

Understanding the Right to Refuse Unsafe Work in California

Across the state, workers are reporting that they are being made to work without appropriate protections that may leave them vulnerable to COVID-19. Workers want to know: do we have the right to refuse work?

Overview

There is a legal “right to refuse” unsafe work under the [California Labor Code Section 6311](#). The law says an employee who is asked to do something dangerous can refuse that work if:

- The employee knows or believes that doing the work creates a “real and apparent” health or safety hazard for themselves or their coworkers; **AND**
- The employee knows or believes that it is against the law according to the Labor Code or a Cal/OSHA order, standard, or regulation.

If a worker must refuse work or exercise other occupational health and safety rights, it is best to do so with at least one fellow worker, if possible. When two or more workers act together to refuse dangerous work their action qualifies as “concerted activity” under the rules of the National Labor Relations Board.

Workers should know, however, that to date the [California Division of Occupational Safety and Health](#) (better known as Cal/OSHA) has not presented any definitive scenarios about the right to refuse and COVID-19, and it has not included this right in its guidance about COVID-19. Cal/OSHA has stated that workers should consult with them about whether or not a specific situation constitutes a “real and apparent” hazard such that refusing to work would be protected.

What constitutes a “real and apparent” hazard is not otherwise defined. Under present pandemic conditions, we believe that only the following specific situation may constitute a relatively clear scenario in which a worker may refuse dangerous work: when they face being directly exposed to confirmed COVID-19 infected individual(s) or bodily fluid without proper safety protections.

For other scenarios, we encourage workers to act collectively to make sure their employers are following the guidance published by labor and public health agencies. These include [Cal/OSHA](#) and the [State of California](#), the [Labor Commissioner's Office](#), the [California Department of Public Health](#), and County Departments of Public Health. For workers whose situation does not fit the above scenarios, we encourage them to [contact Worksafe](#) or consult with Cal/OSHA about their specific circumstances.

Note: There are [many other areas of law](#) that may relate to the right to refuse work, including laws that protect workers with qualified disabilities, prevent workplace discrimination, govern workers' compensation, and more. This fact sheet does not cover every issue that could arise out of a refusal to engage in unsafe work.

Steps For Refusing Unsafe Work

Currently there is no guarantee that Cal/OSHA or the Labor Commissioner will protect the right to refuse unsafe work with respect to COVID-19. Exercising the right to refuse involves taking the following steps:

1. Collect and document as much information as you can, and consult trusted coworkers. Find out if others are getting sick or believe the task is unsafe or unhealthy.
2. Figure out if the hazard breaks the law by [contacting Cal/OSHA](#) to discuss the specific situation. Ask what steps you would need to take with the complaint filing process to protect your right before taking other action.
3. If you have a union, ask for help. If not, see if there is an [occupational safety and health group](#) or worker center near you.
4. Prepare to talk to your supervisor:
 - Try to act when others are around so you have witnesses.
 - If you can get others to refuse with you, that may be more effective.
 - If you have a union, ask a representative to come with you.
5. Explain to your supervisor that you think the job or task is a hazard to you (and to other coworkers, if true).
 - Ask that it be fixed, and request a timeline for it to be addressed.
 - Follow up your discussion with a written confirmation letter or note to document what was said.

6. If the hazard is not fixed in a reasonable amount of time or by the timeline you have requested, tell your supervisor that you are using your legal right to refuse hazardous or unsafe work.
7. Explain to your supervisor (and put in writing) that you are only taking this step because you know or believe:
 - Continuing to work will be a health or safety hazard for you or your coworkers; **AND**
 - The hazard violates the law in the Labor Code or a state health and safety standard or guidance; **AND**
 - You are willing to do other work that is not hazardous, until the hazard is fixed; **AND**
 - You are willing to do the job or task once the hazard is fixed.
8. Call the [local Cal/OSHA office](#) to make a complaint. If you have a union, the representative could help.

If Retaliation Happens

For workers who have already exercised the right to refuse and faced an adverse employment action, their potential remedy is to file a complaint with the Labor Commissioner, not Cal/OSHA, since the Labor Commissioner is responsible for investigating retaliation complaints.

The [Labor Commissioner website](#) states that employees who are not essential workers (“non-essential workers”) and who believe they were terminated or otherwise retaliated against for refusing to go into work may [file a retaliation claim](#) with the Labor Commissioner’s Office. Workers can also file a complaint for any other violation of their occupational safety and health rights, such as:

- Requesting health or safety measures such as PPE from their employer
- Informing their employer or supervisor of a workplace safety concern or violation
- Writing a letter, email, or filing an internal workplace safety complaint
- Talking to, or filing a complaint with, any government agency
- Participating in a work-related meeting or discussion of workplace safety
- Reporting a workplace safety issue or injury

Conclusion

If your employer retaliates against you for exercising your right by firing, laying you off, demoting you, transferring you, cutting your hours, or any other adverse employment action, document everything that has happened to you. [File a complaint](#) with the Labor Commissioner's Office immediately.

Worksafe is a legal support center and an expert on occupational health and safety issues in California. We can provide legal information, but we do not represent individual clients. Worksafe advises individual workers filing complaints with state agencies in select cases. The contents of this fact sheet do not constitute legal advice.

About Worksafe

Worksafe is a California-based nonprofit that works to protect people from job-related hazards and empower us all to advocate for safe and healthy workplaces. We engage in policy advocacy, legal support, training, and coalition building to ensure the occupational safety and health rights of vulnerable workers. Our mission is preventing worker injury, illness, and death by bringing justice to the workplace.

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