

## Client Services Policy Manual

Policy Number:  
Subject:  
Chapter:

**RE-09**  
**Re-employment Penalties and Payments**  
**Return to Work and Rehabilitation**

---

### Policy Statement

If, after WorkplaceNL contacts the workplace parties to determine the facts relevant to the issue(s) of re-employment, WorkplaceNL determines that the employer has not fulfilled the re-employment obligation, it

- i. shall, in all but exceptional cases, levy on the employer a penalty not exceeding the amount of the worker's net average earnings with the pre-injury employer for the 12 months immediately preceding the beginning of the loss of earnings as a result of the injury (i.e. *net average earnings*); and
- ii. may make payments to the worker for up to a maximum of one year as if the worker was entitled to payments under section 74.

The re-employment penalty is an amount owing to WorkplaceNL at the time that it is levied and shall be added to the employer's assessment and payment enforced under section 118. 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-compliance penalty charged against the injury employer.

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.

### General

#### Amount of the Penalty

Generally, a penalty is based on the worker's actual net average earnings with the pre-injury employer. This amount is not subject to the maximum compensable earnings amount.

The penalty is applied from the start date of the re-employment obligation (refer to policy RE-08 "Compliance with the Re-employment Obligation").

Formula:

*Number of weeks of non-compliance (up to 52) x worker's net average earnings with pre-injury employer = penalty*

## Client Services Policy Manual

Policy Number: **RE-09**  
Subject: **Re-employment Penalties and Payments**  
Chapter: **Return to Work and Rehabilitation**

---

### **Example**

WorkplaceNL determines that an employer has failed to re-employ a worker whose net average earnings are \$52,000. Although these earnings are greater than the maximum compensable earnings, the penalty levied on the employer will be \$52,000.

### **Waiving the penalty**

WorkplaceNL may waive the penalty in its entirety if the employer offers to re-employ the worker, but the worker and the employer agree to a voluntary cessation of employment.

However, if an employer fails to offer to re-employ a worker, and the worker agrees to sever the employment relationship (with or without a severance package), a penalty will be levied.

### **Reducing the Penalty**

WorkplaceNL may reduce the amount of the penalty if the employer

- i. subsequently meets the re-employment obligation, or
- ii. does not meet the re-employment obligation, but offers the worker suitable work at a wage loss.

### **Employer subsequently meets the re-employment obligation**

The reduced penalty is calculated according to the number of weeks (or part weeks) that the employer does not meet the re-employment obligation.

### **Example**

WorkplaceNL notifies the employer that the worker is fit to perform the pre-injury job. Subsequently, WorkplaceNL determines that the employer has failed to offer to re-employ the worker in the pre-injury or comparable job. Accordingly, a penalty is levied equal to the worker's net average earnings with the pre-injury employer for the 12 months preceding the earnings loss, \$52,000 (\$1000/week).

*52 weeks x \$1,000 = \$52,000 penalty*

The employer re-employs the worker ten weeks after receiving the initial notice from WorkplaceNL. WorkplaceNL reduces the penalty to the number of weeks that the employer failed to re-employ the worker, and adjusts the employer's penalty.

*Adjusted Penalty: 10 weeks x \$1,000 = \$10,000*

## Client Services Policy Manual

Policy Number: **RE-09**  
Subject: **Re-employment Penalties and Payments**  
Chapter: **Return to Work and Rehabilitation**

---

### **Employer provides suitable work at a wage loss**

If an employer does not meet the re-employment obligation but offers the worker suitable work at a wage loss, the penalty will be reduced by 50%.

### **Employer provides suitable work at no wage loss**

If an employer does not meet the re-employment obligation but offers the worker suitable work at no wage loss, the penalty will be reduced by 75%.

Depending on the circumstances, different penalties may be levied throughout the duration of the re-employment obligation.

If an employer fails to meet the re-employment obligation on more than one occasion for the same claim, the total of all penalties levied cannot exceed the maximum penalty (the worker's actual net average earnings with the pre-injury employer for the 12 months immediately preceding the loss of earnings resulting from the injury).

### **Collection of penalty**

WorkplaceNL collects re-employment penalties according to the established provisions governing the collection of assessments.

### **Penalty for employer non-co-operation**

In deciding whether to levy a re-employment penalty, WorkplaceNL may also determine whether a finding of non-co-operation is appropriate (see policy RE-02 "The Goal of Early and Safe Return to Work & the Roles of the Parties"). If so, WorkplaceNL shall levy a financial penalty on the employer not exceeding the cost to WorkplaceNL of providing the worker's benefits.

