

# Workers' Compensation:

**Getting your job back  
after an injury**



If you were injured at work after  
January 1, 1990, you might be able  
to get your job back.

**Note:** On January 1, 1998, workers' compensation law changed, including the official name of the Board. The Workers' Compensation Board (WCB) is now the Workplace Safety and Insurance Board. In this booklet we call it "the Board".

This booklet is for people who are having trouble getting their job back after being injured at work. Some people have no trouble getting their job back. If you were injured and you think you are ready to work again, as long as your employer offers you a job you can do, you can go back to work. You do not have to wait for the Board to tell you that you can go back. But, if problems do come up, the rights talked about in this booklet may apply to you.



## **I was injured on the job. Can I get my job back when I am able to work again?**

It depends. If you were injured after January 1, 1990, your employer may be required by law to offer you work, but maybe not your old job.

If your employer does not offer you work when the law says they should, the Board can order your employer to pay a fine. The Board may also continue to pay you workers' compensation benefits if your employer is not offering you work.

Even if your employer is not required to offer you work, you still have some protection. The law says you and your employer must co-operate in getting you back to work after your work injury. If the Board thinks you are not co-operating, your benefits could be reduced or cut off. If you and your employer cannot agree, you can ask a Board mediator to help.

Also, you may have legal protections under the Ontario Human Rights Code, the Canadian Human Rights Act, or the collective agreement of your union. Check with your community legal clinic or your union.

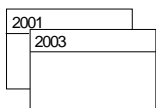


## **What does the law say about my employer offering me work?**

The law says your employer must offer you work for a limited time after you are hurt, but only if you meet all 3 of these conditions:

- 1) You worked continuously for your employer for at least 1 year before your injury.
- 2) Your employer regularly employs 20 or more workers.
- 3) You were injured after January 1, 1990, (or after May 11, 1992 if you are a construction worker).

If you are a construction worker who was injured on or after January 1, 1998, the conditions listed above do not apply to you. In that case, you have re-employment rights even if you worked for less than 1 year with an employer who has less than 20 workers.



## **How long does my employer have to keep a job open for me?**

Your employer's responsibility to offer you work lasts for up to 2 years after your injury. But this time can be shorter in certain situations. For example, if the Board tells your employer you are able to go back to your old job, your employer only has to offer you the job for 1 year after being told this by the Board.

In both cases, your employer's responsibility to offer you work ends on your 65th birthday.



## **Who decides what kind of job I am able to do now?**

If you and your employer cannot agree on what job you can go back to, then you must contact the Board. A Board Adjudicator decides what kind of job you can do.

If you are medically fit to do your old job, the Adjudicator tells your employer that you are medically able to do the "essential duties" of your old job. This means the Board thinks you are fit to do the most important parts of your old job.

When an Adjudicator decides whether you can do a job, he or she must consider whether an “accommodation” will help you do the job. Accommodations can include changing work equipment, making the worksite easier to access, getting help from other workers, or changing work schedules.

If you are not medically fit to do your old job even with an accommodation, your Adjudicator explains to your employer that you can only do “modified work”. This means that the Board thinks you are fit to work, but not to do your old job.



## **What if the Board says I can do my old job?**

If you can do the essential duties of your old job (with accommodations, if necessary) the law says your employer must offer you your old job back.

If your old job is not available, your employer must offer you a similar job. This job must be as good as your old job, and it must pay close to what your old job paid.



## What if the Board says I can only do modified work?

If you can only do modified work, your employer must offer you the first suitable job that becomes available. Suitable work is work you know how to do and can do safely. Your employer does not have to create a suitable job for you.



## What if my employer hires me back, but then lets me go?

If your employer hires you back after you are injured, and then lays you off or “terminates” you, you can make a complaint to the Board. File your complaint right away.

The Board must decide on your rights if you file your complaint within 3 months of being let go. You should still file a complaint if it is later than 3 months and explain your reasons for the delay. The Board may decide on a late complaint, but it does not have to.

If your employer lets you go within 6 months after rehiring you, **your employer** must prove that your termination was **not** related to your injury. But, if your employer lets you go more than 6 months after rehiring you, it is up to **you** to prove that your termination **was** related to your injury.

