



Advisory Circular

Subject: Right to Refuse Dangerous Work - Employer and Employee Rights and Responsibilities

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1.0 Introduction

- (1) This Advisory Circular (AC) is provided for information and guidance purposes. It describes an example of an acceptable means, but not the only means, of demonstrating compliance with regulations and standards. This AC on its own does not change, create, amend or permit deviations from regulatory requirements, nor does it establish minimum standards.

1.1 Purpose

- (1) The purpose of this document is to remind air operators of their rights and responsibilities and those of their employees with respect to employees refusing to work in dangerous situations. This AC is also meant to raise awareness about the definition of “danger” that appears in the *Canada Labour Code* (CLC), Part II.

1.2 Applicability

- (1) This document applies to air operators under federal jurisdiction as defined in section 123 of the CLC, and to their personnel working on-board aircraft while in operation. This AC is also available to Transport Canada Civil Aviation (TCCA) personnel for information purposes. It will serve as a reference for Civil Aviation Safety Inspectors – Occupational Safety and Health (Delegated by the Head of Compliance and Enforcement) in the course of their duties.

1.3 Description of changes

- (1) Not applicable.

2.0 References and requirements

2.1 Reference documents

- (1) It is intended that the following reference materials be used in conjunction with this document:
 - (a) *Canada Labour Code* (the Code or CLC, hereafter), Part II - Occupational Health and Safety
 - (b) *Policy Committees, Work Place Committees and Health and Safety Representatives Regulations*
 - (c) Interpretation, Policy and Guideline 905-1-IPG-062: Definition of Danger
 - (d) Interpretation, Policy and Guideline 905-1-IPG-083: Complaint is Trivial, Frivolous, Vexatious or Made in Bad Faith

2.2 Cancelled documents

- (1) Not applicable.
- (2) By default, it is understood that the publication of a new issue of a document automatically renders any earlier issues of the same document null and void.

2.3 Definitions and abbreviations

- (1) The following **definitions** are used in this document:
 - (a) **Board:** means the Canada Industrial Relations Board. A person appointed by the Board hears appeals of Directions or, after refusals to work, decisions of no danger.

- (b) **Delegated Official, ODH:** means a person that has been delegated certain authorities by the Head of Compliance and Enforcement to perform activities related to the enforcement of the CLC. In this document, the person authorized by the Head, Civil Aviation Safety Inspector – Occupational Health and Safety (CASI-OHS) has been titled the “Health and Safety Officer” (HSO) for brevity.
 - (c) **Extended jurisdiction:** means authorization for Transport Canada (TC) to carry out the administration and enforcement of the CLC on behalf of Employment and Social Development Canada (ESDC) -Labour for certain employees in the federal transportation sectors.
 - (d) **On-board employee:** means a person who is working on board an aircraft while in operation, as defined in the CLC; and who is covered by OHS regulations specific to the mode of transportation made pursuant to the CLC.
- (2) The following **abbreviations** are used in this document:
- (a) **AC:** Advisory Circular
 - (b) **AOHS:** Aviation Occupational Health and Safety
 - (c) **AOHSR:** *Aviation Occupational Health and Safety Regulations*
 - (d) **CASI-OHS:** Civil Aviation Safety Inspector – Occupational Health and Safety
 - (e) **CLC:** *Canada Labour Code*
 - (f) **HSO:** Health and Safety Officer
 - (g) **ODH:** Official Delegated by the Head (of Compliance and Enforcement)
 - (h) **OHS:** Occupational Health and Safety
 - (i) **RTW:** Refusal to Work

3.0 Background

- (1) The *Canada Labour Code*, Part II (CLC), is the legislation which ensures that the health and safety of all employees, who are under federal jurisdiction while at work, is protected. This legislation also provides employees with three basic rights:
 - (a) the right to know;
 - (b) the right to participate; and
 - (c) the right to refuse dangerous work.
- (2) To appreciate the scope of this third basic right, it must be viewed in conjunction with the revised definition of “danger” that was included in the October 2014 amendment of the CLC, which reads:
 - (a) “Danger” means 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.

4.0 Application

- (1) Utilizing paraphrased excerpts from the CLC, this AC outlines the process that employers and employees must adhere to in the event of a refusal to work situation. When and where applicable, some of the process steps are followed by specific references to the CLC. However, for the complete and definitive version of the refusal to work process, always refer directly to the CLC and enabling regulations.

4.1 Refusals to work – on board an aircraft in operation

- (1) For employees working on board an aircraft, refusals to work in dangerous situations may occur during flight preparations or once on board the aircraft, in various scenarios depending on the nature of the work being performed, the type of aircraft involved, and the work location.

