

The Right to Cease or Refuse Unsafe Work

Workers have the right to cease work or refuse to carry out work if they have a **reasonable concern** that to carry out the work would **expose** them to a **serious risk to the worker's health and safety emanating from an immediate or imminent exposure to a hazard**. For instance, exposure to asbestos, live electrical wires, violence, toxic air or chemicals, unsafe buildings, a fall from height [section 84].

A worker who has ceased work must remain available to carry out suitable alternative work at the same or another workplace, if that work is safe and appropriate for the worker to carry out, until the worker can resume normal duties. Suitable alternative work is work that is within the worker's skills and capabilities.

What a worker must do if they are to exercise their right to stop or refuse unsafe work

When a worker decides to cease, or refuses to carry out work, the worker must, as soon as practicable, notify (inform) the Person Conducting the Business or Undertaking (PCBU) that they have ceased work and remain available to carry out suitable alternative work. Regardless of whether the PCBU provides safe and appropriate alternative work (at either at the same or another workplace [section 88]), the worker is entitled to usual payment. The refusal of a worker to perform suitable alternative work and to instead, for example, sit in the lunch room until the issue has been resolved, could be considered industrial action under the *Fair Work Act 2009*. The worker could be subject to the loss of a minimum of 4 hours pay and possible fines under the Fair Work Act or similar sanctions under state industrial legislation.

- The Fair Work Act provides that industrial action **does not** include action by an employee if the action was based on a reasonable concern of the employee about an imminent risk to his or her health or safety; and the employee did not unreasonably fail to comply with direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

The role of a HSR

The worker may choose to inform the HSR of their decision and seek their advice and assistance in consulting with the PCBU.

A HSR who has a reasonable concern that workers in the work group are exposed to a serious risk to their health or safety can **direct** these workers to cease work, if the HSR has attended approved training and has consulted and attempted to resolve the matter with the relevant PCBU. The HSR is not required to consult or attempt to resolve the matter first if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction. In such cases, the HSR must inform the PCBU about the cease work direction and consult with them as soon as practicable.

Assistance from the regulator

A worker, HSR or PCBU can ask the regulator to appoint an inspector to attend the workplace to assist in resolving a WHS issue arising in relation to the cessation of work [section 89]. Under sections 104 and 105 of the WHS Act, workers and their HSRs are protected from discrimination for exercising this right.