

ADMINISTRATIVE PROCEDURES

SUBJECT: Health & Safety Work Refusals

The Lambton Kent District School Board recognizes that every employee has the right to refuse unsafe work under the Occupational Health & Safety Act. The following procedure was developed to identify the process regarding work refusals.

Criteria for a Work Refusal as defined in Part V, section 43(3) of the Occupational Health & Safety Act

A worker may refuse to do particular work where he or she has reason to believe that,

- a) any equipment, machine, device, or thing the worker is to use or operate is likely to endanger himself, herself, or another worker;
- b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;
 - b.1) workplace violence is likely to endanger himself or herself; or
- c) any equipment, machine device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of the Occupational Health & Safety Act or the regulations and such contravention is likely to endanger himself, herself, or another worker.

Application

1. The right to refuse work applies to all LKDSB employees as long as the criteria for the refusal as per the Act is met. However, in some cases as per in point 2 below, this right may be limited for teachers.
2. As per section 3(3) of [Regulation 857](#)-Teachers, the right to refuse work, does not apply to teachers, as defined in the Education Act, where the circumstance is such that the life, health, or safety of a student is in imminent jeopardy. Teachers must first secure the safety of their students. When the life, health or safety of a student is not in imminent jeopardy, a teacher has the right to refuse work consistent with the Occupational Health & Safety Act and this Administrative Procedure.
3. It is hoped that most health & safety concerns can be resolved and corrected by following the Health & Safety Concern Resolution Flow Chart process, attached as Appendix A, prior to an Employee having the need to refuse work.

Steps to be followed during a work refusal

Stage 1 Work Refusal

1. An employee who feels that the criteria for a work refusal has been met and has a genuine belief that continuing to do the work could result in harm to themselves or others should immediately report the circumstance of the refusal to their Principal / Supervisor. The Employee should clearly state that they are refusing to work as per the Occupational Health & Safety Act.
2. The Principal / Supervisor should immediately notify the Worker Health & Safety Representatives at the site. The site-based worker representatives should decide which one of them will represent the Employee in the investigation of the refusal and that Representative should be made available with no delay.
3. Together in the presence of the Employee, the Principal / Supervisor, and the site-based Worker Health & Safety Representative should investigate the circumstance of the refusal. The Health & Safety Department can be contacted for advice or to assist in this investigation.
4. Until the investigation is complete, the refusing Employee is to remain in a safe area near their work area. Any affected students or other staff members should also be moved to a safe area while the investigation is completed.
5. If the Principal / Supervisor agrees with the Employee, action must be taken to correct the problem or isolate the problem (i.e., lockout, etc.) until the problem can be corrected. If the Employee is satisfied that the situation has been resolved and that they are no longer in harm's way, then the employee is to return to work and at this point the work refusal is over.
6. The Principal /Supervisor should document the circumstance of the worker refusal and the corrective actions taken, using the Work Refusal Stage 1 Resolution Form in Appendix 2, with appropriate signatures. A copy of the report should be provided to the Health & Safety Department. The Health & Safety Officer should share a copy with the Co-chairs of the appropriate Joint Health & Safety Committee.
7. If still unresolved, prior to moving to Stage 2, the Principal/Supervisor should contact the Health & Safety Department, who will contact the Co-Chairs of the appropriate Joint Health & Safety Committee. The Health & Safety Officer and the Worker Co-chair, or their designate, will meet with the parties involved in the refusal and attempt to resolve the issue. If the issue still cannot be resolved, then the refusal moves to a Stage 2 work refusal under the Occupational Health & Safety Act.

Stage 2 Work Refusal

1. If after the investigation in stage 1 or after implementing any corrective actions to deal with the circumstances that caused the refusal, the Employee still feels that they have reasonable grounds to believe that the criteria for a work refusal have been met and that they may still be in harm's way as per that criteria, the Employee shall clearly state to their Principal / Supervisor that they are exercising their right to continue to refuse work under the Occupational Health & Safety Act.

