Chapter: Return to Work
Legislative authority: section 118

Prevention statement

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act *(the 'Act') establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.*

Purpose

This policy provides information on whether an employer, who has a re-employment obligation, has failed to fulfill its re-employment obligation, when a worker has been terminated by the employer within six months of re-employment.

Definitions

board means the Workers' Safety and Compensation Board

employer means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

worker means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

Policy statement

1. General

The Act provides that if an employer re-employs a worker in accordance with section 118 and then terminates the employment within six months, the employer is presumed not to have fulfilled their obligations under section 118. An employer may rebut this presumption by showing that the termination of the worker's employment was not related to the work-related injury.

2. Contravention of the re-employment obligation provisions

The board must ensure that the work cessation is, in fact, a termination (e.g. severing the employment relationship) and not some other temporary cessation that is not intended to be a termination.

The presumption that the employer has not fulfilled its re-employment obligation does not change the obligation of the board to gather the information necessary to make the appropriate decision.

The board may make a determination on its own initiative that the employer did not fulfill its re-employment obligations or a worker can request the board make the determination.

To determine if the employer has not fulfilled its re-employment obligations, the board will examine:

a. the terms of an applicable collective agreement (see policy 4.12 Re-Employment Provisions of Collective Agreements);

b. any applicable written employer policy;

c. established practices of the employer; and

d. other relevant evidence.

Evidence collected will be used to determine if the re-employment obligation has been met. If the facts do not support the employer's decision to terminate the worker, the board will presume that the employer did not fulfill their re-employment obligations.

The board is not required to consider a request by a worker who has been re-employed and whose employment is terminated within six months, where the request is made more than 30 days after the date of termination of employment.

2.1 Termination after six months of re-employment

Where a worker is terminated more than six months after re-employment, the presumption does not apply and a determination must be made as to whether the employer has not fulfilled their re-employment obligations by reviewing the circumstances of the termination where deemed appropriate by the board.

2.2 Consequences of a contravention

If the board determines that the employer has contravened or not complied with section 118 of the Act the board may impose an administrative penalty and may make re-employment

payments to the worker (see policy 4.9 Compliance with the Re-Employment Obligation and policy 7.9 Administrative Penalties).

History

Policy 4.11 Termination after Re-Employment, effective July 1, 2022, revoked June 1, 2026

RE-07-3 Termination after Re-Employment, effective July 1, 2012, revoked July 1, 2022

RE-07-2 Termination after Re-Employment, effective January 1, 2011, revoked July 1, 2012