

Issue Date: September 12, 2006
Review Date: February 6, 2020
Revision Date: February 6, 2020

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1.0 PURPOSE

The purpose of this procedure is to establish procedural guidelines as per the Occupational Health & Safety Act for a work refusal.

2.0 SCOPE

The scope of this procedure applies to all employees of the University of Windsor.

3.0 DEFINITIONS

Dangerous Circumstances [OHSA, S.44(1)]: A situation in which,

- a) A provision of the OHSA or the regulations is being contravened;
- b) The contravention poses a danger or a hazard to a worker; and
- c) The danger or hazard is such that any delay in controlling it may seriously endanger a worker

MOL: Ministry of Labour

Reasonable grounds: for continuing to refuse work means that the worker has some objective information that makes him or her believe the work is still unsafe. The worker does not have to be correct in their knowledge or belief. For example, the refusing worker may have been told by other workers who used a lift truck that the brakes sometimes fail.

OHSA: Occupational Health & Safety Act

4.0 RESPONSIBILITIES

Workers: report to their Supervisor with reasons for believing work is unsafe.

Supervisors: participate in the investigation of the work or task believed to be unsafe and respond based on the work refusal procedure outlined below. The supervisor is not permitted to reprimand the employee for invoking their right to refuse work that they have reason to believe is unsafe.

Joint Health and Safety Committee (JHSC) members: participate in the investigation of the work or task believed to be unsafe, as required.

Representative from the Worker's Union: participate in the investigation of the work or task believed to be unsafe, as required

Health and Safety Office : assist with investigation and resolution of the health and safety concern.

5.0 REFERENCE DOCUMENTS

OHS-4.5.2a Work Refusal Form

Occupational Health & Safety Act, S. 43-49

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6.0 PROCEDURE

Workers in the province of Ontario have the right to refuse work which they have reason to believe is unsafe. As per the Occupational Health & Safety Act, a worker may refuse to work or do particular work where he or she believes 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 Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

[OHSA, S.43(3)]

Work Refusal Process (initiated by worker)

Should there be a work refusal, the following procedures apply (also see work refusal procedure flow chart included in this procedure):

Stage 1:

1. Worker has reason to believe work or task is unsafe.
2. The worker will immediately tell the supervisor or employer that the work is being refused and explain the reason(s) for believing the work is unsafe. This report shall be documented using the Work Refusal form (OHS-4.5.2a).
3. The worker shall remain in a safe place near his / her work station. As per the OHSA S.43(13), the University is obligated to pay the worker for this time at their regular or premium rate as appropriate.
4. The Supervisor shall immediately investigate the situation in the presence of the worker, a worker representative from the JHSC, if possible a certified member, and if applicable a representative from the worker's union. A representative from the Health & Safety office shall be contacted by the Supervisor.
5. The Supervisor shall record the investigation findings and remediation timelines on the Work Refusal Form, if applicable. If there will not be a remediation plan, the reasoning behind it must be recorded on the form
6. Should the issue be resolved by the worker and Supervisor and preventive/corrective action taken, if required, the worker shall return to work if he/she deems the work to longer be dangerous.
7. If the worker and Supervisor cannot agree that the work is no longer dangerous, the worker may continue to refuse to work if he/she has reasonable grounds to believe the work continues to be unsafe. At this time, the issue is deemed to be unresolved and the work refusal process proceeds to Stage 2.

Stage 2:

1. Following the investigation, should the worker have reasonable grounds to believe that the work or task continues to be unsafe, they must remain in a safe place near his / her work station and a call shall be made to the Ministry of Labour by the employer or the worker, or a person on behalf of the employer or worker [OHSA S.43(6)]. The Supervisor may assign the worker alternative reasonable work during the worker's normal hours until the Ministry of Labour arrives to investigate.

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2. While waiting for the Ministry of Labour, refused work may be offered to another worker providing it is offered in the presence of a worker representative from the JHSC, if possible a certified member, and if applicable, a representative from the worker's union. This worker shall also be advised of the other worker's refusal and his / her reasons for the refusal [OHS, S.43(11)].
3. The MOL Inspector shall investigate in consultation with the employer, the worker, the JHSC worker representative and, if applicable, a representative from the worker's union.
4. The Inspector shall give his or her decision, in writing, as soon as is practicable to all involved parties and any applicable changes can be made in order to return the worker to their duties.
5. The worker returns to work following the completion of required remedial action (if any).

