

Questions & Answers

RE: Proclamation of Section 41 of the *Workers' Compensation Act (WCA)*

Why was this legislation approved?

It provides re-employment protection for injured workers once they are medically able to perform their pre-injury duties or other suitable employment and outlines employers' obligations to re-employ.

The legislation also demonstrates a commitment to protect injured workers from potential discrimination on the basis of disabilities.

What are the basic elements in this legislation?

It affects employers with 20 or more workers including private businesses as well as the Yukon Government, Municipal and First Nations Governments.

Approximately 150 employers will be covered under this legislation.

It outlines these employers' obligations to offer to re-employ injured workers, who have been in a continuous employment relationship for at least one year by the employer and are now medically able to perform the essential duties of their pre-injury job or other suitable employment.

Section 41 also provides specific guidelines, remedies and penalties about:

- **suitable employment;**
- **workplace accommodations for returning workers;**
- **time-lines on the obligation to re-employ**
- **when an employer is no longer obligated to re-employ;**
- **termination of a re-employed worker;**
- **penalties for not meeting re-employment obligations, and;**
- **how Section 41 relates to existing collective agreements.**

Details can be found on the YWCHSB website at www.wcb.yk.ca

Why is this section being proclaimed now?

In 2008, Cabinet requested this section not be proclaimed until amendments to the *Human Rights Act* were completed. These amendments were completed in May 2009 removing any impediments to bringing Section 41 into force.

What changes to the *Human Rights Act* allow Section 41 to be proclaimed?

Section 20 of this Act was amended to clarify when the Commission would investigate a complaint.

This section states that complainants must exhaust grievance or review procedures which are otherwise reasonably available or procedures provided for under another Act.

Section 41 of the *Workers' Compensation Act* provides specific procedures, guidelines and remedies to deal with issues of re-employment.

Why so much time between the proclamation being signed and the effective date of the legislation? (About 10 months)

This allows affected stakeholders the time to participate with YWCHSB in the development of policies related to Section 41, which will also educate them on their roles and responsibilities under this legislation.

It gives employers planning time so they are prepared and ready to comply on the effective date of the legislation.

This time will also be used by YWCHSB to provide information sessions for workers and employers to ensure they are aware of their legal obligations.

The Yukon Federation of Labour will offer training sessions for workers and employers in the fall outlining details of this legislation.

The YWCHSB's Return-To-Work Consultant (Donna Burns 667-5319) provides free assistance to workers and employers in getting injured workers back on the job safely and quickly.

Why does this legislation affect only employers with 20 or more workers?

These employers are considered to have sufficient capacity within their businesses to meet re-employment obligations.

What are the costs for employers obligated to re-employ workers?

Employers will be liable for a payment of up to a maximum of \$1,000 in expenses related to the accommodation of the work or the workplace. YWCHSB will pay expenses in excess of \$1,000 related to accommodation requirements for the returning worker.

Are there limits to employers' obligations to re-employ?

Yes. An employer is obligated to re-employ a worker until the earliest of:

- **two years, after the date of the work related injury;**
- **one year after the worker is able to perform the essential duties of his/her pre-injury job; or**
- **the date on which the worker reaches the age when they are entitled to apply for benefits under the *Old Age Security Act*.**

OR

- **when an employer has offered re-employment and the worker has refused the employer's offer.**

Can a re-employed worker be terminated?

If an employer re-employs a worker then terminates their employment within six months the employer is presumed not to have met their obligations under this legislation.

The exception to this rule is when an employer can prove to YWCHSB that the termination was not related to the worker's original injury.

What happens when YWCHSB decides that an employer has not fulfilled their obligations to a worker?

YWCHSB may levy a penalty on the employer not exceeding the worker's net average earnings for the 12 months prior to the work-related injury.

Any payable penalty is an amount owing to YWCHSB and may be added to the employer's assessment.

What are the return to work obligations for employers with fewer than 20 workers?

These employers have obligations to co-operate in the early and safe return to work of an injured worker.

Injured workers have a duty to co-operate in health care assistance and treatment that promotes their recovery, as well as in their early and safe return to work.

Guidelines, remedies and penalties can be found in detail on the YWCSHB website at www.wcb.yk.ca under Policies-Return to Work and Rehabilitation.

When Section 41 comes into effect will it be retroactive for workers injured before January 1, 2011?

No. Only workers who are injured on or after January 1, 2011 will be covered under this legislation. The workers must also have been in a continuous employment relationship for at least a year with the employer.

Is this type of legislation unique to the Yukon?

No. The majority of other jurisdictions in Canada (7) have similar legislation. (Those that do not are B.C., Alberta, Saskatchewan and Northwest Territories/Nunavut.)