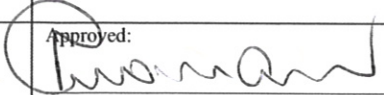
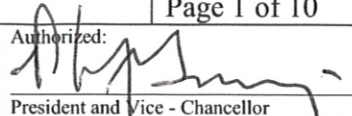
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	Title: Work Refusal Program	Page 1 of 10
Submitted: Risk Management Support Group	Approved:  Vice President, Administration	Authorized:  President and Vice - Chancellor

1 PURPOSE

- 1.1 To ensure the safety of staff and students.
- 1.2 To outline procedures to resolve health and safety related work refusals and ensure compliance with the Occupational Health & Safety Act.

2 SCOPE


- 2.1 All McMaster University employees.

3 RELATED DOCUMENTS

- 3.1 Occupational Health and Safety Act and Regulations R.S.O. 1990 for Industrial Establishments
(O. Reg 851) and Construction Projects (O. Reg 213/91).
- 3.2 McMaster University Workplace and Environmental Health and Safety Policy, RMM#100.
- 3.3 Risk Management System, RMM# 102 Occupational Health and Safety Act.
- 3.4 Central Joint Health and Safety Committee, RMM#104.
- 3.5 McMaster University Joint Health and Safety Committees, RMM#105.
- 3.6 Safety Orientation and Training Program, RMM#300.

4 DEFINITIONS

- 4.1 **Certified Member** – a JHSC committee member who is certified by the Workplace Safety and Insurance Board as per the Occupational Health and Safety Act.
- 4.2 **Employer**- A person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with the owner, constructor, contractor or subcontractor, to perform work or supply services.
- 4.3 **Ensure** – take every reasonable precaution to achieve the stated objective.
- 4.4 **Refusal to Work** – *A worker may refuse to work or do particular work where he or she has reason to believe he or she or another worker may be endangered according to the definition in OHSA section 43(Appendix A).*
- 4.5 **Supervisor** – Person who has charge of a workplace or authority over a worker.
- 4.6 **Worker** – means a person who performs work or supplies services for monetary compensation.

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4.7 **Work Refusal Investigative Team** – Shall consist of the worker, the workers immediate supervisor, a certified member representing workers from the workplace JHSC or the CJHSC and as an observer, a representative from the FHSc office and/or a representative from EOHSS, and if necessary, a management representative with authority to make change in the workplace. Note: Security Service will be a member of the Work Refusal Investigative Team in case of work refusal relating to workplace violence.

4.8 **Acronyms**

JHSC – Joint Health and Safety Committee

CJHSC – Central Joint Health and Safety Committee

EOHSS – Environmental and Occupational Health Support Services

MOL – Ministry of Labour

OHSA - Occupational Health and Safety Act R.S.O., 1990

RMSG – Risk Management Support Group

RMM – Risk Management Manual

WRIT – Work Refusal Investigative Team (supervisor, worker, certified JHSC or CJHSC worker member, and as an observer, RMSG representative and/or EOHSS representative and if necessary a management representative with authority to make change in the workplace)

FHSc – Faculty of Health Sciences Safety Office

5 **RESPONSIBILITIES**

5.1 **Role of Senior Managers (Deans / Directors / Chairs / Managers):**


Senior Managers shall:

- provide the required resources and direction to support the OHSA Work Refusal Program.
- ensure that all employees under their direction are aware of the OHSA Work Refusal Program.

5.2 **Role of Supervisors (Administrative and Academic):**

Supervisors shall:

- be knowledgeable of the OHSA work refusal procedures (See Appendix A);
 - on receipt of work refusal, ensure the worker is removed to a safe location and to remain in a safe place and available for investigation;
 - take immediate steps to secure the work area and call in the certified worker representative to investigate in the presence of the worker and supervisor;
 - take steps to correct the unsafe condition to the satisfaction of the worker and certified worker member;
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- convene the Work Refusal Investigative Team (WRIT) in consultation with the worker and certified worker representative, if the unsafe condition cannot be resolved to the satisfaction of the worker and certified worker representative;
- report the work refusal as soon as possible to the Manager EOHSS, ext 24352 or Manager of FHSc, ext 24956;
- participate in the job hazard analysis and preparation of a written investigation report and recommendations; and
- ensure that work only resumes after the WRIT has signed off on an agreed to solution that has eliminated the hazard.

