

Client Services Procedure Manual

Procedure: 33.00

Subject: Workplace Party Cooperation to Early and Safe Return to Work

33.00 Introduction

The main focus of the duty to cooperate is to reconnect the injured worker to the workplace as soon as possible following the injury. The connection is made through an offer of suitable and available employment which may or may not be the pre-injury job or a part thereof.

In general, **cooperation** means the workplace parties:

1. maintain effective communication throughout the period of the worker's recovery;
2. work towards identifying suitable and available employment for the worker; and
3. fulfill the reporting obligations to WorkplaceNL.

The workplace parties are considered to be cooperating when they are arranging early and safe return to work, participating in early and safe return to work, and resolving issues related to early and safe return to work.

There are incentives for cooperation for the workplace parties. Incentive for worker cooperation includes the prospect of an early and safe return to work, maintaining a good relationship with the employer, and receipt of appropriate workers' compensation benefits. For employers who cooperate in early safe return to work, employers can retain experienced and skilled staff, and avoid direct financial penalties levied against their assessment account where the cost of benefits charged to their firm experience is used to determine the assessment base rate applied to their industry group and the employer's individual experience rate.

Minor delays can occur in the early and safe return to work process due to legitimate reason(s). A legitimate reason depends on the particular situation and must be determined by the decision maker on a case-by-case basis.

33.01 Cooperation of the Workplace Parties

Effective Communication

The frequency, method and content of communication between the workplace parties prior to and during the early and safe return to work process will be determined by the procedures of the employer. WorkplaceNL recommends that the workplace parties make telephone contact at least once each week during the early and safe return to work process. Workers are required to provide their functional abilities information from their physician or chiropractor to their employer by the next working day (through personal visit, phone call, fax or mail or other reasonable means) to facilitate early and safe return to work planning

Suitable Employment

While the employer is required to identify and provide suitable and available employment for the injured worker within three (3) working days of receiving the worker's functional ability information, the worker is also expected to provide reasonable assistance to the employer. Examples of reasonable assistance may involve providing information, suggesting modifications to the pre-injury job, or reviewing work

sites and processes to identify suitable employment opportunities, etc. (See Procedure 34.00 “Suitable and Available Employment”). Suitable employment should commence as soon as possible but no more than three (3) working days after the employer has offered the work unless there are exceptional circumstances. For example, it may be impractical to arrange suitable work within the three (3) day time frame where the employer operates in a remote work site.

Return to Work Plans

Early and safe return to work plans are progressive, outline suitable employment for the worker, and are received by WorkplaceNL from the employer within one week of receiving the worker’s functional ability information. Where changes occur, updated return to work plans will be submitted to WorkplaceNL within one week of the occurrence. (See Procedure 34.00, Suitable and Available Employment, for details required in a Return to Work Plan.)

Give WorkplaceNL Information

If a dispute arises in the return to work process between the worker and employer that cannot be resolved by the parties and would negatively impact the return to work, the employer must contact WorkplaceNL immediately to advise of the dispute.

33.02 Non-cooperation

The success of early and safe return to work plans depends upon the cooperation of the workplace parties. While each case must be judged on its individual merits, the following are examples of non-cooperation:

1. The employer
 - a. has suitable work available but fails to offer the employment to the worker;
 - b. fails to communicate with the worker on a regular basis;
 - c. refuses to pay the salary earned during the early and safe return to work process;
 - d. fails to provide WorkplaceNL with a written return to work plan in the time frames prescribed; or
 - e. fails to notify WorkplaceNL of a dispute between the workplace parties which is impeding the early and safe return to work process.

2. The worker
 - a. refuses to provide required information to WorkplaceNL within the reasonable time frames specified by the decision maker for providing the information;
 - b. refuses to accept an offer of suitable and available employment from the employer;
 - c. fails to assist the employer in identifying suitable and available employment options when requested to do so;
 - d. fails to provide the employer with the form 8/10 from the health care provider;
 - e. fails to attend or participate in an evaluation determined appropriate by the Case Manager and/or health care provider (e.g., functional capacity evaluation) to progress the early and safe return to work plan; or
 - f. fails to notify WorkplaceNL of a dispute between the workplace parties which is impeding the early and safe return to work process.

