

Chapter: Return to Work

Legislative authority: sections, 117, 118

Prevention statement

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act (the 'Act') establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy provides information on administrative penalties for employer non-compliance with re-employment obligations.

Definitions

board means the Workers' Safety and Compensation Board

employer means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

net earnings means a worker's gross earnings less income tax, employment insurance, and Quebec/Canada Pension Plan deductions

suitable employment means work that meets the following criteria:

- a. the work is within the worker's functional abilities;
- b. the worker has, or is reasonably able to acquire, the necessary skills to perform the work;
- c. the work does not pose a health or safety risk to the worker or co-workers; and
- d. the work restores the worker's earnings, if possible.

worker means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

Policy statement

1. General

Employers may be subject to administrative penalties for non-compliance relating to the return to work process and non-compliance with the re-employment obligation.

Administrative penalties can be levied on an employer for a contravention of section 117 non-cooperation with return to work (see policy 4.5 Duty to Co-Operate, Part 4 of 4: Penalties for Non Co-Operation).

Administrative penalties can also be levied under section 118 of the Act for non-compliance with re-employment obligations.

2. Administrative penalties for employer non-compliance with section 117 of the Act, Return to Work

The board may levy an administrative penalty on an employer where there is a finding that an employer has contravened section 117 of the Act (see policy 4.5 Duty to Co-Operate, Part 4 of 4: Penalties for Non Co-Operation).

2.1 Amount of administrative penalty for non-compliance under section 117, Return to Work

If the board determines that an employer has contravened section 117, it may levy an administrative penalty on the employer in accordance with the Act and policy 4.5 Duty to Co-Operate, Part 4 of 4: Penalties for Non Co-Operation.

3. Administrative penalties for employer non-compliance with section 118 of the Act, Re-employment obligation

Administrative penalties for non-compliance with an employer's re-employment obligation may be levied by the board if the board determines that the employer has contravened section 118 of the Act.

The board may:

- a. levy an administrative penalty up to an amount equal to the worker's net average earnings for the 12 months immediately preceding the work-related injury; and
- b. make payments to the worker for a maximum of 12 months as if the worker was entitled to loss of earnings benefits under section 102 of the Act.

3.1 Amount of an administrative penalty for employer non-compliance with re-employment obligations under section 118

An administrative penalty is based on the worker's net average earnings with the employer at the time of the work-related injury.

The maximum annual earnings amount is not applicable to the amount of the administrative penalty.

The formula for calculating the administrative penalty is as follows:

number of weeks of non-compliance (up to 52) x worker's net average earnings with the employer at the time of the work-related injury = administrative penalty amount.

For example, the board determines that an employer has failed to re-employ a worker whose net average earnings are \$100,000 per year. Although these earnings are greater than the maximum annual earnings amount, the maximum administrative penalty that can be levied on the employer is \$100,000.

3.2 Revoking an administrative penalty

The board may revoke the administrative penalty in its entirety if the employer offers, in writing, to re-employ the worker, but the worker and the employer agree to a voluntary severance of employment.

Even if a worker agrees to sever the employment relationship, (with or without a severance package), if an employer fails to offer, in writing, to re-employ the worker, an administrative penalty may be levied.

3.3 Varying an administrative penalty

The board may vary or reduce the amount of the administrative penalty if the employer:

- a. subsequently meets the re-employment obligation; or
- b. does not meet the re-employment obligation, but offers the worker suitable employment at a wage loss, with the agreement of the worker.

3.4 Employer subsequently meets the re-employment obligation

The reduced administrative penalty is calculated according to the number of weeks (or part weeks) that the employer does not meet the re-employment obligation.

For example, the board notifies the employer that the worker is fit to perform the employment at the time of the work-related injury. Subsequently, the board determines

that the employer has failed to offer to re-employ the worker in the work at the time of the work-related injury or comparable employment. Accordingly, an administrative penalty is levied equal to the worker's net average earnings with the employer at the time of the work-related injury for the 12 months preceding the earnings loss (\$52,000 per year, \$1,000 per week).

52 weeks X \$1,000 = \$52,000 administrative penalty

The employer re-employs the worker ten weeks after receiving the initial notice from the board, with the agreement of the worker. The board reduces the administrative penalty to the number of weeks that the employer failed to re-employ the worker, and adjusts the employer's administrative penalty:

Adjusted Administrative Penalty: 10 weeks X \$1,000 = \$10,000.

3.5 Employer provides suitable employment at a wage loss

Where a worker is medically able to perform the essential duties of the worker's employment at the time of the work-related injury, and the employer does not meet the re-employment obligation, but subsequently offers the worker suitable employment at a wage loss, the board may reduce the administrative penalty up to 50% of the remaining balance.

