

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 consequences of non-compliance with re-employment obligations.

Definitions

available work means work that exists with the employer at the time of the work-related injury at the site or at a proposed work site arranged by the employer that is comparable to the work site at the time of the work-related injury. In determining if a proposed work site is comparable to the work site at the time of the work-related injury, the considerations include, but are not limited to, whether:

- a. assignment to a work site other than the injury work site forms part of the employment contract;
- b. travelling to the proposed job is within the normal parameters of travel expected of a worker; or
- c. the worker and the employer agree on appropriateness of the conditions of work for the worker

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

medically able to perform means a worker is able to perform work duties when the worker has the functional abilities to perform those duties

suitable employment means work that meets the following criteria:

- a. the work is within the worker's functional abilities;
- b. the worker has, or is reasonably able to acquire, the necessary skills to perform the work;
- c. the work does not pose a health or safety risk to the worker or co-workers; and
- d. the work restores the worker's earnings, if possible

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

Section 118 of the Act sets out an employer's re-employment obligations. If the board determines that an employer has not complied with the employer's obligations under section 118, the board may make payments to the worker for a maximum of one year as if the worker were entitled to loss of earning benefits under the Act (subsection 118 (13)).

When a worker is medically able to perform the essential duties of the employment at the time of the work-related injury, an employer who is subject to a re-employment obligation must:

- a. offer to re-employ the worker in the position that the worker held prior to the work-related injury; or
- b. offer an alternative position which is comparable in nature and earnings to the worker's employment at the time of the work-related injury (see policy 4.7 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury).

However, when a worker is medically unable to perform the essential duties of the worker's employment at the time of the work-related injury, but is able to perform suitable employment, the employer must offer the worker the first opportunity to accept suitable employment that may become available with the employer (see the Determining Suitable Employment section of policy 4.6 Employer's Obligation to Re-Employ).

The employer must accommodate the work or workplace for the worker to the extent determined by the board (see subsection 118 (6) of the Act and policy 4.8 Accommodating Work or a Workplace).

2. Duration of re-employment obligation

An employer, who has a re-employment obligation under section 118 of the Act, is obligated to re-employ the worker until the earliest of three dates:

- a. two years after the date of the work-related injury;
- b. one year after the date the worker is medically able to perform the essential duties of the employment they held at the time of the work-related injury (see the Determining When A Worker Is Unable To Work section in policy 4.6 Employer's Obligation to Re-Employ); or
- c. the date on which the worker reaches the age when they are eligible to apply for benefits under Part 1 of the *Old Age Security Act*.

2.1 Worker's notice of fitness to work

Under the Act and board policies, a worker is required to take all reasonable steps to provide the board with any health information and other information that the board requires and notify the board immediately of any change in circumstance that affects or may affect their claim, and maintain communication with their employer throughout the return to work process (see policy 2.5 Mitigation of Loss).

As a result of these requirements, the worker must immediately notify the board and the employer when they are able to perform:

- a. the essential duties of the employment at the time of the work-related injury; or
- b. suitable employment.

In turn, the board expects employers to offer to re-employ workers as part of the early and safe return to work process.

2.2 The board's notice of fitness to work

In the event the employer and worker cannot initially agree on the worker's level of fitness to work or subsequently disagree as to the worker's level of fitness to work, the board will provide notice (verbally, if possible, and in writing) of the worker's fitness to return to work.

2.3 Change in level of fitness to work

If a worker is able to perform suitable employment and is later able to perform the essential duties of the job at the time of the work-related injury, the worker must immediately inform the board and the employer of the improvement. The employer is then required to offer to re-employ the worker in the job at the time of the work-related injury, or alternative employment

which is comparable in nature and earnings with employment at the time of the work-related injury.

The board will provide notice (verbally, if possible, and in writing) of the change in the level of the worker's fitness to work only if the worker and the employer do not agree on the level of the worker's fitness to work.

