



Policy Amendment Proposal RE-07-3 Termination after Re-Employment

This policy amendment proposal relating to termination after re-employment will reflect the issues consulted on during the engagement for the *Workers' Safety and Compensation Act* (the 'Act') and will align the amendments made in the new legislation.

The new Act comes into force July 1, 2022. The intended effective date of the proposed policy amendments will be July 1, 2022.

The proposed amended Termination after Re-Employment policy will reflect minor changes to ensure consistency with the provisions of the Act.

A five-year policy review plan will be developed later in 2022. After July 1, 2022, all amended policies to align with the new Act will be prioritized for a more detailed review.

The purpose of this policy is to provide 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.

Relevant sections of the Act

The following sections of the Act are relevant:

- 118 employer's obligation to re-employ

Proposed minor changes to this policy are highlighted in yellow

- changes to section references, language and definitions
- for clarity, addition of section 2, "Breach of the re-employment obligation"

Board Orders/Regulations

N/A

Current policy

[RE-07-3 Termination after Re-Employment](#)



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The Board of Directors is providing this policy amendment proposal to stakeholders seeking their input, comments, questions and suggestions.

Some questions for consideration:

1. Are there any general comments about this policy proposal?
2. Are there any gaps in this policy proposal?
3. Additional comments?

The views of our stakeholders are important to us. All feedback will be considered prior to the Board of Directors approving any amendments.

Engagement on this policy proposal closes on **May 31, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) our website and sending it as an attachment to Policy.Feedback@wcb.yk.ca
2. Emailing comments directly to Policy.Feedback@wcb.yk.ca
3. Receipt in our building by May 31, 2022, by mail or drop off at
*Yukon Workers' Compensation Health and Safety Board
401 Strickland Street
Whitehorse, Yukon Y1A 5N8*

By the end of June a summary of all feedback on this policy amendment proposal will be published on our website at www.wcb.yk.ca



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Preventing work-related injuries is the most important job in any workplace. The *Workers' Safety and Compensation 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 (new title)**

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.



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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 [RE-08 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.

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**.

*Consequences of a **contravention***

If **the board** determines that the employer has **contravened section 118** of the Act **the board** may levy an administrative penalty and **may** make re-employment payments to the worker (see policy [RE-07-1 Compliance with the Re-Employment Obligation](#) and policy [RE-07-2 Re-Employment Penalties and Payments](#)).

Related Policies

[RE-07-1 Compliance with the Re-Employment Obligation](#)

[RE-07-2 Re-Employment Penalties and Payments](#)

[RE-08 Re-employment Provisions of Collective Agreements](#)