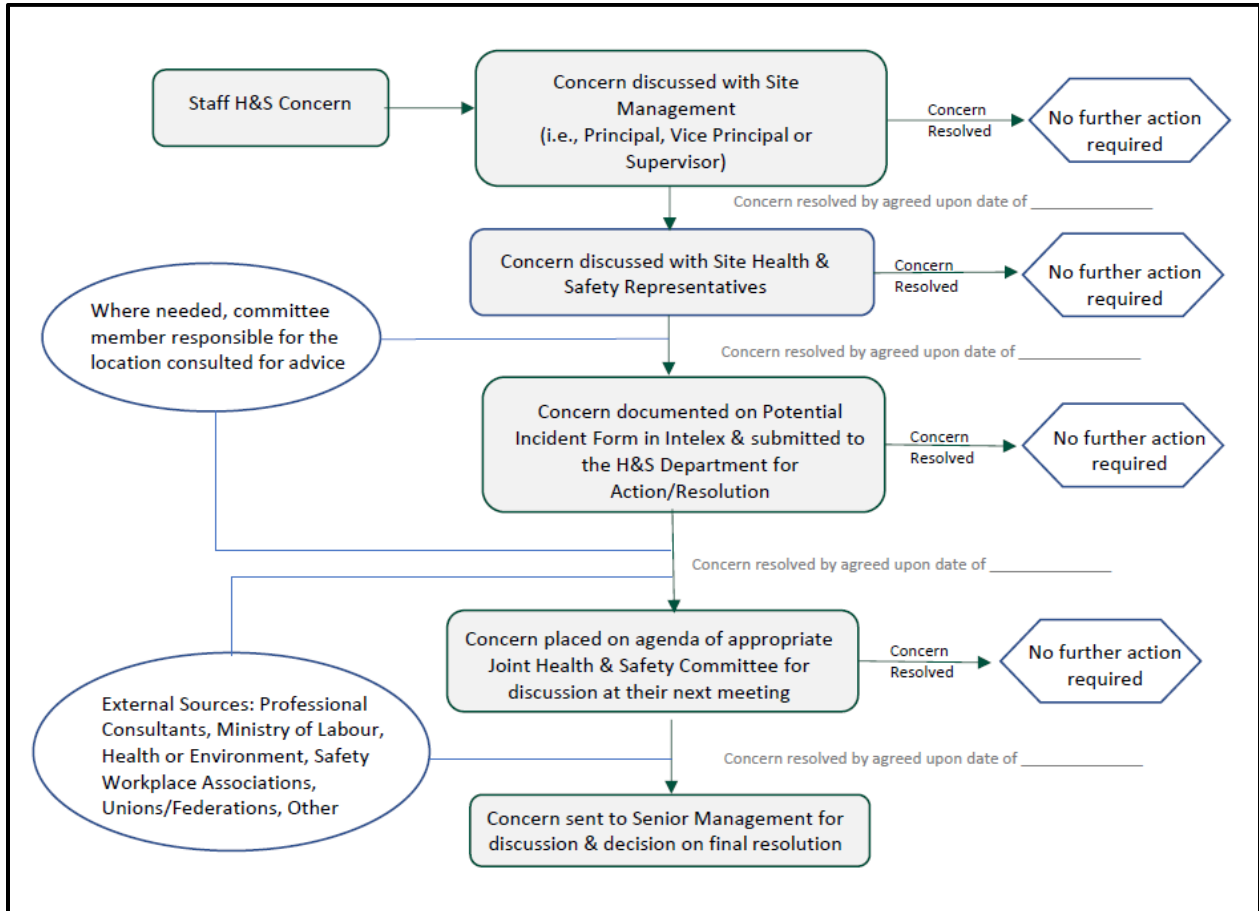
2. As per the Occupational Health & Safety Act, the Ontario Ministry of Labour, Training and Skills Development (MLTSD) must be notified that an unresolved work refusal is in progress. It is the responsibility of the Principal / Supervisor to immediately contact the MLTSD at 1- 877-202-0008.
3. An Officer from the MLTSD will investigate the refusal to work in consultation with the Principal / Supervisor, the refusing Employee, the Health & Safety Officer, and the Worker Co-chair, of the appropriate JHSC or their designate. The site Health & Safety Representative that represented the Employee in Stage 1 must be made available, where necessary, to discuss their findings from Stage 1.
4. The refusing Employee must remain in a safe place at the workplace during their normal working hours pending the investigation and the decision by the inspector. However, subject to any provisions within a collective agreement the Employee can be assigned to do other reasonable alternative work during their normal working hours while waiting for this decision.
5. The Principal / Supervisor can ask another Employee to do the work of the refusing Employee but must advise that Employee about the refusal and the circumstances for it in the presence of the site-based Worker Health & Safety Representative or the Worker Co-chair or their designate.
6. As per the Occupational Health & Safety Act, the MLTSD Officer will provide a written report outlining their decision to all parties. The report will specify whether the work refusal was justified, and, if it was, what measures the Principal / Supervisor and /or Employer must take. If the refusal was justified, work cannot continue until the orders to remedy the problem have been carried out. However, the Employee can be assigned alternate work or depending on the issue moved to an alternate area within the worksite as long as the work or movement within the building is reasonable. If the MLTSD Officer determines the refusal was not justified, the Employee is expected to return to work.
7. Under no circumstances can the refusing Employee be reprimanded for exercising their right to refuse work even if the MLTSD determines the refusal was not justified.
8. Copies of the MLTSD's report will be made available to the appropriate Joint Health & Safety Committee. A copy should also be posted on the Health & Safety Bulletin Board at the site the work refusal occurred for a period of at least 14 days. A redacted copy will be placed under the MLTSD Reports Tab in the Health & Safety section of the staff web.
9. If either party is not satisfied with the decision of the MLTSD Officer, the decision can be appealed to the Ontario Labour Relations Board.

