

COVID-19 in Construction

Prevention Resource Guide

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VERSION 1



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INTRODUCTION

Similar to the *Communications Resource Guide* and *Compensation Claims Resource Guide*, this *Prevention Resource Guide* provides affiliates with critically important information to guard against the COVID-19 crisis. Given the BC government's decision to deem construction an essential service, business managers and business agents should ensure they are intimately familiar with COVID-19 prevention protocols, keep a close eye on their contractors health and safety protocols, and educate their membership about prevention requirements including their right to refuse unsafe work. The goal of this guide is to make this heavy burden a little bit lighter.

Business managers and business agents should promptly raise prevention issues and concerns with contractors and WorkSafeBC if the necessary standards are not being adhered to. It is WorkSafeBC's and contractors' collective responsibility to uphold the *Occupational Health and Safety Regulations* as well as the COVID-19-specific protocols from the Provincial Health Officer. Worker representatives and Joint Health & Safety Committees must also be actively involved in these matters.

For a logical presentation of these materials, this guide presents a host of COVID-19 prevention edicts to employers from the Provincial Health Officer and WorkSafeBC, followed by the regulations and guidelines regarding the workers' right to refuse unsafe work if the prevention edicts are not upheld.

Similar to the earlier guides, this document is provided as a Word document in order to facilitate copying and pasting. Hyperlinks are provided to direct readers to more detailed information. To enable members to drill down into the hyperlink data, business managers should make this document available on their union websites.

Updates will be provided as the response to the COVID-19 crisis changes.

Business managers and business agents with questions or concerns about workplace health and safety, should call WorkSafeBC's Prevention Information Line, toll-free, at: **1.888.621.7233**. The line is answered 24 hours a day, seven days a week. Union members with questions or concerns should contact their unions.

WORKSAFEBC, CONSTRUCTION AND COVID-19 SAFETY

Since the COVID-19 outbreak, the BC Building Trades Council has been pushing WorkSafeBC to engage with employers, industry associations, unions, and workers to ensure construction sites throughout the province are safe and healthy for our members.

WorkSafeBC continues to provide essential services to both workers and employers. While their physical offices are closed to visitors, all areas of the organization remain operational and accessible by phone or online. In particular, WorkSafeBC's prevention team continues to conduct inspections and provide education and consultation services to ensure everyone in the workplace is fulfilling their obligations during the COVID-19 crisis.

ROLE OF PRIME CONTRACTORS, EMPLOYERS, AND SUB-CONTRACTORS

Prime contractors have specific responsibilities for health and safety and must ensure that the activities of employers, workers, sub-contractors and other parties at the workplace are coordinated. The prime contractor is also required to do everything that is reasonably practicable to establish and maintain a system or process that will ensure the compliance with the *Occupational Health and Safety Regulation* and the *Workers Compensation Act*.

Construction employers and sub-contractors are responsible for ensuring the health and safety of workers by putting policies and procedures in place to keep workers healthy and safe, and providing workers with up-to-date instructions, training, and supervision on those policies and procedures.

Prime contractors, employers, and sub-contractors must have a mechanism in place for workers to raise issues and concerns about COVID-19 exposure so that additional precautions and controls can be put in place where required. Worker representatives and Joint Health & Safety Committees are of the utmost importance in this context.

CONTROLLING THE RISK OF COVID-19 EXPOSURE

Construction employers must take all necessary precautions to minimize the risk of COVID-19 transmission and illness to workers and others at the workplace. This includes:

- Implementing a policy requiring anyone with symptoms of COVID-19, such as sore throat, fever, sneezing, or coughing to self-isolate at home for 10 days from the onset of symptoms, as well as anyone advised by public health to self-isolate;
- Prohibiting workers from entering the jobsite if they, or any member of their household, have travelled outside of the country within the past 14 days;
- Maintaining a distance of two metres (6 feet) between workers wherever possible by revising work schedules, organizing work tasks, posting occupancy limits on elevators, and limiting the number of workers at one time in break locations;

- Adjusting practices to encourage physical distancing, such as reducing in-person meetings and other gatherings, maintaining an up-to-date list of employees at the workplace, and holding on-site meetings in open spaces or outside;
- Providing adequate hand-washing facilities on site for all workers and ensuring their location is visible and easily accessed;
- Regularly cleaning all common areas and surfaces, including washrooms, shared offices, common tables, desks, light switches and door handles;
- Communicating the policies and protocols that are in place to minimize the risk of COVID-19 exposure and transmission through training, signage, and site orientation as appropriate;
- Involving the worker representative or Joint Occupational Health & Safety Committees in all aspects of prevention discussions and actions;
- Ensuring that a sufficient number of plumbed washroom facilities are readily available for workers. If plumbed washroom facilities cannot be provided because of the nature of the workplace or the nature of the work, the employer must provide access to portable washroom and hand-washing facilities, or make such other reasonable arrangements to accommodate workers as the circumstances allow, if access to portable washroom and hand-washing facilities cannot be provided;
- Making sure that if washroom facilities are provided, they must be maintained in proper working order, kept clean and sanitary, and provided with the supplies necessary for their use;
- Checking to ensure all office and non-porous tools are regularly sanitized and cleaned;
- Placing informative posters and literature around the jobsite to educate workers and other of the dangers and necessary precautions regarding COVID-19.

