



Tips For Escalating Unresolved Health and Safety Concerns to the Ministry of Labour, Immigration, Training and Skills Development

Tip Sheet

Guiding Principle: Raise unresolved health and safety concerns as high as necessary and as quickly as possible to keep workers safe!

Introduction

Among their functions, Ministry of Labour, Immigration, Training and Skills Development (MLITSD) inspectors are expected to investigate:

1. Internal Responsibility System (IRS) failures and other complaints.
2. Critical and fatal injuries/illnesses.
3. Work refusals/work stoppages.

When the inspector finds sufficient evidence, they can enforce the law by issuing orders and/or laying charges under the *Occupational Health and Safety Act (OHSA)*.

This document is designed to assist ONA members with deciding when it is appropriate to contact the MLITSD for help in their workplaces.

Who can call the MLITSD?

Anyone can contact the MLITSD. There is nothing in law prohibiting a worker, union representative/official or anyone from contacting the MLITSD at any time.

When Should the MLITSD be Called?

1. When the IRS fails to resolve concerns:

Employers, supervisors, workers, health and safety representatives (HSRs), Joint

Health and Safety Committee (JHSC) members and others must perform their duties as expressed in the *OHSA* and may exercise the rights that are outlined. The government established this legal system of “internal responsibility” in hopes that workplace parties would work together to achieve safe and healthy workplaces without formal intervention (see Appendix A for diagram of IRS).

ONA recommends that wherever possible, use the IRS. But don't let issues drag on. When exposure to a **serious hazard is imminent** or there is **prolonged potential or actual exposure** to a hazard due to the **failure or the sluggishness of the IRS**:

- Raise the issue with the employer as high as necessary (e.g., JHSC, director, CEO, Board of Directors) and as quickly as necessary (e.g., phone, email, in person) to protect a worker.
- Work with your Labour Relations Officer (LRO), who will assist in raising the issue within the union as high as necessary and as quickly as necessary to protect a worker (e.g., HSR, JHSC, Bargaining Unit President, Local Coordinator, specialists, manager, Strategy Team, Board of Directors, Communications and Government Relations Team).
- In addition to considering a call to the MLITSD, filing a grievance could also be appropriate in the circumstances. Your LRO can consult with a member of ONA's Health and Safety and Litigation Teams about this strategy.

2. When an employer fails to notify the MLITSD of a fatal or critical injury and/or does not permit the JHSC to investigate:

The employer is required by Sections 51-53 of the *OHSA* to report critical and fatal injuries to the MLITSD, the union and the JHSC, and Section 9 empowers the JHSC to investigate. When an employer does not comply with these sections, contact the MLITSD.

3. When work refusal reaches “second stage”:

When a worker exercises their right to refuse unsafe work, the supervisor or employer must immediately investigate in the presence of the worker and a JHSC worker member (*OHSA* Section 43). If the concern is not resolved and the worker has reasonable grounds to believe that the work continues to be unsafe, the worker can continue to refuse. The MLITSD must be notified at the second stage of the refusal.

4. When bilateral work stoppage is not resolved:

A certified JHSC member who has reason to believe that “dangerous circumstances” (defined in *OHSA* Section 44) exist, may request an investigation by a supervisor, and thereafter by a second certified member. If the investigations do not resolve the concern, the MLITSD must be notified.

How to Contact the MLITSD

MLITSD intake officers often ask if the IRS has been exhausted prior to calling the MLITSD. If the caller answers in the negative, some have refused to send an inspector. ONA has convinced upper levels of the MLITSD that the IRS is generally not working in health-care facilities, and that we need the assistance of the MLITSD to prod employers to comply with their legal duty to establish functioning IRSs.

If necessary, remind the MLITSD that (most of) our members have a limited right to refuse unsafe work, and the only thing between them and imminent jeopardy may be the MLITSD. Also, the IRS is implied in *OHS*A. While it is the preferred process of resolving health and safety concerns, there is nothing in law prohibiting a worker, union representative or anyone from contacting the MLITSD at any time.

If there is any concern that the MLITSD will not respond appropriately to the complaint, advise the MLITSD that attempts have been made to resolve a health and safety concern with the employer through the IRS that remains unaddressed. Insist on speaking to an inspector because the employer is in violation of the *OHS*A and workers' health is at risk. In the event that you do not receive a phone call from the MLITSD within about three business days, call to inquire on the status of your complaint.

Complaints to the MLITSD can be made by phone or online at:

<https://www.ontario.ca/page/filing-workplace-health-and-safety-complaint>.

A benefit to on-line submissions is the email confirmation received from the MLITSD, which includes a file number that can be referenced in future calls on that same issue. Having a record of the complaint is also a benefit. Note that the maximum number of characters for an online submission is 2,500 characters.

Although it is possible to file an anonymous complaint, ONA encourages members to provide contact information when contacting the MLITSD. This information allows an inspector to contact you to advise when they will inspect the workplace. A worker representative has the right to attend the inspection [*OHS*A Section 9 (23)]. Following up with any concerns or questions is also more easily done if the complaint is not anonymous.

In preparation for contacting the MLITSD, use the JHSC Toolkit to guide you and contact the servicing LRO. One of the resources in the toolkit is the Gathering the Facts document. This resource will help you gather important facts to support why you are filing a complaint.

Unsatisfactory MLITSD Decision

When dissatisfied with an inspector's decision, work with your LRO to strategize about next steps. They will provide you with a copy of ONA's Gathering the Facts tool to collect the facts and information needed to assess and develop a strategy. Possible strategies could include appealing the inspector's decision and/or escalating the issue within the employer and/or MLITSD. Note that there is a **30-day time limit to file an OHS appeal**, so it is important to notify your LRO immediately of the field visit report and provide them with a copy.

