

# [Introduction of internal responsibility stipulates that workers take](https://assignbuster.com/introduction-of-internal-responsibility-stipulates-that-workers-take/)

Introduction” The right to refuse unsafe work and the ‘ internal responsibility system’represent a fundamental shift in ideology over how workplace health and safetyis governed. Using qualitative data, Gray provides a grounded critique of thisshift and demonstrate that the right to refuse is continually evolving thoughits everyday applications: the local definition of what constitutes risk isconstantly being negotiated. Even when workers do not formally use this rightto deal with a hazard they still, nonetheless, engage in the local constructionof how this safety right is conceptualized, defined and exercised.” (Gray, 2002) Everyone in the workplace, thatincludes workers and employers is responsible for their own safety and thesafety of the co-workers. This is the foundation of Internal Responsibility System (Gray, 2002) that forms the underlying philosophy of theoccupational health and safety legislation in all Canadian jurisdictions.

Thissystem will essentially, create an employee-employer partnership in ensuring asafe and healthy workplace and entrusts the responsibility on everyone in theworkplace. The legal right to refuse unsafe work is one element of the InternalResponsibility System. The right to refuse unsafe work appears to have thesupport of the power of law and seems to fully protect workers from having to carryout jobs that they believe are dangerous. But the system of internalresponsibility stipulates that workers take responsibility for their own safetywhile at work. Thus the two represent a fundamental change in ideology over howworkplace safety is managed.

The Internal Responsibility Systemthat relies on responsible workers is affected by social interaction within aworkplace and the overall social relations of production. Safety is just one ofthe many factors that determine whether an employee will exercise his/her legalright. Any formal safety refusal has an inherent confrontational nature aboutit. If the employee wants a good working relationship with the employer anddoes not want to get into a possible conflict, he/she will lean towards aless-confrontational method of refusing.

Thethree broad pathways for refusing dangerous work, that differentiate thevarious types of strategies that workers use to negotiate safety, are: Formalconfrontational, Informalconfrontational, andInformalnon-confrontationalEven though workers possess the rightto refuse unsafe work, they may not formally use their employee right, but theystill greatly influence the way safety right is conceptualized, defined andexercised. The general types of legal awareness of workers who refuse unsafejobs are ‘ before’, ‘ with’ and ‘ against’ the law as mentioned by Garry C Gray inhis research paper. The two main characteristics of the ‘ before the law’ form of legality isthat the law is characterised by its impartiality and individuals are morelikely to use the law if they can justify to themselves that some kind ofcollective harm exists.

The individual nature of the right to refuse unsafework might therefore be in practical conflict with how some individualsgenerally understand the appropriate use of the law. This explains why somepeople may avoid using their formal right to refuse unsafe work. In the ‘ with the law’ form of legal consciousness, the law is described andplayed as a game.

The legal right of refusing unsafe work is mostly not exertedby an employee because of the historical conflict and present dayconfrontations that happens after the refusal. This results in workers relying oninformal ways of refusing. In the event of a confrontation, the matter is dealtwithin and resolved privately in the organization as required by the internalresponsibility system, thus replacing the ‘ practice’ of legal consciousness byencouraging workers and those with managerial authority to involve in thepractice of “ internal game playing”. This could be both direct like, misusingthe legal loopholes in the procedural aspects of workplace refusals andindirect such as, making subtle threats of potential job loss or transfer. Someworkers can play with the law better than others and thus the informalnon-confrontational way of refusing is the most predominant method used byworkers. The ‘ against the law’ form of legality is developed over time andthrough experience for many of the situations which the workers confront regularlyat work. In this form, the workers will not formally use the law; instead theyrely on actions such as privately refusing, avoidance and involving in othersilent and hidden resistant practices.

Thisgradually becomes a routine because they are repeated so often thus losing the initialintent of refusal to work. Legislations across CanadaWorkers generally have four rights under theOccupational Health and Safety Act (OHSA): the right to know the potentialhazards, the right to participate in identifying the health and safety hazards, the right to refuse unsafe work, and the right to stop dangerous work. Thecontentious one among the four is the Act that allows worker the right torefuse work that he or she believes is unsafe to himself or his co-worker.

Every province has regulations governing the rightto refuse unsafe work and they vary slightly from province to province. The legalright achieved by the labour movement to provide a safe workplace by theemployer and the right for a healthy and safe workplace for the workers hasgained great importance throughout Canada. The legal rights and obligations of aworker to refuse unsafe work is in Part II of the Canada Labour Code (laws-lois. justice. gc. ca/eng/acts/L-2/page-22. html, 1985).

