

Section 3.12 Refusal of Unsafe Work / Right to Refuse Unsafe Work Checklist

CUPE BC Region - All Sectors Spring 2023

I. INTRODUCTION:

This CUPE BC Region three-part checklist is for Refusals of Unsafe Work (Right to Refuse) as per OHS Regulation 3.12 and includes some best practices seen from across Canada e.g. CCOHS, CUPE, CUPE National Health and Safety Branch, etc. The checklist – which should always be considered a draft working document – reviews preparing for a Refusal of Unsafe Work, what to do during a Refusal of Unsafe Work and following up from a Refusal of Unsafe Work. This checklist is for all sectors (non-federal jurisdiction) for refusals of unsafe work, including, non-exhaustively: COVID-19, violence, occupational exposures to hazardous substances or biological agents, malfunctioning equipment, orientation and training, etc.

II. HOW TO USE THIS CHECKLIST:

This checklist should be reviewed prior to a refusal of unsafe work occurrence. This checklist helps to prepare workers, Joint Health and Safety Committee members and CUPE Locals for the Right to Refuse Unsafe Work process including OHS Regulation 3.12 and the related OHS Guidelines (for example). **If there is a need to engage in the Refusal of Unsafe Work process, contact your Joint Health and Safety Committee worker member and the Local Executive immediately and see Section II of the Table below for Refusals of Unsafe Work.**

III. WHO IS THIS CHECKLIST FOR:

This checklist is intended for workers, Joint Health and Safety Committees and CUPE Locals.

IV. THIS CHECKLIST DOES NOT REPLACE LAW, POLICY AND OHS REGULATIONS:

This document is for CUPE purposes and does not replace the WorkSafeBC OHS Regulations at <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-regulation/part-03-rights-and-responsibilities>. Access a full copy of the *Workers Compensation Act* (the "Act"), the Occupational Health & Safety Regulation ("OHSR"), as well as occupational health and safety policies and guidelines at [WorkSafeBC.com](https://www.worksafebc.com), under Law & Policy. **These change frequently – check the most current online resources at WorkSafeBC. Links change frequently as well.**

<p>The following factors and questions are derived from the WorkSafeBC OHS Regulations, the OHS Guidelines, OHS Policies, Appellate Tribunal Decisions, the CCOHS, the BC Federation of Labour and the CUPE National Health and Safety Branch.</p> <p>If an answer is “Yes” to a question, then no action is required. If the answer is “No” or “Unsure”, then further action is required e.g. contact the Joint Health and Safety Committee, obtain more training, contact the CUPE National Representative assigned to the CUPE Local, contact WorkSafeBC if and as required, etc.</p>	Yes	No	Unsure
I. PRE-SECTION 3.12 / RIGHT TO REFUSE UNSAFE WORK OCCURRENCE (See 3.10 and 3.11)			
Has there been orientation, training and / or education of workers, including supervisors, regarding Section 3.12 / Right to Refuse Unsafe Work?			
Is the nature of the sector, industry, and occupation and / or job considered in the Section 3.12 / Right to Refuse Unsafe Work? Do you know the hazards in these?			
Is there a pre-existing condition e.g. health conditions that make workers susceptible to workplace hazards? Ensure appropriate parties are aware of this.			
Have workers been advised of the current hazards in the specific workplace?			
Have workers been advised of the current hazards related to the specific work duties for that occupation and / or job?			
Do workers have the orientation, training, education and equipment to do the work? Also see OHS Regulations 3.10 and 3.11.			
Have there been risk assessments of the workplace in the last year? See https://www.worksafebc.com/en/health-safety/create-manage/managing-risk/identifying-hazards (WorkSafeBC, Identifying Hazards).			
Are there unusual or unexpected circumstances that occur e.g. variable weather conditions, variable workload, incidents of violence, etc.?			
Were the results of the risk assessment shared with workers, the Joint Health and Safety Committee and the Local Executive?			
Is the Joint Health and Safety Committee involved in the Section 3.12 / Right to Refuse Unsafe Work process? Also see OHS Regulations 3.10 and 3.11.			
Is the worker a member of the Joint Health and Safety Committee or worker trained or educated regarding incident investigations?			
Is the worker a member of the Joint Health and Safety Committee or worker trained or educated regarding Right to Refuse Unsafe Work?			
Are there barriers that may be making workers reluctant to exercise their right to refuse unsafe work?			
Are there hazards that are being overlooked or minimized because they are seen as “part of the job” e.g. violence is an expectation of employment?			

