

 Yukon Workers' Compensation Health and Safety Board	<b>Part:</b>	<b>Return to Work &amp; Rehabilitation</b>		
	<b>Board Approval:</b>	<i>Original Signed by Chair</i>	<b>Effective Date:</b>	<b>July 1, 2008</b>
	<b>Number:</b>	<b>RE-03</b>	<b>Last Revised:</b>	
	<b>Board Order:</b>		<b>Review Date:</b>	

## MITIGATION OF LOSS

### GENERAL INFORMATION

The *Workers Compensation Act* S.Y. 2008 (the “Act”) is administered by the Yukon Workers’ Compensation Health and Safety Board (YWCHSB) and provides an employer-funded system of no-fault insurance to workers in return for giving up their right to sue their employer in the event of a work-related injury. The intent of the *Act* is to ensure that workers receive rehabilitation and other benefits that are necessary to assist in their recovery and return to work. As an integral part of the recovery and return to work team, injured workers are responsible to co-operate and participate with maximum effort, i.e. to mitigate their loss as a result of the work-related injury.

### PURPOSE

The purpose of this policy is to:

- a) explain a worker’s legislated responsibilities under the *Act* to reduce or eliminate any work-related impairment and/or loss of earnings to the greatest extent possible, and to act in a manner that is consistent with recovery and early and safe return to work; and
- b) provide direction to assist workers who are failing to mitigate their loss to meet their legislated responsibilities.

### DEFINITION

#### Personal health care factor

A personal health care factor is one which has an impact on the recovery and return to work of the worker and which the worker is in a position to influence in a positive way through altering some aspect of his or her personal behavior. Examples would include a worker requiring and agreeing to surgery, but who is not participating in medical rehabilitation or who refuses to take the doctor’s advice concerning recovery.

## PREVENTION

An injured worker shares the responsibility for identifying and reducing factors which increase the risk of further harm or secondary injury (see YWCHSB policy, “Subsequent Disorders or Conditions Resulting from a Work-related Injury”) during recovery or return to work following a work-related injury. The YWCHSB will work in co-operation with the worker, employer, health care providers and other members of the case management team (for a full description of the team, see YWCHSB policy, “Return to Work – Overview”) to facilitate recovery and prevent secondary conditions including, but not limited to, depression, chronic pain, long term disability. Co-operation by the worker is key to the worker’s recovery from the work-related injury and the prevention of further work-related injuries.

## POLICY STATEMENT

There are many factors that are within the exclusive control of the worker which can significantly affect a worker’s recovery from a work-related injury and early and safe return to work. Such factors include seeking out and attending necessary medical and health care attention that, in the opinion of the YWCHSB, promotes recovery and return to work; avoiding injurious practices or activities; attending medical examinations and co-operating with the YWCHSB in providing full and accurate information during the course of a claim for compensation.

Section 14 of the *Act* requires an injured worker to take all reasonable steps to:

- a) reduce or eliminate any impairment and loss of earnings resulting from a work-related injury;
- b) seek out and co-operate in any health care assistance or treatment that, in the opinion of the YWCHSB, promotes recovery and return to work;
- c) submit to medical and other examinations as required;
- d) maintain level of functioning;
- e) take all reasonable steps to provide to the YWCHSB full and accurate information on any relevant matter; and
- f) notify the YWCHSB immediately of a change in circumstances that may affect entitlement to compensation.

If a worker fails to comply with this section, it will negatively impact the worker’s recovery and/or return to work; therefore, the YWCHSB will make every effort to assist the worker to meet his or her obligations. Where a worker fails to mitigate his

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or her loss as a result of a work-related injury, the YWCHSB will take further action including suspension, reduction or termination of a worker's compensation benefits.

### 1. Worker's Responsibilities to Mitigate Loss

A worker is responsible for taking all reasonable steps to reduce or eliminate any impairment and/or loss of earnings resulting from a work-related injury and seek out and co-operate in any treatment and rehabilitation that, in the opinion of the YWCHSB, promotes the worker's recovery and early and safe return to work.

#### a) Treatment and Rehabilitation

The worker's involvement in his or her own healing, recovery and treatment is pivotal as they are in the best position to ensure proper, effective and appropriate treatment is carried out. A worker can assist in the healing and recovery process by participating with maximum effort, co-operating with health care providers and the YWCHSB and acting in a manner conducive to lessening the effects of the injuries sustained. In this light, a worker has a duty to:

- i) undergo appropriate medical, surgical, or other therapeutic treatment that is considered necessary for the worker's recovery and return to work;
- ii) immediately communicate any concerns regarding treatment, recovery or return to work with the YWCHSB; and
- iii) participate actively in the rehabilitation process (e.g. following home exercise programs, asking questions of health care providers, give maximum effort, disclose all relevant information) and fulfill the requirements of the return to work or vocational rehabilitation plan (Early and Safe Return to Work Plan or Vocational Rehabilitation Plan).

#### b) Injurious Practices

One of the objects of the workers' compensation system is to assist workers to overcome the effects of work-related injuries. The activities and actions of the worker can either inhibit or enhance this process; it is in the best interest of the worker to act in a manner that enhances recovery and healing. Given the importance of a worker's efforts in recovery, the *Act* sets out that a worker has a duty to:

- i) co-operate without delay in seeking and attending health care treatment appropriate for the work-related injury;

- ii) refrain from any activity or condition which is likely to directly impede recovery and/or the ability to work following a work-related injury;
- iii) attempt to eliminate or reduce negative personal health care factors where not dealing with the factors is likely injurious to recovery from the work-related injury and return to work; and
- iv) refrain from treatments that the YWCHSB considers experimental, unproven or inappropriate for the worker, or which may cause increased impairment or prolonged and/or increased loss of earning capacity.

c) **Medical Examinations**

Medical examinations are a critical component in developing the appropriate treatment plan for an injured worker's recovery and return to work. Workers are required to attend and fully participate in medical examinations unless they have a legitimate reason for not attending/participating in the examination, as determined by the YWCHSB.

