



# What We Heard

Labour Market Re-entry, Early and Safe Return to Work, and PRIME Programs  
November 2021  
Consultation Summary

**WorkplaceNL**

Health | Safety | Compensation



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## WorkplaceNL

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We thank all stakeholders who provided their feedback on our Early and Safe Return to Work (ESRTW) approaches, their experiences with the type and quality of Labour Market Re-entry (LMR) assessments and plans, as well as proposed changes to the Prevention and Return-to-Work Insurance Management for Employers and Employees (PRIME) program.

The experience and perspectives of injured workers, employers and service providers is important to continuously shape programs that help injured workers return to work, where possible, and to create safe workplaces for residents of our province – to benefit all workplace parties.

We are committed to transparent consultation, and to use your feedback to inform our decisions.

We appreciate your feedback as we explore ways to improve our programs and will continue to consult with you.



Dennis Hogan, CEO, WorkplaceNL

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# Consultation

WorkplaceNL hosted a virtual consultation session on November 25, 2021 – attended by 19 organizations and 42 individuals (Annex A refers).

We invited written submissions from all organizations – extending the deadline to December 16, 2021 to those who requested more time. We received four submissions from the Canadian Federation of Independent Business (CFIB), Newfoundland and Labrador Federation of Labour (NLFL), Newfoundland and Labrador Construction Safety Association (NLCSA) and SafetyNL.

Upon request, we held individual meetings with organizations that concluded in March 2022.

This document summarizes what we heard from these consultations.

We are also planning a focus group with randomly selected injured workers who have experience with ESRTW and LMR.

## **Feedback on consultation process**

WorkplaceNL is striving to enhance how and when we consult. We heard during the 2019 statutory review of the workers' compensation system that there is a need to balance our approach. So, we invited more organizations to this consultation so we can hear from a broader group representing injured workers, employers and service providers.

Process changes for future consultations have also been noted, asking that we give more advance notice and share the invitation list.

## **Policy changes**

We shared draft LMR and PRIME policy changes with both of our primary stakeholders, the NLFL and Newfoundland and Labrador Employers' Council (NLEC), throughout the spring of 2022. Our Board of Directors approved those policy changes in June 2022.

All policies are available on our website: [www.workplacenl.ca](http://www.workplacenl.ca).

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## TOPIC 1 - ESRTW

### **i. Background on ESRTW**

To lessen the impact of workplace injuries on everyone, ESRTW proactively helps workers stay at work or perform duties that are as close as possible to their pre-injury job while they recover and receive medical treatment. This helps workers maintain their emotional well-being, return to full pay, maintain skills, recover faster, and stay in contact with their co-workers. Employers maintain productivity, retain qualified workers, reduce recruitment costs and reduce claims costs – while they fulfil legal requirements to accommodate employees.

We revised the ESRTW program following feedback from the 2018 PRIME review. As a result, we made the following changes to help employers and workers support successful return-to-work outcomes:

- Developed new industry-specific fact sheets
- Offered earlier occupational therapy (OT) services, where appropriate
- Strengthened internal collaboration with Occupational Health and Safety Advisors
- Expanded the Return to Work (RTW) Facilitator role
- Offered quarterly webinars on:
  - ESRTW Basics (including PRIME)
  - ESRTW plan submissions and connect (an online resource for employers)
  - ESRTW strategies and solutions
  - Co-operation and accommodating an injured worker

### **ii. What we heard**

Overall, support was positive for the ESRTW changes with some questions and concerns, as noted below.

Some participants indicated that they fully support the changes since 2018, including:

- The intent to increase collaboration and build positive relationships with workers and employers.
- Proactive follow-up between WorkplaceNL and the employer to help with successful return-to-work planning.
- The openness, transparency and improved communication, as evidenced with the virtual consultation.

