

Employers' Duty to Re-Employ Injured Workers – Know The Laws of Your Province



The workers comp laws of all but 4 jurisdictions (Alberta, Saskatchewan, Northwest Territories and Nunavut) require employers to reinstate workers who miss time due to a work-related injury or illness to their previous job or an equivalent one offering the same compensation when they're medically able to return. However, the employer's re-employment duties only last a specific amount of time. Here are the re-employment rules in each part of Canada.

Caveat: Remember that in addition to workers comp rules, human rights laws of **all** jurisdictions require employers to accommodate workers' disabilities to the point of undue hardship. These duties are broader than what workers comp requires because: a. They're not limited in time duration; and b. They cover all injuries and illnesses, not just those that are work-related.

Return to Work & Employer Duty to Re-Employ Injured Workers

FEDERAL

General: Illegal to dismiss, suspend, lay off, demote or discipline an employee because of absence from work due to

work-related illness or injury [*Canada Labour Code (CLC)*, Sec. 239.1(1)]

Duty to Re-Employ: Employer must, when reasonably practicable, return workers to work after an absence due to work-related illness or injury but may assign to a different position, with different employment terms and conditions if worker can't perform the work performed before the injury or illness-related absence [*CLC*, Secs. 239.1(3)-(4)]

Support for Injured Workers: Employer must:

1. "subscribe to a plan" providing absent worker wage replacement payable at workers wage replacement rate in worker's province of permanent residence;
2. allow worker to accrue pension, health and disability benefits and seniority; and
3. maintain employer contributions required to keep worker eligible for such benefits [*CLC*, Secs. 239.(2)-(7)]

Duration: Duty to return worker to work begins on the date that, according to a certificate from the qualified medical practitioner authorized by the plan the employer subscribes to, the worker is fit to return to work with or without qualifications and ends 18 months after that date [*Canada Labour Standards Reg*, Sec. 34(1)].

Termination: If employer terminates, lays off or discontinues the job function of an employee within 9 months of their return to work, it must prove to a Head of Compliance and Enforcement that it wasn't because of the employee's absence due to a work-related illness or injury [*Reg.*, Sec. 34(2)]

Procedures: If employer can't return worker to work within 21 days from date of receipt of above certificate, it must, within those 21 days, notify worker and union, if any, in writing whether return to work is reasonably practicable and, if not, the reasons why not [*Reg*, Sec. 34(3)].

ALBERTA

Employer of an injured worker required only to cooperate with the WCB and the worker “in efforts to achieve the early and safe return of the worker to the worker’s employment” [*Workers Compensation Act*, Sec. 89.2]

BRITISH COLUMBIA

Duty to Cooperate:

1. Employer must cooperate with worker and Board in worker’s early and safe return to, or continuation of, work by: (a) contacting the worker as soon as practicable after the injury and maintaining communication with the worker; (b) identifying suitable work that, if possible, restores the full pre-injury work wages; (c) providing the information the Board requires in relation to the worker’s return to, or continuation of, work; and (d) any other thing the Board requires;
2. Worker must cooperate with employer and Board in early and safe return to, or continuation of, work by: (a) contacting the employer as soon as practicable after the injury and maintaining communication with the employer; (b) if employer requests, assisting the employer to identify suitable work that, if possible, restores the worker’s full pre-injury wages the worker was earning at the worker’s pre-injury work; (c) providing the information the Board requires in relation to the worker’s return to, or continuation of, work; and (d) any other thing the Board requires; and
3. Board has 60 days to resolve disputes over alleged failure to cooperate [*Workers Comp Act*, Sec. 154.2]

Duty to Maintain Employment: Unless a regulatory exemption applies, an employer that regularly employs 20 or more workers owes the following obligations to a worker who was employed full- or part-time for a continuous period of at least 12

months before the date of the injury, must:

1. Offer a worker that's fit to work but not fit to carry out the essential duties of the worker's pre-injury work, the first suitable work that becomes available;
2. Offer a worker that's fit to carry out the essential duties of the pre-injury work either pre-injury work or alternative work that's comparable in kind and wages to the worker's pre-injury work and wages;
3. To the point of undue hardship, make any change to the work or the workplace necessary to accommodate a worker;
4. An employer that terminates a worker's employment within 6 months after the worker begins to carry out suitable work or the essential duties of the worker's pre-injury work or alternative work, the employer is deemed to be in violation of its duty to maintain employment unless it can show that termination wasn't related to the worker's injury; and
5. Employer's obligations end: (a) If the worker hasn't returned to work or isn't carrying out suitable, as the case may be, by the second anniversary of the injury date [Act, Sec. 154.3]

