

The Canada Labour Code



General Employer Duty

s. 124

“Every employer shall ensure that the health and safety at work of every person employed by the employer is protected”



MENU

- The Basics
- Internal Responsibility System including the Hazard Prevention program
- Seeking Enforcement
- The Right to Refuse Dangerous Work
- Resources
- Questions



2 Components of Legislative Framework:



ACT

- States general duties, requirements and principles



REGULATIONS

- Provide specific rules for many circumstances
- Cannot exceed the general authority of the ACT

Reading Legislation

To interpret legislation correctly, pay attention to:

- Punctuation – the use of commas, periods, and new paragraphs impact meaning
- The word **and** versus **or**
- The word **may** versus **shall**
- **As prescribed** means as outlined in the Regulation, in the work place, or by the committee
- Remember to read the legislation as a whole



Activity: Identifying Legislative Bodies

- What bodies set out the legislative framework for work place health and safety?



Legislative and Regulatory Bodies:

1. Labour Program, Employment and Social Development Canada (ESDC)
2. Treasury Board
3. National Joint Council



Framework

The following form the legislative, regulatory, and procedural framework for H&S in federally regulated workplaces:

- Canada Labour Code, Part II
- Canada Occupational Safety and Health Regulations
- Collective Agreements
- NJC Directives
- Workplace Policies and Procedures



Canada Labour Code – Part II

Purpose of Legislation:

- 122.1 (...) to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies

Preventive measures:

- 122.2 Preventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees.



Collective Agreements (National Joint Council Directives – March 2022)

National Joint Council Occupational Health and Safety Directive

<https://www.njc-cnm.gc.ca/directive/d7/en>

National Joint Council Uniforms Directive

<https://www.njc-cnm.gc.ca/directive/d11/en>

First Aid to the General Public - Allowance for Employees

<https://www.njc-cnm.gc.ca/directive/d13/en>



Treasury Board Policies and Directives Employer Policies (Departmental – Agency)

Treasury Board Policy on Occupational Safety and Health

<https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=12560>

Directive on Building Emergency and Evacuation Teams

<https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32630>

Directive on Occupational Health Evaluations

<https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32632>

Directive on the Duty to Accommodate

<https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32634>



Internal Responsibility System

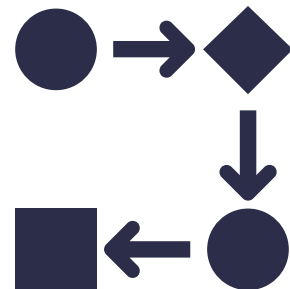
Canadian OHS law rests on the **Internal Responsibility System (IRS)**

What is the Internal Responsibility System?



How is the IRS supposed to work?

- Work place parties are more knowledgeable and have a greater vested interest regarding hazards that may exist in the work place.
- The **Internal Complaint Resolution Process** must be used before other legal redress found in the OHS Legislation.



IRS and the Employer

Employers must:

- Provide a healthy work place
- Set up programs and procedures
- Provide all workers with:
 - Information
 - Instruction
 - Training
 - Supervision
- Fix problems
- Work with the joint work place committee



IRS and the Worker

Workers must:

- Look after our OHS
- Look after co-workers' OHS
- Follow established procedures
- Report
 - Hazards
 - Symptoms
- Use our rights
- Take action to get problems fixed



IRS and the Government

The government:

- Is the regulator – Health and Safety Officers enforce the law
- Prepares and implements new laws through a consultation process



Related Legislative Language

122.2 – PREVENTATIVE MEASURES

“Preventative measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees.”



Hazard Prevention Program

- A program developed for the prevention of hazards in the work place through either the elimination of hazards, the reduction of hazards and finally the use of personal protective equipment
- The prevention program also applies to workers who work outside of the work place – their work activities are covered to the extent that the employer controls the activity
- The prevention program should tie together all of the preventative measures found in the Code and Regulations
- Provides for an all-encompassing prevention system in the work place that deals with all hazards, including hazards not directly referred to in existing regulations



Legislative Authority

125.(1)(z.03) – *“The employer shall develop, implement and monitor, in consultation with the policy committee or, if there is no policy committee, the work place committee or the health and safety representative, a **prescribed** program for the **prevention** of hazards in the work place appropriate to its size and the nature of the hazards in it that also provides for the education of employees in health and safety matters related to those hazards”*



