

Internal Complaint Resolution Process & Refusal to Work Process

Presented by:

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Information:

Please be advised this is an awareness information session, and is not representative as training under the requirements of the Canada Labour Code, Part II and Canadian Occupational Health and Safety Regulations.



Introduction

The following presentation will provide an overview of the Internal Complaint Resolution Process (ICRP) and the Refusal to Work (RTW) process. These processes, as outlined in the *Canada Labour Code*, Part II, are meant to engage and strengthen the internal responsibility system in the work place. Scenarios will be provided to more concretely illustrate the steps in action.



Objective

At the end of this presentation, participants will be able to:

- Recognize when and how to engage the ICRP and RTW process in their work place
- Outline each step of the ICRP and RTW process
- Define the term “danger”
- Understand the difference between an “imminent” and “serious” threat
- Utilize 3 key questions to better assess/determine the presence or absence of “danger”
- Understand when and how to engage the Labour Program





Internal Complaint Resolution Process

Internal Complaint Resolution Process

127.1 (1)

An employee who believes on reasonable grounds that there has been a contravention of this Part or that there is likely to be an accident, injury or illness arising out of, linked with or occurring in the course of employment shall, before exercising any other recourse available under this Part, except the rights conferred by sections 128, 129 and 132, make a complaint to the employee's supervisor.



Internal Complaint Resolution Process

127.1 (Slide 1)

Employee believes there is a contravention or that an accident or injury is likely – 127.1 (1)

Employee must make complaint to supervisor 127.1(1)

Supervisor and employee must try to resolve complaint 127.1(2)

If complaint unresolved – may be referred to chairperson of work place committee or health and safety representative for further joint investigation – 127.1(3)

Employee and employer members of work place committee 127.1(3)(a)

Health and safety representative and person designated by employer – 127.1(3)(b)

Persons who investigated complaint shall inform employee and employer in writing of results 127.1(4)

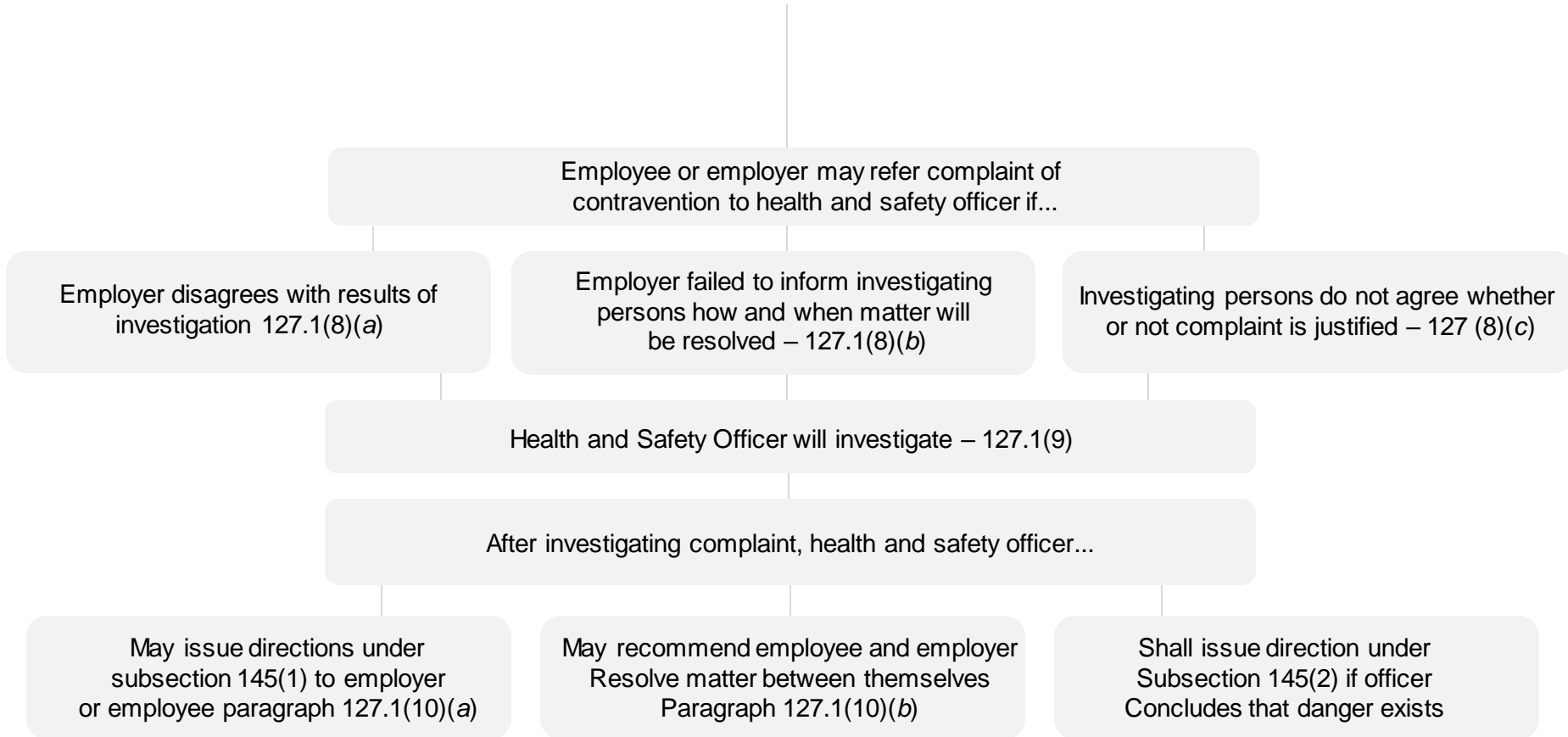
Whether or not complaint is justified – persons who investigated complaint may make recommendations to employer – 127.1(5)

