CLAIMS & INJURY MANAGEMENT FAQ'S

The frequently asked questions below have been curated to answer the most common questions employers have when managing the injured worker's recovery and the claim process associated with the injury. They have been divided into "Claims Management", "Injury Management", and "NEW Questions" sections.

Note: *If you have questions beyond what is listed, please submit them here, and we will address them promptly.*

Claims Management

These FAQs will assist employers to:

- Know how to fulfill legal obligations when a worker is injured
- Understand the roles of WorkSafeBC (Prevention and Claims Divisions)
- Understand the rights and responsibilities of both the employer and worker relating to claims decisions

1. When must I report a work injury to WorkSafeBC (Claims Division)?

You need to contact WorkSafeBC if your worker:

- Seeks external medical assessment or treatment for a work-related injury
- Misses time from work after the day of injury due to a work-related injury
- Sustains any serious injury or death including losing consciousness
- Is diagnosed with a work-related illness or disease
- Develops symptoms of a mental health disorder related to work or the work environment
- Suffers damage to eyeglasses, dentures, hearing aids, or artificial limbs due to a work-related incident.

You have 72 hours from the time that you are notified of the injury or disease to report it to the WorkSafeBC Claims Division. For more information on reporting a workplace injury or disease, click here.

2. What are my obligations to WorkSafeBC if a "Serious Incident" occurs in my workplace?

When a serious incident occurs, employers must immediately report the incident to WorkSafeBC by calling the Prevention Line.

- This reporting requirement is in addition to reporting the injury for claim purposes
- Prevention Line: 604.276.3100 (Lower Mainland) or 1.888.621.7233 (Nation-wide)

3. What is the WorkSafeBC definition of a "Serious Incident"?

Serious incidents include the following:

- Serious injury to or death of a worker
- Major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system, or excavation
- Major release of a hazardous substance
- Fire or explosion that had the potential to cause serious injury to a worker
- Blasting incident causing personal injury
- Dangerous incident involving explosives, whether or not there is a personal injury

For more information on reporting serious injuries, click here.

4. What are some examples of serious injuries within our industry?

Examples of "serious injuries" within our industry include:

- Restaurants: Grease fire in the kitchen leading to serious burns or other injuries
- Bars, Pubs & Night Clubs: Collapse of a stage or dance floor leading to serious injury or possible serious injury to workers
- Ski Hills: Avalanche control situation where workers were put in undue danger due to the explosion itself or artificially triggered slide
- Hotels: Large spills of chemicals used in the pool and hot tub that have led to dangerous exposures to airborne contaminants
- General: Death of a worker due to any work-related cause

5. How can I report a worker injury to WorkSafeBC (Claims Division)?

There are multiple ways that employers can report a worker injury to the Claims Division of WorkSafeBC, including:

- Online: If you have an online account with WorkSafeBC, the best way to report an injury is to log into your account, click on "report an injury", and follow the prompts at www.worksafebc.com.
- Fax: Download the "Employer's Report of Injury or Occupational Disease (Form 7)", fill out the fillable PDF or a hard copy, print, and fax it directly to WorkSafeBC at: 604.233.9777 (Lower Mainland) or 1.888.922.8807 (Province-wide)
- Mail: Download the "Employer's Report of Injury or Occupational Disease (Form 7)", fill out the fillable PDF or a hard copy, print, and mail it directly to WorkSafeBC at:

  WorkSafeBC
  PO Box 4700 Station Terminal
  Vancouver, BC
  V6B 1J1

You can view your submitted claims and upload related documents on the online portal at www.worksafebc.com.

6. What does WorkSafeBC do after I report the injury?

There are various things that WorkSafeBC will do when an injury is reported including:

- Generate a unique claim number that should be provided by the employer to the worker.
- An adjudicator (also known as a claim manager) will then:
  - Review all the information that has been provided, including what has been sent in from you, the worker, and the worker's health care provider(s).
  - Based on the information provided, they will determine whether the claim is to be "accepted".

A claim being accepted means that the worker will be compensated for medical costs and/or wage loss. You will be notified via letter once the decision is made.

