

Frequently Asked Questions About Injured Workers

The Bureau of Labor and Industries Technical Assistance for Employers unit receives a number of inquiries from employers about injured workers. Below is the first of two columns with answers to your most frequently asked questions.

When must I reinstate a worker injured on the job?

An employer's duty to reinstate an injured worker arises from Oregon Revised Statute (ORS) 659A.043, found on the BOLI website at <http://egov.oregon.gov/BOLI/>.

The right to reinstatement applies to a worker injured on the job, whose claim is found compensable by the employer's workers' compensation insurer and who is released by the worker's doctor to full duty, without restrictions. Within 7 days of receiving notice of the doctor's release, the worker must notify the employer that the worker has been released to full duty and request reinstatement. The employer must reinstate the worker to the worker's pre-injury, regular duty job.

The pre-injury job to which an injured worker has reinstatement rights is the one the worker held before going on workers' compensation leave. The law permits the employer to hire a replacement to perform the injured worker's pre-injury job while the worker is on leave, but once the injured worker is released for full duty the employer must remove the replacement from the position and reinstate the injured worker.

Are there limits on the employer's duty to reinstate?

Reinstatement applies only to workers with on the job injuries, although other laws such as family leave and disability laws, not discussed here, may protect a worker's right to return to the worker's job or another job whether or not they have an on the job injury.

The law requiring reinstatement of injured workers applies only to an employer of 21 or more employees in the state. If you are a small employer with fewer than 21 employees in the state, ORS 659A.043 does *not* require that you reinstate an injured worker.

If the workers' compensation claim is denied by the employer's insurer, the employer has *no* duty to reinstate.

The employer's duty to reinstate expires 3 years from the date of injury unless certain events have occurred first, such as the worker accepting suitable employment after becoming medically stationary or refusing a suitable light duty position.

How does reemployment of an injured worker differ from reinstatement of an injured worker?

As discussed above, the statutes require that a worker who has sustained a compensable injury but is later released by the worker's doctor to full duty without restrictions, must be reinstated to their former regular position.

In contrast, ORS 659A.046 requires that a worker who has sustained a compensable injury and becomes medically stationery but disabled from performing the duties of the worker's former regular employment must, upon demand, be reemployed by the worker's employer at employment that is "available and suitable." If an employer has two or more available suitable positions, the employer must offer the job that is "as similar as practicable" to the job the worker had at the time of injury. The injured worker reemployment requirement applies to employers of 6 or more workers in Oregon.

When must an employer offer an available and suitable position to an injured worker?

After a worker is injured on the job, the worker's doctor may say that the worker is not yet able to perform the worker's regular duty job but release the worker to perform "light duty." When this happens an employer may, but is not required, to offer the injured worker an available, suitable position.

However, with respect to an injured worker who is medically stationery but disabled (perhaps forever) from performing the duties of the worker's former regular employment, the employer must offer the worker any available, suitable position. This does *not* mean that the employer must modify or create a new job for the worker. However, it does mean that if an employer has a position that is available and can be performed without violating the worker's restrictions, the employer must offer the position to the worker. The worker is entitled to remain in the position, provided the worker's restrictions continue to allow the worker to perform the duties of the position and the position is not eliminated for bona fide reasons.

If an injured worker who is medically stationery but unable to return to the worker's former position and therefore qualifies for available suitable employment recovers to the point the worker can perform the duties of the worker's former position, the worker must make timely demand for reinstatement to the former position.

For more information on this topic and other employment related issues, join Technical Assistance for Employers at an upcoming seminar. Wage and Hour Laws in Portland on May 13, St. Helens on May 15, and Corvallis on May 20; Leave Laws in Oregon City on May 14 and Eugene on May 21; Crime Victims Leave Laws in Portland on May 20; Recordkeeping Requirements in Portland on May 22; and Avoiding Workplace Harassment in Albany on May 22. For registration information, visit our website at www.oregon.gov/BOLI/TA.