

Client Services Policy Manual

Policy Number:	RE-02
Subject:	The Goal of Early & Safe Return to Work and the Roles of the Parties
Chapter:	Return to Work and Rehabilitation

Policy Statement

All employers (including self-insured employers and those covered by the Government Employees' Compensation Act) and workers are obligated under the Workplace Health, Safety Compensation Act (the Act) to co-operate in the worker's early and safe return to suitable and available employment while the worker is receiving active medical rehabilitation for a work injury.

Workers and employers (the workplace parties), and where appropriate, health care providers, are responsible for resolving return to work issues in the workplace with support from WorkplaceNL. In unionized work environments, WorkplaceNL encourages and promotes union representatives' participation in the process. The workplace parties must co-operate and be self-reliant in returning the worker to suitable and available employment.

Employers and unions also have obligations to injured and disabled workers under human rights legislation.

When referencing any of the return to work policies (RE-01 to RE-11 and RE-18), it is important to recognize the responsibilities of the workplace parties within the context of the complete return to work process. Therefore, the whole return to work model must be considered in its entirety and not only the specific guidelines under an individual policy.

Construction Industry

For application of section 89 of the Act for this industry, please refer to Policy RE-19, Construction Industry.

General

The effectiveness of the workplace parties' early and safe return to work activities can be measured by the success with which:

- the worker returns to suitable and available work with the injury employer in a timely and safe manner, and
- the worker's pre-injury earnings are restored.

Definitions

Co-operation means:

- maintaining effective communication throughout the period of the worker's recovery;
- working towards identifying suitable and available employment for the worker; and

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- fulfilling the reporting obligations to WorkplaceNL.

Suitable Employment is work that meets all of the following criteria:

- the work is within the worker's functional abilities;
- the worker has, or is reasonably able to acquire, the necessary skills to perform the work;
- the work does not pose a health or safety risk to the worker or co-workers; and
- the work restores the worker's pre-injury earnings, if possible.

Available Work is work that exists with the injury employer at the pre-injury work site, or at a comparable work site arranged by the employer.

To determine a **comparable work site** to the pre-injury work site, WorkplaceNL considers whether:

- assignment to a work site other than the injury site forms part of the employment contract, or
- travelling to the proposed job is within the normal parameters of travel expected of a worker.

Health Care Provider - generally refers to the treating health care provider recognized by WorkplaceNL who is responsible for the ongoing care of the worker. This includes physicians, specialists, and other health care professionals (see Policy HC-13, Health Care Entitlement).

Roles of the Parties

Role of the Worker - Worker Co-operation

The Act sets out minimum requirements for workers regarding co-operation in the early and safe return to work process. Workers are required to:

- contact the injury employer as soon as possible after the injury occurs and maintain effective communication throughout the period of recovery or impairment;
- assist the employer, as may be required or requested, to identify suitable and available employment;
- accept suitable employment when identified; and
- give WorkplaceNL any information requested concerning

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the return to work, including information about any disputes or disagreements which arise during the early and safe return to work process.

Workers are eligible to receive appropriate benefits while co-operating in their active medical rehabilitation and in the progressive early and safe return to work process.

Unions also have obligations to injured and disabled workers under human rights legislation.

Role of the Employer - Employer Co-operation

The Act sets out minimum requirements for employers of injured workers regarding co-operation in the early and safe return to work process. Employers are required to:

- Contact the worker as soon as possible after the injury occurs and maintains effective communication throughout the period of the worker's recovery or impairment.
- Provide suitable and available employment. The employer is responsible to pay the worker's salary earned during the early and safe return to work process. 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 subject to the maximum compensable ceiling.
- Give WorkplaceNL any information requested concerning the worker's return to work, including information about any disputes or disagreements which arise during the early and safe return to work process.

Role of the Health Care Provider

The health care provider is responsible for:

- providing the workplace parties and WorkplaceNL with functional abilities information;
- providing the worker and WorkplaceNL with medical information;
- identifying the most appropriate method of treatment for the injury;
- ensuring the worker receives timely treatment; and
- ensuring return to work is discussed throughout recovery.

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Role of WorkplaceNL

WorkplaceNL is responsible to facilitate the shared responsibilities of the workplace parties in the early and safe return to work process by:

- communicating to the workplace parties their statutory obligations to co-operate in the early and safe return to work process;
- ensuring the return to work plans are achieving the hierarchy of return to work priorities (refer to Policy RE-18, Hierarchy of Return to Work and Accommodation) and are consistent with the worker's functional abilities (refer to Policy RE-03, Functional Abilities Information for Return to Work);
- monitoring activities, progress, and co-operation of the workplace parties;
- proactively managing the medical rehabilitation of the worker in consultation with the worker and health care provider(s);
- determining compliance with the obligation to co-operate and, where applicable, to re-employ;
- offering/providing dispute resolution; and
- communicating regularly and effectively with the workplace parties and health care providers.

Resolving Disputes or Disagreements

If a dispute or disagreement is identified, or if there is evidence of difficulty, WorkplaceNL will contact both workplace parties to determine what assistance or information is required to initiate, maintain or restore co-operative activities.

To facilitate self-reliance and remove barriers in the early and safe return to work process, WorkplaceNL shall provide:

- information to assist in assessing the workplace in terms of the worker's functional abilities, skills, knowledge and fitness to work;
- information regarding job/workplace accommodations; and
- the offer of mediation services, if either of the workplace parties request mediation, or if WorkplaceNL determines that mediation will be helpful.

