

**WORKSAFE SERVICES DIVISION  
OCCUPATIONAL HEALTH AND SAFETY  
LEGISLATION INTERPRETATIONS**



<b>Topic</b>	Employees' Right Upon Termination of a Refusal	Issued by: V.P., WorkSafe Services
<b>Statute</b>	<i>Occupational Health &amp; Safety Act</i>	Date Issued: September 8, 1997
<b>Section</b>	20(11)	Date Revised: Oct 13, 2004

**20(11)** Where, on a referral to an officer under subsection (4) or (8), the officer finds that an employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall advise the employee in writing to do that act.

**20(12)** Pending any investigation under this section or, if an appeal is taken by an employee against the advice of an officer given under subsection (11), pending the decision of the Chief Compliance Officer, the employee shall remain available at a safe place near his or her work station during his or her normal work hours.

**21(1)** An employee's right under section 19 to refuse to do any act is protected,

- (a) if he has reported his concern to his supervisor under section 20,
  - (i) until remedial action recommended by the supervisor under section 20 is taken by the supervisor or employer to the employee's satisfaction, or
  - (ii) until the supervisor has advised the employee under section 20 to do that act;
- (b) if the employee has referred the matter to a committee under section 20,
  - (i) until remedial action recommended by the committee under section 20 is taken by the employer to the employee's satisfaction, or
  - (ii) until the committee has advised the employee under section 20 to do that act;
- (c) if the employee has referred the matter to an officer under section 20,
  - (i) until remedial action ordered by the officer under section 20 is taken by the employer to the officer's satisfaction, or
  - (ii) until the officer has advised the employee under section 20 to do that act, and
- (d) if the employee has appealed the advice of an officer given under subsection 20(11) to the Chief Compliance Officer, until the decision of the Chief Compliance Officer is rendered.

**37(2.1)** Where the decision of the Chief Compliance Officer under this section is appealed under section 21 of the *Workplace Health, Safety and Compensation Commission Act*, the decision remains in effect until the Appeals Tribunal disposes of the appeal.

**Question**

Can an employee continue to refuse after an officer has advised him to return to work?

**Response**

Yes, an employee's right to refuse is protected under subsection 21(1)(d) until the Chief Compliance Officer has advised the employee to do the act. Once the Chief Compliance Officer has rendered his decision; the employee's protection ceases.

The employee has two options at that point. The employee can carry out the task as the Chief Compliance Officer has decided or the employee may, for a variety of reasons, not wish to do the assigned task. If in the second instance the employee continues to refuse, he or she does so at the risk of reprimand or termination of employment by the employer.

Under section 37(2.1) of the Act, there is a provision to appeal the Chief Compliance Officer's decision to the Appeals Tribunal. Such an appeal will not suspend the Chief Compliance Officer's decision.

During the period of time required for the Appeals Tribunal to dispose of the appeal be it days or weeks, the employee would be expected to comply with an employer's instruction to do the task which the Chief Compliance Officer had found to be safe.