

Obligation to Re-employ

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49.3(1) In accordance with this section, an employer within the scope of this Part must offer to re-employ a worker

- (a) who has been unable to work as a result of an accident; and
- (b) who, on the day of the accident, had been employed by the employer for at least 12 continuous months on a full-time or regular part-time basis.

Exception

49.3(2) This section does not apply to

- (a) casual emergency workers, learners, persons deemed to be workers under section 75.1 (volunteer coverage) and persons declared to be workers under section 77 (declared workers) or section 77.1 (work experience program);
- (b) an employer who employs fewer than 25 full-time or regular part-time workers, as determined by the board; or
- (c) an employer, worker or industry excluded by regulation.

Duration of obligation

49.3(3) The employer is obligated under this section until the earliest of the following dates:

- (a) the second anniversary of the day of the accident;
- (b) six months after the worker is medically able to perform the essential duties of the worker's pre-accident employment or other suitable work, as determined by the board;
- (c) the date on which the worker would have retired from that employment, as determined by the board.

Duty to accommodate

49.3(4) The employer must accommodate the work or the workplace to the needs of the worker to the extent that the accommodation does not cause the employer undue hardship.

Able to perform the essential duties

49.3(5) When the worker is medically able to perform the essential duties of the worker's pre-accident employment, the employer must

- (a) offer to re-employ the worker in the position the worker held on the day of the accident; or
- (b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the day of the accident.

Able to perform suitable work

49.3(6) When the worker is medically able to perform suitable work but is unable to perform the essential duties of the worker's pre-accident employment, the employer must offer the worker the first opportunity to accept suitable employment that becomes available with the employer.

Determinations re return to work

49.3(7) If the worker and the employer disagree about the worker's fitness to return to work, the board must determine

(a) if the worker has not returned to work with the employer, whether the worker is medically able to perform the essential duties of the worker's pre-accident employment or to perform suitable work; or

(b) if the board has previously determined that the worker is medically able to perform suitable work, whether the worker is medically able to perform the essential duties of the worker's pre-accident employment.

Effect of termination

49.3(8) If an employer re-employs a worker in accordance with this section and then terminates the employment within six months, the employer is presumed not to have fulfilled the employer's obligations under this section. The employer may rebut the presumption by showing that the termination was not related to the accident.

Layoff or termination

49.3(9) Nothing in this section prevents an employer from

(a) refusing to offer to re-employ a worker;

(b) refusing to continue to employ a worker;

(c) discharging, laying off or suspending a worker; or

(d) altering the status of or transferring a worker;

if the employer satisfies the board that the employer's decision to do so was for a business reason made in good faith and that the decision was not affected by the worker being or having been unable to work as a result of the accident.

Notice of dispute

49.3(10) The employer or the worker must notify the board of disputes concerning whether the employer has fulfilled the employer's obligations to the worker under this section.

Resolution of dispute

49.3(11) Upon receiving a notice under subsection (10), the board must, within 60 days or within any longer period that the board allows, determine whether the employer has fulfilled the employer's obligations to the worker under this section.

Mediation

49.3(12) The board may attempt to resolve the dispute under subsection (10) through mediation.

Limitation

49.3(13) The board is not required to make a determination under subsection (11) where

- (a) a re-employed worker's employment is terminated within six months; and
- (b) the worker's notice under subsection (10) is provided to the board more than three months after the date of termination.

Board may determine whether employer fulfills obligation

49.3(14) The board may, on its own initiative, determine whether the employer has fulfilled the employer's obligations to the worker under this section.

Failure to comply

49.3(15) If the board determines that the employer has not complied with an obligation under this section, the employer is subject to an administrative penalty under subsection 109.7(1) in an amount not exceeding the amount of the worker's net average earnings for the year before the accident.

Conflict with collective agreement

49.3(16) If the employer's obligations under this section afford the worker greater re-employment terms than does a collective agreement that is binding on the employer, this section prevails over the collective agreement.