

## COVID-19 Update

March 25, 2020

### Attention RN's. Your limited right to refuse unsafe work explained.

Most ONA members have a right to refuse to work where unsafe conditions exist *and* they are not adequately protected through infection control procedures and equipment. Individual circumstances, such as lack of adequate respiratory protection will need to be addressed at the institutional level and the member will need to make a judgment call, weighing the risks against the client's need for care.

During SARS, an ONA member exercised her right to refuse unsafe work when the employer requested she care for a SARS patient without being fitted with the required N95 respirator. The MOL upheld her work refusal and ordered that this worker not be required to care for a SARS patient until she was properly fit tested with an N95 respirator.

Remember, **to refuse unsafe work a worker need only have reason to believe that their work or a particular task may endanger themselves or another worker.** The test at this stage is subjective and the worker's belief need only be honest and genuine.

#### Steps to Follow in Refusing Work

##### First Stage:

- You must immediately tell your leader that the work is being refused and explain why. You should document all of the details pertaining to the work refusal. **Complete an AEMs, per LHSC Work Refusal Policy.**
- The employer must investigate the situation immediately, in your presence and a JHSC member who represents workers, or another worker chosen by the union.
- You must remain in a safe place that is as near as reasonably possible to the workstation and available to the employer for the purposes of the investigation until the investigation is completed. **(No other worker shall be assigned to do the work that has been refused unless, in the presence of a JHSC worker member who, if possible, is a certified member, or another worker chosen by the union has been advised of the other worker's refusal and of their reasons for the refusal.)** If the situation is resolved at this point, the refusing worker returns to work.
- Following the investigation, you can continue to refuse the work if you have reasonable grounds for still believing that the work continues to be unsafe.

##### **\*When work refusal reaches "second stage"**

When you exercise your right to refuse unsafe work, the employer must immediately investigate in your presence and a JHSC worker member. If the concern is not resolved and you have reasonable grounds to believe that the work continues to be unsafe, you can continue to refuse. At this "second stage" of the refusal, the MOL must be notified.

##### Second Stage:

- You, the union or employer must cause an MOL inspector to be notified). The inspector should come to the workplace to investigate the refusal and consult with you and the employer. The worker representative from the first stage will also be consulted as part of the inspector's investigation.
- While waiting for the inspector's investigation to be completed, you must remain during your normal working hours in a safe place that is as near as reasonably possible to the workstation, and available to the inspector for the purposes of the investigation, unless, subject to the provisions of a collective agreement, the employer assigns some other reasonable work during normal working hours. If no such work is practicable, the employer can give other directions to the worker.

- The inspector must decide whether the work is likely to endanger you or another person. The inspector's decision must be given, in writing, to the worker, the employer and the worker representative identified above, if there is one. If the inspector finds that the work is not likely to endanger anyone, you would normally return to work. If you

#### **Worker to Suffer no Reprisals for Calling the MOL**

The *Occupational Health and Safety Act* has a section (50) that is intended to protect you from reprisals by your employer when you obey the law or exercise your rights. The Ministry of Labour website says you also cannot be penalized if you provide information to a MOL inspector, follow an order of an inspector, or testify in a legal proceeding. If you think you or your members have suffered a reprisal, you or your members can file a complaint to the Ontario Labour Relations Board (OLRB) or file a grievance. The employer has the onus to prove that they did not act illegally.

#### **The Regulatory College and Unsafe Working Conditions**

Nurses must consider their standards of practice established by the CNO. The CNO has two key standards and one practice guideline that are relevant in this context, namely the Professional Standards (2002), Ethics (2018), and Refusing Assignments and Discontinuing Services (2017). Refusing Assignments and Discontinuing Services was developed by the CNO in response to SARS. **The CNO's position at the conclusion of SARS was that, while nurses are committed to meeting the needs of clients, the provision of professional nursing services does not include working in situations where nurses' health is at risk and no precautions have been taken.**

