in this case is that the worker truly and effectively exercised a right of refusal in the sense of the law.

7.3/ Contestation before the CNESST

The worker must personally submit a written complaint to the CNESST within 30 days of the disciplinary measure.

a) Evidentiary Procedure

The union's burden of proof is limited to demonstrating that the worker exercised a right as protected by the law.

There is a legal presumption in favour of the worker against whom an employer has imposed sanctions on the grounds that they exercised the right of refusal. This presumption can be rebutted by evidence from the employer that the sanction was given for another just and sufficient cause. This cause must be serious and verifiable, not a flimsy pretext.

How can an employer prove that a worker abused their right? They must demonstrate that the worker:

- was not acting in good faith; or
- lacked reasonable grounds to act; or
- did not remain at their workplace, available to be reassigned to other work; or
- never alerted the employer that they were exercising their right of refusal.

If the employer succeeds in overturning a presumption, it is still possible to cancel the sanction under review, but the burden of proof then falls on the worker who exercised their right.

b) The Powers of the Tribunal

The administrative judge can maintain the measure or cancel it and order the employer to reintegrate the worker. They cannot substitute the decision for another sanction that they consider appropriate.

If the presumption is maintained, they can order that the worker be reintegrated pending the final decision.



7.4/ Contestation before a Grievance Arbitrator

Your collective agreement will indicate the deadlines to respect in its grievance and arbitration procedure.

Evidentiary Proceedings before the Arbitrator

Unless the collective agreement provides for a more beneficial arrangement, evidentiary proceedings before an arbitrator are more difficult, based on the prevailing trends in case law.

We have to prove that:

- 1) the worker sincerely believed that their health or safety was in danger;
- 2) the worker informed their supervisor that they were exercising their right of refusal and their reasons for doing so;
- 3) there were objective grounds to act;
- 4) the danger was serious enough to justify their action.

In contrast, the arbitrator has broader powers than an administrative judge; they can modify the employer's decision if the circumstances justify it.

7.5/ Which option should you choose?

If it is clear and obvious that the worker exercised their right of refusal as protected by the law, it's preferable to opt for CNESST proceedings, due to the legal presumption and the possibility of reintegration pending a final decision.

However, if there are any doubts as to whether the worker had the right to refuse the work or failed to respect their obligations to inform their employer or remain on site, it's better to follow the grievance procedure, as the arbitrator can mitigate the disciplinary measure.

You must make your choice before starting one of the procedures; combining the two procedures is prohibited and will nullify both.

8/ Other Factors to Keep in Mind

8.1/ The Compliance Inspection

You may encounter a situation in which, for whatever reason, contesting dangerous work by exercising the right of refusal is not ideal. For example, there may be a case in which a worker doesn't want to act directly, despite union advice to the contrary. An alternative solution exists for these cases: a CNESST compliance inspection. To launch this process, an inspector must be called (this can be done directly by the union), who then has the same powers as in the case of a refusal.

However, this approach is not as effective as exercising the right of refusal, because:


- the worker must remain at their station while waiting for the inspector's decision, which could expose them to health and safety risks;
- the impacts on the employer are not the same;
- the inspector will often avoid having to intervene on the complaint, leaving the person who filed a complaint without an answer;
- inspectors tend to take longer to arrive on site than in cases of refusal to work.



8.2/ The Law is Just a Minimum

 *“This Act is of public order and any derogating provision of any agreement or decree is absolutely null.*

However, an agreement or decree may provide, in respect of a worker, a person performing functions under this Act or a certified association, more favourable provisions for the health, safety and physical or mental well-being of the worker.” (Section 4)

 *“Nothing in this Act or in the regulations may be construed as limiting the rights of a worker or certified association under a collective agreement, Act, regulation, decree, order in council or other order.” (Section 5)*

It is still possible to negotiate more advantageous clauses through a collective agreement. For example:

- providing for the right of the union to put a stop to dangerous work on its own right (the collective right of refusal);
- eliminating the possibility of any disciplinary measures, notwithstanding sections 30 and 31 of the law;
- preventing workers from being reassigned to another task, unless it is related to their usual work. This reassignment must not, under any circumstances, lead to a temporary layoff;
- allowing for a grievance arbitrator to follow the same evidentiary procedure as an administrative judge, all while preserving their power to mitigate disciplinary measures.

Conclusion

You might love your job to death, but it's not worth dying for.

The **Act respecting occupational health and safety** helps workers refuse to perform work that endangers their health, safety, or physical or mental well-being.

It is up to unions to ensure that more people learn about this fundamental right by explaining to workers how they can apply it and the protections that they have when making use of it—because no one else will.

We believe that this guide can be a practical tool that fills this important role for unions in Quebec and elsewhere: informing members about their right to health and safety in the workplace.





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