

## Client Services Policy Manual

Policy Number: **RE-08**  
Subject: **Compliance with the Re-employment Obligation**  
Chapter: **Return to Work and Rehabilitation**

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### Policy Statement

When a worker is able to perform the essential duties of the pre-injury job, the employer is required to offer to re-employ the worker in the position held on the date of injury, accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship (see policy RE-07 Undue Hardship), or provide alternative employment comparable to the employment on the date of injury (see policy RE-06 “Alternative Work Comparable to the Pre-injury Job”). For the purpose of section 89.1 of the *Workplace Health, Safety Compensation Act* (the Act), the date of disability for re-employment purposes and determining compliance with the employer’s obligation is the date that the worker experiences loss of earning capacity, either full or partial, as a result of an injury.

When a worker is able to perform suitable employment (see policy RE-05 “Re-employment Obligation” Determining Suitable Employment), the employer is required to offer the worker the first opportunity to accept suitable employment that becomes available.

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

The re-employment obligation for this industry is determined by policy RE-19 “Construction Industry”.

### General

#### Duration of Obligation

An employer is obligated to re-employ the worker until the earliest of:

- i. two years after the date of the worker's disability (see policy RE-05 “Re-employment Obligation” Determining the date of disability);
- ii. one year after the date the employer is notified by WorkplaceNL that the worker is medically able to perform the essential duties of the pre-injury job; or
- iii. the date the worker reaches age 65.

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The date that the employer's re-employment obligation begins varies according to the date of disability.

### **Notice of fitness to work (by the worker)**

Workers are required to:

- i. inform WorkplaceNL of any change in circumstance as required by section 54.1 of the Act, and
- ii. maintain contact with the employer throughout the early and safe return to work process (see policy RE-02 "The Goal of Early and Safe Return to Work and the Roles of the Parties").

As a result of these requirements, workers must notify WorkplaceNL and employer when they are able to perform

- i. the essential duties of the pre-injury employment, or
- ii. suitable work.

In turn, WorkplaceNL expects employers to re-employ workers as part of the early and safe return to work process. The employer's obligation to re-employ begins on the date that the worker is able to perform the essential duties of the pre-injury or suitable employment.

### **Notice of fitness to work (by WorkplaceNL)**

WorkplaceNL will only provide notice verbally, if possible, and in writing of the worker's fitness to return to work if the workplace parties:

- i. cannot initially agree on the worker's level of fitness, or
- ii. if they subsequently disagree as to the worker's level of fitness.

In these cases, the employer's re-employment obligation begins from the date that WorkplaceNL provides notice to the employer.

### **Change in fitness level**

If a worker is able to perform suitable work and is later able to perform the essential duties of the pre-injury job, the worker must inform WorkplaceNL and the employer of the improvement. The employer is then required to offer to re-employ the worker in the pre-injury job or an alternative job of a comparable nature.

WorkplaceNL will only provide notice verbally, if possible, and in

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writing of the worker's change in fitness level if the workplace parties cannot agree on the worker's fitness to return to pre-injury employment.

### **Determining Compliance**

At the worker's request, or on its own initiative, WorkplaceNL will determine whether employers have met their re-employment obligation to workers.

In making this determination, WorkplaceNL shall contact the workplace parties to obtain the facts relevant to the issue(s) of re-employment. WorkplaceNL will consider these facts to determine whether the employer:

- i. offered to re-employ the worker;
- ii. offered employment consistent with the worker's ability to return to the pre-injury job or a comparable job, or suitable employment (see policy RE-05 "Re-employment Obligation" Determining Suitable Employment);
- iii. was willing to accommodate the work or workplace to the needs of the worker (see policy RE-18 "Hierarchy of Return to Work and Accommodation"), and
- iv. whether the employer re-employed the worker for the duration of the re-employment obligation.

### **Identifying Non-Compliance**

Workers who are terminated within six months of re-employment will have three months to request in writing that WorkplaceNL investigate the non-compliance with the re-employment obligation. If the request is made after three months, WorkplaceNL is not required to investigate. WorkplaceNL may also investigate where it identifies potential non-compliance.

Before a penalty is levied against an employer for not complying with the re-employment obligation, the employer will be given an opportunity to respond to WorkplaceNL regarding the reason for non-compliance. If WorkplaceNL finds that an employer has failed to meet the re-employment obligation and does not have a legitimate reason, WorkplaceNL will inform the employer verbally, if possible, and in writing of the amount of the re-employment penalty (see policy RE-09 "Re-employment Penalties and Payments" for the full extent of penalties in such cases).

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If the employer fails to comply within one week of notification, the penalty will be levied. Where there is evidence that an employer has been formally notified in writing of the co-operation obligation 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 comply before any penalty is levied on the same or subsequent claim. The penalty will only be levied where the employer fails to demonstrate compliance to the satisfaction of WorkplaceNL and does not have a legitimate reason for not complying.

### **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 89.1*  
*Policies: RE-01 through RE-11, RE-18 and RE-19*

### **Amendment History**

<i>Original Effective Date</i>	2002 01 01
<i>Revision #3</i>	2004 07 22
<i>Revision #4</i>	2010 05 06
<i>Revision #5</i>	2016 04 08