

Wellness

"... with this new language within the Workers' Compensation Act, WSBC has an increased ability to provide resources to help facilitate reasonable accommodation, as well as an ability to enforce compliance..."

by

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WorkSafeBC's Duty to Cooperate and Duty to Maintain Employment for Injured Workers

On **January 1, 2024**, WorkSafeBC (WSBC) incorporated Compensation to Injured Workers and Their Dependents, Division 3.1, Sections 154.1 to 154.6 into Part 4 of the Workers Compensation Act. Specifically, two sections – Section 154.2, the duty to cooperate, and Section 154.3, the duty to maintain employment – set out the obligations for employers and workers to cooperate in a timely and safe return to work. In addition, this language defines the requirements for employers – including school districts – to maintain employment with their injured workers.

According to WSBC, the goal of this new legislation is to recognize that there are benefits to injured workers when they remain connected to employment following a workplace injury, including:

- Promotion of a timely, suitable, and durable return or continuation of work
- Preservation of, or restoration of, employment relationships
- Reduction in the risk of joblessness and worklessness, and potentially reduction of the financial impact of the workplace injury

The Duty to Cooperate

Under Division 3.1, Section 154.2 of the Workers Compensation Act, **the duty to cooperate** creates obligations for workers and employers to cooperate with each other, and with WSBC, to identify and make suitable work available to workers in a timely and safe manner following an injury.

The Employer and Worker expectations include:

The Employer

- Is to contact the worker as soon as practicable after the worker is injured to maintain communication (except where communication with the worker may cause harm or delay recovery).
- Is to identify and make available suitable work that, where possible, restores the full wages the worker was earning pre-injury.
- Is to provide WSBC with information required to help the worker return or continue to work.

The Worker

- Is to contact the employer as soon as practicable after the injury and maintain communication (except where this may cause further harm or a delay in recovery).
- Is to assist the employer to identify suitable work.
- Is to provide WSBC with information required to help return or continue to work.
- Is to not unreasonably refuse suitable work when offered at any time from the injury employer.

The duty to cooperate legislation applies to all claims with a date of injury after January 1, 2022, and all decisions after January 1, 2024.

The Duty to Maintain Employment

Under the duty to maintain employment, a school district has an obligation to maintain the employment of an injured worker who has been employed at that district for at least one year prior to their injury.

If a worker is fit to carry out the essential duties of their pre-injury work, the employer must:

1. Offer that pre-injury work to the worker, or
2. Offer to the worker alternative work of a kind and at wages that are comparable to the worker's pre-injury work and wages

If a worker is fit for work, but not fit to carry out the essential duties of their pre-injury work, an employer must offer the first suitable work that becomes available.

The employer must make any changes to the work or workplace necessary to accommodate, up to undue hardship. Undue hardship is determined upon the specifics of each case. There are limits to this obligation; examples include accommodations which are unsafe, or which impact the seniority clauses in collective agreements. The accommodation does not need to be the worker's preferred accommodation: the employer only needs to provide a reasonable option. Simply because an accommodation may require a financial investment from the district does not make it an undue hardship.

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If an employer terminates a worker's employment six months after the worker begins carrying out suitable work or the essential duties of their pre-injury job, the employer may be found to have failed in their duty to maintain employment.

The duty to maintain employment legislation applies to all claims with a date of injury after July 1, 2023, and all decisions after January 1, 2024.

Non-compliance

Division 3.1, Section 154.5 defines the consequences for employers who breach their Return to Work (RTW) obligations under the duty to cooperate and duty to maintain employment. Workers, however, also may experience consequences should they not cooperate in the accommodation process. For example, workers who do not cooperate, or who do not accept reasonable accommodation offerings, may have their WSBC compensation benefits suspended or reduced. Meanwhile, employers who are not in compliance may be charged with financial penalties. In addition, workers may continue to receive wage loss benefits, even if they are fit to return to work, if the employer does not provide suitable opportunities. It is the role of WSBC to determine whether there has been non-compliance and to establish any potential penalty.

Members Needing Accommodation

While the percentage of Principals and Vice-Principals injured at work remains low, there has been an increase in accepted WSBC claims for school administrators over the past few years. Principals and Vice-Principals returning

to work after recovering from these injuries often need temporary accommodation to reintegrate them into the workplace. A smaller number require permanent changes to some components of their jobs in order to safely return to work. While accommodating teachers and support staff seems to happen regularly, accommodating school-based leaders is often challenging due to the complexities of their roles.

This new legislation in the Workers Compensation Act does reinforce what is already required under the BC Human Rights Act, but only for workplace injuries causing wage loss that are accepted by WorkSafeBC. The BC Human Rights Act still requires employers to accommodate employees regardless of whether their medical condition is work or non-work related.

Unfortunately, and particularly since the pandemic, individuals launching BC Human Rights complaints for workplace accommodation face a slow and tedious process. In addition, many Principals and Vice-Principals believe that asking for accommodation reflects negatively on them, and that this may threaten their career prospects. However, with this new language within the Workers' Compensation Act, WSBC has an increased ability to provide resources to help facilitate reasonable accommodation, as well as an ability to enforce compliance through penalties (for both workers and employers). This is expected to reduce the overall impact on workers by enabling them to remain employed at their pre-injury salary, to reduce the overall Workers Compensation costs for employers, and to ultimately speed up the time required to reach an acceptable accommodation agreement. Ideally, this will result in a better outcome for all!

For More Information



The Employer's
Page

The Worker's
Page



On the WorkSafeBC website, the **Employers' page** and **The Workers' page** provide more information on the legislation, including:

- WorkSafeBC YouTube presentations that explain the legislation and how it will be applied
- Employer and Worker fact sheets
- Detailed policy and practice directives related to administration of the legislation

If you are looking for ideas on how to accommodate your specific health condition so that you can attend work more regularly and be more productive, you may find tips when you visit specific association websites, such as the Arthritis Society of Canada or BC Cancer, or you can try the Job Accommodation Network and search for your condition for reasonable accommodation considerations.

The Job
Accommodation
Network



If you have a health condition that you believe may require workplace accommodation, please feel free to reach out to me at Rochelle@bcvpva.bc.ca