

Accommodation at Work

FREQUENTLY ASKED QUESTIONS

Employers



New Brunswick
Brunswick

NEW BRUNSWICK
HUMAN RIGHTS COMMISSION



COMMISSION DES DROITS
DE LA PERSONNE
DU NOUVEAU-BRUNSWICK

WORKSAFE
TRAVAIL SÉCURITAIRE **NB**

The standards New Brunswick employers must meet to ensure their workers' continued employment after a permitted leave or workplace accident.

Rights, obligations and best practices for employers under New Brunswick's

- *Workers' Compensation Act*
- *Employment Standards Act*
- *Human Rights Act*

Q:

If a person who works for me is injured at work, or falls ill due to an occupational disease, am I required to re-employ them once they're ready to return to work?

A:

Section 42.1 of the *Workers' Compensation (WC) Act* – the “re-employment obligation” – states that if you employ 10 or more workers, you must offer to re-employ a worker who:

- Has experienced a workplace injury, injury recurrence or occupational disease by accident.
- Is entitled to workers' compensation benefits through WorkSafeNB.
- Has worked for you for at least one year.

Even if you do not have a “re-employment obligation” under the *WC Act*, you have a duty to accommodate under the *Human Rights (HR) Act* that may require you to allow an employee to return to work.

Q:

What does the re-employment obligation require that I offer the worker?

A:

If you are subject to the re-employment obligation under the *WC Act*, you must offer the worker re-employment according to the following rules:

- If the worker is ready to return to work and is capable of performing the duties required of their pre-accident job, you must re-employ them in the same job, or an equivalent one, with no loss of seniority or benefits.

- If the worker is ready to return to work and is **not** capable of performing those duties, you must offer them any available alternate position better suited to their current abilities, with no loss of seniority or benefits.

As the employer, you must make this offer of re-employment within the following time frames:

- Within one year of the date the worker began to receive workers' compensation benefits, if you employ between 10 and 19 workers.
- Within two years of the date the worker began to receive workers' compensation benefits, if you employ 20 workers or more.

Some limitations related to industry may apply. The re-employment obligation under the *HR Act* may extend beyond two years, and it applies regardless of the number of employees. Please review the *Accommodation at Work* guide for detailed information.

Q:

If the worker is unable to return to their pre-accident job due to the nature of their workplace injury, how is the alternate offer of employment determined?

A:

WorkSafeNB will work with both you and the worker to arrive at a reasonable offer of accommodation.

Q:

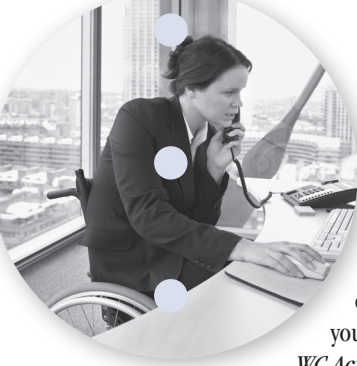
What if I cannot re-employ the worker?

A:

If you are subject to the re-employment obligation and you:

- Refuse to re-employ the worker even though they are capable of performing their pre-accident job;
- Refuse to accommodate them in a new position more appropriate to their post-accident abilities;
- Do not make what WorkSafeNB determines to be a reasonable offer of accommodation;





the worker can file a complaint with the Employment Standards (ES) Branch of the Department of Post-Secondary Education, Training and Labour (PETL) of New Brunswick. PETL officers will investigate the complaint and can compel you to meet your re-employment obligation under the *WC Act*. If the worker doesn't file a complaint against you, WorkSafeNB can do it on the worker's behalf. The worker can also file a complaint with the Human Rights Commission (HRC).

Q:

What happens if the ES officer finds in favour of the worker?

A:

You will be compelled to make an offer of re-employment according to the legislated obligation under the *WC Act*. You could also be compelled to pay the worker for any economic loss they have suffered.

WorkSafeNB may also levy a fine against you in the amount of \$2,500, which will be added to your assessed workers' compensation premium for the year the non-compliance took place.

Q:

What happens if I make what WorkSafeNB believes to be a reasonable offer of accommodation, and the worker disagrees?

A:

If the worker doesn't believe the offer of accommodation is reasonable, the worker can:

- Appeal WorkSafeNB's decision with WorkSafeNB's Appeals Tribunal.
- File a complaint with the ES Branch.
- File a complaint with the HRC.

