

Employers

How does Duty to Cooperate apply to employers?

The Duty to Cooperation legislation empowers WCB Nova Scotia to hold both workers and employers accountable for their collective responsibilities to cooperate in the return-to-work process.

This legislation is a measure to encourage workers to stay at work following a work-related injury, if it is safe and suitable to do so. Research shows that workers who stay connected to the workplace after an injury get better faster and experience better physical, psychological and financial outcomes. Employers also benefit by limiting the impact of injury on staffing and operations, enhancing employee morale and corporate reputation through demonstrating a commitment to employee well-being and ethical practices.

Will the legislation apply to claims registered prior to July 15 or only to those accepted after that date?

The Duty to Cooperate legislation will apply to all WCB claims that are open when the legislation takes effect on July 15.

What does cooperation look like for an employer?

Cooperation and commitment by the employer in the return-to-work process is essential. Early involvement is crucial to develop and support a personalized return-to-work plan for the worker.

This includes:

- Contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the period of their recovery and full return-to-work.
- Attempting to provide suitable work that is available.
- Providing WCB with any requested information about the worker's return-to-work.

What happens if an employer does not cooperate?

We will contact the employer if they are not cooperating in a worker's return-to-work process. An example of non-cooperation would be if an employer has suitable work available but fails to offer the employment to the worker.

Penalties will only occur after we attempt to gain, or regain, the employer's cooperation. Penalties may include all compensation costs paid to the worker and the costs incurred by WCB during the period of non-compliance.

How is an employer notified of non-compliance?

We will notify an employer that they are non-compliant and provide them with guidance on how they can comply within a specified deadline. To avoid penalties, employers will need to be compliant before the set deadline.

How is Duty to Cooperate different from the Duty to Re-Employ in the Act?

The [Workers' Compensation Act](#) (the "Act") requires employers to re-employ injured workers once the worker has recovered/reached medical stability. Unlike in the past, employers and workers now have a legal obligation to cooperate in the return-to-work process.

The new Duty to Cooperate legislation introduces a legal duty on the employer to cooperate in return-to-work efforts during the recovery or acute phase of a work-related injury before the worker has reached medical stability.

Does Duty to Cooperate apply to federal workplaces, organizations working in NS on a part-time basis, and seasonal workers?

Yes, it applies to all workplaces in Nova Scotia.

What is the WCB's role in Duty to Cooperate?

We're holding ourselves accountable as we introduce this new accountability for employers and workers. We know how important it is for employers and workers to experience a collaborative process with WCB Case Workers when making efforts to return-to-work.

This is evidenced by recent efforts such as:

- Improved service level agreements that support clear processes and transparency in our reporting process.
- Holding service providers more accountable to focus on worker recovery.
- Re-organizing our case management teams to place workers at the centre of our work and streamline our processes to be more effective.

What can I do if I am not getting the support I need from my WCB Case Worker?

If you are having an issue, we want to hear about it. If you are having an unsatisfactory experience with your service, we encourage you to contact the manager of your WCB Case Worker.

If that is not satisfactory, we also have a formal complaint process to escalate serious service complaints to our [Client Relations Officer](#).

When a work-related injury occurs, can we start the return-to-work process while the worker waits to be assessed?

Yes, the return-to-work process can start immediately and does not need to wait for a case conference or a functional assessment from a health care provider. The best place to start is by having a conversation with the worker to begin exploring options for modified work.

A health care provider's assessment will include an understanding of the worker's functional limitations or restrictions to support the worker in returning to pre-injury status. This will provide you the information to increase or decrease duties based on abilities and job demands.

Your WCB Case Worker can assist through this process as needed, but a health care provider's assessment is not required to start the return-to-work process for a work-related injury.

What happens if a worker is reinjured during return-to-work efforts?

We work closely with health care providers and the employer to establish safe duties for a worker to perform, based on medical information and the worker's functional assessment. If modified duties are hindering a worker's injury, the worker should communicate this concern early with their employer and health care provider. Your WCB Case Worker will evaluate any new information received from the medical provider and support the employer and worker to ensure that modified work tasks are safe to perform.