The definition of danger in the Labour Code reads as:” dangermeans any hazard, condition or activity that could reasonably be expected to bean imminent or serious threat to the life or health of a person exposed to itbefore the hazard or condition can be corrected or the activity altered” The legislation provides all workers the rightto refuse work on reasonable grounds they believe that could compromise theirsafety, and/or the safety of others; however exercising the right to refuse is aserious issue and cannot be taken casually. This typically involves a sequenceof steps to identify and resolve the unsafe or dangerous work. Sections oflegislation which refer to the “ right to refuse” work in each jurisdictionare listed below (cupe.

ca/orders/refusing-unsafe-work-fact-sheet, 2015):  Alberta Occupational Health and Safety Act, Sections 35 and 36 British Columbia Workers’ Compensation Act, Occupational Health and Safety Regulation – Section 3. 12 and 3. 13 Manitoba Workplace Safety and Health Act, Sections 42 and 43 New Brunswick Occupational Health and Safety Act, Sections 19 to 23 Newfoundland and Labrador Occupational Health and Safety Act, Sections 45 to 49 Nova Scotia Occupational Health and Safety Act, Sections 43 to 45 Ontario Occupational Health and Safety Act, Sections 43 to 50 Prince Edward Island Occupational Health and Safety Act, Sections 28 to 31 Quebec Act Respecting Occupational Health and Safety, Sections 12 to 31 Saskatchewan Saskatchewan Employment Act, Section 3-31 Canada Canada Labour Code, Part II, Sections 128 to 131  Some of the similarities and difference inlegislation among the provinces are summarized as below (cupe. ca/orders/refusing-unsafe-work-fact-sheet, 2015): According to Section 35 of the OccupationalHealth and Safety Act in Alberta, the worker can refuse unsafe work if he or she believes there is imminent dangerto himself/herself and to others. The worker cannot be disciplined or dismissed accordingto Section 36 of the act for conforming with the legislation. In BritishColumbia, the Act (OHSR, Section 3. 12) states that the worker must notcarry out unsafe work or any work process or operation of any tool or equipmentthat would lead to workplace hazard to self or others. According to theWorkers’ Compensation Act (Occupational Health and Safety Regulation, Section3.

13), the worker cannot be disciplinedfor complying with the regulations. If the work is considered to be dangerous tothe worker’s health and to his/her co-workers, Section 43 of the WorkplaceSafety and Health Act allows the worker to refuse work in Manitoba. Section 42 of the act states that the worker cannot be threatened or discriminated against for conforming with the legislationAccording to Section 19 of the OccupationalHealth and Safety Act, a worker in NewBrunswick has the legal right to refuse work if there is a reason tobelieve that an act is likely to compromise the safety and health of himselfand others. According to section 24 of the act, no worker can be discriminated against, threatened, or coerced for acting in accordance with the legislation. A worker in Newfoundland and Labrador has the legal right to refuse unsafe workaccording to Section 45 of OHSA, if there is reasonable ground to believe thatthe work, tool or equipment is dangerous to the health and safety to the workerand others in the workplace. Section 49 of the Act states that the workercannot be discriminated againstthrough dismissal, discipline, or reduction of either wages or benefits for complying with thelegislation. In NovaScotia, according to Section 43 of the OHSA, if there is sufficient groundto be certain that a work condition, equipment, material or any aspect of thework is dangerous to the safety and health of the worker, he or she has thelegal right to refuse work.

The worker according to section 45 of the actcannot be threatened or victimised through dismissal, reprimand or reduction of either wages or benefitsfor complying with the legislation. Ontario’s OHSA Section 43(3) states that any equipmentor workplace condition that is likely to endanger the health and safety, theworker has the right to refuse work. Few workers and certain circumstances areexcluded from this regulation which are listed in Section 43(1) and (2) of theOHS Act. According to Section 50 of the OHS act, the worker cannot be threatened, discharged, disciplined, intimidated or forced for complying with the legislation. If there is a defensible reason to be certainthat the work will cause harm to the health and safety of the worker andothers, Section 28 of the Occupational Health and Safety Act in Prince Edward Island allows the workerto refuse work. Section 29 of the act states that the worker cannot be threatened or discriminated against, intimidatedor coerced for complying with thelegislation. For a worker in Quebec, Respecting Occupational Health and Safety (ROHSA), Section12 of the Act states that on reasonable grounds if the work appears tocompromise the health and safety or physical well-being of the worker andothers, he/she has the legal right to refuse work. Sections 30 highlights thatin such circumstances the worker cannot be dismissed, suspended, transferred, or penalizedfor complying with the legislation.

Also, the worker has the right toprotective reassignment under certain situations. Saskatchewan also has similar regulation like other provinces. Section 3-31 of the Saskatchewan Employment Act allows the legal right ofrefusal to work under reasonable grounds if a worker deems that the act or aseries of acts is dangerous to the health and safety at workplace. In Section3-35 of the act, the worker cannot bediscriminated against for complying with the legislation.

