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# COVID-19, the Omicron variant and the right to refuse unsafe work

## Frequently Asked Questions (FAQs)

**Important: Working during a pandemic does not change your right to refuse to perform work in conditions that have the potential to harm you or others.**

This FAQs document answers common questions about the right to refuse unsafe work in light of the COVID-19 pandemic. A flow chart on the work refusal process is attached to this FAQ.

The right to refuse unsafe work is one of three basic health and safety rights achieved by the labour movement – along with the right to know about the hazards in your workplace, and the right to participate in workplace health and safety decisions.

The right to refuse allows workers to protect their own safety by refusing to perform work that they believe has the potential to harm themselves or others at the workplace.

**IF I AM REQUIRED TO REPORT ON SITE TO A WORKPLACE (e.g., an EA required to assist with in-person learning), DO I STILL HAVE THE RIGHT TO REFUSE DANGEROUS WORK?**

Yes. Being asked to report on site to a workplace during the Omicron wave does not limit your right to refuse dangerous work. Workers have the right to refuse to perform **any specific job or task which they have reasonable grounds to believe is dangerous** to you or to any other person. This could include:

- A danger that is not addressed by the existing hazard controls
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- A situation that departs from usual safe work practices;
- A danger that would normally stop work; or
- A situation for which you are not properly **trained, equipped, or experienced** to do the assigned work.

Employers have a duty to protect workers' health and safety. CUPE believes that if the work is necessary for you to be on site, employers should go above and beyond normal operating procedures by following the precautionary principle to make sure workers are protected – especially workers who are tasked with helping others.

## **CAN I REFUSE WORK BECAUSE OF THE COVID-19 PANDEMIC?**

No. You can't refuse work simply because COVID-19 or Omicron exists. There must be a link between COVID-19 and your reasonable belief that you are at risk for injury or illness. In the case of COVID-19, a potential danger would include a risk of exposure that is not being properly managed, such as an employer failing to provide you with appropriate personal protective equipment or the training to use it.

## **CAN I INVOKE THE RIGHT TO REFUSE UNSAFE WORK IF I AM NOT PROVIDED THE PROPER PERSONAL PROTECTIVE EQUIPMENT (PPE) REQUIRED TO BE SAFE?**

Yes. Employers must provide you with the PPE needed to perform your job safely. Different jobs and tasks have different requirements for PPE depending on the likelihood for exposure. As of January 5, 2022, the minimum PPE requirements for staff in schools are:

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- A non-fit-tested<sup>1</sup> N95 respirator for all staff.<sup>2</sup>
- Face shields to all staff working with or exposed to unmasked students.
- Gloves and/or gowns to staff likely to be exposed to bodily fluids and waste.

Regardless of the equipment, employers are required to provide training on the proper use and care of PPE before it is used for the first time. If the training is not provided, you have the right to refuse the work or task.

## **CAN A GROUP OF WORKERS REFUSE WORK WHERE HEALTH AND SAFETY IS IN DANGER?**

The right to refuse unsafe work is an individual process. Multiple workers can refuse to perform work they think could cause injury or illness, but each worker must make their own refusal and give their own reason when they report the refusal. You are not protected from discipline if you stop working “in solidarity” or for “sympathetic reasons” because your co-worker has refused to perform unsafe work.

## **SHOULD I REFUSE UNSAFE WORK BY EMAIL OR BY TELEPHONE?**

No, you should be at the workplace in a safe place when initiating the work refusal. During the first stage of the work refusal, the supervisor or employer must investigate the circumstances of the work refusal **in the presence** of the worker and the worker’s representative (e.g. worker member of the Joint Health and Safety Committee). However, this does not preclude a worker from signaling to a supervisor by email or telephone of any health and safety concern or hazard.

## **DO I HAVE A LIMITED RIGHT TO REFUSE UNSAFE WORK?**

No. Unlike teachers, the OHSA and the regulations, do not limit your right to refuse unsafe work. We strongly recommend that when you exercise your right to refuse, that it does not place a student or other worker in harm.

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<sup>1</sup> OSBCU is advocating for school boards and the Government to facilitate rapid fit-testing of all education workers, with priority given to staff working in close proximity to unmasked students.

<sup>2</sup> Accommodations must be given to staff who are medically unable to tolerate a respirator.

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For workers who belong to regulatory colleges (e.g., College of Early Childhood Educators, Social Workers, Trades, Speech and Language Pathologists and Audiologists, etc.), it is important that they also consider their professional obligations and the standards of their college.

## **WHAT IF MY EMPLOYER IS SAYING THAT MY RIGHT TO REFUSE DANGEROUS WORK IS “INSUBORDINATION”, OR THREATENS ME WITH DISCIPLINE?**

It's important to clearly make the distinction between an unsafe work refusal and insubordination. To do this, indicate from the outset that your refusal is based on a concern for your health and safety (or that of others). CUPE recommends reporting the work refusal before beginning the dangerous work or task and, if possible, putting the refusal in writing as soon as you can. There are no required phrases or words to initiate the process, but you should clearly state your reasons, so it is not confused with being insubordinate.

You cannot be subject to reprisals or threats of reprisal by the employer, or by anyone acting on behalf of the employer, for exercising your right to refuse work that you believe endangers your health and safety or that of another worker. Reprisals or threats can include but are not limited to: disciplinary actions or warnings, penalties, withholding of pay, demotions, suspension, and termination.

