

RE-EMPLOYMENT

Does Your Employer Have to Re-employ You After a Work-related Injury?

Your employer must offer to re-employ you after a work-related injury if:

- it regularly employs 20 workers or more, and
- it employed you for at least 12 continuous months before your injury.

Special rules apply to construction workers, seasonal workers, trainees, temporary help agency workers and contract workers.

Even if your employer has an obligation to re-employ you, you must still co-operate in early and safe return to work activities (see OWA Fact Sheet 10 called “Early and Safe Return to Work”).

When Must Your Employer Re-employ You?

When you are able to perform the **essential duties** of the job that you were doing at the time you were injured, your employer must:

- offer to re-employ you in the job that you did on the day of your injury, or
- offer to provide another job that is similar in nature and pays at least 90% of what you were earning before your injury.

Being able to perform the essential duties of the job means doing the job at a normal production level.

If you are unable to perform your pre-injury job, but are able to do some other kind of work, your employer must offer you the **first suitable employment** that becomes available. Work is considered suitable if you have, or are able to acquire, the necessary skills to perform the work without posing a health and safety risk to yourself or your co-workers.

If you were injured at work, you must inform the Workplace Safety and Insurance Board (WSIB) and your employer when you are able to perform the essential duties of your regular job or do suitable work. You must also tell WSIB about any material change in circumstances. See OWA Fact Sheet 7 called “Material Change In Circumstances”.

WSIB can notify you and your employer when it believes you are able to perform the essential duties of your job before the accident or do suitable work. Your employer can also contact you and WSIB if it believes it has a job available that you can do.

How Long Does Your Employer’s Re-employment Obligation Last?

Your employer must try to re-employ you until the earliest of the following:

- two years after the date of your injury,
- one year after WSIB advises the employer that you are able to perform the essential duties of your regular job,
- the day that you turn 65 years of age.

Is Your Employer Required to Take Steps to Help You Return to Work?

Yes. Your employer must accommodate you by changing your job or workplace, or by providing assistive devices that will help you to perform the essential duties of your regular job or another job. For example, your employer may have to change equipment, work schedules, or the way the work is done in an effort to make it easier for you to return to work.

Your employer can only refuse to make accommodations if it shows the expense would cause it undue hardship in terms of cost or health and safety requirements.

What If Your Employer Fires You After You Return to Work?

If your employer dismisses you after you return to work, you can object to WSIB. WSIB will investigate. If you are dismissed within **six months** of your return to work, the employer will have to show WSIB that the decision to dismiss you was not caused by your injury in any way. If you are dismissed more than **six months** after returning to work, WSIB will examine all the circumstances and decide whether your employer met its re-employment obligation.

If your employer dismisses you within **six months** of when you were rehired, then you must object to WSIB within **three months** of the date you were dismissed. If you wait longer, WSIB is not required to consider your objection.

What Does WSIB Do If Your Employer Fails to Meet Its Re-employment Obligation?

If your employer refuses to re-employ you, contact WSIB. You can ask WSIB to decide whether your employer has met its re-employment obligation. WSIB can decide if you are able to perform the essential duties of your old job or do other suitable work, and whether your employer has tried hard enough to accommodate your disability.

If WSIB decides your employer has not met its re-employment obligation, you are **entitled to full or partial re-employment payments**. These payments are in the same amount you would receive if you were entitled to loss of earnings benefits and they can last up to one year. In order to receive benefits, you must be available for and co-operate in a medical rehabilitation program, early and safe return to work activities, or a labour market re-entry assessment and plan. See OWA Fact Sheets 10 and 12 called “Early and Safe Return to Work” and “Labour Market Re-entry”.

WSIB cannot force your employer to re-employ you, but it can make the employer pay a substantial penalty if it does not.

Can You Appeal a WSIB Decision on Re-employment?

Yes, but you must object in writing within **30 days** of the date of the decision.

Can You Complain to the Ontario Human Rights Commission?

Yes, the Ontario Human Rights Code considers a workplace injury to be a disability and your employer must accommodate you. The duty under the Human Rights Code, to change your job or workplace, does not depend on how many people work for your employer and is not limited in time. You need to start a Human Rights complaint right away because there are time limits involved. Do not wait for WSIB to make a decision. You may contact the Ontario Human Rights Commission by phone at 1-800-387-9080 or visit their website address at www.ohrc.on.ca.

IMPORTANT INFORMATION

There are time limits for appealing WSIB decisions. If you wish to appeal a decision, contact a qualified representative as soon as possible. For more information on time limits, see OWA Fact Sheets 24 and 25 called “Appealing to WSIB” and “Appealing to WSIAT”.

This Fact Sheet contains general information only. It is not a legal document. To see what the law says, you should look at the Workplace Safety and Insurance Act and WSIB policies. If you require help and do not have a union to assist you, contact the Office of the Worker Adviser:

- Our toll free telephone number is 1-800-435-8980 (English) or 1-800-661-6365 (French)
- or visit our website at <http://www.owa.gov.on.ca>

Cette feuille-info est aussi disponible en français