If the Appeals Tribunal upholds WorkSafeNB's decision and the worker still believes the offer to be unreasonable, the worker can:

- File a complaint with the HRC.
- File a complaint with the ES Branch.

Q:

What happens if the worker wasn't injured at work, but had to leave the job for a period of time due to a family member's illness? Is the job still protected?

A:

Yes, it may be. The *Employment Standards (ES) Act* of New Brunswick requires employers to allow workers to return to work after a “permitted leave.”*

The following permitted leaves are itemized under the *ES Act*:

- Maternity leave
- Child care leave
- Bereavement leave
- Compassionate care leave
- Court leave
- Family responsibility leave
- Sick leave
- Reservists’ leave

*Please refer to the *Accommodation at Work* guide for details on the time frames for each of these leaves.

Q:

What protection does the return to work clause of the *ES Act* offer workers?

A:

The *ES Act* states that you:

- Cannot dismiss, suspend or lay off a worker during a permitted leave.
- Must allow the worker to resume work in the position held immediately before the beginning of the leave – or an equivalent position – with no decrease in pay.

Q:

What happens if I do not allow the worker to return to work?

A:

The worker can file a complaint with the ES Branch of PETL. ES officers will investigate the complaint, and can compel you to comply with your obligations under the *ES Act*. In the case of maternity leave or an absence due to a disability, the worker may also file a complaint with the HRC.

Q:

What if the complaint filed under the *ES Act* is resolved in my favour, and the worker is still dissatisfied with the result?

A:

The worker can file an appeal with the Labour and Employment Board. In the case of maternity leave or an absence due to a disability, the worker can also complain to the HRC.

Q:

Does the New Brunswick *ES Act* apply to federally regulated industries?

A:

No. If your business is federally regulated, the worker will have to file a complaint instead under the Canada Labour Code. For more information, please refer to the *Accommodation at Work* guide.

Q:

What is the worker's right to return to work under the *HR Act*?

A:

The right to return to work and to accommodation under the *HR Act* is separate and broader than under the *WC Act* or *ES Act*. A worker may file a human rights complaint at any time within one year of a refusal to allow a return to work or to make reasonable accommodation, whether or not processes are underway under the *WC Act* or the *ES Act*.

All employees who must stop working due to a physical or mental disability have the right to return to their original job without loss of seniority, benefits or pay if they can perform the work after reasonable accommodation is made by the employer. If they cannot perform the original job, they have a right to a modified or alternate job with reasonable accommodation and without loss of seniority, benefits or pay.

This right exists regardless of the size of the employer or the number of years worked, and regardless of whether the disability resulted from work or another cause. There is no predetermined time when this right expires.

Accommodation means to adjust rules, policies, job descriptions, practices, facilities and equipment to enable a person to continue to work or to return to work. Examples of accommodation include accessible bathrooms, stress leave and light duties.

However, the employer is not required to make an accommodation, to hold a position open or offer a position if it would cause "undue hardship" to the employer. What constitutes undue hardship depends on several factors. For more information, refer to the *Accommodation at Work* guide.

Q:

Does the New Brunswick *HR Act* apply to federally regulated industries?

A:

No. If your business is federally regulated, the worker will have to file a complaint instead under the Canadian *Human Rights Act*, administered by the Canadian Human Rights Commission. For more information, please refer to the *Accommodation at Work* guide.



Q:

How does the human rights complaint process work?

A:

A human rights complaint must be filed with the HRC within one year of the discrimination. Time extensions are available in exceptional cases. Complaints are investigated and conciliated by HRC staff. If a substantiated complaint cannot be resolved, a Human Rights Board of Inquiry may hold a hearing and issue an order.

For more information, please refer to the *Accommodation at Work* guide, or contact:

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1 Portland Street
P.O. Box 160
Saint John, NB E2L 3X9
1 800 222-9775
www.worksafenb.ca

Department of Post-Secondary Education,
Training and Labour
Employment Standards Branch
P.O. Box 6000
Fredericton, NB E3B 5H1
1 888 452-2687
www.gnb.ca/0308/index-e.asp

Human Rights Commission
P.O. Box 6000
Fredericton, NB E3B 5H1
1 888 471-2233
TDD number: 506 453-2911
email: hrc.cdp@gnb.ca
www.gnb.ca/hrc-cdp

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