

REHABILITATION / RETURN TO WORK

Also see ['Rehabilitation – Legislation, Policy and where to find additional information'](#).

	REHIRING WORKER	Section of Act	Policy (if any)	Links (if any)
AB	There is no requirement under the <i>Workers' Compensation Act</i> for employers to rehire injured workers. However, under human rights legislation, employers have a duty to accommodate workers with disabilities.	No reference	Policy 04-05, Part I	
BC	There is no requirement under the <i>Workers Compensation Act</i> for employers to rehire injured workers.	No reference		
MB	The obligation for certain employers to re-employ workers became effective January 1, 2007. Employers who employ 25 or more full-time or regular part-time workers are obligated to re-employ injured workers who were in their employ for at least 12 continuous months prior to their injuries. The re-employment obligation is time-limited. When injured workers are medically able to return to the essential duties of the jobs held at the time of their injuries, employers are obligated to reinstate the workers in their original jobs or alternative jobs that are comparable in tasks and earnings to their original positions. When injured workers are not able to return to their original positions, but can safely do other work, employers are obligated to offer their injured workers the first opportunity to accept suitable work that becomes available.	Workers' Compensation Act (s. 49.3)	Policy 43.20.25, Return to Work with the Accident Employer	
NB	New Brunswick exempts employers of less than 10 workers. New Brunswick has a range of 10-19 workers for one year and 20 or more for two years. New Brunswick requires the worker to have been employed by the accident employer for at least one year before the employer is required to re-employ. The employer must reinstate the worker in New Brunswick, without loss of seniority or benefits. In New Brunswick, the employer is not bound to re-employ the worker if the worker refuses a suitable job. Re-employment obligation is enforced under the <i>Employment Standards Act</i> .	Workers' Compensation Act (s. 42.1)	Policy No. 21-413 Return to Work – Responsibilities and Re-employment Obligations	
NL	Legislation took effect January 1, 2002 regarding employers' duty to cooperate in early, safe RTW and re-employ obligations. Employers with less than 20 workers are exempt from re-employment obligations, and workers must have been employed by the injury employer for at least one year at the time of the injury. Similar provisions for the construction industry took effect January 1, 2003. Employers who have a re-employment obligation must accommodate the work or the workplace to the extent that the accommodation does not cause undue hardship.	Workplace Health, Safety and Compensation Act (s. 89, 89.1, 89.3 and 89.4)	Policies RE-01 - RE-08; Procedures 33.00 - 48.00	
NT/ NU	In the Northwest Territories and Nunavut, if it is considered to be appropriate, the Commission will provide vocational rehabilitation, including consultation, advice, counseling, the planning and design of a rehabilitation plan and the costs of rehabilitation, to help the worker return to work and to assist them in lessening or removing the consequences of his/her injuries.	Workers' Compensation Act (s.46)	Policy 04.14, Return to Work	
NS	Nova Scotia will exempt employers with less than 20 workers, and will require the worker to have been employed by the accident employer for at least one year before the employer is required to re-employ. Nova Scotia exempts the construction industry. In Nova Scotia, the employer is not bound to re-employ the worker if the worker refuses a suitable job.	Workers' Compensation Act (s. 89-101)		

