

Table of Concordance:

Chapter 5 – Re-employment

New Policy 5.6.1 – Obligation, Duties, and Penalties

This table provides a high-level comparison of the WCB’s new *Policy 5.6.1 – Obligation, Duties, and Penalties* and the rescinded policies in Chapter 5 – Re-employment. In particular it outlines where to find, in the new policy, the content of the 16 re-employment policies previously found in Chapter 5 of the WCB Policy Manual.

New Re-employment Policy 5.6.1	Old Policies in Chapter 5 of the WCB Policy Manual: Re-employment
Preamble	<ul style="list-style-type: none"> This is new content. There was no general preamble in the previous re-employment policies.
1. Re-employment and Human Rights Legislation	<ul style="list-style-type: none"> This is new content. This section acknowledges that employers may also have obligations under human rights legislation. However, the <i>Workers’ Compensation Act</i> (the “<i>Act</i>”) and policy focus on re-employing workers with a compensable injury under the <i>Act</i>.
2. Employers and Workers Covered by Re-employment Obligation	<ul style="list-style-type: none"> Section 2 of the new policy is based on old policies: <ul style="list-style-type: none"> 5.1.1R1 - <i>Employer Coverage</i> 5.1.2R - <i>Worker Eligibility</i> Simplified/streamlined wording. Reference to Canada Revenue Agency "Remittance for Current Source Deductions", Form PD7A is now in a footnote.
3. Length of Re-employment Obligation	<ul style="list-style-type: none"> The content of section 3 of the new policy is taken from policies: <ul style="list-style-type: none"> 5.2.1R- <i>Determination of Date of Injury for Purposes of Re-Employment</i> 5.2.2- <i>Employer’s Obligations Within the Re-Employment Period</i> A section was added that states that where a worker refuses an offer of employment, the employer is no longer bound by the re-employment provisions of the <i>Act</i> with respect to the worker. The actual provision is not new – it is in Section 93 of the <i>Act</i>.
4. Determining if case is appropriate for re-employment	<ul style="list-style-type: none"> The content of section 4 of the new policy is taken from <i>Policy 5.1.3 - Case Appropriate for Re-Employment</i>. The old policy states WCB can defer or deny a case for re-employment where the case management process has not been completed; or labour / management issues will interfere with the re-employment process. It was determined that the phrase “case management process has not been completed” was overly broad and required refinement. Therefore, the policy provision was clarified in the new policy and now reads “the WCB may delay or determine it is inappropriate to enforce the re-employment provisions where: a) it is not anticipated the worker will be fit to be re-employed; The content of old <i>Policy 5.3.3 - Established Hiring Practices in Worker’s Trade or Occupation</i>, was included in this section of the new policy.
5. Obligations of Injured Workers	<ul style="list-style-type: none"> Worker obligations from Section 84 of the <i>Act</i> were included in this section of the new policy. The general responsibilities of injured workers to participate in mitigation of the effects of the workplace injury is outlined.

**New
Re-employment
Policy 5.6.1**

**Old Policies in Chapter 5 of the
WCB Policy Manual: Re-employment**

<p>6. Re-employment Obligations of Employers</p>	<ul style="list-style-type: none"> • The bulk of content in section 6 of the new policy comes from these old policies: <ul style="list-style-type: none"> ○ <i>5.2.2 - Employer’s Obligations Within the Re-Employment Period</i> ○ <i>5.2.4 - Worker Able to Perform Essential Duties of Pre-Injury Employment</i> ○ <i>5.2.5 - Worker Able to Perform Suitable Work placed in section 5 of draft policy.</i> • A series of factors to consider when deciding if alternative employment offered by the employer is equivalent to pre-injury employment were added. • the statement “references to pre-injury circumstances refer to those circumstances which existed when the worker’s time loss commenced” from old <i>Policy 5.2.1R</i> was moved to this section of the new policy. • The content of old policy <i>Policy 5.3.2 - Collective Agreements</i> was moved to this section of the new policy.
<p>7. Accommodation and Undue Hardship</p>	<ul style="list-style-type: none"> • The content of old Policy 5.2.6 – <i>Accommodation</i> has been placed in section 7 of the new policy. • Examples of potential accommodations and factors that may be considered when determining if an accommodation would be an undue hardship have been added.
<p>8. Failure to re-employ</p>	<ul style="list-style-type: none"> • The content of the following old policies has been moved to this section of the new policy: <ul style="list-style-type: none"> ○ <i>Policy 5.3.1 - Employer Defenses</i> ○ <i>Policy 5.2.3 - Termination Within the Re-Employment Period</i> ○ <i>Policy Number: 5.3.4 - Section 71 of Labour Standards Code</i> • The reference to the onus on the worker to provide evidence that a termination from employment more than 6 months after reinstatement, but still within the re-employment period, is related to the injury and/or claim was removed. This provision was not supported by the content of the <i>Act</i>.
<p>9. Orders and Penalties</p>	<ul style="list-style-type: none"> • The basis for the content of this section of the new policy are old policies: <ul style="list-style-type: none"> ○ <i>Policy 5.4.1 - Order to Re-Employ</i> ○ <i>Policy 5.4.2 - Penalties Under Section 99 for Breach of Re-Employment Obligations</i> • The content of the policies was updated to ensure consistency with the <i>Act</i>. It is now clear in the policy the WCB does not have discretion to choose the lesser penalty amount specified in the <i>Act</i> (Section 99) when calculating the penalty for non-compliance. The WCB must choose the higher amount. However, as is the case today, the WCB is still able to consider mitigating factors and reduce or eliminate the penalty if appropriate. • A time frame has been included for compliance with an order to re-employ. The order will include the penalty amount that will be applied if the employer fails to comply. • Factors the WCB may consider when determining the penalty amount for non-compliance with an order to re-employ have been included to support transparency and fairness.
<p>N/A</p>	<ul style="list-style-type: none"> • The content of <i>Policy 5.5.1 - Re-employment Appeals</i> has not been included in the new policy. Re-employment appeals follow the same appeal process as any other decision under appeal.