Yukon Workers' Compensation Health and Safety Board	Part:		Return to Work & Rehabilitation	
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DUTY TO CO-OPERATE, PART 1 OF 4: EARLY AND SAFE RETURN TO WORK PLANS

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 case management team (for a full description of the team, see YWCHSB policy, "Return to Work – Overview") should jointly develop and agree upon an injured worker's customized early and safe return to suitable and available employment with the pre-injury employer. The Early and Safe Return to Work (ESRTW) plan should accommodate the injured worker's functional abilities and have a rehabilitative focus with the primary goal being to return the injured worker to the pre-injury job in accordance with the return to work hierarchy of objectives.

PURPOSE

This policy will be used to assist an injured worker to return to work during his or her recovery. It is intended to provide direction for the identification of suitable and available employment and the development of an ESRTW plan for the injured worker.

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.

DEFINITIONS

1. Accommodation: is the use of modified work and/or adaptive technologies to enable a worker to return to work following a work-related injury. In any specific case, accommodation can include, but is not limited to, any of the options outlined in this policy or an appropriate combination thereof.

2. Available work: is work that exists with the pre-injury employer at the pre-injury work site, or at a proposed work site, arranged by the employer, comparable to the pre-injury work site. For determining if a proposed work site is comparable to the pre-injury work site, the YWCHSB's considerations include, but are not limited to, whether:

a) assignment to a work site other than the injury site forms part of the employment contract;

b) if traveling to the proposed job is within the normal parameters of travel expected of a worker; or

c) if worker and employer agree on appropriateness of the conditions of work for the worker.

3. Suitable employment: is work that meets all of the following criteria:

a) the work is within the worker's functional abilities;

b) the worker has, or is reasonably able to acquire, the necessary skills to perform the work;

Example:
A one-day training program for a worker on a four-week ESRTW plan would be considered reasonable; a three-week training program, requiring the worker to travel, for an eight-week ESRTW plan would not be considered reasonable, unless both worker and employer agreed to it.

c) the work does not pose a health or safety risk to the worker or co-workers; and

d) the work restores the worker's pre-injury earnings, if possible.

Chair

POLICY STATEMENT

The Yukon Workers' Compensation Health and Safety Board (YWCHSB) encourages health care providers, injured workers, employers and other members of the case management team to work co-operatively in exploring reasonable, creative and flexible plans that will keep the injured worker attached to his or her workplace.

The YWCHSB recognizes that injured workers can benefit from returning to work in some capacity before full recovery is achieved. Returning to work can improve a worker's physical and mental health, while easing the transition to full or maximized duties. Statistically, injured workers who participate in early and safe return to work plans return to work more quickly than workers who do not have return to work plans as part of their recovery.

In order to have a safe and effective early and safe return to work, a worker's functional abilities following a work-related injury must be accommodated. Accommodation can include the use of modified work, adaptive technologies, or a combination of both.

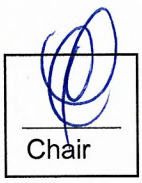
1. Modified Work

a) Alternate Duties: Alternate duties are non pre-injury duties within the worker's functional abilities.

b) Alternative Work: Alternative work is a different job or bundle of duties (not the pre-injury job or duties) that are suitable and are provided to accommodate a worker who has temporary or permanent functional restrictions as a result of the injury. This could be used on a trial basis to determine a worker's functional abilities.

c) Graduated Early and Safe Return to Work: A gradual return to pre-injury hours of work achieved by increasing the number of hours worked over a defined time frame agreed upon by the workplace parties utilizing the functional abilities information relating to the worker. While the pre-injury hours of work vary, the pre-injury duties are ideally the same; however, modified duties can be used where necessitated by the worker's functional abilities as a result of the injury.

d) Modified Duties: Changing the job duties of the pre-injury position required to accommodate the worker's functional restrictions as a result of the injury. Modified duties include altering or removing some or all pre-injury duties.



2. Adaptive Technologies

a) Assistive Devices: Assistive devices include aids/attachments specifically designed for the worker and/or required by the worker to perform job-related activities.

b) Modifications: Changes to job schedule, equipment, organization of work, and/or facilities.

3. Return to Work Hierarchy of Objectives

ESRTW plans are developed according to the following sequential hierarchy of objectives to return the worker to work:

a) pre-injury job;

b) pre-injury job with modifications/assistive devices;

c) pre-injury job, modified pre-injury duties;

d) pre-injury job, modified duties;

e) graduated Early and Safe Return to Work;

f) an alternate job with the same employer;

g) a similar or different job with a different employer (there are no obligations under the *Workers' Compensation Act* S.Y. 2008 (the "*Act*") on this employer with respect to return to work);

h) a combination of any of the above, dependent upon circumstances.

