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Right to refuse dangerous work

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Introduction

This document is about the right to refuse dangerous work. It aims to inform employees, employers, members of the work place committee, and occupational health and safety representatives of their legal rights and obligations when an employee exercises a refusal to work under Part II of the Canada Labour Code (Code).

The Labour Program of Employment and Social Development Canada enforces the Code, the purpose of Part II is to protect your workplace health and safety.

This document is part of a series aiming to provide information on Part II of the Code. It contains changes made to the Code, which came into force on October 31, 2014.

The use of the masculine gender has been adopted to facilitate reading and has no discriminatory intent.

Definition

The definition of danger reads as follows:

"any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered."

The right to refuse dangerous work

Any employee subject to Part II of the Code has the right to refuse dangerous work as long as they have reasonable cause to believe that it presents a danger. Specifically the Code states that an employee may refuse in the following circumstances:

- to use or operate a machine that constitutes a danger to the employee or to another employee
- to work in a place
- to perform an activity that constitutes a danger to the employee or to another employee

The Code contains certain exceptions regarding the right to refuse dangerous work. These exceptions include: if the refusal puts the life, health or safety of another person directly in danger; or, the danger in question is a normal condition of employment.

Note: The procedure is different for an employee working on a ship or aircraft that is in operation. If the employee believes that there is a work-related danger, the employee must bring it to the attention of the person in charge who will then decide what to do after taking into account the safety of the aircraft or ship.

Exercising the right to refuse

An employee wishing to exercise the right to refuse dangerous work shall immediately report the dangerous situation to the employer. ¹ If more than one employee has made a report of a similar nature, those employees may designate one employee from among themselves to represent them during the work place committee's or representative's investigation.

The employee shall also specify to the employer whether he or she intends to pursue the matter under the Code or under a collective agreement, when applicable, to deal with the refusal. The employee's decision cannot be changed unless both the employee and the employer agree to do so. If the employee decides to exercise recourse under the collective agreement, the Minister will not intervene.

Employer's investigation and actions to be taken

Upon being notified that the employee has exercised the right to refuse dangerous work, the employer shall immediately investigate the situation in the presence of the employee. The investigation is conducted even if the employee or the person designated to represent the employee chooses not to be present.

The employer cannot, at this point, assign someone else to do the work that the employee refused to do. An employer can only do this after the matter has been fully investigated internally as described in this document, and has been properly referred to the Minister of Labour.

The Code states that the employees affected by a refusal may, for the purpose of calculating wages and benefits, be at work until the end of the scheduled work period or until work resumes, whichever period is shorter.

Once the employer's investigation has been concluded, the employer shall prepare a written report setting out the results of the investigation. If, following the investigation, the employer agrees that a danger exists, the employer shall take immediate action to protect employees from the danger. The employer shall also inform the work place committee or representative of the situation and the action taken to resolve it.

Continued refusal of the employee

If following the employer's investigation, the employee does not agree with the employer decision, the employee can continue the refusal. The employee shall immediately report the continued refusal to the employer and to the work place committee or representative.

Investigation by the work place committee or representative

Upon being informed of a continued refusal, the work place committee or representative shall immediately initiate an investigation in the presence to the employee. At the conclusion of the investigation, the work place committee or representative shall immediately provide a written report to the employer that sets out the results of the investigation and their recommendations, if any. The work place committee shall appoint two of its members to conduct the investigation, one member representing the employees, the other representing the employer. To allow for an unbiased investigation by the work place committee, it is preferable that the assigned employer member on the committee not be the same person who conducted the original employer investigation.

The employer can provide the work place committee or representative with additional information and ask that they review their report, accordingly. If the work place committee or representative considers it appropriate, they can present to the employer a revised report that takes into account this new information.

Employer's decision

After receiving the report from the work place committee or representative, the employer makes one of the following decisions:

Danger exists:

The employer shall take immediate action to protect employee(s) and inform the work place committee or representative of the situation and the actions taken to resolve it.

If after the corrective measures are taken and the employee agrees, he or she returns to work.

Danger exists but the refusal is not permitted under ss.128.(2) as it puts lives, health or safety of another person directly in danger or the danger is a normal condition of employment.

The employer shall notify the employee in writing.

If the employee agrees, he or she returns to work.

Danger does not exist:

The employer shall notify the employee in writing.