A notice of fitness to work or change in level of fitness to work provided by the board will include the following:

- a. The employer will be notified of its obligation to re-employ the worker, and to immediately notify the board if the worker's employment is terminated within six months of the worker being re-employed by the employer; and
- b. The worker will be notified of their responsibility to accept an offer of re-employment that is in accordance with the relevant provisions of the Act and board policies, and to immediately notify the board if their employment is terminated within six months of being re-employed by the employer.

3. Determining compliance

The board may, or on the request of a worker must, determine whether the employer has met its re-employment obligations to a worker.

In making this determination, the board will review relevant information with the employer and worker to obtain the facts relevant to the issue(s), and will consider these facts to determine whether the employer:

- a. offered to re-employ the worker;
- b. offered employment consistent with the worker's ability to return to the job at the time of the work-related injury, or comparable employment, or suitable employment;
- c. was willing to accommodate the work or workplace to the needs of the worker; and
- d. offered to re-employ the worker for the duration of the re-employment obligation.

3.1 Request by worker to investigate non-compliance

Workers who are terminated within six months of re-employment have 30 days from the date of termination to request that the board investigate any alleged non-compliance with the re-employment obligation. If the request is made beyond 30 days from the date of termination, the board is not required to investigate.

4. Administrative Penalties

The board may impose an administrative penalty on the employer as set out in policy 7.9, Administrative Penalties.

Before an administrative penalty is imposed against an employer for non-compliance with the re-employment obligation, the employer will be given an opportunity to respond to the board regarding the reason for non-compliance.

If the board finds that the employer has failed to meet the re-employment obligation and does not have a legitimate reason for doing so, the board will notify the employer (verbally, if possible, and in writing) that they are in non-compliance and the amount of the potential administrative penalty (see policy 7.9 Administrative Penalties).

If the employer fails to comply within seven days of being notified by the board that the employer is in non-compliance with the re-employment obligation, the board may impose an administrative penalty. Where the employer has been notified by the board of the co-operation obligation in the past (either on the same claim or other claims) the board does not have to provide an additional notification.

Where the employer requires time to comply for a reason beyond the employer's control, a reasonable time will be allowed before a penalty is imposed on the same or subsequent claim.

4.1 Revoking an administrative penalty

The board may revoke the administrative penalty in its entirety if the employer offers, in writing, to re-employ the worker, but the worker and the employer agree to a voluntary severance of employment.

Even if a worker agrees to sever the employment relationship, (with or without a severance package), if an employer fails to offer, in writing, to re-employ the worker, an administrative penalty may be imposed.

4.2 Varying an administrative penalty

The board may vary or reduce the amount of the administrative penalty if the employer:

- (a) subsequently meets the re-employment obligation; or
- (b) does not meet the re-employment obligation, but offers the worker suitable employment at a wage loss, with the agreement of the worker.

a. Employer subsequently meets the re-employment obligation

The reduced administrative penalty is calculated according to the number of weeks (or part weeks) that the employer does not meet the re-employment obligation.

For example, the board notifies the employer that the worker is fit to perform the employment at the time of the work-related injury. Subsequently, the board determines that the employer has failed to offer to re-employ the worker in the work at the time of the work-related injury or comparable employment. Accordingly, an administrative penalty is imposed equal to the worker's gross average earnings in the year prior to the work-related injury (\$52,000 per year, \$1,000 per week).

The employer re-employs the worker ten weeks after receiving the initial notice from the board, with the agreement of the worker. The board reduces the administrative penalty to the number of weeks that the employer failed to re-employ the worker, and adjusts the employer's administrative penalty:

Adjusted Administrative Penalty: 10 weeks X \$1,000 = \$10,000.

b. Employer provides suitable employment at a wage loss

Where a worker is medically able to perform the essential duties of the worker's employment at the time of the work-related injury, and the employer does not meet the re-employment obligation, but subsequently offers the worker suitable employment at a wage loss, the board may reduce the administrative penalty up to 50% of the remaining balance.

c. Employer provides suitable employment at no wage loss

Where a worker is medically able to perform the essential duties of the worker's employment at the time of the work-related injury, and the employer does not meet the re-employment obligation, but subsequently offers the worker suitable employment at no wage loss, the board may reduce the administrative penalty up to 75% of the remaining balance.

