## RIGHT TO REFUSE DANGEROUS WORK

[Organization Name] understands all workers have a right to a safe and healthy working environment. The purpose of this policy is to outline:

* The right to refuse dangerous work under the *Canada Labour Code (Code)*
* Who has the right to refuse
* The procedure that must be followed in the event of a refusal to work

DEFINITIONS

“Danger” within this policy means "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” (Government of Canada).

POLICY

[Organization Name] respects the legal right of employees to refuse dangerous work if they have reasonable cause to believe it presents a danger and as long as:

1. the refusal to work will not put the life, health, or safety of another person directly in danger; or
2. the danger in question is not a normal condition of employment.

The Code lays out that employees may refuse:

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

When an employee wishes to exercise their right to refuse dangerous work, they must follow the procedure set out in the *Canada Labour Code*.

There will be no negative consequence for employees who exercise their right to refuse in good faith and who adhere to the processes set out by law and in this policy.

An employee who exercises their right to refuse dangerous work will continue to collect wages and benefits as if they were at work until the end of the scheduled work period, or until work resumes, whichever comes first.

[Organization Name] will not ask another employee to perform work another employee has refused to do until the matter has been fully investigated internally and referred to the Ministry of Labour.

WORK REFUSAL PROCESS

The following process has been sourced directly from the Government of Canada and must be followed when an employee exercises their right to refuse dangerous work.

Refusal of Dangerous Work:

* The refusal process begins with the worker reporting the dangerous situation to their employer. This should be done immediately. If more than one employee reports the danger, they may choose one worker to represent them during the investigation
* The employee or employees must also state if they will pursue the matter under the Code or Collective Agreement. This decision cannot be changed unless both parties agree. If the matter is being investigated via the collective agreement, the Minister will not get involved.

Investigation by Employer:

* [Organization Name] will investigate the situation in the presence of the employee right away
  + This will occur even if the employee or representative decides not to be present
* The employer will prepare a written report containing the results of the investigation
* If the employer agrees danger is present, they will:
  + Take immediate action to protect employees
  + Notify the work place committee of the issue and the action(s) taken to resolve the issue(s)

Continued Refusal to Work

* An employee may continue to refuse to work if they do not agree with the employer’s investigation by reporting their continued refusal to the work place committee
* The committee will then investigate an investigation with the worker present
* At the end of their investigation the workplace committee will immediately provide a written report to the employer which outlines:
  + Results of the investigation
  + Any recommendations
* Next, the workplace committee will appoint two members to complete another investigation (one employer representative and one employee representative)
  + Additional information from the employer may be presented to the committee for them to review
  + A revised report with new information may be presented to the employer after the investigation, if it is deemed necessary

Employer Decision

Once the report is received from the workplace committee, the employee must decide whether:

1. Danger exists;
2. 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; or
3. Danger does not exist.

If danger exists, the employer shall act immediately to rectify the situation and notify the work place committee of the actions taken. If the employee agrees the measures taken have corrected the issue, they can return to work.

If the refusal is not allowed, the employer will inform the employee about this in writing and if the employee agrees, they may return to work.

If danger does not exist, the employer will inform the employee about this in writing and if the employee agrees, they may return to work.

If the employee disagrees with the employer’s decision in any of the above scenarios, [Organization Name] will immediately notify the Minister of Labour and the workplace committee. [Organization Name] will also provide the Minister with the investigation reports provided at each step.

During the Minister’s investigation, [Organization Name] may choose to assign an alternate employee to perform the work, if the first employee is still refusing, as long as the appointed 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.

Minister’s Investigation

If the Minister is notified of a continued refusal, they will conduct an investigation in the presence of the employer, employee, and another representative of the employee (a worker committee member, if possible).

The only reason the Minister will not conduct an investigation is if they believe the issue should be dealt with by another law or section of the Code. In this case the Minister would provide this decision in writing as soon as possible.

If the Minister investigates, they will provide written notification to the employer and employee as soon as possible with the results of the investigation that:

1. Danger exists;
2. 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; or
3. Danger does not exist.

Where danger exists, the employee may continue to refuse to work until all directions given by the Minister to address the danger are fulfilled.

In all other situations, the Minister will provide the decision in writing and the employee will no longer be entitled to refuse to work. A full report will be provided by the Minister to the employer, employee and workplace committee within 10 days of its completion.

Employee Recourse

In the case that a Minister decides not to investigate a continued work refusal, the employee may file an application for judicial review with the Federal Court within thirty (30) days after receiving the 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.

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

If it can be proven an employee of [Organization Name] has willfully abused the right to refuse dangerous work through appropriate investigation as set out within the Code, disciplinary action may be taken.