

WHAT TO DO IF YOU DO NOT FEEL YOUR EMPLOYER HAS PROVIDED A SAFE WORKPLACE

Employers are required to provide a safe work environment and employees have a right to refuse dangerous work.

The Alberta Federation of Labour provides this explanation of unsafe work and the procedure to refuse unsafe work on their website https://www.afl.org/your_rights:

Unsafe work is work that involves an "imminent danger," which can be:

- a danger that isn't normal for that type of work, or
- a danger under which a worker in that type of work would not normally do the work.

Workers in Alberta can refuse work which they believe puts them in imminent danger, or puts another worker at the workplace in imminent danger. The provincial government's Occupational Health and Safety Act explains this.

Domestic workers, such as nannies and housekeepers, and certain agricultural workers can't refuse unsafe work, because these workers aren't covered by the Occupational Health and Safety Act.

Workers who refuse unsafe work cannot be fired or disciplined as a result, but employers often do punish workers who report unsafe work. Workers who report unsafe works are still entitled to receive pay, but they may be assigned to do other work while the problem is being corrected.

The Occupational Health and Safety Act states that once they have been notified of unsafe work, they are obligated to ensure no other worker is assigned to perform the work unless:

- the worker to be assigned is not exposed to imminent danger,
- the imminent danger has been eliminated.

The procedure to refuse unsafe work

- (a) Reporting and remaining on site for the supervisor's investigation

The worker should report immediately to both the supervisor and the worker health and safety representative (if there is one) the refusal to work and the related safety concern. You should remain on site for the shift, while taking every measure to report the refusal. This may minimize complications later in the process.

After being told about the refusal, the supervisor investigates the work, fixes it, and gives a report to the worker of what was found, and the repairs that were made.

- (b) Health and safety officer's investigation

After receiving the supervisor's report, a worker who believes the work is still unsafe can file a complaint with Workplace Health and Safety at 1-866-415-8690. Workers who are deaf or have a hearing impairment can call 780-427-9999 in Edmonton, or 1-800-232-7215 from elsewhere in the province.

The worker health and safety representative should be told about the disagreement, too.

An occupational health and safety officer from Workplace Health and Safety investigates the work, makes a decision, and gives the decision in writing to the worker and the supervisor. It is expected that the supervisor has the work fixed if the officer's decision requires it, and the worker returns to work if the officer decides that the work is not unsafe.

A worker disagreeing with the officer's decision can request the Occupational Health and Safety Council to conduct a review.

Alberta Occupational Health and Safety legislation applies to all workplace environments. The section in the OHS Act that deals with Dangerous Work and Discriminatory Action is provided below and comes directly from the website link provided. We recommend that you familiarize yourself with this section of the Act to ensure you understand your obligations when addressing dangerous work.

ALBERTA OCCUPATIONAL HEALTH AND SAFETY ACT

https://www.qp.alberta.ca/1266.cfm?page=O02P1.cfm&leg_type=Acts&isbncln=9780779800865&display=html

Part 4 Dangerous Work and Discriminatory Action

Right to refuse dangerous work

31(1) Subject to this section and section 5, a worker may refuse to work or to do particular work at a work site if the worker believes on reasonable grounds that there is a dangerous condition at the work site or that the work constitutes a danger to the worker's health and safety or to the health and safety of another worker or another person.

(2) A worker who refuses to work or to do particular work under subsection (1) shall promptly report the refusal and the reasons for it to the worker's employer or supervisor or to another person designated by the employer or supervisor.

(3) If the employer does not remedy the dangerous condition immediately, the employer shall immediately inspect the dangerous condition in the presence of the worker, when it is reasonably practicable to do so and when the presence of the worker does not create a danger to the health and safety of that worker or of any other person, and one of the following persons, when it is reasonably practicable to do so and when the presence of that person does not create a danger to the health and safety of that person or of any other person:

- (a) if there is a joint work site health and safety committee established under section 16, the co-chair or a committee member who represents workers;
- (b) if there is a health and safety representative designated under section 17, that representative;
- (c) if there is no committee or representative, or where no committee member or representative is available, another worker selected by the worker refusing to do the work.

(4) The employer required to inspect under subsection (3) shall take any action necessary to remedy any dangerous condition, or ensure that such action is taken.

(5) Until the dangerous condition is remedied, the worker who reported it may continue to refuse to work or to do particular work to which the dangerous condition may relate.

(6) When a worker has refused to work or to do particular work under subsection (1), the employer shall not request or assign another worker to do the work until the employer has determined that the work does not constitute a danger to the health and safety of any person or that a dangerous condition does not exist.

(7) Where the employer assigns another worker to do the work, the employer shall advise that worker, in writing, of

- (a) the first worker's refusal,
- (b) the reasons for the refusal,
- (c) the reason why, in the opinion of the employer, the work does not constitute a danger to the health and safety of any person or that a dangerous condition is not present, and
- (d) that worker's right to refuse to do dangerous work under this section.

(8) On completing an inspection under subsection (3), the employer shall prepare a written report of the refusal to work, the inspection and action taken, if any, under subsection (4).