7. What if I have additional information about the claim that I think the adjudicator should consider?

If you have new or additional information that may affect the claim decision, you can contact the WorkSafeBC claim manager and explain the new or additional information. If they do not accept or consider the information, you can request a reconsideration of the decision. A reconsideration request must be made within 75 days of the date on the decision letter.

8. What do I do if I disagree with the decision made about the claim?

If you disagree with the adjudicator's decision, you can request a formal "Request for Review" that would be completed by WorkSafeBC's Review Division. A review request must be submitted within 90 days of the date on the decision letter.

9. Where can I find more information about filing a Request for Review?

More information on the Review Division can be found here. Additionally, information is available in WorkSafeBC's Claim Review and Appeal Guide for Employers.

10. What are other resources that I can turn to for assistance when requesting a review or if I need help with a claim?

The Employers' Advisors Office offers employers free, impartial advice on claims, assessment, and prevention matters. They are independent of WorkSafeBC and have offices in eight locations throughout the province (Abbotsford, Kamloops, Kelowna, Nanaimo, Trail, Prince George, Richmond, and Victoria).

11. If my worker's claim has been accepted, how should I follow up with WorkSafeBC in managing the claim?

It is best to stay in contact with the WorkSafeBC Claim Manager by checking in for regular updates on the claim.

You should also contact WorkSafeBC Claims Division when you have any questions or concerns including:

- Questions relating to a decision made by WorkSafeBC or if you don't understand a decision letter that you have received
- Concerns about the worker's recovery
- Updated information about modified or alternate work offered to the injured worker while they are unable to perform their regular duties

Note: It is important to keep your employer account number and claim number on hand during the call.
WorkSafeBC Claims Division: 604.231.8888 (Lower Mainland), 1.888.967.5377 (Nation-wide)

12. What are the costs that are going to be associated with the claim?

Direct, visible costs that are going to be associated with the claim include:

- medical assessment and/or treatment,
- Wage loss benefits,
- Insurance premiums increase,
- Possible WorkSafeBC fines (not always experienced), and
- Claim administration costs.

Indirect, invisible costs go above and beyond the direct costs but still are related to, and caused by the injury. Often adding up to four times more than direct costs, indirect costs include:

- First aid (wages, supplies, equipment, transportation),
- Responding to the incident (investigation and clean up),
- Replacement workers (recruitment, hiring, training, wages),
- Lost or reduced output (spoiled product, idle machine time, reduced service hours), and
- Workplace culture (weakened safety culture, psychological impact on coworkers).

For a visual in understanding the costs associated with a claim, check out our Costs of A Workplace Injury Infographic.

Injury Management

These FAQs will assist employers to:

- Know and fulfill legal obligations when a worker is injured, including the Duty to Maintain Employment and Duty to Cooperate
- Understand the role of WorkSafeBC
- Understand the rights and responsibilities of both the employer and worker relating to injury management
- Successfully manage workplace injury claims

1. How can I help my worker fully resume their regular work duties and hours?

There are various things you can do as the employer to help your worker resume their regular duties and hours faster, including:

- Proactively develop procedures for facilitating the Recovery at Work Program including:
  - assigning procedural responsibilities to managers, supervisors, injured workers, and first aid attendants,
  - brainstorm potential modified and alternate duties for frequently injured positions
  - communicate program details to managers, supervisors, workers, and first aid attendants.
- Have the worker perform alternate or modified duties while they are recovering from their injury. This can only happen if the work being done does not aggravate or postpone a full recovery. This will help to prevent long-lasting disability and/or mental health struggles associated with the injury.
- Understand that the injury may cause a psychological response for the worker. Support them as best you can throughout the recovery process. For more information on this topic, check out our Employee Mental Health Support Post-Injury Resources.

Additional Notes:

- A worker does not have to be 100% recovered to be able to contribute to their workplace. While no two workers recover from an injury or illness in the same way, those who resume work at some capacity as soon as possible usually recover faster. Work is a big part of a person's life, and remaining connected to the workplace and feeling valued goes a long way in helping a worker recover faster.
- Successful Recovery at Work Programs require strong communication and teamwork between the employer, the injured worker, WorkSafeBC, and the worker's health care provider(s).
- Supporting a worker in their recovery at work is good for them and good for your business.

