

# **NEW CONSTRUCTION REGULATION**

## **RE-EMPLOYMENT**

### **SCENARIOS**

(Regulation Comes Into Force September 1, 2008)

# Scenario 1

## Scenario

- *Union worker.*
- Injured on day 8 of project, returns to pre-injury work on day 10.
- Terminated on day 20—project completed.

## Response

- Employer HAS MET their obligation by re-employing worker for balance of project.
- If other work in the worker's trade and classification becomes available at a collective agreement workplace (during the balance of the re-employment obligation period), the employer should offer to re-employ.
- If no work becomes available, the employer would not be in breach of re-employment obligation.

## Presumption

- Presumption applies (termination within 6 months of re-employment) but employer can rebut presumption by showing that the termination was not caused in any part by the work-related injury/disease.

# Scenario 2

## Scenario

- *Non-union worker.*
- Injured on day 2 of project.
- Returns to pre-injury work six months later.
- Terminated six weeks later, at completion of project.
- After completion of project, employer no longer employing workers at the workplace where the worker was injured or at a comparable workplace.

## Response

- Employer HAS MET their obligation by re-employing worker for balance of project.
- If other work in the worker's trade becomes available during balance of re-employment obligation period, the employer should offer to re-employ.
- If no work becomes available, the employer would not be in breach of re-employment obligation.

## Presumption

- Presumption applies (termination within 6 months of re-employment) but employer can rebut presumption by showing that the termination was not caused in any part by the work-related injury/disease.

# Scenario 3

## Scenario

- *Non-union worker.*
- Injured on day 2 of project.
- Fit to return to pre-injury work six months later.
- For remaining six weeks of project, no work available or performed by another worker who was hired, assigned or transferred after the worker was injured.

## Response

- Because no work is available when the worker is fit to return to work, the employer is NOT in breach of re-employment obligation.
- If work in the worker's trade becomes available at some point within the obligation period, either at the pre-injury workplace or at a comparable workplace, the employer should offer to re-employ.
- If no work becomes available, the employer would not be in breach of re-employment obligation.

## Presumption

- Because the worker was not re-employed, the presumption clause does not apply.

# Scenario 4

## Scenario

- *Non-union worker.*
- Injured on day 2 of project.
- Fit to return to pre-injury work six months later.
- For remaining six weeks of project, no work available with accident employer or performed by another worker who was hired, assigned or transferred after the worker was injured.
- 2 weeks following the worker's fitness to return to pre-injury work, the worker finds employment with another construction firm. Worker remains with the other construction firm for 13 months.

## Response

- Because no work is available when the worker is fit to return to work, the employer is NOT in breach of re-employment obligation.
- If work in the worker's trade at the pre-injury workplace, or at a comparable workplace, becomes available at some point within the obligation period, the employer should offer to re-employ.
- If the employer offers to re-employ in the pre-injury work, but the worker declines the offer, the re-employment obligation ends.
- If no work in the worker's trade becomes available, the employer's re-employment obligation will have ended by the time the worker completes work at the other firm.

## Presumption

Because the worker was not re-employed, the presumption clause does not apply.

# Scenario 5

## Scenario

- *Union worker* fit for suitable work in construction.
- Employer offers suitable work in the worker's trade and classification to the worker.
- Worker claims work is not suitable and requests labour market re-entry (LMR) services.
- WSIB determines work offered by the employer is suitable (and does not provide LMR services)
- Worker rejects WSIB's decision, does not return to work, and launches an appeal.

## Response

- Employer **HAS MET** the obligation by offering suitable construction work. If the WSIB finds the worker has declined the offer, the employer's re-employment obligation has ended.
- The obligation to offer suitable construction work resumes if the WSIB's decision is overturned at appeal.

# Scenario 6

## Scenario

- *Union worker* injured on last day of project in North Bay.
- Worker fit for suitable work in construction.
- Employer has no work in the area or at a collective agreement workplace, but has suitable construction work in Mississauga.

