

New updates to British Columbia's *Workers Compensation Act*

DENTONS

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British Columbia's **Bill 41** implementing the *Workers Compensation Amendment Act (No. 2)*, 2022 received royal assent on November 24, 2022. We detailed these amendments in a previous **insight**. Employers in BC should now be aware of two important new obligations that are coming into force on January 1, 2024.

- **Effective January 1, 2024 – Duty to cooperate:** Employers and workers have a duty to cooperate in the worker's return-to-work process for any injuries sustained no more than two years before January 1, 2024; and
- **Effective January 1, 2024 – Duty to maintain employment:** Employers that regularly employ at least 20 workers have a duty to maintain an injured worker's employment for injuries sustained no more than six months before January 1, 2024.

Implications for employers

The duty to cooperate and the duty to maintain employment will come into effect on January 1, 2024, but the provisions are retroactive. The duty to cooperate will apply to claims with injury dates dating back up to two years before the effective date, i.e., January 1, 2022. The duty to maintain employment will apply to claims with injury dates dating back up to six months before the effective date, i.e., July 1, 2023.

Employers should consider implementing policies and practices consistent with these new twin duties to avoid any potential administrative penalties for noncompliance. While the duties generally follow existing common law human rights principles, there are additional nuances employers should be alive to. For instance, where there are conflicts between a collective agreement and the Act, the provisions of the Act prevail if they benefit the worker, unless the conflict deals with the worker's seniority. Further, employers should be aware there may be strategic implications in the forum a claim is adjudicated, as the remedies available in WorkSafeBC claims can differ from those at the Human Rights Tribunal or at arbitration.

If you have any questions with respect to the new obligations and their impact on BC employers, please contact the authors, **Eleni Kassaris**, **Tomasz Cerazy**, **Rachel Au**, or any member of our Employment and Labour Group.

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