# **Employer and Worker Return-to-Work Obligations (Bill 41)**

Stephen Symon, Return to Work Services

Updated: May 2025



## **Agenda**

- 1 Community social services and employer portal
- 2 Work and health
- 3 Return-to-work obligations: Overview
- 4 Return-to-work obligations: In practice
- 5 Discussion

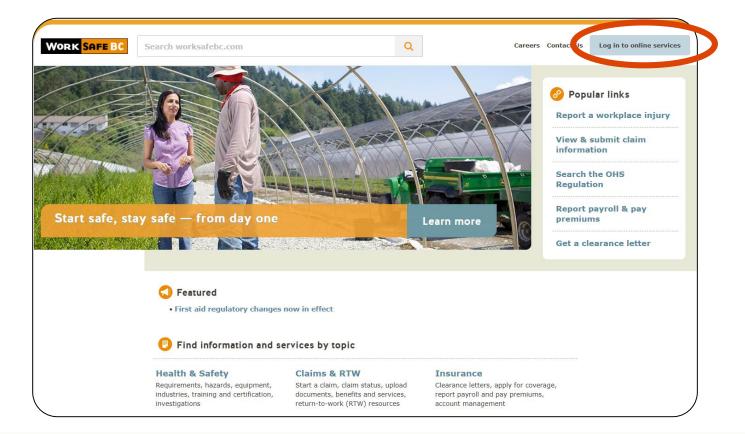
**Overview: Your data** 

## Community Social Services by the Numbers 2019-2024 (Counselling, Life Job Skills, and Residential Services)



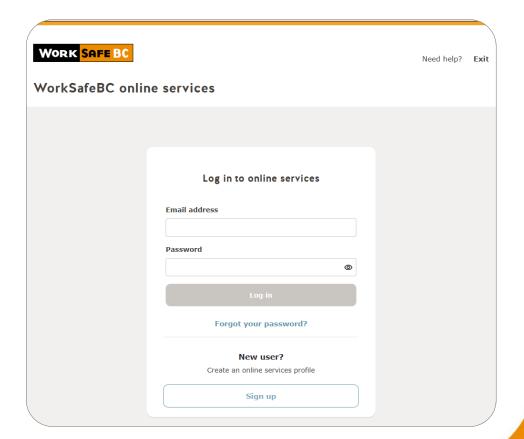
2019

#### WorkSafeBC.com

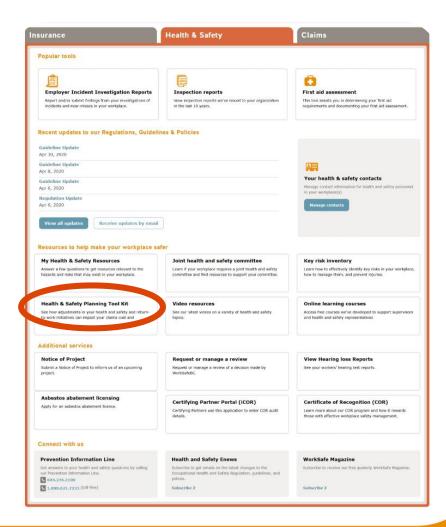


#### **Employer Log In**

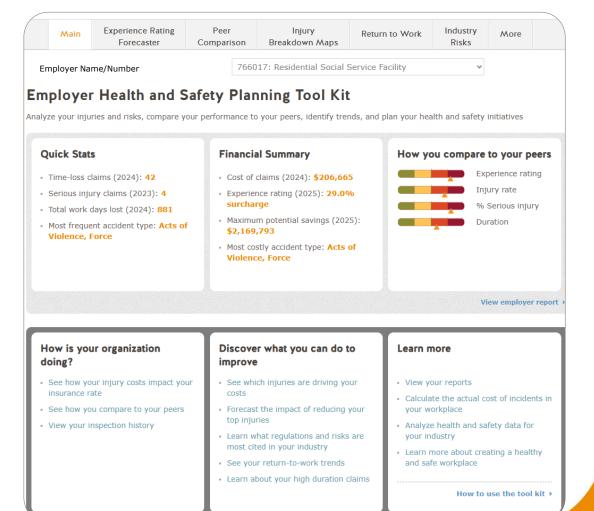
WorkSafeBC account:
If you don't have access,
contact your account
administrator



