

Backgrounder

September 18, 2008

New Regulation on Return to Work and Re-employment for the Construction Industry

When the *Workplace Safety and Insurance Act, 1997* (“WSIA”) came into effect, it provided that construction workers’ and employers’ rights and obligations with respect to early and safe return to work and re-employment would be set out in a regulation.

Until a new regulation was created under the WSIA, the regulation made under the *Workers’ Compensation Act* (“WCA”) continued to apply to workers and employers in the construction industry.

The Workplace Safety and Insurance Board (WSIB) worked with stakeholders from the construction industry for several years to develop and reach consensus on a new draft regulation. The new regulation was approved by the Ontario Government on February 21, 2008, with an effective date of September 1, 2008.

In consultation with stakeholders, new WSIB policies were created to support the re-employment provisions of the regulation.

The re-employment policies apply to workers who were injured or became ill on or after September 1, 2008. To ensure construction stakeholders are given time to familiarize themselves with this information, re-employment penalties for employer non-compliance will not be applied until April 15, 2009.

The New Regulation

- provides return to work co-operation rules for construction employers and workers that do not currently exist
- provides more clearly articulated re-employment obligations for construction employers
- maximizes improved return to work outcomes for the construction sector
- reflects employment realities that are unique to the construction industry.

The regulation mandates that the employer of a worker who has been unable to work as a result of a work-related injury offers to re-employ the worker in the first job that becomes available and is consistent with the worker’s medical ability. The

regulation, however, does not require employers to create jobs that don't exist, or confer a special preferential status for injured workers. It is designed to maximize return to work outcomes by requiring employers to offer work – and for workers to accept work within their trade or, in certain situations, outside their trade – that is available, or becomes available at the original job site or a comparable job site.

A worker with a work-related injury or disease is considered 'unable to work' if he or she is absent from work, works less than regular hours, and/or requires accommodated/modified work that pays, or normally pays, less than their regular salary.

Key Concepts of new Re-employment Policies

A construction employer's obligation to re-employ begins when they are notified that an injured worker is medically able to perform:

- the essential duties of the pre-injury job
- suitable construction work, or
- suitable non-construction work.

Once the employer is notified that the worker is fit to return to work, the employer must offer to re-employ the injured worker in the first available job that is consistent with the worker's medical abilities.

Other issues covered under the WSIB operational policies include:

- extent of employer's duty to accommodate when it has control over the workplace
- differences between a unionized and a non-unionized environment
- re-employment obligation when more than one position is available
- definition of suitable work
- duration of the re-employment obligation when a worker has declined an offer of work
- breaches of the re-employment obligation and the presumption clause
- re-employment penalties and payments.

For further information on the new regulation and re-employment policies for the construction industry, please visit our website at www.wsib.on.ca, or call 1-800-387-0750.

Ontario's Workplace Safety and Insurance Board (WSIB) plays a key role in the province's occupational health and safety system. The WSIB administers no-fault workplace insurance for employers and their workers and is committed to the prevention of workplace injuries and illnesses. The WSIB provides disability benefits, monitors the quality of health care, and assists in early and safe return to work for workers who are injured on the job or contract an occupational disease.