

Refusal to Work

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Workers have a right and also a responsibility to refuse to work if there are enough reasons to believe that there is imminent danger to himself or unusual circumstances that may be hazardous or injurious to his health or life.

Employers have a duty of care to provide safe and healthy workplaces and also have a responsibility to assure that at their place of work there is a functioning Health and Safety Committee. Any concern that could lead to a refusal to work must be reported to the employer preferably in writing.

The employer would then convene a meeting with the HSE Committee which must also include Trade Union Representatives or a worker representative.

The Occupational Safety and Health Act Chap. 88:08 (the "OSH Act") makes provision for Refusal to Work in order to protect the health and safety of workers in the workplace. Sections 14 to 21 of the OSH Act provide the operational framework for administering the OSH Agency's refusal to work procedure.

The refusal requires a **subjective, personal belief** by the worker that the job or workplace is hazardous or injurious to the life or health of the worker. **Every worker has the right to refuse to do unsafe work.** Exceptions to this refusal to work include members of the Defence Force, Police Services, Fire Services or Prison Services and persons employed in a laboratory, hospital clinic, health centre, nursing home, psychiatric institution, home for the aged, rehabilitation centre or other similar establishments. (Section 14 (2)).

Sufficient Reason: Reasons for refusal to work must be sound and based on verifiable information. A worker refusing to work must be in a position to produce evidence to support a claim of a threat of serious or imminent danger. (Section 15).

Serious and imminent danger implies that there is a high probability that an accident resulting in a critical or fatal injury will occur in the workplace as a result of exposure to an occupational safety or health hazard.

The following conditions must be met:

- There must be a threat of death or serious physical harm. "Serious physical harm" or critical injury means that a part of the body is damaged so severely that it cannot be used or cannot be used very well. (Section 15 (a) (b)).

- For a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency. The harm caused by the health hazard does not have to happen immediately.

- The threat must be immediate. This means that you must believe that death or serious physical harm could occur within a very short time.

Refusal to Work Procedure

A worker who exercises his or her right to refuse to perform unsafe work must follow the correct procedure.

Step 1: The worker must have "**sufficient reason to believe**" that either some machinery, plant, device or thing he or she operates or is to operate or the physical condition of the workplace poses an unacceptable risk or presents serious and imminent danger to himself or another worker.

Step 2: A worker MUST promptly report his refusal to work to his employer or his representative and a representative of the Safety and Health Committee.

Note: *The OSH Act stipulates that the investigation shall be conducted, by the Safety and Health Committee, in the presence of a Trade Union/ worker representative and the employer or his or her representative, in the presence of the refusing worker.*

Step 3: If there is no Safety and Health Committee, the worker shall report his refusal to work to the employer or his representative and the OSHA Chief Inspector. The worker's refusal will be investigated in accordance with Section 18 of the OSH Act.

Step 4: The employer is required to conduct an investigation in accordance with Section 16 of the OSH Act. A determination of whether the refusal to work is legitimate requires the following to be satisfied:

- What were the reasons for refusal?
- Was the right procedure followed?
- Was there serious and imminent danger?
- Was the refusal investigated?
- Was there sufficient evidence to justify the refusal?

While the refusal to work is being investigated, the worker shall - during normal working hours - be in a safe place in the industrial establishment and make themselves available to assist, if necessary, in carrying out the investigation.

The employer may also assign the worker reasonable alternative work during his normal hours; or where assignment of reasonable alternative work is not practicable, give other directions to the worker. The employer must in no way adversely affect the employment of a worker or alter his position to his prejudice as a result of a genuine refusal to work situation.

Step 5: If the employer determines that the employee has reasonable grounds for refusal to work, the employer is required under Section 17 to contact the OSH Agency who will assign a Safety & Health Inspector to investigate.

Step 6: The Inspector will determine whether the refusal to work is justified.

Step 7: Where the matter is resolved, the worker shall return to work.

Step 8: If the worker is aggrieved by the decision of the Inspector, he/she may request that the Chief Inspector review the decision of the Inspector.

Step 9: The Chief Inspector will make a determination on whether conditions for refusal to work exist.

Step 10: The employer or employee may challenge the decision of the Chief Inspector at the Industrial Court.

"Any person who fails to comply with the decision of the Chief Inspector commits an offence.

Employees are reminded that the employer may take normal disciplinary action for failure to follow the above-mentioned procedure.

Mutual respect and cooperation between workers and their employers is the ideal atmosphere in which to find a resolution to the situation.

On behalf of the OSH Authority, all workers and employers should cooperate to produce safe and healthy workplaces in Trinidad and Tobago."

Dr. Victor Coombs
Chairman, OSH Authority