



# An Overview of Jurisdictional Responsibilities for Employers & Employees



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In Canada, employers are subject to a **duty to accommodate**. This means that the employer must make reasonable efforts to modify the job or working conditions to allow the worker's employment to continue. The need for accommodation can apply to potential employees as well, as they are required to communicate to their employer any necessary accommodations related to a limitation or impairment that could pose a safety risk if the accommodation is not met.

## Why do Employers Request Fitness-to-Work Testing?

Employers usually request Fitness-to-Work testing due to company policy or government regulations, but the worker must consent to testing. Employers may also request testing for a number of reasons, including a change in work conditions or in an employee's health that could pose a safety risk in completing the standard job requirements. The majority of regional worker's compensation agencies require some form of fit-for-duty testing as part of a mandated return-to-work plan for workers who have experienced injury or illness.

## What is Fitness-to-Work Testing?

Employers typically request Fitness-to-Work testing to ensure that their workers can do a particular job safely. This type of occupational testing does not aim to eliminate prospective workers, but rather to avoid subjecting a worker to possible injury by having them take on a job they are not physically capable of doing. This helps to enhance a safety-first culture by considering the abilities and limitations of your workers, to maximize their chance of success in their respective roles.

SureHire staff are credentialed health professionals, such as physiotherapists, kinesiologists, and athletic therapists. Fitness-to-Work testing aims to examine a worker's physical capabilities as they relate to their essential job functions. SureHire utilizes a level system to convey results to our clients, which allow them to make more educated hiring decisions.

## DID YOU KNOW?

Should an incident occur on your job site, you can use the information provided through SureHire's Fitness-to-Work testing when applying for cost-relief through your regional worker's compensation board.

[Learn more](#)



# Provincial & Territorial Regulations

While Canadian provincial and territorial legislation don't have too much specifically that applies to Fitness-to-Work testing, similar testing, such as return-to-work testing, pre-employment testing, post-incident testing, and the duty to accommodate, generally fall under both human rights legislation and labour relations acts.

## Pre-Employment Testing

Pre-employment testing is legal in Canada and can include physical, mental, and other components. Canada, like the US, largely relies on the so-called "80% Rule." Developed in California, it holds that a pre-employment test is not discriminatory if 80% of applicants can reasonably be expected to pass it. However, a recent [Saskatchewan court decision](#) determined that the 80% rule is not always a sufficient test of discrimination. Employers must also demonstrate a clear and rational connection between the test and the job itself.

This court decision does not bind other provinces. However, they may be influenced by it, and employers should heed it. In a related example, the [Ontario Human Rights Commission](#) has ruled that employment conditions must be:

1. Adopted for a purpose or goal that is rationally connected to performing the job

2. Adopted in good faith, in the belief that it is necessary to fulfill a legitimate work-related purpose
3. Reasonably necessary to accomplish the work-related purpose


Employer best practice in pre-employment testing should ensure the testing has a connection to the job and is reasonably necessary. This concept is known as a Bona Fide Occupational Requirement (BFOR) and is required in provinces such as [Alberta](#). In [Newfoundland](#), this is referred to as Good Faith Occupational Requirements.

## Duty to Accommodate

Employers across Canada must accommodate employees' individual needs based on grounds protected under the Human Rights legislation to the point of undue hardship. Undue hardship occurs when the accommodation creates intolerable conditions for the employer, such as unbearable financial costs or severe disruption to the business.

In some provinces, including Alberta, the duty to accommodate has also been extended to hiring practices. In other words, employers must accommodate potential employees and existing employees.

Both employers and employees have obligations under a duty to accommodate. Employers have a responsibility to explore the options available for accommodation, and employees must communicate their need for accommodation and cooperate with the employer's attempts to accommodate.





