

## ***Re-employing injured workers in the construction industry***

On September 1, 2008, a new regulation took effect for the construction industry with regard to re-employment.

The regulation provides several benefits, including:

- return to work co-operation rules for construction employers and workers that didn't exist prior to September 1, 2008
- re-employment obligations for construction employers that are more clearly articulated
- improved return to work outcomes for the construction industry
- a reasonable balance between the interests of employers, workers and the system.

### **New Re-employment Policies**

Three WSIB operational policies were created to support the re-employment provisions of the regulation. These policies took effect on September 1, 2008, and apply to workers who are injured or become ill on or after this date. Operational policies to support the return to work provisions of the regulation will take effect at a later date.

The re-employment obligations set out in the regulation and in the policies apply to all construction employers even those with less than 20 workers. More specifically they apply to any employer whose predominant business activity – as determined by the WSIB – is classified within Schedule 1, Class G-Construction.

The policies therefore apply to any worker who has entered into a contract of service or apprenticeship with a construction employer for the performance of construction work and who has been “unable to work” as a result of a work-related injury. They do not apply to a construction employer's non-construction workers (i.e., office staff who do not work at a construction workplace). (Please see general Re-employment Fact Sheet on the WSIB website at [www.wsib.on.ca](http://www.wsib.on.ca).)

There is no requirement that the construction worker must have worked for the employer for one year prior to the injury.

### **New Requirements**

A construction employer's obligation to re-employ begins when it is notified that an injured construction worker, who has been “unable to work”, is medically able to perform:

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

Following notification, the employer must offer to re-employ the injured worker in the first job that becomes available and is consistent with the worker's medical ability to return to work.

The employer's offer of work must take into account its obligation to accommodate the work and the workplace to the needs of the worker, to the extent that the accommodation does not cause the employer undue hardship. An employer is required to accommodate the workplace if it has "control over the workplace" - it has the authority to order or implement non-permanent physical changes to any structure(s) on the workplace to meet the needs of the worker (e.g., building a temporary ramp). Even though a construction employer may not have an obligation to accommodate the workplace because it does not have control over the workplace, it still has an obligation to accommodate the worker's work if such a need exists.

In all cases where the worker is medically able to perform some type of construction work, an employer who has more than one construction job available must offer to re-employ the worker in the construction job that is most similar in nature and earnings to the one the worker had on the date of injury.

### **Duration of the Requirements**

The employer's obligation to re-employ continues until the earliest of:

- two years from the date of injury
- one year after the worker is medically able to do the essential duties of the pre-injury job
- the date the worker declines an offer of work, or
- the date the worker reaches age 65.

### **Other Items Covered by the Operational Policies**

The three WSIB operational policies created to support the re-employment provisions of the regulation cover issues such as:

- the differences between a unionized and a non-unionized environment
- the definition of suitable work
- breaches of the re-employment obligation
- re-employment penalties and payments.

The WSIB considered the input of both worker and employer stakeholders in arriving at the regulation and the operational policies.

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.

This information is available in several languages by calling our information hotline at: 416-344-4999, toll-free 1-800-465-5606 or Telephone Service for the Deaf (TTY): 1-800-387-0050. Pour obtenir un exemplaire en français, composez le 1-800-465-5606.