

How long do we need to hold job for employee out for workers' comp injury?

Q. Is an employer required to keep a job open for an employee who is out on an indefinite leave due to a workers' compensation injury? Does the employee have an automatic right to get put back into the same job he was doing right before he was injured?

A. No, although employers commonly assume that they have such a duty. Minnesota law does not require you to hold a job open indefinitely in such circumstances. (You may have to if the leave also qualifies as FMLA leave.)

Although the Minnesota Workers' Compensation Act prohibits employers from retaliating against injured employees by wrongfully refusing to rehire them, that law includes a defense for employers. It allows them to demonstrate that the refusal to rehire was based upon legitimate business reasons, such as an undue employer hardship.

Employers, of course, need to make sure they can identify a specific hardship they would bear by keeping the job open. It's not enough to just claim it would be "unreasonably inconvenient" to leave the job open indefinitely.

If injured employees reapply for work after recovering, an employer cannot refuse to hire them just because they pursued workers' compensation claims.