# Provincial & Territorial Testing & Applicable Legislation

Reigon	Testing	Legislation
British Columbia	In BC, pre-employment and fitness-to-work testing is acceptable. However, where an employer's workplace standard discriminates against an employee on a prohibited ground (such as sex or disability), that standard will violate the applicable human rights legislation unless the employer can establish it as a bona fide occupational requirement.	<ul style="list-style-type: none"> <li>• <a href="#">Employment Standards Act</a></li> <li>• <a href="#">Workplace Safety</a></li> <li>• <a href="#">Worksafe BC</a></li> <li>• <a href="#">BC Human Rights Code</a></li> </ul>
Alberta	As per the Alberta Human Rights Commission, "human rights law prohibits discrimination based on disability. In general, testing for a condition that is a physical or mental disability is allowed only where the disability would prevent an applicant or employee from carrying out the key duties of their job and the condition cannot be accommodated." These disabilities include drug and/or alcohol addiction. This applies to pre-employment and existing employment testing, including return-to-work testing.	<ul style="list-style-type: none"> <li>• <a href="#">Alberta Human Rights Commission</a></li> <li>• <a href="#">Alberta OH&amp;S</a></li> </ul>
Saskatchewan	Saskatchewan legislation is largely silent on the subject of pre-employment and fitness-to-work testing. However, the same duty to accommodate and establish BFOR requirements under human rights legislation still exist.	<ul style="list-style-type: none"> <li>• <a href="#">Workers' Compensation Act, 1979</a></li> <li>• <a href="#">The Saskatchewan Human Rights Code, 2018</a></li> <li>• <a href="#">The Saskatchewan Employment Act</a></li> </ul>
Manitoba	Both pre-employment and return-to-work testing is permitted as long as it does not discriminate under the Manitoba Human Rights Code.	<ul style="list-style-type: none"> <li>• <a href="#">Manitoba Human Rights</a></li> <li>• <a href="#">Manitoba Labour Standards</a></li> </ul>
Ontario	In Ontario, pre-employment and fitness-to-work testing is acceptable. However, in situations where an employer's workplace standard discriminates against an employee on a prohibited ground (such as sex or disability), that standard will violate the applicable human rights legislation unless the employer can establish it is a bona fide occupational requirement.	<ul style="list-style-type: none"> <li>• <a href="#">Accessibility for Ontarians with Disabilities Act</a></li> <li>• <a href="#">Ontario Human Rights Commission</a></li> </ul>
Quebec	Employees must undergo medical assessments to ensure they are fit for duty before being placed in any safety-sensitive job and this can be applied to both pre-employment and return to work situations.	<ul style="list-style-type: none"> <li>• <a href="#">Charter of Human Rights and Freedoms</a></li> <li>• <a href="#">Employment Standards Act</a></li> <li>• <a href="#">Workplace Safety &amp; Health Act</a></li> </ul>
Nova Scotia	Employers may request information to ensure an employee is fit to perform the key duties of the job. This could include information regarding their mental and physical functional abilities. Employees are responsible for cooperating with reasonable requests for medical information.	<ul style="list-style-type: none"> <li>• <a href="#">Nova Scotia Human Rights Commission</a></li> <li>• <a href="#">Labour Board Legislation</a></li> <li>• <a href="#">Labour Standards Code</a></li> <li>• <a href="#">Worker's Compensation Board of Nova Scotia</a></li> </ul>
New Brunswick	Employers have a duty to accommodate workers with a disability so they may be hired and retained. This duty applies to all aspects of employment, including hiring, job descriptions, facilities, equipment, and return-to-work after injury/illness that constitutes a disability.	<ul style="list-style-type: none"> <li>• <a href="#">WorkSafe New Brunswick</a></li> <li>• <a href="#">Worker's Compensation Act</a></li> <li>• <a href="#">New Brunswick Occupational Health &amp; Safety Act</a></li> </ul>
Prince Edward Island	Employers are responsible to maintain a safe workplace and to work in partnership with workers and the WCB to prevent workplace injuries and illnesses from happening. This includes promoting a culture of workplace injury prevention and developing and maintaining occupational health and safety standards.	<ul style="list-style-type: none"> <li>• <a href="#">Worker's Compensation Board of PEI</a></li> <li>• <a href="#">Employment Standards</a></li> <li>• <a href="#">OHS Act &amp; Regulations</a></li> <li>• <a href="#">Prince Edward Island Human Rights Commission</a></li> </ul>
Newfoundland & Labrador	Bona fide occupational requirements (BFORs) are referred to as Good Faith Occupational Requirements in Newfoundland and Labrador legislation.	<ul style="list-style-type: none"> <li>• <a href="#">Newfoundland &amp; Labrador Human Rights Commission</a></li> <li>• <a href="#">Newfoundland &amp; Labrador Occupational Health &amp; Safety Act</a></li> <li>• <a href="#">Labour Standards Act</a></li> </ul>
Nunavut	If work demands constant and uninterrupted physical exertion, an employer shall assess the risks to the worker's health and safety and inform the worker of the nature and extent of the risks and the ways to eliminate or reduce those risks.	<ul style="list-style-type: none"> <li>• <a href="#">Labour Standards Board</a></li> <li>• <a href="#">Nunavut Human Rights Tribunal</a></li> <li>• <a href="#">Occupational Health &amp; Safety Regulations</a></li> </ul>
Northwest Territories	If work demands constant and uninterrupted physical exertion, an employer shall assess the risks to the worker's health and safety and inform the worker of the nature and extent of the risks and the ways to eliminate or reduce those risks.	<ul style="list-style-type: none"> <li>• <a href="#">Occupational Health &amp; Safety Regulations</a></li> <li>• <a href="#">Northwest Territories Human Rights Commission</a></li> <li>• <a href="#">Employment Standards</a></li> </ul>
Yukon	Every employer shall ensure, so far as is reasonably practicable, that the workplace, including processes under the employer's control are safe and without risks to health; and work techniques and procedures are adopted and used that will prevent or reduce the risk of occupational injury.	<ul style="list-style-type: none"> <li>• <a href="#">Employment Standards</a></li> <li>• <a href="#">Yukon Human Rights Commission</a></li> <li>• <a href="#">Occupational Health &amp; Safety Act</a></li> </ul>