What happens if a worker refuses to participate in their return-to-work plan?

With the introduction of the Duty to Cooperate legislation, employers are encouraged to remind workers of their responsibility to cooperate, including accepting suitable and safe work when it is offered. Employers can also inform workers that if they are unable to cooperate, they must provide a valid reason. Without a compelling explanation, the case may be escalated to WCB for review.

A good first step is to discuss this scenario with your WCB Case Worker to explore your options. If the duties were approved by WCB and a health care provider, the Case Worker needs to meet with the injured worker to discuss their roles and responsibilities in returning to work.

If the worker does not have a compelling reason to comply with duty to cooperate, this may result in the reduction, suspension, termination, or withholding of the worker's benefits.

What if you do not have a role that can suitably and safely accommodate an injured worker?

If you encounter this situation, there are a few options you can explore.

- Partner with an occupational therapist. They will visit your workplace and review job duties with you. Your WCB Case Worker would be able to help you find a local occupational therapist to support this effort.
- Speak to your WCB Case Worker about our Employer Incentive Program or options for On-the-Job Training.

- Check out the WCB's Working to Well web pages for additional resources at wcb.ns.ca/Working-to-Well
- Get creative. Workplaces often have a long list of tasks that workers pick away at, but don't necessarily have dedicated time to complete. These tasks are an example of work that is perfect for accommodating. For example, on construction sites, can the workers help shadow new employees? Sign off on training? Drive around to different construction sites to drop off or pick up supplies? Do equipment safety checks?

Is undue hardship considered in Duty to Cooperate?

Yes. This will apply to small to medium organizations who may have available and suitable work but experience excessive financial burden to accommodate an injured worker. WCB will ask for documentation to support any evidence of financial hardship.

When employees are working across more than one organization, who is responsible for accommodation?

All employers have a duty to accommodate workers with a workplace injury.

Workers

How does Duty to Cooperate apply to workers?

Workers have always been required to cooperate with WCB and health care providers in their recovery and return-to-work efforts. Unlike in the past however, workers and employers now have a legal obligation to cooperate in their return-to-work process.

This legislation is a measure to encourage workers to stay at work following a work-related injury, if it is safe and suitable to do so. Research shows that workers who stay connected to the workplace after an injury get better faster and experience better physical, psychological and financial outcomes.

What does cooperation look like for workers?

Worker involvement in the return-to-work process is essential. It provides a sense of ownership of the program and commitment to return to work in a safe and timely manner.

This includes:

- Contacting the employer as soon as possible after the injury occurs and maintaining communication throughout the period of the recovery and full return-to-work.
- Assisting the employer to identify suitable work that is available.
- Providing WCB with any requested information concerning their return-to-work.

How is a worker contacted for non-compliance?

WCB will contact the worker if we find that they are not cooperating in their return-to-work process. An example of non-cooperation may include situations where the worker refuses to accept an offer of suitable and available employment from the employer.

What happens when a worker does not cooperate?

If we determine a worker is not cooperating in the return-to-work process, and the worker does not have a compelling reason, WCB will advise the worker that they are not cooperating. If the worker does not have a compelling reason to comply with Duty to Cooperate, this may result in the reduction, suspension, termination, or withholding of the worker's benefits until they cooperate in their return to work.

What happens if an employer does not cooperate?

We will contact the employer if they are not cooperating in a worker's return-to-work process. An example of non-cooperation would be if an employer has suitable work available but fails to offer the employment to the worker.

How does DTC apply to workers in unions?

Your union will be engaged as part of the return-to-work team and will work with your employer, WCB Case Manager and health care provider to keep you connected to work when it is safe to do so.

What happens when a doctor's note differs from a service provider's functional assessment?

WCB Case Workers are responsible for validating the objective evidence of the medical information. They will contact a worker's physician for evidence to support.