

**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.*

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## Purpose

This policy provides information on the accommodation requirements for employers.

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## Definitions

**adaptive technologies** means:

- a. assistive devices which include aids/attachments specifically designed for the worker and/or required by the worker to perform job-related activities
- b. modifications which include changes to job schedule, equipment, aid/attachments, organization of work, and/or facilities

**board** means the Workers' Safety and Compensation Board

**case management team** means a team that assists the worker with their recovery, early and safe return to work plan and, if needed, vocational rehabilitation. The team always includes the worker and the board. Employers have a duty to co-operate in their worker's early and safe return to work and will be encouraged to use participation on the Case Management Team to facilitate that duty. The team can also include up to two representatives of the worker (chosen by the worker), case manager and the health care providers. Other members may be added depending on their specific roles and responsibilities.

**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

**modified duties** means changing the job duties of the position at the time of the work-related injury required to accommodate the worker's functional restrictions as a result of the work-related injury; includes altering or removing some duties

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**Effective date:** July 1, 2022

**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

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## Policy statement

### 1. General

The intent of the duty to accommodate is to provide equal opportunity and access to employment for workers with work-related injuries, who might otherwise face barriers to employment because of those injuries. It may also help to prevent work-related injuries or recurrences.

To facilitate return to work, the board uses a hierarchy of objectives, the goal of which is to safely return the worker to employment through early and safe return to work and/or re-employment obligation, or to offer vocational rehabilitation services to ensure workers have the skills, knowledge and abilities to re-enter the workforce and reduce or eliminate their loss of earnings (see policy 4.1 Return to Work - Overview). While the hierarchy is intended as a guideline for most cases, there may be situations where the priorities of a specific case may differ as the most effective method of returning the worker to the same, comparable or suitable employment.

### 2. Duty to accommodate for employers with a re-employment obligation (under section 118 - employer's obligation to re-employ)

Employers who have a re-employment obligation under section 118 of the Act must accommodate the work or the workplace for a worker with a work-related injury to the extent determined by the board.

Examples of accommodation of a work-related injury in the workplace include (but are not limited to) the following:

- a. helping to meet the needs of a worker with a work-related injury by giving them special equipment, or rearranging the work space; and
- b. assigning a worker to different work, taking away or substituting work duties, or sharing duties among employees.

### 3. Duty to accommodate under human rights legislation

Under the *Human Rights Act*, all employers have a duty to accommodate disabled workers. The legislation prohibits discrimination on the basis of a person's physical or mental disability. The goal of accommodation is to ensure that a worker who is able to work can do so. In practice, this means that the employer must accommodate the worker in a way that, while not causing the employer undue hardship, will ensure that the worker can work.

#### *3.1 Determining undue hardship*

In most cases accommodation is simple and affordable. However, there may be some cases where a particular type of accommodation will cause undue hardship to an employer. The employer responsible for making an accommodation must demonstrate that providing the accommodation would create undue hardship. Generalized conclusions or speculation will not suffice to support a claim of undue hardship.

Instead, undue hardship must be based on an individualized assessment of current circumstances with respect to a specific accommodation. In order to claim the undue hardship defence, the employer who is responsible for making the accommodation has the onus of proof. It is not up to the worker or the board to prove that the accommodation can be accomplished without undue hardship. The board recognizes that different businesses have different financial and operational circumstances. What may be an undue hardship for one business may not be undue for another one.

Where a claim of undue hardship is made the board will conduct an investigation and will take the following factors into account in making a determination of undue hardship.

#### *3.2 Health and safety*

The extent to which the accommodation would compromise the health and safety of the worker, co-workers, or members of the public.

#### *3.3 Disruption to the public*

The extent to which the accommodation would impact the legitimate operational requirements of the employer and result in disruption to the public.

### *3.4 Contractual obligations*

The effect on contractual obligations will be considered. However, collective agreements or other contractual arrangements cannot act as a barrier to providing accommodation (see policy 4.12 Re-Employment Provisions of Collective Agreements).

### *3.5 Financial cost*

The extent to which demonstrated costs of the accommodation would impact on the financial viability of the employer's business.

### *3.6 Business efficiency*

The extent to which the accommodation would impact on the way in which the employer is able to operate and carry on its business. Larger employers will have more flexibility than smaller employers to rearrange work duties and otherwise handle other changes to the usual way of working.

### *3.7 Excluded factors*

Matters such as business inconvenience, employee morale and customer preferences will not be considered relevant in an undue hardship defence. Business inconvenience in and of itself is not a defence to the accommodation obligation. If there are demonstrable costs attributable to decreased productivity, efficiency or effectiveness, they can be taken into account in assessing undue hardship under the cost standard, providing they are quantifiable and demonstrably related to the proposed accommodation.

An employer cannot claim undue hardship based on customer (or employee) preferences, fears or prejudices toward an individual's work-related injury or disability.

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## History

RE-06 Accommodating Work or a Workplace, effective July 1, 2012, revoked July 1, 2022

RE-06 Accommodating Work or a Workplace, effective January 1, 2011, revoked July 1, 2012