



August 13, 2021

VIA EMAIL ONLY: ohspolicyfeedback@worksafebc.com

Policy, Regulation and Research Division
WorkSafeBC
P.O. Box 5350, Station Terminal
Vancouver BC V6B 5L5

Re Consultation on proposed amendments to Part 3 of the Occupational Health and Safety Regulation

Introduction

The BC General Employees' Union (BCGEU) represents over 80,000 workers in more than 550 bargaining units throughout British Columbia. Our diverse membership includes direct government employees who protect children and families, provide income assistance to vulnerable individuals, fight forest fires, protect the environment, manage our natural resources, deliver care to people with mental health issues and addictions, administer B.C.'s public system of liquor control, licensing and distribution, staff correctional facilities and the courts, and provide technical, administrative and clerical services.

Our membership also comprises workers throughout the broader public and private sectors where members provide clinical care and home support services for seniors; a diverse range of community social services; highway and bridge maintenance, post-secondary instruction and administration, as well as other non-governmental industries, including financial services, hospitality, retail and gaming.

Every day, BCGEU members are on the frontlines of service delivery, in jobs that put them at a high risk of physical and psychological injury. They are some of the most vital but most vulnerable workers in B.C. Since its inception, the BCGEU has been active in occupational health and safety, tirelessly working to improve workplace safety for our members. As such, our union is well positioned to contribute to this consultation.

Submission

On March 28, 2019, Lisa Helps was retained by the Attorney General of British Columbia to undertake a review of the actions taken by the government of British Columbia and WorkSafeBC in response to the recommendations from the Dyble Report, the Macatee Report and the Coroner's verdicts after the horrific explosions and resulting fires at Babine Forest Products in Burns Lake and Lakeland Mills in Prince George.



The review resulted in a report entitled "Crossing the Rubicon"¹ in which Lisa Helps made eleven recommendations as part of a mandate to provide advice for the purpose of informing potential further legislative amendments or other legal action taken by the government and WorkSafeBC.

One of Lisa Helps' eleven recommendations was to amend the Occupational Health and Safety Regulation, Section 3.12 to strengthen worker protections. Under Section 3.12 of the Occupational Health and Safety Regulation, workers have the right to refuse to perform unsafe work. Workers must notify a supervisor or employer, who then carries the responsibility of determining if the work is unsafe and to then remedy the situation without delay.

The employer can reassign a new task to the worker, at no loss in pay and without the employer taking any disciplinary action onto the worker. As currently written, the WCA allows for the refused work to be reassigned to another worker. There may be cases where this is a legitimate remedy. For example, if a worker is assigned to operate a piece of equipment without appropriate training, reassigning that task to a worker who has completed the training is a reasonable remedy. However, throughout her interviews while conducting the report Lisa Helps found numerous examples of workers attempts to bring attention to unsafe working conditions only to have employers or supervisors reassign the unsafe work to others without appropriate remedy.

This situation is all too common amongst younger and less experienced workers who may be impressionable, unaware of the hazard and fear the refusal will lead to fewer on-call shifts or missed opportunities for promotion.

Lisa Helps would go on to state: "A worker who refuses unsafe work and is reassigned can look on while another worker takes over without a designated recourse for the first worker" and that "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."

Given that, possible remedies suggested were to draft legislation such that the subsequent worker must be notified of a refusal by a previous worker and given the option to continue, a documentation process for the refusal and any other available remedy which will protect workers from either employer or internal pressure.

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

(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

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



- (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 subsequent Section 3.13 of the OHSR which also references Section 47 of the Workers Compensation Act sets out the right of the worker to no prohibited action or punishment:

- (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.*

The proposed amendments³ by WorkSafeBC include adding Section 3.12.1 Reassignment of refused work which reads:

Reassignment of refused work 3.12.1

- (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 BCGEU is in favour of the proposed amendments to Section 3.12.1 as they add enhanced protections for workers. As such, we recommend additional enhancements to the language.

Recommendations

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

³ <https://www.worksafebc.com/en/resources/law-policy/discussion-papers/part-3-rights-and-responsibilities-aug-13-21?lang=en>



- 1) We propose a further amendment as a point of clarification to Section 3.12.1 (b) as follows:

*(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:*
- 2) We propose a further amendment to Section 3.12.1 (c) (i) as an additional point of clarification as follows:

*(c) (i) the **details of any previous** refusal*
- (3) We propose a further amendment to Section 3.12.1(c)(iv) to further clarify Lisa Help's suggested remedy of notifying the subsequent worker as follows:

*(iv) the right of the **subsequent** worker to refuse to perform unsafe work.*
- (4) The BCGEU recommends that WCB develop an implementation plan for these changes to section 3.12.1 to ensure that workers and employers are provided appropriate resources and made aware of the changes.
- (5) The BCGEU wants to ensure that it is highlighted and made clear and that a strong emphasis is communicated to employers that section 3.12.1 (1) (b) requires **written** notice of refusals not yet resolved through section 3.12 be communicated to workers.

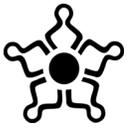
Considering our proposed amendments, Section 3.12.1 would read as follows:

Reassignment of refused work 3.12.1

- (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 **both** the worker and a person referred to in section 3.12(4)(a), (b) or (c) of all of the following:*
 - (i) the **details of any previous** 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 **subsequent** worker to refuse to perform unsafe work.*

Conclusion

The BCGEU represents tens of thousands of workers throughout the province of British Columbia who at times may be put in high-risk situations and required to exercise their fundamental right of refusal. We support the proposed additions of Section 3.12.1 to the Occupational Health and Safety Regulation to enhance protection of workers, however we strongly urge WCB to consider and adopt our proposed recommendations to add further clarification to the proposed language. We strongly believe these recommendations will improve the health and safety of workers by ensuring workers who are assigned to a task are aware of any previous refusal so they can make an informed decision as to whether the task is safe to perform.



On behalf of BCGEU members, we appreciate the opportunity to provide this submission.

Yours truly,

A handwritten signature in black ink that reads "Stephanie Smith". The script is cursive and fluid.

Stephanie Smith
President

PC/CN/MoveUP
Part 3 OHSR submission August 2021

cc: Sheila Moir, Director of Occupation Health & Safety – BC Federation of Labour