

Do Employers Have to Re-Employ Injured Workers? – Ask The Expert



The human rights law duty to accommodate injured workers applies regardless of what workers comp requires.

QUESTION

Are we legally obligated to re-employ an injured worker returning from a work injury?

ANSWER

Yes, if you determine that there's suitable work that the worker is capable of doing.

EXPLANATION

The duty to re-employ injured workers is complicated because it comes from 2 different laws:

- **Workers Comp laws** of 8 jurisdictions (MB, NB, NL, NS, ON, PEI, QC and YK) expressly require employers to re-hire workers after they suffer workplace injuries; and
- **Human Rights laws** require employers to make accommodations for workers with disabilities.

Keep in mind that most work-related injuries would constitute disabilities under human rights laws. **Translation:** All injured workers are entitled to accommodations to the point of undue hardship. And unlike workers comp re-employment requirements, the duty to accommodate applies in all parts of Canada. In addition, the limitations that typically apply to workers comp re-employment (for example, they apply only to companies with at least a specific number of employees and to employees with a specific minimum amount of service) don't apply to accommodation duties.

However, unlike the workers comp laws, the accommodation laws don't specifically require employers to re-employ their injured workers. That may be a required accommodation; or it may be undue hardship. It all depends on the specific situation, especially the availability of suitable work. The one constant is that employers must at least consider accommodations, specifically by assessing the worker's capabilities and determining if there are jobs suitable for those capabilities.