# Musculoskeletal Incidents & Injuries

One of the main reasons to perform fitness-to-work testing is to ensure that new hires can do the job they are applying for and to help existing workers return safely following an injury or incident. Much of this is related to the prevention of musculoskeletal injuries (MSDs). Work-related MSDs (are painful disorders of muscles, tendons, and nerves and are among the most common workplace injuries. In fact, MSDs are estimated to cost Canadian businesses \$22 billion annually.

MSDs can involve any part of the body and can include:

- Repetitive motion injuries
- Repetitive strain injuries
- Cumulative trauma disorders
- Occupational cervicobrachial (relating to the neck and arm) disorders
- Overuse syndromes
- Regional musculoskeletal disorders
- Soft tissue disorders

MSDs often result from repetitive movements or awkward posture or positioning but can also be exacerbated by extreme conditions such as cold or heat.

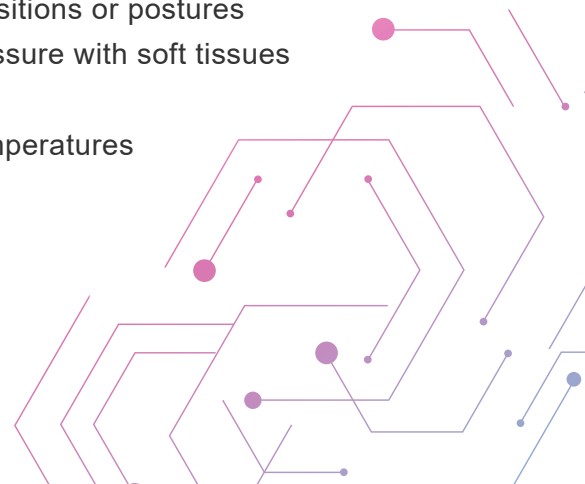
# Industries That See Their Fair Share of MSDs

## Construction

The nature of construction work, with employees often working outside, in cramped or awkward positions, and frequently using tools that vibrate, means that MSDs are a frequent source of injury for construction workers. They can impair the ability of workers to do their jobs or may even cause permanent disability.

Some of the contributing factors for MSDs in the construction industry include:

- Forceful exertion
- Repetitive movements
- Awkward positions or postures
- Contact pressure with soft tissues
- Vibration
- Extreme temperatures





## Transportation

Musculoskeletal disorders (MSDs) can put drivers and the public at increased risk in the transportation industry. According to several studies, drivers with MSDs had crash rates that were [70% higher](#) than those without musculoskeletal conditions. According to national Workers' Compensation data, it is also the industry with the [highest rates](#) of MSDs.

