

Return to Work – 2023 Year in Review



BRITISH COLUMBIA

LAWS & ANNOUNCEMENTS

Jul 17: From now through September 1, WorkSafeBC will be holding public consultations on 4 [proposed policies](#) implementing the new employer duties to cooperate with and maintain employment for workers who suffer work-related injuries that take effect on January 1, 2024.

Action Point: Find out about the [workers comp re-employment rules](#) in each part of Canada.

Nov 24: BC passed workers comp reform legislation ([Bill 41](#)) requiring employers to re-employ injured workers. Employers and injured workers must cooperate in return to work and WorkSafeBC can issue Administrative Monetary Penalties against employers for violating their cooperation or return to work duties. The law also bans employers to discourage workers from filing workers comp claims.

Action Point: Find out about the [workers comp re-employment rules](#) in each part of Canada.

NEW BRUNSWICK

LAWS & ANNOUNCEMENTS

Feb 16: WorkSafeNB kicked off a new “Getting back is part of

getting better” advertising campaign to highlight the importance that work plays in the injury and illness recovery process. More than 3,400 New Brunswick workers missed time due to a work injury in 2021.

NEWFOUNDLAND & LABRADOR

LAWS & ANNOUNCEMENTS

Jan 30: WorkplaceNL issued revised guidance ([Bulletin 33](#)) on workers comp return to work rules and the duty of employers to reemploy workers returning from work injuries. The key revisions affect the requirements for in-person and virtual assessments of injured workers.

ONTARIO

LAWS & ANNOUNCEMENTS

Dec 7: Newly tabled [Bill 57](#) would ban the WSIB from factoring earnings that an injured worker could make in suitable and available work they don’t actually have into their benefit amounts unless the worker refuses such work in bad faith.

Action Point: Use the [OHSI Special Report on Return to Work](#) to get injured workers back quickly and safely.

CASES

Return To Work: OK to Fire Worker for Not Cooperating in Return-to-Work Process

A 71-year-old art gallery worker complained about being bullied and harassed by her supervisor. The employer investigated and found the charges unwarranted. After taking medical leave for 2 years, she wanted to return. The employer asked her to sign a consent so it could assess her capabilities, but the worker refused. As a result, the employer terminated her. The union claimed that the request for consent to a medical assessment was harassment but the Ontario arbitrator disagreed and found that her refusal to

cooperate in the return to work process by providing consent to the medical assessment frustrated her contract and was just cause to terminate [[Art Gallery of Ontario v OPSEU](#), 2023 CanLII 69409 (ON LA), August 1, 2023].

Return To Work: Union Loses Challenge to Non-Work Injuries Accommodations Policy

In 2009, a nursing home adopted a policy on how it would accommodate workers with non-occupational injuries. Because it covered both union and non-union workers, the policy didn't get into too many specifics about the role of the union in the accommodations process. After accepting the policy without any major disputes for almost a decade and a half, the union challenged its legality under human rights and workers comp law. The Ontario arbitrator rejected the grievance finding that the policy's mechanisms and overall approach to accommodating non-work injuries was reasonable and compliant with all applicable laws [[Service Employees International Union, Local 1 Canada v Oakwood Park Lodge](#), 2023 CanLII 88536 (ON LA), September 28, 2023].