## **Get to know your data: Employer Portal**



# Get to know your data: Employer Health & Safety Planning Tool Kit



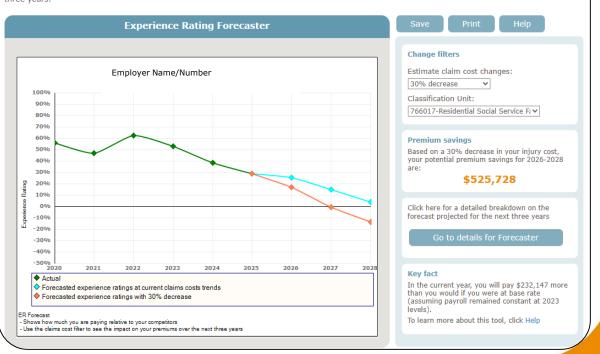
# Get to know your data: Experience Rating Forecaster



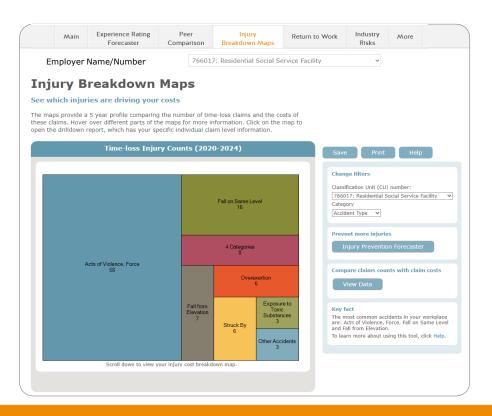
#### **Experience Rating Forecaster**

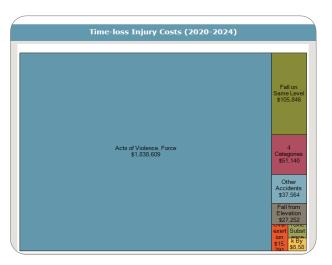
#### Forecast how injury costs will impact your insurance rate

See how much you are paying relative to your industry's base rate. Use the claim cost filter drop down menu to see how a reduction in your claim costs could impact your premiums over the next three years.



## **Get to know your data:** Injury types and costs





# Get to know your data: Return to Work and Claim Duration

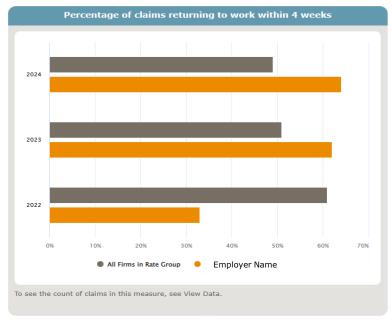
Main Experience Rating Forecaster Comparison Breakdown Maps Return to Work Risks

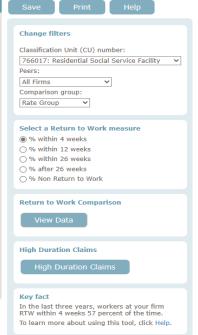
Employer Name/Number 766017: Residential Social Service Facility

#### **Return to Work**

#### See your Return to Work trends

The orange bar represents the percentage of your injured workers that returned to work within the selected time range.