Is there discriminatory action or prohibited action e.g. discipline, threats of discipline, inducement, when a Section 3.12 / Right to Refuse Unsafe Work occurs? See https://www.worksafebc.com/en/for-workers/just-for-you/prohibited-action-complaints (WorkSafeBC, Prohibited Action Complaints) and https://www.worksafebc.com/en/resources/review-appeal/information-sheet/prohibited-action-complaints-workers?lang=en (WorkSafeBC, Prohibited Action Complaints Workers).			
Have discriminatory action or prohibited actions been addressed? See https://www.worksafebc.com/en/for-workers/just-for-you/prohibited-action-complaints (WorkSafeBC, Prohibited Action Complaints) and https://www.worksafebc.com/en/resources/review-appeal/information-sheet/prohibited-action-complaints-workers?lang=en (WorkSafeBC, Prohibited Action Complaints Workers).			
II. SECTION 3.12 / RIGHT TO REFUSE UNSAFE WORK OCCURRENCE			
Is the Joint Health and Safety Committee involved at the beginning of the Section 3.12 / Right to Refuse Unsafe Work process?			
Is your safety immediately impacted e.g. there is a hazard that requires leaving the worksite, the need to contact emergency services e.g. police or Emergency Medical Services, seek medical attention, etc. See https://www.worksafebc.com/en/claims/report-workplace-injury-illness/reporting-serious-accidents-fatalities (WorkSafeBC, Reporting Serious Incidents and Fatalities).			
Was there an undue hazard (for definitions, see the Notes below)? Note: WorkSafeBC's non-binding OHS Guidelines state that a hazard means: "A "hazard" is identified in Part 1 of the <i>Regulation</i> as "a thing or condition that may expose a person to a risk of injury or occupational disease". Further, "undue" is defined by the Oxford dictionary as "unwarranted, inappropriate, excessive or disproportionate". Therefore, a thing or condition that may expose a worker to an excessive or unwarranted risk of injury or occupational disease represents an undue hazard for the purposes of Section 3.12 of the <i>Regulation</i> . WorkSafeBC's non-binding OHS Guidelines state "To uphold a work refusal, there needs to be a clear connection between the undue hazard asserted by the susceptible worker, and his or her health condition". The WorkSafeBC's Review Division appeal decisions have stated that hazards must be "objectively verifiable undue or excessive hazard present at the time of the work refusal". CUPE disagrees with this definition as it does not comply with the OHS Regulations, however, a WorkSafeBC Prevention Officer may apply this definition. See Appeal decision reference number R0268525.			

<p>Was there an undue hazard (for definitions, see the Notes below)? Note: WorkSafeBC's non-binding OHS Guidelines state that a hazard means: "A "hazard" is identified in Part 1 of the <i>Regulation</i> as "a thing or condition that may expose a person to a risk of injury or occupational disease." Further, "undue" is defined by the Oxford dictionary as "unwarranted, inappropriate, excessive or disproportionate". Therefore, a thing or condition that may expose a worker to an excessive or unwarranted risk of injury or occupational disease represents an undue hazard for the purposes of Section 3.12 of the <i>Regulation</i>.</p> <p>WorkSafeBC's non-binding OHS Guidelines state "To uphold a work refusal, there needs to be a clear connection between the undue hazard asserted by the susceptible worker, and his or her health condition."</p> <p>The WorkSafeBC's Review Division appeal decisions have stated that hazards must be "objectively verifiable undue or excessive hazard present at the time of the work refusal". CUPE disagrees with this definition as it does not comply with the OHS Regulations, however, a WorkSafeBC Prevention Officer may apply this definition. See Appeal decision reference number R0268525.</p>			
<p>Was there a "reasonable cause to believe" that an undue hazard exists or would be created (for definitions, see the Note below)? Note: WorkSafeBC's non-binding OHS Guidelines state that a reasonable cause to believe means: "The use of the term "reasonable" in "reasonable cause to believe" means that the worker must assess the situation as a reasonable person, taking into account relevant and available information and exercising good faith judgment with respect to the hazard with due regard to the worker's training and experience."</p>			
<p>Was there "an objective basis for a continued refusal for unsafe work" as per the WorkSafeBC non-binding OHS Guidelines? See the Notes above.</p>			
<p>Did the worker immediately report the hazard to their supervisor or employer?</p>			
<p>Did the supervisor or employer immediately investigate the matter?</p>			
<p>Did the supervisor or employer ensure that any hazard was remedied without delay? Also see OHS Regulations 3.10 and 3.11 e.g. Reporting Unsafe Conditions.</p>			
<p>If the concern was deemed by the supervisor or employer not to be valid, did they inform the worker who made the report of unsafe work?</p>			
<p>If the procedure did not resolve the matter and the worker continued to refuse to carry out the work process or operate the tool, appliance or equipment, did the supervisor or employer investigate the matter in the presence of the worker who made the report AND in the presence of:</p> <ul style="list-style-type: none"> (a) a worker member of the joint committee, or, (b) a worker who is selected by a trade union representing the worker, or (c) if there is no joint committee or the worker is not represented by a trade union, any other reasonably available worker selected by the worker. 			

