

# OCCUPATIONAL AND ENVIRONMENTAL SAFETY & HEALTH OPERATIONAL PROCEDURE

**Subject:** Right to Refuse Dangerous Work

**Effective Date:** February 2014 (version 5)

**Supersedes:** July 2012

**Review Date:** 3 years or legislation or job changes

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## 1.0 GUIDING PRINCIPLES

- 1.1 In keeping with the Winnipeg Regional Health Authority (WRHA) commitment to providing a safe and healthy workplace as noted in the WRHA 'Workplace Safety and Health' policy (20.10.080), the following Operational Procedure has been developed to ensure that all workers have the Right to Refuse work they believe is unsafe and to inform staff of their rights and responsibilities respecting the Right to Refuse Dangerous Work.
- 1.2 This operational procedure is also designed to ensure that when followed the minimum requirements of Manitoba Workplace Safety and Health legislation is complied with and where possible exceeded.
- 1.3 As with all matters relating to the Safety and Health of workers the Workplace Safety and Health Committee should be consulted for their input.

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## 2.0 DEFINITIONS

- 2.1 **The Act:** The Workplace Safety and Health Act W210 of Manitoba.
- 2.2 **Committee:** Means a workplace (occupational) safety and health committee established under section 40 of the Workplace Safety and Health Act.
- 2.3 **Employer:**
  - 2.3.1 Every person who, by himself or his agent or representative employs or engages one or more workers,
  - 2.3.2 and The Crown and every agency of the government.
- 2.4 **Supervisor:** Means a person who has charge of a workplace or authority over a worker.
- 2.5 **Worker:**
  - 2.5.1 Any person who is employed by an employer to perform a service whether for gain or reward, or hope of gain or reward or not.
  - 2.5.2 Any person engaged by another person to perform services, whether under a contract of employment or not
  - 2.5.3 Any person undergoing training or serving an apprenticeship at an education institution or at any other place.

- 2.6 **Director:** means the person administratively responsible for the department or unit. Director includes heads of departments.
- 2.7 **OESH:** means the Occupational and Environmental Safety and Health Unit.
- 2.8 **Safety and Health Officer:** Means a person designated as a Safety and Health Officer under the Workplace Safety and Health Act.
- 2.9 **Right to Refuse Dangerous Work:** 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. (Workplace Safety and Health Act, Section 43: 1).
- 2.10 **Dangerous Work:** “Dangerous” work generally means: work involving safety and health risks that are not normal for the job and will cause immediate and serious, or long term effects on your safety and health or the safety and health of others.
- 2.11 **Discriminatory Action Against Worker Prohibited:** No employer, union or person acting on behalf of an employer or union shall take or threaten discriminatory action against a worker for refusing to do dangerous work under section 43. (Workplace Safety and Health Act, Section 42: 1).
- 2.12 **Discriminatory Action:** 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 an union, and without restricting the generality of the foregoing includes layoff, 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.

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### 3.0 OPERATIONAL PROCEDURE

The Right to Refuse steps are based on the Workplace Safety and Health Act Section 43: see Appendix A attached algorithm for guidelines on the process.

Right to Refuse applies to those situations where a worker believes a task or assignment is dangerous for themselves or others. “Dangerous” work generally means: work involving safety and health risks that are not normal for the job and will cause immediate and serious or long term effects on your safety and health or the safety and health of others. The Right to Refuse is one of the legislated worker rights. When an employee exercises the Right to Refuse Dangerous Work, they are protected in terms of their employment, wages and benefits. Every effort shall be made to resolve concerns as quickly as possible.

WRHA Occupational and Environmental Safety and Health may be contacted at any time for consultation during this process.

#### 3.1 The Operational Procedure – Report and Resolution of Safety Concerns must be followed before a Right to Refuse is initiated.

