

Ask The Expert: Do We Have to Create Modified Duty Work for Workers with Non-Work Injuries?



QUESTION

An employee broke his ankle while on holidays and can't return to full duties for 3 months. But he wants to return to work with modified duties as soon as possible. We're a small company with no meaningful modified work available for the next 3 months. Can you please outline our duty to accommodate the employee, keeping in mind that his injury isn't work-related. We're in Alberta.

ANSWER

You must accommodate the employee but don't necessarily have to create a meaningless job just so he can return.

EXPLANATION

A broken ankle is a disability requiring accommodations to the point of undue hardship under human rights law regardless of whether it's work-related. While each situation is different, a strong case can be made that creating a meaningless modified work position that adds no value to your organization is undue hardship. But while you don't necessarily have to grant the request, you do have to activate an accommodations process to address it thoroughly and fairly, including via:

- Assessing the employee's capabilities;
- If necessary, seeking to modify the position in accordance with those capabilities;
- If that's not possible, determining if there are other jobs the employee can do.

If you've already done these things, just make sure you have clear and thorough records documenting your actions and decisions.

Last but not least, be mindful of the workers' comp issues. The good news is that while it doesn't relieve you of the human rights duty to accommodate, the fact that the injury isn't work-related does get you out of the new Alberta Bill 30 workers' comp duty to *reinstate* the employee which covers only 'compensable injuries.'