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BULLETIN

PROPOSED CHANGES TO THE *WORKERS' COMPENSATION ACT*

On October 31, 2022, the provincial government introduced Bill 41 – 2022: *Workers' Compensation Amendment Act (No. 2)*, 2022 (the "Amendments"), which recommends changes to the *Workers' Compensation Act* (the "WCA"). The Amendments, if passed, impact several of the rights and responsibilities held by workers and employers in BC, which the province has indicated will "restore fairness for workers injured on the job."

The Amendments introduce an independent fair practices commissioner (the "FPC"), to be appointed directly by WorkSafeBC's board of directors. The FPC will be responsible for investigating allegations of unfairness and systemic issues within WorkSafeBC, will be able to recommend solutions to any complaints, and is required to submit an annual report to the board of directors. It is important to note that the FPC is restricted from commenting on ongoing decisions, policy changes, or the merits of any decision. Additionally, the Amendments do not require the FPC to respond to complainants directly.

Perhaps most importantly for local governments, the Amendments establish a duty for employers to re-employ injured employees and to accommodate returning employees short of undue hardship. The Amendments set out a "duty to cooperate," which is imposed upon both employers and workers. Among other things, the duty to cooperate requires an employer to work with WorkSafeBC and the worker towards the worker's early and safe return to, or continuation of, work. This includes contacting the worker as soon as practicable after the worker is injured (and maintaining communication), identifying suitable work that, if possible, restores the worker to their full pre-injury wages, and providing WorkSafeBC with information relating to the worker's return to, or continuation of, work.

The duty to cooperate also imposes requirements upon the worker: they must contact and maintain communication with their employer, and assist the employer in identifying suitable work that, if possible, restores their full pre-injury wages. If WorkSafeBC determines that a worker has failed to comply with these requirements, they may reduce or suspend compensation until the worker complies.

The Amendments also impose a "duty to maintain employment", on employers in relation to employees who have worked for the employer for at least 12 months prior to the injury. The Amendments also codify an employer's obligation to accommodate a worker to the point of undue hardship. This obligation does not apply to a person who is a worker only because the

person is deemed under the WCA to be a worker or employers who regularly employ fewer than 20 workers.

Employers will be required to offer a worker suitable alternative work as it becomes available to workers who cannot perform the essential duties of their job. Employers must also offer the worker their pre-injury work once the worker is fit to do the work, or offer alternative work of a kind and at wages comparable to the pre-injury work and wages. If an employer terminates the worker's employment within six months after their return to work, the employer will be deemed to have failed to comply with this duty.

The obligation to offer suitable work under the duty to maintain employment ends two years after the date of the injury, if the worker has not yet returned to work. If the worker is carrying out suitable work but has not returned to their pre-injury work or comparable alternative work, then the ongoing and underlying obligation to offer their pre-injury position or a comparable alternative also extinguishes two years after the date of injury.

In instances where there is a dispute between a worker and employer, the Amendments require WorkSafeBC to determine whether the worker is fit to carry out suitable work, and whether suitable work is available. WorkSafeBC must also determine whether an employer has failed to comply with the duty to maintain employment upon the request of a worker, barring certain limited exceptions.

The Amendments also provide that if a term of a collective agreement conflicts with the above duties, the Amendment in conflict will prevail to the extent that it provides a better benefit. Finally, the Amendments would add an explicit prohibition against employers dissuading workers from filing a claim for compensation.

Bill 41 is currently at first reading, and we will be sure to watch closely as it progresses through the legislature.

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