Employer shall in writing, inform persons who investigated complaint how and when matter will be resolved – 127.1(6)

If investigating persons conclude that danger exist – employer can't assign another employee to task - 127.1(7)



Internal Complaint Resolution Process 127.1 (slide 2)



Internal Complaint Resolution Process

Labour Program Policy

- Anonymous/confidential complaints shall be returned to the complainant.
- Third party complaints not accepted
- There must be an employer-employee relationship (Canada Industrial Relations Board-CIRB referral if applicable)



Internal Complaint Resolution Process

Frequently Asked Questions

Q: Does a complaint have to be made in writing?

A: The legislation does not require a written complaint however best practice would be to record the complaint in writing.

Q: How much time does an employer/committee have to investigate a complaint?

A: The employer must start the investigation without delay. The time it takes to investigate depends on the nature of the complaint.



Internal Complaint Resolution Process

Frequently Asked Questions

Q: Can a complaint be withdrawn?

A: Yes, a complaint can be withdrawn at the request of the complainant.

Q: Can the employer submit an unresolved complaint to the Labour Program?

A: The employer and the employee may refer a complaint to the Minister, in any of the circumstances outlined in section 127.1(8) of the *Canada Labour Code*.



Internal Complaint Resolution Process

Submitting a complaint to the Labour Program

- Call 1-800-641-4049
- Labour Program will screen the complaint and provide complaint form (LAB1060), if applicable
- Submit the complaint registration form (LAB1060) via email or mail to nearest office.
- Labour Program – Regional Offices contacts link:
<https://www.canada.ca/en/employment-social-development/services/labour-contact.html>



Internal Complaint Resolution Process

Case Study

Background:

- An employee filed a complaint in the workplace, citing a violation to the *Canada Labour Code* section 135.1(8), as the employer was completing the monthly inspections of the workplace without the involvement of an employee committee member.
- At the start of the COVID-19 pandemic, the employer decided to complete the workplace inspections in the absence of an employee committee member, since most of the employee members on the committee were working remotely.
- The complainant was of the position that an employee member on the committee should be involved in conducting the monthly workplace inspections.