5. Re-employment payments made to worker

The board may make payments to the worker for a maximum of 12 months as if the worker were entitled to loss of earnings benefits under section 102 of the Act.

a. Worker medically able to perform essential duties without accommodation

If the worker is medically able to perform the essential duties of the employment at the time of the work-related injury without accommodation, but the employer fails to meet the re-employment obligation, re-employment payments may be made by the board to the worker, effective from the start date of the re-employment obligation.

The amount of the re-employment payment is calculated in accordance with section 102 of the Act 'Compensation for Loss of Earning Capacity' (see policy 3.1 Loss of Earnings Benefits).

b. Employer fails to offer to re-employ

If the employer fails to offer to re-employ the worker in the employment at the time of the work-related injury or comparable employment, full re-employment payments are paid to the worker.

c. Employer provides suitable employment at a wage loss

If the employer fails to offer to re-employ the worker in the employment at the time of the work-related injury or comparable employment, but offers the worker suitable employment at a wage loss with the agreement of the worker, the board may make partial re-employment payments to the worker, based on the difference between the worker's gross average earnings in the year prior to the work-related injury and the gross average earnings of the suitable employment.

d. Employer provides suitable employment at no wage loss

If the employer fails to re-employ the worker in the employment at the time of the work-related injury or comparable employment, but provides the worker with suitable employment at no wage loss and the worker is in agreement, no re-employment payments are made to the worker.

e. Effect of re-employment penalty on employer on payments made to worker

Workers are entitled to re-employment payments regardless of whether a re-employment penalty is imposed or collected from the employer.

f. Worker medically able to perform essential duties with accommodation or medically able to perform suitable employment (temporary loss of earnings)

If the worker is medically able to perform only:

- i. the essential duties of the employment at the time of the work-related injury with accommodation; or
- ii. suitable employment;

and the employer fails to meet the re-employment obligation, the worker may be offered a vocational assessment (see policy 4.14 Vocational Rehabilitation) and temporary loss of earnings benefits are paid to the worker as long as the worker is available for and co-operates in:

- iii. a medical rehabilitation program;

- iv. an early and safe return to work plan; or
- v. a vocational assessment and vocational rehabilitation plan.

If the employer subsequently meets the re-employment obligation, the board re-examines the need for the vocational rehabilitation plan (if applicable).

g. Worker accepts less suitable employment

If the worker accepts work that is not the most suitable employment available, temporary partial loss of earnings benefits will be paid based on the earnings for the most suitable employment. A vocational assessment will be conducted to determine whether the worker requires a vocational rehabilitation (VR) plan.

h. Change in fitness level

If, in the first year during which the non-compliance with the re-employment obligation occurred, the worker's fitness level for employment improves such that the worker is able to perform the essential duties of the employment at the time of the work-related injury without accommodation, temporary loss of earnings benefits are converted to re-employment payments.

i. Duration of re-employment payments

Re-employment payments are issued for a period of:

- i. one year; or
- ii. to the end of the re-employment obligation period, whichever occurs sooner.

Re-employment payments end if the employer subsequently meets its re-employment obligations.

History

Policy 4.10 Re-Employment Penalties and Payments, effective July 1, 2022, revoked June 1, 2026

RE-07-2 Re-Employment Penalties and Payments, effective July 1, 2012, revoked July 1, 2022

RE-07-2 Re-Employment Penalties and Payments, effective January 1, 2011, revoked July 1, 2012

RE-07-1 Compliance with the Re-Employment Obligation, effective July 1, 2012, revoked July 1, 2022

RE-07-1 Compliance with the Re-Employment Obligation, effective January 1, 2011, revoked July 1, 2012