Participants shared the following suggestions to further improve ESRTW:

- Explore the Nova Scotia model of direct access to physiotherapy. (Note: WorkplaceNL currently provides direct access to physiotherapy as early as the day of injury, even if a claim is not yet adjudicated.)
- Offer a prelude or 'stay-at-work' program. We confirmed that ESRTW is a stay-at-work program. RTW facilitators work with injured workers before their claim is adjudicated to help them stay at work, if possible.
- Employers asked that workplace assessments suggest pre-determined suitable work options or positions that may accommodate an injured worker and help increase employer awareness of accommodation options.



- Concern that medical clearance may not be required before an injured worker returns to work.
- Ensure a balance between both the injured worker and the employer in consultations about ESRTW – this has been acknowledged.
- Objection to linking ESRTW with LMR services. This assumes the two are distinct programs and all ESRTW provisions must be exhausted prior to moving the injured worker to another program.
- Increase the focus on educating employers about their duty to accommodate.
- Clarity was requested on how WorkplaceNL’s RTW Facilitators help review the functional abilities provided by the health care provider.
- Concern that it appears that employers are not penalized for non-cooperation in accommodating injured workers.
- Income Replacement Rate (IRR), at 85 per cent of net earnings for the injured worker, is not high enough.
- Ensure that injured workers do not take advantage of the workers’ compensation system if changes are implemented.
- Investigate claims duration together with claims suppression.
- Consider what research proposes as appropriate interventions and accommodations before making changes to ESRTW or other programs and promoting “stay-at-work” solutions.
- Call for research with a gender equity lens, as it is important to know who will be affected by changes to ESRTW.
- Consider setting timelines for both employers and workers, as a step to shorten claim duration and reduce communication with WorkplaceNL.

- Caution to putting all products online only, as some business owners find using online forms difficult. (Note: all forms remain available on [www.workplacenl.ca](http://www.workplacenl.ca) or from any of our three offices).
- Simplify the hierarchy of RTW and develop more specific resources to help workplace parties, such as examples of actual RTW job plans and tasks for construction companies.

### iii. Answers provided

The November 2021 consultation proved useful in hearing questions about the new approach of early OT services for suitable claims. We provided the following answers as clarification.

#### Focus:

- ESRTW, including early OT services, continues to focus on keeping the injured worker with their pre-injury employer.

#### Process:

- Lost-time claims are assigned to both a RTW facilitator and case manager if there is a Form 6 (Workers' Report of Injury), Form 7 (Employers' Report of Injury), and one medical report (i.e., Physician Report MD or Chiropractor Report 8/10C) on file.
- Case managers then consult with primary health care providers and injured workers in deciding if early OT services are recommended.

- Early OT services may help with claims and timely return-to-work issues where there are incomplete forms or if medical practitioners did not list functional abilities or limitations on the forms.
- Injured workers are not expected to pay for occupational therapy services.
- We are exploring how to offer the service province-wide; no concerns were identified with providers' availability during the early stages of the roll-out.
- We are exploring opportunities for multi-disciplinary assessments and treatment programs for traumatic work-related mental stress injuries. It was suggested that occupational therapists may be able to help.

#### Education:

- Our Health Care Services team will provide further education to physicians to strengthen their awareness of the new approach and to use connect (online service) to complete function boxes on medical forms.
- We agreed to add more information on the role of occupational therapy to ESRTW webinars.
- Education with workers and employers regarding their roles and responsibilities is underway. Our goal is to help minimize concerns of those who may feel pressured to return to work, if they are not ready. Case managers and RTW facilitators also work with health care providers to address concerns.



## TOPIC 2 – LMR

### i. Background on LMR

Some workers need additional help to re-enter the workforce or reduce the impact of lost earnings after an injury. Labour market re-entry services may provide the support they need.

LMR assessments assess workers' skills, knowledge and abilities to help develop a plan for re-training or re-employment. Their labour market re-entry plan may include employment readiness preparation (in-person or online), computer training, skills upgrading, post-secondary education, self-employment, and on-the-job training.