Bilateral Work Stoppage Procedure

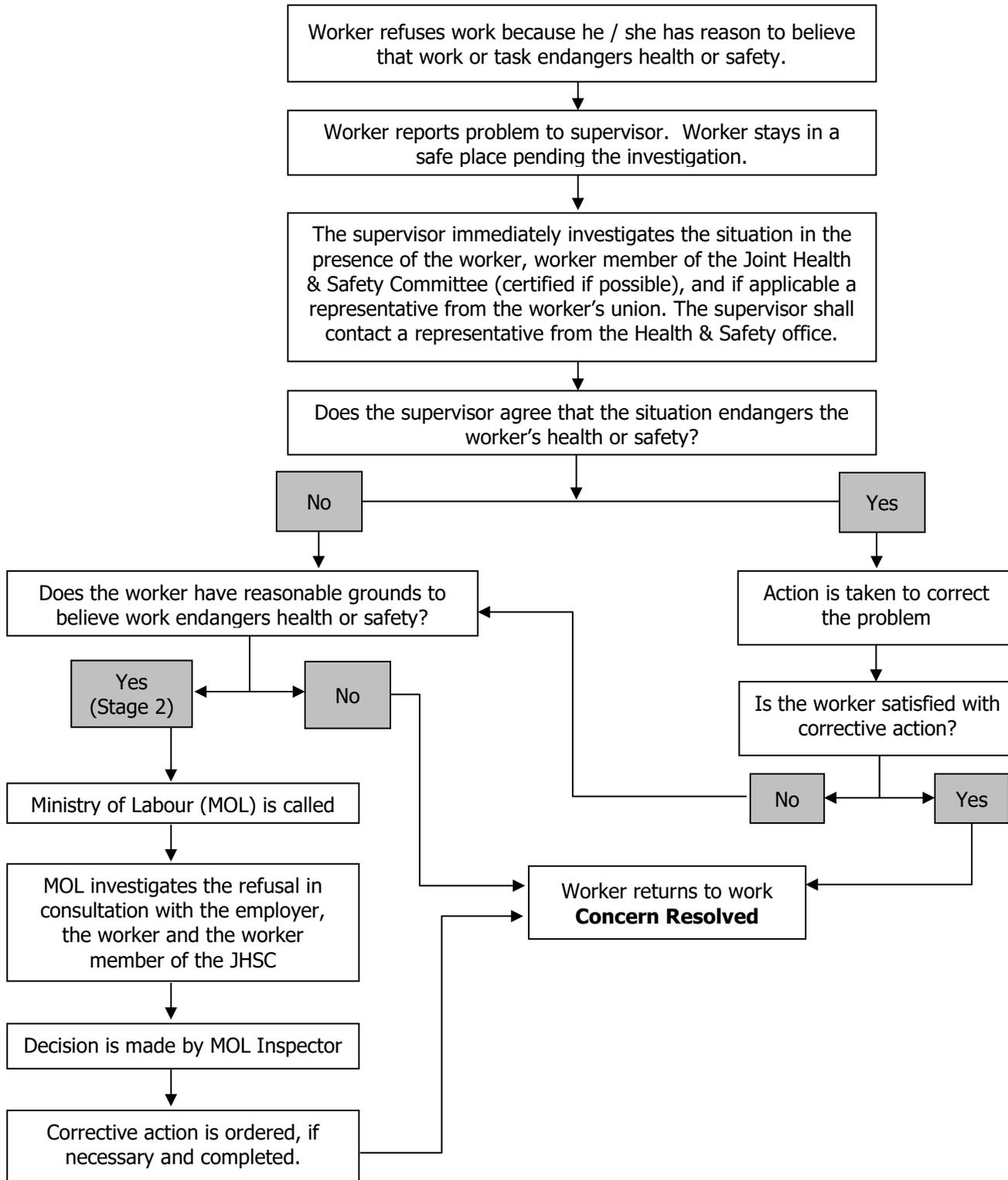
A certified member of the JHSC may also request the investigation of a health and safety concern and initiate the work refusal procedure as outlined by this procedure (see bilateral work stoppage procedure flow chart included in this procedure).

1. A certified member who has reason to believe that dangerous circumstances exist at the workplace may request that a supervisor investigate the matter and the supervisor shall promptly do so in the presence of the certified member who made the request [S.45(1)]. A representative from the Health & Safety office shall be contacted by the Supervisor.
2. If the Supervisor agrees that dangerous circumstances exist, work is stopped until corrective action is taken.
3. If the first certified member has reason to believe that dangerous circumstances continue after the supervisor's investigation and remedial actions (if any), the certified member may request that a second certified member representing the other workplace party investigate the matter. For example, if the first certified member represents workers, the second member must represent the employer.
4. The second certified member shall promptly investigate the matter in the presence of the first certified member [S.45(3)].
5. If both certified members find that the dangerous circumstances exist, the certified members may direct the employer to stop the work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing [S.45(4)].
6. The employer shall immediately comply with the direction to stop work and shall ensure that compliance is effected in a way that does not endanger a person [S.45(5)].
7. If the certified members do not agree whether dangerous circumstances exist, either certified member may request that an inspector investigate the matter and the inspector shall do so and provide the certified members with a written decision [S.45(6)].
8. After taking steps to remedy the dangerous circumstances, the employer may request the certified members or an inspector to cancel the direction [S.45(7)].
9. The certified members who issued a direction may jointly cancel it or an inspector may cancel it [S.45(8)].