MANITOBA

Duty to Re-Employ:

1. Employer with 25 or more workers must offer to re-employ a worker who: (a) has been unable to work as a result of an accident; and (b) who, on the day of the accident, was employed by the employer on a full or regular part-time basis for at least 12 continuous months;
2. **Exceptions:** casual emergency workers, learners, persons deemed to be workers under section 75.1 (volunteer coverage) and persons declared to be workers under section 77 (declared workers) or section 77.1 (work experience program); and
3. For as long as the duty remains in effect, employer must

accommodate the work or the workplace to the needs of the worker to the extent that the accommodation does not cause the employer undue hardship [*Workers Compensation Act*, Secs. 49.3(1),(2) and (4)]

Duration: Duty to re-employ ends on whichever of the following happens earliest: (a) the second anniversary of the day of the accident; (b) 6 months after the worker is medically able to perform the essential duties of the worker's pre-accident employment or other suitable work, as determined by the board; and (c) the date the worker would have retired from that employment, as determined by the board [*Act*, Sec. 49.3(3)]

Workers Able to Perform Essential Duties: If the worker is medically able to perform the essential duties of pre-accident employment, the employer must offer either to re-employ the worker in the position the worker held on the day of the accident, or provide the worker alternative employment of a comparable nature and at comparable earnings to the worker's employment on the day of the accident [*Act*, Sec. 49.3(5)]

Workers Unable to Perform Suitable Work: If the worker is medically able to perform suitable work but unable to perform the essential duties of the pre-accident employment, the employer must offer the worker the first opportunity to accept suitable employment that becomes available [*Act*, Sec. 49.3(6)]

Board's Role: Board determines disputes over worker's fitness to work and can impose administrative monetary penalties on employers that fail to comply [*Act*, Secs. 49.3(7) + (15)]

Termination: Employer that terminates re-employed worker within 6 months of return is presumed in violation of duty to re-employ but can rebut the presumption by showing that the termination wasn't related to the accident [*Act*, Sec.49.3(8)]

NEW BRUNSWICK

General: 1. Illegal to dismiss, suspend, lay off, penalize,

discipline or discriminate against a worker because the worker suffered an injury by an accident covered by workers comp, as determined by the Commission; and 2. Above duty remains in effect starting on the date of the worker's injury and ending on the later of: (a) the date the Commission renders its decision with respect to the application for compensation; and (b) a period of: (i) 1 year after the date the worker was entitled to benefits, if the employer employed fewer than 20 workers at the beginning of that period, or (ii) 2 years after the date the worker was entitled to benefits, if the employer employed 20 or more workers at the beginning of that period [Workers Compensation Act, Sec. 42.3]

Duty to Cooperate: Employer of an injured worker must cooperate in the early and safe return to work of the worker by: (a) contacting the worker and the Commission as soon as the circumstances permit after the injury by accident occurs and maintaining communication throughout the period of recovery and impairment, (b) offering to provide the worker suitable work, (c) cooperating with the Commission in any Commission-sanctioned program for returning to work that the Commission considers necessary to promote the worker's rehabilitation, and (d) giving the Commission any information requested concerning the worker's return to work; 2. Injured worker shall cooperate in the worker's own early and safe return to work by: (a) contacting the employer and the Commission as soon as the circumstances permit after the injury by accident occurs and maintaining communication throughout the period of recovery and impairment, (b) cooperating with the employer when the employer is attempting to provide suitable work, (c) cooperating with the Commission in any Commission-sanctioned program for returning to work that the Commission considers necessary to promote the worker's rehabilitation, and (d) giving the Commission any information requested concerning the worker's return to work; and 3. Commission may reduce or suspend payment of the injured worker's compensation if the worker fails to comply with the

above obligations [Act, Sec. 42.6]