Implementation Date: June 2, 2009

Revised: June 20, 2022

Reference: Occupational Health and Safety Act

Appendix A – LKDSB Health & Safety Concern Resolution Flow Chart



Appendix B – LKDSB Work Refusal Resolution Form

It is hoped that most health & safety concerns can be resolved or corrected by following the LKDSB Health & Safety Concern Resolution Flow Chart prior to having the need refuse work. Please note at any time during the work refusal process the LKDSB H&S Department can be contacted for assistance.

STAGE 1	
Name of Worker exercising Right Refuse:	Name of Principal /Supervisor investigating Refusal:
Employee's Work Location	Time & Date of Refusal:
Employee's Position:	Verified Employee is refusing work under the Occupational Health & Safety Act: <input type="checkbox"/> Yes <input type="checkbox"/> No
The worker refusal is based on the following criteria as per the Occupational Health & Safety Act (Check all that apply): <ul style="list-style-type: none"> <input type="checkbox"/> Equipment, machine, device, or thing the worker is to use or operate is likely to endanger them or another worker. <input type="checkbox"/> The physical condition of the workplace or part thereof in which the worker works, or is to work, is likely to endanger them. <input type="checkbox"/> Workplace violence is likely to endanger them. <input type="checkbox"/> Equipment, machine, device, or thing the worker is to use or operate or the physical condition of the workplace or the part thereof in which the worker works or is to work is in contravention of the Occupational Health & Safety Act or the Regulations and such convention is likely to endanger them or another worker. 	
Investigation Details – see box below in regard to Worker Rep:	
Was the investigation performed in the presence of one of the Site Health & Safety Representatives <input type="checkbox"/> Yes Name of site H&S Worker Representative: _____ <input type="checkbox"/> No Do not proceed any further with the investigation until a Worker Representative is in attendance.	
<input type="checkbox"/> Unsafe Work Identified and Corrective Measures Taken <input type="checkbox"/> Unsafe Work Not Identified – contact LKDSB H&S Department	
Corrective Measure Taken:	
Agreement Work Refusal has been Resolved and worker returns to work:	
_____ Worker's Signature	_____ Principal / Supervisor's Signature

Health & Safety Department contacted.

Prior to moving to stage 2, the Health & Safety Officer & the Worker Co-chair should meet with the parties involved in an attempt to resolve the issues.

Name of Health & Safety Department Representative:

Name of Worker Co-Chair or designate:

Issues Resolved - Complete Measure Taken and Signature section of Stage 1.

Issues Unresolved – Contact Ministry of Labour, Training and Skills Development (MLTSD) and proceed to Stage 2.

STAGE 2

Criteria for Continued Refusal:

Name of MLTSD Officer:

Were MLTSD Orders issued

Yes – attach a copy of the Order to this form.

No

Copies of this form must be made available to LKDSB the Health & Safety Department. The Health & Safety Department will provide copies to the appropriate Joint Health & Safety Committee. Any MLTSD Orders must be posted on the H&S Bulletin Board at the site of the refusal for 14 days.

Appendix C – Work Refusal Flow Chart