Seeking Enforcement

- Under section 126(1)(j) of the Canada Labour Code Part II, every worker must report to the employer any situation that he/she believes to be a contravention of Part II of the Code by the employer, another worker or any other person.
- Section 126(1)(g) further requires that every worker must report to the employer any thing or circumstance in a work place that is likely to be hazardous to the health or safety of the employee, or that of the other employees or other persons granted access to the work place by the employer;



Seeking Enforcement

- The employee's right to complain is limited only by the need to have "reasonable grounds" for the belief.
- The employer is required to respond to these reports as mandated in section 125(1)(z.02) of the Code. Worker complaints must be responded to and, more importantly, acted upon.
- An internal complaint resolution process is established in section 127.1. This internal occupational health and safety complaint resolution process has to be used before other recourses available under Part II of the Code, except for the right to refuse dangerous work and the right of pregnant or nursing workers to temporarily withdraw from dangerous work.



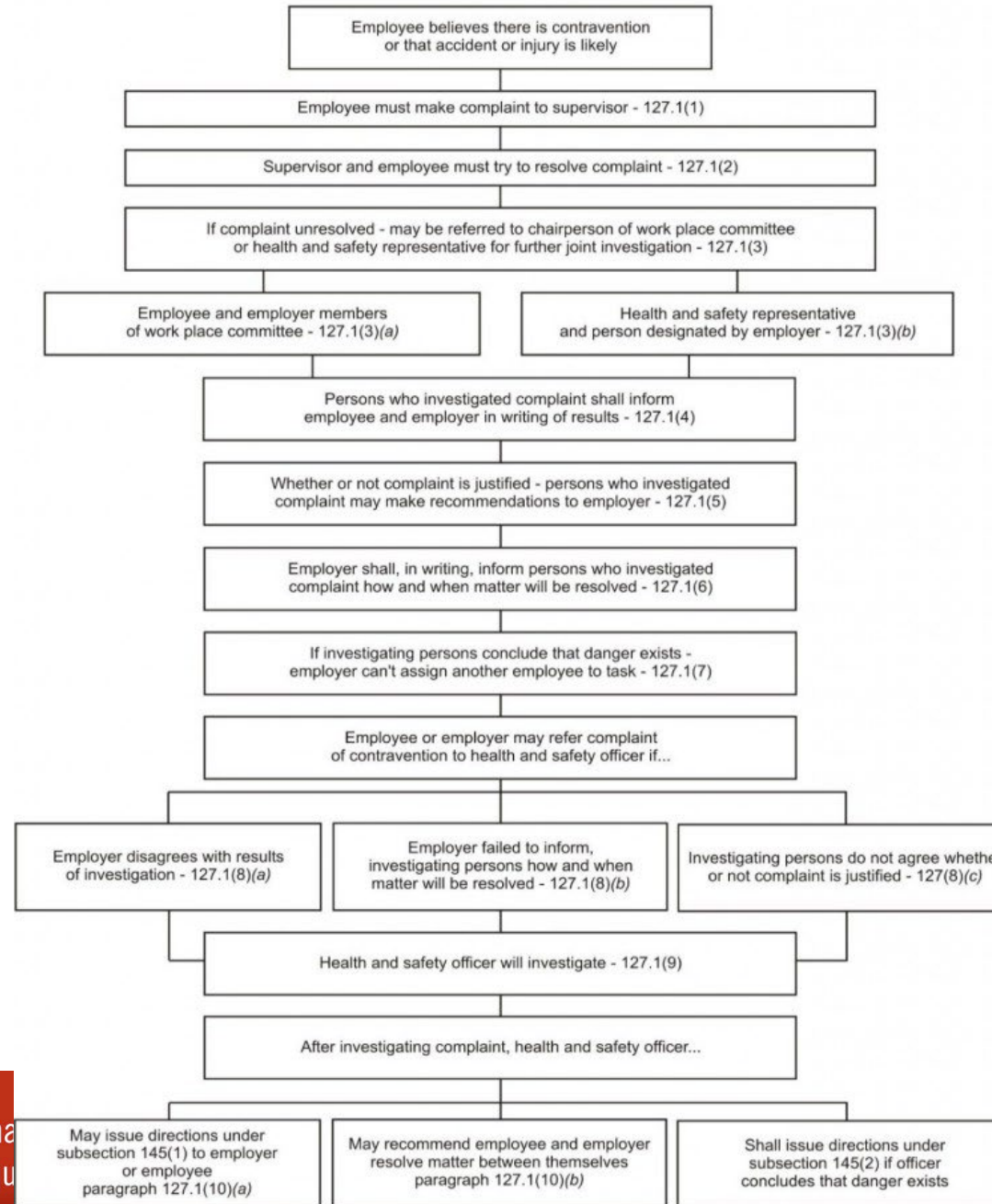
Internal complaint resolution process - Overview

HANDOUT

- ESDC- Labour Program
- Pamphlet 3 Hazardous Internal complaint resolution process
- <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/complaint-resolution.html>



**Internal Complaint
Resolution Process 127.1**



Internal complaint resolution process

1. How are complaints made under Part II of the Canada Labour Code?

- Complaints can be made to a health and safety officer at the Labour Program only if the internal resolution process has been followed and has not been successful in resolving the matter.