## Response

- Employer required to offer suitable construction work at the Mississauga location.
- WSIB must satisfy itself that the worker has the ability to travel safely to and from the Mississauga worksite.
- When determining whether worker must accept offer of Mississauga work, WSIB considers whether the location is within a reasonable distance of the worker's home bearing in mind
  - the modes of travel available to the worker
  - travel norms for construction workers in the worker's trade who work for the accident employer, and
  - the amount of travel that was required before the injury.
- If more than one suitable construction job available in Mississauga, employer required to offer the job that is most similar in nature and earnings to the pre-injury job.
- If the worker can travel safely to and from the worksite, and if the offered work is within a reasonable distance of the worker's home, the worker is obligated to accept the offer. If the worker declines the offer, the employer's re-employment obligation has ended.

# Scenario 7

## Scenario

- *Non-union worker* injured on last day of project in North Bay.
- Worker fit for suitable work in construction.
- Employer has no work in the area, but has suitable construction work in Mississauga.

## Response

- Employer required to offer suitable construction work in Mississauga only if the WSIB determines that the Mississauga workplace is a “comparable workplace” to the North Bay workplace.
- WSIB must consider the “modes of travel available to worker, “worker’s pre-injury travel pattern” and “travel norms for other construction workers” when determining “comparable workplace.”
- WSIB must also satisfy itself that the worker has the ability to travel safely to and from the Mississauga worksite.
- If WSIB did find the Mississauga workplace to be comparable, and if more than one suitable construction job is available in Mississauga, employer required to offer the job that is most similar in nature and earnings to the pre-injury job.
- If the employer is obligated to offer to re-employ, and if the worker can travel safely to and from the worksite, the worker is obligated to accept the offer. If the worker declines the offer, the employer’s re-employment obligation has ended.

# Scenario 8

## Scenario

- Worker injured on first day of the project.
- Worker sees the Emergency Room physician on the date of injury and returns to his pre-injury job on the following day.
- One week later the worker attends a follow-up appointment with his family physician and misses two hours of work.

## Response

- The employer **DOES NOT** have a re-employment obligation because the worker has not been *unable to work* as a result of his work-related injury.
- A worker is considered *unable to work* only if, because of the work-related injury, he/she
  - Is absent from work
  - works less than regular hours, and/or
  - requires accommodated/modified work that pays, or normally pays, less than his regular pay.
- Draft OPM 19-04-02 provides that the “unable to work” threshold is not met if a worker loses time/earnings from work because he or she must attend a health care appointment.