The main goal of an ESRTW plan is return to the worker's pre-injury position through the provision of suitable and available employment in accordance with section 40 of the *Act.* Where a worker's ESRTW plan starts at a level below this primary goal, the plan should be progressive toward the worker's pre-injury job. ESRTW plans must accommodate the worker's altered functional abilities as a result of the work-related injury and, where appropriate, be rehabilitative in nature with respect to injury recovery.

Chair

4. Early and Safe Return to Work Process

Where a worker is eligible to receive loss of earnings benefits as a result of a work-related disability, the case manager shall consult with the worker and employer about an ESRTW plan. This process must begin as soon as possible following the work-related injury using the functional abilities information provided by the injured worker's health care provider(s) (see YWCHSB policy, "Duty to Co-operate, Part 3 of 4: Functional Abilities").

Where desired by the worker, employer or the YWCHSB, the case management team can be expanded to include other parties whose input can assist the development, implementation, monitoring or adjustment of the ESRTW plan.

5. Early and Safe Return to Work Plan

An ESRTW plan will address the following key elements:

a) identification of the case management team;

b) functional abilities information attached to the ESRTW plan;

c) identification of suitable and available work in accordance with the return to work hierarchy of objectives (including goals and a schedule of expected dates of progression);

d) the need for modifications, assistive devices, modified duties, modified hours, if any, required to accommodate the worker's functional abilities;

e) any additional assessments required before or during the ESRTW plan (e.g. ergonomic assessments, work station reviews, physical demands analyses);

f) treatment schedules that must be accommodated within the ESRTW plan (e.g. physiotherapy appointments);

g) recovery expectation date;

h) information on the worker's pay during the ESRTW plan (see YWCHSB policy, "Duty to Co-operate, Part 2 of 4: Roles and Responsibilities"); and

i) review dates, schedule of the team, responsibilities and milestones.

Chair

Research supports that virtually any return to work opportunity promotes rapid recovery for most injuries. YWCHSB staff will work with the worker, employer and other members of the case management team if applicable, to design and support an early and safe return to work plan that recognizes the specific needs of the injured worker balanced with the impact return to work can have on the workplace.

6. Determining Need for Modifications and Assistive Devices

In determining the need for modifications or assistive devices, the YWCHSB will consider:

a) the tasks or activities to be performed;

b) the worker's functional abilities;

c) any non-work-related disability, handicap, or condition a worker may have;

d) any modification or device necessary for the performance of job tasks or activities, and

e) other factors in the physical work environment that affect the worker's ability to perform the job duties.

7. Costs of Modifications and/or Assistive Devices

In cases where it is determined that the YWCHSB will cover accommodations, this will include the purchase, installation and maintenance costs, and may also include the costs for repair or replacement of appropriate modifications and assistive devices, as necessary.

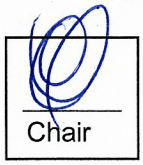
The modifications or assistive devices remain the property of the YWCHSB and may be recovered from the premises of the employer.

8. Conclusion of an Early and Safe Return to Work Plan

An ESRTW plan is concluded by the YWCHSB, with input from the case management team, based on the following factors:

a) the goals of return to work have been achieved as evidenced by progress reporting, evaluation, testing results and medical evidence validating that the injured worker is fit for pre-injury employment;

b) the injured worker is not going to benefit from continued return to work services as determined by the case management team;



c) the injured worker has reached medical maximum improvement but has not reached the goals of return to work (e.g. pre-injury job or pre-injury earnings);

d) the injured worker fails to co-operate with and/or abandons the ESRTW plan;

e) the injured worker refuses to accept suitable employment;

f) the injured worker's choice to relocate to a place which significantly limits the ability of the YWCHSB to continue with the provisions of the return to work plan; or

g) the injured worker voluntarily ends employment or is terminated for just cause.

The conclusion of the ESRTW plan may lead to further steps in the compensation process, such as:

a) employment readiness;

b) determining suitable employment and earning capacity; or

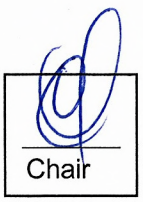
c) relocation.

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 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 39, 40, 41, 42, 52 and 53

POLICY References

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

HISTORY

CS-11, “Rehabilitation Policy” effective February 12, 2007, revoked July 1, 2008.

Chair