If the employee agrees, he or she returns to work.

If the employee disagrees with the employer's decision, the employee shall inform the employer that the refusal to work will continue. The employer shall immediately inform the Minister of Labour and the work place committee or representative and shall provide the Minister copies of the two investigation reports.

Minister's investigation

The Minister, upon being informed of the employer's decision and the continued refusal, shall conduct an investigation unless the Minister is of the opinion that the refusal is: more effectively addressed by other legislation, trivial, frivolous or vexatious, or made in bad faith. The Minister investigates in the presence of the employer, employee and a member of the work place committee appointed by the employees or of the representative or, if this is not possible, in the presence of any employee from the work place who is appointed by the employee. The employee may continue the refusal to work during the Minister's investigation on the situation.

At this point, the employer may assign another employee to perform the refused work, but must first ensure the other employee:

- is qualified to perform the work;
- is advised of the continued refusal and the reasons for it; and
- will not be put in danger.

In the event that the Minister conducts an investigation, the Minister shall also consider:

- if there is a previous or ongoing investigation(s) in relation to the same employer and that involve substantially the same issues, and decide whether or not to rely on the findings of previous investigations; or
- if the current investigation can be combined with an ongoing investigation(s) in order to issue a single decision.

After these points have been considered, the Minister will conduct an investigation. At the conclusion of the investigation, the Minister shall give written notification of one of the following decisions to the employer and the employee:

Danger exists:

The Minister shall issue the directions that the Minister considers appropriate.

An employee may continue to refuse to work until the directions are complied with or until they are modified or cancelled under this Part.

Danger exists but the refusal is not permitted under ss.128.(2) as it puts lives, health or safety of another person directly in danger or the danger is a normal condition of employment.

The Minister's decision shall be provided in writing.

The employee is no longer entitled to refuse to work.

Danger does not exist:

The Minister's decision shall be provided in writing.

The employee is no longer entitled to refuse to work.

Following the Minister's written decision, the Minister shall provide the employee, employer and work place committee or representative with a copy of the written report within 10 days of its completion.

In the event that the Minister does not conduct an investigation because the Minister is of the opinion that:

- the matter could be more appropriately dealt with, initially or at each step by means of a procedure provided for under Parts I or III of the Code or under another Act of Parliament;
- the matter is trivial, frivolous or vexatious or;
- the continued refusal by the employee is in bad faith.

The Minister shall provide this decision in writing to the employer and employee as soon as feasible. After being informed of the Minister's decision not to proceed with an investigation, the employee is no longer entitled to refuse to work.

If the employee feels aggrieved by the Minister's decision to not investigate the refusal to work the employee may file an application for judicial review with the Federal Court within thirty (30) days after receiving the decision.

Appealing the Minister's decision

An employee who feels aggrieved by the Minister's decision that no danger exists or that the refusal to work is not permitted under ss.128.(2) has ten (10) days after receiving the decision to appeal the decision in writing to an appeals officer.

Appealing the Minister's direction

Any employer, employee or trade union that feels aggrieved by the Minister's direction has thirty (30) days after the direction was issued to appeal the direction in writing to an appeals officer.

Disciplinary action taken by the employer

The Code allows an employer to take disciplinary action against an employee who the employer can demonstrate has willfully abused his right to refuse dangerous work. However, disciplinary action can only take place after all the applicable investigations and appeals have been completed.

The employer must provide written reasons to the employee for any disciplinary action taken within fifteen (15) working days of the employee's request.