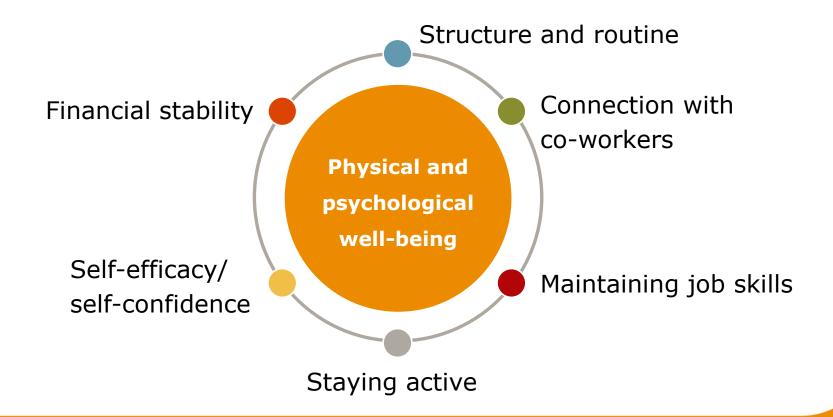


# Get to know your data: Employer Report

art I - Employer S	Summary Over	view							
he following shows a	summary overvie	w of your cl	aims, p	reve	ntion and in	surance info	ormation.		
Year Range:	2020 - 2025	COR - OHS	COR - OHS: Y Exp. 2026-09-04					Address:	
Activity Start Date: January 1, 2011 Activity End Date:		COR - RTW	COR - RTW: N Exp. N/A High Risk Strategy Health Care 2021-2023 - Group: Subsector 7660					Employer Address	
Injury Prevention		2020	2	2021	2022	2023	2024	2025	
# Time-loss Claims		11		19	13	19	42	3	
# Person Years		215		209	189	240	0	0	
Injury Rate (Employer)		5.1		9.1	6.9	7.9			
Injury Rate (CU)		5.8		6.4	7.1	5.5			
# Excess Injuries		-1		6	0	6	0	0	
# Inspection Reports / # Other Contacts		18 / 6		6/0	10 / 2	5/2	16 / 0	20 / 0	
# Orders		6		2	4	3	12	17	
# Warning Letters Sent / # Net Citations Imposed / # Net Penalties Imposed		0/0/0	0 /	0/0	1/0/0	0/0/0	1/0/0	0/0/0	
Injury Recovery									
Six-Month Truncated Duration (Employer (CU))		89 (43)	38	3 (45)	32 (37)	62 (44)	25 (43)	0	
Avg. Complete Duration (Employer (CU))		158 (70)	161	(73)	86 (61)	68 (83)	61 (89)	0	
% High Duration Claims (Employer (CU))		18% (25%)	16% (	26%)	46% (21%)	21% (24%)	14% (27%)	0% (0%)	
RTW (<= 4 weeks) (Employer)		3 / 60%	8 /	47%	6 / 33%	10 / 63%	29 / 64%	3 / 75%	
RTW (<= 26 weeks) (Employer)		4 / 80%	13 /	76%	13 / 72%	10 / 63%	39 / 87%	4 / 100%	
Total RTW (Employer)		4 / 80%	16 /	94%	16 / 89%	10 / 63%	42 / 93%	4 / 100%	
Total RTW (CU)		698 / 91%	811 /	91%	975 / 92%	890 / 90%	992 / 87%	152 / 84%	
Claim Summary									
# STD/LTD/Fatal Claims		13		19	15	18	42	4	
# Work-Related Deaths		0		0	0	0	0	0	
# First-Paid LTD Claims		0		3	6	1	4	0	
Serious Injury Claims		3 / 27%	5 /	26%	2 / 15%	4 / 21%	4 / 10%	0 / 0%	
# Sprains and Strains		3		7	4	9	15	0	
Long Recovery Sprains and Strains		1 / 33%	1/	14%	0 / 0%	3 / 33%	1 / 7%	0 /	
# Health Care-Only Claims		13		12	18	9	15	9	
Total Work Days Lost		1,628		1,097	1,268	796	655	427	
Work Days Lost for Injuries in This Year		1,491		409	666	1,037	881	12	
Total Claim Costs Paid		\$338,346	<b>\$</b> 553	2,688	\$752,860	\$187,717	\$616,766	\$115,832	
Claim Costs Paid for Injuries in This Year									
Insurance									
Base Rate		\$2.28		\$2.74	\$3.29	\$3.95	\$4.75	\$5.70	
Experience Rating %		56.0%	4	6.9%	62.5%	52.6%	38.3%	29.0%	
Net Rate		\$3.56		\$4.02	\$5.35	\$6.03	\$6.57	\$7.35	
Assessable Payroll		\$10,761,896	\$11,32	2,549	\$10,332,038	\$14,069,490	\$46,749,680	\$48,217,621	
Assessment Amount									
Assessable Payroll (CU)									