3.1.1 The worker expresses a safety concern to their Supervisor.

3.1.2 The supervisor shall make every effort to resolve the safety and health concern immediately/in a timely manner.

- 3.1.3 If the concern is not resolved through the Report and Resolution of Safety Concerns Process, or the reporting employee feels on reasonable grounds that the issue still presents **an imminent danger**, the employee may initiate the Right to Refuse Process.
- 3.2 **Right to Refuse Tracking Form:** In all cases of refusals, the process will be documented on the Right to Refuse Tracking form (Appendix B) by the affected supervisor/manager. A copy of the completed form:
- 3.2.1.1 Should be stored on the employee file;
  - 3.2.1.2 Must be provided to WRHA OESH;
  - 3.2.1.3 Must be provided to the site Workplace Safety and Health Committee. Personal information should be removed.
- 3.3 **The Right to Refuse process begins – Step 1**
- 3.3.1 The worker advises the supervisor that he/she will be exercising the Right to Refuse Dangerous work and explains the reasons. This can be accomplished by
- 3.3.1.1 Refusing worker completes initial section of Right to Refuse Form immediately.
  - 3.3.1.2 Refusing worker emails reason for refusal to Supervisor. Supervisor completes Part 1 of Form based on email.
  - 3.3.1.3 Refusing workers gives reason for refusal to Supervisor via telephone. Supervisor writes down and reads reasons back to refusing worker. Refusing worker agrees that information can be placed in Part 1 of form.
- 3.3.2 The supervisor immediately notifies OESH, Union where applicable, Human Resources and the worker co-chair of the Health and Safety Committee by email that a Right to Refuse has been initiated. *Note: This is notification only – it is the responsibility of the Supervisor to attempt to resolve the Right to Refuse at Step 1.*
- 3.3.3 The Supervisor immediately inspects and/or investigates the dangerous condition and tries to resolve the situation.
- 3.3.4 The worker must remain available and will be assigned to do other work.
- 3.3.5 If the worker feels that the dangerous condition has been remedied then the Right to Refuse is closed. The supervisor and employee complete the Refusal to Work Form as per 3.2 above.
- 3.3.6 If the dangerous condition has not been remedied then the Right to Refuse progresses to Step 2 immediately. *Note: another worker cannot be assigned until Step 2 has been completed.*
- 3.4 **The Right to Refuse Process – Step 2**  
*Note: for Community Health Services the Team Manager or designate is now involved*
- 3.4.1 Notification that the Right to Refuse has progressed to Step 2 will be done by the supervisor by immediately notifying the OESH Safety Coordinator and
- 3.4.1.1 The Safety Committee Worker Co-Chair; if not available then
  - 3.4.1.2 A Safety Committee member representing the worker: if not available then
  - 3.4.1.3 A worker chosen by the refusing worker.

- 3.4.2 The supervisor shall perform an inspection/investigation of the dangerous condition in the company of a person representing the worker selected in the following order:
  - 3.4.2.1 The Safety Committee Worker Co-Chair; if not available then
  - 3.4.2.2 A Safety Committee member representing the worker: if not available then
  - 3.4.2.3 A worker chosen by the refusing worker.
- 3.4.3 Following the inspection/investigation, the supervisor will take action to remedy the dangerous condition if it has been determined that an unsafe condition still exists.
- 3.4.4 The supervisor will ensure that details of the inspection/investigation and action taken where determined appropriate will be detailed on the Right to Refuse form. If, in the opinion of the employer, the work does not constitute a danger, this must be detailed on the form.
- 3.4.5 The employer shall not request or assign another worker to perform the refused work or task unless
  - 3.4.5.1 The employer has advised the other worker, in writing, of
    - 3.4.5.1.1 The first worker's refusal,
    - 3.4.5.1.2 The reasons for the refusal,
    - 3.4.5.1.3 The other worker's right to refuse dangerous work
    - 3.4.5.1.4 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;
  - 3.4.5.2 Where practicable, the first worker has advised the other worker of
    - 3.4.5.2.1 The first worker's refusal, and
    - 3.4.5.2.2 The reasons for the refusal; and
  - 3.4.5.3 The actions required in 3.4.2 (inspection/investigation with committee) and 3.4.3 (remedy where required) have been completed.
- 3.4.6 This can be accomplished by:
  - 3.4.6.1 The supervisor
    - 3.4.6.1.1 Shows the form to the other worker
    - 3.4.6.1.2 Email, fax, courier the form to the other worker
  - 3.4.6.2 Where practicable, Workers speak to each other directly (face to face, phone, etc.)
- 3.4.7 If the worker feels that the dangerous condition has been remedied then the Right to Refuse is closed. The supervisor and employee complete the Refusal to Work Form as per 3.2 above.
- 3.4.8 The worker may continue to refuse the work until the dangerous condition is remedied. The worker must remain available and will be assigned to do other work.

