 Yukon Workers' Compensation Health and Safety Board	Part:	Return to Work & Rehabilitation		
	Board Approval:	Original signed by Chair	Effective Date:	Jan. 1, 2010
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	Board Order:		Review Date:	

## [RETURN TO WORK - OVERVIEW](#)

***When referencing any of the return to work policies (RE-01 to RE-13), it is important to recognize the responsibilities of the employer and worker 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 INFORMATION**

Return to work is a proactive approach to help injured workers return to safe and productive work activities as soon as it is functionally appropriate. It is a partnership involving employers, workers, health care providers, unions and the Yukon Workers' Compensation Health and Safety Board (YWCHSB). The YWCHSB provides return to work services and programs to injured workers; the primary goals of which are to safely return each worker to employment or employability that is comparable to the pre-injury level as soon as functionally appropriate during recovery. The YWCHSB recognizes that early and safe return to work is an important part of the rehabilitation plan for most injured workers. If a worker is able to remain at work or return to the workplace during their recovery period, the social and financial costs associated with workplace injury are significantly reduced.

It is critical for employers to understand that, under the *Human Rights Act*, every employer has a duty – to the point of undue hardship – to accommodate injured workers, regardless of the type of injury.

### **PURPOSE**

This policy gives an overview of the return to work process and related provisions of the *Workers' Compensation Act*, S.Y. 2008 (the "Act") and outlines the roles of workers, employers and the YWCHSB in supporting the early and safe return to work of injured workers.

## DEFINITIONS

- 1. Case Management Team:** A team that assists the injured worker with their recovery, early and safe return to work plan and, if needed, vocational rehabilitation. The team always includes the injured worker and YWCHSB. Employers have a duty to co-operate in their injured worker’s early and safe return to work and will be encouraged to use participation on the Case Management Team to facilitate that duty. The team can also include up to two representatives of the injured worker<sup>1</sup> (as desired by the injured worker), disability manager and the health care community. Other members may be added depending on their specific roles and responsibilities.

## PREVENTION

Preventing workplace injuries is the responsibility of everyone in the workplace. When injuries do occur it is important for workers and employers to minimize the impacts by focusing on keeping the worker, when possible, or returning the injured worker to safe and productive work as soon as it is functionally appropriate for the worker to do so. Prevention of recurrences and further injuries once injured workers have returned to work is of utmost importance.

## POLICY STATEMENT

The YWCHSB will encourage injured workers, health care providers, employers and other parties to work co-operatively as a Case Management Team and to explore all reasonable, creative and flexible solutions to design plans that will facilitate the worker staying at work, when possible, or facilitate the worker’s early and safe return to work when the worker, functionally, cannot stay at work.

### 1. Early and Safe Return to Work

Return to work following a work-related injury starts during the recovery phase of the early and safe return to work plan. In this phase of return to work, injured workers and their employers will work together with the YWCHSB and other appropriate parties to form the Case Management Team to accommodate an injured worker’s functional abilities while recovery from the injury is occurring. Section 40 of the *Act* includes a duty to co-operate in early and safe return to work for all injured workers and their employers. The focus in this phase is on

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<sup>1</sup> Note that the only type of representative who may make decisions on behalf of the worker is a lawyer retained by the worker or a worker’s representative with power of attorney and/or power of personal attorney.

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accommodating the injured worker in their pre-injury job with the pre-injury employer in accordance with the following hierarchy of return to work (see below).

## 2. Return to Work Hierarchy of Objectives

Return to work services are provided according to the following sequential hierarchy of objectives to return the worker to:

- a) their pre-injury job;
- b) their pre-injury job with modifications/assistive devices (modifications do not include changing job duties);
- c) their pre-injury job with modified duties (including different duties while maintaining up to 50% of pre-injury duties).
- d) Graduated Early and Safe Return to work, (return to pre-injury job where the main restriction is reduced time at work);
- e) a different job with the same employer;
- f) a similar or different job with a different employer (there are no obligations under the *Act* on the different employer with respect to return to work);
- g) a combination of any of the above, dependent upon circumstances.

Return to work statistics show that the majority of injured workers recover and are able to return to their pre-injury job. The YWCHSB may consider providing assistance to upgrade the injured worker's existing skill sets as part of a vocational rehabilitation plan, during recovery, where an early and safe return to work plan is not possible because of a work-related injury (see Policy RE-10, "Vocational Rehabilitation").