Note: An employee may not refuse to work if the refusal puts the life, health or safety of another person directly in danger, or if the danger is a normal condition of their employment. [Subsection CLC 128(2)]

- (2) For the purposes of the CLC, an aircraft is in operation from the time it first moves under its own power, for the purpose of taking off from a Canadian or foreign place of departure, until it comes to rest at the end of its flight to its first destination in Canada. [Subsection 128(5)]
 - (a) An aircraft is “in operation” anytime it is flying in Canada or abroad, and anytime the aircraft doors are closed, and the aircraft is moving on the ground, under its own power, for the purposes of taking-off or landing. An aircraft is not considered to be “in operation” when it is stationary, in Canada or abroad, either before, after, or between flights.
 - (b) For clarification surrounding rotary wing (i.e., helicopter) operations, for **Aviation Occupational Health and Safety** purposes, a helicopter would be considered to be “in-operation” when engines are running and blades are turning, for the purposes of taking off, even if the aircraft is resting on the ground at the time. For example, a helicopter making frequent, quick stops on the ground to load/unload equipment or people would be considered in-operation the entire time the blades were moving, whether or not the aircraft was airborne for the entire duration.
 - (c) In addition to the above, when an aircraft is on the ground in Canada or abroad, and not in operation, on-board employees can also exercise their rights under the CLC and refuse dangerous work.
- (3) Initial refusal
 - (a) The initial refusal is the initial invocation by an employee of their right under subsection 128(1) of the Code to refuse to use or operate a machine or thing, to work in a place, or to perform an activity, that the employee has reasonable cause to believe constitutes a danger to themselves or another employee.

Table 1– Process - Refusals to work

Refusal occurs while the aircraft is in operation	Refusal occurs while the aircraft is <u>not</u> in operation
<ul style="list-style-type: none"> ➤ An employee must notify the person in charge of the aircraft of the circumstances of the danger. [Subsection 128(3)] ➤ The pilot-in-command is considered to be the person in charge of the aircraft and therefore must decide and advise the employee whether they may cease working or not. [Subsection 128(3)] ➤ If the employee is informed that they may not cease working, then that employee shall not, while the aircraft is in operation, refuse to work. [Subsection 128(4)] ➤ An employee who was, prevented from refusing to work while the aircraft was in operation, shall report the circumstances of the matter to the employer without delay, once the aircraft has landed. [Subsection 128(6)] 	<ul style="list-style-type: none"> ➤ The employee reports the matter to the employer. ➤ In most cases, this usually means the employee’s refusal to work would initially be handled by the duly authorized personnel appointed by the employer, and not by the person in charge of the aircraft. [Subsection 128(6)] <p>Note: in the above situation, there is nothing to prevent an employer from appointing the person in charge of the aircraft as the designated employer representative.</p>

4.2 Process continued – regardless of where the refusal occurred (on board or off board)

- (1) The subsequent steps apply once the aircraft is on the ground, whether the refusal occurred while the aircraft was in operation (on board) or stationary (off board).
 - (a) The employer investigates the matter in the presence of the employee who reported it and prepares a written report with the investigation results. [Subsection 128(7.1)]
 - (b) If the employer agrees that a danger exists, they must take immediate action to protect their employees from the danger, and then they must inform the Work Place Health and Safety Committee, or the Health and Safety Representative, of the matter and the action taken to resolve it. [Subsection 128(8)]

4.3 Intermediate refusal

- (1) The intermediate refusal is the confirmation by an employee that the matter described in the initial refusal has not been resolved following an investigation by the employer as required by subsection 128(7.1).
- (2) Should the above not resolve the matter, the employee may continue to refuse to work, in which case, they must report the matter to the employer and to the Work Place Health and Safety Committee or the Health and Safety Representative. [Subsection 128(9)]
- (3) Immediately upon being informed, the Work Place Health and Safety Committee must designate one employee member chosen to represent the employer and one member representing employees to investigate the matter, in the presence of the employee. If no committee is required in the workplace, the Health and Safety Representative, in the presence of the employee, and a person designated by the employer must conduct the investigation. [Subsection 128(10)]

- (4) The members of the Work Place Committee or the Health and Safety Representative shall provide a written report to the employer that sets out the results of the investigation and their recommendations, if any.
- (5) After receiving a report the employer shall make one of the following decisions, and inform the employee or the committee members according to the circumstances [Subsection 128(13)]:
 - (a) agree that a danger exists;
 - (b) agree that a danger exists but consider that either the refusal puts the life, health or safety of another person directly in danger; or the danger is a normal condition of employment.
 - (c) determine that a danger does not exist.

4.4 Notification of a continued refusal to the Head

- (1) If after this investigation the employee has reasonable cause to believe that the danger still exists, the refusal to work may continue. On being informed of the continued refusal to work, the employer shall notify the Head, namely a Civil Aviation Safety Inspector – Occupational Health and Safety (CASI-OHS) (HSO, hereafter). [Subsection 128(16)]

After hours, Aviation Operations Centre (AOC) can be reached in order for a CASI-OHS (HSO) to be contacted. The HSO will communicate with the workplace and launch the investigation.

