August 6, 2021 |

Briefs

Submission to WCB on proposed regulatory amendments to Part 3, Section 3.12, Refusal of Unsafe Work

Introduction

The BC Federation of Labour (“Federation,” “BCFED”) appreciates the opportunity to provide our submission with respect to the proposed amendments to:

Part 3: Rights and Responsibilities, Section 3.12 Refusal of Unsafe Work.

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy. The Federation is recognized by the Workers’ Compensation Board (WCB) and the government as a major stakeholder in advocating for the health and safety of all workers in BC and full compensation for injured workers and their surviving dependents.

This submission was prepared in consultation with our affiliates.

Part 3: Rights and Responsibilities, Section 3.12 Refusal of Unsafe Work

Submission

In August 2019, the government commissioned Lisa Helps to conduct a review of the actions taken by the government and the WCB in response to the recommendations from the Dyble Report, the Macatee Report and the Coroner's verdicts after explosions and resulting fires at Babine Forest Products in Burns Lake and Lakeland Mills in Prince George. Four workers were killed and many workers were seriously injured in these explosions. The reviewer was mandated “to provide advice for the purpose of informing potential further legislative amendments or other legal actions taken by the government and WorkSafeBC.”[1]

One of the eleven recommendations Helps made was to strengthen the occupational health and safety regulation Section 3.12 to ensure protection for all workers. As Helps states in her report: “*The gap in application of this Regulation appears to be an employer reassigning an employee, not remedying the hazard and assigning another employee to continue working*.

In her interviews with workers, they explained their experiences of attempting to identify hazardous situations to the employer only to see the employer assigning another worker to do the job without fixing the hazard. Unfortunately, this is not an uncommon experience in many workplaces, often younger, less experienced workers will be told by the employer to continue the hazardous work. Their experiences highlighted the need for a stronger approach when individual employees are not successful in having the unsafe situation remedied.

According to the WCB explanatory notes, the proposed amendment to add Section 3.12.1 to the current refusal of unsafe work procedure is intended to ensure protection for a worker assigned to work that has previously been refused. BC is one of the only jurisdictions in Canada that does not have a regulatory requirement to inform a worker about a previous work refusal.

Workers in BC have four fundamental rights enshrined in legislation that are intended to ensure their health and safety. With these rights in place unions were successful in their fight to increase the power of workers in workplace health and safety.

1. The right to know about workplace hazards.

2. The right to participate in workplace health and safety activities.
3. The right to refuse unsafe work.
4. Protection from prohibited actions.

Section 3.12 of the Occupational Health and Safety regulation sets out the requirements and procedures for workers in BC to refuse unsafe work.

(1) A person must not carry out or cause to be carried out any work process or operate or cause to be operated any tool, appliance or equipment if that person has reasonable cause to believe that to do so would create an undue hazard to the health and safety of any person.

(2) A worker who refuses to carry out a work process or operate a tool, appliance or equipment pursuant to subsection (1) must immediately report the circumstances of the unsafe condition to his or her supervisor or employer.

(3) A supervisor or employer receiving a report made under subsection (2) must immediately investigate the matter and

(a) ensure that any unsafe condition is remedied without delay, or

(b) if in his or her opinion the report is not valid, must so inform the person who made the report.

(4) If the procedure under subsection (3) does not resolve the matter and the worker continues to refuse to carry out the work process or operate the tool, appliance or equipment, the supervisor or employer must investigate the matter in the presence of the worker who made the report and in the presence of

(a) a worker member of the joint committee,

(b) a worker who is selected by a trade union representing the worker, or

(c) if there is no joint committee or the worker is not represented by a trade union, any other reasonably available worker selected by the worker.

(5) If the investigation under subsection (4) does not resolve the matter and the worker continues to refuse to carry out the work process or operate the tool, appliance or equipment, both the supervisor, or the employer, and the worker must immediately notify an officer, who must investigate the matter without undue delay and issue whatever orders are deemed necessary.[2]

The requirements for Section 13.12 that a person “must not” carry out any work process or operate or cause to be operated” establish the right to refuse as a responsibility of all parties; workers, supervisors and employers. Unfortunately, despite a step- by -step problem solving process, the refusal of unsafe work is often misunderstood and not often used.

The proposed amendments will help ensure employers investigate more effectively and implement a resolution early in the process. It will a also be an important tool for WCB prevention officers to hold employer accountable.21

Section 3.13 is specifically applied to the refusal of unsafe work and affords workers the fourth right of protection from prohibited action or punishment as found in the *Workers Compensation Act,* Part 2, Division 6. For example, when a worker refuses unsafe work, an employer cannot fire or threaten to do so; intimidate or coerce to not report a health and safety concern or impose any penalty such as transferring to another job, shift or work location, reducing hours or denying benefits.