## Work is healthy



## **Consequences of disability**

- Impact relationships with family
- Morbidity
- Loss of livelihood
  - WorkSafeBC aims to mitigate these and to save people's jobs, wherever possible.



1 in 3 experience marital problems



1 in 4 experience financial problems



1 in 5 experience clinical depression



1 in 6 develop substance use disorder

## **Unemployment and mortality risk**

Medical condition	Relative risk of increased mortality		
Diabetes	1.85		
Hypertension	1.74		
Smoking	1.80		
Obesity	1.29		
Poverty	1.75		
Being unemployed	1.63		







Roelfs, Shor, Davidson et al., Losing life and livelihood: A systematic review and meta-analysis of unemployment and all-cause mortality *Social Science & Medicine* (2011): <a href="https://www.sciencedirect.com/science/article/pii/S027795361100044X">https://www.sciencedirect.com/science/article/pii/S027795361100044X</a>

## **Worklessness: A medical emergency**

When someone has been away from work for 4 weeks, it's a **medical emergency**.

 Dr. Gary Franklin, medical director of the Washington State Department of Labor & Industries

## Waiting game ...



Return-to-work (RTW) obligations under Bill 41

### Introduction



New legislation in effect as of January 1, 2024



**Duty to cooperate** 



Duty to maintain employment



Consequences for non-compliance

## Goal of the legislation

Recognizes the benefits of injured workers remaining connected to employment following a workplace injury or illness:

- Supports timely and safe return to work
- Preserves or restores employment relationships
- Reduces risk of joblessness and worklessness and may reduce the financial impact of the workplace injury



**Overview: Duty to cooperate** 

### **Duty to cooperate**

- **Duty to cooperate**: Adds legal duty for workers and employers to cooperate in the worker's early and safe return to work or continuation of work
- 2 Duty to maintain employment
- 3 Consequences of non-compliance

#### **Duties**

#### **Employer**

- Maintain contact
- Identify suitable work options
- Make suitable work available

#### Worker

- Maintain contact
- · Identify suitable work options.
- Not unreasonably refuse suitable work

#### WorkSafeBC (as needed)

- Facilitate communication
- Assist with RTW planning
- Intervene and resolve disputes in a timely way.
- Determine compliance

## When can you pause communication?

The worker and employer can delay making contact or pause communication if these interactions are likely to:

- Significantly worsen the worker's physical or mental health, or
- Have a negative impact on their recovery.

This is temporary, until communication barriers are addressed.



## Application of duty to cooperate

What claims are impacted?

All accepted claims where the worker is disabled from earning full wages.

When do the obligations start?

They begin from the date of the worker's injury, date of psychological change, or date of disablement.

When does the duty to cooperate apply?

It applies to claims with a date of injury on or after January 1, 2022, and to decisions on or after January 1, 2024.

What is the duration of the obligations?

Throughout the entire claim or as long as the employment relationship exists.

When doesn't the duty to cooperate apply?

It doesn't apply to health care—only claims or preliminary determinations.