## **WHAT SHOULD I EXPECT TO OCCUR DURING THE WORK REFUSAL PROCESS?**

The supervisor or employer must follow the work refusal process as set out in the Occupational Health and Safety Act (a flow chart is attached to the FAQ). It is important to document the work refusal investigation at all stages, including any statements given by the supervisor or employer and the health and safety inspector from the Ministry of Labour, Training and Skills Development. More information about calling health and safety inspectors can be found [here](#).

**PROCEDURE FOR REFUSING WORK THAT ENDANGERS HEALTH AND SAFETY  
PART V – Section 43 Occupational Health and Safety Act (Ontario)**

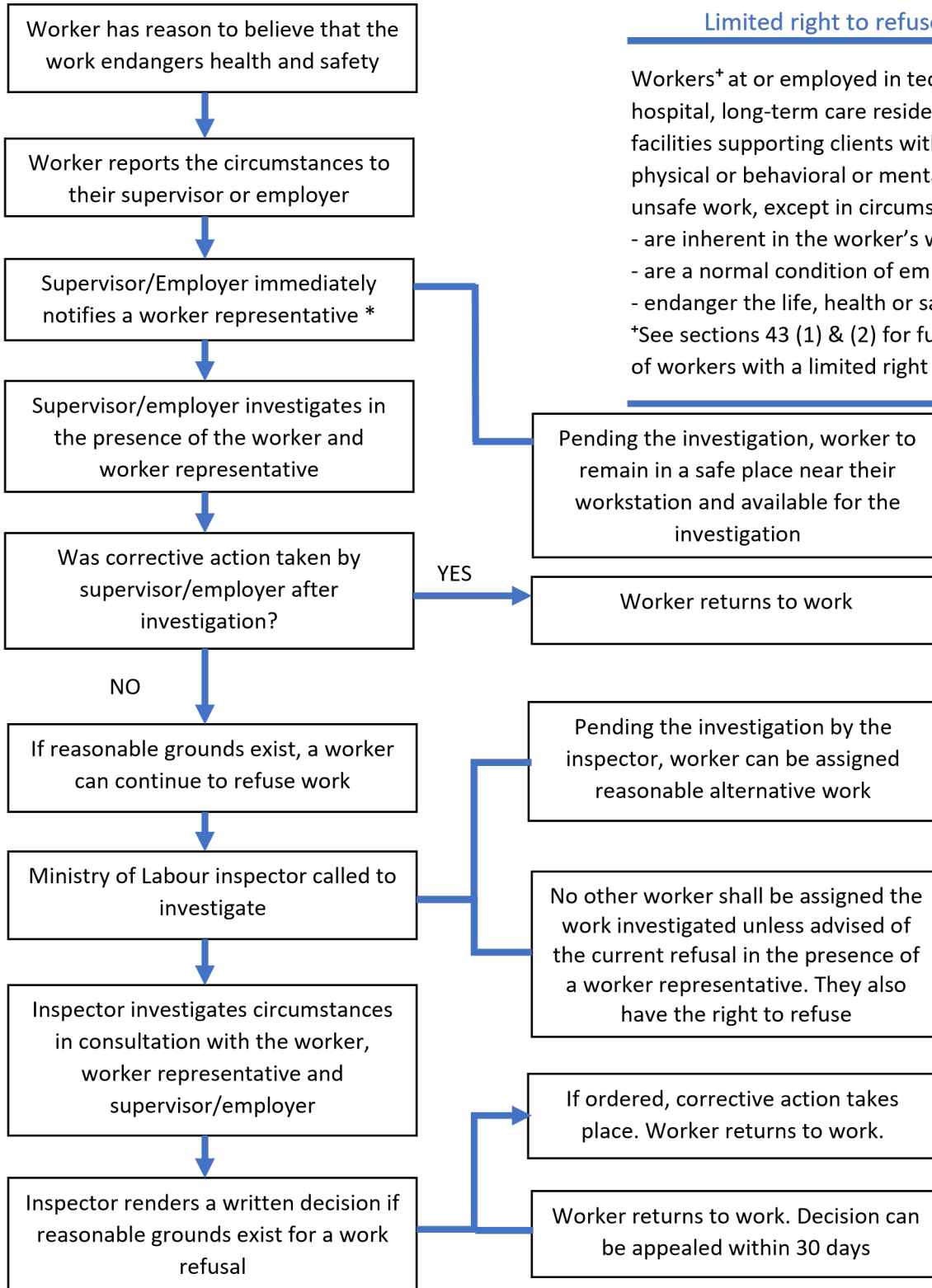


Limited right to refuse unsafe work

Workers\* at or employed in technical service of a hospital, long-term care residential or group home, and facilities supporting clients with developmental or physical or behavioral or mental disability can refuse unsafe work, except in circumstances that:

- are inherent in the worker's work; or
- are a normal condition of employment; or
- endanger the life, health or safety of another person

\*See sections 43 (1) & (2) for full detail and a complete list of workers with a limited right to refuse.



\*Worker representative = Either a worker member of the joint health and safety committee or health and safety representative, if any, or union representative with health and safety knowledge.

*Please note that the information provided on this sheet does not constitute legal advice. If you have any questions about health and safety law, speak to your Local Executive, CUPE National Servicing representative, or CUPE National Health and Safety Specialist.*