After hours emergency number for all regions: 1-877-992-6853

Note: at this point, the employer may, during the investigation and until a decision is issued, require that the employee concerned remain at a safe location or assign the employee reasonable alternative work.

Inclusively, the employer shall not assign another employee to use or operate the machine or thing, work in that place or perform the activity unless:

- (a) the other employee is qualified for the work;
 - (b) the other employee has been advised of the refusal of the employee concerned and of the reasons for the refusal; and
 - (c) the employer is satisfied on reasonable grounds that the other employee will not be put in danger. [Subsection 129(5)]
- (2) The HSO must then investigate the matter unless, pursuant to paragraphs 129(1)(b) and (c), the matter is considered to be trivial, frivolous or vexatious or the continued refusal to work is in bad faith.
 - (3) The HSO shall also consider if there is a previous or ongoing investigation(s) in relation to the same employer and that involve substantially the same issues and decide whether or not to rely on the findings of previous investigations. [Subsection 129(3.1)]
 - (4) The HSO shall also consider if the current investigation can be combined with an ongoing investigation(s) and issue a single decision.
 - (5) After consideration of the foregoing, the HSO proceeds with an investigation, and may do so in the presence of the employer, the employee and an employee member of the Health and Safety committee or the representative. [Subsection 129(1.4)]
 - (6) On completion of the investigation, the HSO shall decide whether the danger exists and give written notification by means of a decision letter to the employer and employee. [Subsection 129(4)]

4.5 Decision and appeals

- (1) If the HSO decides that the danger exists, they shall issue the appropriate Directions to the employer, and the employee may continue to refuse to work until the Directions are complied with or until they are varied or rescinded as the result of an appeal. [Subsection 129(6)]
- (2) An employer that feels aggrieved by a Direction may appeal it in writing to the Board within 30 (thirty) days after the date of the Direction being issued. Unless otherwise ordered by the Board, an appeal of a Direction does not operate as a stay of the Direction. [Subsections 146(1) & (2)]
- (3) If the HSO decides that the danger does not exist, the employee is not entitled to continue to refuse to work. However, the employee may appeal the HSO decision, provided the appeal is sent in writing to the Board within 10 (ten) days after receiving notice of the decision. [Subsection 129(7)]
- (4) If the Decision or Direction is appealed, the Board shall, without delay, inquire into the circumstances of the matter and may vary, rescind or confirm the decision or Direction, and may also issue any Direction they consider appropriate. [Subsection 146.1(1)]

4.6 Rights, prohibitions and abuse of rights

- (1) Employees need to be assured by their employers that exercising their right to refuse will not, in and of itself, result in disciplinary action being taken against them.
 - (a) To protect an employee's rights, the CLC states that no employer shall take, or threaten to take, any disciplinary action against an employee who has acted in accordance with, or who has sought the enforcement of, any of the provisions of the CLC. [Section 147]
 - (b) Equally important for employers to note is that the CLC also states that after all the investigations and appeals have been exhausted by the employee who exercised their right to refuse dangerous work, the employer may take disciplinary action against that employee, provided the employer can demonstrate the employee has willfully abused those rights. [Section 147.1]

5.0 Conclusion

- (1) To be in compliance with the CLC, employers must provide each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work, which would include being informed about their "refusal to work if danger exists" rights and responsibilities. [Paragraph 125(1)(q)]
- (2) Employers must also ensure that employees who have supervisory or managerial responsibilities, for example, pilots-in-command, are adequately trained in health and safety, and informed of the responsibilities they have when acting on behalf of their employer. [Paragraph 125(1)(z)]
- (3) It is also the employer's duty to ensure that members of Policy Health and Safety Committees, Work Place Health and Safety Committees, and Health and Safety Representatives receive training in health and safety and are informed of their responsibilities under the CLC. [Paragraph 125(1)(z.01) and Policy Committees, Work Place Committees and Health and Safety Representatives Regulations, Section 14]
- (4) The *Canada Labour Code* can be viewed in its entirety at the following website:
<http://laws-lois.justice.gc.ca/eng/acts/L-2/FullText.html>
- (5) The Aviation Occupational Health and Safety Regulations can be viewed at the following website:
<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2011-87/index.html>

- (6) More information on the AOHS program can be found at the following website:
<https://tc.canada.ca/en/aviation/commercial-air-services/aviation-occupational-health-safety>

6.0 Information management

- (1) Not applicable.

7.0 Document history

- (1) Not applicable.

8.0 Contact us

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We invite suggestions for amendment to this document. Submit your comments to:

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