# rights of all employees / work Refusals / reports of unsafe work environment

***Task Instruction***

***These procedures apply to all employees in Canada only.***

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Legislation

Kelly Services (Canada), Ltd. adheres to the Canadian Health & Safety legislation that states:

The right to participate in workplace health and safety decisions, the right to know about the hazards in your workplace, the right to refuse unsafe work and the right to stop work are the basic health and safety rights achieved by the labour movement. Procedures and circumstances around these rights vary from province to province. Below you will find a listing of the legislation which refer to the rights of workers in each jurisdiction.

**British Columbia Workers’ Compensation Act, Occupational Health and Safety Regulation – Section 3.12 and 3.13**

**Alberta Occupational Health and Safety Act, Sections 35 and 36**

**Saskatchewan Saskatchewan Employment Act, Section 3-31**

**Manitoba Workplace Safety and Health Act, Sections 42 and 43**

**Ontario Occupational Health and Safety Act, Sections 43 to 50**

**Quebec Occupational Health and Safety Act, Sections 43 to 50**

**New Brunswick Occupational Health and Safety Act, Sections 19 to 23**

**Nova Scotia Occupational Health and Safety Act, Sections 43 to 45**

**Newfoundland and Labrador Occupational Health and Safety Act, Sections 45 to 49**

**Prince Edward Island Occupational Health and Safety Act, Sections 28 to 31**

**Canada Canada Labour Code, Part II, Sections 128 to 131**

Scope

At Kelly, we are committed to the safety and health of all employees. We share with our customers the responsibility for their safety and take all precautions in order to ensure each and every employee works in an environment free from safety hazards, violence and harassment.

Every employee has the:

**The Right to Participate**

Workers have the right to be part of the process of identifying and resolving workplace health and safety concerns. This right is expressed through worker membership on joint health and safety committees, or through worker health and safety representatives.

**The Right to Know**

Workers have the right to know about hazards in their work, get information, supervision and instruction to protect their health and safety on the job. This means the right to be trained and to have information on machinery, equipment, working conditions, processes and hazardous substances. The parts of the Act that implement the Workplace Hazardous Materials Information System (WHMIS) play an important role in giving workers the right to know. The employer can enable the workers' right to know in various ways, such as making sure they get:

* Information about the hazards in the work they are doing;
* Training to do the work in a healthy and safe way;
* Competent supervision to stay healthy and safe.

**The Right to Refuse Work**

Workers have the right to refuse work that they believe is dangerous to either their own health and safety or that of another worker. The Act describes the exact process for refusing dangerous work and the responsibilities of the employer in responding to such a refusal. For example, workers may refuse work if they believe their health and safety is endangered by any equipment they are to use or by the physical conditions of the workplace. Every Act describes the exact process for refusing work and the responsibilities of the employer/supervisor in responding to such a refusal.

A worker can refuse to work if he or she has reason to believe that:

* any machine, equipment or tool that the worker is using or is told to use is likely to endanger himself or herself or another worker.
* the physical condition of the workplace or workstation is likely to endanger himself or herself.
* workplace violence is likely to endanger himself or herself.
* any machine, equipment or tool that the worker is using, or the physical condition of the workplace, contravenes the Act or regulations and is likely to endanger himself or herself or another worker.

**The Right to Stop Work**

The Occupational Health and Safety Act permits specified persons to stop work in "dangerous circumstances". In most cases, it takes both worker and management certified joint health and safety committee members to direct an employer to stop dangerous work (joint stoppage). One must be a certified member representing workers; the other, a certified member representing the employer. In some special cases, a single certified member may have this right.

* Dangerous Circumstances: Work can be stopped only in “dangerous circumstances”. This means a situation in which all of the following apply:
  + the Act or the regulations are being contravened, and
  + the contravention poses a danger or a hazard to a worker, and
  + any delay in controlling the danger or hazard may seriously endanger a worker.

Procedure

These procedures will demonstrate how to manage the situation.

The Customer Health & Safety Assessment asks specific questions about the safety of our customer’s environment, their safety programs, the type of work our employees will be doing and the type of machinery they will be working on. Where hazards exist, Kelly will partner with the customer to ensure that measures are in place to prevent injury and either remove the hazards or put controls in place that will keep our people safe.

In the event that any Kelly employee is exposed to a hazard or work situation that the employee feels is unsafe, that employee has the right to stop and refuse unsafe work.

When an employee refuses unsafe work, there are certain procedures that must be followed. They are as follows:

**FIRST STAGE**

1. Worker considers work unsafe.
2. Worker reports refusal to his/her supervisor or employer. Worker may also wish to advise the worker safety representative and/or management representative. Worker stays in safe place.
3. The Kelly Representative documents the work refusal or unsafe work environment in Aclaimant.
4. Employer or supervisor investigates in the presence of the worker and the worker safety representative.
5. Either:
   1. **Issue resolved.** Worker goes back to work.
   2. **Issue not resolved.** Proceed to the second stage

If the refusing worker is not satisfied with the result of the first stage investigation, the worker can continue to refuse the work if he or she has reasonable grounds for believing that the circumstances that caused the worker to initially refuse work continue. At this point, the "second stage" of a work refusal begins and the Safety Department must be notified via Aclaimant tool.

