



# ATU LEGAL BULLETIN:

## Your Right to Refuse Unsafe Work

As transit workers continue to provide the essential services that our communities need to respond to the COVID-19 pandemic and to meet their essential needs, we are suffering some of the pandemic's biggest casualties. Not one more transit worker should die because our transit systems are refusing to implement necessary safety precautions. **Our employers have an obligation** to provide a safe workplace, and **we have a right to refuse unsafe work when our employers fail to meet their obligations.**

Although the precise statute which protects you may vary on whether you work for a public or private employer, the type of equipment you operate or fix, and the State or Province in which you work, the rules are simple.<sup>1</sup> If you report to work as required and are assigned or asked to do unsafe work, you have a protected legal right to refuse to perform the work if:

1. **You are refusing the assigned work out of a genuine fear of catching COVID-19** because your employer has failed to take reasonable safety precautions.
2. **Your fear is reasonable**—you are assessing the actual facts before you and relying on good science, and the advice of the International Union and public health authorities like the CDC or the Public Health Agency of Canada regarding safe work practices, not on questionable internet news sources or shop conspiracy theories.
3. **You personally have asked your supervisor to minimize or eliminate the hazard**—ideally stating you're doing so for the benefit of you and your coworkers.
4. **The employer has failed to minimize or eliminate the hazard.**

If you refuse unsafe work:

- Contact your President/Business Agent or union representative immediately to assist you. **This is particularly true in Canada where you will generally be asked to deal with management in a well-intentioned, legally-mandated resolution process which employers can cynically game and abuse.**
- Demand safe substitute work at your current rate of pay while the employer is fixing the problem. In Canada you are generally entitled to substitute work under your work refusal law. No matter where you are, you should file a grievance if the employer puts you in a non-paid status.
- File a grievance immediately to challenge any discipline or retaliation.

If we don't take action to secure our safety, we will die waiting for management to do it for us. Exercise your right to refuse unsafe work!

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<sup>1</sup> National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142(b) (U.S.); Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105(a)(2) (U.S.); Occupational Safety and Health Act (OSH Act), 29 C.F.R. §1977.12(b)(2), (U.S.); National Labor Relations Act (NLRA), 29 U.S.C. § 143 (U.S.); Canada Labour Code, RSC 1985, c L-2, s 128 (Canada Federal); Occupational Health and Safety Act, SA 2017, c O-2.1, ss 31-36 (AB); Occupational Health and Safety Regulation, BC Reg 296/97, ss 3.12 and 3.13 (BC); Workplace Safety and Health Act, CCSM c W210, s 43 (MB); Occupational Health and Safety Act, SNB 1983, c O-0.2, ss 19-23 (NB); Occupational Health and Safety Act, RSNL 1990, c O-3, ss 45-52 (NL); Occupational Health and Safety Act, SNS 1996, c 7, ss 42-46 (NS); Occupational Health and Safety Act, RSO 1990, c O.1, s 43 (ON); Loi sur la santé et la sécurité du travail, RLRQ, c S-2.1, s 12, 31 (Act respecting occupational health and safety, CQLR c S-2.1, s 12, 31) (QC); Saskatchewan Employment Act, SS 2013, c S-15.1, ss 3-31, 3-32, 3-35 (SK).