



British Columbia's
Office of the Human Rights
Commissioner

SEPTEMBER 26, 2023

Lori Guiton
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WorkSafeBC
PO Box 5350 Stn Terminal
Vancouver, B.C. V6B 5L5

Via email: lori.guiton@worksafebc.com

Re: New return-to-work provisions passed through the *Workers Compensation Amendment Act (No. 2), 2022*

Dear Lori,

Thank you for reaching out to my office to discuss Bill 41, the [*Workers Compensation Amendment Act \(No. 2\), 2022*](#), and the new return-to-work provisions included within the bill. Namely, the duty to cooperate and the duty to maintain employment. I appreciate the opportunity to comment on the proposed policies that will guide the implementation of these new provisions when they come into force in January 2024.

Section 154(3) of the legislation includes an employer's obligation to accommodate an injured worker to the point of undue hardship. The proposed policy describes the point of undue hardship and provides several factors relevant to a consideration of whether a proposed accommodation would lead to undue hardship. The proposed policy notes that the factors are drawn from "human rights principles, as well as policy from jurisdictions with similar legislation."

The explanatory notes in the proposed policy say that all employers have an obligation to comply with human rights legislation to accommodate workers with disabilities and that this obligation is set out in the *BC Human Rights Code*. I recommend that you refer to the existing jurisprudence in the proposed policy. Specifically, **I encourage you to direct decision makers under the *Workers Compensation Act* to interpret undue hardship in [s.154\(3\)\(5\) of the amended Act](#) in the same way undue hardship is defined by the Human Rights Tribunal, pursuant to the *Human Rights Code* and Code jurisprudence.** For the sake of clarity, the policy should specify that the most up to date precedents in human rights jurisprudence should be followed (rather than limiting this interpretation to the point in time that the policy is developed). Failing to provide this explicit direction runs the risk that parallel and inconsistent interpretations of the duty to accommodate to the point of undue hardship will develop, which would be confusing to decision makers, workers and employers as well as potentially undermining the rule of law.

For workers and employers who may now have obligations and recourse in both the compensation system and the human rights system, it is very important that the relationship between the two legal regimes be made clear from the outset.

To support my commitment to public accountability and responsibility to serve the people of British Columbia, this letter may also be made public.

If you have any questions or wish to discuss this further, please do not hesitate to reach out. I look forward to hearing back from you on what action is taken.

Sincerely,



Kasari Govender
Human Rights Commissioner

CC: Lavinia Floarea, WorkSafeBC, Manager, Policy, Regulation and Research Department
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