Source: Association of Workers' Compensation Boards of Canada – 2011

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	REHIRING WORKER	Section of Act	Policy (if any)	Links (if any)
ON	Ontario will exempt employers with less than 20 workers, and will require the worker to have been employed by the accident employer for at least one year before the employer is required to re-employ. Ontario requires the employer to make contributions for employment benefits for one year if the worker is off work due to the injury and if the employee continues to pay his contributions. In Ontario, the employer cannot dismiss, suspend, layoff, discipline or discriminate or refuse to rehire a worker because of a work injury without paying a penalty for non-compliance. Ontario states an employer must make accommodations to the workplace to allow an injured worker to resume duties, unless such actions cause the employer undue hardship. Ontario allows an employer to provide a temporary work assignment which accommodates the worker's disability until the worker is fully able to resume the pre-accident job. (Note: different re-employment obligations apply to the construction industry)	Workplace Safety and Insurance Act (s. 41) Ontario Regulation 35/08 Return to Work and Re-employment Construction Industry	19-02-02. Responsibilities of the Workplace Parties in the RTW process Construction Industry: <ul style="list-style-type: none"> • 19-05-01 • 19-05-02 • 19-05-03 • 19-05-04 	
PE	Prince Edward Island requires the worker to have been employed by the accident employer for at least one year prior to the injury before the employer is required to re-employ. The obligation to re-employ does not apply to an employer who regularly employs fewer than 20 workers and the construction industry.	Workers Compensation Act (s. 86.1 – 86.12)	POL-93. Return to Work	
QC	In Quebec, a worker is entitled to be reinstated, in priority, in his employment or in an equivalent job. This right may be exercised within one year following the date of the injury in an establishment with 20 workers or less and within two years in an establishment with more than 20 workers. The employer must reinstate the worker in Quebec without loss of seniority or benefits. Quebec allows an employer to provide a temporary work assignment which accommodates the worker's disability until the worker is fully able to resume the pre-accident job. In Quebec, the employer cannot dismiss, suspend, layoff, discipline or discriminate or refuse to rehire a worker because of a work injury without paying a penalty for non-compliance.	Act respecting Industrial accidents and occupational diseases (s. 234 to 251)		
SK		Labour Standards Act , Section 44.2(1)		
YT	Section 41 requires employers to offer to re-employ injured workers once they are medically able to perform their pre-injury duties or other suitable employment. This obligation applies to workers who: <ul style="list-style-type: none"> • Have been in a continuous employment relationship with their employer for at least a year; and • Are injured on or after January 1, 2011. This section of the <i>Act</i> applies to employers with 20 or more workers.	Workers' Compensation Act (s. 41(1))		What Employers need to know about section 41

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	DUTY TO ACCOMMODATE	Section of Act	Policy (if any)	Links (if any)
AB	There is no duty to accommodate specifically contained within the Act.	No reference		
BC	There is no mandatory accommodation legislation in the British Columbia <i>Workers' Compensation Act</i> . In the second phase of the vocational rehabilitation process, as outlined in the <i>Rehabilitation Services and Claims Manual</i> ¹ , employers are encouraged to accommodate job modification or alternate in-service placement for workers who cannot return to the same job.	No reference		
MB	Effective January 1, 2007, employers who have 25 or more full-time or regular part-time workers will be required to re-employ injured workers who have been in their employ for at least 12 continuous months prior to their injuries. The duty to accommodate under the <i>Workers Compensation Act</i> is similar to the duty under human rights law. Employers are required to accommodate the work or workplace of injured workers providing it does not cause employers undue hardship.	Workers Compensation Act (s. 49.3)		
NB	In New Brunswick, the <i>Workers' Compensation Act</i> does not contain any specific references to a duty to accommodate. However, the New Brunswick <i>Human Rights Act</i> requires employers to accommodate workers with disabilities up to the point of undue hardship, as determined by the Human Rights Commission. WorkSafeNB's role is to communicate the duty to accommodate to the workplace parties and work in cooperation with the Human Rights Commission to educate parties of their obligations. The New Brunswick <i>Workers' Compensation Act</i> does, however, contain reemployment obligations. An employer has an obligation to reemploy an injured worker for 1 year in an establishment employing between 10-19 workers inclusive, and for 2 years in an establishment of 20 or more workers. This obligation applies to an employer of an injured worker who has been employed by that employer for at least one year.	No reference	Policy No. 21-413 Return to Work – Responsibilities and Re-employment Obligations	
NL	<p>The obligation to re-employ took effect January 1, 2002 for most employers (and January 1, 2003 for employers of construction workers). The obligation applies only to an employer and a worker who have been in an employment relationship for a continuous period of one year immediately prior to the date of the worker's injury and the employer regularly employs 20 or more workers.</p> <p>Where the worker is medically able to perform the essential duties of the pre-injury employment, the employer with a re-employment obligation must offer to re-employ the worker in the position that the worker held on the date of injury or offer the worker alternative employment of a nature and earnings comparable to the pre-injury employment. Where the worker is medically able to perform suitable work, the employer must offer suitable employment that may become available. The obligation to re-employ is until the earliest of 2 years after the date of injury, one year after the worker is medically able to perform the essential duties of his or her pre-injury employment and the date the worker reaches age 65. Employers shall accommodate the work or workplace for the worker to the extent that the accommodation does not cause the employer undue hardship.</p> <p>Where a collective agreement is binding on the employer and the re-employment obligations under the Act give the worker greater re-employment terms than the collective agreement, the Act prevails. However, the Act does not displace seniority provisions of a collective agreement.</p> <p>Where the employer re-employs the worker and then terminates the employment within 6 months, the employer is presumed not to have fulfilled the re-employment obligation.</p> <p>Where the Commission decides that an employer has not fulfilled the obligation to the worker, the Commission may levy a penalty on the employer not exceeding the amount of the worker's net average earnings for the 12 months immediately preceding the beginning of the loss of earnings resulting from the injury and make payments to the worker for a maximum of one year as if the worker were entitled to payments under the Act. The penalty will be added to the employer's assessment.</p>	Workplace Health, Safety and Compensation Act (s. 89 and 89.1)	Policies RE-01 - RE-08; Procedures 33.00 - 48.00	