Early and safe return to work is explained further in the YWCHSB policies:

"Duty to Co-operate Part 1 of 4: Early and Safe Return to Work Plans",  
"Duty to Co-operate Part 2 of 4: Roles and Responsibilities",  
"Duty to Co-operate Part 3 of 4: Functional Abilities", and  
"Duty to Co-operate Part 4 of 4: Penalties for Non co-operation".

### **Re-employment Obligation (currently not in effect)**

Section 41 of the *Act* contains two duties for employers of 20 or more workers:

- 1) the re-employment obligation; and
- 2) the duty to accommodate.

When section 41 of the *Act* comes into effect, YWCHSB policies will be developed to provide specific direction on the application of this section.

### **3. Vocational Rehabilitation**

In cases where an injured worker has reached (or is expected to reach) maximum medical improvement, but is unable to work and earn at their pre-injury level, the worker may be offered a vocational assessment to identify current skills and abilities and to determine options to assist the worker to work and earn, preferably at the pre-injury level, given the residual level of function post-injury.

Some injured workers will require vocational rehabilitation (employment readiness, academic upgrading, re-training, on the job training,) in order to enable them, to the greatest extent possible, to work and earn at their pre-injury level, preferably with the pre-injury employer.

YWCHSB return to work policies, “Vocational Rehabilitation” and “Vocational and Academic Assistance for Surviving Spouse” provide further information on vocational rehabilitation.

### **4. Estimating Earnings Capacity**

The YWCHSB’s obligation to injured workers is to return them to their pre-injury employability status to the greatest extent possible. This is achieved through return to work (early and safe return to work, re-employment obligation, employment readiness, vocational rehabilitation assessment, vocational rehabilitation plans) in conjunction with the provision of appropriate health care treatment, products and services as determined by YWCHSB.

In some cases YWCHSB must estimate a worker’s earning capacity where the worker has reached maximum medical improvement and is not working and earning at the pre-injury level, but is employable.

This process is explained in YWCHSB policy, “Determining Suitable Employment and Earnings Capacity Loss”.

## 5. Employment Readiness

When an injured worker is considered employable by YWCHSB, but is not job-attached to their pre-injury employer, that worker may be eligible for an employment readiness program of benefits and services designed to improve the worker’s ability to successfully re-enter the labour market.

YWCHSB policy, “Employment Readiness” provides more information on this program.

### APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of YWCHSB and to the Workers’ Compensation Appeal Tribunal. It applies to all employers and workers covered by the *Act*, regardless of date of injury.


### EXCEPTIONAL CIRCUMSTANCES

In situations 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 an unintended result, YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB policy, “Merits and Justice of the Case”. Such a decision will be considered for that specific case only and will not be precedent setting.

### APPEALS

Decisions made by the YWCHSB under this policy, can be appealed in writing to YWCHSB Hearing Officer in accordance with subsection 53(1) of the *Act*, or any decision made under subsection 14(2) or subsection 40(6) of the *Act* may be appealed directly to the Workers’ Compensation Appeal Tribunal (WCAT).

A notice of appeal must be filed within 24 months of the date of the decision by YWCHSB, in accordance with section 52 of the *Act*.

  
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**ACT REFERENCES**

Sections 14, 40, 41, 52 and 53

**POLICY REFERENCES**

EN-02, "Merits and Justice of the Case"

RE-02-1, "Duty to Co-operate Part 1 of 4 - Early and Safe Return to Work Plans"

RE-02-2, "Duty to Co-operate Part 2 of 4 - Roles and Responsibilities"

RE-02-3, "Duty to Co-operate Part 3 of 4 - Functional Abilities"

RE-02-4, "Duty to Co-operate Part 4 of 4 - Penalties for Non-co-operation"

RE-10, "Vocational Rehabilitation"

RE-11, "Vocational and Academic Assistance for Surviving Spouse"

RE-12, "Employment Readiness"

RE-13, "Determining Suitable Employment and Earnings Capacity Loss"

**HISTORY**

RE-01, "Return to Work: Overview", effective July 1, 2008; revoked January 1, 2010