

When do I have the right to refuse unsafe work?

July 1, 1998

The Report: July / August 1998 vol.19 num.1

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I am an x-ray technologist at a large hospital and work primarily out of the emergency department. Recently, the hospital cut back on portering staff. The problem arises when I have to transfer a patient from a stretcher to the examination table. While we are told not to do these transfers on our own or without enough assistance, it often means that I have to wait a long time before the other technologist is back from the wards or a porter is free. Meanwhile I am told that the results are required right away and that the backlog is getting larger... Do I have a right to refuse to do the transfer? What if it is a really small patient that I can probably move on my own?



The right to refuse is set out in two places. Currently it is found in section 3.24 of the health and safety regulation and reads as follows:

"...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 could create an undue hazard to the health and safety of any person."

This clause currently governs all work refusals in BC. However, the provincial government introduced new legislation this June that deals with health and safety. Section 141 of that legislation will govern work refusals and will take precedence over the language set out above. The legislative language is not yet in force but will come into effect once the legislation is proclaimed, sometime in the next six to twelve months. The new language reads as follows:

1. Subject to this section, a worker may refuse to carry out work if the worker has reasonable grounds for believing that the work is unsafe.

2. ...work is unsafe if the work activities, the conditions of the work, or the conditions that would result if the work were done are such that there is or would be a significant risk that the worker or another person might be killed, seriously injured or suffer serious illness.

3. the right to refuse does not apply if ... the refusal would directly endanger the health or safety of another person.

As this language is new, it is unclear whether it will actually raise the standard so that the seriousness of the hazard will have to be greater than it would have been under the regulatory language. By requiring that the right is only triggered when there is -significant" risk of -serious" injury, it is arguable that the government has made it more difficult for workers in BC to refuse unsafe work. However, HSA will take the position in support of any refusing member that a -serious" injury is one which would require a worker to lose any time from work (i.e. disable them in any way).

As for the situation described in the question, HSA still maintains that the type of musculoskeletal injuries resulting from improper patient transfers are serious in that they result in disability in the majority of cases. Moreover, there is more than enough evidence of the dire consequences of people attempting single person transfers (of a patient who is not completely ambulatory) to support the argument that this situation constitutes a -significant" risk. This applies to even the smallest of patients.

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