

 Yukon Workers' Compensation Health and Safety Board	Part:	Return to Work & Rehabilitation		
	Board Approval:	Original signed by Chair	Effective Date:	Jan. 1, 2010
	Number:	RE-02-2	Last Revised:	
	Board Order:		Review Date:	

DUTY TO CO-OPERATE, PART 2 OF 4:
ROLES AND RESPONSIBILITIES

When referencing any of the return to work policies, 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

The Yukon Workers' Compensation Health and Safety Board (YWCHSB) provides return to work services and programs to an injured worker; the goal of which is to safely return the worker to employment or employability that is comparable to the pre-injury level and is functionally appropriate during recovery. For the return to work process to be successful there must be ongoing co-operation, commitment and communication between the employer, worker, the YWCHSB, and health care providers. It is through this partnership that the common, primary goal of a successful early and safe return to work for an injured worker can be achieved.

PURPOSE

This policy outlines the roles and responsibilities of the workers, employers, health care providers and the YWCHSB as members of the Case Management Team in supporting the early and safe return to work of injured workers during recovery from a work-related injury (for a full description of the team, see YWCHSB policy, "Return to Work – Overview").

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

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Management Team to facilitate that duty. The team can also include up to two representatives of the injured worker¹ (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, however, it is important for workers and employers to try to minimize the impacts by focusing on efforts to return the injured worker to their workplace, performing safe and productive work as soon as it is functionally possible. Prevention of further injuries and recurrences is also an integral part of the return to work process.

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.

ROLES AND RESPONSIBILITIES

1. Role of the Health Care Provider

In addition to diagnosing and treating the injured worker, health care providers are responsible to:

- a) provide the employer and worker and the YWCHSB with functional abilities information (subsection 42(1) of the *Act*);
- b) provide the worker and the YWCHSB with relevant objective medical information;
- c) identify the most appropriate method of treatment for the injury;
- d) ensure the worker receives timely treatment; and
- e) ensure the benefits of early and safe return to work are discussed, encouraged and supported throughout recovery.

¹ 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.

2. Role of the YWCHSB

The YWCHSB role is to assist both the worker and the employer in developing a plan for the early and safe return to work of an injured worker. YWCHSB staff are responsible to use their expertise in presenting information and options with likely outcomes, timelines, practical expectations and to help the injured worker and employer make choices in developing and implementing a return to work plan. They are responsible for monitoring the effectiveness of the plan and determining when the plan is completed.

In order to facilitate the shared responsibilities of the workplace parties in the early and safe return to work process, the YWCHSB will:

- a) establish the Case Management Team;
- b) manage the medical recovery of the injured worker. In doing so, the YWCHSB will:
 - i) determine the expected duration of injury recovery;
 - ii) monitor health care reports and communicate appropriate information to the Case Management Team;
 - iii) expedite health care appointments;
 - iv) confer with an YWCHSB medical consultant if recovery or milestones to recovery are of longer than expected duration;
 - v) determine when the worker has reached maximum medical improvement; and
 - vi) provide other appropriate services, as needed, to facilitate the worker's recovery;
- c) communicate to the employer and worker their statutory obligations to co-operate and the early and safe return to work process;
- d) ensure ESRTW plans are progressing along the hierarchy of return to work objectives (see YWCHSB policy RE-01, "Return to Work – Overview), are consistent with the worker's functional abilities and, where appropriate, are rehabilitative in nature;
- e) monitor activities, progress, and co-operation of the employer and worker; determine compliance with the obligation to co-operate. Penalties for non co-operation will be determined in accordance with the provisions outlined in subsections 40(4), (5), and (6) of the *Act* and in the YWCHSB policy, RE-02 – 4, "Duty to Co-operate, Part 4 of 4: Penalties for Non Co-operation";
- f) resolve disputes; and
- g) communicate regularly and effectively with the employer, worker, health care providers and, where appropriate, other members of the Case Management Team.

