



Bermuda Industrial Union

49 Union Square, Hamilton
Bermuda HM-12

Telephone: (441) 292-0044
Fax: (441) 295-7992. E-Mail: biu@biu.bm

Dear Directors Mr. Todd and Mr. Cann,

September 24, 2021

In light of the recent findings with reference to the Occupational Safety and Health Guidance for Employers during Covid-19. Under Appendix A – Employer’s Frequently Asked Questions (FAQs) 6 and 7 (provided by Government of Bermuda Ministry of Health, coronavirus.gov.bm) also Occupational Safety and Health Act 1982 7C (d)

What if employees refuse to work because they are afraid of contracting Covid-19 in the workplace?

Employers have an obligation to take all reasonable care in the circumstances to protect the health and safety of employees under the occupational safety and health legislation. If any employee reasonably believes that there is a dangerous condition in the workplace, or that their duties present a danger to their health and safety (**which is not an inherent or normal condition of their work**), **the employee may initiate a work refusal according Section 7C of the OCCUPATIONAL SAFETY AND HEALTH ACT.**

In the context of the Covid-19 pandemic, employers may see work refusal from employees based on:

- a confirmed or pending case of Covid-19 in the workplace;
- a confirmed case of Covid-19 in an employee’s immediate family or other close contact;
- the risk of potential exposures to Covid-19 from contractors, customers or clients depending on the nature of the workplace or its customers; or
- concerns from employees who are particularly vulnerable (i.e. the elderly, those with compromised immune systems or underlying medical conditions) not wishing to report to work.

Whether or not a work refusal based on the above or other grounds is reasonable will depend on individual circumstances. In the event of a work refusal the employer must respond in accordance with the occupational safety and health legislation. This response will include an investigation into the concerns and, if appropriate, adopting measures to eliminate or reduce the workplace danger. This investigation will, in large part, be based upon the current scientific understanding of COVID-19 and the specific facts in the individual workplace. **No reprisal for properly exercising a health and safety right may occur.**

Employers should also understand that, where the Occupational Safety & Health office is required to resolve the work refusal, the way this is done could be different than what might ordinarily occur.

The determination might be made without meeting with the workplace parties in person, or there may be other steps or measures implemented for the protection of its staff, that is unusual.

7. Can employees be disciplined for a work refusal?

Bermuda's occupational health and safety legislation provides that employers cannot dismiss, discipline, or intimidate employees for properly exercising a health and safety right. Where an employer decides to discipline an employee for refusing work as outlined in the occupational safety and health legislation, legal counsel should be consulted.

Occupational Safety and Health Act 1982 7C (d)

Protection for unjust disciplinary measures

7C. No employer shall dismiss, suspend, layoff, demote or impose any penalty, financial or otherwise or institute any disciplinary measures against an employee for -

- 7C(d) exercising his right under this Act.

(Section 7C inserted by 2004:21 s.7 effective 20th July 2004)

With regards to the above Act, (OSHA 7C(d) and Guidance Appendix A (FAQs) 6&7, we the executive of both the Department of Public Transportation (DPT) and the Department of Marine and Ports (M&P), on behalf of our membership request the following:

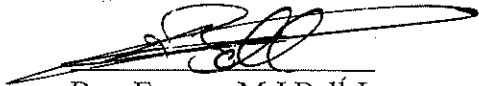
- Deep cleaning and sanitizing of all vessels/buses and all staff areas
- Deep cleaning and sanitizing to be performed on a mutually agreed schedule
- PCR or Saliva COVID-19 testing to be set up and performed on a bi-weekly basis, therefore everyone knows their status
- **No loss of pay during this shut down period**

Upon completion and our satisfaction of the above request, only then can a discussion of resuming services be had with the membership.

Therefore based on ALL the above information, the Bus Division and Marine and Ports Division of the BIU are more than justified in requesting that we be paid for the time we have been off because of these health and safety concerns due to the COVID 19 Pandemic. The Government policy of no work and no pay does not apply in this situation because these are not normal circumstances.

In the interest of returning public transportation services back to normal so that the people who rely on the service are not inconvenienced any further, we are requesting that both departments rethink their decision of no work and no pay.

We remain,



Bro. Eugene M J Ball Jr
BIU President of the Bus Division



Sis. Cebile Dawson
BIU President of the Marine & Ports Division

cc: Premier the Hon. David Burt JP, MP.
cc: Minister of Labour the Hon. Jason Hayward JP, MP
cc: Minister of Transportation the Hon. Lawrence Scott JP, MP
cc: Permanent Secretary Ms. Jasmine Smith
cc: Head of Civil Service Dr. Derrick Binns