Some of the factors that put transportation workers at risk include:

- Sitting in a static or fixed position for extended periods of time
- Using excessive force in raising and lowering the landing gear on a semi-trailer, if improperly greased
- Forceful effort and awkward postures in releasing the primary locking mechanism of the fifth wheel or secondary manual lock
- Loading and unloading trucks
- Chaining, strapping, or tarping loads
- Getting into and out of a tractor or trailer

Long-distance transport is more static, while short-distance often involves getting up and down more frequently and requires the driver to do additional product handling as well. Specific loads can involve more vibration and restrictive postures. Lack of sleep can also put both long and short distance truckers at increased risk of WMSDs.

## Oil & Gas

In a recent study of Norway's offshore petroleum industry workers, MSDs made up [more than half](#) of all occupational diseases. There are numerous factors in the oil and gas industry that can put workers at risk for MSDs, including:

- The weight of loads such as equipment, process machinery, and materials in sacks and drums
- Working environments that are often confined or promote poor working posture
- The nature of the floors, which may be slippery or hinder the use of handling equipment
- High level of repetition in some tasks
- Difficulty using handling equipment such as cranes and hoists on some installations
- Repeated bending, lifting heavy items, pushing, and pulling loads are common
- Psychological stressors include long working hours, time pressure, standing for long periods, heat and cold stress, and isolation



### ***Fit-to-Work Testing Saved My Husband's Life!***

**It's incredible to see the impact SureHire has had on so many individuals. The work we do doesn't just help people get a job, it helps hard working people get home safe and sound every day!**

*"Dear SureHire, I just wanted to let you know that SureHire saved my husband's life. My husband, Brian was seeking employment in NFLD, and he was asked to complete a pre-hire fitness testing program through SureHire. As a result of the initial screening, he was asked to have a cardiac stress test, which he failed. He was then sent off for a nuclear dye test which showed heart disease before being sent to a Cardiac Centre where he had a quadruple by-pass surgery. He is now at home recovering! Thanks SureHire, you saved my husband!"*





## Forestry

As an outdoor occupation often conducted in remote and challenging terrain in less-than-ideal environmental conditions, forestry workers are at an increased risk for MSDs. Some of these risks include:

- Repetitive movements such as swinging, bending and lifting
- Heavy lifting
- Poor body positioning
- Accelerated work pace at critical times
- Long shifts and long work weeks, particularly in logging camps
- Impact and vibration from falling trees, terrain, equipment, and tools
- Challenging environmental conditions (low temperatures, slippery and uneven ground)
- Heavy work that includes manual handling of loads
- Repeated use of heavy, awkward, and dangerous tools and machinery such as chainsaws

## Agriculture

Every year over [1,300 workers are injured](#) on Canadian farms, and these injuries cost [\\$300 million](#) in lost productivity alone. MSDs are so common in agriculture that many who work in this industry consider them an unavoidable cost for doing this type of work. Agriculture workers and farmers encounter a wide variety of risks for MSDs depending upon the job they perform.

- Maintaining a stooped position for long periods
- Working in adverse weather conditions from extreme cold to extreme heat
- Carrying heavy loads and swinging or twisting to position heavy loads such as bales of hay
- Sitting for long periods on tractors and harvesting equipment
- Vibrations from equipment and tools
- Reaching and extending limbs (for example, to pick fruit)
- Handling of low loads at high frequency
- Manual lifting and carrying of loads
- Manual pushing and pulling of loads
- Static postures
- Obsolete machinery that increases exposure to whole-body vibration
- Working on uneven ground for long periods





## Manufacturing

The repetitive nature of manufacturing work and several other factors unique to this industry put manufacturing workers at increased risk of MSDs. However, reducing MSDs can improve productivity, reduce worker's compensation, and reduce healthcare costs for employers and employees. These risk factors in manufacturing include:

- Standing for long periods of time on hard surfaces
- Maintaining a single posture for long periods of time
- Awkward positioning including bending and twisting, extended reach, and squatting or sitting
- Repetitive motions and tasks
- Forceful movements in lifting objects, using tools, and moving
- Vibrations from machinery or tools
- Confined or cramped workspaces
- Manual materials handling
- Exposure to hot or cold temperatures
- Contact stress from focusing force on a small area of



## Mining

In the 1990s, British Columbia conducted an audit of worker's compensation claims paid out in the mining industry specifically for MSDs. It concluded that over \$1 million in claims were paid out for carpal tunnel-related injuries in a 5-year period, and \$2 million in claims were paid out for back injuries alone.

