

SafeCareBC

Duty to Cooperate Duty to Maintain Employment

May 16, 2024

Topics covered

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Purpose of the new legislation

- Provides legal framework
- Establishes duty of cooperation
- Establishes duty to maintain employment
- Provides financial consequences
- Leads to better outcomes

“People injured on the job need to know that there is a workers' compensation system that meets their needs ... With these changes, we're making sure that workers are properly supported when they need it the most.”

Harry Bains, Minister of Labour



Duty to cooperate

- 1 **Duty to cooperate** – Adds legal duty for workers and employers to cooperate in the worker's early and safe return to work (RTW), or continuation of work
- 2 Duty to maintain employment
- 3 Consequences of non-compliance

Duties

Employer

- Maintain contact.
- Identify suitable work options.
- Make available suitable work.

Worker

- Maintain contact.
- Identify suitable work options.
- Not unreasonably refuse suitable work.

WorkSafeBC

- Facilitate communication.
- Assist with RTW planning.
- Intervene and resolve disputes in a timely way.
- Determine compliance.

Application of the duty to cooperate

What claims are impacted?

All **accepted** claims where the worker is disabled from earning full wages.

When does duty to cooperate start?

Begins from the date of the worker's injury, date of psychological change, or date of disablement.

When does the duty to cooperate apply?

All claims with a date of injury after January 1, 2022; and,
All decisions **after** January 1, 2024.

Duration of the obligations

Continues throughout the entire claim or as long as the employment relationship exists.

When doesn't the duty to cooperate apply?

Health care only claims or preliminary determinations.

Question...

Do I need medical approval to offer suitable work?

Duty to maintain employment (DTME)

- 1 Duty to cooperate
- 2 **Duty to maintain employment** – Adds legal duty for eligible employers to maintain employment of an injured worker
- 3 Consequences of non-compliance

Duties

Employer

- Offer and provide suitable work in accordance with worker's abilities.
- Accommodate worker (to point of undue hardship).

Worker

- Update employer on abilities.
- Participate in suitable or accommodated work offer.
- Inform WorkSafeBC if terminated due to injury.

WorkSafeBC

- Perform essential duties.
- Assess in determining functional abilities.
- Assist with RTW planning.
- Resolve disputes.
- Determine compliance.

Application of the duty to maintain employment

What claims are impacted?

All **accepted** claims where employers and workers meet the eligibility criteria, and the worker is disabled from earning full wages.

When do the obligations start?

Begins from the date of the worker's injury, date of psychological change, or date of disablement.

When does the DTME apply?

All claims with a date of injury after July 1, 2023, and all decisions **after** January 1, 2024.

Duration of the obligations

As long as the employment relationship exists: Obligation to offer RTW varies based on the worker's RTW status. And obligation to make changes to the work or workplace to accommodate worker is ongoing.

When doesn't the DTME apply?

Terminations occurring before January 1, 2024, health-care care only claims, or preliminary determinations.

When the duty to maintain employment obligations end

By the second anniversary of the date of injury, date of psychological change, or date of disablement:

If the worker:	The employer's obligation:
Has returned to pre-injury or alternative work.	To make changes to the work and/or the workplace to accommodate the worker is ongoing
Is carrying out suitable work.	<ul style="list-style-type: none">• To offer the pre-injury or alternative work ends• The obligation to make or maintain changes to the work and/or the workplace is ongoing
Has not returned to work.	Under the duty to maintain employment ends
Has voluntarily severed employment or the employment relationship ended.	Ends when there is no longer an existing employment relationship

Consequences of non-compliance

- 1 Duty to cooperate
- 2 Duty to maintain employment
- 3 **Consequences of non-compliance** – Adds legal authority to impose administrative penalties, reduce or suspend wage-loss equivalency benefits, and entitle worker benefits

Impacts

Employer

- Administrative penalties for employer if they fail to cooperate or maintain employment.

Worker

- Workers' benefits may be reduced or suspended for failing to cooperate.
- Entitlement to specialized benefits where employer failed to comply.

WorkSafeBC

- Adjudicate failure to comply with law and policy.
- Determine and impose penalty amounts.
- Payment of benefits.

Question...

If an external applicant is a stronger candidate for a job,
do I have to give it to the injured worker?

Question...