33.03 Applying Non-Cooperation

When the decision maker identifies there is an issue of non-cooperation, he/she will thoroughly investigate all circumstances surrounding non-cooperation. This will include discussion with the workplace parties and an opportunity to cooperate before a finding of non-cooperation can be made.

Where there is non-cooperation, the decision maker will provide immediate verbal notification, if possible, document the verbal notification on a case worksheet, and follow up immediately in writing advising of:

1. the finding of non-cooperation;
2. the obligation to cooperate; and
3. the consequences of non-cooperation.

Where either or both of the workplace parties are found to be non-co-operative, appropriate penalties for non-cooperation will not be levied until after the claim has been adjudicated and accepted but will be applied retroactively to when the non-cooperation started.

Worker Non-cooperation

Usually, a worker's benefits would not be suspended due to non-cooperation - they would be reduced or terminated. Benefits will be terminated when a finding of non-cooperation has been applied against a worker. Where there are legitimate reasons for non-cooperation, benefits may be reduced or suspended in accordance with other appropriate policies (e.g., EN-17 "Interruptions and Delays in Work Injury Recovery").

Employer Non-cooperation

Penalties levied against the employer for non-cooperation are for the period of non-cooperation and could include:

1. The worker's full wage loss benefits paid by WorkplaceNL to the worker. This penalty will be levied on a bi-weekly basis by the decision maker completing the penalty form and forwarding it to the Assessment Services Department. For all wage loss benefit penalties levied, an additional penalty amounting to 12.5% of wage loss benefits will also be charged against the employer on a bi-weekly basis through the Assessment Services Department. This amount is charged to cover the administrative cost to WorkplaceNL of providing the worker with benefits.
2. The full cost of the labour market re-entry assessment, if required, which will be levied against the employer's assessment account when the assessment is completed.
3. The full cost of the labour market re-entry plan, if one is required to help the worker become market ready, which will be levied against the employer's assessment account on a quarterly basis as costs are incurred. These costs, which include, tuition, books, accommodations, travel, tools and equipment, etc., will be levied against the employer's assessment account.

These penalties will continue until the earliest date that:

1. the employer cooperates;
2. the worker's benefit entitlement ends; or,
3. the worker's wage loss benefit entitlement (excluding Extended Earnings Loss benefits) ends.

33.04 Union Cooperation

In unionized work environments, WorkplaceNL promotes union representatives' participation in the early and safe return to work process. While unions do not have a legislated duty to cooperate under the *Workplace Health, Safety and Compensation Act*, they do have an obligation to fairly represent their members in a timely manner. Beyond the expectations of the Act, employers and unions have obligations to injured and disabled workers under human rights legislation.

If an injured worker is a member of a union, the Case Manager will advise that worker to contact his/her local union shop steward to get information regarding the Collective Agreement provisions that impact return to work in that particular workplace.

Case Managers are reminded that Collective Agreements are contracts between two parties: the employer and the union, acting as bargaining agent on behalf of the workers. Where information from a collective agreement, relevant to the early and safe return to work process, is being presented and/or interpreted by either party, the Case Manager is required to confirm the interpretation with the other party.

33.05 Health Care Provider Cooperation

Where a Case Manager determines that a health care provider is not meeting their responsibilities under *the Workplace Health, Safety and Compensation Act* by:

1. delaying submission of medical reports;
2. providing illegible reports;
3. providing diagnosis without clear, objective medical findings;
4. refusing to release functional abilities information to the employer, worker or WorkplaceNL;
5. refusing to provide medical information to the worker or WorkplaceNL; and/or
6. failing to discuss return to work with the worker throughout recovery.

The Case Manager will take the steps necessary to enable the health care provider to provide the information including, but not limited to, writing the provider to advise of problem, updating the case worksheet with the issue, notifying the Director of Health Care Services of the issue, and, where appropriate, advising the worker that his/her health care provider is not appropriately providing the necessary information.

Reference: *The Workplace Health, Safety and Compensation Act, Sections 89 and 89.4*

Policies: RE-01 Early and Safe Return to Work Overview

RE-02 The Goal of Early and Safe Return to Work and the Roles of the Parties

Amendment History

<i>Original Effective Date</i>	2002 01 01
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