5.3 **Role of Workers:**

Individual Workers shall:

- stop work when they believe that an immediate safety hazard exists in the workplace that may endanger themselves or another worker;
- report the work refusal to their immediate supervisor; and
- participate in the investigation with the supervisor and the certified worker representative.

5.4 **Role of Work Refusal Investigative Team:**


The WRIT shall:

- convene as soon as possible at or near the site of the work refusal;
- investigate the OHS work refusal;
- file a report with recommendations that resolve the safety issue; and
- in the event of an impasse, request intervention by an MOL inspector.

5.5 **Role of Environmental and Occupational Health Services (EOHSS) and Faculty of Health Sciences Safety Office (FHSc):**

The EOHSS and/or FHSc Office shall:

- respond to all OHS work refusals as members of the WRIT;
 - ensure that work resumes only when the WRIT investigative report has been accepted by the workplace parties and all of the WRIT recommendations implemented;
 - in the event that a resolution of the safety issue has not been agreed to, secure the work site and arrange for an MOL inspector to attend the area in question; and
 - ensure the appropriate health and safety groups are immediately informed of a work refusal.
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5.6 **Role of Joint Health and Safety Committees (JHSCs):**

JHSCs shall:

- designate a certified worker member to respond to work refusals;
- ensure that certified JHSC worker members participate in investigations of work refusals as required by OHS/A;
- participate in the WRIT through the designated certified member; and
- receive and review copies of WRIT investigation reports and any MOL work refusal investigation reports.

5.7 **Role of Central Joint Health and Safety Committee (CJHSC):**

The CJHSC shall:

- receive and review copies of WRIT investigation reports and any MOL work refusal investigation reports;
- ensure that CJHSC certified worker members are prepared to participate in investigations in support of absent JHSC certified worker members; and
- ensure a certified member is on the WRIT.

6 **PROCEDURES**

6.1 **Application of OSHA Work Refusals**


- 6.1.1 All workers have the right to declare an OSHA work refusal (See Appendix A).
- 6.1.2 Supervisors and employees must distinguish the OSHA work refusal procedure from every day due diligence associated with the recognition and correction, reporting and correcting of workplace safety hazards that should be addressed by the supervisor and the employee in the workplace.

6.2 **Initiating OSHA Work Refusals**

- 6.2.1 The worker shall notify his or her supervisor that he or she is refusing to perform unsafe work because he or she has reason to believe that performing the work may endanger themselves or another worker.
- 6.2.2 The worker shall remain in a safe place, and is available for the investigation.

6.3 **OSHA Investigation Procedures**


- 6.3.1 The supervisor shall notify the designated JHSC certified worker member.
- 6.3.2 The supervisor shall arrange for the WRIT to be convened at the work site.
- 6.3.3 The WRIT shall be comprised of the supervisor, the involved worker, a certified JHSC worker member, and representative from the EOHSS and/or FHSc Office.
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6.3.4 If an acceptable resolution to the health or safety issue is not agreed to by all members of the WRIT the EOHSS or FHSc office or any of the workplace parties shall arrange for an investigation to be conducted by an MOL inspector.

7 **RECORDS**

7.2 A permanent record shall be maintained of all investigations related to OHSA work refusals

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Appendix A

PART V RIGHT TO REFUSE OR TO STOP WORK WHERE HEALTH OR SAFETY IN DANGER

Refusal to work

Non-application to certain workers

43. (1) This section does not apply to a worker described in subsection (2),

- (a) when a circumstance described in clause (3) (a), (b) or (c) is inherent in the worker's work or is a normal condition of the worker's employment; or

Note: On June 15, 2010, clause (a) is amended by striking out "clause (3) (a), (b) or (c)" and substituting "clause (3) (a), (b), (b.1) or (c)". See: 2009, c. 23, ss. 4 (1), 9.

- (b) when the worker's refusal to work would directly endanger the life, health or safety of another person. R.S.O. 1990, c. O.1, s. 43 (1).


Idem

(2) The worker referred to in subsection (1) is,

- (a) a person employed in, or a member of, a police force to which the *Police Services Act* applies;
- (b) a firefighter as defined in subsection 1 (1) of the *Fire Protection and Prevention Act, 1997*;
- (c) a person employed in the operation of,
 - (i) a correctional institution or facility,
 - (ii) a place of secure custody designated under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise,
 - (iii) a place of temporary detention under the *Youth Criminal Justice Act* (Canada), or
 - (iv) a similar institution, facility or place;
- (d) a person employed in the operation of,
 - (i) a hospital, sanatorium, nursing home, home for the aged, psychiatric institution, mental health centre or rehabilitation facility,

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause (i) is amended by the Statutes of Ontario, 2007, chapter 8, section 221 by striking out "nursing home, home for the aged" and substituting "long-term care home". See: 2007, c. 8, ss. 221, 232 (2).