From 2018-21, on average two to four per cent of about 5,000 new claims per year required an LMR assessment (approximately 180 injured workers a year). Of that, less than half moved on to develop an LMR plan.

In order to assess labour market re-entry options, we help workers identify career choices by:

- Assessing their transferrable skills
- Understanding if they need help to re-enter the labour market
- Identifying at least three safe and suitable occupational groups (based on Canada's National Occupational Classification (NOC) system)
- Ensuring the options are reasonable based on skills, knowledge and abilities

We consider many factors when determining the appropriate labour market re-entry path for workers, including: the degree of workers' transferrable skills; workers' choice; employers' cost; sustainability; and, severity or type of injury.

After the LMR assessment, we reassess workers' wage-loss benefits, considering the worker's pre-injury earnings and the wage of the selected group of occupations within the NOC system. Depending on the option selected, workers' benefits may be continued (if training is the appropriate option); reduced and supplemented with partial Extended Earning Loss (EEL); or discontinued (if the identified option matches their pre-injury earnings).

Not all injured workers need an LMR Plan – some workers have the skills and abilities to re-enter the workforce in other jobs or choose to not avail of training. In these cases, we provide six additional weeks of temporary earnings loss (TEL) benefits based on the wage of the pre-injury job, while workers search for employment. After six weeks, we recalculate workers' benefits depending on the occupation selected – which may result in partial EEL benefits. These additional weeks of benefits are not provided for workers who successfully complete an LMR Plan that involved formal training.



## ii. Changes to LMR

Successive statutory reviews and stakeholder feedback has led to improvements to LMR services. Prior to 2019, LMR services were only offered towards the end of injured workers' recovery if ESRTW efforts did not result in suitable and available work, to restore their pre-injury earnings. However, some worker may lose their chance to find and keep longer-term employment if LMR services are left to the end of their claim. Our assessment process may help employers provide specific training for an accommodated position, or help injured workers prepare for other positions with their original employer.

A review of best practices in other Canadian workers' compensation boards has revealed that LMR programming is more effective in helping workers and employers if:

- Offered earlier in a claim
- Return-to-work and recovery are more integrated
- The pre-injury employer and injured worker remain in contact with each other and connected to the return-to-work process
- Employment readiness services are available to injured workers earlier in their recovery

We have made recent changes to our LMR services to better serve injured workers and employers by:

- Providing employment readiness supports to workers earlier in their claim, through a new, secure website
- Tailoring LMR services to workers' needs (i.e., explore re-training once physically able and interested)

- Involving workers more in the assessment and planning process
- Providing up to \$10,000 should an injured worker wish to relocate for employment in other parts of the province

Our goal is to help workers focus on their futures and create opportunities for them to get back to their pre-injury earnings when their recovery allows. Thus far, the shift to offering LMR services earlier are through changes in process or screening practices at WorkplaceNL. Individualized responses are important. Given it may be beneficial, LMR assessments and plans may be offered earlier, particularly if:

- The employment relationship has ended
- Their injury is such that return to work is only possible with re-training
- Additional supports, such as employment readiness, would help the worker secure alternate employment with the pre-injury employer

Other policy and procedure changes to support injured workers were shared during the November 2021 consultation, including:

- Increasing room and board amounts to reflect increased housing costs.
- Increasing travel, allowances and expenses covered during LMR plans.
- Increasing expense levels, such as meal allowance, to align with health care fees and expense coverage.
- Clarifying an employer's duty to accommodate, as a result of a Supreme Court of Canada decision (i.e., Caron decision). This included enforcing and ensuring employers accommodate to the point of demonstrated undue hardship.



### iii. What we heard

Participants were asked to provide comment and insight on their experience with the type and quality of LMR assessments or plans, provided by WorkplaceNL or contracted by external providers. As a whole, feedback provided went beyond the question directed at the quality and type of LMR assessments or plans and also included improvements to LMR. No feedback was provided on the use of external providers in the provision of LMR services.