2. What are the benefits of having an injured worker recover at work?

By providing alternate or modified duties as they recover, your business can see many benefits including:

- retention of a skilled and experienced worker, which reduces recruitment and retraining costs
- enhanced worker and employer relationships – keeping the injured worker connected demonstrates that you value your workers
- reduces the burden on co-workers
- reduces productivity losses and workflow interruptions
- reduces WorkSafeBC premiums

3. What steps should be taken to determine a worker's ability to recover or return to work?

First, determine if returning your injured worker to the workplace while they are recovering is a viable option. Contact the worker soon after the injury to inquire about their well-being, offer emotional support, and offer modified or alternate duties based on their abilities. A supportive, helpful, and positive employer/worker relationship is key to a successful return to work plan and a faster recovery.

In some cases, the worker may not be able to do any work activity and may need some time off. Be sure the worker is aware that alternate or modified duties are available to them for whenever they're able, and continue to regularly check in with the worker to show ongoing support.

If the injury is less serious, encourage the worker to recover on the job. The worker should discuss their abilities with their health care provider who will recommend safe work activities that could keep them involved at work and assist in their recovery.

Collaborate with the worker and their health care provider(s) by letting them know what modified duties are available for the worker. Consider what would be safe and suitable for the injury. To support recovery, the offered modified or alternate duties should be safe, productive, and meaningful.

4. Once it is determined that a Recovery/Return at Work plan is viable, what are the next steps?

Together with the worker, and with input from their health care provider(s), develop a recovery/return to work plan including considerations of suitable work and potential for reduced working hours, if needed.

Use the Modified Work Offer form from WorkSafeBC to document the plan. Be sure to ongoingly submit updated plans to WorkSafeBC via the online portal, fax, or mail.

Once the plan is implemented, be flexible and modify the plan when/if needed over time. Check in at regular intervals (once a week or more frequently) with the worker to ensure the worker is making progress towards a full return to their regular duties and/or hours. Alternate or modified work should not prolong injury recovery.

Keep the worker connected to the workplace. It helps with the worker's recovery to invite them to staff meetings, other meetings, special events, training, or even coffee with co-workers keeping them involved, invested, and feeling as part of the team.

5. What is the industry best practice if a worker with an open claim is scheduled to be terminated (i.e. at the end of the busy season)?

If a worker is laid off, as scheduled, and is not fully recovered (either off work on wage loss, or working modified duties), WorkSafeBC will start or continue to pay the worker bi-weekly wage loss benefits and will continue to pay them until the worker is fully recovered or the worker starts other employment. These wage-loss benefits will continue to be associated with the claim attached to your business.

6. Is there a benefit to keeping the injured worker on payroll and providing modified duties past the end of their seasonal contract date regardless of their recovery progress?

Some employers will keep injured workers on modified work especially if they are close to a full recovery, or if the layoff is for a short time. This will assist in mitigating claims costs. If the worker is laid off, they may be entitled to a job search allowance to find other employment while they recover. This could be a minimum of 12 weeks of wage loss benefits while looking for employment.

7. How often do I need to contact my injured worker for an injury update?

Frequent, meaningful, and genuine communication with injured workers can increase their likelihood of returning to work promptly. Communication at least once every 7 days is best practice to check in on the worker's recovery, plan for their return, or update their modified work offer.

A weekly check-in should take place until they are fully recovered to full working hours and duties.

8. What other resources are available regarding Injury Management?

There are several resources available regarding injury management, including:

- WorkSafeBC's Recover at Work Starter Toolkit would be a great place to start when developing an Injury Management Program
- go2HR's OHS Program Manuals include a draft Return to Work Section that can be added to an existing OHS Program
    - OHS Program Manual Template for the General Industry

    - OHS Program Manual Template for Restaurants
- WorkSafeBC Return to Work Support (1-877-633-6233) can answer questions about your worker's recovery and recovery at work considerations
- Modified Work Offer Template (WorkSafeBC)
- Typical Limitations for Common Injuries (WorkSafeBC)

9. What are the important dates associated with the Duty to Cooperate and Duty to Maintain Employment?

Important dates for associated with the new legislations are:

- November 24, 2022 Bill 41 received Royal Assent in the Legislative Assembly of BC.
- The Duty to Cooperate & Duty to Maintain Employment provisions within Bill 41 are effective January 1, 2024.
- The Duty to Cooperate applies to claims with injury dates of January 1, 2022 onward.
- The Duty to Maintain Employment applies to claims with injury dates of July 1, 2023 onward.
- The Duty to Maintain Employment ends on the second anniversary of the date of injury, psychological change, or date of disablement.