(9) The employer shall give a copy of the report completed under subsection (8) to

- (a) the worker who refused work under subsection (1),
- (b) the joint work site health and safety committee, if one exists, and
- (c) the health and safety representative, if one exists.

(10) The employer shall ensure that a report given under subsection (9) does not contain any personal information related to the worker who refused to work under subsection (1).

Report of dangerous condition to an officer

32(1) If the dangerous condition or the danger to the worker's health and safety or to the health and safety of another worker or another person is not remedied after an inspection under section 31(3), the worker who refused to perform the work under section 31(1) or any person present during the inspection may file a complaint with an officer.

(2) On receiving a complaint under subsection (1), the officer shall investigate the matter and decide whether there is a dangerous condition or whether the work the worker has refused to do constitutes a danger to the health and safety of the worker or of any other worker or person at the work site.

(3) If the officer decides that there is a dangerous condition or a danger to the worker's health and safety or to the health and safety of any other worker or person at the work site, the officer shall

- (a) make a written report stating the officer's decision,
- (b) make any order under this Act that the officer considers necessary, and
- (c) give a copy of the report and any order to
 - (i) the worker who refused to do the work,
 - (ii) the employer,
 - (iii) the joint work site health and safety committee, if one exists,
 - (iv) the health and safety representative, if one exists, and
 - (v) any other person who filed a complaint.

(4) If the officer decides that a dangerous condition is not present, the officer shall, in writing,

- (a) inform the employer and the worker of that decision,
- (b) inform the joint work site health and safety committee, if one exists, or the health and safety representative, if one exists, of that decision, and
- (c) inform the worker that the worker is no longer entitled to refuse to do the work.

Worker entitled to be paid despite refusal

33(1) If a worker has refused to work or to do particular work under section 31(1),

- (a) the worker is entitled to the same wages and benefits that the worker would have received had the worker continued to work, and
- (b) the employer may reassign the worker temporarily to alternate work.

(2) A work reassignment under subsection (1)(b) is not considered discriminatory action for the purposes of section 35.

Employer not to make worker work in dangerous conditions

34(1) When the employer or supervisor at a work site knows or ought to know of a condition at the work site that is or is likely to be dangerous to the health and safety of a worker, the employer or supervisor shall not require or permit any worker to do that work until the dangerous condition is remedied.

(2) Subject to section 31, nothing in subsection (1) prevents the doing of any work or thing at a work site that may be necessary to remedy a condition that is or is likely to be dangerous to the health and safety of a worker.

Prohibition of discriminatory action

- 35** No person shall take any discriminatory action against a worker, by reason of that worker
- (a) acting in compliance with this Act, the regulations, the OHS code or an order given under this Act, the regulations or the OHS code or the terms, conditions or requirements on an acceptance under section 55 or on an approval under section 56,
 - (b) being called to testify, intending to testify or testifying in a proceeding under this Act,
 - (c) giving relevant information about work site conditions affecting the health and safety of any worker engaged in work or any other person present at the work site to any of the following:
 - (i) an employer or a person acting on behalf of an employer;
 - (ii) an officer or another person concerned with the administration of this Act, the regulations or the OHS code;
 - (iii) a joint work site health and safety committee or a health and safety representative,
 - (d) performing duties or exercising rights as a member of a joint work site health and safety committee or as a health and safety representative,
 - (e) assisting or having assisted with the activities of a joint work site health and safety committee or health and safety representative,
 - (f) refusing to do work under section 31(1),
 - (g) seeking to establish a joint work site health and safety committee or have a health and safety representative designated,
 - (h) being prevented from working because of an order under this Act, the regulations or the OHS code, and
 - (i) taking reasonable action to protect the health and safety of that worker or any other person.

Discriminatory action complaint

36(1) A worker who has reasonable cause to believe that the worker has been subjected to discriminatory action in respect of an alleged contravention of section 35 may file a complaint with an officer.

(2) An officer who receives a complaint under subsection (1) shall investigate, make a decision and prepare a written report of the worker's complaint, the investigation and the decision of the officer and shall give the worker and the employer a copy of the report.

(3) If, in the opinion of the officer, discriminatory action has occurred, the officer shall in writing order an employer to do one or more of the following:

- (a) cease the discriminatory action;

- (b) reinstate the worker to the worker's former employment under the same terms and conditions under which the worker was formerly employed;
- (c) pay the worker not more than the equivalent of wages and benefits that the worker would have earned if the worker had not been subjected to discriminatory action;
- (d) remove any reprimand or other reference to the matter from the worker's employment records;
- (e) other measures to prevent recurrence.

(4) A worker or an employer who receives a report under subsection (2) may appeal the matter to the appeal body under section 71 by serving a notice of appeal on the appeal body within 30 days from the receipt of the report.

(5) If an officer determines that discriminatory action has been taken against a worker who has acted or participated in an activity described in section 35,

- (a) there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 35, and
- (b) the onus is on the employer to establish that the discriminatory action was taken against the worker for a reason other than acting or participating in an activity described in section 35.