**SECOND STAGE**

1. The Safety Department will review the first stage investigations including speaking with the worker refusing unsafe work and will notify the Ministry of Labour Immigration, Training and Skills Development (MLITSD formerly MOL) or the appropriate provincial agency. With reasonable grounds to believe work is still unsafe, worker continues to refuse and remains in safe place. Worker or employer or someone representing worker or employer calls the MOL.
2. The Inspector investigates in company of worker, safety representative and supervisor or management representative. \*
3. Inspector gives decision to worker, management representative/supervisor and safety representative in writing.
4. Changes are made if required or ordered. Worker returns to work.

\* Pending the provincial agency’s investigation:

* The refusing worker may be offered other work.
* Refused work may be offered to another worker, but management must inform the new worker that the offered work is the subject of a work refusal. This must be done in the presence of:
  + a member of the joint health and safety committee who represents workers; or
  + a health and safety representative, or
  + a worker who because of his or her knowledge, experience and training is selected.

**What happens when a worker refuses unsafe work?**

If the worker continues to refuse to work after the completion of the employer's investigation (first stage), the Safety Department must notify the inspector (second stage). The inspector will come to the workplace to investigate the refusal in consultation with the worker and the employer (or a representative of the employer). If there is a joint health and safety committee member, a worker health and safety representative, or by the other workers to represent the worker, they will also be consulted as part of the inspector's investigation.

While waiting for the inspector's investigation to be completed, the worker must remain in a safe place that is as near as reasonably possible to his or her workstation and available to the inspector for the purposes of the investigation, unless the employer assigns some other reasonable alternative work during normal working hours or gives other directions to the worker where an assignment of reasonable alternative work is not practicable.

The inspector must decide whether the circumstance(s) that led to the work refusal is likely to endanger the worker (or another person). The inspector's decision must be given, in writing, to the worker, the employer, and the worker representative, if there is one. If the inspector finds that the circumstance is not likely to endanger anyone, the refusing worker is expected to return to work. If the inspector finds that the circumstance(s) is likely to endanger the worker or another person, the inspector will typically order the employer to remedy the hazard.

**Will the employee be paid while refusing to work?**

Yes. Kelly employees will be paid during the “first stage” of a work refusal. During the “second stage”, the Kelly employee may be asked to perform other work either at the customer site or another customer site. “Second stage” work refusal’s will be handled on a case-by-case basis in cooperation with the Safety Department

**Can the employee be disciplined for refusing unsafe work?**

No. A worker has the duty to work in accordance with the Safety Act and the regulations and has the right to seek their enforcement. The employer is not allowed to penalize, dismiss, discipline, suspend or threaten to do any of these things to a worker who has obeyed the law.

However, this provision does not apply if the work refusal was made in bad faith or if the worker continues to refuse work after the inspector finds the work to be safe and not endanger the worker

At a customer site, Kelly does not control the day-to-day safety, nor do we have control over the work being done. If a hazard or unsafe work situation is reported, or work is required that has the potential to be hazardous, we must ensure that the customer will develop and implement controls to ensure the safety of our workers.

* Kelly may be required to participate in the development and implementation of safety controls, which is encouraged. Contact the Safety Department if involvement is required or assistance is needed.

References

* Aclaimant
* KellyWeb Canada > Health & Safety > Policies and Procedures > Rights of All Employees / Work Refusals / Reports of Unsafe Work Environment
* Occupational Health & Safety Act (Ontario) – Part V. 43 – 49

Communication/Training

Rights of All Employees will be communicated via regular Kelly communication methods, via employee orientation (Full time/Temporary) and with further information being communicated when needed through regular email and updated KellyWeb Canada content.

Communication for all full-time employees will be delivered during the Hiring orientation.

Communication for all temporary employees will be delivered during the Registration process via the Kelly Talent Handbook.

All training for temporary employees will take place during orientation.

Additional training is available. Contact the Safety Department to arrange any site-specific training that may be required by the customer.

Roles & Responsibilities

The Safety Department is the designated owner of this Task Instruction and is responsible for content as well as ensuring the document is updated as required and maintained in a current status.

The Safety Department is responsible for the content of this document as well as for managing the associated activities.

The Senior Safety Manager, Safety, Health & Environmental, is responsible for approving this document for publication.

The Kelly Representatives are responsible for reviewing the available documentation, participating in the available training and implementing this program in their branch to help reduce injuries.

Evaluation & Acknowledging Success

The Safety Department will evaluate this program annually.

Branch safety compliance will be audited during our annual safety audits.

Reason for Issue

Kelly Occupational Health & Safety Compliance.

Contact

Direct any questions about these procedures to your immediate supervisor or:

* Holly Hardison, Safety, Health & Environmental Manager, +1 226 759 5839
* Cheri Duggan, Global Senior Safety, Health & Environmental Manager, +1 661 204 2959