

Health and Safety Q&A

General overview

Dear AJC Members,

As a result of recent inquiries involving a few recent work-related incidents, the AJC has developed the following Q&A to assist those members who have reason to believe that their or their colleague's health and safety may be at risk while at the workplace. Please review the enclosed and direct any specific H&S inquiries you may to your local employee health and safety representative or the AJC directly at the admin@ajc-ajj.com.

What H&S legislative and collective agreement provisions govern health and safety in my workplace?

Section 240 of the Public Service Labour Relations Act (PSLRA) and Part 2 of the Canadian Labour Code (CLC) http://laws.justice.gc.ca/eng/L-2/page-2.html#anchorbo-ga:l_II apply.

Additionally, refer to section 26 of the AJC-AJJ collective agreement.

<http://www.ajc-ajj.org/eng/Shared%20Documents/AJC%20Collective%20Agreement%20-%20final%20-%20July%2023%202010.pdf>

What can I do if I have a concern regarding my or someone else's health and safety in the workplace?

Prior to filing a complaint or refusal, we encourage our members to first contact their area health and safety representative for advice and ongoing support. If a health and safety representative is unavailable, contact should be made with an AJC representative.

The following internal complaint resolution process must be followed under the CLC prior to contacting a health and safety officer:

"INTERNAL COMPLAINT RESOLUTION PROCESS"

Complaint to supervisor

127.1 (1) An employee who believes on reasonable grounds that there has been a contravention of this Part or that there is likely to be an accident or injury to health arising out of, linked with or occurring in the course of employment shall, before exercising any other recourse available under this Part, except the rights conferred by sections 128, 129 and 132, make a complaint to the employee's supervisor.

Resolve complaint

(2) The employee and the supervisor shall try to resolve the complaint between themselves as soon as possible.

Investigation of complaint

- (3) The employee or the supervisor may refer an unresolved complaint to a chairperson of the work place committee or to the health and safety representative to be investigated jointly
- (a) by an employee member and an employer member of the work place committee; or
 - (b) by the health and safety representative and a person designated by the employer.

Notice

- (4) The persons who investigate the complaint shall inform the employee and the employer in writing, in the form and manner prescribed if any is prescribed, of the results of the investigation.

Recommendations

- (5) The persons who investigate a complaint may make recommendations to the employer with respect to the situation that gave rise to the complaint, whether or not they conclude that the complaint is justified.

Employer's duty

- (6) If the persons who investigate the complaint conclude that the complaint is justified, the employer, on being informed of the results of the investigation, shall in writing and without delay inform the persons who investigated the complaint of how and when the employer will resolve the matter, and the employer shall resolve the matter accordingly.

Stoppage of activity

- (7) If the persons who investigate the complaint conclude that a danger exists as described in subsection 128(1), the employer shall, on receipt of a written notice, ensure that no employee use or operate the machine or thing, work in the place or perform the activity that constituted the danger until the situation is rectified.

Referral to health and safety officer

- (8) The employee or employer may refer a complaint that there has been a contravention of this Part to a health and safety officer in the following circumstances:
- (a) where the employer does not agree with the results of the investigation;
 - (b) where the employer has failed to inform the persons who investigated the complaint of how and when the employer intends to resolve the matter or has failed to take action to resolve the matter; or
 - (c) where the persons who investigated the complaint do not agree between themselves as to whether the complaint is justified.

Investigation by health and safety officer

- (9) The health and safety officer shall investigate, or cause another health and safety officer to investigate, the complaint referred to the officer under subsection (8).

Duty and power of health and safety officer

- (10) On completion of the investigation, the health and safety officer
- (a) may issue directions to an employer or employee under subsection 145(1);
 - (b) may, if in the officer's opinion it is appropriate, recommend that the employee and employer resolve the matter between themselves; or
 - (c) shall, if the officer concludes that a danger exists as described in subsection 128(1), issue directions under subsection 145(2).

Interpretation

(11) For greater certainty, nothing in this section limits a health and safety officer's authority under section 145." 2000, c. 20, s. 10.

Can I exercise my right to refuse work for health and safety reasons and if so, under what circumstances?

Section 128(1) of the Canadian Labour Code part 2 provides for the right to refuse work if you have reasonable cause to believe that a danger exists. Under section 122, (1) of the CLC, 'danger' means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system." Refer to some of the relevant provisions we have highlighted below:

"Refusal to work if danger"

128. (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that
- (a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;
 - (b) a condition exists in the place that constitutes a danger to the employee; or
 - (c) the performance of the activity constitutes a danger to the employee or to another employee.

No refusal permitted in certain dangerous circumstances

- (2) An employee may not, under this section, refuse to use or operate a machine or thing, to work in a place or to perform an activity if
- (a) the refusal puts the life, health or safety of another person directly in danger; or
 - (b) the danger referred to in subsection (1) is a normal condition of employment.

Report to employer

(6) An employee who refuses to use or operate a machine or thing, work in a place or perform an activity under subsection (1), or who is prevented from acting in accordance with that subsection by subsection (4), shall report the circumstances of the matter to the employer without delay.

Select a remedy

(7) Where an employee makes a report under subsection (6), the employee, if there is a collective agreement in place that provides for a redress mechanism in circumstances described in this section, shall inform the employer, in the prescribed manner and time if any is prescribed, whether the employee intends to exercise recourse under the agreement or this section. The selection of recourse is irrevocable unless the employer and employee agree otherwise.

