

Client Services Procedure Manual

Procedure: 43.00

Subject: Termination after Re-Employment

43.01 Introduction

Section 89.1 of *the Workplace Health, Safety and Compensation Act* contains a presumption that a breach of the re-employment obligation has occurred where a worker is terminated within six months of re-employment.

43.02 Termination within Six Months of Re-Employment

It is the worker's responsibility to report his or her termination after re-employment to the Case Manager within three months of its occurrence so that the Case Manager can readily obtain the facts. If the termination is not reported within three months, then the Case Manager is not required to investigate the report.

When a termination is reported, the Case Manager must contact the employer to determine that it is in fact a termination of employment (i.e. the employment relationship has been severed) and not a temporary work cessation where the employment relationship is not broken.

Generally, the following types of work cessation do not break the employment relationship:

- a) strikes and lockouts;
- b) sabbaticals, sick leaves, parental leaves, leaves of absence, and vacations;
- c) work-related injuries resulting in time off work;
- d) layoffs of less than three months if the worker returns to work for the employer through an employer's offer of re-employment at the time of layoff, or a union hall's hiring process, or
- e) layoffs of more than three months if the worker returns to the employer through an offer of re-employment or a union hall hiring process, and
 - i a date of recall was stipulated, and the recall occurs,
 - ii the employer continued to pay the worker,
 - iii the employer continued to make benefit payments for the worker pursuant to the provisions of a retirement, pension, or employee insurance plan, or,
 - iv the employee received, or was entitled to, supplementary employment insurance benefits.

If it is a termination, the employer is considered in breach of the obligation and the appropriate penalty will be levied (in accordance with Policy RE-09 Re-employment Penalties and Payments and Procedure #42.00).

The employer has the right to rebut this presumption by submitting evidence that a breach has not occurred and that the termination was not caused by the injury or the claim for compensation. Where the employer submits evidence to rebut, the Case Manager will refer the claim to the Legal Department to review the evidence, conduct an investigation if necessary, and submit the findings to the Case

Manager. Where the evidence supports the employer is not in breach, the Case Manager will rescind the penalty.

The provision under section 89.1(9) of *the Workplace Health, Safety and Compensation Act* regarding termination within six months of re-employment does not extend the re-employment period in any way whatsoever. Therefore, for example, where a worker is cleared in month 23 of the two year obligation period, the obligation runs out in one month notwithstanding of section 89.1(9) of *the Workplace Health, Safety and Compensation Act*.

43.03 Termination after Six Months of Re-Employment

Where a worker is terminated after six months of the re-employment, a breach is not presumed. The Case Manager refers the claim to the Legal Department to conduct an investigation of the circumstances. The Legal Department will submit its findings to the Case Manager who will determine non-compliance with the re-employment obligation.

Reference: *The Workplace Health, Safety and Compensation Act, Section 89.1*
Policy RE-10 Termination after Re-Employment

Amendment History

Original Effective Date 2002 01 01