

Thursday, March 26, 2020

## COVID-19 and Refusal to Work in the Municipal Context

Many municipalities have been deeply affected by the recent events surrounding the spread of the COVID-19 virus. One of the issues that municipalities, as employers, may face is the refusal by employees to come to work. This is likely to be an ongoing issue, but one which municipalities can prepare for.

### The law respecting refusal to work

Generally, employees are permitted to refuse work that an employee believes, on reasonable grounds, is dangerous or constitutes a danger to the employee's health and safety or to the health and safety of another employee or another person. Employees who refuse to do work must promptly report the refusal and the reasons for it to their employer or supervisor, or their designate. The employer is then responsible for taking any actions necessary to remedy the dangerous condition or ensure that such action is taken. Until the dangerous condition is remedied, the employee who reported it may continue to refuse to work.

Under the *Occupational Health and Safety Act*, if an employee has refused to do work due to a dangerous condition, they are entitled to the same wages and benefits that the employee would have received had the employee continued to work. The employer may reassign the employee temporarily to alternate work, but that work must be at the same wage and benefits as the previous work.

There are common exceptions to an employee's ability to refuse work. The primary exception is where dangerous conditions are inherent in the employee's work. The other exception is where exercising the ability to refuse work would endanger the health and safety of another person (e.g. police officers, healthcare workers). These exceptions are generally supported by either express or implied terms in the employment agreement, and are based on contractual principles rather than statutory obligations.

### Pandemics like COVID-19

In the context of the spread of illness or pandemics, the circumstances that lead to an employee being able to refuse work is something above mere concern. A danger that could permit a work refusal exists when the employer has failed, as is reasonably practicable, to control the hazard within safe limits, or otherwise ensure employees are protected. There has to be a reasonable possibility that the hazard could cause illness to the employee, as opposed to a mere possibility or a high possibility.

There are situations in which the COVID-19 pandemic could give rise to an employee's ability to refuse work. If the employee is particularly vulnerable to contracting COVID-19 and part of their duties require coming into contact with members of the general public, then they may have a valid basis to refuse the work. Other factors that may contribute to an appropriate work refusal include, but are not limited to:

1. the typical duties and nature of the work of the employee (e.g. does the employee frequently come into close contact with people throughout their workday?)
2. health and safety procedures put in place by the employer;
3. severity of the transmission of COVID-19;
4. recommendations from public health officials;
5. ability of employees to practice proper hand-washing, sanitizing, and social distancing practices; or
6. whether other employees in the workplace have tested positive for COVID-19.

Whether the conditions in municipal workplaces are dangerous must be determined on a case-by-case basis, but will likely be influenced by the factors listed above. When weighing these factors, municipalities must consider whether the spread of COVID-19 has become dangerous or hazardous in the context of their specific workplace.

In most situations, municipalities may be able to remedy the dangerous condition that led to an employee's refusal to work and the employee will be required to return to work. In some cases, the municipality may not be able to remedy the danger posed to its employees and may be required to accept the refusal to work.

Because the challenges regarding COVID-19 continue to change on a daily basis, the factors that could influence an employee's refusal of work may also change. If you have any further questions, or, if you are dealing with an employee who has refused work because of the COVID-19 pandemic, please contact [Matthew Woodley](#), [Anthony Purgas](#), [Albert Lavergne](#) or any member of RMRF's [Employment Law Team](#).

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