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Work Refusal Procedure

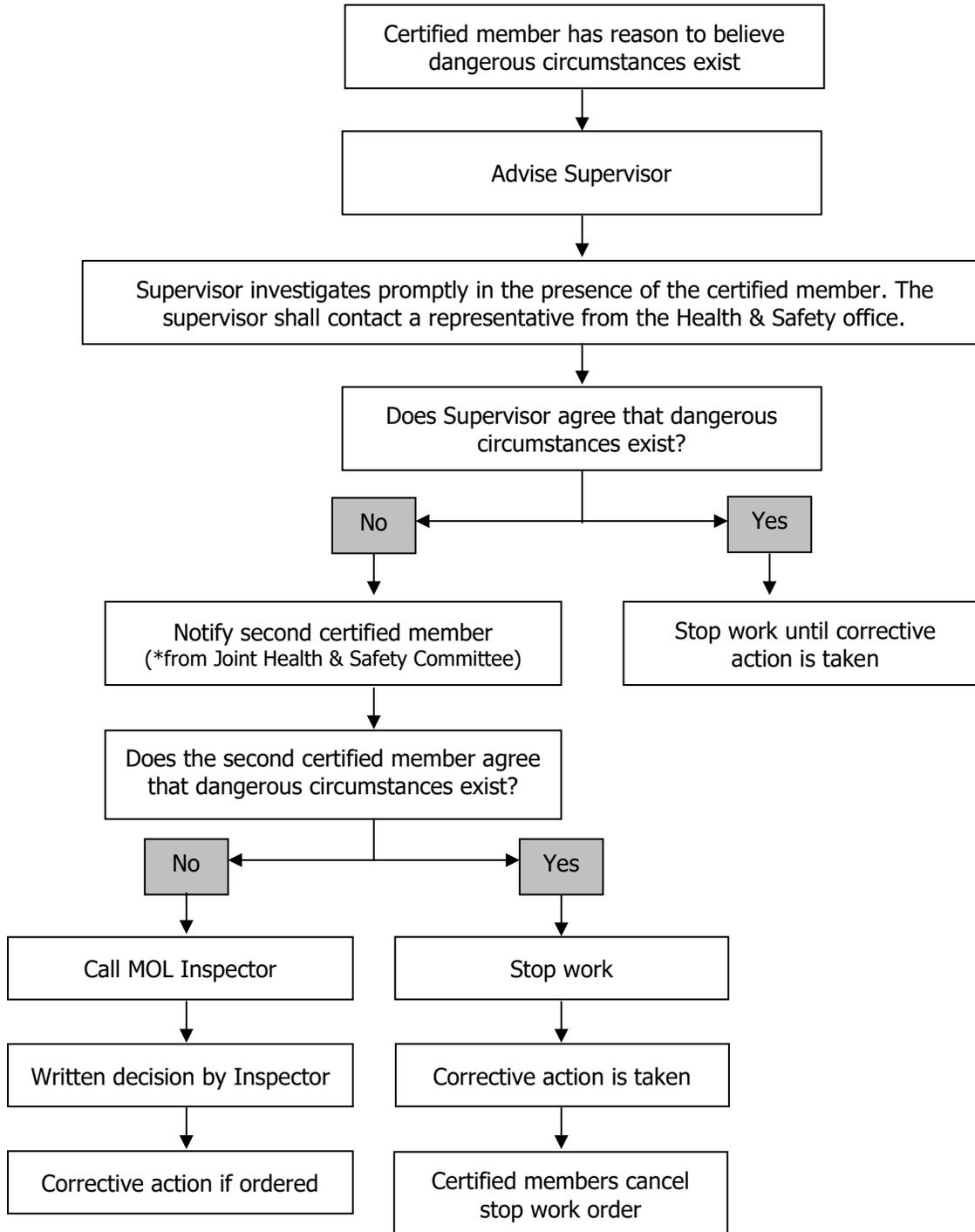


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Bilateral Work Stoppage Procedure

If a certified member of the JHSC believes that the workplace situation endangers the health or safety of a worker, they have the right to stop that work. The following procedure should be followed in cases where the certified member elects to stop work:



* If the first certified member represents workers, the second member must represent the employer.

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Unilateral Work Stoppage Procedure

The OHS Act permits an individual certified member, in special cases, to stop work in dangerous circumstances. This individual right to stop work must be granted by the Ontario Labour Relations Board (S.46 & 47).

Reprisals by Employer Prohibited

Workers who invoke their right to refuse work because they have reason to believe to be unsafe are protected by the Occupational Health and Safety Act.

As per Part VI, sec. 50(1):

No employer or person acting on behalf of an employer shall,

- a) dismiss or threaten to dismiss a worker;*
- b) discipline or suspend or threaten to discipline or suspend a worker;*
- c) impose any penalty upon a worker; or*
- d) intimidate or coerce a worker,*

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act.

7.0 REVISION HISTORY

Date (yyyy/mm/dd)	Revision
2007/10/22	Modified procedure to include workwell requirements. Changed title from Right to Refuse Unsafe Work.
2013/10/07	Updated logo, position titles, Work Refusal form to include corrective action chart.