

Bill 30 overview



Bill 30 overview

Today's session will:

- Provide you with an **overview of the legislation changes** and how they affect you and your injured workers.
- Highlight **your responsibilities** under the new legislation.
- Provide you with **resources to help you** through the new processes and keep you informed.

2018 legislation and policy updates

Legislation now in place as of January 1

- Update cost-of-living adjustment (COLA) calculation
- Enhance retirement benefits
- Introduce lump-sum fatality benefit
- Enhance grant requirements for safety associations



JANUARY

Legislation now in place as of April 1

- Expand presumption for myocardial infarction to paramedics
- Expand PTSD presumption to include correctional officers and emergency dispatchers
- Add a presumption for traumatic psychological injury claims for all workers



APRIL

Legislation takes effect September 1

- ◆ Introduce Code of Rights and Conduct
- ◆ Confirm all reasonable efforts are made in a worker's job search before estimating earnings capacity
- ◆ Provide interim relief during review or appeal
- ◆ Establish employers' obligation to reinstate injured workers
- Extend window for appeal to two years
- Remove the cap for maximum insurable earnings
- Enhance benefits for severely injured young workers
- Enhance benefits for all surviving spouses
- Continue coverage for workers under their employers' health benefits plan



SEPTEMBER

2018

Consultation January 2 - March 6

- ◆ Develop Code of Rights and Conduct
- ◆ Amend process for estimating earning capacity
- ◆ Provide interim relief during review or appeal
- ◆ Establish employers' obligation to reinstate injured workers



- Legislative changes have also been made to the *Workers' Compensation Act (WCA)* regarding the Medical Panels Office and Appeals Commission. Some of these changes came into force on proclamation of Bill 30, while others come into force throughout 2018.
- The establishment of a Fair Practices Office has also been included in the WCA and will be effective December 2018.
- For specific details about these changes and corresponding timelines, [please refer to Bill 30](#).

Legislation in place as of April 1

- Expanding presumption for myocardial infarction (heart attack) to paramedics, in addition to firefighters.
- Expanding presumption for post-traumatic stress disorder to correctional officers and emergency dispatchers, in addition to first responders.

Legislation in place as of April 1

Adding presumption for traumatic psychological injury claims for all workers.

- Worker has been exposed to a traumatic event during the course of employment, and
- Diagnosed with a psychological injury by a physician or psychologist using Diagnostic and Statistical Manual (DSM) criteria.

Legislation in place as of September 1

Remove cap for maximum compensable earnings

- Compensation for earnings loss will be based on 90% of the workers net earnings, with no limit.
- The removal of the cap does not apply to personal coverage holders.

Employment Health Benefits



Employment Health Benefits

- **Employers are required to continue to pay health benefit contributions** when a worker is absent from work due to a work injury for up to one year following the date of accident.
- **If your worker was paying into the benefit plan before** the injury they must also continue to pay into the plan.
- Workers are entitled to the same health benefits as they had on the date of accident. This can include coverage for dependents.
- Section 88.2(8)

Who is covered under the legislation?

Applies to most, but not all employers and workers. It **doesn't apply** to:

- Volunteer emergency response personnel (e.g., volunteer firefighter, ambulance driver, etc.).
- Personal coverage holders.
- Individuals who operate a business as a partnership or proprietorship.
- Persons declared workers under s.7 of the *WC Regulation* (e.g., students).
- Employers and workers in exempt industries unless they have optional WCB coverage in effect.

Employment Health Benefits

Health care benefits may include:

- Dental
- Vision care
- Medications
- Hospital services
- Health services (e.g., Nursing care, hearing aids, dressings, foot orthotics, etc.)
- Paramedical services (e.g., Chiro, massage therapy, physio, etc.)

Not included: Wellness account benefits, other benefits (e.g., Over-the-counter medications, pensions, life and travel insurance, etc.)

Employment Health Benefits

- If your worker makes contributions, you must provide them a process to continue to do so.
- **If the worker decides not to continue** then they will not be covered for ongoing health benefits.
- **If the employer choose not to continue making contributions**, WCB will reimburse the worker for expenses incurred and charge those expenses directly to your account.
- The employer may also be **penalized up to the equivalent of one year's** contributions to the injured worker's employment health benefits.

Employment Health Benefits

If the worker is **terminated** you still need to provide health benefits as long as:

- They were entitled to benefits at time of accident, and
- they have work restrictions preventing them from performing date of accident work, and
- they continue to pay their portion, if applicable, and
- the **termination is within 1 year following the date of accident.**

If the worker **voluntarily ends their employment**, you are no longer required to provide health benefits.

Penalty process

- **WCB will work with employers and make every reasonable effort** to educate them on the legislative requirements.
- **If an employer chooses to end contributions**, a referral to Claims Audit will be completed. They will contact the employer (by phone and in writing) to educate of the potential human and financial implications of their decision.
- **If there is no compliance**, the worker's out-of-pocket expenses will be levied to the employer's account. Additional penalties and financial implications may be determined.

EHB Take-Aways

- Injured workers are **entitled to the same benefits** they had before the accident.
- Contact your benefit provider to **ensure there are no barriers** to continued coverage.
- **Have a system in place** so your injured worker can continue making his or her premium contributions (if applicable).

*Obligation
to Reinstate*



Obligation to Reinstate

- If your injured worker has been an employee with your company for 12+ months, **you must bring the worker back** after a workplace injury.
- This legislation does not apply to certain workers (e.g., some deemed workers, volunteers).
- You must accommodate **unless it impacts your ability to run your business (undue hardship)**.

Who is covered under the legislation?