For additional details, see WorkSafeBC’s *Preventing exposure to COVID-19 in the workplace - A guide for employers* [here](#).

WORKER TRANSPORTATION

- Employers should assess the number of workers being transported at any one given time and employ measures to ensure distance between workers is maintained.
- Whenever possible, workers should travel alone in their vehicles in order to practice physical distancing. If that is the case, employers must implement all the necessary safeguards related to working alone or in isolation, to ensure the safety of these workers.
- Measures that may be taken to ensure appropriate distance include having workers sit one to a seat, with riders staggered to allow maximum distance, adjusting the number of workers taken per trip, and the overall number of trips needed to transport workers to a worksite. It may mean using larger vehicles to ensure maximum spacing, or using multiple vehicles.
- If it is not possible to ensure 2 metres of distance between workers in a vehicle through these measures, the employer must consider other control measures, such as personal protective equipment (“PPE”) where appropriate.

- Employers must also implement a process that allows for physical distancing when loading and unloading vehicles. Workers waiting for loading/unloading should maintain physical distancing while remaining safely away from traffic.
- Employers should have hand washing facilities or sanitizing stations available to workers as they enter and exit the vehicle.
- Employers must ensure that high contact surfaces within the vehicle are routinely cleaned. These include seatbelts, headrests, door handles, steering wheels, and hand holds.

WORK CAMPS

Work camps provide an environment that can foster the transmission of infections, so it is important to implement effective infection prevention and control measures that can reduce the risk of COVID-19 transmission. Employers must ensure that these measures are in place and communicated to everyone at the camp.

ON March 30, 2020, the BC Centre for Disease Control issued the Interim [Communicable Disease Control Guidelines for Industrial Camps](#), which provides information on prevention measures and how to manage the risk of COVID-19 exposure in an industrial camp. Business Managers should consult this document for details.

WORKERS' RIGHT TO REFUSE UNSAFE WORK

The *Occupational Health and Safety Regulations* (“OHSR”) has two key sections dealing with the refusal of unsafe work.

SECTION 3.12: RULES AND PROCEDURES REGARDING UNSAFE WORK

Under the *OHSR*, Section 3.12, our members have the right to refuse work if they believe it presents an undue hazard. WorkSafeBC defines an undue hazard as an “unwarranted, inappropriate, excessive, or disproportionate” risk, above and beyond the potential exposure a general member of the public would face through regular, day-to-day activity.

When the issue of unsafe work or an unsafe workplace arises, the following rules and procedures as specified in section 3.12 of the *OHSR* apply.

- (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.

SECTION 3.13: NO REPRISAL AGAINST WORKERS

Under section 3.13 of the OHSR, employers are prohibited from taking action against a worker who brings forward a complaint of unsafe work or an unsafe workplace.

- (1) A worker must not be subject to prohibited action as defined in section 47 of the *Workers Compensation Act* because the worker has acted in compliance with section 3.12 or with an order made by an officer.
- (2) Temporary assignment to alternative work at no loss in pay to the worker until the matter in section 3.12 is resolved is deemed not to constitute prohibited action.

If the worker has reasonable cause to believe that performing a job or task puts him or her or someone else at risk, they should not perform the job or task. They should immediately notify their supervisor or employer, who will then take the appropriate steps to determine if the work is unsafe and remedy the situation.

Workers are the most important eyes and ears on the front line of workplace health and safety. When they refuse to work because they deem it unsafe, employers should consider it a welcome opportunity to investigate and correct a situation that could have caused great harm. During the COVID-19 crisis this is truer than ever.

WORKSAFEBC GUIDELINES REGARDING UNSAFE WORK

Purpose of guideline

This guideline explains the test for determining whether a worker has a "reasonable cause to believe" that an undue hazard exists or would be created, and what constitutes an "undue hazard." It also provides guidance on the process for the investigation into a work refusal, where completion of the procedure under section 3.12(3) of the *Regulation* has not resolved the work stoppage.

The right to refuse unsafe work

The refusal of unsafe work is both a fundamental right and a responsibility held by workers. A worker's refusal of unsafe work is an integral element in ensuring work is carried out safely. Workers who reasonably believe work is unsafe must refuse to perform that work and are entitled to have their employer investigate and, where necessary, correct the hazard.

Elements of the right to refuse

Section 3.12(1) states that "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." In many situations, the "reasonable cause" and "undue hazard" can be straightforward. However, in some situations it can be more difficult to determine that the worker has reasonable cause to believe there is an undue hazard. These terms are discussed below.

"Undue hazard"

A "hazard" is identified in Part 1 of the *Regulation* as "a thing or condition that may expose a person to a risk of injury or occupational disease." Further, "undue" is defined by the Oxford dictionary as "unwarranted, inappropriate, excessive or disproportionate." Therefore, a thing or condition that may expose a worker to an excessive or unwarranted risk of injury or occupational disease represents an undue hazard for the purposes of section 3.12 of the *Regulation*.

