

Client Services Procedure Manual

Procedure: 46.00
Subject: Suitable Employment & Earnings

46.01 Introduction

The Case Manager determines suitable employment and earnings for a worker when deciding whether the worker requires a labour market re-entry plan. Suitable employment is a category of jobs that are safe, suited to the worker's functional abilities and aptitude, and will reduce or eliminate the loss of earnings resulting from the work injury. The earnings associated with the suitable employment are based on the minimum wage, average entry wage, average wage or actual wage for the suitable employment that has been identified. The National Occupational Classification (NOC) is the primary tool used to identify suitable employment. Suitable earnings will be derived from provincial wage rate information provided by Human Resource Development Canada.

The Suitable Employment & Earnings determination is an outcome of a comprehensive labour market re-entry assessment and planning process that emphasizes worker consultation and involvement throughout. As a result, the Case Manager must ensure that the worker is aware of the suitable employment and earnings policy requirements prior to commencing a labour market re-entry plan.

Capacity to work and earn, not the availability of employment opportunity, is the relevant factor.

This important rule was confirmed by the Supreme Court of Newfoundland, Trial Division, (Judge J. Woolridge) decision dated November 3, 1992 in the case of D. Chaffey v. W.C.C. The decision states on page 8:

“Capacity means an individual's mental or physical ability. Clearly all that is being compensated for is the injury's effects. Once the situation prevails where the injury or the physical or mental state of the worker as caused by the injury is no longer the reason he is not working, the responsibility to compensate no longer exists.”

46.02 Determining Suitable Employment

1. To determine suitable employment the Case Manager must consider the worker's current skill type, skill level, employment history, aptitudes, interests and transferable skills. This information must be documented on the worker's file as part of the labour market re-entry assessment.
 - a. Skill type is a general definition which refers to the type of work performed by the worker. Factors to be considered are the industry of employment where experience has been gained or for which training has been undertaken.
 - b. Skill level refers to the nature and extent of work experience formal or informal training that the worker has acquired. Under National Occupational Classification, skill levels are assessed within the following occupational categories: Management; Professional Occupations; Technical, Paraprofessional and Skilled Occupations; Intermediate Occupations; and, Labouring and Elemental Occupations.

Skill Level (Source: NOC 2001 Career Handbook)

In the context of the NOC, skill level corresponds to the type and/or amount of training or education required for the work of an occupation. The NOC consists of four skill levels identified A through D and each is assigned a numerical value ranging from 1 to 6. To illustrate this concept, have a look at the following chart to see the relationship between the alphabetical value of each skill level and its accompanying numerical value.

Skill level is primarily based on the nature of education and training required to work in an occupation. This criterion also reflects the experience required for entry, and the complexity of the responsibilities involved in the work, compared with other occupations. In most cases, progression to skill level A, from B, is not usually possible without completion of additional formal education, whereas progression from skill level D to skill level C is often achievable through on-the-job training and experience.

Each skill level is intended to reflect commonly accepted paths to employment in an occupation. Where there are several paths to employment, the skill level most commonly identified by employers is used, considering the context of the occupation and the trends in hiring requirements.

NOC Skill Levels		
Skill Level (alpha)	Skill Level (digit)	Nature of Education/Training
A Occupations usually require university education.	1	<ul style="list-style-type: none"> University degree at the bachelor's or master's or doctorate level.
B Occupations usually require college education or apprenticeship training.	2 or 3	<ul style="list-style-type: none"> Two to three years of post-secondary education at a community college, institute of technology or CEGEP; or Two to five years of apprenticeship training; or Three to four years of secondary school and more than two years of on-the-job training, specialized training courses or specific work experience. Occupations with supervisory responsibilities and occupations with significant health and safety responsibilities, such as firefighters, police officers and registered nursing assistants are all assigned the skill level B.
C Occupations usually require secondary school and/or occupation-specific training	4 or 5	<ul style="list-style-type: none"> One to four years of secondary school education; or Up to two years of on-the-job training, specialized training courses or specific work experience.
D On-the-job training is usually provided for occupations	6	<ul style="list-style-type: none"> Short work demonstration or on-the-job training; or No formal educational requirements

- c. Transferable skills are those cognitive and personal skills (such as communication, problem-solving, working with others, organizational, improving own learning and performance, etc.) which are central to occupational competence in all sectors and at all levels. They are skills acquired during life activities such as on-the-job training, classes, projects, parenting, hobbies, sports, volunteering, etc., that are transferable and applicable to successful labour market participation.
2. Following a labour market re-entry assessment, the Case Manager, in consultation with the worker, determines whether a labour market re-entry plan is required. The suitable employment that is anticipated following completion of the labour market re-entry plan will be identified.
3. From the information provided in the labour market re-entry assessment, the Case Manager will identify an appropriate major group and minor group using the National Occupational Classification system.

Example:

Based on the skills and employment history information a worker may be suited for employment in the following categories:



While it is possible that a worker may be capable of suitable work in more than one minor group, the most appropriate is chosen. It must be recognized that within the same National Occupational Classification there will be variations in physical and other demands from one job to the next depending upon the needs of the specific workplace. As a result, the worker will not be job matched to a specific job.

4. The Case Manager must ensure that the identified suitable employment is a category of jobs in which safe occupations exist which are suited to the worker's skills and within the worker's functional abilities and aptitude. These would be confirmed as part of the labour market re-entry

assessment and medical information available to the Case Manager (e.g., doctor's functional abilities information, Functional Capacity Evaluation, etc.).