3. Role of the Worker

Injured worker involvement in the development of their own return to work plan is essential. It provides a sense of ownership of the program and commitment to return to work in a timely and reasonable manner. Return to work services provide early assistance to workers to help the injured worker maintain a positive connection to the workplace and alleviate any of the concerns, experienced by the worker following an injury. It is incumbent upon the worker to take responsibility for their own recovery and return to work. This includes accepting suitable early, safe return to work offers of accommodation by the pre-injury employer. In recognizing the worker's key role in the return to work process, the *Act* sets out minimum requirements for workers regarding co-operation in rehabilitation and the safe return to work process. Workers are expected to co-operate fully in return to work measures. Subsection 40 (2) of the *Act* requires that a worker:

- a) contact the pre-injury employer as soon as possible after the injury occurs and ensure effective communication throughout the period of recovery or impairment;
- b) participate actively and communicate fully in the return to work process and fulfill the commitments of the return to work plan;
- c) assist the pre-injury employer, as may be required or requested, to identify suitable and available employment (this includes, but is not limited to, bringing functional abilities information from the health care provider to the pre-injury employer as soon as possible after the health care visit(s));
- d) accept suitable employment when identified; and
- e) give the YWCHSB any information requested concerning the return to work including information about any disputes or disagreements which arise during and after the safe return to work process.

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

4. Role of the Employer

Co-operation and commitment by the employer in the return to work process is essential. Early involvement by the employer is crucial as well as ongoing communication and consultation in order to develop and support the return to work plan for the worker. Commitment by the employer will ensure success and

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reduce costs due to injuries for all stakeholders. In recognition of the important role of the employer, the *Act* sets out minimum requirements for employers of injured workers regarding co-operation in the early and safe return to work process. Subsection 40(1) requires the employer to:

- a) contact the worker as soon as possible after the injury occurs and maintain communication throughout the period of the worker's recovery or impairment;
- b) provide support, participate and provide information on return to work opportunities;
- c) provide suitable and available employment in accordance with the duty to co-operate; and
- d) contact the YWCHSB with any information requested concerning the worker's work, including informing the YWCHSB about any disputes or disagreements which are not resolved and which are negatively impacting the early and safe return to work process.

5. Role of Self-Employed Individuals Who are Injured Workers

A sole proprietor who has purchased optional coverage and has experienced a work-related injury must cooperate and commit to their ESRTW plan as both the injured worker **and** the employer.

Where there is more than one director of a company and a director has a work-related injury, another director of the company (who is not a spouse, as defined by the *Act*) shall be designated as the Employer for the purposes of the ESRTW plan.

When roles of the worker and employer are in conflict in these situations, the matter will be resolved by the YWCHSB decision-maker.

See the YWCHSB's policies, EA-02, "Determining the Status of a Person: Employer, Worker, Sole Proprietor or Non-Working Director" and EA-04, "Optional Coverage for Sole Proprietors, Partners or Employers".

6. Responsibility for Payments during ESRTW Plans

Numerous options are available for the development of an ESRTW plan for an injured worker. ESRTW plans promote an injured worker's return to fitness for employment and ultimately employment. Whether the YWCHSB pays compensation benefits, the employer pays employment earnings, or a cost-sharing arrangement is negotiated is determined based on the hierarchy of return to work options.

APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of the 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, the 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 the 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 the YWCHSB, in accordance with section 52 of the *Act*.

ACT REFERENCES

Sections 14, 40, 42, 52 and 53

POLICY REFERENCES

RE-01, "Return to Work – Overview"

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

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

EA-02, "Determining the Status of a Person: Employer, Worker, Sole Proprietor or Non-Working Director"

EA-04, "Optional Coverage for Sole Proprietors, Partners or Employers"

HISTORY

RE-02-2, "Return to Work, Duty to Co-operate: Part 2 of 4: Roles and Responsibilities", effective July 1, 2008; revoked January 1, 2010