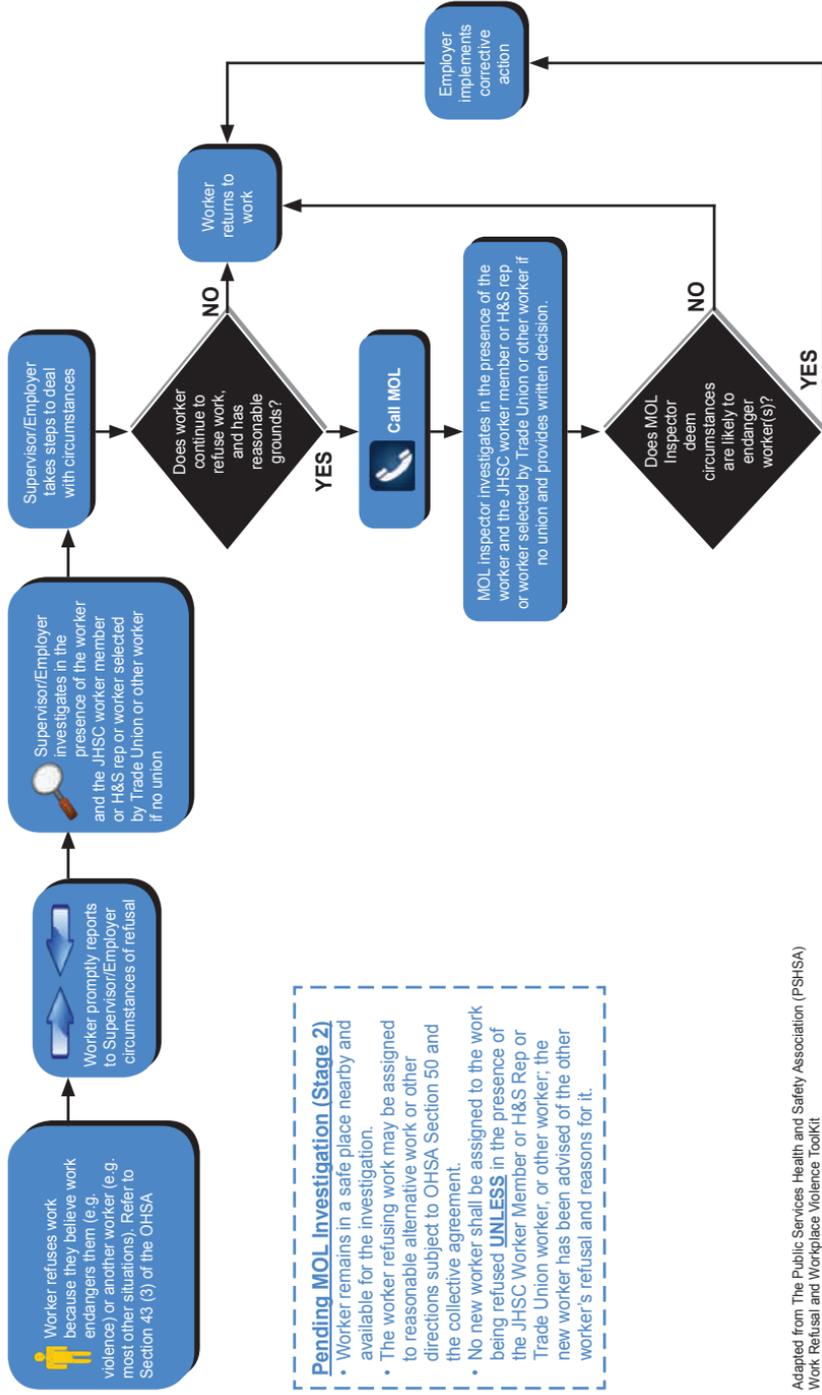
If you are considering a work refusal, please contact the Local Office for assistance. Check out ONA's booklet "My Right To Refuse Unsafe Work" at:

[https://www.ona.org/wpcontent/uploads/ona\\_guide\\_myrighttorefuseunsafework.pdf](https://www.ona.org/wpcontent/uploads/ona_guide_myrighttorefuseunsafework.pdf)

**519-667-0937**



## Appendix 4 Work Refusal Flowchart



### Pending MOL investigation (Stage 2)

- Worker remains in a safe place nearby and available for the investigation.
- The worker refusing work may be assigned to reasonable alternative work or other directions subject to OHS Section 50 and the collective agreement.
- No new worker shall be assigned to the work being refused **UNLESS** in the presence of the JHSC Worker Member or H&S Rep or Trade Union worker, or other worker, the new worker has been advised of the other worker's refusal and reasons for it.