1 [Policy item C11-87.00 \(Vocational Rehabilitation process\)](#).

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	DUTY TO ACCOMMODATE	Section of Act	Policy (if any)	Links (if any)
	<p>All employers and workers regardless of the number of workers and length of time employed have a duty to co-operate in early and safe return to work. Employers must contact the worker as soon as possible following an injury and maintain effective communication throughout the period of recovery, provide suitable work that becomes available and where possible restores the worker's pre-injury earnings, and give the Commission information it requires. Workers have the same communication requirements with the employer and the Commission, and they must accept suitable work that becomes available.</p> <p>A hierarchy of return to work priorities has been developed to allow workplace parties to achieve maximum benefit from the return to work process. It focuses on maintaining the link to the pre-injury job, where possible, and clarifies accommodation requirements. A series of definitions promote a consistent understanding of the various programs used throughout the process.</p> <p>Mediation is offered by the Commission where there is a dispute or difficulty concerning co-operation efforts. Where there is a finding of employer non co-operation, the Commission may levy a penalty. Where there is a finding of worker non co-operation, the Commission may suspend, reduce or terminate the worker's compensation benefits.</p>			
NT/NU	There is no duty to accommodate specifically contained within the Acts.	No reference	Policy 04.14, Return to Work	
NS	<p>Nova Scotia has a mandatory duty to accommodate. Under s. 91 of the Act:</p> <p>The employer shall, in order to fulfill the employers obligations pursuant to Sections 89 to 101, accommodate the work or the workplace to the needs of a worker who requires accommodation as a result of the injury to the extent that the accommodation does not cause the employer undue hardship.</p> <p>The Board may determine whether the employer has fulfilled the employer's obligations.</p>	Workers' Compensation Act (s. 91)		
ON	In Ontario, the duty to accommodate is set out in the reemployment provisions (s.41). The duty is similar to that in the provincial human rights code. An employer subject to s. 41 must accommodate the work or the workplace for the injured worker to the extent that the accommodation does not cause the employer undue hardship. 'Undue hardship' is generally interpreted to mean undue financial loss.	Workplace Safety and Insurance Act (s. 41(6)) Ontario Regulation 35/08 Return to Work and Re-employment Construction Industry (s. 7)	19-02-02 19-05-02	
PE	<p>In Prince Edward Island, an employer shall accommodate the work or workplace to the needs of a worker who requires accommodations as a result of the injury to the extent that the accommodation does not cause the employer undue hardship.(see Sections 86-86.12 of PEI's Act for specifics). Pursuant to section 86.5:</p> <p>An employer shall, to the satisfaction of the Board and in order to fulfil the employer's obligations pursuant to sections 86.1 to 86.11, accommodate the work or the workplace to the needs of a worker who requires accommodation as a result of the injury to the extent that the accommodation does not cause the employer undue hardship.</p>	Workers Compensation Act (s. 86.1 – 86.12)	POL-93, Return to Work	