Applies to most, but not all employers and workers. It **doesn't apply** to:

- Volunteer emergency response personnel (e.g., volunteer firefighter, ambulance driver, etc.).
- Personal coverage holders.
- Individuals who operate a business as a partnership or proprietorship.
- Persons declared workers under s.7 of the *WC Regulation* (e.g., students).
- Employers and workers in exempt industries unless they have optional WCB coverage in effect.

Obligation to Reinstate

Your responsibilities:

- You must bring your employees back to their **date-of-accident job** (or alternate employment with the same earnings) when they are fit for full duties.
- **Suitable work** must be offered when your employees are fit for modified work.

Suitable modified work

The following conditions must be met:

- The work accommodates the worker's compensable medical restrictions so the worker can perform the duties safely.
- The work contributes to the worker's physical and vocational rehabilitation by keeping the worker active and involved in the workplace.
- The work promotes the gradual restoration to the worker's pre-accident level of employment.
- The work must be a meaningful and productive part of the employer's operations.
- The work does not create financial hardship for the worker.

How can an employer accommodate?

- Supplying or modifying tools or equipment.
- Making the premises accessible.
- Modifying the hours and/or work or offering flexible work schedules.
- Moving your injured worker to a different work location.
- Altering aspects of the job, such as job duties.
- Moving the worker to a different job or operations.

Timelines

A fitness to return to work should not be unexpected with good communication.

The claim owner will notify the employer of a fitness for work and the employer is expected to:

- Offer pre-accident job with no restrictions **within a day.**
- If temporary accommodation is required, then offer modified work **within three days.**
- If permanent accommodation is required, then WCB will work with you and the worker to **negotiate a timeframe.**

Collective Agreements

- **The reinstatement terms of the Workers' Compensation Act prevail** over the collective agreement.
- **The only exception** is that it does not displace the seniority provisions.
- Employers are to offer employment within the collective agreement first.
- If obligation cannot be met, then they must consider opportunities outside the collective agreement, including opportunities contained in other collective agreements under their operations.

Responsibilities

Both employers and workers must:

- Contact each other after an accident and maintain communication throughout the recovery.
- Participate in the establishment of modified duties.
- Provide information to WCB about the return to work and notify claim owner of any dispute or disagreements regarding the return to work.
- Do other things prescribed by WCB to support a safe return to work.

Duration of Obligation

- There is **no set limit** on an employer's obligation.
- Normally doesn't last beyond the end date of a **contract or project**, but is dependent on whether the worker could reasonably be expected to return on another contract or project.
- Employers obligation ends if a worker declines an offer that is deemed suitable by WCB or voluntarily ends employment.

Work Interruptions

- If a worker is fit during a layoff period then the employer is expected to offer reinstatement at the beginning of the usual busy season.
- WCB will determine if a worker is eligible for benefits during work interruptions (like shutdown, strike, layoffs, terminations) by asking:
 - Is it temporary or long term?
 - Is it a normal cyclical event?
 - Is the worker at a disadvantage with effectively entering into a job market due to the injury?

Obligation to Reinstate and Termination

- When an employee returns to work and is terminated within six months or while still on benefits (e.g., receiving a wage top-up), WCB will **presume the employer did not meet** their obligation.
- The employer can **ask for their obligation to be reviewed**, but must prove (with evidence) the termination was for valid business reasons.
 - This includes employees who return to regular work duties with no restrictions.
 - The employer may be found to have **not met their obligation after six months** if the termination was due to the work injury/ illness.

Undue Hardship

- Undue hardship is when an employer cannot sustain the economic, efficiency costs of the accommodation. It is **more than inconvenience**.
- WCB's jurisdiction only applies to workplace accommodation required for compensable work injuries.
- Unless there are unusual and compelling circumstances, WCB would not consider hardship to arise where the worker is fit for full duties within six weeks.

Assessing undue hardship

WCB may consider any or all of the following:

- Employer size and available resources.
- Financial costs.
- Disruption of operations.
- Interchangeability of workforce and facilities.
- Health and safety concerns.
- Morale problems of other employees due to the accommodation.
- Substantial interference with the rights of others.

Undue Hardship

- Employers are required to provide supporting evidence to demonstrate a hardship.
- If undue hardship is approved then no penalties will be applied and the claim will continue as per normal process.
- Employers have the right to request a review of the decision or appeal through normal WCB processes.
- WCB will notify the **Human Rights Commission** when dealing with a worker/employer dispute.

Impact for non-compliance

- If an employer has not met their obligation to reinstate, Claims Audit may levy a penalty of **up to** 100% of the worker's average net earnings for a year before the accident.
 - The penalty may be paid to the worker.
- An additional penalty may be assessed if the employer fails to cooperate in the process.
- If a worker doesn't cooperate, their compensation may be reduced or suspended until they agree to cooperate.

Penalty process

- Undue hardship or termination reasons will be reviewed on a claim-by-claim basis.
- All information will be gathered to ensure informed fair decision are made.
- WCB will work with employers to educate them on any decision to not comply with legislation.
 - A referral to Claims Audit will be completed, who will contact the employer (by phone and in writing) to educate them on the potential human and financial implications.
- If there is no compliance, a penalty may be levied to the employer account. Additional penalties and financial implications may be determined.

OTR Resolution of Disputes

- You are required to consider **all options** that would accommodate the injured worker without undue hardship
- Both you and your worker are responsible for notifying WCB if there are any disputes about the obligation (e.g., termination).
- WCB has 60 days to resolve the dispute and may mediate if needed (unless the notification occurs more than three months after termination).

OTR Take-Aways

- Legislation applies to **continuously employed workers** (12+ months).
- Ensure that you have a **strong modified work program** in place.
- Communicate your company policies **clearly and regularly** with your staff. Document any performance issues.
- **Undue hardship is more than just an inconvenience—the threshold is high.** We will work with you to determine if undue hardship applies.

Questions?

and evaluations