Internal Complaint Resolution Process

Case Study

Process:

- The employer investigated the complaint and determined that the complaint was not justified as the workplace was being inspected each month.
- The health and safety committee investigated the complaint and could not reach a consensus as to whether the complaint was justified.
- Following both investigations, the complainant believed that the issue was unresolved. The complainant subsequently filed a Part II complaint with the Labour Program.



Internal Complaint Resolution Process

Case Study

Results:

- The investigating Official Delegated by the Minister (ODHCE) determined that the complaint was justified and that the employer was in violation of section 135.1(8) of the *Canada Labour Code*, which mandates that the functions of the health and safety committee, must be performed by at least half of the members being employee members, if two or more members are designated. If one member is designated, the member shall be an employee member.
- All employee members on the committee were working remotely during the pandemic.
- To ensure compliance with the *Code*, the employer reached out to the Union to have a unionized employee who was working in the office, to be selected for appointment to the health and safety committee.





Refusal To Work: The Right to Refuse Dangerous Work

Right to Refuse Dangerous Work:

Definition of Danger:

Subsection 122(1) of the Code defines “danger” as:

Any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered.

Imminent Threat:

- Something that can happen or exist soon (in a matter of minutes or hours)
- Has a high probability of happening or existing
- Can be severe or minor harm (but not trivial)

Serious Threat:

- The degree of expected harm is severe, not minor
- No time frame as to when the harm will occur (can be days, weeks, months or in some cases years)
- Can be reasonably expected to result in a death, a major injury or illness requiring medical attention



Right to Refuse Dangerous Work:

The *Code* states that an employee may refuse to work under the following circumstances:

- to use or operate a machine that constitutes a danger to the employee or to another employee
- to work where a condition exists in the place that constitutes a danger to the employee
- to perform an activity that constitutes a danger to the employee or to another employee

Exceptions:

- if the refusal puts the life, health or safety of another person directly in danger;
- the danger in question is a normal condition of employment.



Right to Refuse Dangerous Work

- Once the right to refuse work is invoked, all parties **must** follow the Refusal to Work Process, in the prescribed order.
- The next two slides demonstrate the process.



Employee refuses and notifies employer 128(6)
Employer investigates in presence of employee
Writes employer report 128(7.1)

Employee not satisfied, employee notifies
employer and committee/representative 128(9)

Committee/Representative investigates in
presence of employee 128(10) provides a
report of investigation results and
recommendations to employer 128(10.1)

