

Employer fact sheet

Duty to maintain employment

What is the duty to maintain employment?

If you're an employer in B.C. who regularly employs 20 or more workers, you have a *duty to maintain employment* of certain workers if they have an accepted WorkSafeBC claim for a work-related injury or illness. You must maintain employment of injured workers you've employed full time or part time for at least 12 continuous months before their date of injury.

The duty to maintain employment may involve returning the worker to their pre-injury work, providing alternative work, or providing suitable work. It includes making changes to the work or workplace necessary to accommodate the worker to the extent that the changes don't cause you undue hardship.

What do employers who have a duty to maintain employment need to do?

If a worker is fit to carry out the essential duties of their pre-injury work, with or without accommodation, you must offer the worker their pre-injury work or alternative work that is comparable in duties and earnings.

If a worker is not fit to carry out the essential duties of the pre-injury work, with or without accommodation, but can work in some capacity, you must offer them the first suitable work that becomes available.

You must also make changes to the work or workplace necessary to accommodate a worker, to the extent that the accommodation doesn't cause you undue hardship.

The obligations brought on by the duty to maintain employment are effective as of January 1, 2024, and apply to claims with a date of injury on or after July 1, 2023.

What happens if I don't comply with the duty to maintain employment?

If there are disputes about your compliance, WorkSafeBC will work with you to find a resolution and identify potential suitable work opportunities.

We'll contact you to explain the requirements to meet the obligations, understand your reasons for not complying, and collaborate with you to find possible solutions. If WorkSafeBC decides you have not met your obligations to maintain a worker's employment, you may have to pay an administrative penalty.

What happens if I don't comply with the duty to maintain employment and the duty to cooperate?

If you fail to cooperate in the worker's timely and safe return to, or continuation of, work and fail to maintain the worker's employment during an overlapping period in the same claim, we'll apply a single penalty. This penalty will be the higher of the two individual penalties.

If you fail to cooperate and fail to maintain a worker's employment at different times in the same claim, we may apply more than one penalty.

See our fact sheet on the [duty to cooperate](#) for more information.

How will this impact my claims costs and rates?

Providing suitable work to injured workers remains one of the best ways to save on your claims costs and insurance rates. By creating a safer and healthier workplace and helping injured workers recover at work, you can positively impact your industry's claims costs and reduce the amount you pay for insurance rates.

The longer a worker remains disengaged from their colleagues and your workplace, the more claim costs accrue, which puts more pressure on the insurance rates for your industry. When you provide injured workers with suitable work that maintains their positive connection to the workplace, it can result in lower claims costs, which puts less pressure on the insurance base rates for your industry.

What part do injured workers who are covered by the legislation play?

While workers don't have any obligations under the duty to maintain employment, they do have responsibilities under the duty to cooperate. See our fact sheet on the duty to cooperate for more information.

Workers are told to notify us if they feel their employer has not met their obligations under the duty to maintain employment.

How long does the duty to maintain employment last?

The duty to maintain employment is ongoing until the second anniversary of the date the worker was injured or disabled. As of the second anniversary:

- If the worker has not returned to work, your obligations end.
- If the worker has returned to work and is carrying out suitable work, your obligation to offer pre-injury or alternative work ends.
- If the worker has returned to work and is carrying out pre-injury work, alternative work, or suitable work, the obligation to make changes to the work and/or workplace necessary to accommodate the worker's injury is ongoing.

If a worker voluntarily ends the employment relationship, your obligations under the duty to maintain employment generally conclude.

What happens if I terminate an injured worker after their return to work?

If you terminate an injured worker within six months of the worker returning to pre-injury work, alternative work, or suitable work, you'll be presumed to have failed in your duty to maintain employment unless you can establish the termination wasn't related to the injury.

If a worker is terminated after six months, you will no longer be presumed to have failed in your duty to maintain employment; however, we may investigate further.

What happens if this legislation conflicts with a collective agreement?

Where the duty to maintain employment conflicts with a term of a collective agreement, the *Workers Compensation Act* prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement. However, seniority-based terms in a collective agreement are unaffected by the duty to maintain employment.

What happens if a worker and I have a disagreement about the duty to maintain employment?

You're encouraged to work together to resolve disagreements. Where required, WorkSafeBC will attempt to facilitate a resolution to any unresolved disagreements.

I still have questions. How should I contact you?

Please visit gems.online.worksafebc.com/emailus to send us questions about your duty to maintain employment. Under "General inquiries," select "Duty to cooperate and duty to maintain employment" as the subject of your email.