



HEALTH AND SAFETY

Worker health and safety is a major work place issue. As Local officers, you will be called upon to deal with critical and sometimes life-threatening situations. Our members are under the jurisdiction of the health and safety provisions of the *Canada Labour Code Part II (Code)* and the Canada Occupational Health and Safety Regulations (COHSR).

Canada Labour Code Part II : <http://laws.justice.gc.ca/en/L-2/>

COHSR: <http://laws.justice.gc.ca/en/SOR-86-304>

Three Basic Rights

Part II of the *Canada Labour Code* provides an employee with three rights:

- Right to Know;
- Right to Participate;
- Right to Refuse.

Right to Know

Through the provisions of the Code, employees have the right to be informed of known or foreseeable hazards in the work place and to be provided with the information, instruction, training and supervision necessary to protect their health and safety.

This right to know is strengthened by ensuring that the methods of communication are appropriate for all employees, including employees with special needs.

Through their health and safety committees or representatives, employees are given the right to have access to government or employer reports relating to the health and safety of employees, but do not have access to medical records of any person except with that person's consent.

Right to Participate

As health and safety representatives or committee members, employees have the right and the responsibility to participate in identifying and correcting job-related health and safety concerns.

Employers who employ 300 or more employees are required to establish a policy health and safety committee. The purpose of the policy committee is to handle issues that are organization-wide in nature. Because these types of issues go beyond a single work place, there is a need for a more strategic or global approach for their resolution.

Part II of the *Canada Labour Code* further provides for employee participation through the use of an internal complaint resolution process.

Right to Refuse

An employee, at work, has the right to refuse dangerous work if he or she has reasonable cause to believe that:

- a condition exists at work that presents a danger to himself or herself;
- the use or operation of a machine or thing presents a danger to the employee or a co-worker;
- the performance of an activity constitutes a danger to the employee or to another employee.

In order for an employee to be protected by the Code when exercising the right to refuse, the employee must follow the following procedures for the Right to Refuse Work if Danger Exists:

The employee informs their supervisor they are refusing to perform their work activities because of one of the following;

- 1) operation of thing constitutes danger to employee or others.
- 2) a condition exists in the place that constitutes danger.
- 3) performance of activity is a danger to employee or others.

It is important to remember that an employee may not refuse if their actions;

- 1) puts some else in danger.
- 2) is a normal condition of employment (i.e. fire fighter)

If the employer agrees that “danger” exists, the employer shall take immediate action and shall inform OSH of action.

If the matter is not resolved, the employee continues to refuse and without delay reports the action to employer and local OSH committee.

The employer shall investigate the refusal upon being notified in the presence of:

- 1) At least one non-management OSH member or
- 2) The H & S representative or
- 3) one person selected by the employee.

A group of employees involved in a work refusal may select one representative to be present during the investigation.

If the employer disputes the matter or the employee feels “danger “ still exists, employer shall contact HRSDC H & S Officer and report the refusal.

The employer must report back to the OHS committee the actions he or she has taken on the work refusal.

No employer shall assign any other employee to use or operate the machine or thing, to work in that place, or to perform the activity until such time as an HRSDC-Labour health and safety officer has been notified of a continued refusal.

Right of Redress

The purpose of the right of redress is to protect employers from abuse of the right to refuse and protect employees from arbitrary discipline.

Exercise of the right of redress can only occur after a health and safety officer has deemed that a dangerous situation did not exist.

The burden of proof is upon the employer to prove that the employee had abused his or her right to refuse to the *Canadian Industrial Relations Board* before disciplinary action can be carried out.

This provision in the Code is intended to balance the protection from abuse against the protection from arbitrary discipline.

Training

Under the Code (article 125 (1)(z.01), the employer provides, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work;

- ensure that members of policy and work place committees and health and safety representatives receive the prescribed training in health and safety and are informed of their responsibilities.

This right is also endorsed by the National Joint Council (NJC) - Part XX – Occupational Health and Safety Committees and Representatives under article 20.18:

The employer shall, in consultation with the appropriate committee, develop a training program for committee members that shall ensure that committee members are trained in the performance of their responsibilities in relation to the activities of the employer and which includes but is not limited to:

- a. their powers and duties under the Code and its pursuant applicable regulations;
- b. requirements found in the NJC OHS Directive;
- c. the rules and procedures of the committees; and
- d. principles of consensus building and resolving health and safety issues

(National Joint Council - PART XX - Occupational Health and Safety Committees and Representatives at:

<http://www.njc-cnm.gc.ca/directive/index.php?sid=270&hl=1&lang=eng>

Monthly Inspection

Part II of the *Canada Labour Code* states that it is every employer's duty to protect the health and safety of every employee while at work.

Under paragraph 125. (1)(z.12) the employer ensures that the work place committee or the health and safety representative inspects each month all or part of the work place, so that every part of the work place is inspected at least once each year.

Health and Safety Committee or Health and Safety Representatives

Amongst its many benefits and protections, the legislation provides for the recognition of the participation of employee representatives in health and safety in the work place. Work place health and safety committees must be established in work places where there are 20 or more employees. At least half of the committee members must be employees who do not have managerial functions. In work places where there are fewer than 20 employees or in work places exempted from the committee requirement, there must be a health and safety representative.