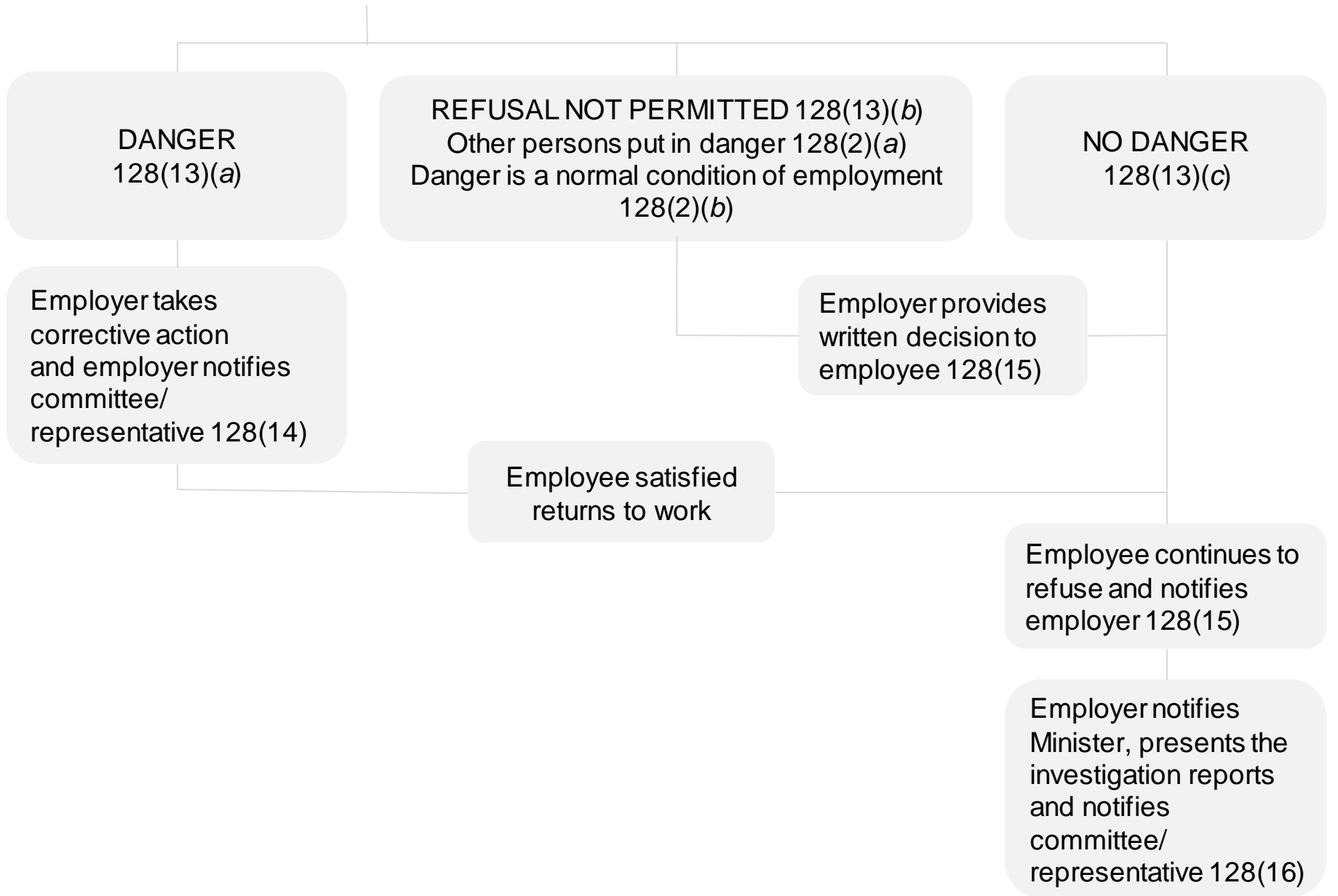
Revises Report if deemed appropriate and
presented

Employee satisfied returns to
work

Employer provides additional
information to committee/
Representative 128(10.2)

Employer decides 128(13)





Determining "Danger"

Questions to be asked when determining if a “danger” exists are:

- 1) What is the alleged hazard, condition or activity?

- 2) a) Could this hazard, condition or activity reasonably be expected to be an imminent threat to the life or health of a person exposed to it?

OR
b) Could this hazard, condition or activity reasonably be expected to be a serious threat to the life or health of a person exposed to it?

- 3) Will the threat to life or health exist before the hazard or condition can be corrected or the activity altered?



Pregnant and Nursing Employees

- An employee who is pregnant or nursing may cease to perform their job if they believe that continuing any of their current job functions may pose a risk to their health or that of their foetus or child.



Pregnant and Nursing Employees

- The employee must notify the employer that they are ceasing to perform their job duties for the reasons identified in the previous slide
- With consent of the employee, the employer shall notify the health and safety committee or representative



Pregnant and Nursing Employees

- The employee must consult with a health care practitioner as defined in section 166 of the *Code*
- The employer may, in consultation with the employee reassign them to another job that would not pose a risk to them, their foetus or child
- Regardless of whether the employee has been reassigned to another job, they shall continue to receive the wages and benefits attached to their substantive position.



Right to Refuse Dangerous Work: Frequently Asked Questions

Q: When can the employer re-assign the work that has been refused?

