Human Resources

Work Refusals Procedure

PURPOSE

To establish a procedure to be followed in the event an employee exercises their right to refuse unsafe work under the Occupational Health and Safety Act (OHSA), Section 43.

SCOPE

All employees at the City of Hamilton have the right to refuse unsafe work. For some, the right to refuse for any reason is limited. For example, certain workers who protect public safety cannot refuse work if:

- the danger is an inherent or normal part of their job, or
- the refusal would endanger the life, health or safety of another person

These workers include:

- Emergency Services employees (Fire Fighters, Paramedics)
- Workers employed in workplaces such as a long term care home, psychiatric institution, mental health centre, rehabilitation facility, residential group homes, licensed laboratories or in any laundry, food service, power plant or technical service used in one of the above. OHSA, s 43(2)
- Teachers, when a pupil's life, health or safety is in imminent jeopardy OHSA, Reg. 857, s 3(3).

DEFINITIONS

Worker

"worker" means any of the following, but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:

1. A person who performs work or supplies services for monetary compensation.
2. A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
3. A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university or other post-secondary institution.
4. A person who receives training from an employer, but who, under the Employment Standards Act, 2000, is not an employee for the purposes of that Act because the conditions set out in subsection 1 (2) of that Act have been met.
5. Such other persons as may be prescribed (by regulation) who perform work or supply services to an employer for no monetary compensation;

Work Refusal

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 workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;
(c) He/she may be endangered by workplace violence, (however work can not be refused on the grounds of workplace harassment), or
(d) 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 or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.
## Workplace Violence

(a) the exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury to the worker;  
(b) an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker; or,  
(c) a statement or behavior that is reasonable for a worker to interpret as a treat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

## Refusal Process

### Stage 1 – Internal Resolution

#### Supervisor Responsibilities

a) Upon an employee reporting a work refusal, request the employee to specifically explain why he/she is refusing work – request the employee put concerns in writing.  
b) If the work refusal is not safety related, the work refusal stops and the employee returns to work  
c) If the refusal is safety related, immediately contact a Joint Health and Safety Committee (JHSC) worker member  
d) Request the refusing employee stay near as reasonably possible to their work station/area.  
e) Promptly conduct an investigation of the matter with the refusing employee and JHSC worker member using the City of Hamilton OHS – Work Refusal – Worksheet  
f) Direct the employee to return to work if the employee is satisfied with the results of the investigation and control measures where applicable  
g) Consult a Health, Safety and Wellness Specialist if needed

#### Employee Responsibilities

a) Immediately report the circumstances leading to the work refusal to the supervisor.  
b) Explain the reason for refusing work – be specific and preferably submit in writing  
c) Remain in a safe place near the workstation/area until an investigation occurs  
d) Participate in the investigation with the supervisor and JHSC worker member.  
e) Resume work, once satisfied with results of the investigation and control measures.  
f) If not satisfied and the employee has reasonable grounds to believe that work is likely to endanger, progress to Stage 2.

#### JHSC Worker Member Responsibilities

a) Attend the work refusal location  
b) Participate in the refusal investigation at Steps 1 and 2  
c) Document details of the work refusal

### Stage 2 – External Resolution if refusing employee believes work continues to endanger health and safety

#### Supervisor Responsibilities

a) Following the investigation with the employee and JHSC representative and where a resolution is not achieved, a Ministry of Labour (MOL) inspector must be called in to investigate  
b) Assign the employee alternate work while waiting for a MOL inspector to arrive at the workplace (Inspector may attempt to resolve via telephone)  
c) Pending the MOL inspector’s investigation, may ask another employee to perform the work that was refused. The employee must be advised of the other employee’s work refusal and reasons for the refusal in the presence of the JHSC worker member.
<table>
<thead>
<tr>
<th><strong>Employee Responsibilities</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>d) Participate in the investigation with the MOL, JHSC worker member, refusing employee and Health, Safety and Wellness Specialist (if available).</td>
</tr>
<tr>
<td>e) Document all details of the work refusal</td>
</tr>
<tr>
<td>f) Comply with MOL written orders</td>
</tr>
</tbody>
</table>

**Employee Responsibilities**

- a) Remain in a safe place near the workstation/area, or perform reasonable alternate work as assigned by the supervisor until the MOL investigator arrives
- b) Participate in the refusal investigation with the MOL inspector, JHSC worker member, supervisor and Health, Safety and Wellness Specialist
- c) Comply with MOL written orders

Reprisals such as discipline or dismissal by the employer for employees exercising their right to refuse are prohibited. [Sec 50 OHSA].

Regular or premium pay shall apply for the time spent by the person exercising his/her rights under this procedure, and for time spent by the person carrying out JHSC duties representing the worker.

**COMPLIANCE**

Workers and their supervisors shall be held accountable for violations of health and safety rules, regulations, and procedures. Disciplinary action, where necessary, will be dictated by the City of Hamilton disciplinary procedure and will be based on the merits of the specific case. Prior to disciplinary measures being taken, management is advised to consult with Employee and Labour Relations.

**RELATED**

OHS – Work Refusal – Work Sheet

**CONTENT**

- 2011-04-18 (reformatted and updated)
- 2014-11-26 (updated)

**SUPERSEDES**

Work Refusal Procedure COH RQ WI 023 dated 2002-10-11

**HISTORY**

The following stakeholders were consulted in the creation or revisions made to this Procedure:
2011-04-18 (reformatted and updated)

Original approved by SMT 2002-10-01

This procedure replaces the version of Work Refusal Procedure COH RQ WI 023 dated 2002-10-01

**APPROVAL**

Original approved by SMT 2002-10-01