

Summary of Process:

Under the Workplace Safety and Health laws, employees have the right to refuse dangerous work.

1. The employee informs the supervisor (in a school, the Principal) that they are invoking their right to refuse dangerous work under the Manitoba Workplace Safety and Health Legislation (below).
2. There must be an investigation to determine if they are in danger or not. While the investigation is going on, the employee can be reassigned to other duties, either at school or at home, and continues to be paid.

If the employer assigns another employee, they must tell that employee in writing that the regular employee has refused to do the work because they feel it is unsafe, and the employee's reasons for the refusal.

The first investigation is done by the Principal, with the employee, and the school (or Divisional) WSH committee co-chair.

3. If the first investigation determines that there is no danger, the employee can then call WSH Manitoba (the official Safety and Health Officers), and they will investigate next and make a determination. Again, while this happens, the employee is not expected to do the work, and is paid.

The Division can not discipline or retaliate in any way, as per Section 42 "Discriminatory Action".

Right to refuse dangerous work

43(1) Subject to this section, a worker may refuse to work or do particular work at a workplace if he or she believes on reasonable grounds that the work constitutes a danger to his or her safety or health or to the safety or health of another worker or another person.

Reporting the refusal

43(2) A worker who refuses to work or do particular work under subsection (1) shall promptly report the refusal and the reasons for it to his or her employer or immediate supervisor, or to any other person in charge at the workplace.

Inspecting dangerous conditions

43(3) If the employer does not remedy the dangerous condition immediately, the person who receives the report of refusal to work, or a person designated by that person, shall immediately inspect the dangerous condition in the presence of the worker and one of the following persons:

- (a) if there is a committee under section 40, the worker co-chairperson of the committee or, if that person is unavailable, a committee member who represents workers;
- (b) if there is a representative designated under section 41, that representative or, if he or she is unavailable, another worker selected by the worker refusing to do the work;
- (c) if there is no committee or representative, another worker selected by the worker who is refusing to work.

Remedial action

43(4) The person required to inspect the dangerous condition shall take any action necessary to remedy any dangerous condition, or ensure that such action is taken.

Worker may continue to refuse

43(5) Until the dangerous condition is remedied, the worker who reported it may continue to refuse to work or do particular work.

Other workers not to be assigned

43(6) When a worker has refused to work or do particular work under subsection (1), the employer shall not request or assign another worker to do the work unless

- (a) the employer has advised the other worker, in writing, of
 - (i) the first worker's refusal,
 - (ii) the reasons for the refusal,
 - (iii) the other worker's right to refuse dangerous work under this section, and
 - (iv) the reason why, in the opinion of the employer, the work does not constitute a danger to the safety or health of the other worker, another worker or any person;
- (b) where practicable, the first worker has advised the other worker of
 - (i) the first worker's refusal, and
 - (ii) the reasons for the refusal; and
- (c) the actions required by subsections (3) and (4) have been taken.

S.M. 2002, c. 33, s. 34; S.M. 2013, c. 9, s. 22.

Report of dangerous condition to an officer

43.1(1) If the dangerous condition is not remedied after an inspection under subsection 43(3), any of the persons present during the inspection may notify a safety and health officer of the refusal to work and the reasons for it.

Investigation by officer

43.1(2) On receiving a notice under subsection (1), the officer shall investigate the matter and decide whether the work the worker has refused to do constitutes a danger to the safety or health of the worker or any other worker or person at the workplace.

Order by officer

43.1(3) If the officer decides that the work is dangerous, he or she shall

- (a) make a written report stating the officer's findings;
- (b) make any improvement order under section 26 or stop work order under section 36 that the officer considers necessary or advisable; and
- (c) give a copy of the report and any order to
 - (i) the worker who refused to do the work,
 - (ii) the employer, and
 - (iii) the co-chairpersons of the committee, or the representative.

Decision not to issue an order

43.1(4) If the officer decides that the work is not dangerous, he or she shall, in writing,

- (a) inform the employer and the worker of that decision; and
- (b) inform the worker that he or she is no longer entitled to refuse to do the work.

S.M. 2002, c. 33, s. 34; S.M. 2013, c. 9, s. 23.

Worker entitled to be paid despite refusal

43.2 If a worker has refused to work or do particular work under section 43,

- (a) the worker is entitled to the same wages and benefits that he or she would have received had the worker continued

to work; and

(b) the employer may re-assign the worker temporarily to alternate work.

S.M. 2002, c. 33, s. 34.

