

Client Services Procedure Manual

Procedure: 34.00

Subject: Suitable and Available Employment

34.00 Introduction

This procedure provides guidelines for the decision maker to follow in ensuring that the duty to co-operate obligation of employers and workers is met. They may also be used in providing advice to the workplace parties on identifying suitable and available employment.

When required, the Case Manager or the Early & Safe Return to Work Facilitator may take an active role in assisting the workplace parties to identify suitable and available employment and develop an appropriate return to work plan for the worker.

34.01 Suitable Employment

The criteria for suitable employment as outlined in RE-02, The Goal of Early and Safe Return to Work and the Roles of the Parties are defined below.

Within Worker's Functional Abilities

The preliminary restrictions outlined by the health care provider on the Form(s) 8/10 will be the main source of work capability information unless a more comprehensive evaluation of functional ability (for example, a functional capacity evaluation, targeted functional assessment, etc.) is required. The suitable employment being proposed must be detailed. The following are examples of information required to evaluate functional suitability:

- the job duties to be performed;
- the physical requirements of those duties;
- the length of time spent in each duty;
- accommodations and/or modifications, if any, offered to offset functional restrictions; and
- the total number of hours per day.

When the employer has a job site or physical demands analysis completed on the employment being offered, that information can also be used in determining if the work is suitable for the particular injured worker in question.

Worker's Skills

The duty to co-operate does not require extensive retraining or skill development in order for the injured worker to participate. In most cases, the employer should be aware of employees' skills, attributes and abilities. If not, the employer and worker should be encouraged to discuss these in relation to the employment being offered.

Where an employee needs new skills, the reasonableness of acquisition will be determined considering the following factors:

- the worker can attain the skills within a one-week period;
- the worker can attain the skills at the workplace or through a local training provider. Local is defined as being within 25 kilometers of the pre-injury workplace or comparable work site being proposed (see definition of comparable work site outlined below);
- the cost to the employer to train the worker is affordable; and
- the injured worker has the physical functional capacity and cognitive capacity to participate in the training.

When specialized trade certification is required to perform suitable work, the employer is not expected to provide such certification for the purpose of early and safe return to work unless such certification can be obtained within a one-week time frame.

Health and Safety

Any offer of suitable employment must be safe for the injured worker and co-workers.

Where a Case Manager has a concern over an unaddressed safety issue in a workplace, he/she should advise the employer that a referral is being made to the Prevention Services Department of WorkplaceNL for appropriate follow-up.

Restores Pre-injury Earnings, If Possible

The employer is responsible for paying the salary earned by the worker during the early and safe return to work process. The employer determines the appropriate remuneration for the suitable employment being performed. WorkplaceNL will pay the differential, if any, between the salary earned during early and safe return to work and 85 per cent of the worker's net pre-injury earnings, to the maximum compensable ceiling.

34.02 Available Employment

Work that Exists

The duty to co-operate provisions of the Workplace Health, Safety and Compensation Act do not require employers to create work where none exists. However, a job vacancy does not have to exist in order for available work to exist.

Where possible, the worker should be offered suitable employment in the pre-injury position before that position is filled by the employer.

Comparable Work Site

The issue of a comparable work site arises when the suitable and available work offered by the employer exists at a physical site that is different from the usual place of pre-injury employment.

Injured workers must have the medical functional ability to travel and the travel must be within the following provisions to be considered comparable.

1. **Single Employment Site:** If the worker was employed at a single employment site prior to the injury, a comparable site is less than 50 kilometers (return trip) from the regular pre-injury site.
2. **Multiple Employment Sites:** If the worker was employed at multiple work sites prior to the injury (for example, a Manager of four restaurants who regularly moves between four sites) a comparable site is:
 - any of the work sites where the worker worked prior to the injury; or
 - a non-pre-injury work site whereby the distance to the comparable site is less than the distance between the two farthest pre-injury sites.
3. **Non-employer Sites:** If the worker regularly traveled to non-employer sites prior to the injury a comparable site is within the pre-injury, geographic boundaries traveled by the worker.
4. **Various Work Sites:** If the worker was required as part of their employment to work at various work sites throughout the province, then the entire province may be considered to be a comparable work site.

Travel During the Early and Safe Return to Work Process

No travel costs will be paid to workers during the early and safe return to work program where the worker is participating in suitable and available work either at the pre-injury site or at a comparable site (as defined above). For example, where a worker wishes to avail of suitable employment at a site beyond the guidelines described above, he/she may choose to do so and may be entitled to recover travel expenses incurred in accordance with the approved expenses schedule for Labour Market Re-entry.

34.03 Return to Work Plans

Developing return to work plans is the responsibility of the workplace parties. WorkplaceNL monitors the progress of the return to work plans and may provide advice and assistance in the development of the plan. The workplace parties may refer to Policy RE-18, Hierarchy of Return to Work and Accommodation, to ensure the injured worker's functional rehabilitation is enhanced and facilitated by the return to work program.

A return to work plan:

- contains an outline of the duties to be performed and the physical requirements for performing those duties;
- is progressive in return to pre-injury duties within a reasonable time frame;
- outlines the hours to be worked each day, and week; and
- defines the salary to be earned by the worker during the return to work plan.

Requirements for return to work plan reporting are outlined in Procedure 33.00, Workplace Party Cooperation in Early and Safe Return to Work.

Reference: The Workplace Health, Safety and Compensation Act, Section 89
Policy RE-01 Early and Safe Return to Work Overview
Policy RE-02 The Goal of Early and Safe Return to Work and the Roles of the Parties
Policy RE-18 Hierarchy of Return to Work and Accommodation
Procedure 33.00 Workplace Party Co-operation in Early and Safe Return to Work

Amendment History

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