There are a variety of MSD risks inherent in mining including:

- Physical injury from accidents involving moving machinery, movement of mining products, and from working with explosives and detonating devices
- Manual handling of supplies and tools
- Work in cramped or confined spaces

# Risk Mitigation: Industry Controls

Engineering controls are the preferred approach to preventing MSDs. This means designing the job to fit the capabilities and limitations of the workforce.

Engineering controls can physically modify forcefulness, repetition, awkwardness, and vibration levels related to work leading to potential MSDs. Examples could include modifying a workstation or buying ergonomic tools and equipment. Administrative controls can also help reduce MSDs by reducing or preventing worker exposure to specific risk factors. These controls can include things like additional rest breaks, job rotations, job expansion, and training.



## Construction Controls

- Plan ahead to minimize material handling
- Keep the worksite tidy to prevent trips & falls
- Where available, order ready-mixed mortar to decrease repetitive shoveling & exposure to cement powder
- Use carts, dollies, hoists, or other mechanical handling devices to make physical tasks less stressful on the body
- Increase use of ladder hoists, gin poles, daisy chains, or cranes to move materials on or off roofs
- Use chain falls, motorized buggies, carrying handles, or extension handles for carrying large or awkward materials like drywall
- Break loads into smaller units, such as putting cement in bags weighing less than 50 pounds
- Use shoulder pads when carrying loads on shoulders
- Employ administrative controls such as ergonomics training, pre-job exercises, weight labeling of materials, & encouraging 2-person lifts with heavy objects







## Transportation Controls

- Consider installing ergonomically designed truck seats
- Train workers on proper lifting & carrying techniques, such as 3-point contact
- Employ the use of mechanical aids, including forklifts and dollies
- Avoid overloading dollies or other lifting aids
- Mandate frequent breaks for long haul truckers
- Ensure proper maintenance of equipment
- Employ administrative controls, including thorough job training

## Oil & Gas Controls

- Avoid excessive manual handling through the use of automation, or introduce mechanical handling aids
- Implement employee rotations to reduce the risk exposure level & pre-medical health checks
- Conduct training in the recognition of musculoskeletal hazards & work techniques that decrease exposure to injury for both workers & management
- Introduce engineering controls including pneumatic & hydraulic configurations & redesign workspaces to minimize awkward positioning



## Forestry Controls

- Avoid tasks above shoulder height
- Ensure tasks are within 16 inches of the worker
- The diameter of tool handles should allow the worker to effortlessly grip the handle, with the thumb & fingers overlapping by 3/8 inch.
- Provide long-handled tools to limit stooping & overreaching
- Maintain machines in proper working order to avoid excessive vibration
- Fix unbalanced rotating parts or unsharpened cutting tools that produce excessive vibration
- Alternate the use of vibrating & non-vibrating tools
- Provide appropriate personal protective equipment (PPE) to mitigate the effects of severe weather exposure.





## Agriculture Controls

- Use harvesting tools that raise workers to appropriate heights or tools with extended reach
- Properly maintain equipment to reduce vibration
- Modify existing equipment to enhance ergonomics
- Consider investing in ergonomically sound equipment designed to fit worker's bodies
- Use wheeled carts, dollies, and other automated products for carrying loads
- Leverage tables, troughs, and benches to eliminate ground-level work
- Use containers or baskets with handles
- Automate repetitive tasks wherever possible
- Employ job rotation for agricultural workers
- Take frequent rest breaks
- Use knee pads and mats to reduce stress on knees and feet

## Manufacturing Controls

- Use mechanical aids for lifting
- Store materials & tools within easy reach
- Ensure workstations are designed for optimal height & to match worker requirements
- Leverage extension poles & scaffolding
- Provide tools with extended handles
- Limit squatting & other awkward positioning to no more than 4 hours per day
- Provide knee pads and anti-fatigue floor pads to limit the impact of hard surfaces on the feet & knees
- Encourage pushing rather than pulling
- Provide wheeled or automated carts
- Purchase tools with padded grips to avoid contact stress
- Rotate workers to different tasks with different muscle loads to avoid repetitive strain injuries

