

BC Compliance Alert on New Workers Comp Reform Bill



The 6 things BC companies need to know about Bill 41, including the new re-employment duties.

BC just passed workers comp reform legislation that will have a significant impact on your company and its workers. The most important part of Bill 41 is the new duty of employers to re-employ injured workers. Here's a briefing of the 6 things that employers in BC need to know about the new law.

1. New Duty to Re-Employ Injured Workers

Under Bill 41, BC employers with 20 or more workers must return workers with 12 or more months of continuous service and who suffer work-related injuries to their pre-injury job or alternative work. To do that, employers must make any changes to the work or workplace that are necessary to accommodate the worker to the point of undue hardship. The duty expires 2 years after the injury date if the worker hasn't returned to work or is carrying out suitable alternative work.

2. New Duty to Cooperate in Return-to-Work Process

Employers and workers have a mutual duty to cooperate in the return-to-work process by:

- Establishing and maintaining communication as soon as practicable after the injury occurs;
- Identify suitable work that the worker can do, if possible, at the worker's pre-injury wages; and
- Notifying Workers Compensation Board (Board) of the worker's return or continuation of work.

Either party can complain to the Board if they think the other side isn't cooperating, in which case the Board can investigate and take actions against the guilty party.

3. New Restrictions on Terminating Injured Workers

To ensure compliance with the new duty to re-employ, Bill 41 provides that if an employer terminates an injured worker within 6 months of their return, it will be presumed to be in violation unless the employer can prove 'to the Board's satisfaction' that the termination was unrelated to the worker's injury. If the employer violates the duty to maintain employment, the Board can sock the employer with administrative monetary penalties (AMPs) and award the worker up to one year's worth of compensation under the temporary total or partial disability provisions of the Act.

4. New Ban on Suppressing Workers Comp Claims

Bill 41 expressly bans employers from discouraging workers to submit claims for workers comp benefits, similar to the current ban on discouraging workers from reporting injuries to the Board. Employers who violate the ban risk AMPs and other penalties.

5. New Formula for Annual Adjustments to Periodic Payments

Current Rule: Annual adjustments are based on the Consumer Price Index (CPI) minus 1% and may not exceed 4% in any year.

New Rule: Annual adjustments will be adjusted at the same rate as inflation (as measured by the CPI) but the 1% subtraction will no longer apply. Although the 4% annual adjustment cap will remain in place, Bill 41 gives the Board authority to increase it to keep up with inflation.

6. Other Key Changes

Other notable changes contained in Bill 41:

- Establishment of an independent Fair Practices Commissioner reporting directly to the WorkSafeBC Board of Directors;
- Allowing workers to request broader access to independent health professionals as part of a Workers Compensation Appeal Tribunal (WCAT) appeal;
- Requiring interest to be paid on benefits owing for 180 or more days; and
- Increasing the maximum compensation for non-traumatic hearing loss, which was previously capped at 15% of a total disability when there was no loss of earnings.

Compliance Strategy

The re-employment provisions of Bill 41 (Changes 1. to 3. above) won't take effect until WorkSafeBC creates regulations to implement the new rules. It's unclear exactly when that will happen. However, employers need to start preparing now by developing a game plan for ensuring that injured workers return safely to the workplace, including the involvement of supervisors and development of an individualized return to work plan for each worker.

Note that most of the Bill 41 changes affecting benefits will take effect on April 3, 2022.