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Penalties for Non-co-operation

Penalties for Worker Non-co-operation

Where there has been a finding against a worker for non-co-operation, the worker will be given an opportunity to respond to WorkplaceNL regarding the reason for not co-operating. If WorkplaceNL determines that a worker is not co-operating in the early and safe return to work activities and does not have a legitimate reason, the worker will be notified (verbally, if possible, and in writing) of the obligation to co-operate in early and safe return to work, the finding of non-co-operation, and the consequences of this finding.

Where within one week from the notification by WorkplaceNL, the worker fails to demonstrate co-operation to the satisfaction of WorkplaceNL and does not have a legitimate reason for not co-operating, the worker's benefits shall be reduced, suspended or terminated, as determined appropriate by WorkplaceNL. Where the worker was in receipt of benefits at the time of the finding of non-co-operation, those benefits will be continued during the notice period.

Where there is evidence that a worker has been formally notified in writing of non-co-operation in the early and safe return to work process in the past (either on the same claim or other claims), WorkplaceNL will not provide a subsequent one week notification before benefits are reduced, suspended or terminated. However, the worker will be given an opportunity to co-operate before any finding of non-co-operation is made on the same or subsequent claim. A suspension, reduction or termination of benefits will only be implemented where the worker fails to demonstrate co-operation to the satisfaction of WorkplaceNL and does not have a legitimate reason for not co-operating.

Penalties for Employer Non-co-operation

Before a penalty is levied against an employer for non-co-operation, the employer will be given an opportunity to respond to WorkplaceNL regarding the reason for not co-operating. If WorkplaceNL determines that an employer is not co-operating in the early and safe return to work activities and does not have a legitimate reason, the employer will be notified (verbally, if possible, and in writing) of the obligation to co-operate in early and safe return to work, the finding of non-co-operation, and the consequences of this finding.

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Where within one week from the notification by WorkplaceNL, the employer fails to demonstrate co-operation and does not have a legitimate reason for not co-operating, WorkplaceNL shall levy a financial penalty on the employer not exceeding the cost to WorkplaceNL of providing the worker's benefits, and may levy a penalty equal to the costs of return to work and labour market re-entry services during the period of non-co-operation.

The non-co-operation penalty(s) is an amount owing to WorkplaceNL at the time that it is levied and shall be added to the injury employer's assessment and payment enforced under section 118 of the Act. A principal, contractor, or subcontractor referred to in section 120 of the Act who is not the injury employer will not be held liable for a non-co-operation penalty charged against the injury employer.

Where there is evidence that an employer has been formally notified in writing of non-co-operation in the early and safe return to work process in the past (either on the same claim or other claims) WorkplaceNL will not provide a subsequent one week penalty notification. However, the employer will be given an opportunity to co-operate before any non-co-operation penalty is levied on the same or subsequent claim. The penalty will only be levied where the employer fails to demonstrate co-operation to the satisfaction of WorkplaceNL and does not have a legitimate reason for not co-operating.

Objection to Penalty

A non-co-operation penalty is not suspended if an employer launches an objection. In these cases, the penalty is still levied. However, the employer's objection is considered before the penalty is enforced.

Misrepresentation by Parties

Any misrepresentation by any of the parties during the early and safe return to work program will be considered as non-co-operation. Before any decision is rendered for misrepresentation, the party will be given an opportunity to respond. Depending on the nature of the misrepresentation, the case may be referred for criminal prosecution.

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Independent Workers

For the purpose of this policy, independent workers are defined as:

- independent operators who have purchased optional personal coverage from WorkplaceNL;
- sole proprietors of a non-incorporated business who have purchased optional personal coverage from WorkplaceNL;
- partners of a non-incorporated business who have purchased optional personal coverage from WorkplaceNL; and
- active directors, managers and executive officers of an incorporated company.

For independent workers, WorkplaceNL will become involved in the early and safe return to work process if:

- the worker is fit for suitable work;
- the worker is unable to perform the pre-injury duties full time; and
- the worker continues to suffer a loss of earnings due to the work-related injury.

For independent workers who have purchased optional personal coverage, the amount of optional personal coverage purchased is the maximum amount which may be used to calculate loss of earnings capacity.

WorkplaceNL's involvement will consist of determining:

- the essential duties of the pre-injury job (as noted on the optional personal coverage application for those who have purchased same);
- the duties of the pre-injury job that cannot be performed due to the work-related injury;
- whether the job can be modified to allow the worker to safely perform the pre-injury essential duties;
- an estimate of the worker's current working abilities, expressed as a percentage, in relationship to the pre-injury duties; and
- whether the worker will continue to experience a loss of earnings after reaching maximum medical recovery.

If WorkplaceNL determines that the independent worker will continue to experience a loss of earnings due to the work-related injury after reaching maximum medical recovery, WorkplaceNL will

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conduct a Labour Market Re-entry assessment.

Exceptional Circumstances

In cases where the individual circumstances of a case are such that the provisions of this policy 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: Workplace Health, Safety and Compensation Act, Section 89, 89.4, 118, and 120
Policies: RE-01 through RE-11, RE-18, RE-19, and HC-13.

Amendment History

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