### New key terms

#### **Essential duties**

- Core tasks that must be performed to meet job requirements
- Replaces "critical job demands"

#### **Suitable work**

- Safe, productive, and meaningful
- Within worker's capabilities and skills
- Modified, light, different duties

### **Suitable work**



#### Safe

Doesn't pose a risk to worker or others

#### **Productive and meaningful**

- Provides objective benefit to the employer's business
- Not token or demeaning

## Consistent with skills, competencies, and qualifications

 Worker has, or is reasonably able to acquire, the necessary skills, competencies, or qualifications

#### Within abilities

- Physical and cognitive
- Based on self-report and/or clinical input

## **Defining productive and meaningful work**

We consider both the physical requirements and purpose of the activity.

#### **Factors:**

- How the work will benefit the employer
- Whether the work is something that, at another time, the employer would pay someone to do
- Whether the work arrangement is token or demeaning
  - Tasks that are no more than symbolic effort and are limited in practical effect
  - Considered detrimental to the worker's rehabilitation
  - Considered in context of the worker's usual role and responsibilities

# Determining whether worker refusal of suitable work offer is reasonable

Opinion of health Non-compensable care provider condition Medications Transportation (side effects) Work location Child/elder care Change in work Other

schedule

## WorkSafeBC review

- Individual circumstances
- Employer attempts to address factors

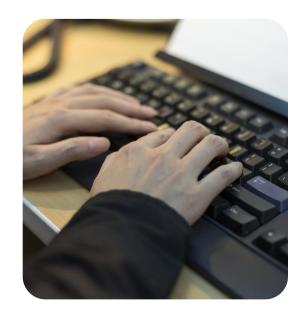
### True or false

Once it's determined that suitable work is not available, the duty to cooperate has been met.

## **Communication and confidentiality**

Employers have a right to access information necessary to operate their business, which may include:

- A worker's functional abilities, restrictions, and area of injury
- When the injured worker is expected back to work
- Whether the injured worker will need temporary modified duties (suitable work) upon return to work
- What return-to-work hours are suitable
- Recommended workplace accommodations or considerations to facilitate RTW



**Overview: Duty to maintain employment** 

## **Duty to maintain employment (DTME)**

- Duty to cooperate
- **Duty to maintain employment**: Adds legal duty for eligible\* employers to maintain employment of an injured worker
- 3 Consequences of non-compliance

#### **Duties**

#### **Employer**

- Offer pre-injury or alternative work
- Offer first suitable work available
- Accommodate worker (to point of undue hardship)

#### Worker

- Update employer on abilities.
- Participate in suitable or accommodated work
- Inform WorkSafeBC if terminated due to injury

#### WorkSafeBC (as needed)

- Assess essential duties
- Assess functional abilities
- Assist with RTW planning
- Resolve disputes
- Determine compliance

<sup>\*</sup>Eligible employers are those with 20 or more workers at the time of injury and where the worker has been employed continuously for 12 months on a full- or part-time basis.

## Application of duty to maintain employment

What claims are impacted?

All accepted claims where employers and workers meet the eligibility criteria, and the worker is disabled from earning full wages.

When do the obligations start?

They begin from the date of the worker's injury, date of psychological change, or date of disablement.

When does the DTME apply?

It aapplies to claims with a date of injury on or after July 1, 2023, and decisions on or after January 1, 2024.

What is the duration of the obligations?

As long as the employment relationship exists. Obligation to offer RTW varies based on the worker's RTW status. Obligation to make changes to the work or workplace to accommodate worker is ongoing.

When doesn't the DTME apply?

It doesn't apply to terminations occurring before January 1, 2024, health care—only claims, or preliminary determinations.

## When the DTME obligations end

As the worker's fitness to carry out the essential duties of the pre-injury work changes, the employer's obligation under the duty to maintain employment also changes to correspond with the worker's changed level of function, as outlined below.

By the second anniversary of the date of injury, date of psychological change, or date of disablement:

If the worker:	The employer's obligation:				
Has returned to pre-injury or alternative work	To make changes to the work and/or the workplace to accommodate the worker is ongoing				
Is carrying out suitable work	<ul> <li>To make or maintain changes to the work and/or the workplace is ongoing</li> <li>To offer the pre-injury or alternative work ends</li> </ul>				
Has not returned to work	Under the duty to maintain employment ends				
Has voluntarily severed employment, or the employment relationship ended	Ends when there is no longer an employment relationship				

### True or false

If there is no suitable work, you as the employer are required to create a new position.