A: The employer is not permitted to re-assign the work that has been refused, until the matter is referred to the Minister and the Minister has determined that none of the circumstances outlined in section of 129(1) of the *Canada Labour Code* apply. The employer is not permitted to re-assign the work until the Head proceeds with an investigation.

(**Head** means the Head of Compliance and Enforcement designated under subsection 122.21(1);)



Right to Refuse Dangerous Work: Frequently Asked Questions

Q: Can the employer send the employee home during the refusal? Alternative work?

A: The employer must investigate in presence of refusing employee, unless employee chooses not to be present (the employee can elect another employee to represent them). The employer can provide reasonable alternative work while the investigation is being conducted.

Q: Can the employer reassign work to contractors?

A: Yes, only after they conduct an investigation (report incl.), conclude danger, and the reassignment removes danger; if the refusing employee is not satisfied, must proceed to next stage, thus reassignment void.



Right to Refuse Dangerous Work:

Frequently Asked Questions

Q: What counts as normal condition of employment?

A: After the employer has identified every hazard and eliminated, reduced and controlled it or provided protective clothing, equipment, devices or materials to protect employees against it; then any danger that remains constitutes a normal condition of employment.

The existence of any danger that is a normal condition of employment is not a grounds for a refusal to work. Normal refers to something that is regular, to a typical state or level of affairs, something that is not out of the ordinary.

An employee, however, still has the right to refuse if there is a disagreement between the parties as to what constitutes a danger.



Right to Refuse Dangerous Work: Frequently Asked Questions

Q: Can an employee invoke their right to refuse work from home?

A: An employee is not permitted to refuse work from their home, unless their home is their workplace. Employees are required to refuse work from a safe place at their workplace.

Q: Can an employee escalate an unresolved internal complaint to a work refusal?

A: Yes, the complaint can escalate to a work refusal. The definition of danger must still be met. The refusal to work process should not be used as a way to expedite an ICRP complaint.



Right to Refuse Dangerous Work: Frequently Asked Questions

Q: Are there any reasons why the Labour Program may choose not to investigate a refusal to work?

A: The Labour Program will choose not to investigate a work refusal if it is determined to be frivolous, vexatious, or made in bad faith or if it could be more appropriately dealt with under Parts I or III of the *Code* or any other Act of Parliament.

If an employee invokes their right to refuse work under their collective agreement, they are not permitted to refuse work under section 128 of the *Code*, unless both parties agree to the change.



Right to Refuse Dangerous Work

Case Study

Background:

- Employer is a courier company that transports goods across North America
- Employee is a Pre-loader
- The employee refused to work because they did not feel that the employer was providing adequate sanitation measures to ensure employee safety during the COVID-19 pandemic



Right to Refuse Dangerous Work

Case Study

Process:

- Employee notified the supervisor of the refusal
- Employer conducted an investigation and concluded that there was no danger
- Employee continued to refuse work
- Workplace H&S Committee was notified and conducted their investigation. The committee determined that proper mitigation strategies were put in place to effectively reduce the risk of the exposure to COVID-19
- Employee continued to refuse work
- Refusal was referred to the Labour Program



Right to Refuse Dangerous Work

Case Study

Results:

- Investigating ODHCE concluded no Danger, there was no evidence the measures put in place were not being followed or were not effective
- There were also no cases of COVID-19 in the workplace
- The refusing employee did not have any pre-existing health conditions which would compromise the immune system
- Safety protocols for physical distancing had been implemented
- PPE was provided and the cleaning protocols were enhanced
- There was no imminent threat to the employee and any potential of a serious threat was mitigated through the preventative measures put in place by the employer



Connect with us...

The Labour Program is working to determine the most effective ways to connect with stakeholders and partners.

- Social media, Twitter, LinkedIn, Facebook
- Publish prosecutions online
- Linking information on the Canada.ca website (Health and Safety)

1-800-641-4049 – Labour Toll Free Line



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Questions?