### **3.5 The Right to Refuse Process – Step 3**

- 3.5.1 If after 3.4, the worker continues to refuse, any party may contact a Safety and Health Officer, Manitoba Labour - Workplace Safety and Health Division to request an investigation. During work hours, call 204-945-3446. After hours, call 204-945-0581.
- 3.5.2 The Safety and Health Officer will meet with the refusing worker and their representative and the employer representative. The Safety and Health Officer will investigate the refusal.
  - 3.5.2.1 If the Safety and Health Officer decides the work/task is unsafe, he/she will make a written report and issue an Improvement Order and/or a Stop Work Order, with copies to:
    - 3.5.2.1.1 The worker who refused the work;
    - 3.5.2.1.2 The employer;
    - 3.5.2.1.3 The worker and employer co-chairs, of the safety committee.
  - 3.5.2.2 If the Safety and Health Officer determines the work is safe, he/she will:
    - 3.5.2.2.1 Inform the employer and worker of the decision;
    - 3.5.2.2.2 Inform the worker that he/she is no longer entitled to refuse the task or work.
- 3.5.3 The final determination of safety of the task can only be given by a Workplace Safety and Health Officer of the Workplace Safety and Health (WSH) Division of Manitoba Labour. *Note: the decision can be appealed.*
- 3.5.4 The refusing worker may appeal the Safety and Health Officer's decision to the Director of the Workplace Safety and Health Branch of the Department of Labour and Immigration. The Director will make a decision about the appeal and provide written reasons. The decision of the Director may be appealed to the Manitoba Labour Board. During the appeal process, the refusing worker is not entitled to be paid for the hours they are not working.

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## **4.0 RESPONSIBILITIES**

### **4.1 Employer / Facility/Program Executive Team**

- 4.1.1 Act in accordance with the objects and purposes of the Act by ensuring, so far as is reasonably practicable, the safety, health and welfare at work of all his workers, and complying with the Act and regulations.
- 4.1.2 Ensure that all his workers, and particularly his supervisors, foremen, chargehands or similar persons, are acquainted with any safety or health hazards which may be encountered by the workers in the course of their service, and that workers are familiar with the use of all devices or equipment provided for their protection
- 4.1.3 Assign responsibilities to staff within the facility/program to ensure the implementation of this operational procedure.

- 4.1.4 Ensure resources (information, training, tool, equipment and time) are available to provide / maintain 4.2.1
- 4.1.5 Support the Operational Procedure throughout the facility/program.
- 4.2 **Directors/Managers/Supervisors**
  - 4.2.1 Ensure compliance with all aspects of the regulations. *The department director is responsible for ensuring that their area of responsibility complies with all aspects of the regulations and this operational procedure.*
  - 4.2.2 Ensure the Right to Refuse steps are followed immediately and as required until the refusal is resolved for all parties.
  - 4.2.3 Ensure the Workplace Safety and Health Committee worker co-chair or representative will make reasonable effort to attend any work refusal investigation, in order to provide assistance in resolving the safety and/or health concern in a timely manner.
  - 4.2.4 Ensure the Right to Refuse is documented on the Safety Related Work Refusal Report and Tracking Form.
- 4.3 **Worker**
  - 4.3.1 Report all safety concerns/hazards to their direct supervisor following the Report and Resolution of Safety Concerns Operational Procedure.
  - 4.3.2 Follow the Right to Refuse steps as outlined in this Operational Procedure.
- 4.4 **Department/Facility/Program Workplace Safety and Health Committees**
  - 4.4.1 Consult with the facility/site/program on the development and implementation of this operational procedure.
  - 4.4.2 Review and monitor the effectiveness of this operational procedure.
  - 4.4.3 The worker co-chair or designate will attend any work refusal investigation immediately, in order to provide assistance in resolving the safety and/or health concern in a timely manner.
- 4.5 **Occupational and Environmental Safety & Health**
  - 4.5.1 Consult with the facility/site/program on all aspects of this operational procedure.
  - 4.5.2 Provide statistics related to Right to Refuse process to Health and Safety Committees on a regular basis.

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## 5.0 TRAINING REQUIREMENTS

- 5.1 The training program must be workplace specific, effective and updated when changes which may affect the procedure are introduced in the workplace.
- 5.2 Training must involve understanding of rights and responsibilities related to the Right to Refuse Dangerous Work.
- 5.3 All employees need to be informed of this right at the time of orientation.
- 5.4 All Supervisors and Health and Safety Committee members must receive this training.
- 5.5 All training must be documented. Records must be retained as required by the Workplace Safety and Health Act and Regulations.
- 5.6 Retraining will be offered if necessary or upon request.

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**REFERENCES:**

Government of Manitoba. (2002). *The Workplace Safety and Health Act – W210*. Winnipeg: Queen's Printer. [www.safemanitoba.com](http://www.safemanitoba.com)

Government of Manitoba. (2006). *The Workplace Safety and Health Regulation – 217/2006*. Winnipeg: Queen's Printer. [www.safemanitoba.com](http://www.safemanitoba.com)

WRHA OESH Operational Procedure – Report and Resolution of Safety Concerns

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**APPENDIX:**

Appendix A: Right to Refuse Algorithm

Appendix B: Right to Refuse Algorithm – Community Health Services

Appendix C: Safety Related Work Refusal Report and Tracking Form

Appendix D: Safety Related Work Refusal Report and Tracking Form – Community Health Services