10. Who does the Duty to Cooperate apply to?

The Duty to Cooperate applies to:

- All employers and injured workers in BC that are provincially regulated.
- Allowed claims where there is an impact on worker's income due to a workplace injury, mental disorder, and/or occupational disease.
- The Duty to Cooperate does not apply to "health-care only claims" where workers are not disabled from their pre-injury job duties.

11. Who does the Duty to Maintain Employment apply to?

The Duty to Maintain Employment applies to:

- Employers with 20 or more workers (located in BC) at the date and time of injury.
- The worker has been employed for at least 12 months (continuous) on either a full or part-time basis before the injury occurred.
- Breaks in employment where the Duty to Maintain Employment would still apply include:
    - workers who work on a series of contracts with the employer that are often renewed or extended over the last 12 months before the date of injury, or
    - layoffs with recalls and leaves of absence such as sick leave or parental leave where the worker is expected to return to work.
- Breaks in employment where the Duty to Maintain Employment would not apply include:

- situations where there is a layoff greater than 3 months with no recall date (i.e. single-year seasonal positions), or
- the worker resigns resulting in a break of employment.

The Duty to Maintain Employment does not apply to “health-care only claims” where workers are not disabled from their pre-injury job duties or terminations occurring before January 1, 2024.

12. What is needed to fulfill the Duty to Cooperate?

To fulfill your Duty to Cooperate as an employer, you must:

- Contact the worker as soon as possible after the injury or illness
- Remain in reasonable contact with the worker and with WorkSafeBC throughout the worker’s recovery and return to work process
- Identify and make available suitable work that is safe, productive, within the worker’s functional abilities, and consistent with their skills and competencies
- Provide WorkSafeBC with information about the worker’s return to work
- Cooperate in the return to work process

13. What is needed to fulfill the Duty to Maintain Employment?

To fulfill your Duty to Maintain Employment of workers with an approved WorkSafeBC claim, you must:

- If the worker is fit to carry out the essential duties of their pre-injury work, with or without accommodation:
  - Offer the worker their pre-injury work or alternate work that is comparable to the worker’s pre-injury duties and earnings.
- If the worker is not fit to carry out the essential duties of the pre-injury work, with or without accommodation, but can work in some capacity:
  - Offer the worker suitable work that becomes available.
- Make changes to the work or workplace necessary to accommodate a worker to the extent that the accommodation, only up to the level of undue hardship.

14. Define the following terms used in the Duty to Cooperate & Duty to Maintain Employment.

Undue Hardship:

- Point at which is too difficult, unsafe, or expensive to remove barriers so that injured workers can return to work
- Undue hardship is determined on a case-by-case basis, through investigation, and in considering specific circumstances such as impacts on regular operations, safety risks to workers or others, and the size and resources of the employer

Essential Duties:

- Core tasks that must be performed to meet job requirements

- Replaces previously used term: “Critical Job Demands”

Suitable Work:

- Safe, productive, and meaningful work tasks that are within worker's capabilities and skills
- Includes terms such as “modified duties”, “graduated return to work”, “modified hours”, “light duties”, and “different duties”

15. What is the difference between modified and alternate duties? Which is better?

Modified duties:

- are regular duties that are modified to accommodate an injury without aggravating it. For example, if a worker is to stand at the front desk or ticket window, but they have an injured leg, you may modify the task by giving the worker a chair to sit on while they do that task.

Alternative duties:

- are completely different duties from the worker’s regular tasks. For example, if a worker is required to type on a keyboard but has an injured hand and can’t type, they may be tasked with counting guests or organizing paperwork that they can do with one hand.

Allowing the person to stay as closely aligned with their regular duties as possible by providing modified duties is better and will help facilitate a faster return to regular duties.