Medical examinations include:

- i) consultations with family physicians, medical consultants, or specialists;
- ii) appointments with physiotherapists, occupational therapists, or other health care providers for assessments to plan treatment activities; or
- iii) assessments used by the YWCHSB (such as vocational assessments, functional capacity evaluations and the like) to determine the worker's abilities and to plan and carry out return to work and vocational rehabilitation activities.

d) **Providing Information**

The YWCHSB relies on the worker to provide relevant information at any time during the claim cycle. A worker has a duty to provide full and accurate information, as requested by the YWCHSB, within three days.

Relevant information includes, but is not limited to, information related to a worker's address and contact information, work-related injury, pre and post injury earnings information and Canada Pension Plan disability benefits and information regarding retirement of the worker. If a worker is in doubt whether information needs to be reported, the worker should immediately contact the YWCHSB for clarification.

Further, a worker must immediately notify the YWCHSB of any change in circumstance that affects or may affect the worker's claim for compensation including, but not limited to, changes in:

- i) health condition;
- ii) fitness for return to work;
- iii) employment income;
- iv) receipt of other income or governmental benefits; and/or
- v) address and contact information (including bank information if the worker is receiving compensation benefits via direct deposit).

Failure to advise the YWCHSB of changes in address, contact information and/or banking information, if applicable, may result in a worker's benefits being reduced, suspended or terminated.

## **2. Consequences of a Worker's Failure to Mitigate**

The worker is in control of many key activities in the recovery process such as attending medical examinations, attending appointments, updating the YWCHSB with relevant and timely information regarding the claim, and not participating in injurious activities.

When an injured worker fails to comply with any of the requirements of section 14 of the *Act* and this policy (for example, does not attend treatments, does not participate or does not participate with maximum effort, or persists in activities that impede recovery or return to work) the YWCHSB is responsible to take corrective action to prevent loss of funds and inefficiencies in the system.

In circumstances where the YWCHSB is concerned that a worker is not meeting the requirements of this policy, this will be communicated to the worker, who will be given the opportunity to provide reasons and an explanation for the behaviour. If the YWCHSB is not able to communicate with the worker due to reasons beyond the control of the YWCHSB despite having made every reasonable effort to contact the worker, the YWCHSB may proceed to suspend, reduce, or terminate the worker's loss of earnings benefits.

The YWCHSB will consider the reasons and explanation of the worker in good faith before deciding to suspend, reduce, or terminate the worker's loss of earnings benefits.

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The YWCHSB may consider such reasons to be justifiable if an unexpected and unforeseen event arises such as:

- a) compelling personal reasons (such as a personal or family medical emergency) requiring the injured worker's immediate attention and response; or
- b) transportation difficulty that is beyond the control of the injured worker and for which there is evidence that a reasonable attempt was made to secure an alternate means of transportation; or
- c) some other emergency requiring the worker's immediate attention.

In reducing, suspending or terminating loss of earnings benefits, the YWCHSB has discretionary authority and will consider the

- a) significance of the failure to co-operate, attend treatments, or otherwise comply with section 14 in terms of the worker's ability to recover and return to work;
- b) ability to reschedule the treatment or appointment in a timely way;
- c) attendance and participation record of the injured worker; and
- d) explanation of the worker for failing to comply with section 14 of the *Act* (for example, any lack of diligence or insincerity on the worker's part).

The decision to suspend or reduce a worker's loss of earnings benefits will be in writing and will include the conditions under which benefits will be reinstated. The decision to terminate a worker's benefits will be in writing and can be appealed directly to the appeal tribunal.

### **3. Resuming Payments**

If compensation has been reduced or suspended because of a worker's actions, payment may be resumed when the reason for the reduction or suspension no longer applies, in which case the payment resumes from the date the reason no longer applies.

When a worker's loss of earnings benefits have been terminated (due to the seriousness of the worker's failure to mitigate loss and/or as a last resort to gain compliance following education, reduction and/or suspension of loss of earnings benefits) payments will not be reinstated at any point in the future with respect to the work-related injury at the time of non-compliance.

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## **APPLICATION**

This policy applies to all injured workers in receipt of loss of earnings benefits on or after July 1, 2008, regardless of the date of injury.

This policy applies to the Board of Directors, President/CEO and staff of the YWCHSB and to the Workers' Compensation Appeal Tribunal; and all workers and employers covered by the *Act*.

## **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 unfair or unintended result, the YWCHSB will decide the case based on its individual merits and justice. 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 Appeal Tribunal of the YWCHSB in accordance with subsection 54(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 14, 40, 41, 42, 52 and 54

## **POLICY REFERENCE**

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

EN-10, "Subsequent Disorders or Conditions Resulting from a Work-related Injury"

RE-01, "Return to Work – Overview"

## **HISTORY**

Section 8 of the *Workers' Compensation Act* R.S.Y. 2002 c. 231.

CL-30, "Suspension, Reduction and Termination of Compensation", effective May 10, 1994, revoked July 1, 2008.