2. Why is there an internal complaint resolution process?

- It has been widely held that the work place parties (employers and employees) are more knowledgeable and have a greater vested interest regarding hazards that may exist in the work place.
- The legislative framework establishes a process that allows for a graduated series of investigations to resolve work place issues while maintaining employment safety. The process allows for the resolution of work place health and safety issues in a more timely and efficient manner and reinforces the concept of the internal responsibility system.
- The process provides the employer/supervisor with the opportunity to address and correct employee concerns without the need to involve the work place health and safety committee, the health and safety representative or a health and safety officer.



Internal complaint resolution process

3. What should I do if I feel the Code is being contravened?

- Employees have a duty to report any situation they believe to be a contravention of the Code to the employer. The first step in the process is to make the complaint known to the employee's supervisor. Together, the employee and the supervisor will try to resolve the matter as soon as possible.

4. What if the supervisor disagrees with the employee?

- The employee or the supervisor may refer an unresolved complaint to a chairperson of the work place health and safety committee or the health and safety representative.

5. How does the work place health and safety committee or representative get involved?

- If a complaint is not resolved at the supervisor level, an employee member and an employer member of the work place health and safety committee will jointly investigate the complaint. In the absence of a health and safety committee, the health and safety representative and a person designated by the employer will jointly investigate the complaint.
- The investigating team will inform the employee and employer in writing of the results of their investigation and may make recommendations to the employer, whether or not they conclude the complaint is justified.



Internal complaint resolution process

6. What happens if the complaint is justified?

- On being informed of the results of the investigation, the employer must inform the investigating team how and when the matter will be resolved.
- If the investigating team concludes that a danger exists, the employer must ensure that no employee is subjected to the danger and must rectify the situation.

7. When can a complaint be referred to a health and safety officer?

- The employer or employee can refer a complaint of a contravention of the Code to a health and safety officer only if:
 - the employer does not agree with the findings of the investigating team; or
 - the employer has failed to inform the investigating team of how and when the matter will be resolved or the employer fails to take the necessary action; or
 - the investigating team cannot agree whether or not the complaint is justified.



Internal complaint resolution process

8. What will the health and safety officer do?

- The first step for the health and safety officer will be to ensure the internal complaint resolution process has been followed.
- The health and safety officer will then investigate the matter and, on completion of the investigation, the officer:
 - may issue directions to the employer or employee if a contravention is identified;
 - may, if the officer considers it appropriate, ask the employer and employee to resolve the matter between themselves;
 - will issue directions if the officer concludes that a danger exists.



Internal complaint resolution process

9. Can an employee be disciplined for making a complaint?

- No. An employee cannot be disciplined for exercising his or her rights or fulfilling a duty under the Code as long as the employee has acted in accordance with the Code.

10. Does the internal complaint resolution process take away an employee's right to refuse dangerous work?

- No. The internal complaint resolution process is intended to establish a collaborative approach to investigating potential work place hazards while maintaining an employee's right to refuse dangerous work.



