

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



How long must you keep an injured worker's job open for a potential return to work?

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

Duty to Re-Employ: Employer must, when reasonably practicable, return a worker 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 he performed before the absence due to the injury or illness [*Canada Labour Code*, Sec. 239.1]

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 his union, if any, in writing whether return to work is reasonably practicable and, if not, the reasons why not [Reg, Sec.34(3)].

ALBERTA

Duty to Re-Employ: None. WCB must "take whatever measures it considers necessary to assist a worker injured in accident and entitled to compensation to return to work," and employer's only duty is to **cooperate** with WCB and worker in return-to-work efforts [*Workers Compensation Act*, Sec. 89]

BRITISH COLUMBIA

Duty to Re-Employ: i. 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; ii. To do that, employers must make any changes to work or workplace necessary to accommodate the worker to the point of undue hardship; iii. Duty expires 2 years after injury date if the worker hasn't returned to work or is carrying out suitable alternative work [*Workers Comp Act*, Sec. 154.3]

Duty to Cooperate: i. Employers and workers have mutual duty to cooperate in return-to-work process by: (a) Establishing and maintaining communication as soon as practicable after the injury occurs; (b) Identifying suitable work that the worker can do, if possible, at worker's pre-injury wages; and (c) Notifying Board of the worker's return or continuation of work; and ii. 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 [*Workers Comp Act*, Sec. 154.2]

Termination: i. If an employer terminates an injured worker within 6 months of their return, it will be presumed to be in violation unless it can prove "to the Board's satisfaction" that the termination was unrelated to the worker's injury; ii. Employer that violates duty to maintain employment is subject to administrative monetary penalties (AMPs) and Board may also award the worker up to one year's worth of compensation under the temporary total or partial disability provisions of the Act [*Workers Comp Act*, Secs. 154.3 and 154.5]

MANITOBA

Duty to Re-Employ: i. 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 employment of a comparable nature and earnings) if: (a) It employs 25 or more workers; and (b) worker was employed for at least 12 continuous months on either a full-time or regular part-time basis (but not as a casual emergency worker, learner, volunteer, declared worker or worker in a work experience program); ii. When worker's medically able to perform suitable work but unable to perform essential duties of pre-accident employment, the employer must offer worker the first opportunity to accept suitable employment that becomes available with the employer; and iii.

If employer and worker can't agree, WCB decides if worker is medically able to work; and iv. Requires accommodations up to undue hardship [*Workers Compensation Act*, Sec. 49.3]

Duration: Employer's duty lasts until: (a) second anniversary of day of accident; (b) 6 months after the worker's medically able to perform the essential duties of his pre-accident employment or other suitable work, as determined by WCB; or (c) date on which the worker would have retired from that employment, as determined by WCB [WCA, Sec. 49.3(3)].

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 [WCA, Sec.49.3(8)]

NEW BRUNSWICK

Duty to Re-Employ: i. 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 position or for suitable work based on worker's functional abilities and employment qualifications with work being comparable in nature and earnings) if worker was employed for at least 12 continuous months on date of accident; ii. Employer must accommodate up to undue hardship; and iii. WCB decides what worker's capabilities are in case of dispute [*Workers Compensation Act*, Sec. 42.4]

Duration: Employer's duty lasts until: (a) 1 year from date worker found entitled to compensation if employer had <20 workers at start of period; or (b) 2 years from date worker found entitled to compensation if employer had 20 or more workers at start of period [Act, Sec. 42.4]

Termination: Employer presumed in violation if it dismisses worker within 6 months of re-employing worker unless it can prove dismissal was unrelated to work injury [Act, Sec. 42.4]

NEWFOUNDLAND

Duty to Re-Employ: i. 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 employment 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; ii. 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; iii. If employer and worker can't agree, WorksafeNL decides if worker is medically able to work; and iv. Requires accommodations up to undue hardship [*Workers Health & Safety Compensation Act*, Sec. 89.1]

Duration: i. Employer's duty lasts until whichever of the following comes first: (a) 2 years after the date of disability; (b) 1 year after worker is medically able to perform the essential duties of his/her pre-injury employment; or (c) date the worker turns 65; and ii. Employer presumed in violation if it dismisses worker within 6 months of re-employment unless it can prove dismissal was

unrelated to injury [WHSCA, Sec. 89.1]

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 [WHSCA, Sec. 89.1]

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 [WHSCA, Sec. 89.2]

NOVA SCOTIA

Duty to Re-Employ: i. 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 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; ii. 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; iii. If after worker returns, work more comparable to pre-injury job opens up, employer must offer worker that work; iv. Worker must also offer more comparable work after worker returns if worker become capable of doing that work; v. If employer and worker can't agree, WCB decides if worker is medically able to work; vi. Requires accommodations up to undue hardship [*Workers Compensation Act*, Secs. 90 to 97]

Duration: i. 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 ii. Employer presumed in violation if it dismisses worker within 6 months of re-employment unless it can prove dismissal was unrelated to injury [WCA, Sec. 92]

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

ONTARIO

Duty to Re-Employ: i. 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; and (c) worker wasn't employed as emergency worker; ii. 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; iii. If employer and worker can't agree, WSIB decides if worker is medically able to work; iv. Requires accommodations up to undue hardship; and v. Special rules apply to workers in construction [*Workplace Safety & Insurance 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 his/her pre-injury employment; or (c) date the worker turns 65 [WSIA, Sec. 41]

Termination: Employer presumed in violation if it dismisses worker within 6 months of re-employment unless it can prove dismissal was unrelated to injury [WSIA, 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 [WSIA, Sec. 42]

PRINCE EDWARD ISLAND

Duty to Re-Employ: i. 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 12 months; and (c) worker wasn't employed in construction (unless regulation specifies otherwise); ii. 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; iii. If employer and worker can't agree, WCB decides if worker is medically able to work; and iv. Requires accommodations up to undue hardship [*Workers Compensation Act*, Sec. 86]

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 [WCA, 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 [WCA, Sec. 86.7]

QUÉBEC

Duty to Re-Employ: i. When 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; ii. 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 iii. 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

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

NORTHWEST TERRITORIES & NUNAVUT

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

YUKON

Duty to Re-Employ: i. 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; ii. 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; iii. If employer and worker can't agree, YWCHSB decides if worker is medically able to work; and iv. Requires accommodations to the point determined by the YWCHSB [*Workers Safety & Compensation 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 where he/she is eligible to apply for benefits under Part 1 of the *Old Age Security Act* [Act, Sec. 118].

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]