### **Labour Market Re-entry for Employer Non-Co-operation**

Where there is a finding of employer non-co-operation, the cost of any labour market re-entry assessment or plan provided to a worker may be charged to the employer. See policies RE-14 "Labour Market Re-entry Assessments" and RE-16 "Labour Market Re-entry Plans" for entitlement to these services.

### **Objection to penalty**

A re-employment 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

## Client Services Policy Manual

Policy Number: **RE-09**  
Subject: **Re-employment Penalties and Payments**  
Chapter: **Return to Work and Rehabilitation**

---

enforced.

### **Re-employment payments (Worker fit for essential duties without accommodation)**

If the worker is fit for the essential duties of the pre-injury job without accommodation, but the employer fails to meet the re-employment obligation, re-employment payments are issued to the worker effective from the start date of the re-employment obligation. The amount of the re-employment payment is calculated in accordance with section 74.

Re-employment payments are issued for a maximum of:

1. one year, or
2. the end of the obligation period.

Re-employment payments end if the employer meets the obligation.

### **Employer fails to re-employ**

If the employer fails to re-employ the worker in the pre-injury job or comparable employment, full re-employment payments are paid to the worker for up to the balance of the year during which the breach initially occurred.

### **Suitable work at a wage loss**

If the employer fails to re-employ the worker in the pre-injury job or comparable employment, but provides the worker with suitable work at a wage loss, partial re-employment payments are issued based on the difference between the worker's pre-injury net average earnings and the net average earnings of the suitable job.

### **Suitable work at no wage loss**

If the employer fails to re-employ the worker in the pre-injury job or comparable employment, but provides the worker with suitable work at no wage loss, *no* re-employment payments are issued.

### **Effect of penalty on payments**

Workers are entitled to re-employment payments regardless of whether a re-employment penalty is levied against the employer.

## Client Services Policy Manual

Policy Number: **RE-09**  
Subject: **Re-employment Penalties and Payments**  
Chapter: **Return to Work and Rehabilitation**

---

### **Temporary Earnings Loss (Worker fit for essential duties with accommodation or fit for suitable work)**

If the worker is fit to perform only

- a) the essential duties of the pre-injury job with accommodation; or
- b) suitable work,

and the employer fails to meet the re-employment obligation, the worker is offered a labour market re-entry assessment and temporary earnings loss benefits are paid to the worker as long as the worker is available for, and co-operates in,

- a) medical rehabilitation programs
- b) early and safe return to work programs, or
- c) labour market re-entry assessments and plans.

If the employer subsequently meets the re-employment obligation, WorkplaceNL re-examines the need for a labour market re-entry plan, if applicable (refer to Labour Market Re-entry policies RE-12 to RE-18).

### **Worker accepts less suitable work**

If the worker accepts work which is not the most suitable job available, partial temporary earnings loss benefits will be paid based on the salary for the most suitable job. A labour market re-entry assessment will be conducted to determine whether the worker requires a labour market re-entry plan.

If a labour market re-entry plan is required, full temporary earnings loss benefits will be paid while the worker participates in the plan.

### **Change in fitness level**

If in the first year during which the re-employment breach occurred, the worker's fitness improves such that he or she is able to perform the essential duties of the pre-injury job without accommodation, temporary earnings loss benefits are converted to re-employment payments.

### **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

## Client Services Policy Manual

Policy Number: **RE-09**  
Subject: **Re-employment Penalties and Payments**  
Chapter: **Return to Work and Rehabilitation**

---

be considered for that specific case only and will not be precedent setting.

### Effective Date

This policy applies to injuries occurring on or after January 1, 2002, other than injuries to construction workers defined by Policy RE-19 "Construction Industry". For a worker who performs construction work and an employer who is engaged primarily in construction work as defined by Policy RE-19 "Construction Industry", the re-employment obligation under this policy applies to injuries occurring on or after January 1, 2003.

**Reference:** *Workplace Health, Safety and Compensation Act (the Act), Section 89.1.*  
*Policies: RE-01 through RE-11*  
*RE-18 Hierarchy of Return to Work and Accommodation*

### Amendment History

<i>Original Effective Date</i>	2002 01 01
<i>Revision #1</i>	2001 12 18
<i>Revision #2</i>	2002 06 26
<i>Revision #3</i>	2004 07 22