Workers in the Federal Sector have theright to refuse work, according to Section 128 in Part II of the Canada LabourCode, if there is reasonable grounds to believe that the work performed willput the safety and health of worker and others in danger. Certain categorieslike workers on ships and aircraft operations are exempted from this Act accordingto Section 128 (3-5). According to the Section 147 of the code, no worker canbe dismissed, suspended, or penalizedfor complying with the legislation. The essence of the legislation to refuse andreport unsafe work in every province and federal sector in Canada is very closein their interpretation and application. On the contentious issue of the rightto refuse unsafe work, most employers have the concerns of this right beingmisused to settle non-health and safety issues.

Employers also question thesubjective assessment mentioned in the Act, under which the worker must onlyhave “ reason to believe” that work is unsafe to qualify for initial investigation. Employers normally oppose the “ susceptible worker” policy, in which workplace situationscan be considered unsafe for a particular worker with a special susceptibility, rather than the normal worker. Trips and fall at workplace can be attributedto both the employers having an unsafe workplace and the employee not beingcareful.

There is often disagreement between the employer and workers about thework place hazards. As mentioned in the article “ Right to Refuse DangerousWork” (Peter Bowal & Aleksandar Gvozdenovic, 2015), there has to be adialogue between both parties, assess workplace hazards and understand theimplications of not following the legislations. Recognizing and declaringdangerous work Health and safety hazards existeverywhere. An unsafe work, confined work space, work involving equipment, allwork that has danger to the health or safety of the personnel need to beidentified and proper measure to protect the worker needs to be put in place bythe employer. The five major workplace hazards are:  Physical, Ergonomic, Biologic, Chemical &Psychological Hazards. Some of these hazards are visible and easy to identifywhether it is unsafe to execute. Some hazards occur over a period of time duesome routine body postures.

Other hazards occur due to improper contact ofchemical or infectious objects. Employers, in such cases should have mandatoryassessments to review and identify unsafe working conditions to avoid legalliabilities.  The hazard assessment shouldbe carried out to identify existing and potential hazards for every job andevery task at a work site. Once the hazards are identified and risk level isassigned, appropriate precaution and control measures need to be put in place. The procedure and situations to refuse workdiffers from province to province. The process by which the worker can exercisethe right to refuse work involves certain steps which is more or less same inevery province. The general procedure followed are (Alberta.

ca » Labour » Occupational Health & Safety> Section 35 Existence of imminent danger, 2013): The first stepthe worker has to take is report to the immediate supervisor about his or herintention to refuse work as he/she believes it is unsafe. Simply stating thatsomething is unsafe is enough to start the work refusal process. It has to berationally defensible to believe the work to be unsafe. If the work situation cannot be correctedimmediately, the worker, supervisor and Joint Health and Safety (JHSC) memberwill initiate the investigation process. The worker willresume work only if the workplace is fully made safe and mutually agreed by theemployer and worker. If the conditioncannot be made safe, a government health and safety inspector is brought in toinvestigate the situation. The inspector will provide a decision in writing. The employershould not assign any other worker to the job without informing them about thework refusal and the reason for refusal.

If the worker isnot satisfied with the report of the investigating officer, he/she can appealfor a review within 30 days. The flow chart from the Canadian Labour Codesummarizes the sequence of process followed in the event of refusing unsafework (Part II of the Canada Labour Code (Occupational Health and Safety), 2015).   Consequences of refusingunsafe workEmployment and Social DevelopmentCanada enforces the Canada Labour Code which notifies the employees andemployers of their legal right and obligations if a refusal of work take placein the workplace. According to the code, the employer is defined as “ a personwho employs one or more employees and includes an employers’ organization andany person who acts on behalf of an employer” (Part II of the Canada Labour Code (Occupational Health and Safety), 2015)If an employer or supervisor receivesnotification that an employee has used the legal right and refused to carry outunsafe work, an investigation should immediately be conducted to assess theimminent danger, in the employee’s presence.

The investigation can also takeplace in the absence of the employee if he/she agrees to it. The work cannot bere-assigned to any other employee while the investigation is on. Once theinvestigation is completed, the employer has to prepare a written report statingthe outcome of internal investigation. If the employer agrees that there isa danger based on the investigation results, the employer should take urgentaction to protect the employees from that danger and should inform the workplace committee or representative about the corrective action taken.

Once thecorrective measures are taken and the employee is satisfied, he or she canreturn to work. If the employee disagrees with thedecision taken by the employer after the investigation, the employee cancontinue to refuse the work, which then should be immediately reported to theemployer and to the work place committee or representative. The work placecommittee or representative will then immediately initiate an investigation inthe employee’s presence. The investigation will be conducted in an unbiasedmanner by a team consisting of one member representing the employees and onemember representing the employer. When the investigation is completed, the workplace committee or representative will give a written report with theinvestigation results and any recommendations to the employer.

