

What nurses need to know about their legal right to refuse dangerous work

By Dewey Funk
UNA, OH&S Advisor

How do I as a nurse invoke my right to refuse dangerous work?

What are my obligations?

What are my employer's obligations in the process?

Nurses are asking more questions about their right to refuse dangerous work.

Questions I frequently hear include: How do I as a nurse invoke my right to refuse dangerous work? What are my obligations? What are my employer's obligations in the process?

The most common question is whether a nurse even has the right to refuse dangerous work, since nurses know they are caregivers responsible for the wellbeing of the patients. Many nurses instinctively put their patients' needs first regardless of the cost to their health and safety. So making the decision to refuse dangerous work is often a struggle for nurses, as it is for workers in many fields. Nurses will see their right to a safe workplace to be at odds with the patient's right to receive care.

Nurses need to consider many factors, including their personal safety, professional obligations, the safety of others, patients, members of the public, and whether someone else has training to be safer on the job. But the answer to this key question is, yes, nurses *do* have the right to refuse unsafe work. And United Nurses of Alberta is there to assist nurses who have to take this serious step. UNA believes the decision must be evaluated and respected by everyone involved.

Many nurses worry they may be disciplined for refusing unsafe work. Neither the employer nor CARNA may discipline a worker who has legitimately refused unsafe work. UNA has successfully challenged employers on this point.

During training to become an RN or RPN the focus is on providing health care for patients and advocating for patient rights. This is so important UNA has insisted that patient advocacy be enshrined in our collective agreements through the Professional Responsibility Process.

If you believe your work has been structured so that your patients' safety and health comes at a risk to your own, you need to contact your union immediately. Your health and safety is important, and UNA can help you ensure that having a safe workplace is not mutually exclusive with providing safe patient care.

The dangerous work refusal process as outlined in Alberta's Occupational Health and Safety Act is discussed below:

Right to refuse dangerous work

31(1) Subject to this section and section 5, a worker may refuse to work or to do particular work at a work site if the worker believes on reasonable grounds that there is a dangerous condition at the work site or that the work constitutes a danger to the worker's health and safety or to the health and safety of another worker or another person.

You have the right to refuse dangerous work if you believe on reasonable grounds the dangerous condition or the work constitutes a danger to your health and safety or the health and safety of another worker.

(2) A worker who refuses to work or to do particular work under subsection (1) shall promptly report the



refusal and the reasons for it to the worker's employer or supervisor or to another person designated by the employer or supervisor.

Should you choose to invoke your right to refuse dangerous work, you must promptly report the reason for the work refusal to your supervisor or the person designated by the employer. Faced with this situation, I advise nurses to state to the employer they are invoking the right to refuse dangerous work under the terms of the OH&S Act.

You do *not* have to file a written report first to invoke the right to refuse dangerous work. But you do have the duty to verbally report the work refusal to your supervisor or manager. Employers have been writing policies or otherwise insisting that employees must submit a written work refusal *before* the employer will consider the work refusal a formal notification. *This is not consistent with the legislation.* However, an employer may require an employee to file a written work refusal later in the process.

(3) If the employer does not remedy the dangerous condition immediately, the employer shall immediately inspect the dangerous condition in the presence of the worker, when it is reasonably practicable to do so and when the presence of the worker does not create a danger to the health and safety of that worker or of any other person, and one of the following persons, when it is reasonably practicable to do so and when the presence of that person does not create a danger to the health and safety of that person or of any other person:

(a) if there is a joint work site health and safety committee established under section 16, the co-chair or a committee member who represents workers;

(b) if there is a health and safety representative designated under section 17, that representative;

(c) if there is no committee or representative, or where no committee member or representative is available, another worker selected by the worker refusing to do the work.

Once you have reported your refusal to do dangerous work to your employer, the responsibility for remedying the situation falls to the employer.

The employer is obligated to inspect the dangerous condition in the presence of the affected worker or workers. The worker has an obligation to accompany the employer with either a Joint Work Site Health and Safety Committee member or, in the event the JWSHS member is not available, another worker selected by the employee. The employer may not choose the worker who will accompany the worker who invoked the right to refuse. This also applies during night shifts and shifts worked on weekends.

(4) The employer required to inspect under subsection (3) shall take any action necessary to remedy any dangerous condition, or ensure that such action is taken.

In the vast majority of cases, employers take corrective actions required to remedy the situation or condition in a timely fashion. This commonly includes taking broken equipment out of service or supplying personnel protective equipment to employees. However, there are occasions where the situation cannot be rectified at once.

(5) Until the dangerous condition is remedied, the worker who reported it may continue to refuse to work or to do particular work to which the dangerous condition may relate.



UNA OH&S Advisor
Dewey Funk

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A worker who has invoked the right to refuse dangerous work may also continue to refuse to do the work until he or she is satisfied the dangerous condition has been remedied.

(6) When a worker has refused to work or to do particular work under subsection (1), the employer shall not request or assign another worker to do the work until the employer has determined that the work does not constitute a danger to the health and safety of any person or that a dangerous condition does not exist.

The employer cannot approach another nurse and assign a replacement nurse to do the work immediately.

(7) Where the employer assigns another worker to do the work, the employer shall advise that worker, in writing, of

- (a) the first worker's refusal,*
- (b) the reasons for the refusal,*
- (c) the reason why, in the opinion of the employer, the work does not constitute a danger to the health and safety of any person or that a dangerous condition is not present, and*
- (d) that worker's right to refuse to do dangerous work under this section.*

If the employer assigns another worker to do the work, the employer must inform that worker of the first worker's refusal, the reason(s) for the refusal, why the employer does not believe the dangerous condition exists for the replacement worker, and the replacement worker's right to refuse.

Examples of why another worker can be assigned to do the work safely include the replacement worker having the required training for the situation where the dangerous work refusal was invoked, or

the broken equipment having been taken out of duty.

(8) On completing an inspection under subsection (3), the employer shall prepare a written report of the refusal to work, the inspection and action taken, if any, under subsection (4).

This is an employer obligation that must be completed by the employer.

(9) The employer shall give a copy of the report completed under subsection (8) to

- (a) the worker who refused work under subsection (1),*
- (b) the joint work site health and safety committee, if one exists, and*
- (c) the health and safety representative, if one exists.*

The employer is also required to complete a report and give a copy of this report to the worker who invoked the dangerous-work refusal and also to provide a copy to the JWHSC.

(10) The employer shall ensure that a report given under subsection (9) does not contain any personal information related to the worker who refused to work under subsection (1).

Personal information, such as the worker's name and address, must be kept confidential.

Finally, UNA members should remember that at any time in the dangerous-work refusal process they may call the Occupational Report Line:

- Edmonton (780) 415-8690
- Rest of Alberta (780) 415-8690

You also have the right to call your union for assistance at any time during the process, or before you make the decision to invoke a dangerous-work refusal. 🇨🇦