## Mining Controls

- Apply engineering controls in tool, workstation, and equipment design, such as making a workbench the appropriate height for a worker or using devices designed to prevent awkward positioning
- Enforce engineering controls in materials handling, such as the use of handling aids
- Employ administrative controls including job rotation, increasing the number of workers doing the job, & transferring employees when they have reached their limit of risk
- Ensure there is good 'housekeeping' of equipment & facilities
- Conduct training in the recognition of musculoskeletal hazards and work techniques that decrease exposure to injury for both workers & management



# Additional Risk Prevention Methods

Age and the ability to meet the job's physical demands are also significant risk factors for workplace-related musculoskeletal injuries. These risks can be exacerbated by existing injury or illness. The best way to counter these risks is to ensure that a prospective employee or existing employee returning to a position following an injury or illness is physically capable of meeting the job's demands. That starts with Fitness-to-Work testing.

Many regional worker's compensation agencies in Canada require a return-to-work program that includes Fitness-to-Work testing. Fitness-to-Work testing can be conducted by a health professional employed by the company or by independent experts who can help an organization establish independence and transparency in its hiring and return-to-work programs.

## Leading vs. Lagging Indicators

A strong health and safety culture in an organization isn't just about having low incident or injury rates. It's about instilling a feeling of comfort and security in all workers so they know their organization is doing everything in its power to be able to keep their employees safe at work. Most health and safety metrics look at "lagging indicators"; meaning you are focusing on things that have already occurred.

Implementing strategies that focus more on "leading indicators", helps employers shift the focus more to prevention and elimination of things that lagging indicators typically track (injuries, lost productivity, compensation costs, etc.).

Leading indicators focus on such things as the percentage of your workforce with proper safety training and education, satisfaction level of workforce with current safety standards, attendance rates at safety meetings/toolbox meetings, and frequency of safety checks/audits completed.



# Our Fitness-to-Work Programs

SureHire's Fitness-to-Work Programs provide a broad picture of an employee or potential employee's overall physical function and health status. It provides valuable insight into whether your job candidates or employees can perform the work tasks critical to their role.

Fitness-to-Work Program	Comprehensive FTW Assessment	Standard Health #1	Standard Health #2
Medical History Review	•	•	•
Vitals check	•	•	•
Full Body Musculoskeletal Exam	•	•	•
Critical Strength & Mobility Test	•		
Modified Critical Strength & Mobility Test		•	
Healthcare Professional Review	•	•	•
Level 1-5 Recommendation to Hire	•	•	•
Vision Screen (optional)	<i>optional</i>	<i>optional</i>	<i>optional</i>

## Fit-For-Work ROI: A Case Study

One of our clients with a large utility infrastructure program in Eastern Canada used our Fitness-to-Work program to ensure their worker's abilities matched the job demands in a challenging and remote work environment.

The goal was for workers to return home safely at the end of each workday, by reducing the risk of injury. The results were incredible, and the data speaks for itself.



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Request a Quote Today!

Learn More About FTW Testing

# FAQs

## What Can Test Participants Expect at Each of the Critical Strength and Mobility (CSM) Stations?

Many individuals ask us about the CSM testing portion of a Fitness-to-Work test. A full CSM test includes:

- Step Test
- Sustained Trunk Flexion
- 1-Hand Carry
- Long Carry
- Sustained Crouch
- Floor-to-Waist Lift
- 10-Foot Carry
- Overhead Lift
- Sustained Kneel



You can get more information about each of these stations by accessing our Guide to CSM Testing.



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## What makes SureHire's FTW Programs different than other providers?

SureHire uses a Level 1 - 5 Result Scale that directly corresponds to a worker's physical capability to do the work. We also make recommendations to employers on accommodations or restrictions for the worker based on our findings from the assessment. The assessment scale levels are as follows:

- L1: Successful Completion
- L2: Restrictions / Modifications Recommended
- L3: Limited — Safety-Sensitive Site Access
- L4: Limited — Non-Safety-Sensitive Site Access
- L5: Stoppage