# Scenario 9

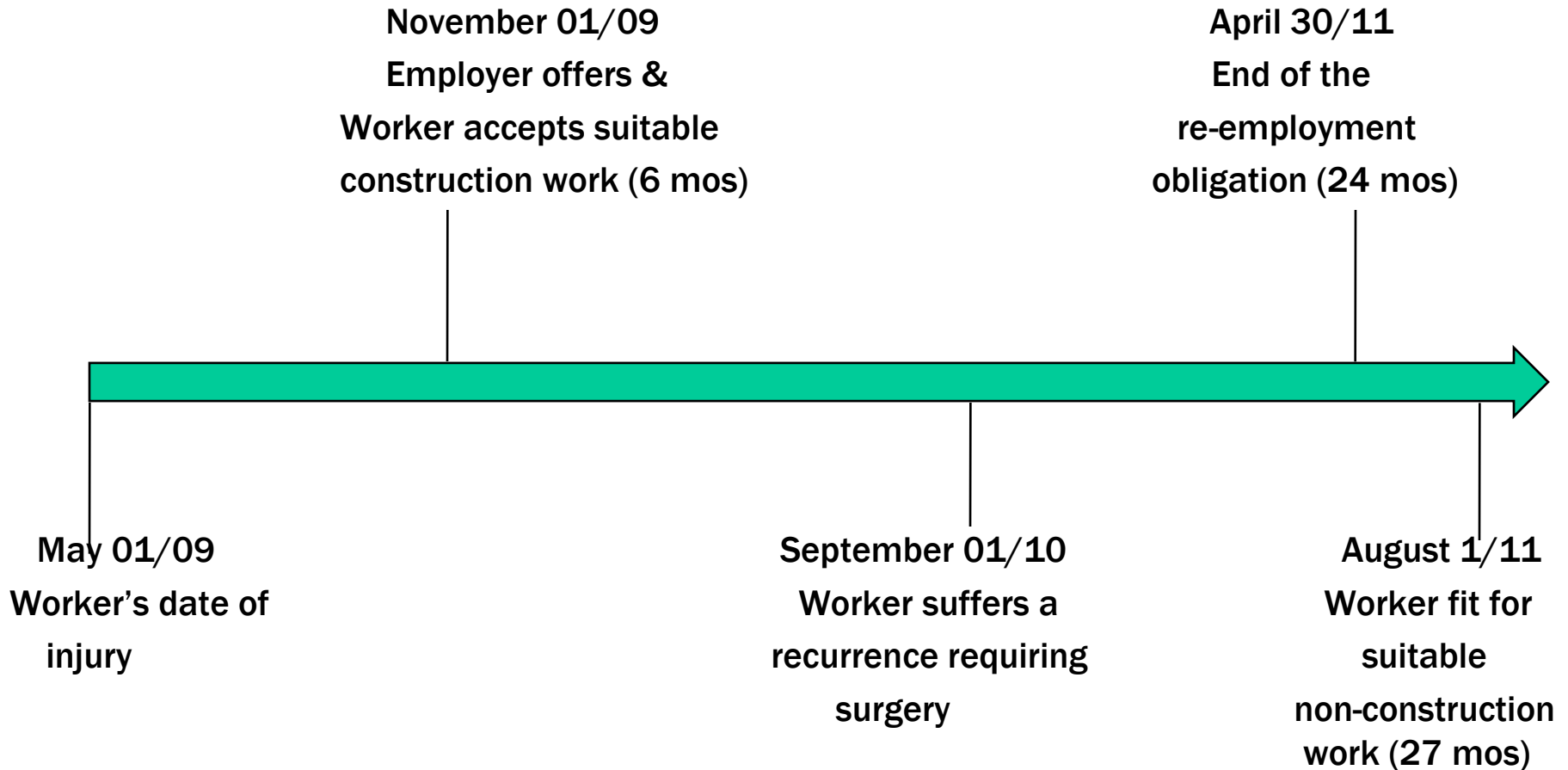
## Scenario

- Six months after an injury, the employer receives notice that the worker is fit for suitable construction work.
- In accordance with the Regulation, the employer re-employs the worker in an available suitable construction work position.
- Ten months after the worker's return to work, the worker has a recurrence of his work-related injury which necessitates surgery.
- When the worker recovers from surgery, 11 months later, he is fit for suitable non-construction work only and a permanent impairment is evident.

## Response

- Employer HAS MET their obligation by re-employing the worker in an available suitable construction work position.
- Even though the worker suffered a recurrence, the end date of the obligation remains two years from the date of injury.
- Since this worker did not recover from his surgery until 27 months had elapsed from the date of injury, at the time of his recovery the re-employment obligation is no longer in effect.

# Scenario 9 (Timeline)



# Scenario 10

## Scenario

- Six months after a union worker suffers an injury, the employer receives notice that the worker is fit for the essential duties of the pre-injury work.
- In accordance with the Regulation, the employer re-employs the worker in an available position in his trade and classification at a collective agreement workplace.

## Response

- Employer HAS MET their obligation by re-employing the worker in an available position in his trade and classification at a collective agreement workplace.
- The employer's re-employment obligation ends one year from the date the worker is fit for the essential duties of his pre-injury work.

# Scenario 10 (Timeline)