Duty to Re-Employ: 1. Employer must offer to re-employ a worker: (a) who's been unable to work as a result of a compensable injury; (b) who had been employed by the employer for at least 12 continuous months on the date of the injury by accident, and (c) who, in the opinion of the Commission, is medically able to perform (i) the essential duties of the worker's pre-injury-by-accident employment, or (ii) suitable work (defined as appropriate work that a worker who suffered an injury by accident is capable of doing, considering the worker's functional abilities and employment qualifications and that does not endanger the worker's health, safety or well-being); 2. Employer must accommodate the work, workplace or both for a worker to the extent that the accommodation doesn't cause the employer undue hardship; 3. If a worker is medically able to perform the essential duties of the pre-injury-by-accident employment, the employer must: (a) offer to re-employ the worker in the position held on the date of the injury by accident, or (b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the date of the injury by accident; 4. If a worker is medically able to perform suitable work but can't perform the essential duties of the pre-injury-by-accident employment, the employer must offer suitable work to the extent that the accommodation doesn't cause the employer undue hardship [Act, Secs. 42.4(1) to (5)]

Duration: 1. The above obligation to re-employ lasts for: (a) one year after the date a worker was entitled to compensation under this Part, if the employer employed fewer than 20 workers at the beginning of that period, or (b) two years after the date a worker was entitled to compensation under this Part, if the employer employed 20 or more workers at the beginning of that period [Act, Sec. 42.4(6)]

Termination: Employer presumed in violation if it dismisses worker within 6 months of re-employing worker unless it can

prove that dismissal was unrelated to work injury [Act, Secs. 42.4(7)-(8)]

NEWFOUNDLAND

Duty to Cooperate:

1. Employer must co-operate in early and safe return to work of a worker injured during employment by: (a) contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the recovery; (b) providing suitable employment that's available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings; (c) giving the Commission the information it may request on the worker's return to work; and (d) doing other things that may be prescribed in the regulations;
2. Worker, too, must cooperate by: (a) contacting the employer as soon as possible after the injury and maintaining communication throughout the recovery; (b) assisting the employer, as required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings; (c) accepting suitable employment identified; (d) giving the Commission the information it may request on the worker's return to work; and (e) doing other things that may be prescribed in the regulations; and
3. Commission resolves disputes and can cut or suspend the benefits of a worker that doesn't cooperate and impose penalties on employers that don't cooperate [*Workers Health & Safety Compensation Act*, Sec. 100]

Duty to Re-Employ:

1. Employer of a worker who's been unable to work as a result of an injury and who, on the date of the injury,

had been employed continuously for at least one year must offer to re-employ the worker (**Exception:** This obligation doesn't apply to employers who regularly employ fewer than 20 workers) accordingly:

2. When a worker is medically able to perform the essential duties of the pre-injury employment, the employer must offer to: (a) re-employ the worker in the position held on the date of injury; or (b) provide the worker alternative employment of a nature and at earnings comparable to employment on the date of injury;
3. If a worker is medically able to perform suitable work but can't perform the essential duties of the pre-injury employment, the employer must offer the worker the first opportunity to accept suitable employment that may become available;
4. Employer must modify the workplace and work to accommodate the worker to the extent that the accommodation doesn't cause the employer undue hardship [Act, Secs. 101(1) to (7)]

Duration: Duty to re-employ lasts until whichever occurs earliest: (a) 2 years after the date of disability; (b) 1 year after the worker is medically able to perform the essential duties of the pre-injury employment; and (c) the date the worker reaches 65 years of age [Act, Sec. 101(8)]

Termination: Employer that terminates a re-employed worker within 6 months is presumed to be in violation but can rebut the presumption by showing that the termination wasn't related to the worker's injury [Act, Sec. 101(9)]

Labour Market Re-Entry: WorkplaceNL must perform labour market re-entry assessment and, if necessary, labour market re-entry plan if: (a) Employer unlikely to re-employ worker because of nature of injury; (b) Employer has been unable to arrange work for the worker that's consistent with the worker's functional abilities and restores worker's pre-injury earnings; or (c) Employer isn't co-operating in early and safe return to work

process [Act, Sec. 102]

NOVA SCOTIA

Duty to Re-Employ:

1. When worker who's been unable to work as a result of a work-related injury or illness is medically able to work, employer must offer to re-employ them (at pre-injury or alternative employment of a comparable nature and earnings) if: (a) It employs 20 or more workers; (b) worker was continuously employed for at least 12 months; and (c) Worker isn't in construction;
2. When worker's medically able to perform suitable work but unable to perform essential duties of pre-injury employment, the employer must offer worker the first opportunity to accept suitable employment that may become available with the employer;
3. If after worker returns, work more comparable to pre-injury job opens up, employer must offer worker that work;
4. Employer must also offer more comparable work after worker returns if worker become capable of doing that work;
5. If employer and worker can't agree, WCB decides if worker is medically able to work; and
6. Requires accommodations up to undue hardship [*Workers Compensation Act*, Secs. 90 to 97]

Duration:

1. Employer's duty lasts until whichever of the following comes first: (a) 2 years after the date of disability; or (b) date the worker turns 65; and
2. Employer is no longer bound by the duty to re-employ if it offers re-employment to a worker in accordance with the law and the worker refuses the offer [Act, Secs. 92 and 93]

Termination: Employer that terminates re-employed worker within 6 months of date re-employment begins is presumed in violation, “unless the contrary is shown” [Act, Sec. 94]

ONTARIO

Duty to Cooperate:

1. Employer of an injured worker must co-operate in worker's early and safe return to work of the worker by:
(a) contacting the worker as soon as possible after the injury and maintaining communication throughout the period recovery and impairment period; (b) attempting to provide suitable employment that's available and consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings; (c) giving the WSIB such information as it may request concerning the worker's return to work; and (d) doing such other things as may be prescribed;
2. Worker must cooperate in their own early and safe return to work by: (a) contacting the employer as soon as possible after the injury occurs and maintaining communication throughout the recovery and impairment period; (b) assisting the employer, as may be required or requested, to identify suitable employment that's available and consistent with the worker's functional abilities and that, when possible, restores their pre-injury earnings; (c) giving the WSIB such information as it may request concerning the worker's return to work; and (d) doing such other things as may be prescribed;
3. Special cooperation rules apply to return to work in the construction industry [*Workplace Safety & Insurance Act*, Sec. 40]

Duty to Re-Employ:

1. When worker who's been unable to work as a result of a work-related injury or illness is medically able to

work, employer must offer to re-employ the worker at pre-injury or alternative work of a comparable nature and earnings if: (a) It employs 20 or more workers; and (b) worker was continuously employed for at least 1 year; and (c) worker wasn't employed as emergency worker;

2. When worker is medically able to perform suitable work but unable to perform essential duties of pre-injury employment, the employer must offer worker the first opportunity to accept suitable employment that may become available with the employer;
3. If employer and worker can't agree, WSIB decides if worker is medically able to work;
4. Employer must make accommodations up to undue hardship; and
5. Special rules apply to workers in construction [Act, Sec. 41]

Duration: Employer's duty lasts until whichever of the following comes first: (a) second anniversary after date of injury; (b) 1 year after worker is medically able to perform the essential duties of the pre-injury employment; or (c) date the worker turns 65 [Act, Sec. 41(7)]

Termination: Employer presumed in violation if it dismisses worker within 6 months of re-employment unless it can prove dismissal was unrelated to injury [Act, Sec. 41]

Labour Market Re-Entry: WSIB must perform labour market re-entry assessment and, if necessary, labour market re-entry plan if: (a) Employer unlikely to re-employ worker because of nature of injury; (b) Employer has been unable to arrange work for the worker that's consistent with the worker's functional abilities and restores worker's pre-injury earnings; or (c) Employer isn't co-operating in early and safe return to work process [Act, Sec. 42]

PRINCE EDWARD ISLAND

Duty to Cooperate:

1. Employer must cooperate in injured worker's early and safe return to work by: (a) contacting the worker as soon as possible after the injury occurs and maintaining communication; (b) providing suitable employment that's available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings; (c) providing the Board the information it may request concerning the worker's return to work; and (d) doing such other things as prescribed by the regulations during the period of the worker's recovery;
2. Worker must cooperate by: (a) contacting the employer as soon as possible after the injury occurs and maintaining communication during the recovery period; (b) assisting the employer, as may be required or requested, to identify suitable employment that's available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings; (c) accepting such suitable employment; (d) providing the Board the information it may request concerning the worker's return to work; and (e) doing such other things as prescribed by the regulations during the recovery period [*Workers Compensation Act*, Sec. 86]

