

If you are reasonably certain that you or others are put in danger by performing your work, what procedure must you follow to exercise your right to refuse?

You inform your immediate superior and you tell her the reasons you are refusing to perform the task being asked of you (OHSA, sec. 15)



The immediate superior summons your union representative (OHSA, sec. 16)



The employer and your union representative analyze the situation and agree on the corrective measures to be applied by the employer



If your employer and your union representative do not agree on the existence of a danger or on the corrective measures to be applied, a request for an intervention by a CNESST⁷ inspector is filed by the employer, your union representative or yourself (OHSA, sec. 18)



The inspector shall immediately determine whether or not a danger exists. He may order a return to work or prescribe temporary measures and require that corrective measures be taken within such time as he may determine (OHSA, sec. 19)



The inspector's decision takes effect immediately and must be applied (OHSA, sec. 191), even if the parties do not agree. The employer or yourself have 10 days to ask for a review of this decision (OHSA, sec. 191.1)



⁷ Commission des normes, de l'équité, de la santé et de la sécurité du travail



For any questions, contact your local union representatives.

You can consult the Act respecting occupational health and safety (OHSA) at:
<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-2.1>



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OHS

DEMYSTIFIED

Know your rights and your obligations

FREQUENTLY ASKED QUESTIONS

Right to Refuse

Do you have reasonable grounds to believe that performing your work will put your or someone else's health, safety or physical well-being in danger?

You can exercise the right to refuse under section 12 of the Act respecting occupational health and safety



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What are the conditions linked to the right of refusal?

The right to refuse must not be exercised in an abusive manner or in bad faith. You must have reasonable grounds to believe that performing your work will expose you to a danger for your health, safety and physical well-being.

You must remain in the workplace and be available to perform another task that you are reasonably capable of performing.

The right to refuse must not put the life, health, safety or physical well-being of another person in immediate danger (OHSA¹, sec. 13).

The conditions being questioned under which the work is performed must not be normal for the kind of work that you perform.

The right to refuse is an individual right. However, when several workers refuse to perform work because of the same danger, their cases may be examined jointly and be the subject of a decision that concerns them all (OHSA, sec. 27).

Can the employer discipline you if you exercise your right of refusal?

The employer cannot penalize you if you exercise your right to refuse. He cannot fire you, or impose a disciplinary measure, unless you have acted in an abusive manner.

Can the employer refuse to pay you when you exercise your right to refuse?

The employer is obliged to pay you your salary.

What are normal working conditions?

Case law has established certain criteria in order to establish the normalcy of working conditions. This criteria has been reported by the authors of *Traité de droit de la santé et de la sécurité au travail*², under the form of these questions:

- Is the work performed in good practice?
- Is the risk inherent to the task?

- Have all the generally recognized safety measures been taken to deal with this situation?
- Is the equipment in normal operating condition?
- Does the physical well-being or health status of the worker allow her to perform this task without it being an additional risk for herself or for other people³?

If you answer no to one or more of these questions, you can conclude that abnormal working conditions exist. And it is not enough that the conditions for performing the work have been the same for many years or that this same work is performed by other people to conclude that the conditions are normal⁴.

EXAMPLES OF DECISIONS

*Affaire McGee and CSSS Jardins-Roussillon*⁵

Summary of the facts

The worker refused to give a patient a bath, on a shower-stretcher, for the reason that she was afraid of him. This patient usually received a bed bath, his body and hands were restrained, as well as the ankles as needed. The worker had already made two complaints to the employer when this same patient had hit her in the temple and in the face. The worker explained to the Labour Administrative Tribunal (TAT), formerly the *Commissions des lésions professionnelles* (CLP) (Commission on Employment Injuries), that the patient was aggressive and unpredictable and that she was afraid to give him a bath on the shower-stretcher, because he could not be restrained.

Decision

In his decision, the TAT administrative judge concluded that the employer must remove the disciplinary notice imposed on the worker when she exercised her right to refuse. The administrative judge acknowledged that the worker had reasonable grounds to believe that performing this work would expose her to danger and that the working conditions were abnormal compared to the usual work.

*Affaire CSSS du Nord de Lanaudière and Chartier*⁶

Summary of the facts

Three workers on the evening shift exercised their right to refuse after one of them heard threatening and aggressive words from one of the residents. The worker overheard a conversation in which the resident told another resident that he had a knife. When the security guards intervened, they discovered that the resident had an Exacto knife on him, which he gave to them. After this incident, the employer proposed a review of the therapeutic nursing plan and an increase in the frequency of security rounds. The workers felt that these measures were inadequate and they decided to exercise a right to refuse.

Decision

The TAT administrative judge concluded that the conditions for performing the work for the three workers were normal and there were no reasonable grounds to believe that they exposed them to a danger. According to him, there was no proof that the patient might have used his physical strength against them, even though he could be verbally intimidating. The administrative judge also stated that the workers never had to use their own physical strength when the patient showed signs of aggressiveness. Therefore, the administrative judge determined that the risk of assault on the workers was very low and that nothing led him to believe there was a potential danger.

In his evaluation, he took into account the safety measures taken by the employer. On the one hand, the security guards made regular rounds, there is a “Code White” set up for emergency situations and the patient’s therapeutic nursing plan (TNP) was updated. On the other hand, this patient was assessed by psychiatry and his medication was adjusted. Consequently, the administrative judge considered that, even if the workers were exposed to aggressive actions and words on a daily basis, the working conditions were normal for this type of healthcare institution (CHSLD) and the work was done according to good practice.

Because each case is unique, please contact your local union team with any questions related to user assaults. It is clear to the FIQ that no worker should have to tolerate being hit, bitten, etc. Moreover, the employer is obliged to take measures to protect the health and ensure the safety and physical well-being of his workers (OHSA, sec. 51).

¹ Act Respecting Occupational Health and Safety

² Bernard CLICHE, Serge LAFONTAINE et Richard MAILHOT, *Traité du droit de la santé et de la sécurité au travail : le régime juridique de la prévention des accidents du travail et des maladies professionnelles*, Cowansville, Éditions Yvon Blais, 1993, p. 563

³ *Ibid.*, p. 20.

⁴ Goodyear Canada inc. et Daoust (1^{er} août 1990), 60389519, D.T.E. 91T-442 (B.R.P.).

⁵ 2011 QCCSST 89 (CanLII).

⁶ 2011 QCCLP 6060 (CanLII).