Welcome to the Bill 41 Provider Info Session

Duty to Cooperate and Duty to Maintain Employment

Agenda

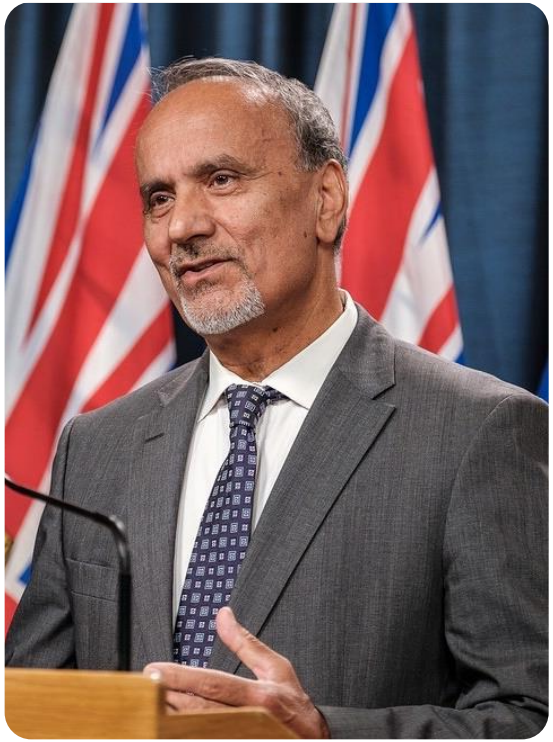
1. Legislation overview
2. Duty to cooperate
3. Duty to maintain employment
4. What this means for you as a Provider
5. Readiness Activities
6. Q&A

Goal of the new legislation

Recognize the benefits of injured workers remaining connected to employment following a workplace injury or illness:

- Timely, suitable, and durable return to or continuation of work
- Preserves or restores employment relationships
- Reduces risk of joblessness, worklessness, and may reduce the financial impact of the workplace injury

> People injured on the job need to know that there is a workers' compensation system that meets their needs … With these changes, we're making sure that workers are properly supported when they need it the most."
>
> The Honourable Harry Bains, Minister of Labour



Division 3.1 of the *Workers Compensation Act*

Section 154.1	Applies to allowed claims where there is an impact on worker's income due to a work-place injury, mental disorder and occupational disease.
Section 154.2	The **duty to cooperate** requires workers and employers to cooperate with each other and WorkSafeBC.
Section 154.3	The **duty to maintain employment** requires an employer to maintain a worker's employment.
Section 154.4	Sets out how these new obligations interact with collective agreements.
Section 154.5	Financial consequences for employers who breach their RTW obligations under the duty to cooperate and duty to maintain employment.
Section 154.6	The Lieutenant Governor in Council may make regulations prescribing classes of employers or workers, or prescribing industries or classes of industries for S.154.3(c).

New key terms

Essential duties

- Core tasks that must be performed to meet job requirements
- Replaces 'critical job demands’

Suitable work

- Safe, productive, and meaningful
- Within workers capabilities and skills
- Modified, light, different duties

Overview: Duty to cooperate

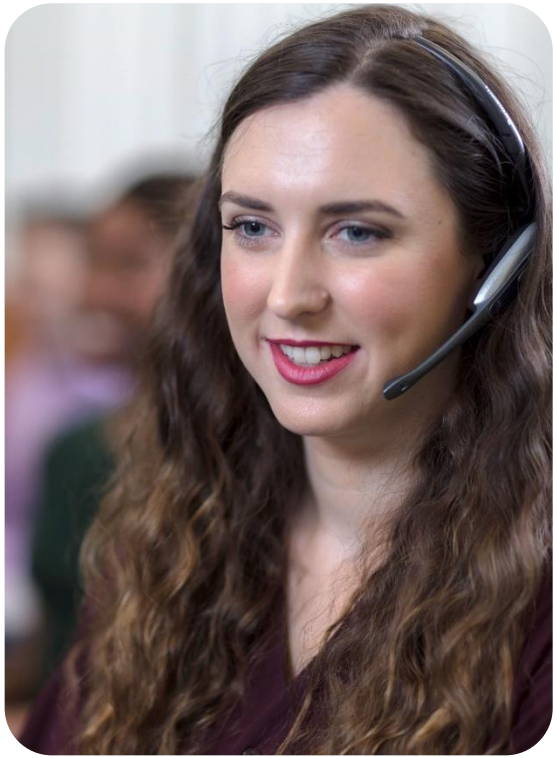
Understanding duty to cooperate

The worker and employer are to:

- **Get in contact** as soon as practicable after the worker is injured and maintaining communication with the worker
- **Cooperation obligation exception** is when these interactions are likely to significantly worsen the worker's physical or mental health or would have a **negative impact on their recovery**
- **Work together in identifying suitable work** for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work
- **Providing** the Board with **information** the Board requires in relation to the worker's return to, or continuation of, work
- **Make available** the identified suitable work to the worker, **not unreasonably refuse** suitable work when offered by **any** time of injury employer

Role of WorkSafeBC

- Facilitate communication
- Return to work planning consultation and support
- Address disputes around suitability of a return-to-work plan
- Determine compliance



Application of the duty to cooperate

What claims are impacted?	All **accepted** claims where the worker is disabled from earning full wages.
When does duty to cooperate start?	Begins from the date of the worker's injury, date of psychological change, or date of disablement.
When does the duty to cooperate apply?	All claims with a date of injury after January 1, 2022; and, All decisions **after** January 1, 2024.
Duration of the obligations	Continues throughout the claim; or, as long as the employment relationship exists.
When doesn't the duty to cooperate apply?	Claims without time-loss.

Overview: Duty to maintain employment

Understanding duty to maintain employment

- If a worker can **carry out the essential duties** of their pre-injury work, the employer must offer that **pre-injury work** to the worker, or offer **alternative work** that is **comparable** to the worker's pre-injury work and wages.
- If a worker can work but **unable to carry out the essential duties** of their pre-injury work, an employer **must offer** to the worker the **first suitable work** that becomes available.
- An employer must, to the point of **undue hardship**, make **any change to the work or the workplace** that is necessary to accommodate a worker.
- If an employer **terminates** a worker within 6 months of starting suitable work or doing the essential duties of their pre-injury or alternative work, they might have failed their duty to maintain employment.

Application of the duty to maintain employment

What claims are impacted?	All **accepted** claims where: • Employers and workers meet the eligibility criteria; and, • The worker is disabled from earning full wages
When do the obligations start?	Begins from the date of the worker's injury, date of psychological change, or date of disablement
When does the DTME apply?	All claims with a date of injury after July 1, 2023; and, All decisions **after** January 1, 2024
Duration of the obligations	As long as the employment relationship exists: • Obligation to offer RTW varies based on the worker's RTW status • Obligation to make changes to the work or workplace to accommodate worker is ongoing
When doesn't the DTME apply?	• Terminations occurring before January 1, 2024 • Claims without time-loss.

Eligibility criteria

The duty to maintain employment

Criteria

Duty to maintain employment

- **Employer size (20 or more workers)**
- **+**
- **Duration of employment (12 months continuous full or part-time work)**

Factors

Employer size (20 or more workers)

- 20+ workers employed on date of injury
- Consideration of seasonal fluctuations
- Reported to Canada Revenue Agency; or earnings reported to Assessments

Duration of employment (12 months continuous full or part-time work)

- Series of employment contracts
- Layoffs:
  - Less than 3 months
  - Greater than 3 months with set recall date
- Includes WSBC claim, leaves of absence, strike, lockout

Exemptions

The duty to maintain employment does not apply to:

- Individuals deemed as workers by the *Act* (public interest undertakings, vocational/training programs, work study)
- Industries or class of industries prescribed by the Lieutenant Governor in Council

Managing non-compliance

Potential compliance issue

WorkSafeBC steps

- Assess actions from perspective of a reasonable person
- Considers individual circumstances
- Monitor claim and continue follow-up
- Determine meaningful action
- Reinstate benefits prospectively

Worker:

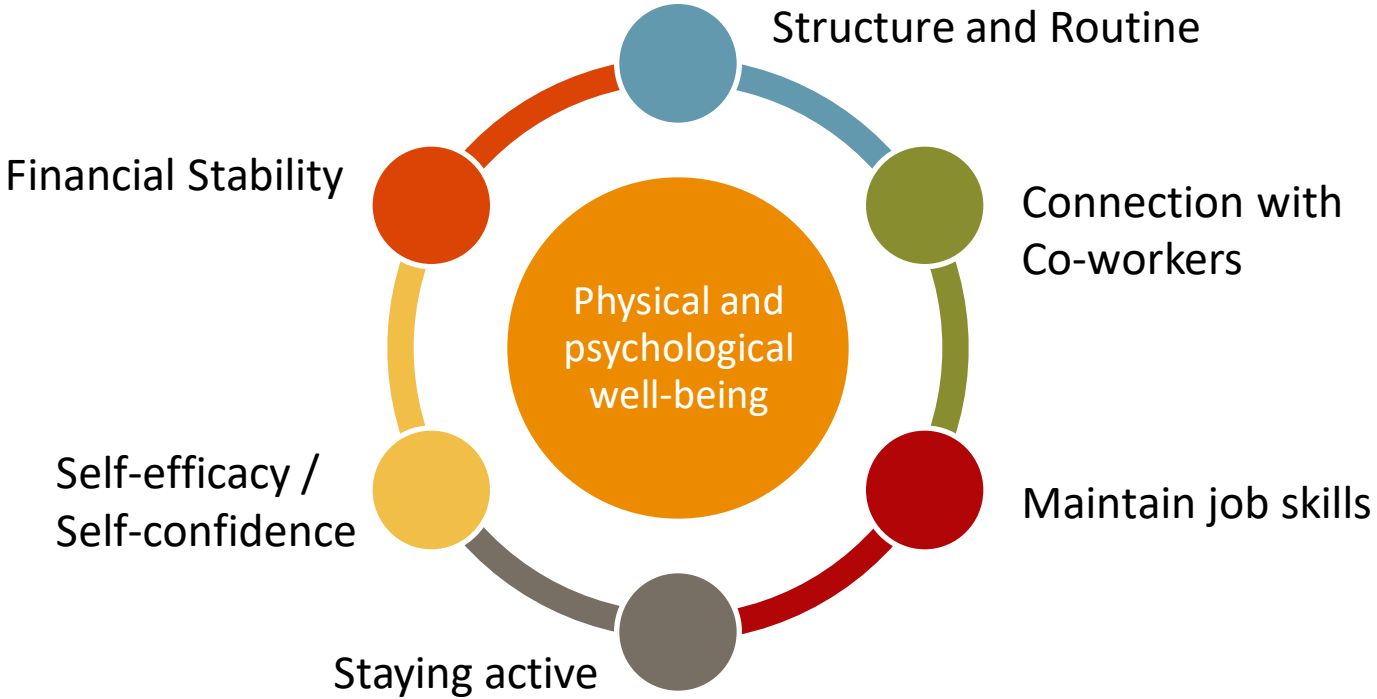
Suspension or reduction of compensation benefits