16. When does the Duty to Maintain Employment obligations end?

Generally speaking, the obligation ends by the second anniversary of the date of injury, psychological change, or disablement, however the employer’s obligations are not static and they change depending on the injured worker’s level of function. Review the chart below to determine specifics depending on the situation:

By the second anniversary of the date of injury, psychological change, or disablement:	
If the worker:	The employer’s obligation:
has returned to pre-injury or alternative work	• to make changes to the work and/or workplace to accommodate the worker is ongoing
is carrying out “suitable work”	• to offer the pre-injury or alternative work ends • to make or maintain changes to the work and/or workplace to accommodate the worker is ongoing

has not returned to work	• under the duty to maintain employment ends
Has voluntarily severed employment or the employment relationship has ended	• under the duty to maintain employment ends

Important notes:

- When a claim is reopened, the 2-year duration does not reset. The employer remains bound by the original duration of obligation as determined by the date of injury.
- Generally, the Duty to Maintain Employment is not intended to extend employment beyond the terms of a fixed contract. However, in cases where there is a demonstrated pattern of extending or renewing the worker's contracts, WorkSafeBC may conclude that the obligation to maintain employment should extend past the end of the contract and be governed by the normal rules of the duration of obligation.

17. What is the role of WorkSafeBC regarding Return to Work?

WorkSafeBC plays a significant role in facilitating Return to Work including:

- Includes terms such as "modified duties", "graduated return to work", "modified hours", "light duties", and "different duties"
- Facilitate communication between all parties involved
- Provide employers and workers with return to work planning consultation and support
- Address disputes around the suitability of suitable work
- Determine compliance of employers and workers with the Duty to Cooperate and Duty to Maintain Employment

18. Where can I find more information about the Duty to Cooperate and the Duty to Maintain Employment?

- Employers: Duty to Cooperate & Duty to Maintain Employment (WorkSafeBC)
- Bill 41 Employer Info Session – Info Session Video Recording (WorkSafeBC)
- Employer Fact Sheet: Duty to Cooperate (WorkSafeBC)
- Employer Fact Sheet: Duty to Maintain Employment (WorkSafeBC)

19. How would I go about identifying suitable work available in my workplace?

Though some employers experience challenges in identifying suitable work for injured workers, most employers can accommodate injured workers in some capacity.

Employers should take proactive steps to identify suitable work for common injuries in the workplace that is safe, productive, meaningful and within the worker's capabilities and skills.

Together with the worker, the employer can identify available work that is aligned with the injured worker's capabilities.

- Ask the worker what duties they can do.
- Be flexible, and together with the worker identify safe and suitable work for them.
- To support them while they recover, the worker's duties must be meaningful, be within their abilities, and not cause harm or slow their recovery.
- It can include modifying the job task that may be considered less strenuous or an alternate job task.

Supervisors and Joint Health & Safety Committee Members can also help generate ideas on what suitable work may be available.

Additional Resources:

- Identifying Worker Capabilities (WorkSafeBC)
- Typical Physical Limitations for Common Injuries (WorkSafeBC)

20. How will the Duty to Maintain Employment & Duty to Cooperate impact my claims costs and rates?

There is no immediate impact to employer's insurance rates. However, providing suitable work to injured workers in a collaborative, safe and timely manner is an effective way to improve recovery and return to work outcomes which may lead to lower claims costs long-term. It is worth noting that the direct cost of the claim (including insurance costs) is not the total cost associated with a claim. The indirect cost of the workplace injury including recruiting and training replacement workers are higher than the direct cost.

Additional Resources:

- Understanding Insurance Rates (WorkSafeBC)

21. What role does the worker's physician or healthcare provider play in the Duty to Maintain Employment?

The role of the healthcare provider remains the same. They are the "medical manager" on the injured worker's claim, making treatment recommendations, providing opinions on the injured worker's functional abilities.

It is important that healthcare professionals understand their role in the process to best support injured workers in their recovery and return to work.

Although WorkSafeBC doesn't require a provider's approval for a worker to return to work, you can support the worker and help them recognize the connection between their functional abilities and possible safe and suitable job duties at work.

Healthcare providers can help by:

- Supporting timely, safe, and suitable return to work as part of the recovery process,
- Focusing on what the worker can do, not what they cannot do,
- Providing objective, accurate and timely medical information,
- Educating workers in their injury and how work can support recovery, and
- Liaising with other involved healthcare professionals to support return to work.