# **Understanding undue hardship**

## **Undue hardship** is:

The point at which it is too difficult, unsafe, or expensive to remove barriers so an injured worker can return to work

## **Undue hardship** is determined:

- On a case-by-case basis
- After thorough investigation
- With consideration of specific circumstances of each situation

While employers are expected to make reasonable and practical efforts to accommodate a worker, there are limits to this obligation.

Accommodation does not need to be the worker's preferred accommodation so long as it's reasonable.

**Collective agreements** 

# True or false

Collective agreements overrule the duty to cooperate and the duty to maintain employment.

# RTW obligations and collective agreements

When there is a conflict between the RTW obligations and a collective agreement, the rule or provision that provides the **most favourable return-to-work options to the worker** will prevail — except where seniority is a factor.



**Overview: Compliance** 

# **Consequences of non-compliance**

- Duty to cooperate
- 2 Duty to maintain employment
- Consequences of non-compliance: Adds legal authority for WorkSafeBC to impose administrative penalties, reduce or suspend wage-loss benefits, and entitle worker benefits

### **Impacts**

### **Employer**

 Receives administrative penalties if they fail to cooperate or maintain employment

#### Worker

- May have benefits reduced or suspended for failing to cooperate
- May be entitled to specialized benefits if employer failed to comply

## WorkSafeBC (as needed)

- Adjudicates failure to comply with law and policy
- Determines and imposes penalty amounts
- Changes benefits

**RTW** obligations in practice

# **True or false**

An employer offer of suitable work must be in writing.

## **Focus on function**

## Aligning our language

- Focus on what the worker can do, not what they can't do.
- This helps individuals see possibilities, not barriers.
- It leads to more productive conversations.
- It also marks a shift in medical forms and provider communication.

# Early Intervention Program (EIP) and RTW obligations

EIP process aligns with the RTW obligations; however, the commitments outlined in EIP do not relieve the employer of their obligations to:

- Contact the worker as soon as practicable after an injury and throughout the claim
- Identify suitable work
- Notify WorkSafeBC of any suitable work offer or RTW plan



# True or false?

You must obtain medical approval to offer suitable work.

# RTW and medical evidence

- No provision under the Workers Compensation Act requires employer/worker to obtain medical clearance for worker to return to work.
- WorkSafeBC does not require medical approval from a health care provider prior to RTW.
- If there are concerns about worker function and safety, involve a health care provider.
- Avoid a "one size fits all" approach.

# What this means for workers and employers

- 1. Focus on quality communication throughout the worker's recovery and return to work.
- 2. Educate everyone at your workplace.
- 3. Support the worker's connection to the workplace.
- 4. Collaborate to develop a return-to-work plan.
- 5. Document the return-to-work plan.



# What this means for workers and employers Mental health claims

- 1. Focus on quality communication throughout the worker's recovery and return to work.
- 2. Educate everyone at your workplace.
- 3. Support the worker's connection to the workplace.
- 4. Collaborate to develop a return-to-work plan.
- 5. Document the return-to-work plan.



# What this means for health care providers

We rely on health care providers to:

- Support timely, safe, and suitable returnto-work as part of the recovery process.
- Focus on what the worker can do, not what they can't do.
- Provide objective, accurate, and timely medical information.
- Educate workers on their injury and how work can support recovery.
- Liaise with other involved health care providers to support return to work.



# **Communication is vital**

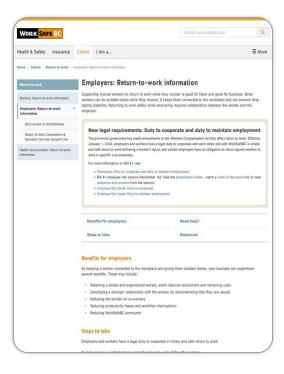
Good communication is the bridge between confusion and clarity.