If the investigation did not resolve the matter, did both the supervisor, or the Employer, and the worker immediately notify a WorkSafeBC Prevention Officer? The WorkSafeBC Prevention Officer must investigate the matter without undue delay and issue whatever Orders are deemed necessary?			
Did the supervisor locate another worker who possessed the necessary training and experience to perform this work safely?			
Did the supervisor or employer reassign the worker who refused the work to other job tasks?			
Was the other worker who was asked to perform the work in question advised of the Section 3.12 / Right to Refuse Unsafe Work process?			
Was the other (replacement) worker orientated and trained in the work duties for that work and location, including the hazards present in the workplace?			
Did the WorkSafeBC Prevention Officer attend the workplace in person?			
Did the WorkSafeBC Prevention Officer attend by phone?			
Did the WorkSafeBC Prevention Officer inspect the work areas, processes, equipment and practices associated with the work refusal?			
Did the WorkSafeBC Prevention Officer issue an inspection report addressing the violations that apply to the undue hazard? See https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-policies/policies-for-the-workers-compensation-act#SectionNumber:P2-95-1 (WorkSafeBC, Division 12 Enforcement Policies on Orders, Penalties, etc.). Note: OHS Policies are mandatory unlike the OHS Guidelines.			
Were there any documents arising from that process? Please provide these to the Joint Health and Safety Committee, subject to privacy considerations.			
Other Comments and Recommendations:			

III. AFTER THE SECTION 3.12 / RIGHT TO REFUSE UNSAFE WORK

Does the employer need to conduct an investigation with the Joint Health and Safety Committee? See WorkSafeBC Form 52E40 at https://www.worksafebc.com/en/health-safety/create-manage/incident-investigations/conducting-employer-investigation (Conducting an Employer Investigation) and https://www.worksafebc.com/en/resources/health-safety/forms/incident-investigation-report-form-52e40?lang=en (Employer Incident Investigation Report) and WorkSafeBC Reference Guide for Employer Investigations at https://www.worksafebc.com/en/resources/health-safety/books-guides/investigations-accidents-incidents-reference-guide-and-workbook?lang=en .			
Were the results of the Section 3.12 / Right to Refuse Unsafe Work process and / or results discussed with the Joint Health and Safety Committee and the Local Executive? Also see OHS Regulations 3.10 and 3.11.			
Were the results of the Section 3.12 / Right to Refuse Unsafe Work process and / or results added to the agenda for the Joint Health and Safety Committee?			
Has the hazard(s) occurred previously?			
Was the hazard(s) rectified if it occurred previously?			
Were there written recommendations to the Joint Health and Safety Committee (including follow up risk assessments)?			
Are there any applicable Collective Agreement provisions that need to be applied?			
Does a grievance need to be filed?			
Has the CUPE National Representative been advised of the Section 3.12 / Right to Refuse Unsafe Work process and / or results?			
Does a WorkSafeBC claim need to be filed? See https://www.worksafebc.com/en/claims (WorkSafeBC Claims).			
Does the WorkSafeBC Prevention Department need to be contacted to pursue further action e.g. an Order? See https://www.worksafebc.com/en/health-safety/create-manage/incident-investigations/penalties (WorkSafeBC Penalties).			
Is further orientation, training and / or education of workers, including supervisors, required?			

Other Comments and Recommendations:

V. Resources: Links change frequently.

I. CUPE National Health and Safety Branch (these may not comply with BC provincial legislation):

“COVID-19 and the right to refuse unsafe work” April 20, 2020, at <https://cupe.ca/covid-19-and-right-refuse-unsafe-work>

“General Health and Safety Checklist for COVID-19” July 10, 2020, at <https://cupe.ca/general-health-and-safety-system-checklist-covid-19>

“Health and Safety Committee Resource Kit” at <https://cupe.ca/health-and-safety-committee-resource-kit>

II. WorkSafeBC:

“Refusing Unsafe Work” at <https://www.worksafebc.com/en/health-safety/create-manage/rights-responsibilities/refusing-unsafe-work>

“The Right to Refuse Unsafe Work” at <https://www.worksafebc.com/en/resources/about-us/news-and-events/backgrounders/the-right-to-refuse-unsafe-work?lang=en>

“The Right to Refuse Unsafe Work” at <https://www.worksafebc.com/en/resources/health-safety/toolbox-meeting-guides/the-right-to-refuse-unsafe-work>

OHS Regulations, Part 3 Rights and Responsibilities at <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-regulation/part-03-rights-and-responsibilities>

OHS Guidelines, Part 3 Rights and Responsibilities (including flowchart as per Appendix A) at <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-guidelines/guidelines-part-03>

VI. Appendices:

Appendix A – WorkSafeBC Flowchart for Regulation Guideline 3.12:

<https://www.worksafebc.com/-/media/WorksafeBC/OHS-Images/G312-flowchart.ashx>