The healthcare provider may be asked by WorkSafeBC to facilitate a return-to-work meeting, conduct a jobsite visit, or provide an assessment on a worker's function as it relates to their pre-injury job and other suitable work. In these cases, WorkSafeBC relies on the information and expertise provided by the healthcare provider to safely support a worker's return to work.

22. Does the Duty to Maintain Employment and Duty to Cooperate apply to injuries sustained outside of work?

The Duty to Cooperate and the Duty to Maintain Employment applies to work-related injuries ONLY. Injuries that occur outside of work are beyond the scope of this new legislation and the responsibilities of WorkSafeBC.

It is important to note, employers are obligated to comply with human rights legislation in the duty to accommodate. These obligations are set out by the BC Human Rights Code for all BC employers.

23. Does WorkSafeBC have specialists that will assist employers in executing their return to work responsibilities?

WorkSafeBC has created new roles to support injured workers and employers while the claim is pending. Their tasks include:

- intervening when the injured worker and employer are not able to agree on a suitable return to work plan,
- assisting employers in developing a return to work plan while the claim is pending very early on in the process, and
- supporting injured workers and employers in cases where there is a dispute requiring more substantive investigation.

24. Within the Duty to Cooperate, how often are workers and employers expected to communicate throughout a claim?

There is no specific rule or timeline for the communication between injured workers and employers to take place. Ongoing communication should be based on what the injured worker and the employer agree to be a reasonable plan. There may be circumstances where there may be a pause in the communication due to the severity or nature of the injury. Generally, WorkSafeBC is looking at a plan where both the injured worker and the employer agree to be reasonable with respect to:

- How the injured worker is recovering,
- What their functional abilities are, and
- What the suitable work opportunities are available to the injured worker at the workplace.

NEW Questions

1. What if the worker says they don't want to see a medical practitioner?

A worker's failure to obtain medical treatment may result in a lack of medical information on the claim file. Insufficient medical evidence may impact the adjudication and acceptance of the claim, the conditions accepted, and determination of the worker's disability. 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 return to work plan.

2. Can you give a few examples of undue hardship?

Undue hardship refers to the point at which accommodating a worker becomes too difficult, unsafe, or costly for the employer. Undue hardship is determined on a case-by-case basis considering the specific circumstances of the case. When determining whether accommodating the worker would cause undue hardship, WorkSafeBC may consider the relevant circumstances, including but not limited to:

- whether accommodating the worker poses safety risks to the worker, other employees, or anyone else;
- whether the employer can adjust or find alternative means to manage the workload or tasks, including whether there are other viable options to complete the worker's essential job duties without sacrificing the quality of work;
- the potential impact the accommodation would have on other workers;
- whether the cost of accommodation may be beyond the financial capacity of the employer, would result in substantial financial strain, and/or endanger the business's viability;
- whether accommodating the worker would interfere with the main purpose or outcome of the job or disrupt the regular operations of the employer to an unreasonable extent;
- whether the size and resources of the employer's operation makes accommodating the worker unmanageable.

3. What should you do if you give the worker 'suitable work' and they refuse or disagree with the suitability?

The duty to cooperate requires workers to not unreasonably refuse suitable work when it is made available by an employer with whom the worker has an existing employment relationship.

The worker and the employer are encouraged to work together to resolve any difficulties or disputes regarding return to work efforts and opportunities. A successful suitable work arrangement depends on the cooperation of all the parties in the workplace.

The employer can notify WorkSafeBC of any dispute that cannot be resolved. When notified of the dispute, WorkSafeBC investigates and considers the availability and suitability of the work offer and the reasonableness of the worker's refusal.

4. What is the best way to communicate the duty to cooperate with staff? Should I tell everyone or wait to talk to the people that it applies to when a situation arises?

How employers communicate the return to work obligations to their staff is at their discretion. The WorkSafeBC website has resources for both workers and employers on the duty to cooperate and the duty to maintain employment.

The links below provide an overview of the obligations of both workers and employers, with links to additional information, including a webinar presentation, Q&As and fact sheets on these obligations and return to work planning information.

