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Subject: Refusal to Work	Date Approved: April 6, 2009
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**Introduction:**

One of the rights provided to Ontario Workers is the right to refuse unsafe work with no reprisals from the employer provided the employee complies with the act, its regulations, any order made against the employer, and that this right not be abused for non-safety related issues. This right is granted by the Occupational Health and Safety Act (OHSA), and the purpose of this program is to provide direction to managers and all employees in the interpretation of this right to ensure that it is exercised properly and consistently by all involved.

**Worker Initiated Refusal to Work:**

The rights of an individual worker to refuse to do unsafe work are found in section 43 of the Occupational Health and Safety Act. These rights are as follows:

**(3) Refusal to work** - A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) Any equipment, machine, device, or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) The physical condition of the work place or the part thereof in which he works or is to work is likely to endanger himself, herself;
- (b.1) workplace violence is likely to endanger himself or herself; or
- (c) Any equipment, machine device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works is in contravention of the OHSA or the regulations and such contravention is likely to endanger himself, herself, or another worker.

**(4) Report of refusal to work** - Upon refusing to do work or do particular work, the worker shall promptly report the circumstances of their refusal to their supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) A committee member who represents workers, if any;
- (b) A health and safety representative, if any; or
- (c) A worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them, who shall be made available and who attend without delay.

**(5) Worker to remain near work station** - Until the investigation is completed, the worker shall remain in a safe place near his or her workstation.

**(6) Refusal to work following investigation** - Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

- (a) The equipment, machine, device or thing that was the cause of his refusal to work or do particular work continues to be likely to endanger himself, herself or another worker or another worker;
- (b) The physical condition of the work place or the part thereof in which he works continues to be likely to endanger himself or herself; or
- (c) Any equipment, machine device or thing that he or she is to use or operate or the physical condition of the work place or the part thereof in which he works or is to work is in contravention of the OHSA or the regulations and such contravention continues to be likely to endanger himself, herself or another worker.

The worker may refuse to work or do particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.

**(7) Investigation by inspector** -An inspector shall investigate the refusal to work in the presence of the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4)(a), (b) or (c).

**(8) Decision of inspector** -The inspector shall, following the investigation referred to in subsection (7), decide whether the machine, device, thing or the workspace or part thereof is likely to endanger the worker or another person.

**(9) Idem** - The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4)(a), (b) or (c).

**(10) Worker to remain at a safe place pending decision** - Pending the investigation and decision of the inspector, the worker shall remain at a safe place near his or her work station during his normal working hours unless the employer, subject to the provisions of a collective agreement, if any,

- (a) Assigns the worker reasonable alternative work during such hours; or
- (b) Subject to section 50, where an assignment of reasonable work is not practicable, gives other directions to the worker.

**(11) Duty to advise other workers** - Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the work place being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other workers' refusal and of his or her reasons for the refusal.

**(12) Idem** - The person referred to in subsection (11) must be,

- (a) A committee member who represents workers and, if possible, who is a certified member;



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- (b) A health and safety representative; or
- (c) A worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is no trade union, by the workers to represent them.

**(13) Entitlement to be paid** - A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be proper,

- (a) For the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4)(a), (b) or (c); and
- (b) For time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12).

### **Reprisals Prohibited by Employer:**

Under section 50 of the Act it, the act, provides a worker who is acting in compliance with of this act and regulations protection from the employer in case reprisals are threatened for the use of this right. This protection is only extended in legitimate cases and the employer can still discipline a worker for using the Right to Refuse Unsafe Work for reasons other than its intended purpose, i.e. if the refusal is for non-safety related gains/issues. In the event that a work refusal was made in bad faith, or if the worker continues to refuse the work after the Ministry of Labour inspector finds that the work is unlikely to endanger the worker, NH FHT may elect to utilize disciplinary action(s) up to and including termination of employment with cause

### **Stages of Work Refusal:**

1. The first stage of an unsafe work refusal, section 23. -(3) is based on "a reason to believe", or a gut feeling, that the work or a condition of the work is unsafe and that it warrants a refusal to work. During this phase of the refusal process, review of the refusal by other members of Management or Safety Committee Members is strongly encouraged in order to resolve the refusal at this stage. The intention at the first stage is to determine the root issue of the refusal and to utilize all available resources to resolve the refusal.
2. The second stage of an unsafe work refusal, section 23. -(6), involves refusals where after the first stage the worker continues to refuse to work and that he now has reasonable grounds, no longer a gut feeling but reasons or facts, to believe that the work will be a source of danger to himself or to another worker. It must be noted here that the first stage review of the situation must be fully exhausted before continuing on with the second stage.
3. When all internal review and options are exhausted a manager shall call in for a Ministry of Labour Inspector to resolve the concern. It is preferred that both the Management and Workers' representative notify the Ministry of Labour together to request that a Inspector resolve the work refusal when all the internal resources have been exhausted.

- While waiting for the Inspector to arrive, review the situation, and issue a decision in writing. The worker may be assigned reasonable alternative work. Additionally, a replacement worker for the disputed machine or workplace may be approached to perform the job provided that the newly assigned worker is informed of the reasons for the work refusal and that this worker be informed in the presence of his or her workers' representative. At the conclusion of the inspectors investigation a decision will be given in writing to the Worker, the employer and their representatives as soon as is practicable.

### **Training:**

All employees shall be made familiar with the right of refusal to do unsafe work, the reporting of a refusal to their supervisor and how a work refusal flows. Additionally, managers shall be trained to recognize an employee's right to refuse work and begin the investigation process.

