Do Injured Employees Have the Right to Return to Work?



QUESTION

Is our company legally obligated to implement a return-to-work policy for injured employees?

– Name withheld

ANSWER

Although highly advisable, implementing a RTW program is not technically required by law. But you do have legal obligations to return injured employees to work. Those obligations vary depending on which jurisdiction you're subject to.

EXPLANATION

There are 3 potential sources of an employer's duty to implement a RTW program for injured employees:

1. **Human Rights Laws**

All 14 jurisdictions ban disability-related discrimination and require employers to make reasonable accommodations for employees with disabilities to the point of undue hardship. So, to the extent that the injury/illness qualifies as a disability, a strong case can be made that RTW is required under human rights laws. More precisely, employees can argue that the duty to accommodate requires employers to return them to suitable work that they're capable of performing—whether that's their previous, a modified or a new position.

2. **Employment Contract**

The duty to return an injured employee to work might also be required under the terms of the employee's collective agreement (or individual employment contract if the employee isn't in a union).

3. **Workers' Comp Laws**

Six provinces (MB, NL, NS, ON, PE and YK) impose specific RTW obligations on employers in their workers' comp laws; similar obligations apply to federally

regulated employers under the *Canada Labour Code*. Although the details differ, these laws impose 3 basic RTW duties on employers:

- **Duty to Cooperate:** NL, ON, PE and YK require employers to cooperate in the RTW process. This typically involves contacting the employee as soon as possible after the injury and explaining the RTW process. Although not specifically required, best practices and workers' comp guidelines dictate that employers devise a written RTW process for the workplace that involves creating individualized RTW plans for each injured employee and working with the employee to implement that RTW plan.
- **Duty to Communicate:** RTW jurisdictions require the employer to notify the workers' comp board of developments in the case and provide any information requested.
- **Duty to Re-Employ:** The objective of the RTW process and plan is to provide the injured employee work that is meaningful, suited to his functional capabilities and, if possible, in line with the employee's pre-injury earnings. There are 3 basic outcomes:
- *First choice: Pre-injury job*: You must restore the employee to his pre-injury position if he's capable of performing the "essential duties" of the job;
- *Second choice: Alternative employment:* If reinstatement to the pre-injury job isn't in the cards, you must offer the employee "alternative employment" comparable to his pre-injury position in terms of the nature of the work, earnings, qualifications, opportunities, etc.; and
- *Third choice: Suitable work*: The third choice is to offer the employee "suitable work" that he has the skills and is medically fit to perform that doesn't pose a health or safety hazard to him or his co-workers to the extent that such work becomes available.

Bottom Line: RTW Saves Money

In addition to being a best practice and crucial to compliance, implementing an RTW program at your workplace makes economic sense. RTW programs are not costly; by the same token, restoring employees to productive, suitable work as soon and safely as possible yields significant benefits including cost savings, greater productivity and improvements in morale.

This table spells out the general employers' return-to-work duties under the OHS and workers' comp laws in each jurisdiction.

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I hope that answers your question.