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

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

5. What if there is a new job posting that I would like an injured worker to move into but the external applicants are stronger candidates?

The new legislation is not intended to impact an employer's right to manage their workforce.

For the duty to cooperate, the process of identifying suitable work involves a collaborative effort between the employer and the worker. Once suitable work is identified, the employer is required to, where reasonable, make that suitable work available to the injured worker.

Where a worker is fit to carry out the essential duties of their pre-injury work, with or without accommodation, the duty to maintain employment requires the employer to offer

the worker their pre-injury work or alternative work that is comparable to the worker's pre-injury duties and earnings. If a worker is not fit to carry out the essential duties of their pre-injury work, with or without accommodation, but is fit to work in some capacity, the employer is required to offer the worker the first suitable work that becomes available.

These return-to-work obligations cannot override a term in the collective agreement that pertains to seniority. Seniority-based terms in the collective agreement are unaffected by the obligations to cooperate and maintain employment.

6. When duty to maintain employment does not apply

The duty to maintain employment applies to employers who regularly employ 20 or more workers, where the injured worker has been employed with the employer for at least one year before the date of injury.

The duty to maintain employment does not apply to individuals who are deemed workers solely because they fall under sections 5, 6, or 7 of the Act related to public interest undertakings, vocational or training programs, or work study and other programs.

The duty to maintain employment does not apply to a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council. At this time, no class of employers or workers, and no industry or class of industries have been excluded from the application of these sections by the Lieutenant Governor in Council.

7. How do I handle similar situations where seniority plays a role?

In general, if there is a potential conflict between the obligations in the Act and the terms of a collective agreement, the Act takes precedence if it provides the worker with greater benefits than the term of a collective agreement.

However, this principle does not apply to seniority provisions in a collective agreement. There is an exception for seniority provisions and the obligations in the Act cannot override the seniority provisions of a collective agreement. Seniority-based terms in a collective agreement are excluded and are not affected by the duties to cooperate and maintain employment.

8. **Are there any penalties for the employer or worker if the duty to cooperate and duty to maintain employment is not followed?**

Where there are disagreements regarding cooperation or maintaining employment, WorkSafeBC will work with the employer and injured worker to find a resolution.

If WorkSafeBC determines that a worker has failed to comply with the duty to cooperate, the worker's wage-loss or wage-loss equivalency benefits may be reduced or suspended until the worker complies. WorkSafeBC will inform the worker of the decision and the steps the worker needs to take.

WorkSafeBC may impose administrative penalties on employers found to have failed to comply with the duty to cooperate or the duty to maintain employment. The individual circumstances of each case are considered when determining whether to impose a penalty and WorkSafeBC will not impose an administrative penalty if the employer has taken all reasonable steps to comply with its obligations. Where an employer is determined to have failed to comply with their obligations, WorkSafeBC will inform the employer of the decision and the steps the employer needs to take.

9. **How do you manage a situation where you backfilled the position the injured worker was in, and then they are suddenly ready to be back in their original position?**

Under the duty to maintain employment, when a worker is fit to return to their pre-injury work, with or without accommodation, the employer must offer the worker either their pre-injury work or alternative work.

Alternative work is work that, while different from the worker's pre-injury work, is comparable to the worker's pre-injury duties and earnings. If there is a dispute on whether the alternative work is comparable, a WorkSafeBC officer will investigate and make this determination.

10. **Since some workplaces are very seasonal, what if the worker is injured in high season, then eventually, the low season approaches and there are less than 20 staff working… would you still need to maintain employment? To build off that question, what if the business is completely closed in the off-season? Is there a duty to maintain employment when the company opens again?**

Generally, the number of workers employed by the employer on the date of injury defines the number of regularly employed worker. For example, if a worker is injured during high season and there are 20 or more workers regularly employed at the time of injury, then the duty to maintain employment would apply to that worker's claim. If a worker is injured during a period when the employer employs fewer than 20 workers,

the duty to maintain employment would not apply. Once the duty to maintain employment is determined to apply on a worker's claim, the obligation remains in effect for the duration of the obligation.

In most cases, the duty to maintain employment is not intended to extend the time frame of employment agreed to at the time of hire. If a worker was hired on a contract, the employer's duty to maintain employment only requires the employer to return the worker to the pre-injury work, alternative work, or suitable work for the remainder of the contract term that was interrupted by the compensable injury or illness.