"Reasonable cause to believe"

The use of the term "reasonable" in "reasonable cause to believe" means that the worker must assess the situation as a reasonable person, taking into account relevant and available information and exercising good faith judgment with respect to the hazard with due regard to the worker's training and experience.

There must be an objective basis for a continued refusal for unsafe work. The goal of the process set out in sections 3.12(2) through (5) is to establish whether there is an objective, or reasonable, basis for the refusal and if so, to determine how to remedy the situation.

WorkSafeBC prevention officers investigating work refusals under s. 3.12(5) will deal with each refusal on a case by case basis, and will undertake a full assessment of the situation in order to conclude whether the worker had reasonable cause to believe an undue hazard existed.

"Reasonable cause to believe" and the susceptible worker

Some workers may have an underlying condition which would lead them to suffer an illness or sustain an injury, even though others would not be affected in the same way. In this so-called "susceptible worker" situation, the "objective" test of whether the worker has reasonable cause to believe the work presents an undue hazard is to be applied in the context of the person's specific health condition.

To uphold a work refusal, there needs to be a clear connection between the undue hazard asserted by the susceptible worker, and his or her health condition. As part of the investigation into the refusal, the employer may ask for confirming evidence of the effect of the hazard on the person's condition. While the evidence is being obtained, the worker should be removed from the condition that the worker asserts is an undue hazard.

Application of procedure

To facilitate a timely resolution to a work refusal and ensure that work activities can return to normal as soon as possible, it is important that each step described in the *Regulation* is followed in an expedited manner. If the process outlined in section 3.12(3) fails to bring resolution to the matter, the investigation would continue as described by section 3.12(4). A person identified by section 3.12(4) who is available to participate in the investigation would be chosen without delay, so the investigation can continue.

If a resolution is found after the matter is investigated in the presence of this person, the work refusal is satisfied at this stage. If no resolution is found to the work refusal, both the supervisor, or the employer, and the worker must immediately notify a WorkSafeBC prevention officer.

A prevention officer investigating a work refusal under section 3.12(5) of the *Regulation* will conduct the following:

1. Ensure that the worker(s) refusing to work and the employer's representative both understand the procedure described under section 3.12. If the parties have not followed the procedure set out in section 3.12(4), the prevention officer will review the procedure with the parties, and direct them to continue their inquiries into the work refusal until such time as the parties have exhausted their efforts to resolve the matter.
2. Should the parties be unable to resolve the matter themselves, the prevention officer will inspect the work areas, processes, equipment, and practices associated with the work refusal. If the prevention officer finds that an undue hazard is present, the prevention officer will issue an inspection report addressing the violations that apply to the undue hazard. This may include compliance orders as well as a stop use or stop work order, if the circumstances meet the criteria for such orders, as described in the applicable guideline, [G-P2-89](#).
3. Where the prevention officer identifies violations that are not related to the inquiry into the work refusal, the prevention officer will address them in a separate inspection report.
4. If an undue hazard is not identified, the prevention officer will inform the parties of this finding, and include the following statement in the inspection text of the inspection report: "An investigation into a work refusal under section 3.12 has not identified an undue hazard."

5. The prevention officer will advise the parties of the requirement of section 3.13 that a worker must not be subject to prohibited action because the worker has acted in keeping with section 3.12 regarding unsafe work.

Where a prevention officer has made a finding that the investigation into a work refusal under section 3.12 has not identified an undue hazard, and the worker refuses to return to work, the worker is no longer protected by the provisions of section 3.13 of the *Regulation*.

CONCLUSION

With the outbreak of COVID-19, the upholding of health and safety protocols has proven to be the single most important issue on construction jobsites. Building trades members who work in a wide range of trades, environments, and sectors are highly vulnerable to this deadly virus. WorkSafeBC's laws, regulations, policies, practices and guidelines provide a solid foundation for preventive actions, but without strict enforcement these instruments aren't worth the paper they are written on. WorkSafeBC, in cooperation with employers, unions, and workers, need to be actively enforcing the rules of the game to keep our workers safe. Since the outbreak, the Council has held WorkSafeBC Prevention Officers' feet to the fire, and we are glad to report that the results are encouraging.

Business managers and business agents are playing a critical role in the COVID-19 drama. By ensuring their contractors are abiding by the health and safety rules of WorkSafeBC and the Provincial Health Officer, they are protecting the lives of their membership. It is our hope that this guide will make your task a little easier by putting the prevention protocols as well as the rules regarding the refusal of unsafe work at your fingertips.

Call WorkSafeBC's Prevention Information Line, toll-free, at **1.888.621.7233** if you have questions or concerns about workplace health and safety. The line is answered 24 hours a day, seven days a week. Union members with questions or concerns should contact their unions.

A right to refuse work flowchart is attached for your convenience.

Flowchart for Regulation Guideline 3.12