- (ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,
 - (iii) an ambulance service or a first aid clinic or station,
 - (iv) a laboratory operated by the Crown or licensed under the *Laboratory and Specimen Collection Centre Licensing Act*, or
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- (v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclause (i) to (iv). R.S.O. 1990, c. O.1, s. 43 (2); 1997, c. 4, s. 84; 2001, c. 13, s. 22; 2006, c. 19, Sched. D, s. 14.

Refusal to work

(3) A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself; or

Note: On June 15, 2010, subsection (3) is amended by striking out “or” at the end of clause (b) and by adding the following clause:

(b.1) workplace violence is likely to endanger himself or herself; or

See: 2009, c. 23, ss. 4 (2), 9.

- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker. R.S.O. 1990, c. O.1, s. 43 (3).

Report of refusal to work

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker’s employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay. R.S.O. 1990, c. O.1, s. 43 (4).

Worker to remain near work station

(5) Until the investigation is completed, the worker shall remain in a safe place near his or her work station. R.S.O. 1990, c. O.1, s. 43 (5).


Note: On June 15, 2010, subsection (5) is repealed and the following substituted:

Worker to remain in safe place and available for investigation

(5) Until the investigation is completed, the worker shall remain,

- (a) in a safe place that is as near as reasonably possible to his or her work station; and
 - (b) available to the employer or supervisor for the purposes of the investigation.
- 2009, c. 23, s. 4 (3).

See: 2009, c. 23, ss. 4 (3), 9.

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Refusal to work following investigation

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

- (a) the equipment, machine, device or thing that was the cause of the refusal to work or do particular work continues to be likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself; or

Note: On June 15, 2010, subsection (6) is amended by striking out “or” at the end of clause (b) and by adding the following clause:

(b.1) workplace violence continues to be likely to endanger himself or herself; or

See: 2009, c. 23, ss. 4 (4), 9.

- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself, herself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof. R.S.O. 1990, c. O.1, s. 43 (6).

Investigation by inspector

(7) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4) (a), (b) or (c). 2001, c. 9, Sched. I, s. 3 (11).

Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether the machine, device, thing or the workplace or part thereof is likely to endanger the worker or another person. R.S.O. 1990, c. O.1, s. 43 (8).

Note: On June 15, 2010, subsection (8) is repealed and the following substituted:


Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person. 2009, c. 23, s. 4 (5).

See: 2009, c. 23, ss. 4 (5), 9.

Idem

(9) The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4) (a), (b) or (c). R.S.O. 1990, c. O.1, s. 43 (9).

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Worker to remain at a safe place pending decision

[\(10\)](#) Pending the investigation and decision of the inspector, the worker shall remain at a safe place near his or her work station during the worker's normal working hours unless the employer, subject to the provisions of a collective agreement, if any,

- (a) assigns the worker reasonable alternative work during such hours; or
- (b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker. R.S.O. 1990, c. O.1, s. 43 (10).

Note: On June 15, 2010, subsection (10) is repealed and the following substituted:

Worker to remain in safe place and available for investigation

[\(10\)](#) Pending the investigation and decision of the inspector, the worker shall remain, during the worker's normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation. 2009, c. 23, s. 4 (6).

Exception

[\(10.1\)](#) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any,

- (a) assigns the worker reasonable alternative work during the worker's normal working hours; or
- (b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker. 2009, c. 23, s. 4 (6).

See: 2009, c. 23, ss. 4 (6), 9.

Duty to advise other workers

[\(11\)](#) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other worker's refusal and of his or her reasons for the refusal. R.S.O. 1990, c. O.1, s. 43 (11).


Idem

- [\(12\)](#) The person referred to in subsection (11) must be,
- (a) a committee member who represents workers and, if possible, who is a certified member;
 - (b) a health and safety representative; or
 - (c) a worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is no trade union, by the workers to represent them. R.S.O. 1990, c. O.1, s. 43 (12).

Entitlement to be paid

[\(13\)](#) A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be proper,

- (a) for the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4) (a), (b) or (c); and

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(b) for time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12). R.S.O. 1990, c. O.1, s. 43 (13).