Nat Turner



# Online tools and resources

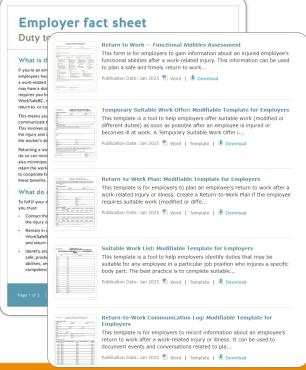
#### worksafebc.com



## Guides and templates



#### Information sheets



## Mental health tools and resources

#### Frequently asked questions Mental disorder claims

This document answers some frequently asked questions about psychological injury claims. The Workers Compensation Act calls these mental disorder claims.

#### Overview

#### In what circumstances will a mental disorder be covered by WorkSafeBC?

A mental disorder may be covered in either of the following circumstances:

- · If it is a reaction to one or more traumatic events arising out of and in the course of employment, or
- · If it is predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of employment

In addition, for compensation to be provided. the mental disorder must be diagnosed by a psychiatrist or psychologist.

For workers in certain occupations who have been exposed to one or more traumatic events in their work and have been diagnosed with a mental disorder as a reaction to that trauma, the mental disorder is presumed to be caused by employment. This is called the mental disorder presumption.

#### Which occupations are eligible for the mental disorder presumption?

The eligible occupations are community-integration specialist, coroner, correctional officer, emergency medical assistant, emergency response dispatcher, firefighter, harm-reduction worker, health care assistant, nurse, parole officer, police officer,

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probation officer, respiratory therapist, shelter worker, sheriff, social worker, transition house worker, victim service worker, and withdrawal management worker.

#### In what circumstances will a mental disorder not be covered by WorkSafeBC?

The law and related policy state that the mental disorder cannot be caused by an employer's decision relating to employment. If a mental disorder is caused by any of the following decisions or actions, it will not be eligible for compensation coverage:

- · A change in work or working conditions
- Discipline
- · Termination of employment
- Workload and deadlines
- Work evaluation
- · Performance management
- · Transfers, lavoffs, demotions, and reorganizations

#### How is a claim for a mental disorder established and investigated?

First, both the employer and the worker must report the claim as they would any other type of claim. Then, once the claim is established, we will assign it to a senior adjudicator, who will take a detailed history, contact the employer as required, obtain all relevant medical reports,

Frequently asked questions: Mental disorder claims







Managing psychological health and safety in the workplace is as important as managing physical health and safety. A psychologically healthy and safe workplace prevents harm to workers' mental health and promotes mental

While many factors outside the workplace can affect mental health, it is an employer's responsibility to address the factors that are within the control, responsibility, or influence of the workplace. These three principles help to create, support, promote, and maintain a psychologically healthy and safe workplace:

- 1. Show leadership commitment
- 2. Develop supportive managers and supervisors
- 3. Ensure worker participation

Many employers already operate according to these principles, which are outlined in more detail in this document, Those who effectively promote psychological health and safety have greater productivity and employee engagement. Their workers experience less conflict and higher morale, and are less likely to leave.

#### Risk management model

The approach to managing psychological health and safety is similar to the approach for managing risks to physical health and safety: understanding risks, implementing safety measures, communicating safety information, and monitoring measures for effectiveness.

Begin by identifying the psychosocial hazards in your workplace, which are conditions that have the potential to cause psychological harm. There are five categories of psychosocial hazards, which are described in more detail later in this document:

- · Interpersonal environment
- · Job design
- · Workplace conditions
- · Need for employer supports
- · Exposure to traumatic events

WORK SAFE BO

# Other tools and resources









# CAN/CSA-Z1003-13/BNQ 9700-803/2013 (R2022) Psychological health and safety in the workplace - Prevention, promotion, and guidance to staged implementation English, French | Publication Year 2013 | Published by CSA Group | Reaffirmed in 2022