As previously stated in our submission this protection does not cover a worker who may be asked to continue work that is subject to an unresolved refusal. According to the WCB’s explanatory notes the purpose of the proposed amendments is to ensure workers who are assigned to a task are aware of any previous refusal so they can make an informed decision about whether the task is safe for them to perform.

The WCB is proposing to amend Section 3.12 by adding the following:

Section 3.12.1 Reassignment of refused work

(1) An employer must ensure that a worker is not required or permitted to perform a task that has been refused under section 3.12 unless

(a) the matter has been resolved under section 3.12(3), (4) or (5), or

(b) the employer has, in writing, advised the worker and a person referred to in section 3.12(4)(a), (b) or (c) of all of the following:

(i) the refusal;

(ii) the unsafe condition reported under section 3.12(2);

(iii) the reasons why the task would not create an undue hazard to the health and safety of the worker or any other person;

(iv) the right of the worker to refuse to perform unsafe work.

The BCFED and our affiliates who participated in the pre-consultation with the Practices, Policy and Research Division (PRRD) felt strongly the proposed amendments must be a continuation of the process required in Section 3.12(4). The presence of a joint committee member, a union representative or another worker selected by the worker was critical to ensuring the worker being asked to perform the task was provided the support of a representative. If the refusal has reached the requirements of Section 3.12(4), the representative will already be involved in the process to resolve the refusal and therefore be aware of the details of the refusal.

We also strongly agree the employer must provide the worker and the representative the information in Section 3.12.1 (b) (i-iv) in writing. We are pleased the PRRD is proposing the written notice may be communicated electronically by text or email. The BCFED made this recommendation in response to the employer group's concern that having to provide a written notice would be time consuming.

Recommendations

#1

To ensure clarity and consistency the BCFED recommends a further amendment to Section 3.12(1) replacing the words "a task" with "any work process or operate or cause to be operated any tool,

appliance or equipment . . .”:

> (1) An employer must ensure that a worker is not required or permitted to perform any work process or operate or cause to be operated any tool, appliance or equipment that has been refused under section 3.12 unless . . . .

#2

The BCFED proposes a further minor amendment as a point of clarification to Section 3.12.1 (b) that both the worker and the other person must be advised.

> (b) the employer has, in writing, advised **both** the worker and a person referred to in Section 3.12(4)(a), (b), or (c) of all of the following: . . . .

Section 3.12.1 (b) sets out the information that must be communicated to the worker and the representative.

Sub Section (b) (i) the refusal.

The explanatory notes clarify this requirement as information on any refusal and we believe this should be added to the guidelines to provide clarification. We also believe the word “details” should be added for clarity.

> Sub Section (b) (i): “details” of the refusal.

#3

As previously mentioned in our submission we strongly support the requirement for the supervisor to advise the worker and the representative information in writing. We believe that electronic communications (test, emails) are viable options when available at the workplace.

The BFED recommends the WCB clarify and provide clear direction on use of electronic communication in the guidelines.

#4

The BCFED agrees with our affiliates HSA and USW and their concerns for providing education on not only the new section but on the entire right to refuse regulation. All parties will benefit from a robust education initiative on the proper procedures for workers to refuse unsafe work, the employer's responsibilities to investigate and the involvement of the health and safety committee or union representative.

Therefore, the BCFED recommends the WCB work with the BCFED Occupational Health and Safety Centre to develop a right to refuse education initiative for employers and workers.

The BCFED recommends the WCB consider clarifying in the guidelines the employer's responsibility to ensure that the written communication is now required consider differing levels of literacy and ensure that workers understand the written notice.

#5

The BCFED encourages the WCB to develop an implementation plan for these proposed changes thereby ensuring that workers, employers and WCB prevention officers are provided with the appropriate resources.

Conclusion

The BCFED is pleased to provide our recommendations for further amendments to Part 3: Rights and Responsibilities, Section 3.12 Refusal of Unsafe Work. We believe the amendments strengthen workers' right to refuse unsafe work. When there is a failure to ensure workers' legal rights to a safe workplace, a failure to inform workers, to involve workers in health and safety, the right to refuse unsafe work can save lives.

We strongly encourage the WCB Board of Directors to seriously consider our recommendations. We believe our proposed amendments will improve the health and safety of workers.

[1] https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/labour/lisa-helps-report-crossing-the-rubicon.pdf

[2] https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation