Provider Information Session Q&A

November 29, 2023

On November 29, 2023, WorkSafeBC held an information session for health care providers on the duty to cooperate and duty to maintain employment amendments to the *Workers Compensation Act*, effective January 1, 2024.

This document provides responses to the questions attendees submitted during that session. The questions have been grouped into the following themes:

- General information about the legislative amendment
- Worker and employer communication
- Suitable work and RTW planning
- WorkSafeBC processes and resources
- Confidentiality
- General questions

You can also view a recording of the session and download the presentation slides.

Learn more

For more information about these changes, visit the worksafebc.com pages below. If you have additional questions, you can email us.

Bill 41 amendments:

- Bill 41: Amendments to the *Workers Compensation Act*

Duty to cooperate and duty to maintain employment:

- Employers: Duty to cooperate and duty to maintain employment
- Workers: Duty to cooperate and duty to maintain employment

Return to work:

- Employers: Return-to-work information
- Workers: Return-to-work information
- Health care providers: Return-to-work information

General information about the legislative amendment

When are the return-to work (RTW) obligations in effect?

The duty to cooperate and duty to maintain employment came into effect on January 1, 2024.

Do these obligations apply to claims started before January 1, 2024?

The duty to cooperate generally applies to workers injured on or after January 1, 2022, and the duty to maintain employment generally applies to workers injured on or after July 1, 2023.

Worker and employer communication

How often are workers and employers expected to communicate?

Workers and employers are expected to make reasonable efforts to contact each other promptly after the injury and to remain in regular contact throughout the recovery process. While workers are expected to initiate contact with the employer as soon as practicable, there is no fixed rule or timeline.

The frequency for ongoing communication should be based on what the worker and employer agree to be reasonable given the specific circumstances of that case and will vary throughout the claim. The frequency of contact may depend on factors such as severity of the injury, availability of the individuals involved, the nature of the workplace, and the progress of the worker's recovery and RTW planning.

Is speaking with a representative sufficient to meet the communication obligations under the duty to cooperate?

The worker or employer may designate a representative to communicate and collaborate with the other party. However, if WorkSafeBC finds that the representative is not meeting the duty to cooperate obligations, any consequences that result will be on the worker or employer, not the representative.

Workers and employers are expected to work together and with WorkSafeBC in the worker's timely and safe return to, or continuation of, work. Third-party agencies, such as disability management companies, may assist in identifying suitable work and supporting the RTW plan.

How is WorkSafeBC informing workers and employer about the duty to cooperate and the duty to maintain employment?

WorkSafeBC is using multiple approaches to educate workers and employers of their obligations under the duty to cooperate and duty to maintain employment. It is not the health care provider's role to educate workers and employers about the new legislation. If a worker or employer asks you for details about their RTW obligations under the new legislation, please refer them to worksafebc.com or have them contact WorkSafeBC.

Suitable work and RTW planning

How can health care providers support the worker's return to suitable work?

The development of suitable work opportunities depends on the cooperation of all parties in the workplace. This may involve consultation between

the worker, the employer, physicians, qualified practitioners, other recognized health care professionals, the union, and WorkSafeBC.

Health care providers are encouraged to engage injured workers in conversations about their abilities and the functional requirements of the suitable work options. As injured workers may rely on their treating clinician's opinion regarding the suitability of a RTW offer, providers can assist by ensuring they understand the nature of the work duties being offered when providing an opinion.

Can providers recommend supernumerary RTW plan?

Where a supernumerary plan is the best way to reintroduce a worker into the workplace and re-engage them in the work, prior approval from WorkSafeBC is not required.

Ensure that WorkSafeBC is kept up to date on the RTW plan and duties the worker is participating in and contact WorkSafeBC if an employer is not supporting the RTW plan.

How can providers support an employer who feels unable to accommodate a RTW plan?

"Suitable work" is considered work that is safe, productive, and within the worker's functional abilities and skills. While employers may experience challenges identifying suitable work, many employers can accommodate an injured worker in some capacity.

Workers and providers may be able to work collaboratively with the employer to assist in identifying suitable work. Employers may choose to involve other workers, supervisors, and safety committee members in those discussions to help generate ideas for suitable RTW options.

Where required, contact WorkSafeBC to discuss your recommendations or concerns.

What actions should be taken if an employer does not respond to a request for accommodation of the pre-injury or suitable work duties?

Health care providers are encouraged to engage employers and workers in conversations to highlight a worker's abilities, identify suitable work activities, report what they can perform at work, and assist both parties in navigating the worker's timely and safe return to work.

Contact WorkSafeBC if the employer is not responding to your communication regarding RTW planning.

What if the worker perceives the work as inappropriate or demeaning?

"Suitable work" is work that is safe, productive, and within the worker's functional abilities and skills. Token employment involves tasks that represent no more than symbolic effort and are limited in their practical effect. Such tasks are considered detrimental to the worker's rehabilitation.

To determine whether the suitable work offer can be characterized as productive work, WorkSafeBC considers not only the physical requirements of the work but also the purpose of those activities, such as:

- How the work will benefit the employer
- Whether the work is something that, at another time, the employer would pay someone to do
- If the work is related to training, whether it is the type of training that the employer would pay the worker to undertake at another time

When making this determination, WorkSafeBC considers the work offer within the larger context of the worker's usual roles and responsibilities with that employer.

What if health care providers have contrary opinions about the worker's ability to return to work?

A return to suitable work does not require medical clearance from the worker's treating clinician or any other health care provider. In many instances, the worker can confirm their functional abilities directly with the employer and they can collaborate on developing a suitable work plan. However, many injured workers rely on their treating clinician's opinion and, as such, refusing a suitable work offer based on that opinion may be considered reasonable.

Where there is a difference in clinical opinions on the worker's ability to participate in suitable work, WorkSafeBC may consider the physician's or other health care provider's understanding of the worker's abilities and the requirements of the suitable work. If the health care provider was not made aware of the availability or the specific details of the suitable work offer, WorkSafeBC may not place significant weight on their opinion of whether the worker is ready to return to work.

Where there is an offer of suitable work and the treating clinician has indicated that the worker is not fit for any type of work and the recommendation appears inconsistent with the worker's ability, the WorkSafeBC may contact the treating clinician to discuss the worker's capabilities.

WorkSafeBC processes and resources

How will WorkSafeBC ensure timely responses and support in RTW matters?

Workers and employers must work together to resolve any difficulties or disputes regarding the worker's return to work. Given the critical role of return to work in a worker's recovery, when notified of a dispute that cannot be resolved, WorkSafeBC investigates and assesses the specific circumstance of the dispute to determine whether the worker and/or employer failed to comply with the duty to cooperate. This decision will be made as soon as possible.

WorkSafeBC is working to ensure we are responsive to the RTW concerns raised by employers and workers. We have hired new staff and redeployed existing staff to support the operationalization of the RTW provisions. The RTW planner role was created to support workers and employers while the claim is pending by intervening when a worker and employer are not able to agree on a plan as a proactive measure. Once a claim is accepted, RTW specialists will be assigned to support workers and employers in cases where there is a dispute that requires substantive investigation.

If you are having difficulty reaching a claims officer, we suggest contacting the Claims Call Centre at 1.888.967.5377 and leaving a message with the information you're seeking to provide or request from the claims officer.

Are rehabilitation programs still required to conduct job demands analysis (JDA), job site visits (JSV), and graduated return-to-work (GRTW) plans?

Yes. There are no changes to existing contract requirements or service expectations as a result of the duty to cooperate and duty to maintain employment amendment, or any other amendments associated with Bill 41.

Is there anticipated to be a decrease in referrals to treatment programs?

We don't know for certain what the impact will be on referral volumes to treatment programs. It is possible that more workers will have participated

in a RTW plan at the time of the referral, or that they are participating in a RTW plan at the same time as attending a rehabilitation program.

As always contracted providers can reach out to Health Care Programs at WorkSafeBC with questions pertaining to referral volumes and trends that are specific to the services they deliver.

Is a change to the treatment program durations anticipated?

Program durations and terms of existing program contracts are not being adjusted based on the new provisions of the duty to cooperate and duty to maintain employment.

Providers should develop the recommended duration of the treatment and RTW program on a case-by-case basis, based on the individual circumstances of the worker.

Will compensation be provided to health care professionals consulted on RTW planning?

Each service agreement with WorkSafeBC is unique. Several of our agreements offer a distinct fee code for providers who consult on RTW planning. We encourage all contracted providers to review their service agreement for applicable fees, and if you have questions, please reach out to Health Care Programs at WorkSafeBC who can provide more specific advice based on the agreement you hold.

Will the duty to cooperate and duty to maintain employment impact key performance indicators (KPIs)?

No.

Confidentiality

Do employers have access to clinical reports submitted to WorkSafeBC?

Generally, employers do not have access to injured workers' medical records or clinical reports. However, where a decision is under review or appeal, the employer is provided a full disclosure of the claim file, which includes all health care records on the claim file.

Only medical information relevant to the compensable condition(s) should be submitted.

Can employers request information from a provider regarding a worker's medical status?

Providers should not disclose details related to the worker's diagnosis, treatment, or medical interventions. The amount and type of information disclosed to an employer about an injured worker may include:

- A worker's 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
- RTW hours
- Recommended workplace accommodations or considerations to facilitate the worker's return to work

General questions

What happens if a worker reports they were terminated due to their injury?

The worker's entitlement to health care treatments is not affected by a termination of employment. If you're informed by a worker that they were terminated due to their injury, please inform WorkSafeBC of the termination of employment and advise the worker to contact WorkSafeBC.

Is there a legal obligation for physicians or treatment providers to provide the employer information about the worker's functional abilities and restrictions?

Some employers request health care providers complete forms that outline the worker's abilities and restrictions, while others request a clearance letter from the health care provider to endorse the worker's return to work.

In general, unless it is a contracted requirement of a program (such as the "early access to physiotherapy" program), WorkSafeBC does not require medical clearance from the worker's treating clinician or any other health care provider prior to the worker beginning a return to either suitable work or their pre-injury work. WorkSafeBC does not have legislation that requires providers to submit this information to employers.

WorkSafeBC is looking at ways to respond to these requests from employers, so they have the information they need to identify and make available work that is suitable for the injured worker.

We request that, as always, you continue to focus on a worker's abilities in your reporting to WorkSafeBC and support collaboration for timely, safe, and suitable RTW as part of the recovery process.