

Client Services Procedure Manual

Procedure: 40.00

Subject: Alternative Work Comparable to the Pre-Injury Job

40.01 Introduction

Alternative work comparable to the pre-injury job must be offered by the employer when the worker is able to perform the essential duties of the pre-injury job but the pre-injury job is not available. The alternative employment must be comparable in both nature and earnings.

An employer who has an obligation to re-employ is also required to provide accommodation to the pre-injury job or the comparable job consistent with the worker functional abilities. (Refer to Policy RE-06 (Alternative Work Comparable to the Pre-injury Job) for an explanation of what is considered a workplace modification and an assistive device.)

40.02 Comparable in Nature

To determine whether an alternative job is comparable in nature to the pre-injury job, the Case Manager must consider all the factors outlined in the Policy RE-06. This is done on a case by case basis, as certain factors may arise relevant to individual circumstances. The goal is to re-establish the worker in a job that is the most comparable to the pre-injury job, since the worker is fit for the pre-injury job but it is not available. Once the requirements of comparable in nature have been met, then a determination must be made as to whether it is comparable in earnings.

When considering geographic location for alternative work, the Case Manager may consider the guidelines for comparable work site under procedure #34.00 (Suitable and Available Employment) except as it relates to functional ability to travel since, in the case of comparable employment, the worker likely has no restrictions (i.e. is fully cleared).

40.03 Comparable in Earnings

In order for an alternative job to be considered comparable in earnings, it must be at least 90% of the net earnings of the pre-injury job. Net earnings are defined in *the Workplace Health, Safety and Compensation Act, 2022* under section 2(1)(bb). All monetary benefits must also be considered in this determination, including vacation time, dental and medical plans, etc.

If the alternative job is not comparable in BOTH nature and earnings, then the employer has not met the re-employment obligation. Therefore, penalties will be enforced in accordance with Policy RE-09 (Re-employment Penalties and Payments).

Even though the worker may agree to accept the job offer regardless of whether it meets the requirements of comparability, the employer will be considered as not having met the re-employment obligation and the applicable penalty will be levied [see Policy RE-09 (Re-employment Penalties and Payments)].

40.04 Government Funded Projects

Employers who participate in government funded projects (where the government pays assessments directly to WorkplaceNL) are subject to re-employment obligations if they meet the requirement of regularly employing 20 or more workers and the injured worker has been employed for a year prior to the injury. The worker must be re-employed for the remainder of the project that he/she was working on at the time of the injury, or re-employed on a comparable project. The obligation period is for the remainder of the project. In no case should an injured worker have a greater advantage by reason of the re-employment obligation than he/she would have had if the injury had not occurred. Government projects are not considered as seasonal employment and the guidelines for seasonal workers do not apply.

40.05 Workplace Modifications

An employer who has an obligation to re-employ is required to accommodate the worker by providing workplace modifications or assistive devices (or a combination of the two) in order to make the essential duties of the pre-injury job or the comparable job consistent with the worker's functional abilities.

Where the employer does not have an obligation to re-employ, or where the employer is obligated to re-employ and has demonstrated that the resulting expenses will cause undue hardship in accordance with Policy RE-07 (Undue Hardship), then WorkplaceNL may provide the accommodation. Employers with a re-employment obligation are required to provide the accommodation up to the point of undue hardship. For more detail, refer to Policy RE-18 (Workplace Modifications and Assistive Devices) and procedure #49.00. Employers must also recognize their obligations to provide safe working conditions and environments in accordance with existing Occupational Health and Safety legislation.

Reference: *Workplace Health, Safety and Compensation Act, 2022, Section 101*
Policy RE-06 Alternative Work Comparable to the Pre-Injury Job

Amendment History

Original Effective Date 2002 01 01