According to the *Canada Labor Code, Part II*, (article 135.1 (1)) a Health and Safety Committee consists of at least two persons and at least half of the members shall be employees who do not exercise managerial functions.

Although there is no single definition of "managerial function", Human Resources and Skills Development Canada's (HRSDC) *Interpretations, Policies and Guidelines (IPG)* on the matter determined "managerial functions" are those functions which indicate whether an employee is management oriented in terms of his/her responsibilities. The duties and responsibilities performed need to "seriously impact" on the employment status of other employees. In order to ensure consistent and uniform application of the Code and its Regulations, the "managerial functions" criteria to be met can be summarized as follows:

1. decision-making authority in financial, operational, personnel and policy matters;
2. the power to make decisions or effective recommendations that materially affect the conditions of employment of others, i.e. recommendations that are usually acted upon;
3. the power to hire, fire, suspend, demote, transfer or otherwise discipline employees;
4. the person acts as a step in the grievance procedure.

Supervisors typically do not meet the criteria identified and therefore are not an acceptable alternative as a management representative to work place health and safety committees.

HRSDC's full interpretation can be viewed by accessing the following link: <http://www.hrsdc.gc.ca/eng/labour/ipg/006.shtml> .

According to 135 (10) of the *Canada Labour Code Part II* a work place committee shall meet during regular working hours at least nine times a year at a regular intervals. The committee shall have two chairpersons selected from among the committee members. One of the chairpersons shall be selected by the employee members and the other shall be selected by the employer members. (*Canada Labour Code Part II – 135.1 (7)*).

The duties of a workplace health and safety committee, found in *Canada Labour Code Part II S.135. (7)* are as follows;

A work place committee, in respect of the work place for which it is established,

- (a) shall consider and expeditiously dispose of complaints relating to the health and safety of employees;
- (b) shall participate in the implementation and monitoring of the a program for the preventions of hazards in the workplace including traing.
- (c) where the program referred to (b) does not cover certain hazards unique to the work place, shall participate in the development, implementation and monitoring of a program for the prevention of those hazards that also provides for the education of employees in health and safety matters related to those hazards;
- (d) where there is no policy committee, shall participate in the development, implementation and monitoring of a program for the prevention of hazards in the work place that also provides for the education of employees in health and safety matters related to those hazards;
- (e) shall participate in all of the inquiries, investigations, studies and inspections pertaining to the health and safety of employees, including any consultations that may be necessary with persons who are professionally or technically qualified to advise the committee on those matters;
- (f) shall participate in the implementation and monitoring of a program for the provision of personal protective equipment, clothing, devices or materials and, where there is no policy committee, shall participate in the development of the program;

- (g) shall ensure that adequate records are maintained on work accidents, injuries and health hazards relating to the health and safety of employees and regularly monitor data relating to those accidents, injuries and hazards;
- (h) shall cooperate with health and safety officers;
- (i) shall participate in the implementation of changes that might affect occupational health and safety, including work processes and procedures and, where there is no policy committee, shall participate in the planning of the implementation of those changes;
- (j) shall assist the employer in investigating and assessing the exposure of employees to hazardous substances;
- (k) shall inspect each month all or part of the work place, so that every part of the work place is inspected at least once each year; and
- (l) where there is no policy committee, shall participate in the development of health and safety policies and programs.

The committee or the health and safety representative may request from an employer any information that it considers necessary to address work place hazards. It has full access to all government and employer reports, studies and tests relating to the health and safety of employees. Of course, it does not have access to an individual's medical records without the individual's consent.

One of the many responsibilities the committee or health safety representative has is that it shall participate in all inquiries, investigations, studies and inspections pertaining to the health and safety of employees.

The National Joint Council has enhanced the intention of the Code for the importance of the committee to participate in investigations. The scope of the Part XVII – Hazardous Occurrence Investigation, Recording and Reporting (HOIRR) establishes that the employer shall develop, in consultation with the appropriate health and safety committee, hazardous occurrence investigation procedures and methodology, which include the process for selecting and appointing a qualified person to conduct investigations.

(Part XVII - Hazardous Occurrence Investigation, Recording and Reporting at:

<http://www.njc-cnm.gc.ca/directive/index.php?sid=284&hl=1&lang=eng>

Therefore, the committee or health and safety representative must be made aware and actively participate in investigations including harassment complaints. According to the *Canada Occupational Health and Safety Regulations*, at article 20.02 , “work place” violence constitutes any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to an employee. *Harassment is a violence that can cause harm, injury or illness to an employee.*

Our Union Health and Safety representatives play an important role in ensuring that the employers provide safe and healthy work places for employees.

For more information on a variety of health and safety topics, consult the Agriculture Union website under the tab Health and Safety.

National Joint Council – Part XVII – Hazardous Occurrence Investigation, Recording and Reporting

<http://www.njc-cnm.gc.ca/directive/index.php?sid=284&hl=1&lang=eng>

National Joint Council – Part XX – Occupational Health and Safety Committees and Representatives

<http://www.njc-cnm.gc.ca/directive/index.php?sid=270&hl=1&lang=eng>

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