Re-Employment Quiz



Which Injured Employees Are Entitled to Re-Employment?

SITUATION

Five employees of ABC Company, a manufacturing plant that employs over 100 workers, want to return to work after missing time with a work-related injury:

Andy is eager to return but not medically capable of working;

- Beverly was offered reasonable modified work but turned it down and wants a new offer;
- Clark wants his old job back but can no longer do the job productively;
- Danielle refuses to let the doctor release her medical records; and
- Ed, who's been with the company for 6 months, is willing to accept any reasonable job

QUESTION 1: Does ABC Have to Offer Andy a Job?

Answer: No.

Explanation: The obligation to re-employ requires employers to offer injured employees not just any job but a job that's commensurate with their current occupational capabilities. Andy isn't medically capable of working yet. Unless and until that changes, ABC need not—and should not—offer to re-employ him.

QUESTION 2: Does ABC Have to Make a New Re-Employment Offer to Beverly?

Answer: No

Explanation: Employers must offer injured workers suitable employment, which may require making reasonable accommodations that allow the employees to do the job in their current medical condition. But employees also have an obligation to cooperate in the process. Part of that obligation is to accept reasonable offers of employment. Rejecting reasonable employment, like Beverly did, normally discharges the employer and ends its re-employment obligations to the employee.

QUESTION 3: Must ABC Let Clark Have His Old Job Back If He Can't Do It Productively?

Answer: No.

Explanation: Employers need only make accommodations that are reasonable. Letting an employee do a job he can't do a job safely and in accordance with the company's reasonable productivity standards goes beyond reasonable and imposes undue hardship on an employer. So ABC wouldn't have to let Clark have his old job—although it does have to offer him suitable *alternative* employment.

QUESTION 4: Must ABC Offer Alternative Employment to Danielle if She Won't Release Her Medical Records?

Answer: No.

Explanation: Although it's her right under privacy laws, Danielle's refusal to authorize disclosure of her medical records is a violation of her duty to cooperate in the vocational rehab/RTW process. Result: Like Beverly in Example B, Danielle forfeits her right to accommodation and re-employment.

QUESTION 5: Must ABC Re-Employ Ed?

Answer: No.

Explanation: The good news for Ed is that, unlike his co-workers, he's acting reasonably and showing the necessary good faith and cooperation. The bad news for Ed is that he's only been with ABC for 6 months. Re-employment obligations depend on the applicable workers' compensation and employment legislation and vary by jurisdiction. Eligibility criteria, including service requirements, are not uniform across Canada. Result: ABC can but doesn't have to let Ed participate in its vocational rehab/RTW process.