If there is no suitable work,
am I required to create a new position?

Collective agreements

RTW obligations and collective agreements

Section 154.4

1. If any of the duty to cooperate or duty to maintain employment obligations conflict with a term of a collective agreement that is binding on an employer in relation to a worker, the section in conflict prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement.
2. This section does not operate to displace a term of the collective agreement that deals with seniority.

When there is a conflict between the new obligations and a collective agreement, the rule or provision that provides the most favorable return to work options will prevail – except where seniority is a factor.

Communication

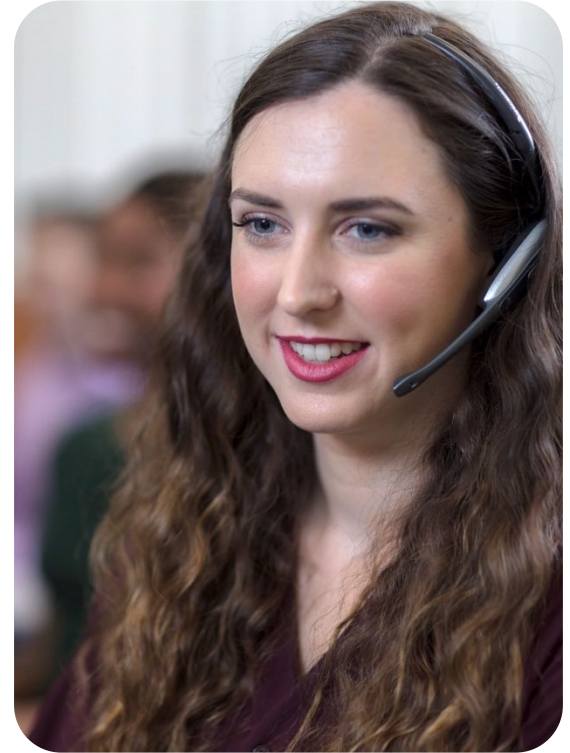
Communication and Confidentiality

The employer is allowed to access information that they require to operate their business. The amount and type of information disclosed to an employer about an injured worker may include:

- A workers' functional abilities and restrictions
- When the injured worker is expected back to work
- Whether the injured worker will need temporary modified duties (suitable work) upon return to work
- Return to work hours
- Recommended workplace accommodations or considerations to facilitate RTW

Role of WorkSafeBC

- Facilitate communication
- Return to work planning consultation and support
- Address disputes around suitability of a return-to-work plan
- Determine compliance



Key takeaways



**New legislation in
effect as of
January 1, 2024**



Duty to cooperate



**Duty to maintain
employment**



**Consequences for
non-compliance**

Need help?

RTW Consultation and Education Services

Self-help tools

Online tools to help guide employers in managing RTW and developing RTW programs

Short-term interventions

Focused assistance to address employers' issues and to improve their RTW performance

Early access to physio program

Direct access to physiotherapy clinic with treatment and RTW planning for qualified employers

RTW training and education

- RTW for leaders
- RTW for supervisors
- RTW coordinator workshop

Employer RTW support

Help line and email to provide employers with RTW support and advice: 1.877.633.6233
rtw-ces@worksafebc.com

Engagements

Partnership with employers to provide RTW program consultations

Mental Health Resources

Resources



How to support workers who experience psychological injuries

This resource is designed to help employers develop an appropriate stay-at-work or return-to-work plan for a worker experiencing a psychological injury. It lists ways employers can support and protect...

Publication Date: Apr 2024 |  PDF | [Guide](#) |  [Download](#) | [Preview](#)



Return-to-work strategies to support workers who experience psychological injuries: A resource for employers

Safely returning to or remaining at work following a psychological injury requires collaboration between the injured worker and their employer. This guide is designed to help employers find actionable...

Publication Date: Apr 2024 |  PDF | [Guide](#) |  [Download](#) | [Preview](#)

Contact

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Return to Work Consultation and Education Services

Employer Support Line

Staffed by RTW Specialists

Will provide assistance and answers to questions about building your RTW program

How to contact us

Email: RTW-CES@worksafebc.com

Phone: 604.279.8155 (Lower Mainland)

Toll-free: 1.877.633.6233

Hours of operation: Monday to Friday (excluding holidays), 8:30 a.m. to 4:30 p.m.





Q and A