

If you have returned to work

If you have returned to your regular hours and duties, you will only meet the threshold where the impairment substantially interferes with most of your usual daily living activities. You then have to show that your job itself does not constitute most of your activities of daily living. To the extent that the work was only part-time, the threshold is easier to meet.

The early case law that dealt with this issue concluded that Regulation 461/96 did not effect a change in the law under Bill 59 (see Nissan v. McNamee). In Sherman v. Guckelsberger, however, a decision dated December 29, 1998, the court disagreed with Nissan.

Since that time there have been two decisions dealing with Plaintiffs who returned to full-time work:

In Valdez v. Clarke, the Plaintiff returned to a full-time job that was more strenuous than his pre-accident work. However, he was not able to return to his part-time business in which he operated a cleaning company.

In Nicolas v. Bowers, the judge did not reference the Nissan and Sherman cases, nor is it indicated if this is a Bill 198 case or not (the date of accident is not mentioned in the judgment). In any event, it was found that the Plaintiff met the threshold even though she had returned to work. The judge notes, however, that the employer had eliminated some of the Plaintiff's job functions, so this is a case of returning to modified employment only, even if this is a Bill 198 case.

It therefore may be easier for part-time workers, caregivers, retired persons and non-earners to meet the threshold than it is for full-time workers who return to work.

This is not a complete analysis of the entire legislation. There are numerous exceptions, exclusions, etc. that apply outside the scope of this summary. Always consult a lawyer if you need clarification or a greater degree of analysis or insight.

To review the actual wording of the Insurance Act, go to http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_960461_e.htm and see section 4.2.

*Although every case is different, finding the best resolution to your case is our common goal.
Please contact us today if you have any questions or concerns.*