Stakeholders - workers, employers, disability managers and health care providers - had differing views and perspectives on providing LMR services earlier in select circumstances.

As a summary, participants shared that:

- The \$150 coverage for miscellaneous fees and computer supports are not enough. (Note: We fully compensate for and will continue to provide injured workers with their course registration, books and equipment needed to attend their chosen program. The presentation focused on proposed additions and increases to existing coverage, as the rate for fees has not increased since 2002.)
- Retraining options identified by LMR assessments are not linked to the types of jobs that are available in the province, particularly rural areas.
- The National Occupational Codes (NOC) are a poor classification tool as they suggest career paths that are not realistic or in-demand in the province.
- An individual's transferable skills are not used in the assessment process.
- LMR screening can be positive for some injured workers if they are in the rehabilitation period, as it can help a worker focus on future opportunities and positively impact their rehabilitation.
- There may be ways to frame the screening and assessment process to focus on the injured worker's future goals for re-employment.
- Assessing abilities and interests are not intended to make the injured worker return to pre-injury work, if they have not recovered.
- Recovery can be a confusing or worrying time for those injured; having more information available can help them think about future goals and plan for change, which may positively impact their rehabilitation.
- Reminder to all parties that workers' compensation is a benefits program; not an insurance program – based on the historic compromise between labour and employers that avoids laying blame for workplace injuries.
- Offering LMR screenings and assessment earlier have an underlying intention to get workers off compensation earlier; this was also indicated in the 2019 Statutory Review.
- The earlier offering of LMR assessments and plans is perceived to be a means to get out of the system – need to focus more on training options for those unable to return to their employer.
- Some employers may resist accommodations and be perceived as not wanting injured workers to return to their jobs.

- Labour Market Re-entry services need to be evaluated, or more effective key performance indicators are needed, so that WorkplaceNL can follow the progress of injured workers – track data on successful employment outcomes or if workers end up on income support. (Note: we are exploring options to assess the effectiveness of LMR.)
- The return-to-work system of the 1980's focused more on rehabilitation and outcomes with viable occupational choices; there are concerns with moving LMR assessments earlier.
- Increase the number of worker advisors for injured workers to have a voice, as indicated in the 2019 statutory review.
- WorkplaceNL's stakeholder consultation approach has changed since 2000; as it is no longer evident that the views of stakeholders are realized in the changes that are being made.
- Earlier LMR assessments, benefit employers and WorkplaceNL; resources would be better directed to focus on accommodations, to help injured workers.
- The discussion about the duty to accommodate in the LMR section of the consultation, and not with ESRTW, is confusing.
- It would be better to include top-up provisions for collective agreements (employers pay injured workers an amount higher than the wage-loss benefits they receive from WorkplaceNL to bring them to full pay) in the Workplace Health, Safety and Compensation Act, as was the case in the 1980's.

## TOPIC 3 – PRIME

### i. Background on PRIME

In 2018, a broad range of stakeholders participated in a review of the PRIME Program and recommended several program changes. In July 2020, results of the 2018 consultations were published in a document entitled [Creating Opportunities for Safer Workplaces: A Review of WorkplaceNL's PRIME Program](#).

Various options to enhance PRIME were identified following the 2018 review; however, simplicity in administration, cost effectiveness, technical resources to implement change, and potential impact on improving safety and return-to-work outcomes were the main drivers of the proposed PRIME model. Internal data was reviewed and research from other jurisdictions was also compiled. The analysis revealed that having an experience rating system imbedded in the rate setting process for employers is a motivator to improve health and safety performance, and manage claims effectively when a worker is injured.

### ii. Changes to the PRIME Program

As a summary, the proposed enhanced PRIME model:

- Has three paths with differing occupational health and safety (OHS) and education requirements depending on employer size (average assessment and number of workers), thus making PRIME more accessible for small and medium sized employers.
- Retains the five per cent practice refund but changes how employers are categorized.

