

Work refusal procedure

Version 7

Published 8/12/2020 by **Petra Misaljevic** Last updated 11/18/2020 3:50 PM by **Tom Bartsiakas**

1. Purpose:

The purpose of this Procedure is to describe the process to address work refusals should they occur. It identifies the various Seneca workplace parties involved in a work refusal and the process which must be followed to assure that the safety concern, which triggered the work refusal process, is adequately addressed.

2. Policy:

Seneca recognizes that employees may have concerns for their health and safety and respects the rights of each employee, under Section 43 of the Occupational Health and Safety Act (OHSA), to refuse unsafe work.

It is hoped that the need for a work refusal will never arise as Seneca is committed to providing a safe and healthy work environment. However, in fulfilling its obligations to employees, the College has developed this procedure to ensure that work refusal concerns are addressed in a manner which is consistent and compliant with the OHSA.

3. Scope and Authority:

A worker has the right to refuse to work if the worker has reason to believe that the work or the workplace is in contravention of the OHSA or regulations and/or is likely to endanger himself, herself or another worker or if the condition of the workplace is in contravention of the OHSA or regulations.

This procedure applies to all persons employed by Seneca. It identifies workplace parties that have the authority to initiate and participate in the process required to address health and safety concerns and to address work refusals should they occur.

4. Responsibilities:

It is extremely important that supervisors understand their obligations and strictly follow the procedure for dealing with health and safety concerns and work refusals given here. It is

hoped that in all cases health and safety concerns can be resolved between the employee and his or her supervisor without escalation beyond the certified members of the health and safety committee and the Health and Safety Office.

The supervisor must take every precaution reasonable for the protection of the employee.

5. Procedure:

The following procedure for dealing with a work refusal is set out in the Occupational Health and Safety Act. It must be followed rigorously by the employee and the supervisor. The Work Refusal Flow Chart illustrates the procedure as a quick reference guide.

First Stage:

1. Upon refusing to work, the worker will promptly report the circumstances of the refusal to their supervisor. The worker must remain at the workplace, but in a safe place near where work of concern was to take place. The worker must remain available to participate in each stage of the refusal process.
2. The supervisor will immediately contact the Occupational Health and Safety Office at ohs@senecacollege.ca or (extension 26422 or 26486) to advise of the work refusal. The Occupational Health and Safety Office notifies the appropriate Joint Health and Safety Committee (JHSC) worker member to attend the investigation.
3. The supervisor will then investigate the reported concern in the presence of the worker and the JHSC worker member. The intent of the OHSA is that this investigation be carried out immediately and that the work is not done until the investigation is completed.
4. If, after the investigation and implementation of any steps taken to deal with the concerns, the worker still has reasonable grounds to believe that the work is unsafe, the worker may continue to refuse to work.

Second Stage:

5. The supervisor and the JHSC worker member will, with the assistance of the Health and Safety Office, notify the Ministry of Labour (MOL) of the occurrence of the work refusal. Seneca's Associate Vice President, Human Resource and Director, Employee & Labour Relations will also be notified at this time.

Ministry of Labour Health & Safety Contact Centre

Toll-free: 1-877-202-0008

TTY: 1-855-653-9260

An inspector from the MOL may attempt to make a determination over the phone whether or not the work refusal meets the criteria of a valid refusal. If the inspector determines that an investigation is necessary to resolve the work refusal a site visit will be arranged. The inspector may not arrive that day and until the inspector arrives the following steps must be followed:

6. Pending the arrival of a MOL inspector, the worker must remain at a safe place near his or her normal work location, during the worker's normally scheduled work hours.

7. The supervisor may assign the worker alternative work during this period.

8. Pending the arrival and investigation of the inspector, no other worker may be assigned to do the work under dispute unless the other worker is advised, in the presence of a worker member of the JHSC, of the work refusal and the reasons for the refusal. The prospective worker also has the right to refuse to do the work in question.

9. The inspector will give their decision in writing to the worker, the supervisor and the JHSC worker member. Please note that a decision may not be forthcoming immediately, and that the inspector may order workplace testing depending on the nature of the work refusal. The decision may indicate that:

a. The employee's refusal is justified and the employer is required to rectify the safety concern, or

b. The inspector may dismiss the continued refusal as unjustified for safety reasons and decide that it is not likely to endanger a worker. At this point there is no legitimate reason why the employee should not return to work.

10. An order of an inspector may be appealed to the Ontario Labour Relations Board within 30 days after the order is issued.

11. The supervisor, employee, certified JHSC member, and the OHS Manager (or designate) must complete the Work Refusal Report Form to properly document the process.

6. Prohibition of Reprisals:

Section 50 of the Occupational Health and Safety Act specifically prohibits reprisals by an employer against any worker who has exercised his or her rights under the act. In particular:

"No employer or person acting on behalf of an employer will,

- a. Dismiss or threaten to dismiss a worker;
- b. Discipline or suspend or threaten to discipline or suspend a worker;
- c. Impose any penalty upon a worker; or
- d. Intimidate or coerce a worker, because the worker has acted in compliance with this Act or the regulations or an order made there under...."

Supervisors must take note of this section in all their dealings with employees when health and safety is an issue.

7. Supporting Documentation:

- OHS-5.2.e.A Work Refusal Flow Chart (Appendix A)
- OHS-5.2.e.B Work Refusal Report Form (Appendix B)

8. Related Policies/Procedures:

- OHS-01.1, Health and Safety Policy Statement

9. Related Materials:

- OHSA sections 25, 26, 27, 28 and 43

tags : human-resources, policies, work-refusal-procedure