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	DUTY TO ACCOMMODATE	Section of Act	Policy (if any)	Links (if any)
QC	<p>The Commission may reimburse the cost of adapting a position if the adaptation enables a worker who has sustained permanent physical impairment to carry on his employment, equivalent employment or suitable employment. The cost includes the expenses incurred for purchasing and installing the materials and equipment necessary for adapting the position, but no cost may be reimbursed except with the prior authorization of the Commission to that effect.</p>	<p>Act respecting Industrial accidents and occupational diseases (s. 176)</p>		
SK	<p>Employers do have a legal duty to accommodate. “Duty to Accommodate” is a legal concept that has evolved out of case law and Human Rights Legislation. If these legal requirements are not met, legal action could result.</p> <p>Recent court decisions have made it clear that the duty to accommodate requires much more from an employer than simply investigating whether any existing job might be suitable for a disabled employee.</p> <p>Duty to accommodate requires the employer to look at all other reasonable alternatives to the point of undue hardship. The term "undue hardship" has no single legal definition, this is a concept developed by the Courts in recent years. The Supreme Court of Canada has developed a non-exhaustive list of six factors that it said were relevant to what constitutes undue hardship:</p> <ol style="list-style-type: none"> 1. Financial cost 2. Impact on a collective agreement 3. Problems of employee morale 4. Interchangeability of the workforce and facilities 5. Size of the employer's operations 6. Safety <p>According to the Saskatchewan Human Rights Code:</p> <p>(Section 9) Every person... shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination on the basis of a prohibited ground.</p> <p>(Section 16(1)): No employer shall refuse to employ or continue to employ or otherwise discriminate against any person ... with respect to employment, or any term of employment on the basis of a prohibited ground.</p> <p>The definition of “disability” includes, but is not limited to, any degree of physical disability, infirmity, malformation or disfigurement; all illnesses; any degree of paralysis, amputation, lack of physical coordination or other impediment. Most work-related injuries are included in this list.</p> <p>While it is not a violation of Human Rights legislation for an employer to refuse to reinstate a disabled worker who cannot do a job, an employer is acting in a discriminatory manner when he or she assumes the disabled worker cannot do any job, based on no facts.</p> <p>The Saskatchewan Labour Standards Act, Section 44.3 states:</p> <ol style="list-style-type: none"> 1. Where an employee becomes disabled and the disability would unreasonably interfere with the performance of the employee's duties, the employer shall, where reasonably practicable, modify the employee's duties or reassign the employee to another job. 2. In any prosecution alleging a contravention of this section, the onus is on the employer to prove that it is not reasonably practicable to modify the employee's duties or reassign the employee to another job. 	<p>Labour Standards Act, Section 44.3</p> <p>Workers' Compensation Act, 1979, Section 51.1 & 104(4b)(ii)</p> <p>Saskatchewan Human Rights Code, Sections 9 & 16(1)</p>	<p>POL 06/2004 (Vocational Rehabilitation – Programs and Services)</p>	

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	<p>Although the employer does not have a duty to hire or reinstate an employee who is incapable of doing a job, the scope of the duty to accommodate is wide. Injured employees must show reasonable cooperation.</p> <p>The Workers' Compensation Act, 1979, Section 51.1, states that a worker shall:</p> <ol style="list-style-type: none"> 1. Take all reasonable action to mitigate the loss of earnings resulting from an injury; and 2. Where circumstances require, co-operate with the board in the development of a rehabilitation plan that is intended to return the worker to a position of independence in suitable productive employment. <p>Section 104(4b)(ii) further states that the Board may terminate or reduce payment to a worker of any compensation based on the worker's loss of earnings if, without good reason, the worker is not available or declines to accept a bona fide offer of employment in an occupation in which the worker is capable of engaging.</p> <p>One of the WCB policies referring to Return-to-Work plans (POL 08/96) says, "Where a collective agreement exists, the WCB expects the parties to establish appropriate procedures to accommodate Return-to-Work plans."</p> <p>The onus is on the employer to prove that all efforts have been made to accommodate a disabled employee. The courts have outlined a "hierarchy of accommodation" for employers to follow, with the objective of accommodating the disabled worker in a suitable position.</p> <p style="padding-left: 40px;">Step 1: Same job, modified: The disabled worker can return to his / her own job with either modified duties or changes in work schedule.</p> <p style="padding-left: 40px;">Step 2: Alternate job: The disabled worker performs another job in its existing form.</p> <p style="padding-left: 40px;">Step 3: Alternate job, modified: The disabled worker performs another job in a modified or rebundled form.</p> <p>Employers following the hierarchy of accommodation should be able to provide documented evidence that they have looked at all reasonable alternatives and exhausted all viable options. As each case will have its own unique merits it is ultimately up to the courts to decide whether the employer has or has not fulfilled their duty to accommodate.</p> <p>The WCB will assist employers to set up a Return-to-Work program or individual transitional Return-to-Work plan.</p>			
YT	Section 41 of the <i>Workers' Compensation Act</i> contains a mandatory accommodation provision.	Workers' Compensation Act (s. 41)	RE-04 RE-05 RE-06 RE-07-1 RE-07-2 RE-07-3 RE-08	

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