**RETURN TO WORK**

**Duty to co-operate in return to work**

**40**(1) The employer of an injured worker shall co-operate in the early and safe return to work of the worker by,

(a) contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the period of the worker’s recovery and impairment;

(b) attempting to provide suitable employment that is available and consistent with the worker’s functional abilities and that, when possible, restores the worker’s pre-injury earnings;

(c) giving the Board such information as the Board may request concerning the worker’s return to work; and

(d) doing such other things as may be prescribed.  1997, c. 16, Sched. A, s. 40 (1).

**Same, worker**

(2) The worker shall co-operate in his or her early and safe return to work by,

(a) contacting his or her employer as soon as possible after the injury occurs and maintaining communication throughout the period of the worker’s recovery and impairment;

(b) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker’s functional abilities and that, when possible, restores his or her pre-injury earnings;

(c) giving the Board such information as the Board may request concerning the worker’s return to work; and

(d) doing such other things as may be prescribed.  1997, c. 16, Sched. A, s. 40 (2).

**Same, construction industry**

(3) Employers engaged primarily in construction and workers who perform construction work shall co-operate in a worker’s early and safe return to work and shall do so in accordance with such requirements as may be prescribed. Subsections (1) and (2) do not apply with respect to those employers and workers.  1997, c. 16, Sched. A, s. 40 (3).

**Same, emergency workers**

(4) If an emergency worker is injured, the worker’s deemed employer is not required to comply with this section. The worker’s actual employer, if any, is required to do so. However, the deemed employer is required to pay the costs of the actual employer’s compliance with this section.  1997, c. 16, Sched. A, s. 40 (4).

**Certain volunteers**

(4.1) Subsection (4) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker.  2000, c. 26, Sched. I, s. 1 (2); 2002, c. 18, Sched. J, s. 5 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 40 (4.1) of the Act is amended by striking out “police force” and substituting “police service”. (See: 2018, c. 3, Sched. 5, s. 68 (4))**

**Board assistance, etc.**

(5) The Board may contact the employer and the worker to monitor their progress on returning the worker to work, to determine whether they are fulfilling their obligations to co-operate and to determine whether any assistance is required to facilitate the worker’s return to work.  1997, c. 16, Sched. A, s. 40 (5).

**Notice of dispute**

(6) The employer or the worker shall notify the Board of any difficulty or dispute concerning their co-operation with each other in the worker’s early and safe return to work.  1997, c. 16, Sched. A, s. 40 (6).

**Resolution of dispute**

(7) The Board shall attempt to resolve the dispute through mediation and, if mediation is not successful, shall decide the matter within 60 days after receiving the notice or within such longer period as the Board may determine.  1997, c. 16, Sched. A, s. 40 (7).

**Transition, vocational rehabilitation**

(8) Until this section applies to an employer and the workers employed by the employer, subsections 53 (1) to (3) of the *Workers’ Compensation Act*, as deemed to be amended by this Act, continue to apply with necessary modifications despite their repeal.  1997, c. 16, Sched. A, s. 40 (8).

**Section Amendments with date in force (d/m/y)**

**Obligation to re-employ**

**41**(1) The employer of a worker who has been unable to work as a result of an injury and who, on the date of the injury, had been employed continuously for at least one year by the employer shall offer to re-employ the worker in accordance with this section.  1997, c. 16, Sched. A, s. 41 (1).

**Exception**

(2) This section does not apply in respect of employers who regularly employ fewer than 20 workers or such classes of employers as may be prescribed.  1997, c. 16, Sched. A, s. 41 (2).

**Determinations re return to work**

(3) The Board may determine the following matters on its own initiative or shall determine them if the worker and the employer disagree about the fitness of the worker to return to work:

1. If the worker has not returned to work with the employer, the Board shall determine whether the worker is medically able to perform the essential duties of his or her pre-injury employment or to perform suitable work.

2. If the Board has previously determined that the worker is medically able to perform suitable work, the Board shall determine whether the worker is medically able to perform the essential duties of the worker’s pre-injury employment.  1997, c. 16, Sched. A, s. 41 (3).

**Obligation to re-employ**

(4) When the worker is medically able to perform the essential duties of his or her pre-injury employment, the employer shall,

(a) offer to re-employ the worker in the position that the worker held on the date of injury; or

(b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker’s employment on the date of injury.  1997, c. 16, Sched. A, s. 41 (4).

**Same**

(5) When the worker is medically able to perform suitable work (although he or she is unable to perform the essential duties of his or her pre-injury employment), the employer shall offer the worker the first opportunity to accept suitable employment that may become available with the employer.  1997, c. 16, Sched. A, s. 41 (5).

**Duty to accommodate**

(6) The employer shall accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship.  1997, c. 16, Sched. A, s. 41 (6).

**Duration of obligation**

(7) The employer is obligated under this section until the earliest of,

(a) the second anniversary of the date of injury;

(b) one year after the worker is medically able to perform the essential duties of his or her pre-injury employment; and

(c) the date on which the worker reaches 65 years of age.  1997, c. 16, Sched. A, s. 41 (7); 2000, c. 26, Sched. I, s. 1 (3).

