



Understanding the Right to Refuse Work Under Quebec and Federal Law

May 03, 2019

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Under Quebec law, a worker has a broadly applicable right to refuse to perform work that she believes to be unsafe and/or a risk to her health. Should this occur, the employer must follow a specific process, failing which it could be subject to administrative or penal sanctions. This post, which is based on our recent article in *The Canadian HR Reporter*, examines the issues surrounding refusals to work.

Background

The right to refuse work is found in the [Act respecting occupational health and safety](#) (the “Act”), Article 12 of which provides that a worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work will expose him to a danger to his health, safety or physical well-being, or will expose another person to a similar danger.

- The conditions for the legitimate exercise of the right of refusal include the following:
- The person exercising the right must be a worker pursuant to the Act.
- The work must have been requested by the employer.
- The worker must have reasonable grounds to believe that the performance of particular work will expose her to a danger.
- The conditions of the work being requested are unreasonable or abnormal.
- The right of refusal cannot put the life, health, safety or physical well-being of another person in immediate danger.
- The worker must immediately inform the employer of the exercise of the right of refusal.

Considering the above, it is important to define the general obligations of both the worker and the employer in the context of a work refusal. First, given that workers have a legal right to refuse to work in certain circumstances, an employer cannot simply reject a worker’s allegation that the work constitutes a danger, without first examining the situation.

If a worker simply refuses to perform certain tasks without alleging any specific danger, this will not be considered as the exercise of the right to refuse to work under the Act and may be considered insubordination.

Process, Possible Outcomes

Upon being informed of the exercise of a right of refusal, the employer must proceed with an examination of the situation in conjunction with the designated safety representative to determine if there is a danger that justifies the work refusal. Further to this examination, several scenarios are possible:

- If the employer and the safety representative agree that there is a danger, they will work together to eliminate this danger, and corrective measures must be put in place.
- If the employer and the safety representative agree that there is no danger, the work can resume. If the worker maintains the refusal, notwithstanding the findings of the employer and the safety representative, he can request the intervention of an inspector of the Commission des normes, de l'équité et de la santé et sécurité du travail (CNESST). In the interim, and unless otherwise ordered by the CNESST, the employer can decide to have the work performed by another worker, subject to informing this other worker that a work refusal was exercised, along with the reasons alleged by the first worker.
- If there is a disagreement between the employer and the safety representative, an inspector of the CNESST will intervene.

While the reasons relating to the work refusal are under review, the worker is deemed to be at work and must therefore be compensated. In turn, the Act expressly allows the employer to temporarily assign the worker to any other task that he is reasonably able to accomplish; therefore, the worker must perform this assignment.

Further, the work that is subject to the work refusal cannot be performed by any other person until (a) the employer and the safety representative are in agreement that there is no danger; and (b) the employer and the safety representative are in agreement that the work refusal is reasonable, but only as it relates to the particular case of the worker that exercised the work refusal; or (c) an inspector of the CNESST has rendered a decision on the merits of the work refusal.

What is a “Danger”?

Among the concepts that are often subject of debate in cases of work refusal is the concept of danger. While the Act does not specifically define “danger”, case law has given that concept its ordinary meaning.

Can Disciplinary Measures be Imposed on the Worker?

In the context of a work refusal, employers are often reflecting on whether specific measures can be imposed on the worker who exercised the right of refusal. In this regard, it is important to remind employers that the Act expressly states that no employer can dismiss, suspend, transfer or take any other reprisal against a worker on the grounds that she exercised a right to refuse to work.

However, case law has recognized that when a worker exercises a right to refuse to work not on the basis of a reasonable apprehension of danger, but rather in a manner that is abusive, in bad faith, or in breach of the exceptions contained in the Act, an employer can impose a disciplinary measure on the worker, the severity of which will depend on the specific circumstances.

Employers Governed by the Canada Labour Code

It is important to note that the work refusal process for employers that are federally regulated – such as interprovincial transportation companies, radio broadcasting stations and banks – is governed by Part II of the Canada Labour Code and not by the Quebec Act respecting occupational health and safety. While the general underlying principles under the two acts are fairly similar, the process that must be followed by the employee and the employer and their respective obligations are different.

For example, upon being informed of the exercise of right of refusal, the employer must immediately investigate the situation in the presence of the worker. Once the employer's investigation has been concluded, the employer must prepare a written report setting out the results of the investigation.

If, following the investigation, the employer agrees that a danger exists, the employer must take immediate action to protect workers from the identified danger.

If the worker disagrees with the employer's findings that no danger exists, he must immediately report the disagreement to the employer and the workplace committee or representative. The committee or representative will then investigate the matter and prepare a written report to the employer, setting out its findings and recommendation.

The employer must then decide whether a danger exists. If the worker disagrees with the employer's decision, he must inform the employer, and the employer must immediately inform the federal Ministry of Labour and the workplace committee or representative. The ministry will then investigate the merits of the work refusal.

[This is a version of an article first appearing in Canadian HR Reporter on April 1, 2019.](#)

Listen to the [podcast](#) (20 mins) with [Patrick Essiminy](#) and the Editor at *Canadian HR Reporter* discussing key health and safety rules in the *Canada Labour Code*, and what to do when an employee makes a work refusal under health and safety legislation.

View the [video](#) (available in French only) of the authors discussing the right to refuse to work for health and safety reasons, presented at a seminar in January 2019.

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