- Retains the experience refund or charge calculation model as well as the necessity that an employer meets their practice requirements in order to receive an available experience refund.
- Changes the practice requirements for OHS and Return-to-Work (RTW).
- Requires RTW education for all employers in order to avail of a refund.
- Enhances the audit scoring process removing the “all or nothing” approach to audit.
- Enhances the audit process for large employers and requires an in-person certification audit prior to receiving a refund.
- Small employers will receive online OHS and RTW courses at no cost.
- A new instructor-led Worker Health and Safety Representative/Designate training course will be developed for small employers in virtual and in-class formats. The course will be one day in duration. Re-certification will occur every three years, and can be completed through in-class, virtual, or online learning.
- Medium and large employers will continue to complete the 2-day OHS Committee training in-class, or through instructor-led virtual training. Upon re-certification, they can complete the online program at no cost, or return to in-class or virtual learning.
- Will consider equivalencies for comparable safety certification programs, such as the NLCSA’s Certificate of Recognition (CORTM) program.



### iii. What we heard

The consultation proved to be useful in clarifying questions raised by participants who wondered about certain aspects of PRIME, present and proposed.

The Newfoundland and Labrador Federation of Labour, as a fundamental value, expressed opposition to a financial incentive- based program, including:

- Dissatisfaction with the lack of study-based research verify claim suppression and reasons for lack of uptake of PRIME by small and medium-sized employers.
- Hesitation to change PRIME without confirming the reasons for lack of participation from employers who have not historically opted in.
- Uncertainty about impacts on PRIME costs in relation to the adoption of upcoming international accounting standards (International Financial Reporting Standards, IFRS 17 Insurance Contracts) by workers’ compensation boards in Canada.
- Disagreement with WorkplaceNL’s approach to not publishing the names of employers that do not pass PRIME and have modest safety records.

Several stakeholders indicated their support for the proposed changes, including the NLEC, CFIB and Eastern Health. The noted positives included less paper work for employers, better training, recognizing other safety certifications as equivalents and five more elements of OHS programming for large employers.

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Their suggestions included a higher refund to further incentivize employers to participate and discussions with large employers to explore ways to improve the audit process.

Other suggestions and comments from participants include:

- Small employers support allowing more businesses to access the program – the best way to reduce time lost is to ensure businesses know the best practices and are able to put them in place. (Note: WorkplaceNL will continue to support smaller businesses by informing them of supports or programs available.)
- Consider increasing the refund to encourage uptake in the program.
- Construction employers support the new program requirements and the recognition of COR as an equivalent certification.
- Reconsider offering a free, online version of the OHS Committee / Worker Health and Safety Representative / Designate training for employers, as the free course may negatively impact the revenue of training providers who offer in-class instruction.
- Adopt the Manitoba model and use upfront independent audits, as the present model may encourage companies to suppress claims. (Note: this suggestion was discussed in a future session that clarified how the Manitoba model would be problematic for workers in Newfoundland and Labrador.)
- Conduct research on claims suppression in the province.
- Adopt education practices and introduce tools to discourage employers from suppressing claims and clarify responsibilities for both injured workers and employers.

- Review WorkplaceNL policies related to the under-reporting of claims, to explore incentives – as was advanced in the 2018 PRIME review.
- Conduct further research on the value of the PRIME program, including the range of factors that have influenced the declining injury rate, to make the new program more effective.
- Fund an independent health clinic from the \$10.8 million allocation for PRIME, as indicated in recommendation 14.1 of the 2019 Statutory Review Committee’s report.
- Reject the proposed changes to PRIME until more research is complete, and more discussion is held with both primary stakeholders.
- Do not prioritize efforts to implement PRIME changes over the 2019 Statutory Review Committee’s recommendations.
- Publicly publish the employers who have OHS penalties and fail PRIME requirements in order to increase transparency and accountability.