Employer not to make worker work in unsafe conditions

43.3(1) When the employer at a workplace or his or her agent, or the supervisor or another person representing the employer at the workplace in a supervisory capacity, knows or ought to know of a condition at the workplace that is or is likely to be dangerous to the safety or health of a worker, he or she shall not require or permit any worker to do that work until the dangerous condition is remedied.

Employer may remedy dangerous condition

43.3(2) Subject to subsection 43(5), nothing in subsection (1) prevents the doing of any work or thing at a workplace that may be necessary to remedy a condition that is or is likely to be dangerous to the safety or health of a worker.

DISCRIMINATORY ACTION



Summary:

A Division cannot retaliate or punish an employee in any way for advocating for safety under the WSA Act. If an employee feels that they are being treated in an unfair manner because of any actions they took under WSH legislation, they may file a complaint with Manitoba WSH. There is a reverse onus on the Division to prove that they did NOT act in a discriminatory action. (ie. guilty unless they can prove themselves innocent.)

“discriminatory action” means any act or omission by an employer or any person acting under the authority of the employer or any union which adversely affects any term or condition of employment, or of membership in a union, and without restricting the generality of the foregoing includes lay-off, suspension, dismissal, loss of opportunity for promotion, demotion, transfer of duties, change of location of workplace, reduction in wages, or change in working hours but does not include the temporary relocation of a worker to other similar or equivalent work without loss of pay or benefits until a condition that threatens the safety or health of the worker is remedied;

Discriminatory action against worker prohibited

42(1) No employer, union or person acting on behalf of an employer or union shall take or threaten discriminatory action against a worker for

- (a) exercising a right under or carrying out a duty in accordance with this Act or the regulations;
- (b) testifying in a proceeding under this Act;
- (c) giving information about workplace conditions affecting the safety, health or welfare of any worker to
 - (i) an employer or a person acting on behalf of an employer,
 - (ii) a safety and health officer or another person concerned with the administration of this Act,
 - (iii) another worker or a union representing a worker, or
 - (iv) a committee or a representative;
- (d) performing duties or exercising rights as a member of a committee or as a representative;
- (e) refusing to do dangerous work under section 43;
- (f) taking reasonable action at the workplace to protect the safety or health of another person;
- (g) complying with this Act or the regulations or a code of practice under this Act, or an order or decision made under this Act;
or
- (h) attempting to have this Act or the regulations enforced.

Failure to pay wages or benefits

42(2) In addition to the circumstances giving rise to discriminatory action as set out in subsection (1), an employer who fails to pay wages or benefits to a worker when required to do so by this Act is deemed to have taken discriminatory action against the worker under this section. S.M. 2002, c. 33, s. 34; S.M. 2013, c. 9, s. 21.

Referring a complaint to an officer

42.1(1) A worker who believes on reasonable grounds that the employer or union has taken discriminatory action against him or her for a reason described in section 42 may refer the matter to a safety and health officer.

Order

42.1(2) If a safety and health officer decides that an employer or union has taken discriminatory action against a worker for a reason described in section 42, the officer shall make an order requiring the employer or union to do one or more of the following:

- (a) stop the discriminatory action;
- (b) reinstate the worker to his or her former employment on the same terms and conditions on which the worker was formerly employed;
- (c) pay the worker any wages the worker would have earned had he or she not been wrongfully discriminated against and compensate the worker for loss of any benefits;
- (d) remove any reprimand or other reference to the matter from any employment records the employer maintains about the worker.

Officer to advise if no discriminatory action

42.1(3) If a safety and health officer decides that no discriminatory action was taken against a worker for a reason described in section 42, the officer shall inform the worker in writing of the reasons for that decision.

Onus on employer or union

42.1(4) If, in a prosecution or other proceeding under this Act, a worker establishes

- (a) that discriminatory action was taken against him or her; and
- (b) that the worker conducted himself or herself in a manner described in section 42; it shall be presumed that the discriminatory action was taken because of the worker's conduct. The onus is then on the employer or union to prove that the decision to take the discriminatory action was not influenced by the conduct.

Court order to reinstate, etc.

42.1(5) If an employer or union is convicted of taking discriminatory action against a worker contrary to this Act, the convicting justice shall order the employer or union to do one or more of the following:

- (a) stop the discriminatory action;
- (b) reinstate the worker to his or her former employment on the same terms and conditions on which the worker was formerly employed;
- (c) pay the worker any wages the worker would have earned had he or she not been wrongfully discriminated against and compensate the worker for loss of any benefits;
- (d) remove any reprimand or other reference to the matter from any employment records the employer maintains about the worker.

S.M. 2002, c. 33, s. 34.