Keep copies of all letters to and from your employer. Make notes about all the phone calls and conversations with your employer, including the dates of your conversations.



## **How do I file a complaint if my employer lets me go?**

Write a letter to your Adjudicator. If you do not know the name of your Adjudicator, call the Board's main number and ask who you should write to. Keep a copy of the letter you send to your Adjudicator.

In your letter to your Adjudicator, explain what your employer has done. Your Adjudicator may try to contact your employer to resolve the problem. If this does not happen, your Adjudicator will write a decision about your complaint. You will get a letter with this decision from your Adjudicator.



## **Can I appeal a Board decision about getting my job back?**

Yes. If you disagree with your Adjudicator's decision about getting your job back, you can appeal it. For example, you can appeal a decision about whether you are medically fit to go back to work, or a decision about your employer letting you go after rehiring you.

Remember, your Adjudicator’s decision can affect whether or not you will get workers’ compensation benefits.



## Is there a time limit to appeal a Board decision?

Yes. There is either a **30-day** or a **6-month** time limit to appeal an Adjudicator’s decision. Which limit applies depends on what the decision is about. When you receive your Adjudicator’s decision, it should tell you the time limit in the letter. If there is no time limit in your Adjudicator’s letter, get legal help right away.

Appealing decisions about getting your job back can be very complicated. To learn more about how to file your appeal, even if it is late, you should get legal help. There is a list of places to go for legal help at the end of this booklet. There is also a booklet in this series with more information about appealing Board decisions called, *Workers’ Compensation: Your right to appeal*.



## Where can I get help?

- **Community legal clinic:** Clinic lawyers and community legal workers give free legal help to people with low incomes. Some clinics take workers' compensation cases. The community legal clinic nearest you is listed under "Legal Aid" in the white or yellow pages of your phone book. You can also visit Legal Aid Ontario's Web site at <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.
- **Office of the Worker Adviser (OWA):** The OWA gives free legal help with workers' compensation cases to non-unionized workers. If there is an office in your area, it will be listed in the Government blue pages of your phone book under the Labour section. If there is no listing for your area, call toll-free **1-800-435-8980** or **416-325-8570** in Toronto, or visit their Web site at <[www.gov.on.ca/lab/owa](http://www.gov.on.ca/lab/owa)>.
- **Member of Provincial Parliament (MPP):** Staff at your MPP's office may be able to help you. To find out who your MPP is, call Elections Ontario toll-free at **1-888-668-8683**, or visit their Web site at <[www.electionsontario.on.ca](http://www.electionsontario.on.ca)>.
- **Union:** Call your staff representative. If he or she cannot help you, ask for the staff person who knows about workers' compensation law.

- **Injured workers' group:** Your local injured workers' group may be able to help you. To find out if there is a group near you, call the Ontario Network of Injured Workers' Groups (ONIWG) at **905-387-1894** or visit their Web site at [www.oniwg.on.ca](http://www.oniwg.on.ca).
- **Legal Aid certificate:** This certificate pays all or part of your lawyer's fees. Contact your nearest legal aid office to find out how to apply. The phone number is listed under "Legal Aid" in the white or yellow pages of your phone book. You can also visit Legal Aid Ontario's Web site at [www.legalaid.on.ca](http://www.legalaid.on.ca) or call toll-free **1-800-668-8258**.
- **Lawyer Referral Service:** If there is no community legal clinic near you and you want help finding a lawyer who practices workers' compensation law, you can call the Lawyer Referral Service at **1-900-565-4577**. The call costs \$6.00. They should give you the name of a lawyer who will talk with you for free for 30 minutes. For more information you can visit their Web site at [www.lsuc.on.ca](http://www.lsuc.on.ca).

This publication contains general information.  
It is not a substitute for getting legal advice for  
your particular situation.

**Written, edited and produced by:**

Community Legal Education Ontario (CLEO)

**With funding from:**

Legal Aid Ontario and the Department of Justice Canada

This pamphlet is part of a series produced by CLEO. We also have publications on other areas of law. Most are free.

We update our publications often to reflect changes in the law. To order one of our publications or to make sure you have the most recent version, please visit our Web site at <[www.cleo.on.ca](http://www.cleo.on.ca)> or call us at **416-408-4420**.

**CLEO** 

August 2003