In cases where there is a demonstrated pattern of extending or renewing a worker's contract or rehiring the worker for the next season, WorkSafeBC may conclude that the employer's duty to maintain employment should extend beyond the term of the contract.

When calculating the duration of the employer's duty to maintain employment, the off-season period is not excluded. However, during the off-season period, the employer's return to work obligations may not be in effect.

11. A question for the 12-month rule of employment- what if the worker took a two-month vacation in the middle of their 12 months with the company, would they still be considered to have worked at the company for 12 months? Additionally, does the 12-month rule change if the worker is casual/part-time/full-time?

If a worker has been working for the employer, either on a full-time, part-time or casual basis, for at least 12 months before the date of injury, they are considered to have been continuously employed, unless that period was interrupted by a work cessation that severed the employment relationship.

Generally, short breaks in employment do not sever the employment relationship for the purposes of the duty to maintain employment. Some examples of breaks in employment or work cessations that do not sever the employment relationship include, but are not limited to:

- The worker has been working for the same employer on a series of employment contracts, and there is a clear pattern of extending or renewing those contracts. The worker will be treated as if they had continuous employment provided there is a consistent trend of extending or renewing contracts and no evidence the employer terminated the worker's employment with no intention of rehiring them in the future;
- Compensable injuries, mental disorders, or occupational diseases resulting in time off work;
- A layoff of less than three months;

• A layoff of more than three months, where the employer set a recall date and the recall occurs;
• Leaves of absence, such as medical leave, maternity/parental leave, or personal leave (i.e., sabbatical or vacation);
• A strike or lock-out.

12. What if a worker's contract is coming to an end and they are on modified duties. Should I keep them on/do I have to keep them on?

In most cases, the duty to maintain employment is not intended to extend the time frame of employment agreed to at the time the worker was hired. If the worker was hired on a contract, the employer's duty to maintain employment only requires the employer to return the worker to the pre-injury, alternative, or suitable work for the remainder of the contract term that was interrupted by the compensable injury. However, in cases where there is a demonstrated pattern of employment contracts being extended or renewed in the past with little to no break in the employment, WorkSafeBC may conclude that the duty to maintain employment should extend beyond the term of the contract and be governed by the normal rules for duration of the duty to maintain employment.

13. Who should be carrying out a job demands analysis?

Generally, the employer should be able to provide WorkSafeBC with a detailed job description and/or list of the essential duties of the position. Where an employer is unable to provide WorkSafeBC information specific to the worker's pre-injury work, WorkSafeBC may use the Government of Canada National Occupational Classification (NOC) website to research the approximate main duties of the worker's occupation. Where required, WorkSafeBC may request a job site visit be conducted to gather information about the injured worker's specific work duties.

14. What should I do with workers from other countries who don't have a doctor if they have a workplace injury. Who should they see?

The Government of Canada website provides information on the rights of temporary foreign workers, including information on access to health care services.

Link: Temporary foreign workers: Your rights are protected - Canada.ca

15. Family doctors are writing sick notes that keep workers off for too long because they know the patient or the patient's family. As an employer, can I get a second opinion?

Workers have the discretion to choose their physician, qualified practitioner, or other recognized health care professional. Workers are not required to disclose medical information such as their specific diagnosis or treatments to the employer. Medical information reasonably shared with the employer includes:

- functional abilities and restrictions;
- expected return-to-work date;
- requirements or needs for temporary suitable return to work options; and
- recommended workplace accommodations or considerations to assist return to work.

To assist in gathering information about the worker's abilities and restriction/s, employers may request the worker's health care provider complete a functional ability form.

If there is a disagreement about the worker's ability to engage in suitable work, WorkSafeBC may investigate and assess the suitability and availability of the work offer and the worker's fitness to carry out the essential duties of the pre-injury or suitable work. The development of suitable work opportunities depends on the cooperation of all parties in the workplace, and may involve consultation between the worker, the employer, physicians, qualified practitioners, other recognized health care professionals, a union, and WorkSafeBC.

If you have questions beyond what is listed, please submit them here, and we will address them promptly.