Worker to Suffer no Reprisals for Contacting the MLITSD

Section 50 of OHSA protects workers from reprisals by employers when exercising their rights. The MLITSD website says workers also cannot be penalized for providing information to an

MLITSD inspector, following an order of an inspector, or testifying in a legal proceeding. Workers can file a complaint to the Ontario Labour Relations Board (OLRB) or file a grievance when they believe they have suffered a reprisal. The employer has the onus to prove that they did not act illegally.

Note: In the event of an **emergency**, always call 9-1-1 immediately. If you believe you or another worker are in immediate danger and something needs to be done right away, to report critical injuries, fatalities and work refusals, or to make a complaint, call the Health and Safety Contact Centre at 1-877-202-0008. (TTY 1-855-653-9260). The number operates **24 hours** a day, seven days a week.

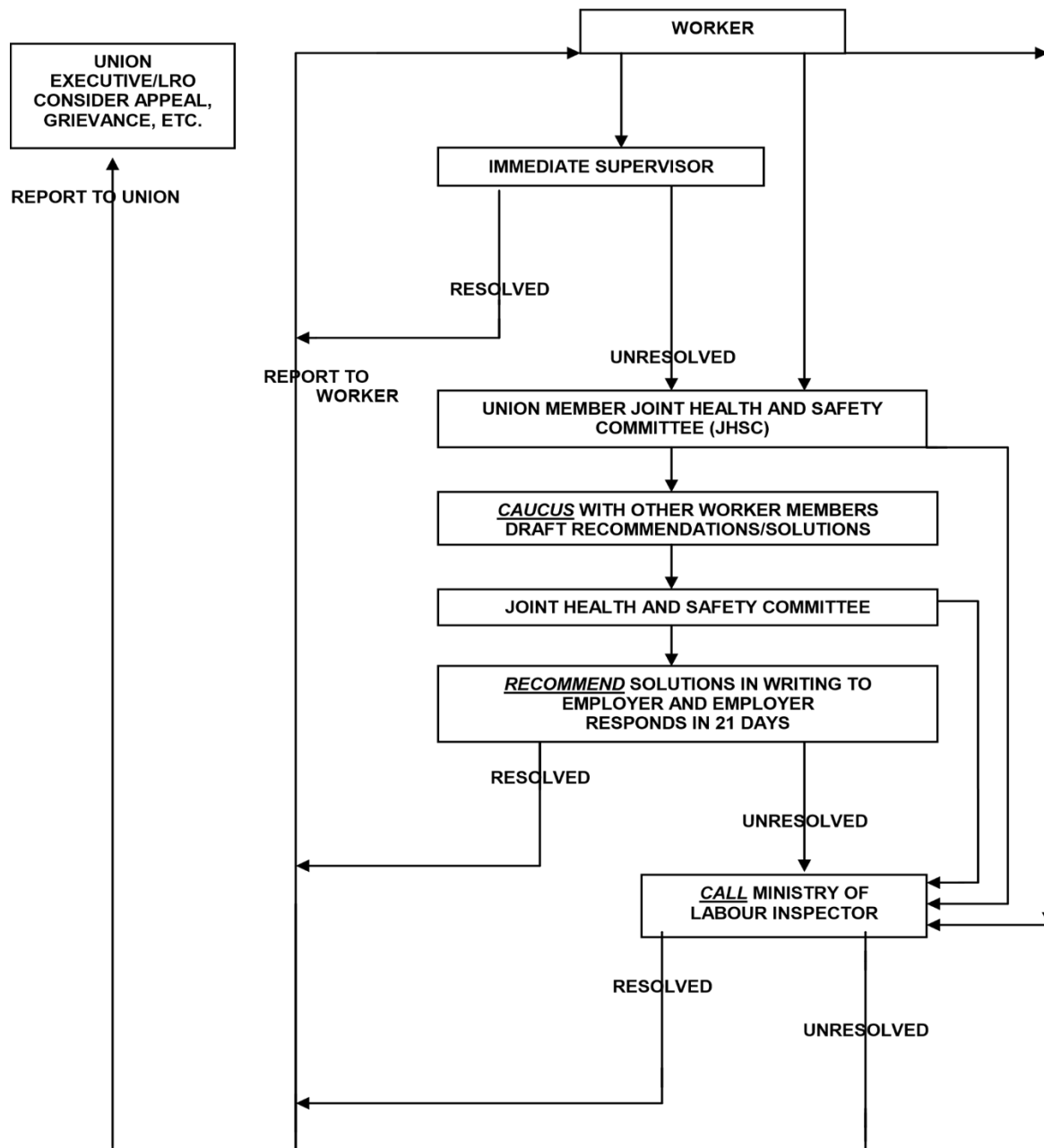
To contact the MLITSD Main Office: Toronto Occupational Health and Safety Branch

400 University Avenue, 14th Floor
Toronto, ON M7A 1T7
Toll Free: 1-877-202-0008
TTY: 1-855-653-9260
Fax: (905) 577-1316
Website: www.labour.gov.on.ca

Locations of MLITSD regional offices can also be found on their website.

Appendix A

Internal Responsibility System Procedure for Resolving Health and Safety Problems



*Raise unresolved health and safety concerns as high as necessary and as quickly as necessary to make workers safe.
Consult your LRO as needed.*