Duty to Re-Employ:

1. When worker who's been unable to work as a result of a work-related injury or illness is medically able to work, employer must offer to re-employ them (at pre-injury or alternative work of a comparable nature and earnings) if: (a) It employs 20 or more workers; and (b) worker was continuously employed for at least 12 months; and (c) worker wasn't employed in construction (unless regulation specifies otherwise);

2. When worker's medically able to perform suitable work but unable to perform essential duties of pre-injury employment, the employer must offer worker the first opportunity to accept suitable employment that may become available with the employer;
3. If employer and worker can't agree, WCB decides if worker is medically able to work; and
4. Requires accommodations up to undue hardship [Act, Secs. 86.1 to 86.12]

Duration: Employer's duty lasts until whichever of the following comes first: (a) 2 years after the date of the accident; or (b) date the worker turns 65 [Act, Sec. 86.11]

Termination: Employer presumed in violation if it dismisses worker within 6 months of re-employment unless it can prove to Board's satisfaction that dismissal was unrelated to injury [Act, Sec. 86.7]

QUÉBEC

Duty to Re-Employ:

1. Worker who's been unable to work as a result of an employment injury is again able to carry on his/her employment, must be reinstated by preference to others in the same establishment or reassigned to equivalent employment;
2. When worker's medically able to perform suitable work but unable to perform essential duties of pre-injury employment, the employer must offer worker the first opportunity to accept suitable employment that may become available with the employer; and
3. If employer and worker can't agree, CNESST decides if worker is medically able to work [*Industrial Accidents & Occupational Diseases Act*, Secs. 236 to 240]

Duration: Employer's duty lasts until: (a) 1 year from date of start of continuous absence if employer had 20 or fewer

workers at start of period; or (b) 2 years from date of start of continuous absence if employer had >20 workers at start of period [Act, Sec. 240]

Other: Special rules apply to construction workers

SASKATCHEWAN

Employer must co-operate with the board and injured worker to achieve the worker's early and safe return [*Workers Compensation Act*, Sec. 53]; No duty to re-employ

NORTHWEST TERRITORIES & NUNAVUT

No employer duty to re-employ, only to cooperate in worker's return

YUKON

Duty to Cooperate:

1. Employer must co-operate in the early and safe return to work of a worker who suffers a work-related injury while performing work for the employer by: (a) contacting the worker as soon as possible after the work-related injury occurs and maintaining communication with them throughout the period of their recovery; (b) providing suitable employment that's available and consistent with the worker's functional abilities and that, if possible, restores their average earnings before the work-related injury; (c) giving the YWCHSB any information that it may request concerning the worker's return to work; and (d) doing any other things that the YWCHSB may determine to facilitate the worker's early and safe return to work; and
2. Worker must co-operate in their early and safe return to work by: (a) contacting their employer as soon as possible after the work-related injury occurs and maintaining communication with them throughout the

period of their recovery; (b) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's average earnings before the work-related injury; (c) accepting suitable employment identified under paragraph (b); (d) giving the YWCHSB any information it may request concerning their return to work; and; (e) doing any other things that the YWCHSB may determine to facilitate their early and safe return to work [*Workers Safety & Compensation Act*, Sec. 117]

Duty to Re-Employ:

1. When worker who's been unable to work as a result of a work-related injury or illness is medically able to work, employer must offer to re-employ him/her (at pre-injury or alternative work of a comparable nature and earnings) if: (a) It employs 20 or more workers; and (b) worker was continuously employed for at least 1 year;
2. When worker's medically able to perform suitable work but unable to perform essential duties of pre-injury employment, the employer must offer worker the first opportunity to accept suitable employment that may become available with the employer;
3. If employer and worker can't agree, YWCHSB decides if worker is medically able to work; and
4. Requires accommodations to the point determined by the YWCHSB [*Act*, Sec. 118]

Duration: Employer's duty lasts until whichever of the following comes first: (a) 2 years after the date of work-related injury; (b) 1 year after the worker is medically able to perform the essential duties of pre-injury employment; and (c) the date the worker reaches the age of eligibility to apply for *Old Age Security Act* benefits [*Act*, Sec. 118]

Termination: Employer presumed in violation if it dismisses

worker within 6 months of re-employment unless it can prove dismissal was unrelated to injury [Act, Sec. 118]