If the employerwishes to provide any additional information to have the report reviewed, andif the workplace committee or representative finds them as appropriate to betaken into account, they can provide a revised report to the employer. If the employer decides that thedanger exists after reviewing the work place committee’s report, the employershould take immediate corrective action to protect the employees and thisshould be reported to the work place committee. Once the corrective measuresare taken and the employee is satisfied, he or she can return to work. If the employer decides that thedanger exists but the refusal cannot be permitted under ss.

128.(2) “ as it putslives, health or safety of another person directly in danger or the danger is anormal condition of employment”, then the employer should let the employee knowabout this in writing and if the employee agrees to it, then he or she canreturn to work. If the employee disagrees with thedecision taken by the employer, the employee should inform the employer thatthe refusal to work would continue.

The employer will then immediately reportit to the Minister of Labour and the work place committee or representative. Acopy of the two earlier investigation reports is also provided to the Minister. The Minister, upon receiving thereport about the continued refusal, will decide if the refusal can be moreeffectively addressed by some other legislation or is “ trivial, frivolous orvexatious, or made in bad faith” in which case, the Minister will not proceedwith an investigation and will provide his decision in writing to the employeeand the employer. The employee no longer has the right to refuse to work. Ifthe employee is not satisfied by the Minister’s decision, the employee can filea judicial review application with the Federal Court within thirty days afterthe decision. If the Minister proceeds with aninvestigation, this will be done in the presence of the employer, employee anda member of the work place committee appointed by the employees. While theMinister’s investigation is on, the employee can continue the refusal to work; and the employer may bring in another qualified employee to do the same work.

Theemployer has to inform this employee of the continued refusal and the reasonsfor it and assure that he/she will not be exposed to danger. If there is aprevious or ongoing investigation for this employer which involves almost thesame issues, the Minister can consider whether or not to trust the previousinvestigation findings. The Minister can also consider if this investigationcan be combined with any ongoing investigation so that a single decision can behanded out. The Minister will then conduct an investigation and will give awritten report with the decision to the employer and the employee.

If the Minister determines that unsafesituation exists at work, the Minister will issue appropriate directions regardingthe work. The employee can continue to refuse to work until the workingsituations have met the terms as in the directions or until they are modifiedor cancelled. If the Minister decides that thedanger exists but the refusal cannot be permitted under ss. 128.(2) “ as it putslives, health or safety of another person directly in danger or the danger is anormal condition of employment”, then the Minister should provide this decisionin writing, and the employee is no longer entitled to refuse work. If the Minister decides that thedanger does not exist, then the Minister should provide this decision inwriting, and the employee is no longer entitled to refuse work.

After providing the Minister’swritten decision, a copy of the written report will also be provided to theemployee, employer and the work place committee or representative within 10days of its completion. If the employee is not happy with theMinister’s decision that no danger exists or the refusal is not permitted underss. 128.(2), the employee can appeal in writing to an appeals officer within 10days after receiving the decision. If any employer, employee or tradeunion is not happy with the Minister’s direction, they can appeal in writing toan appeals officer within 30 days after the direction was issued.

Discipline for refusingwork believed to be unsafeAn employee cannot be disciplined ordismissed if the refusal to dangerous work was in compliance with thelegislation and regulations. However, if the employer can prove that anemployee has deliberately misused his right to refuse dangerous work, disciplinary action can be taken against that employee, once all theinvestigations and appeals have been completed. The reasons for thedisciplinary action should be provided in writing to the employee within 15working days of the employee’s request. The employee can make a complaintregarding the disciplinary action within 90 days to the Canada IndustrialRelations Board. If the employee is a public servant, he/she can complain tothe Public Service Labour Relations Board (PSLRB).

If the board receives acomplaint that an employee is penalized for exercising the right to refuseunsafe work, then the employer will have to demonstrate before the Board thatthe decision is not related to the incident of refusing work by the employee. Thefinal decision will be taken by the Board or PSLRB; but, if the employee is notsatisfied, he/she can appeal the Board’s decision to the Federal Court. ConclusionDespite the Federal and Provinciallegislations that governs workplace health and safety in Canada, every yearmany Canadians are still injured and killed in their workplace. Safety ofworkers should be enforced by the government and laws should encourageemployers to act more responsibly. Right to refuse dangerous work has proved asa deterrent in Canadian workplace against unsafe work practices. Majority ofCanadian workers are shielded against acts of retaliation by employers fordeclining to perform unsafe work. The most glaring inadequacy in thislegislation is the lack of standards to determine the rationality of any worker’sclaim of an unsafe work.

Employers are at time forced to retrieve due to thestringent legislation which seems to favour the worker. Legislations are meantto be followed and not to be bypassed.