

Coronavirus: COVID-19 Update March 19, 2020

Work Refusal

What if one of my employees refuses to work because of COVID-19?

Workers do have the legal right to refuse work that they genuinely believe poses a threat to their health and safety. This right includes the condition of the workplace, equipment, violence, or contravention of the act that poses serious and imminent danger. (note there are limited rights to refuse for essential service workers and some industry sectors such as law enforcement, health care, first responders, and education).

If a worker refuses unsafe work, the employer must follow the procedure as described in the Occupational Health and Safety Act: <https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-v-right-refuse-or-stop-work-where-health-and-safety-danger>

The approach to the investigation of the refusal may need to be modified due to current situations of social distancing and isolation. Your worker health and safety representatives may not be available, the Ministry of Labour officials may not be attending workplaces in person, etc.

Ideally, in this case, the investigation will include reliable scientific information about COVID-19, and the risk of exposure to the worker. A risk assessment should be completed that includes the probability of exposure including the frequency, and any controls you have in place for prevention.

Consider the following factors (this list is not exhaustive):

- Does the worker, or a family member, have a compromised immune system or underlying health condition that could make exposure have more serious consequences?
- Is the worker's age a factor? Are they part of a more vulnerable demographic?
- Is it essential for the worker to have face to face contact with the public?
- Can you reasonably suspend some operations?
- Can you provide adequate PPE?
 - This may or may not be a viable solution based on the recommendations of health officials and infection prevention protocols
- Is there another worker that can perform those duties?
- Can the worker maintain at least 6 feet of distance from customers?
- Can you control the condition of the workplace / location?
- Do you know the health status of the people the worker will interact with?
 - Is it possible to pre-screen these people in a respectful and appropriate manner?

Note that you may not be aware of the underlying health issues of employees, and do not have the right to inquire about their diagnosis. However, in these exceptional situations it is wise to communicate with employees and encourage them to share this information with you, confidentially, so that you can implement protective measures for their safety.

You will have to assess the risk in the framework of the situation as they evolve in real time, as things are changing rapidly. Workers may be at risk in their personal lives as well such as when grocery shopping;



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however, as the employer you have a duty to mitigate the risk in the workplace. The worker also has a duty in this case, to social distance as much as possible.

The question is if you can provide sufficient measures to reduce the risk of exposure to as low as reasonably possible and if the work is essential. Remember that risk is subjective, and each person has their own risk tolerance. Employers need to be objective and reasonable when assessing the risk, respect employee concerns, and communicate clearly to employees to explain the measures being taken and how the risk is being reduced.

This is likely to be a recurring issue as we work through the implications of this virus and the messages from health officials and government agencies. There is no “one size fits all” answer. Each case will need to be assessed on its own merit and circumstances. And creative solutions may be required to mitigate the risk and ease the concerns of all parties.

If the worker will be exposed to a person that:

- Has tested positive for COVID-19;
- Is in mandatory quarantine or self-isolation because of:
 - Travel,
 - Contact with a person who as traveled,
 - By order of public health or other government/health officials,
 - Or showing symptoms;

then the right to refuse MAY be substantiated – depending on the job duties of the worker.