

PERSONNEL

Safety-Related Refusal to Work

1.0 Objective

- 1.1 The Internal Responsibility System (IRS) is a workplace party partnership, where the employer, supervisors and workers share joint responsibility for identifying and correcting health and safety issues. It is the foundation of a well functioning and supportive health and safety system. Workplace parties must work together and utilize the Internal Responsibility System (IRS) to resolve concerns regarding health and safety as they arise.
- 1.2 This procedure provides guidance on how to utilize the Internal Responsibility System (IRS) in managing safety-related refusal to work and outlines the legislative process that must be followed.
- 1.3 This procedure is to be interpreted and applied in accordance with the District's commitment to promoting and upholding Indigenous rights and human rights in all of its learning and working environments. This includes anti-colonial, anti-discriminatory and anti-racist approaches and actions to provide services and employment that are safe, welcoming, inclusive, equitable, accessible and free from discrimination and harassment consistent with DDSB's Indigenous Education Policy, the Human Rights, Anti-Discrimination and Anti-Racism policy (the "Human Rights Policy"), and the Safe and Respectful Workplace and Harassment Prevention Policy.

2.0 Definitions

2.1 Supervisor

Under the Occupational Health and Safety Act, the supervisor is defined as "a person who has charge of a workplace or authority over a worker". For the purposes of investigating a work refusal in this Board, a supervisor shall include:

- all Superintendents,
- all System Leads
- all Principals and/or Vice Principals,
- all Managers,
- all Maintenance and Custodial Supervisors.

Accordingly, supervisors described above shall be responsible for investigating all work refusals relating to staff directly under their jurisdiction.

2.2 Worker

Under the Occupational Health and Safety Act, the worker means any of the following:

- A person who performs work or supplies services to the DDSB for monetary compensation.
- A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
- A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university, career college or other post-secondary institution.

3.0 Procedure

3.1 Grounds for a Work Refusal

The “right to refuse”, while entrenched in legislation, should not be the primary mechanism to solve workplace safety concerns. A safety related work refusal must be made based on a reasonable belief that the work may cause injury or death to the Worker or another Worker.

The Occupational Health and Safety Act (OHSA) provides each worker the right to refuse work or 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 part thereof in which he or she works or is to work is likely to endanger himself or herself
- c. workplace violence is likely to endanger himself or herself, or
- d. 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 OHSA or the regulations, and such contravention is likely to endanger himself, herself or another worker.

When the right does not apply. As per O. Reg 857, the right to refuse or to stop work does not apply to a teacher where the circumstances are such that the life, health or safety of a student is in imminent jeopardy.

3.2 Wages during an investigation.

When a worker exercises the right to refuse work they shall not be penalized for exercising a right under the OHSA. This means that workers who refuse to work must continue to be paid normal wages while the matter is being investigated by the DDSB or the Ministry of Labour, Immigration, Training and Skills Development (MLTSD).

3.3 Individual reporting.

The right to refuse work is an individual rather than a collective right. When a number of workers believe the work is unsafe, each worker must report the matter individually.

3.4 Responsibility to Investigate

The Occupational Health and Safety Act outlines the work refusal process with some exactness. There are potentially two stages, and both worker and supervisor must do or

not do various things at each stage. The steps have been outlined in Appendix A: Work Refusal Process.

3.5 Employee Protection from Reprisal

Supervisors must take great care that they do not penalize any worker for exercising or seeking to exercise their rights under the Act. If a worker has acted in compliance with the Act, its regulations or an order made under them, the employer (or any person acting on behalf of the employer) may not, because the worker so acted:

- dismiss or threaten to dismiss the worker;
- discipline or threaten to discipline the worker;
- impose any penalty on the worker;
- intimidate or coerce a worker.

However, a worker who does not exercise the right in good faith in a way that complies with the OHSA, or if a worker continues to refuse after the Ministry of Labour inspector finds that the work is not likely to endanger the worker, there may be progressive discipline applied up to and including termination of employment.

If a worker complains that the employer (or any person acting on behalf of the employer) has improperly taken any of these actions, he or she may file a grievance or make a complaint to the Ontario Labour Relations Board.