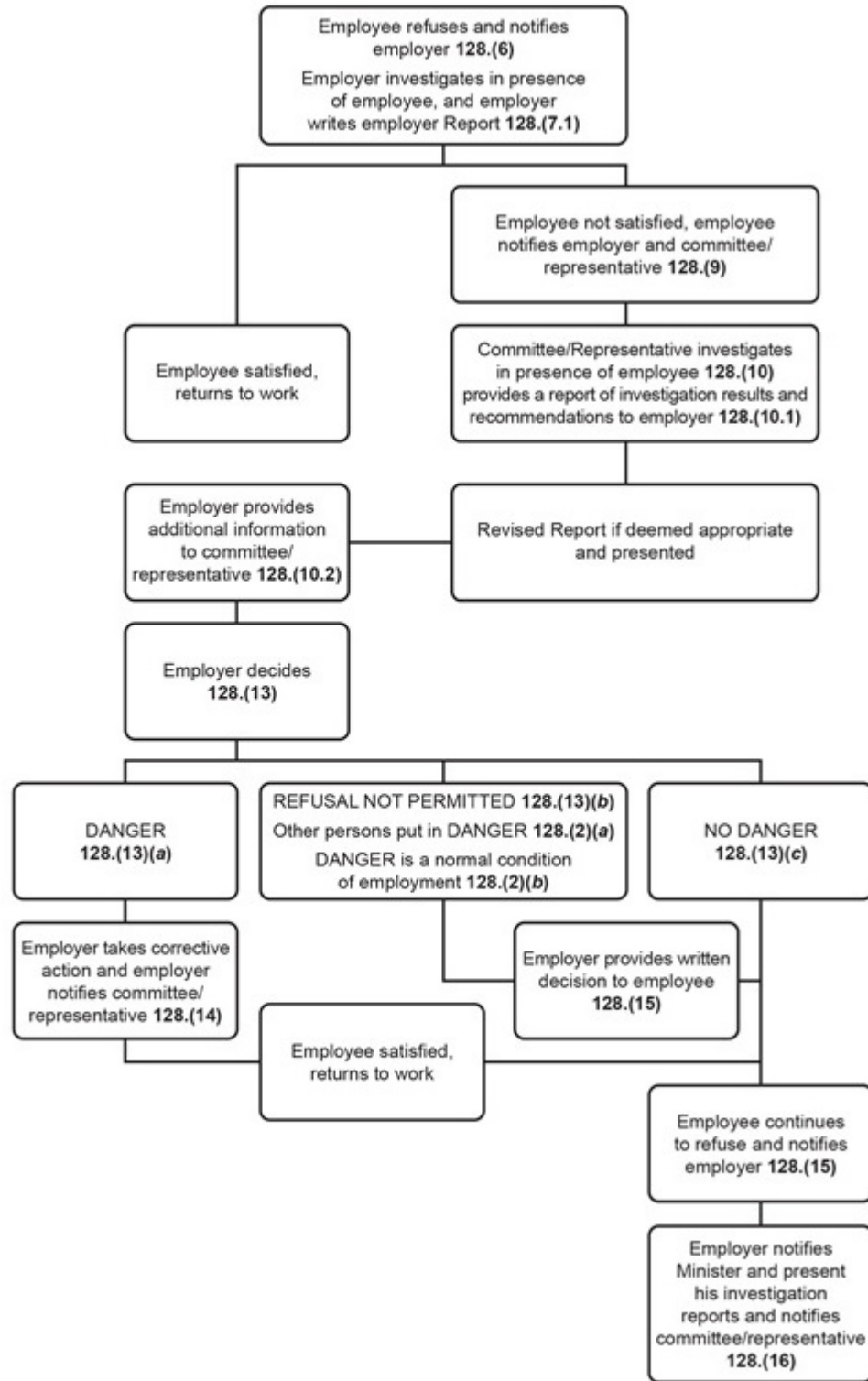
The Code allows an employee the right to make a complaint to the Canada Industrial Relations Board. Public servant has the right to make a complaint to the Public Service Labour Relations Board (PSLRB) about improper dismissal, lay off, suspension or other penalty.

The employee has ninety (90) days from the time of the disciplinary action to make a complaint to the Board or the PSLRB.

If an employee complains to the Board or the PSLRB that undue disciplinary action has been taken because of having exercised their right to refuse dangerous work, it will be up to the employer to prove that this is not so.

The Board or PSLRB will make the final decision to resolve the situation; however, the employee can appeal the Board's decision to the Federal Court.

Work place refusal to work flow chart



► Description of: Work place refusal to work flow chart

This pamphlet is provided for information purposes only. For interpretation and application purposes, refer to Part II of the Canada Labour Code (Occupational Health and Safety) and the Canada Health and Safety Regulations, and relevant amendments.

Information about these provisions may be obtained from the Labour Program by calling toll free at 1-800-641-4049, by visiting the website or by submitting questions or comments through the Labour Program "Contact Us" form.

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- 1 The Code defines an "employer" as a person who employs one or more employees and includes an employers' organization and any person who acts on behalf of an employer.
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