Employer to take immediate action

(8) If the employer agrees that a danger exists, the employer shall take immediate action to protect employees from the danger. The employer shall inform the work place committee or the health and safety representative of the matter and the action taken to resolve it.

Continued refusal

(9) If the matter is not resolved under subsection (8), the employee may, if otherwise entitled to under this section, continue the refusal and the employee shall without delay report the circumstances of the matter to the employer and to the work place committee or the health and safety representative.

Investigation of report

(10) An employer shall, immediately after being informed of the continued refusal under subsection (9), investigate the matter in the presence of the employee who reported it and of

(a) at least one member of the work place committee who does not exercise managerial functions;

(b) the health and safety representative; or

(c) if no person is available under paragraph (a) or (b), at least one person from the work place who is selected by the employee.

If more than one report

(11) If more than one employee has made a report of a similar nature under subsection (9), those employees may designate one employee from among themselves to be present at the investigation.

Absence of employee

(12) An employer may proceed with an investigation in the absence of the employee who reported the matter if that employee or a person designated under subsection (11) chooses not to be present.

Continued refusal to work

(13) If an employer disputes a matter reported under subsection (9) or takes steps to protect employees from the danger, and the employee has reasonable cause to believe that the danger continues to exist, the employee may continue to refuse to use or operate the machine or thing, work in that place or perform that activity. On being informed of the continued refusal, the employer shall notify a health and safety officer.

Notification of steps to eliminate danger

(14) An employer shall inform the work place committee or the health and safety representative of any steps taken by the employer under subsection (13).

Employees on shift during work stoppage

128.1 (1) Unless otherwise provided in a collective agreement or other agreement, employees who are affected by a stoppage of work arising from the application of section 127.1, 128 or 129 or subsection 145(2) are deemed, for the purpose of calculating wages and benefits, to be at work during the stoppage until work resumes or until the end of the scheduled work period or shift, whichever period is shorter.

Employees on next shift

(2) Unless otherwise provided in a collective agreement or other agreement, employees who are due to work on a scheduled work period or shift after a shift during which there has been a stoppage of work arising from the application of section 127.1, 128 or 129 or subsection 145(2) are deemed, for the purpose of calculating wages and benefits, to be at work during their work period or shift, unless they have been given at least one hour's notice not to attend work.

Alternative work

(3) An employer may assign reasonable alternative work to employees who are deemed under subsection (1) or (2) to be at work.

Repayment

(4) Unless otherwise provided in a collective agreement or other agreement, employees who are paid wages or benefits under subsection (1) or (2) may be required by the employer to repay those wages and benefits if it is determined, after all avenues of redress have been exhausted by the employee who exercised rights under section 128 or 129, that the employee exercised those rights knowing that no circumstances existed that would warrant it."

Who do I contact in the event of an unresolved complaint or refusal?

You should contact a health and safety officer under the HRSDC-Labour program at 1-800-641-4049. Contact should be made after exhausting the internal complaint resolution process under Section 127.1 of the CLC. Sections 129, 130, 131, of the CLC Part 2 addresses the investigation of a health and safety officer.

Can I be disciplined for refusing to work?

Under the section 147.1 (1) of the CLC, “an employer may, after all the investigations and appeals have been exhausted by the employee who has exercised rights under sections 128 and 129, take disciplinary action against the employee who the employer can demonstrate has wilfully abused those rights.” The employee must be provided with written reasons for the discipline from the employer within 15 days after receiving the employee’s request, section 147.1(2) of the CLC.

Under normal circumstances you are protected under the section 147 of the CLC, “no employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee’s rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee

- (a) has testified or is about to testify in a proceeding taken or an inquiry held under this Part;
- (b) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or
- (c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.”

R.S., 1985, c. L-2, s. 147; R.S., 1985, c. 9 (1st Supp.), s. 4; 2000, c. 20, s. 14.

Who makes the final decision regarding health and safety complaints and work refusals?

Under section 146.3 of the CLC, an appeals officer makes the final decision. This decision shall not be questioned or reviewed by any court.

Other useful links:

Association of Justice Counsel AJC-AJJ

<http://www.ajc-ajj.org/eng/default.aspx>

Canadian Labour Code Part 2 – Health and Safety

http://laws.justice.gc.ca/eng/L-2/page-2.html#anchorbo-ga:l_II

Treasury Board, Occupational Health and Safety-Policy and Publications

<http://www.tbs-sct.gc.ca/hr-rh/osh-sst/index-eng.asp>

HRSDC-Labour Program, Health and Safety

http://www.rhdcc-hrsdc.gc.ca/eng/labour/health_safety/index.shtml

CCOHS Canadian Centre for Occupational Health and Safety

<http://www.ccohs.ca/>

Part 3 PSLRA Occupational Health and Safety

http://laws.justice.gc.ca/eng/P-33.3/page-3.html#anchorbo-ga:l_3

Canada Occupational Health and Safety Regulations

<http://laws.justice.gc.ca/eng/SOR-86-304/index.html>

National Joint Council Occupational Health and Safety Directive

<http://www.njc-cnm.gc.ca/directive/index.php?did=7&dlabel=oshd-dsst&lang=eng&merge=2&slabel=index>