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# e2r Alert!

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## Potential Changes to BC's Workers Compensation Act

The British Columbia Ministry of Labour introduced Bill 41, the *Workers Compensation Amendment Act (No.2), 2022*, in October 2022. If Bill 41 is passed into law, it will increase employers' obligations to injured workers who operate in BC under the *Workers Compensation Act* ("WCA").

The most notable implications of the Bill include the creation of a 'duty to cooperate' and a 'duty to maintain employment'.

### **Duty To Cooperate**

The duty to cooperate requires both employers and employees to take part in the reintegration of the worker to the workplace post-injury. The mutual responsibility includes:

- Contacting one another as soon as practical after the worker is injured and to maintain communication throughout the process
- Identify suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work
- Informing WorkSafeBC of the return to work and communicating with it throughout the process

In short - remember to talk to the injured employee and to WorkSafeBC (you don't want grumpy civil servants who have the power to fine you out there!) and identify suitable work for the employee (i.e. – don't give them the worst job in the company).

### **Duty To Maintain Employment**

The duty to maintain employment applies to workers who have been employed for at least 12 continuous months, and who have been unable to work on account of a work-related accident. If an employer employs less than twenty employees, then the duty does not apply.

The duty requires reinstatement to work after injury and includes:

- Where a worker is 'fit to work', but cannot carry out the essential duties of their pre-injury work, the employer must offer the worker the 'first suitable work that becomes available
- Where a worker is 'fit to carry out the essential duties of the worker's pre-injury work, the employer must: i) offer that pre-injury work to the worker, or ii) offer the worker alternative work that is comparable in duties and pay to the worker's pre-injury work
- The employer must make any change to the work or the workplace that is necessary to accommodate the worker, up to the point of undue hardship

The above obligation is separate from the existing duty to accommodate under the *Human Rights Code*.

Pursuant to the Bill, employers should not terminate an injured worker within six months unless it is for 100% legitimate reasons – you will need to adduce evidence of this! An employer's obligation to maintain employment ends two years after the date of the injury if the worker has not returned to work by that date. Undue hardship is a tough one and a very high standard so employer's need to think hard before they say no.

### **Administrative Penalties**

If WorkSafeBC finds that the employer failed to comply with its obligations under the WCA, it may issue significant administrative penalties. Currently, the maximum fine WorkSafeBC can levy is \$108,400.00 (ouch! Do not let this happen to you – be mindful, be careful and be compliant!). Further, the Bill contains a provision prohibiting employers from deterring workers from reporting injuries or filing a claim for compensation, which would constitute an offence under the WCA.

The Bill is at its second reading before the Legislative Assembly of BC and is not yet in force. Please note that the Bill contains other amendments to the WCA that are not covered in this E-Alert. If you would like to discuss the Bill in greater detail, we recommend speaking to an e2r™ Advisor.