**Construction industry requirements**

(8) Employers engaged primarily in construction shall comply with such requirements as may be prescribed concerning the re-employment of workers who perform construction work. The application of this subsection is not contingent on the length of a worker’s continuous employment as required under subsection (1).  Subsections (2), (4) to (7) and (10) do not apply with respect to those workers and employers.  1997, c. 16, Sched. A, s. 41 (8).

**Transition**

(9) Until requirements referred to in subsection (8) are prescribed, subsection 54 (9) of the *Workers’ Compensation Act* and Ontario Regulation 259/92 continue to apply with necessary modifications to employers and workers referred to in subsection (8) despite the repeal of subsection 54 (9).  1997, c. 16, Sched. A, s. 41 (9).

**Effect of termination**

(10) If an employer re-employs a worker in accordance with this section and then terminates the employment within six months, the employer is presumed not to have fulfilled the employer’s obligations under this section. The employer may rebut the presumption by showing that the termination of the worker’s employment was not related to the injury.  1997, c. 16, Sched. A, s. 41 (10).

**Determination re compliance**

(11) Upon the request of a worker or on its own initiative, the Board shall determine whether the employer has fulfilled the employer’s obligations to the worker under this section.  1997, c. 16, Sched. A, s. 41 (11).

**Restriction**

(12) The Board is not required to consider a request under subsection (11) by a worker who has been re-employed and whose employment is terminated within six months if the request is made more than three months after the date of termination of employment.  1997, c. 16, Sched. A, s. 41 (12).

**Failure to comply**

(13) If the Board decides that the employer has not fulfilled the employer’s obligations to the worker, the Board may,

(a) levy a penalty on the employer not exceeding the amount of the worker’s net average earnings for the year preceding the injury; and

(b) make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 43 (loss of earnings).  1997, c. 16, Sched. A, s. 41 (13).

**Same**

(14) A penalty payable under subsection (13) is an amount owing to the Board.  1997, c. 16, Sched. A, s. 41 (14).

**Conflict with collective agreement**

(15) If this section conflicts with a collective agreement that is binding upon the employer and if the employer’s obligations under this section afford the worker greater re-employment terms than does the collective agreement, this section prevails over the collective agreement. However, this subsection does not operate to displace the seniority provisions of the collective agreement.  1997, c. 16, Sched. A, s. 41 (15).

**Emergency workers**

(16) If an emergency worker is injured, the worker’s deemed employer is not required to comply with this section.  The worker’s actual employer, if any, is required to do so. However, the deemed employer is required to pay the costs of the actual employer’s compliance with subsection (6).  1997, c. 16, Sched. A, s. 41 (16).

**Certain volunteers**

(17) Subsection (16) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker.  2000, c. 26, Sched. I, s. 1 (4); 2002, c. 18, Sched. J, s. 5 (4).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 41 (17) of the Act is amended by striking out “police force” and substituting “police service”. (See: 2018, c. 3, Sched. 5, s. 68 (5))**

**Section Amendments with date in force (d/m/y)**

**Labour market re-entry**

**Labour market re-entry assessment**

**42**(1) The Board shall provide a worker with a labour market re-entry assessment if any of the following circumstances exist:

1. If it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury.

2. If the worker’s employer has been unable to arrange work for the worker that is consistent with the worker’s functional abilities and that restores the worker’s pre-injury earnings.

3. If the worker’s employer is not co-operating in the early and safe return to work of the worker.  1997, c. 16, Sched. A, s. 42 (1).

**Labour market re-entry plan**

(2) Based on the results of the assessment, the Board shall decide if a worker requires a labour market re-entry plan in order to enable the worker to re-enter the labour market and reduce or eliminate the loss of earnings that may result from the injury.  1997, c. 16, Sched. A, s. 42 (2).

**Suitable employment or business**

(3) In deciding whether a plan is required for a worker, the Board shall determine the employment or business that is suitable for the worker and is available.  1997, c. 16, Sched. A, s. 42 (3); 2007, c. 7, Sched. 41, s. 1 (1).

**Preparation of plan**

(4) The Board shall arrange for a plan to be prepared for a worker if the Board determines that the worker requires a labour market re-entry plan.  1997, c. 16, Sched. A, s. 42 (4).

**Consultation required**

(5) The labour market re-entry plan shall be prepared in consultation with,

(a) the worker and, unless the Board considers it inappropriate to do so, the worker’s employer; and

(b) the worker’s health practitioners if the Board considers it necessary to do so.  1997, c. 16, Sched. A, s. 42 (5).

**Contents of plan**

(6) The plan shall contain the steps necessary to enable the worker to re-enter the labour market in the employment or business that is suitable for the worker and is available.  1997, c. 16, Sched. A, s. 42 (6); 2007, c. 7, Sched. 41, s. 1 (2).

**Duty to co-operate**

(7) The worker shall co-operate in all aspects of the labour market re-entry assessment or plan provided to the worker.  1997, c. 16, Sched. A, s. 42 (7).

**Expenses**

(8) The Board shall pay such expenses related to the plan as the Board considers appropriate to enable the worker to re-enter the labour market.  1997, c. 16, Sched. A, s. 42 (8).