3.7 Documentation

Supervisors are to retain all documentation resulting from Safety-Related Refusal to Work. It is recommended that the documentation include the following information:

- Name of staff who is refusing work, date/time refusal started
- Who is part of the work refusal process (worker, JHSC work representative, H&S staff, etc)
- Reasons provided for the work refusal
- Name of the alternate staff assigned to the work of the refusing worker and confirmation that they were made aware of the work refusal in the presence of a worker representative
- Note any information brought up during the work refusal, including items you may not have been aware of
- Resolution of work refusal- what next steps/solutions to be put in place to resolve the work refusal
- Date/time refusal resolved

4.0 References

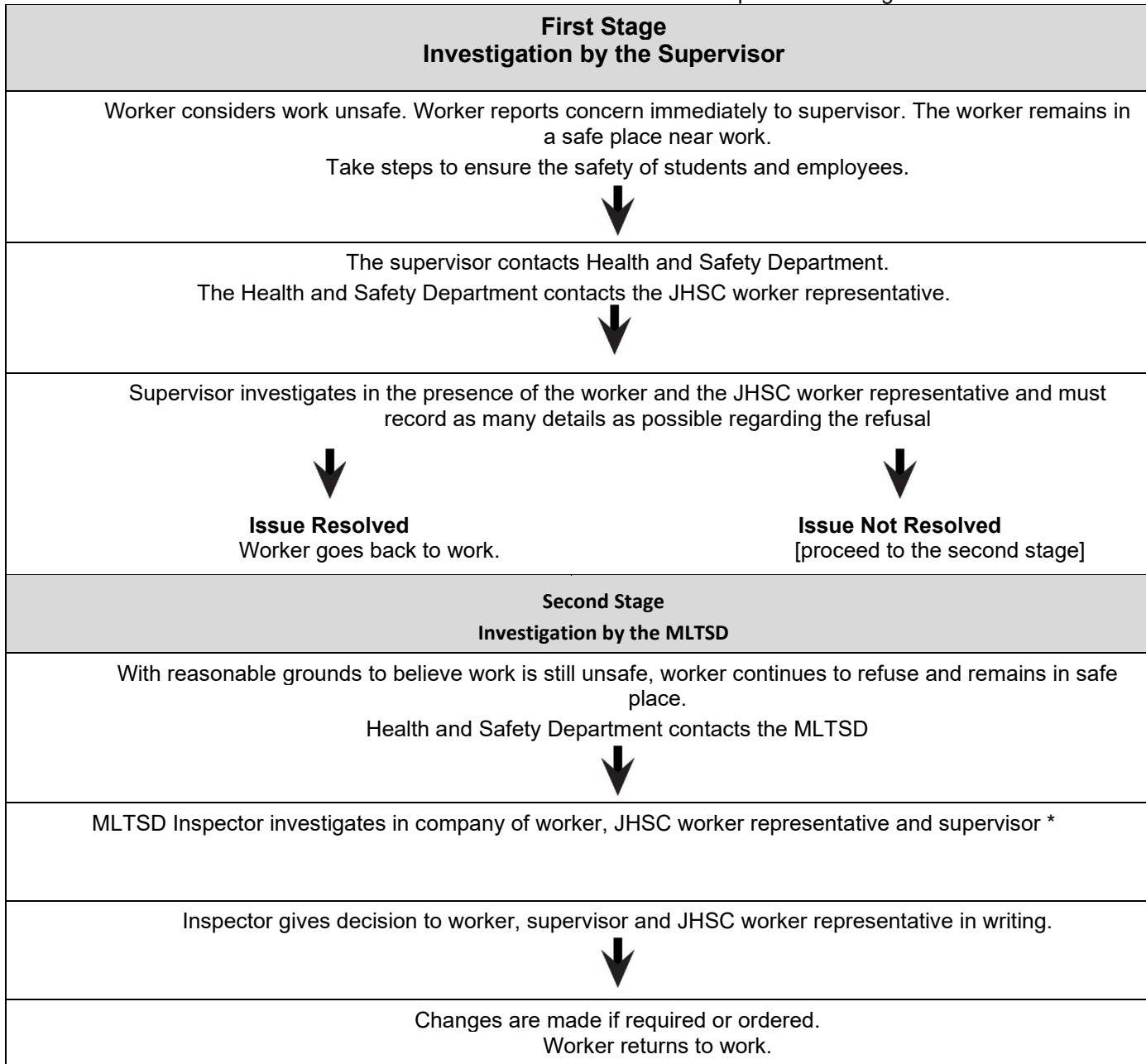
[The Occupational Health and Safety Act](#)

[R.R.O. 1990, Reg. 857: TEACHERS](#)

Appendix:

Work Refusal Process: Appendix A

Staff have the right and a legal obligation to inform their supervisor of safety concerns as they arise. All efforts must be made to resolve and address the concerns prior to initiating a formal work refusal.



* Pending the MOL investigation:

- The refusing worker may be offered reasonable alternative work during their normal working hours if it does not conflict with their collective agreement (as applicable).
- Refused work may be offered to another worker, but supervisor 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 worker representative.

Flowchart adapted by Ontario Ministry of labour website:

<https://www.labour.gov.on.ca/english/hs/pubs/refusalprint.php>

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