Summary

Reintegration in the event of personal injury
When an employee becomes the victim of an accident or other event for which another party is liable, different areas of law are involved. Liability law provides the employee with a right to recover damage from the liable party. Labour law and social security law provide for an entitlement to continued payment of the employee's salary, or to a social security benefit. Such entitlements, however, come with obligations. For instance, an employee has the duty to mitigate damage, in so far as this can reasonably be required, and he has far-reaching obligations to reintegrate and rehabilitate into the workplace. These obligations originate from different areas of law and are not coordinated as regards content. This causes legal uncertainty.

This study provides insight in the mutual influence of civil liability law and labour and social security law as regards the obligations of an employee aimed at returning to gainful employment.

Chapter two focuses on the objectives of social security law using an historical overview of the reintegration legislation. In order to keep social security costs manageable those who are incapacitated for work must, according to the government, return to work quickly. Social considerations as well as financial arguments played an important role in the creation of the current reintegration legislation. The government considers it important that those who are unfit for work do not remain inactive unnecessarily. Long-term incapacity for work results in a weakened social position and a reduction in income.

Chapter three investigates the scope of the reintegration obligations contained in labour and social security law. The employee is, on penalty of loss of an income provision, in principle obliged to carry out suitable work. Suitable work means all work calculated for the strengths and skills of the employee, unless acceptance of this work cannot be demanded of him due to physical, mental or social reasons. This obligation may in certain circumstances demand that a person unfit for work adjusts his life substantially. The employer is also obliged to make efforts to reintegrate the employee.
Chapter four focuses on (the objective of) the victim's duty to mitigate damage. This obligation contributes to the recovery (of the capacity for work) of the victim. The injured party may not omit to take damage mitigating measures now that a third party is liable for his loss. The duty to mitigate damage is characterised by the victim-friendly starting points of liability law. Caution is called for when considering the question whether the injured party may be required to carry out suitable work. The injured party is granted freedom of choice. This explains why farther-reaching obligations may be demanded from the injured party in the context of labour and social security law than in the context of liability law.

Chapter five addressed the question in which ways there can be interaction between the substantively different obligations originating from the different fields of law. The different obligations always demand from the injured party that he makes efforts to recover his capacity for work. The scope of the obligations differ strongly however. Contrary to social security law, caution is exercised in liability law. It is after all the liable party who has placed the injured party in the position where he is obliged to exercise damage limitation. Due to the differences in scope, it is conceivable that reintegration fails. The injured party could evade his social security law obligations to subsequently recoup the financial consequences of his behaviour from the liable party. However if the victim-friendly principles of liability law are disregarded in labour and social security law, more is demanded from the injured party than is justified.

Chapter six addresses the situation where the employer is liable for the damage of the employee. In that event the employer has two roles; that of employer and that of liable party. In its role as liable party it may expect smaller rehabilitation efforts from the injured employee than in its role as employer. Liability of the employer could in theory lead to the employer making too much effort to rehabilitate the employee as the employer is no longer faced with just the wage costs of the first two years of illness. However, the law contains safeguards to prevent misuse. The employee may request a second opinion from the UWV (Employee Insurance Agency) or may commence (partial dispute) proceedings before the court.

As a solution for the outlined issue, I have put forward the possibility of a ‘luxury’ reintegration process. The employer can recoup the costs made for the reintegration of the victim from the liable party. This allows the employer more financial room for the reintegration of the employee. By means of a victim-friendly process, the obligations towards the employer can be attuned to the victim-friendly principles of liability law. This creates harmony between the different obligations resting on the victim. Undesirable consequences of the interaction between the different fields of law are removed.