#### **iv. Answers provided**

During the discussion and in subsequent individual meetings on the changes to the PRIME program, we answered questions and confirmed that:

- The proposed revisions to the audit process include worker interviews and site visits – this change would be welcome. Such audit changes that include interviews and site visits will prevent negative behaviors of employers that may include covering up safety violations.
- We are adding RTW as a PRIME requirement for all employers, they also have a legal obligation to accommodate injured workers.

- All proposed courses were to be offered online, self-paced, free-of-charge and available to all employers.
- Data analysis shows a correlation between passing PRIME and a decrease in the injury rate of employers.
- Mandatory supervisor training can be added at any time, after the OHS regulations are changed. This falls within the mandate of the Provincial Government.
- A stakeholder committee to develop a new PRIME model was not created due to the challenges facing businesses during the pandemic.
- Claims suppression was not formally researched through a study; mechanisms are in place to signal if there is a problem.
- All of an employer's worksites must pass PRIME in order for the employer to get a refund, unless their lines of businesses are grouped differently during the registration process.
- The number of employers categorized as 'large' will increase significantly under the proposed model based on their assessments and number of employees.
- Some of the high delinquency rates of OHS committees during the pandemic were acknowledged due to the automation of the system; however, higher delinquency rates of OHS Committees in the pandemic, did not correlate into safety violations.

Other impacts were possible as many employers reduced workforces, closed for set periods, moved employees to remote working - all of which would change meeting requirements.

- The cost of PRIME's practice refunds is paid for by employers and included in the average assessment rate (i.e., the \$0.06 per \$100 of assessable payroll charged to employers is returned if they pass PRIME).
- Under PRIME, \$10.8 million was paid in refunds in 2020, entirely funded by employers. The experience component is a net zero cost over time, as funds are moved from poor safety-performing employers (pay charges) to employers that have better safety performance (receive refunds).
- The focus on more education and training for owners or managers, and less rigor on audits for small to medium-sized employers, should increase participation and support the development of individualized OHS programming at work sites.

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## Annex A – Participants and Invitees

**Note:** WorkplaceNL Board members and employees are not listed

**Newfoundland and Labrador Federation of Labour**

Mary Shortall, John Reardon, Theresa Minette

**Newfoundland and Labrador Employers' Council**

Richard Alexander, Jeff Butt, Michael Young, Andrew Pike

**Canadian Federation of Independent Business NL**

Frederic Gionet, John Hearn

**Newfoundland and Labrador Teachers' Association (NLTA)**

Darrin Pike

**Newfoundland and Labrador Association of Public Employees (NAPE)**

Vina Gould, Bernadette Sobol

**International Association of Firefighters (IAFF)**

Jim O'Toole

**Newfoundland and Labrador Fish Harvesting Safety Association**

Brenda Greenslade

**Newfoundland and Labrador Construction Safety Association**

Jackie Manuel

**Forestry Safety Association of Newfoundland and Labrador**

Dion Newman

**Made Safe NL**

David Haire

**Eastern Health Authority**

Tara Hunt, Matthew Boone, Lynette Labour, Denise Maher, Ada Cabot, Kim Cooper, Sandra LeDrew, April Byrne, Kathleen Bradbury, Amy Taylor, Courtney French

**LifeMark**

Sharon Horan

**Empower NL (The Disability Resource Centre)**

Stephen Quinn, Jim Escott

**Academy Canada**

Samantha Piercy, Suzanne Jordan, Jordan Snow,

**Fish Food and Allied Workers' Union (FFAW)**

Johan Joensen

**Registered Nurses Union**

Yvette Coffey, Mike Fagan, Tony Moores, John Vivian

**Safety Net**

Kim Cullen

**Advisory Council on Occupational Health and Safety**

Travis White

**Cahill Group of Companies**

Trina Byrne

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## Annex B – Written Submissions

**The following organizations provided written submissions:**

- Newfoundland and Labrador Federation of Labour
- Newfoundland and Labrador Construction Safety Association
- The Canadian Federation of Independent Business
- SafetyNL



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