3.6 Employer provides suitable employment at no wage loss

Where a worker is medically able to perform the essential duties of the worker's employment at the time of the work-related injury, and the employer does not meet the re-employment obligation, but subsequently offers the worker suitable employment at no wage loss, the board may reduce the administrative penalty up to 75% of the remaining balance.

3.7 More than one administrative penalty

Depending on the circumstances, more than one administrative penalty may be levied throughout the duration of the re-employment obligation.

If an employer fails to meet the re-employment obligation on more than one occasion for the same claim, the total of all administrative penalties levied cannot exceed the worker's actual net average earnings with the employer at the time of the work-related injury for the 12 months immediately preceding the work-related injury.

4. Re-employment payments made to worker under section 118 of the Act

4.1 Worker medically able to perform essential duties without accommodation

If the worker is medically able to perform the essential duties of the employment at the time of the work-related injury without accommodation, but the employer fails to meet the re-employment obligation, re-employment payments may be made by the board to the worker, effective from the start date of the re-employment obligation.

The amount of the re-employment payment is calculated in accordance with section 102 of the Act 'Compensation for Loss of Earning Capacity' (see policy 3.1 Loss of Earnings Benefits).

4.2 Employer fails to offer to re-employ

If the employer fails to offer to re-employ the worker in the employment at the time of the work-related injury or comparable employment, full re-employment payments are paid to the worker.

4.3 Employer provides suitable employment at a wage loss

If the employer fails to offer to re-employ the worker in the employment at the time of the work-related injury or comparable employment, but offers the worker suitable employment at a wage loss with the agreement of the worker, the board may make partial re-employment payments to the worker, based on the difference between the worker's net average earnings at the time of the work-related injury and the net average earnings of the suitable employment.

4.4 Employer provides suitable employment at no wage loss

If the employer fails to re-employ the worker in the employment at the time of the work-related injury or comparable employment, but provides the worker with suitable employment at no wage loss and the worker is in agreement, no re-employment payments are made to the worker.

4.5 Effect of re-employment penalty on employer on payments made to worker

Workers are entitled to re-employment payments regardless of whether a re-employment penalty is levied or collected from the employer.

4.6 Worker medically able to perform essential duties with accommodation or medically able to perform suitable employment (temporary loss of earnings)

If the worker is medically able to perform only:

- a. the essential duties of the employment at the time of the work-related injury with accommodation; or

- b. suitable employment;

and the employer fails to meet the re-employment obligation, the worker may be offered a vocational assessment (see policy 4.14 Vocational Rehabilitation) and temporary loss of earnings benefits are paid to the worker as long as the worker is available for and co-operates in:

- c. a medical rehabilitation program;
- d. an early and safe return to work plan; or
- e. a vocational assessment and vocational rehabilitation plan.

If the employer subsequently meets the re-employment obligation, the board re-examines the need for the vocational rehabilitation plan (if applicable).

4.7 Worker accepts less suitable employment

If the worker accepts work that is not the most suitable employment available, temporary partial loss of earnings benefits will be paid based on the earnings for the most suitable employment. A vocational assessment will be conducted to determine whether the worker requires a vocational rehabilitation (VR) plan.

4.8 Change in fitness level

If, in the first year during which the non-compliance with the re-employment obligation occurred, the worker's fitness level for employment improves such that the worker is able to perform the essential duties of the employment at the time of the work-related injury without accommodation, temporary loss of earnings benefits are converted to re-employment payments.

4.9 Duration of re-employment payments

Re-employment payments are issued for a period of:

- a. one year; or
- b. to the end of the re-employment obligation period, whichever occurs sooner.

Re-employment payments end if the employer subsequently meets its re-employment obligation.

5. Collection of administrative penalties

The board collects administrative penalties (under section 117) and re-employment penalties (under section 118) according to the established provisions governing the collection of assessments (see policy 5.4 Reporting Payroll and Payment of Assessment Premiums). Administrative penalties are amounts owing to the board at the time that it is levied and it will be added to the employer's assessment account and payment enforced under Part 7, Division 3 of the Act 'Enforcement and Priorities'.

Section 139 of the Act deals with liability for assessment premiums of contractors and subcontractors. A principal, contractor, or subcontractor referred to in section 139 of the Act who is not the injury employer will not be held liable for an administrative penalty under section 117 or an administrative penalty under section 118 that is charged against the injury employer.

5.1 Stay of administrative penalty

An administrative penalty is not suspended if an employer requests a reconsideration or an appeal of the administrative penalty. The person may apply to the board for a stay of the penalty.

History

RE-07-2 Re-Employment Penalties and Payments, effective July 1, 2012, revoked July 1, 2022

RE-07-2 Re-Employment Penalties and Payments, effective January 1, 2011, revoked July 1, 2012