Right to Refuse process - Overview

HANDOUT

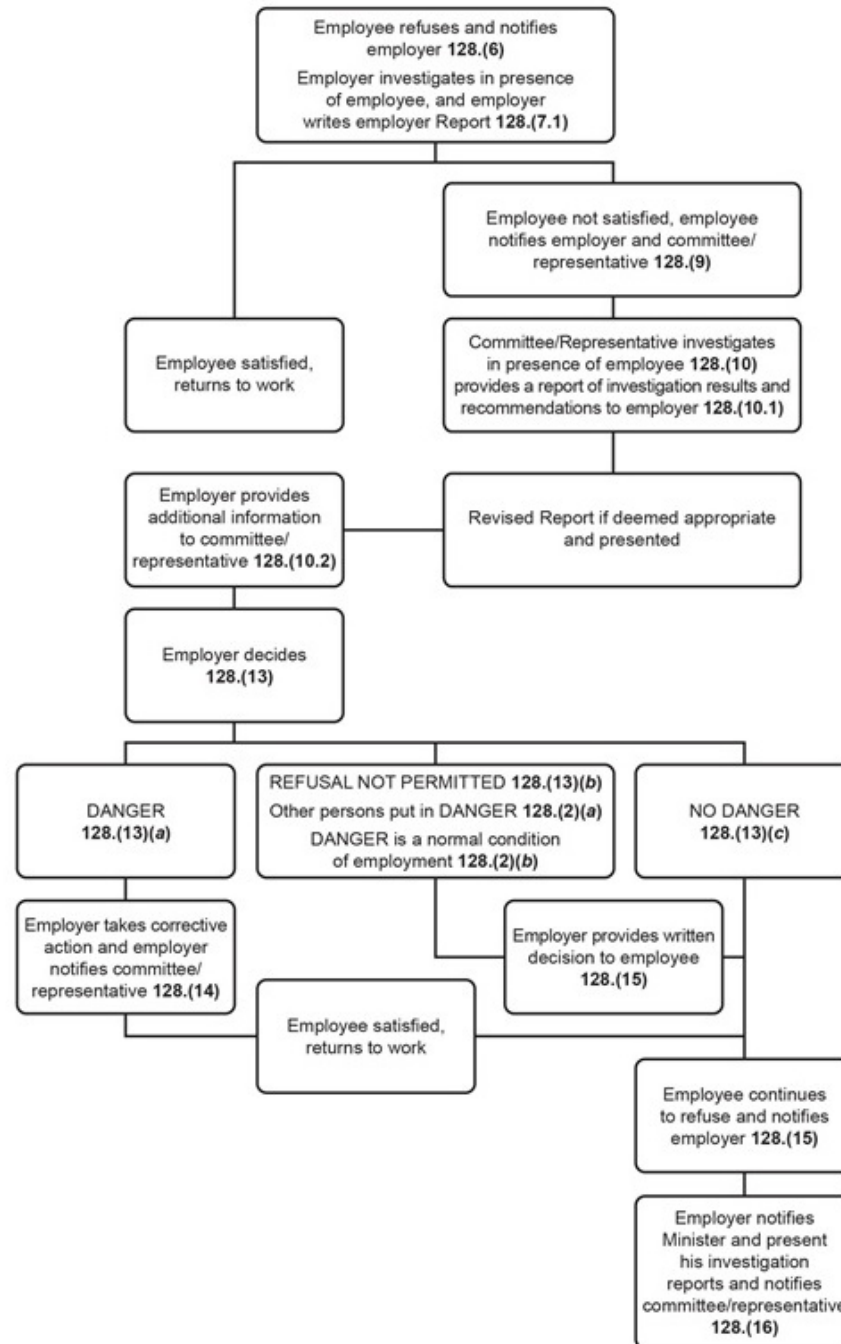
- ESDC- Labour Program
- Pamphlet 4 Right to Refuse Dangerous Work
- <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/right-refuse.html>



Danger Defined

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





Right to Refuse process - Overview

- Employee refuses and notifies employer 128.(6).
- Employer investigates in presence of employee, and employer writes employer Report 128.(7.1)
- If the employee is satisfied, employee returns to work.
- If the employee is not satisfied, the employee notifies the employer and the committee/representative 128.(9)



Right to Refuse process - Overview

- Committee/representative investigates in presence of employee 128.(10) and provides a report of investigation results and recommendations to the employer 128.(10.1)
- If the employee is satisfied, employee returns to work.
- The employer provides additional information to the committee/representative 128.(10.2)
- A revised report if deemed appropriate is presented to the employer that takes into account the new information



Right to Refuse process - Overview

- The employer then decides under 128.(13) whether:
 - Danger exists – employer takes corrective action and employer notifies committee / representative 128.(14)
 - Danger exists - but the refusal is not permitted under ss.128.(13)(b) as it puts lives, health or safety of another person directly in danger 128.(2)(a) or the danger is a normal condition of employment 128.(2)(b).
 - Danger does not exist 128.(13)(c)
- Employer provides a written decision to the employee 128.(15)



Right to Refuse process - Overview

- If the employee is satisfied, employee returns to work
- If employee continue to refuse and notifies the employer under 128.(15)
- The employer notifies the Minister of Labour and presents his investigation reports and also notifies the committee/representative 128.(16)



Resources

Labour Canada -

<https://www.canada.ca/en/services/jobs/workplace/health-safety.html>

Canadian Centre for Occupational Health and Safety - <http://ccohs.ca>



