

#55. **TOWN OF LUNENBURG**
RIGHT TO REFUSE WORK
PROCEDURE

I. Objective

The Occupational Health and Safety Act provides that employees have the right to refuse work that they feel is unsafe. A copy of the relevant sections of the Act are attached hereto as Schedule "A". This policy expands upon these Provincial legislative provisions.

II. Purpose

The purpose of this policy is to set out more clearly and in the context of the Town of Lunenburg the procedure to follow and various responsibilities when an employee believes an unsafe work condition exists pursuant to Schedule "A" attached.

III. Policy Statement

1. Where an employee reasonably believes an unsafe work condition exists they should:
 - a) Determine if they are able to render the unsafe condition safe in the normal course of their duties.
 - b) If the employee is unable to remove the conditions that make the workplace unsafe they are to report the unsafe condition to their immediate supervisor and their refusal to work. The employee may ask that the Department Safety Committee representative be present during discussion involving employee from this step onward.
 - c) If the employee's immediate supervisor is unable or unwilling to rectify the unsafe work condition (or there is no immediate supervisor except the Department Head), the employee should address their concerns to their Department Head.

- d) Where the employee is not satisfied that the unsafe condition has been rectified by their immediate supervisor and/or Department Head they should promptly advise the Town Manager/Clerk about the unsafe condition. The Department Head (and immediate supervisor where applicable) and Department Safety representative may also be present for this discussion.
- e) If the Town Manager/Clerk is unable or unwilling to rectify the unsafe working condition, she will then call together at least three (3) Safety Committee members consisting of the Chairman, and two other members who may give their opinion. They may not, however, order the employee back to work. If the employee is not satisfied with this group's response, the employee may request that a full Safety Committee meeting shall be held. The Committee must unanimously agree to order an employee back to work.
- f) If the employee is still not satisfied that the safety issue has been rectified they may ask the Department of Labour to investigate. In this case the employee will be reassigned to another job in the Department until the Department of Labour has had an opportunity to investigate the complaint.
- g) At any step when the employee is satisfied that the unsafe condition has been remedied, they may return to work at the job duty in question.

and time spent by the employee in such activities is deemed to be work time for which the employee shall be paid by the employer at the applicable rate.

(2) Where there is

(a) a committee or representative at a workplace, the employee who observes workplace occupational health or safety monitoring and the taking of samples or measurements shall be selected by the committee or representative, as the case may be; or

(b) no committee or representative at a workplace, the employee who observes workplace occupational health or safety monitoring and the taking of samples or measurements shall be selected by the employees.

(3) Every employer shall provide

(a) reasonable notice to an observer of the commencement of the occupational health or safety monitoring and of the taking of samples or measurements undertaken pursuant to subsection (1); and

(b) access to a workplace for the purpose of the observation.

(4) Where an observer requests, the procedure for occupational health or safety monitoring and the taking of samples or measurements shall be identified and explained to the observer.

(5) Where an owner, constructor or contractor performs occupational health or safety monitoring or takes samples or measurements that relate to the health or safety of employees at the workplace,

(a) the owner, constructor or contractor shall provide reasonable notice to all employers at the workplace of the commencement of the occupational health or safety monitoring and of the taking of samples or measurements; and

(b) the requirements of subsections (1) to (4) apply.

(6) Where the monitoring, samples or measurements referred to in subsection (1) are conducted by, or at the request of, an officer, the officer may undertake the monitoring, samples or measurements whether or not notice has been given pursuant to subsection (3) or (5). 1996, c. 7, s. 42.

RIGHT TO REFUSE WORK

Right to refuse work and consequences of refusal

43 (1) Any employee may refuse to do any act at the employee's place of employment where the employee has reasonable grounds for believing that the act is likely to endanger the employee's health or safety or the health or safety of any other person until

(a) the employer has taken remedial action to the satisfaction of the employee;

(b) the committee, if any, has investigated the matter and unanimously advised the employee to return to work; or

(c) an officer has investigated the matter and has advised the employee to return to work.

(2) Where an employee exercises the employee's right to refuse to work pursuant to subsection (1), the employee shall

- (a) immediately report it to a supervisor;
 - (b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and
 - (c) where the matter is not remedied to the employee's satisfaction after the employee has reported pursuant to clauses (a) and (b), report it to the Division.
- (3) At the option of the employee, the employee who refuses to do any act pursuant to subsection (1) may accompany an officer or the committee or representative, if any, on a physical inspection of the workplace, or part thereof, being carried out for the purpose of ensuring others understand the reasons for the refusal.
- (4) Notwithstanding subsection 50(8), an employee who accompanies an officer, the committee or a representative, as provided in subsection (3), shall be compensated in accordance with subsection (7), but the compensation shall not exceed that which would otherwise have been payable for the employee's regular or scheduled working hours.
- (5) Subject to any applicable collective agreement, and subsection (3), where an employee refuses to do work pursuant to subsection (1), the employer may reassign the employee to other work and the employee shall accept the reassignment until the employee is able to return to work pursuant to subsection (1).
- (6) Where an employee is reassigned to other work pursuant to subsection (5), the employer shall pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued in the employee's normal work.
- (7) Where an employee has refused to work pursuant to subsection (1) and has not been reassigned to other work pursuant to subsection (5), the employer shall, until clause (1)(a), (b) or (c) is met, pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued to work.
- (8) A reassignment of work pursuant to subsection (5) is not discriminatory action pursuant to Section 45.
- (9) An employee may not, pursuant to this Section, refuse to use or operate a machine or thing or to work in a place where
- (a) the refusal puts the life, health or safety of another person directly in danger; or
 - (b) the danger referred to in subsection (1) is inherent in the work of the employee. 1996, c. 7, s. 43.

Restriction on assignment of work where refusal

44 Where an employee exercises the employee's right to refuse to work pursuant to subsection 43(1), no employee shall be assigned to do that work until the matter has been dealt with under that subsection, unless the employee to be so assigned has been advised of

- (a) the refusal by another employee;
- (b) the reason for the refusal; and