

§218. Worker reinstatement rights

Upon petition of an injured employee, the board may require, after hearing, that the employee be reinstated as required by this section. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Reinstatement rights. When an employee has suffered a compensable injury, the employee is entitled, upon request, to reinstatement to the employee's former position if the position is available and suitable to the employee's physical condition. If the employee's former position is not available or suitable, the employee is entitled, upon request, to reinstatement to any other available position suitable to the employee's physical condition.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Reasonable accommodation required. In order to facilitate the placement of an injured employee as required under this section, the employer must make reasonable accommodations for the physical condition of the employee unless the employer can demonstrate that no reasonable accommodation exists or that the accommodation would impose an undue hardship on the employer. In determining whether undue hardship exists, the board shall consider:

A. The size of the employer's business; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The number of employees employed by the employer; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The nature of the employer's operations; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. Any other relevant factors. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Time period; discrimination prohibited. The employer's obligation to reinstate the employee continues until 2 years, or 3 years if the employer has over 200 employees, after the date of the injury. An employer who reinstates an employee under this section may not subsequently discriminate against that employee in any employment decision, including decisions related to tenure, promotion, transfer or reemployment following a layoff, because of the employee's assertion of a claim or right under this Act. Nothing in this subsection may be construed to limit any protection offered to an employee by section 353.

[PL 2013, c. 63, §7 (AMD).]

4. Limitations. This section does not obligate an employer to offer an injured employee employment or reemployment in:

A. Supervisory or confidential positions within the meaning of the 29 United States Code, Section 152; or [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Any position for which the employee is not qualified. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Failure to comply. The employer's failure to comply with the obligations under this section disqualifies the employer or insurance carrier from exercising any right it may otherwise have to reduce or terminate the employee's benefits under this Act. The disqualification continues as long as the employer fails to offer reinstatement or until the employee accepts other employment.

If any injured employee refuses to accept an offer of reinstatement for a position suitable to the employee's physical condition, the employee is considered to have voluntarily withdrawn from the work force and is no longer entitled to any wage loss benefits under this Act during the period of refusal. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Burden of proof. The petitioning party has the burden of proof on all issues regarding claims under this section except that the employer always retains the burden of proof regarding the availability or nonavailability of work. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Rehabilitation plans. All obligations under this section are suspended during the implementation of a rehabilitation plan under section 217. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

8. Foreign workers. If an employee is prevented from accepting an offer of reinstatement because of residence in a foreign country or termination of status as a lawfully employable alien, the employee is deemed to have refused the offer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2013, c. 63, §7 (AMD).

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