



ATU LEGAL BULLETIN

YOUR RIGHT TO REFUSE UNSAFE WORK DURING CIVIL UNREST

Transit workers have never faced such dangerous conditions. We are called upon daily to cope with the life-threatening dangers of the COVID-19 pandemic. The ever-present danger of assaults and attacks on bus drivers continue as a daily occurrence. Now we are confronted with transit agency demands that we put ourselves in harm's way to transport detainees and law enforcement officers as civil unrest explodes in numerous cities in the United States and Canada.

We unequivocally support the calls for justice and equality. Unfortunately transit buses have been targeted and burned in a number of cities threatening harm to our members and the riders we serve.

We have a choice and the legal right to refuse unsafe work. This is as true when the hazard is civil unrest as when it is relates to COVID-19 and any other dangerous work environment.

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.¹ 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 for your safety** because your employer has assigned you dangerous work such as transporting detainees or law enforcement officers.
2. **Your fear is reasonable**—you are assessing the actual facts before you and relying on good information, such as confirmed incidents attacks on bus operators or buses, credible press reports or police advisories, and not on questionable internet news sources or shop conspiracy theories.
3. **You personally have asked your supervisor for safe work.**
4. **The employer has failed to provide you with safe work.**

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 may die waiting for management to do it for us. During this period of civil unrest and the COVID-19 pandemic —as always—exercise your right to refuse unsafe work!

¹ 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).