



NYS PUBLIC EMPLOYEES FEDERATION

HEALTH AND SAFETY FACTSHEET



EXERCISING YOUR RIGHT OF REFUSAL FOR HAZARDOUS WORK



One of the key protections under the New York State Public Employee Safety and Health (PESH) act is the right to refuse an assigned task that may result in death or serious injury. This right is provided for under federal Occupational Safety and Health Administration (OSHA) standard 1977.12(b)(2), which, for public sector workers in New York State, is enforced by the NYS DOL PESH Bureau (as all OSHA standards are).

If the hazardous condition clearly presents a risk of death or serious physical harm, and your employer has refused to correct the hazard or reassign you to a safer task, and there is not sufficient time for PESH to conduct an inspection, you may have a legal right to refuse to work in a situation in which you would be exposed to that hazard.

Known as the Right of Refusal, it is an important protection for workers, but one which must meet all of OSHA's criteria for use so that you are not subject to insubordination or other disciplinary actions by your employer.

Can I Refuse Hazardous Work and Leave the Worksite?

You may file a complaint with PESH for hazardous working conditions at any time, but you do not have the right to be insubordinate and leave a worksite solely for filing a complaint.

Job hazards vary by workplace and occupation, so does defining what constitutes a hazardous condition that it triggers a Right of Refusal.

What is the Criteria for Right of Refusal?

Your right to refuse to do a hazardous task is protected if **ALL** of the following conditions are met:

- Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; **and**
- You refused to work in "good faith." This means that you must genuinely believe that an imminent danger exists; **and**
- A reasonable person would agree that there is a real danger of death or serious injury; **and**
- There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting a PESH inspection.





How Do I Invoke My Right of Refusal?

You may take the following steps:

- Notify your employer of the hazard immediately, and ask that they eliminate or correct the hazard, provide the proper safety measures to perform the task safely, or assign other work;
- Tell your employer that you cannot perform the work unless and until the hazard is corrected;
 - You can say “I am exercising my right of refusal for unsafe work until such time as you provide the proper safety measures needed for me to do this assignment.”
- Remain at the worksite until ordered to leave by your employer.
 - If it is the physical worksite that is unsafe, get to safety and continue taking direction from your employer.
- Contact PESH at 1-844-SAFE-NYS (1-844-723-3697) and report the imminent danger situation.
- Contact your PEF Steward, PEF Field Representative, and/or the PEF Health and Safety Department.

What Happens if My Employer Retaliates Against Me for Filing a PESH Complaint?

If your employer retaliates against you for refusing to perform the hazardous task, contact PESH immediately. Complaints of retaliation must be made to PESH within 30 days of the alleged reprisal.

What PESH Standards Apply?

Worker protections under PESH include:



- Hazard-specific standards; <https://www.osha.gov/a-z>
- General Duty Clause requirements (which states all employers provide a work environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm"); <https://www.osha.gov/laws-regs/oshact/section5-duties>
- 1977.12 (protections when exercising a right of refusal for hazardous work) <https://www.osha.gov/laws-regs/regulations/standardnumber/1977/1977.12>
- Section 11(c) (discrimination protections for workers when exercising their rights under the OSHA Act); <https://www.osha.gov/laws-regs/regulations/standardnumber/1977/1977.3>



- PESH (NYS DOL Public Employee Safety and Health Bureau)
 - <https://dol.ny.gov/public-employee-safety-health>
 - 1-844-SAFE-NYS (1-844-723-3697)
 - Ask.SHNYPESH@labor.ny.gov
 - PESH Regional Office list <https://dol.ny.gov/safety-health-regional-offices>
- PEF Field Offices
 - (800) 342-4306 or (518) 785-1900
 - <https://www.pef.org/regions/> (To look up your regional office by location)
- PEF Health and Safety Department
 - (800) 342-4306 ext 254 or (518) 785-1900 ext 254
 - HealthAndSafety@pef.org

Contact the PEF Health and Safety Department for further information or with any questions on this or any workplace health and safety issue.

The PEF Occupational Health & Safety Department provides training and technical assistance on workplace health and safety concerns, and state and federal standards and regulations. Factsheets and trainings on a variety of topics and many other resources are also available upon request. Or visit our website at <https://www.pef.org/departments/health-safety/>

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