The Job Site Analysis data base will be the primary tool utilized by the Labour Market Re-Entry Planners to select occupations by National Occupational Classification category and obtain information relating to requirements, earnings and degree of physical strenuousness (i.e., sedentary, light, medium, heavy).

5. The suitable employment must exist within the Province of Newfoundland and Labrador, or the Province of residence if that is more appropriate.
6. Non-compensable factors normally addressed under Policies EN-17 (Interruptions and Delays in Medical Treatment) and RE-13 (Labour Market Re-Entry Co-operation) will continue to be addressed under these policies.
7. Where a factor or factors other than those addressed under Policies EN-17 (Interruptions and Delays in Medical Treatment) or RE-13 (Labour Market Re-Entry Co-operation) are preventing the worker from participating in a reasonable and feasible labour market re-entry plan or less than three suitable employment options have been identified, the worker will, at minimum, be considered capable of suitable employment and minimum wage earnings within National Occupational Classification major group "labouring and elemental occupations" identifying an appropriate minor group. This refers to skill level D which does not require specific education or training other than on the job orientation or short work demonstration. In these cases, factors other than the injury are impacting the worker's ability to participate in a labour market re-entry plan. These workers demonstrate a capacity for a workday tolerance.

Where no suitable employment options have been identified in the labour market re-entry assessment, the worker may be considered capable of suitable employment at minimum wage where it can be demonstrated that the worker has the ability to participate in a skill development program/placement. In such cases, the worker will be offered the opportunity to participate, thereby eliminating the factor or factors preventing participation in employment readiness or a reasonable, feasible labour market re-entry plan.

For example, a worker has a demonstrated workday tolerance but a non-compensable factor of limited money-handling skills has been identified as an obstacle to suitable employment, the labour market re-entry assessment will identify the method and recommendation for this skill development program for the worker to become market ready. The availability and offer of the skill development program would then remove the barrier to suitable employment for labouring and other elemental occupations in reference to Policy RE-15.

"Labouring and elemental occupations" refers to an occupational category for which the skills necessary to re-enter the labour market -- such as skill type, skill level, and transferable skills -- usually exist amongst the general population.

Example:

A typical decision would, for example, discuss suitable employment within *Elemental Sales and Service Occupations* [Major Group 66].

Major Group = *Elemental Sales and Service Occupations*
Minor = 666 Cleaners (occupations within this group could include light duty cleaner, specialized cleaner, janitor, caretaker and building superintendent)

8. The Case Manager will communicate verbally to the worker, if possible, and in all cases in writing as part of the labour market re-entry plan, the decision and rationale related to the identified major and minor group.

46.03 Determining Suitable Earnings

1. The Case Manager will use a flexible approach for determining suitable earnings involving the use of minimum wage, average entry level wages, average maximum wages, or actual wages, whichever is more equitable.
2. The Case Manager shall rely on provincial wage rate information as determined by Human Resources Development Canada available to WorkplaceNL when establishing wages.
 - i. The minimum wage is a basic labour standard that sets the lowest wage rate that an employer can pay to employees who are covered by provincial legislation.
 - ii. Average entry wage is the average of all entry level wages for new entrants in the employment category (minor group) being considered.
 - iii. Average wage is the average maximum wage for experienced workers in the employment category who have acquired five (5) years of experience in the last nine (9) years of employment.
 - iv. Actual wage is the wage rate associated with the actual employment position that a worker has obtained at the time that the extended earnings loss benefit is implemented. For example, following completion of a formal training program, the worker obtains a position with an employer. The actual wage being paid by the employer is \$28,000 per year, whereas the average entry level wage (item 2. above) is \$25,000 per year. Extended earnings loss benefits will be based on the actual wage.
3. Minor group earnings are to be used except in cases where the identified labour market re-entry option involves highly specific training such as Occupational Therapy, Physiotherapy, or Speech Language Pathology, etc. These options have specific skill sets which are not transferable from one unit group to the next. Subsequently, unit group earnings may be applied.
4. For workers who require a labour market re-entry plan that involves acquiring a new skill set or entering a new field (changing major groups) Extended Earnings Loss benefit entitlement at the end of the plan will be based on the worker's pre-injury indexed earnings less the:
 - average entry wages for the applicable minor group, or
 - the worker's actual earnings if higher or within 90%.

Average wage is the average of all earners -- experienced and inexperienced -- in the employment category (minor group) being considered.

5. For workers who do not require a labour market re-entry plan because their current skill type and level allows workforce re-entry (for example, experienced workers who have acquired at least five (5) of the last nine (9) years of employment in the employment category), or for worker's whose labour market re-entry plan is designed to improve existing or transferable skills, an Extended Earnings Loss benefit entitlement at the completion of the plan will be based on the worker's pre-injury indexed earnings less the:

- average wages (average maximum wage) for the applicable minor group, or
- the worker's actual earnings if higher or within 90%.

The National Occupational Classification system is not applicable when actual wages are used.

6. Where the work injury prevents the worker from having any capacity to earn in suitable employment, full extended earnings loss will be payable, subject to legislative and policy provisions regarding benefit calculation and deductions for employment related income.

46.04 Exceptional Circumstances

In cases where the individual circumstances of a case are such that the provisions of this procedure cannot be applied or to do so would result in an unfair or unintended result, WorkplaceNL will decide the case based on its individual merits and justice. Such a decision will be considered for that specific case only and will not be precedent setting.

Reference: *The Workplace Health, Safety and Compensation Act, Sections 19, 54, 55, 63, 73, 75, and 89.2 Policy RE-15 Determining Suitable Employment & Earnings*

Amendment History

<i>Original Effective Date</i>	2001 11 01
<i>Revision #1</i>	2004 03 23