

 Yukon Workers' Compensation Health and Safety Board	Part:	Return to Work & Rehabilitation		
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DUTY TO CO-OPERATE, PART 3 OF 4:
FUNCTIONAL ABILITIES

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

All employers and workers are obliged under the *Workers' Compensation Act* S.Y. 2008 (the "Act") to co-operate in the worker's early and safe return to suitable and available employment during recovery from a work-related injury.

PURPOSE

This policy outlines the legislated responsibility of a health care provider, when requested, to provide the Yukon Workers' Compensation Health and Safety Board (YWCHSB), the worker and the employer, with information concerning the worker's functional abilities, as set out in section 42 of the *Act*.

DEFINITION

Functional Capacity Evaluation: a series of tests that provides an independent assessment and job simulation of critical physical demands, a reliable prediction of functional physical tolerances and the frequency with which a worker can perform them.

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 medically possible.

Prevention of further injuries and recurrences is also an integral part of the return to work process.

POLICY STATEMENT

Functional abilities information is a list of the worker's physical limitations and abilities (i.e. what the worker can or cannot do) with respect to a work-related injury. This information is provided to workers, employers and the YWCHSB by health care providers and is usually not directly tied to the workers' job duties by the health care provider unless the health care provider has specific knowledge of the worker's job, is qualified to provide such an assessment and has been requested to provide this information by the employer, worker, YWCHSB or, in the case of an appeal, by the hearing officer or Workers' Compensation Appeal Tribunal (Tribunal).

This functional abilities information is used by the case management team (for full description of the team, see YWCHSB policy, "Return to Work – Overview") to develop a plan for an injured worker to return to work during recovery. The goal is to return to the worker's pre-injury job in accordance with the hierarchy of return to work (see YWCHSB policy, "Return to Work – Overview") while accommodating the worker's functional abilities.

1. Functional Abilities Information

When requested to do so by the employer, worker or the YWCHSB, the health care provider treating the worker must give the employer, worker and YWCHSB information concerning the worker's functional abilities.

Functional abilities information regarding a particular injured worker can be obtained in writing by using:

- a) the functional abilities information provided by the health care provider on the YWCHSB's "Functional Abilities Form"; and
- b) a form created by the employer which is specific to their own workplace should they wish to do so; or
- c) if required, a more comprehensive evaluation of functional ability, such as a functional capacity evaluation.

While generally a family physician is responsible for the ongoing care of the worker, other health care providers who treat and/or assess the worker may also be called upon to provide functional abilities information.

Chair

2. Payment For Functional Abilities Information

The YWCHSB will pay health care providers for functional abilities information that is:

- a) provided on the YWCHSB “Functional Abilities Form”; or
- b) in the opinion of the YWCHSB as part of the case management team, required to facilitate the early and safe return to work plan (e.g. a functional capacity evaluation).

The YWCHSB will pay a health care provider a set amount for the provision of information under section 42 of the *Act*.

If an employer uses their own functional abilities form, or the case management team desires a different evaluation of functional ability not required/approved by the YWCHSB, the employer must cover the fee to complete the evaluation or form, and obtain separate consent from the worker, as the consent given to the YWCHSB by the worker when filing a claim for compensation relates only to the disclosure of information on the YWCHSB’s forms.

The employer’s request for disclosure of functional abilities information shall be limited to that which is required for the purpose of aiding in the worker’s return to work. Where, in the YWCHSB’s opinion as part of the case management team, a more comprehensive evaluation of functional ability is required, the YWCHSB will arrange and pay for it.

3. Confidentiality of Report

With the consent of the worker, the employer or employer representatives may disclose the functional abilities information provided by the health care provider to a person assisting the return to work of the injured worker.

Anyone who contravenes this confidentiality requirement may be liable for a fine of up to five thousand dollars (\$5,000.00) or up to six months in jail, or both, in accordance with section 110 of the *Act*.

APPLICATION

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

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EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this procedure 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 directly in writing to the hearing officer of the YWCHSB in accordance with subsection 53(1) of the *Act*. Notice of the 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 42, 52, 53, and 110

POLICY REFERENCES

RE-01, "Return to Work – Overview"
EN-02, “Merits and Justice of the Case”

HISTORY

New

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