

Draft Regulations on The Right to Refuse Dangerous Tasks

These regulations serve to set out the framework for the administration of section 104 of the Safety and Health at Work Act, 2005 -12. Section 104 states

Where, during the course of his employment, there is sufficient evidence to indicate that an employee's health and safety are in imminent danger, that employee may refuse to carry out the tasks assigned to him pending consultation with his safety committee, trade union, staff association or the Chief Labour Officer.

Ref.: These definitions were adapted from the U.S.A OSHA website www.osha.gov/ass/opa/worker/refuse.html

The terms 'imminent danger' and 'sufficient evidence' are used in the SHaW Act; 'good faith' is used in this regulation. It is necessary to ensure consistent interpretation by users.

1. For the purposes of these regulations, the expression

"imminent danger" applies where conditions or practices in a workplace present a danger which could reasonably be expected to cause death, immediate serious physical harm, or an occupational disease.

"serious physical harm" refers to severe damage, whether or not reversible, to a part of the body to the extent that incapacity could be the result.

"incapacity" refers to inability, lack of sufficient strength or power.

"sufficient evidence" means that conditions must be such that a reasonable person would agree that there is a real danger of death or serious physical harm.

"good faith" means that even if an imminent danger is not found to exist, the employee had reasonable grounds to believe that it did exist.

2. (1) Section 104 does not apply to employees who are not at risk from the imminent danger.

Ref.: This section was developed based on the Ontario, Canada, Occupational Health and Safety Act, Part V Section 43 (www.e-laws.gov.on.ca/dblaws/statutes/english/90o01_e.htm); Trinidad & Tobago, Occupational Safety and Health Act, Section 14; Guyana, Occupational Safety and Health Act, Section 56; Caricom Model Law.

The objective is to exclude those persons employed in what may be considered 'essential services' and other areas where refusal would compromise the safety and health of others who must rely on them for assistance.

(2) The provisions of section 104 shall not apply to an employee:

(a) when that employee's refusal to work would directly endanger the life, safety or health of another person;

(b) where the person is employed in the Fire Service, Prison Service or other correctional facilities; where the normal conditions of an employee's work has inherent dangers and all reasonably practicable measures have been taken to reduce the risks;

(c) where the normal conditions of an employee's work has inherent dangers and all reasonably practicable measures have been taken to reduce the risks;

(d) where the person is employed in the operation of an ambulance service, a hospital, clinic, health centre, sanatorium, nursing home, home for the aged, psychiatric institution, mental health facility, mental retardation centre or a rehabilitation facility

Ref.: Reg. 2(3) is based on Section 42 (1)(b) of the Caricom Model Law. This section allows all workers to refuse to work where the physical work conditions pose a serious threat to life or limb.

Ref.: The reporting and investigating requirements were developed based on the Trinidad & Tobago, Occupational Safety and Health Act, Section 16; Guyana, Occupational Safety and Health Act, Section 56 (4 – 6) and the Ontario, Canada, Occupational Health and Safety Act, Part V, Section 43 (3 – 5) (www.e-laws.gov.on.ca/dblaws/statutes/english/90o01_e.htm).

The employer should include the safety committee or safety delegate during the initial investigation into the refusal of work. During this time, the worker is still considered to be at work and should continue to receive payment, therefore he may be reassigned if possible.

(3) Employees referred to in paragraph 2(c) and 2(d) may refuse to work where unsafe conditions in the workplace, which are not inherent to the job or task, present an imminent and serious danger to their life and health, where the refusal does not contravene regulation 2(a).

3. (1) Where an employee refuses to work, under section 104 of the Safety and Health at Work Act, he shall immediately report the refusal and the circumstances surrounding such, to the employer or person authorised to act on the employer's behalf.

(2) The employee shall report to work and remain in a safe area near the workstation until an investigation of the refusal to work is completed, or until the employer finds reasonable alternative work for him.

4. (1) The employer or his representative shall immediately investigate any report in the presence of the employee and in the presence of one of the following:

(a) an employees' representative appointed to the safety committee, if any;

(b) a safety delegate;

who shall attend without delay and assist in the investigation and make recommendations.

(2) Following the investigation, the employer shall take such reasonably practicable action as may be appropriate.

Ref.: Adapted from the Trinidad & Tobago, Occupational Safety and Health Act, Section 20; Guyana, Occupational Safety and Health Act, Section 56 (7, 11 - 12) and the Ontario, Canada, Occupational Health and Safety Act, Part V, Section 43 (6, 10).

5. (1) Where, following the investigation or any action taken to deal with the circumstances that caused the work to be halted, there are reasonable grounds to believe that imminent danger continues to exist,
- (a) the employee may refuse to work or do the particular work and shall inform the trade union and Chief Labour Officer; or
 - (b) the employer or his representative shall inform the Chief Labour Officer.
- (2) Pending the investigation by and the decision of the Chief Labour Officer, the employer shall, subject to the provisions of a collective agreement if any,
- (a) assign the employee reasonable alternative work; or
 - (b) where an assignment of reasonable alternative work is not practicable, give other directions to the employee.
- (3) Pending the investigation by and the decision of the Chief Labour Officer, no employee shall be assigned to use or operate the equipment, machine, device, article or substance, or to work in that part of the workplace being investigated.

Ref.: Adapted from the Trinidad & Tobago, Occupational Safety and Health Act, Section 18; Guyana, Occupational Safety and Health Act, Section 56 (10) and the Ontario, Canada, Occupational Health and Safety Act, Part V, Section 43 (7 - 9).

6. The Chief Labour Officer shall commence an investigation within two calendar days of notification during which a verbal report shall be given, following which the written decision shall be forwarded, as soon as is practicable. The decision of the Chief Labour Officer shall be binding.

Ref.: Adapted from The Trinidad & Tobago, Occupational Safety and Health Act, Section 20 - 21; Guyana, Occupational Safety and Health Act, Section 56 (13 - 14) and the Ontario, Canada, Occupational Health and Safety Act, Part V, Section 43 (13).

7. (1) An employee who acts in good faith:
- (a) shall be deemed to be at work, and be entitled to his full pay and benefits; and
 - (b) shall not be dismissed, threatened, victimized, disciplined, intimidated, coerced, or made to suffer any detriment as a result.
- (2) Any employee at the workplace involved in the investigation of the refusal to work shall also be entitled to full pay and benefits as normal.

This section seeks to protect the worker who refuses to work as well as any employee involved in the investigation.

Ref.: Regulation 7(3) is intended to allow for a complaints procedure where persons do not receive pay in accordance with this section.

Ref.: Reg. 8 Adapted from Guyana, Occupational Safety and Health Act, Section 57 The intention is to allow for a mechanism that permits redress where malicious actions are taken.

Ref.: Reg. 8.2 – 8.3 are based on the Caricom Model Law and explain the complaints procedure.

(3) Where an employee has reasonable grounds to believe that any provision of these regulations has been broken to his detriment, he may file a complaint with the Chief Labour Officer in accordance with regulation 8.

8. (1) An employer, an employee at the workplace or a representative of the trade union that represents employees at the workplace, may file a complaint with the Chief Labour Officer if there are reasonable grounds to believe that any party acted recklessly or not in good faith with respect to the refusal to work under section 104.
- (2) A complaint must be filed as soon as practicable and in any case, not later than 14 calendar days after the event to which the complaint relates.
- (3) The Chief Labour Officer shall make a declaration respecting the complaint and may advise of appropriate action to be taken in a timely manner and in any case a declaration shall be made within 15 calendar days of receipt of the complaint.