**Refusal to work**

**Non-application to certain workers**

**43**(1) This section does not apply to a worker described in subsection (2),

(a) when a circumstance described in clause (3) (a), (b), (b.1) or (c) is inherent in the worker’s work or is a normal condition of the worker’s employment; or

(b) when the worker’s refusal to work would directly endanger the life, health or safety of another person.  R.S.O. 1990, c. O.1, s. 43 (1); 2009, c. 23, s. 4 (1).

**Idem**

(2) The worker referred to in subsection (1) is,

(a) a person employed in, or a member of, a police force to which the *Police Services Act* applies;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 43 (2) (a) of the Act is amended by striking out “a police force to which the *Police Services Act* applies” at the end and substituting “a police service to which the *Police Services Act, 2018* applies”. (See: 2018, c. 3, Sched. 5, s. 41 (1))**

(b) a firefighter as defined in subsection 1 (1) of the *Fire Protection and Prevention Act, 1997*;

(c) a person employed in the operation of,

(i) a correctional institution or facility,

(ii) a place of secure custody designated under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise,

(iii) a place of temporary detention under the *Youth Criminal Justice Act*(Canada), or

(iv) a similar institution, facility or place;

(d) a person employed in the operation of,

(i) a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,

(ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,

(iii) an ambulance service or a first aid clinic or station,

(iv) a laboratory operated by the Crown or licensed under the *Laboratory and Specimen Collection Centre Licensing Act*, or

(v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclause (i) to (iv).  R.S.O. 1990, c. O.1, s. 43 (2); 1997, c. 4, s. 84; 2001, c. 13, s. 22; 2006, c. 19, Sched. D, s. 14; 2007, c. 8, s. 221.

**Refusal to work**

(3) A worker may refuse to work or do particular work where he or she has reason to believe that,

(a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;

(b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;

(b.1) workplace violence is likely to endanger himself or herself; or

(c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.  R.S.O. 1990, c. O.1, s. 43 (3); 2009, c. 23, s. 4 (2).

**Report of refusal to work**

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker’s employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

(a) a committee member who represents workers, if any;

(b) a health and safety representative, if any; or

(c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay.  R.S.O. 1990, c. O.1, s. 43 (4).

**Worker to remain in safe place and available for investigation**

(5) Until the investigation is completed, the worker shall remain,

(a) in a safe place that is as near as reasonably possible to his or her work station; and

(b) available to the employer or supervisor for the purposes of the investigation.  2009, c. 23, s. 4 (3).

**Refusal to work following investigation**

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

(a) the equipment, machine, device or thing that was the cause of the refusal to work or do particular work continues to be likely to endanger himself, herself or another worker;

(b) the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself;

(b.1) workplace violence continues to be likely to endanger himself or herself; or

(c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself, herself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.  R.S.O. 1990, c. O.1, s. 43 (6); 2009, c. 23, s. 4 (4).

**Investigation by inspector**

(7) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4) (a), (b) or (c).  2001, c. 9, Sched. I, s. 3 (11).

**Decision of inspector**

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person.  2009, c. 23, s. 4 (5).

**Idem**

(9) The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4) (a), (b) or (c).  R.S.O. 1990, c. O.1, s. 43 (9).

**Worker to remain in safe place and available for investigation**

(10) Pending the investigation and decision of the inspector, the worker shall remain, during the worker’s normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation.  2009, c. 23, s. 4 (6).

**Exception**

(10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any,

(a) assigns the worker reasonable alternative work during the worker’s normal working hours; or

(b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.  2009, c. 23, s. 4 (6).

**Duty to advise other workers**

(11) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other worker’s refusal and of his or her reasons for the refusal.  R.S.O. 1990, c. O.1, s. 43 (11).

**Idem**

(12) The person referred to in subsection (11) must be,

(a) a committee member who represents workers and, if possible, who is a certified member;

(b) a health and safety representative; or

(c) a worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is no trade union, by the workers to represent them.  R.S.O. 1990, c. O.1, s. 43 (12).

**Entitlement to be paid**

(13) A person shall be deemed to be at work and the person’s employer shall pay him or her at the regular or premium rate, as may be proper,

(a) for the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4) (a), (b) or (c); and

(b) for time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12).  R.S.O. 1990, c. O.1, s. 43 (13).