Employer:

Administrative penalties

What this means for you as a Provider

Return to work is good medicine



Suitable work

Safe

- Doesn't pose a risk to worker or others

Productive and Meaningful

- Provides objective benefit to the employer's business
- Not token or demeaning

Skills, Competencies, Qualifications

- Has, or is reasonably able to acquire, the necessary skills, competencies, or qualifications

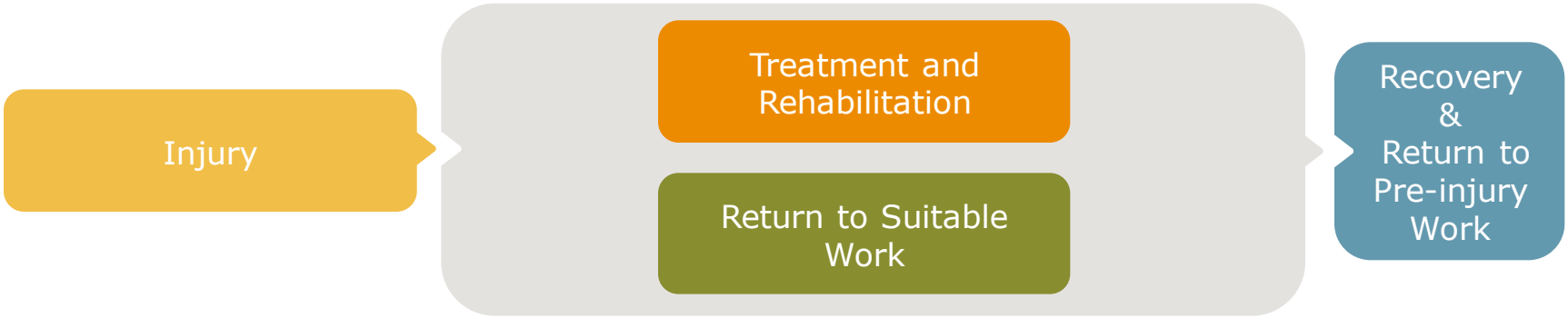
Within Abilities

- Physical and cognitive
- Based on self-report and/or clinical input

Integrating Recovery and Return to Work

Traditional Process

Integrating Recovery and Return to Work



What this means for you as a Provider

- You may hear from Employers earlier and more often in a worker's recovery
  - Requesting information about a worker’s functional abilities
  - Asking for assistance in determining suitable work and/or return-to-work planning
- Balancing treatment and work schedules
- Workers and employers may explore return-to-work options across departments or outside their usual role in the workplace
- Program goals may look different (return to suitable work vs return to regular/essential work)

How health care providers can help

- Support timely, safe, and suitable return-to-work as part of the recovery process
- Focus on what the worker can do, not what they can’t do
- Provide objective, accurate and timely medical information
- Educate workers on their injury and how work can support recovery
- Liaise with other involved healthcare providers to support return to work.

Communication and Confidentiality

The employer is allowed to access information that they require to operate their business. The amount and type of information disclosed to an employer about an injured worker may include:

- A workers' functional abilities and restrictions
- When the injured worker is expected back to work
- Whether the injured worker will need temporary modified duties (suitable work) upon return to work
- Return to work hours
- Recommended workplace accommodations or considerations to facilitate RTW

Wrap-up

Readiness activities

- Employer info session
- Worker info session
- Health care provider info session
- Outreach to associations
- Updates to WorkSafeBC.com
    - Fact Sheets/FAQ