

Know your obligations after a workplace injury

(effective Sept. 1, 2018)

Every successful return to work starts with a great plan. New legislation effective Sept. 1 makes it even more important for all Alberta employers and their workers to work together to have a solid return-to-work plan in place when injuries happen.

Under the new legislation, offering your injured worker modified work is no longer an option, it's your responsibility.

This new legislation applies to most, but not all, employers and workers. There are some exceptions like short-term or seasonal employees, subcontractors, and people with personal coverage. [Find out more.](#)

What the legislation means for you

The concepts of modified work and accommodation are not new. In 2017, 93 per cent of injured workers returned to their date-of-accident employment, and 80 per cent of injured workers were placed in modified duties while they recovered.

Employers and workers are now expected to work together towards a return to the same job or an alternative job after a workplace accident, unless it impacts your ability to run your business.

If your injured worker has been an employee with your company for 12+ months, it's assumed that the injured worker will go back to work:

- As soon as they are able to perform their essential job duties in the same job or a job of equal value and pay.
- When they are fit for modified work or alternative work in the first available job.

WCB will work with you to help you bring your injured employees back to work safely. This legislation applies to all claims with a date of accident on or after Sept. 1, 2018.

Here are 10 things you should know about the new legislation:

1. How long does the obligation to reinstate last?

An obligation to reinstate ends when an employee declines to return to work. If your employee is terminated within six months of returning to work, WCB will presume that you did

not meet your obligation to return the employee to work, unless you can provide evidence that there was an appropriate and valid business reason to terminate the employee, unrelated to the work injury. (e.g., like a work shut-down or lay-off.)

If that can't be proven, the account may be penalized up to the equivalent of the worker's net salary for the year before the accident occurred.

2. Who's responsible for paying my injured worker's salary during their recovery?

WCB provides wage replacement benefits until your employee is able to return to work. If the employee has restrictions and an accommodation is required at fewer hours or a lower salary, WCB also pay a wage top-up benefit until they've recovered.

3. What if I can't afford to provide the worker with the required specialized equipment or facility changes that may be needed so they can safely return to work?

WCB is committed to providing financial assistance if equipment or facility changes are needed.

4. How much time do I have to find my worker employment after he/she is fit for modified work?

You must offer the worker the first suitable employment opportunity that becomes available once the worker is medically and physically capable to perform suitable work.

5. What's my injured worker's obligation in this process?

Both you and your injured worker are required to cooperate with each other and WCB in a safe return-to-work. This means maintaining communication throughout the recovery period and taking an active role in their return to work planning.

6. What happens if my injured worker doesn't cooperate?

If a worker does not cooperate as required by the legislation, we'll determine if there is a valid reason for not cooperating (e.g., health and safety concern, strike/lockout, death in the family, unexpected illness or accident, etc.) If there isn't a valid reason, we may reduce or suspend the compensation benefits to the worker.

7. What type of job do I have to hold for them?

You're expected to keep an employee's pre-accident job (or a similar job with the same earnings) for them to return to when they are able to do the essential parts of their job.

When an employee is fit for modified work (temporarily or permanently), you're also expected to provide the employee with the first available suitable position.

8. How is this different from duty to accommodate with Human Rights? Do both legislations apply to me?

All employers have a duty to modify the work or the workplace to accommodate the needs of a disabled worker under Canadian and Alberta human rights law.

Under the *Workers' Compensation Act*, WCB is responsible for determining whether an employer has met the obligation to accommodate the worker to the point of undue hardship.

To claim undue hardship, you will be required to complete a form that will ask for details and supporting documentation to confirm which factors your claim of undue hardship is based upon. These factors can include the size of your business, health and safety concerns and cost, to name a few. WCB staff can help guide you through this process.

If WCB determines that you have not fulfilled your obligation, you have the right to request a review or appeal of that decision through the normal WCB processes.

While WCB and Human Rights Commission may both hear complaints regarding duty to accommodate, WCB is required to provide the Human Rights Commission with notice that it is dealing with a dispute regarding this issue.

It is not expected that parties will be able to re-argue the same issue regarding duty to accommodate before both WCB and the Human Rights Commission.

9. How will this impact my claims costs and rates?

As always, providing suitable work (whether temporary modified work or a permanent alternate position) remains your best way to control claims costs and positively affect your premiums. If employers and workers work together towards a successful return to work, we actually expect claims costs to decrease.

Penalties related to this legislation will go into general revenues. As is our current practice, the levying of fines or penalties does not impact your premiums.

It is a separate program intended to gain compliance after education has not been successful and is implemented on a case-by-case basis. However, it may impact your participation in other programs like Partnerships in Injury Reduction or funding distribution.

10. I don't have a plan in place. How can WCB help?

More information about developing or formalizing your modified work plan can be found in the *Return to Work* section of on our website at www.wcb.ab.ca.

We offer a Modified Duty workshop in both Edmonton and Calgary that teaches you how to build an effective modified work plan.

For more details about this and other workshops we offer at Millard Health, please visit the Millard Treatment Centre section of our website.

Our Return-to-work planning seminar also helps you make sure a solid plan is in place to get your injured workers back to work safely.

Find out more in the *Resources > Seminars* and workshops section of our website.

[Click here](#) for more information about your responsibilities to continue paying your injured worker's health care benefits.

Still have questions? Please contact us toll-free at 1-866-922-9221.