



## Policy Amendment Proposal

### RE-05 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury

This policy amendment proposal relating to alternative employment comparable to employment at the time of the work-related injury will reflect the issues consulted on during the engagement for the *Workers' Safety and Compensation Act* (the 'Act') and will align the amendments made in the new legislation.

The new Act comes into force July 1, 2022. The intended effective date of the proposed policy amendments will be July 1, 2022.

The proposed amended Alternative Employment Comparable to Employment at the Time of the Work-Related Injury policy will reflect minor changes to ensure consistency with the provisions of the Act.

A five-year policy review plan will be developed later in 2022. After July 1, 2022, all amended policies to align with the new Act will be prioritized for a more detailed review.

The purpose of this policy is to provide an overview of the obligation of an employer who has a re-employment obligation to provide a worker with alternative work/employment of a nature and with earnings comparable to the worker's employment at the time of the work-related injury.

#### Relevant sections of the Act

The following sections of the Act are relevant:

- 118 employer's obligation to re-employ

**Proposed minor changes to this policy** are highlighted in yellow

- changes to section references, language and definitions
- new policy title to reflect language in the Act

#### Board Orders/Regulations

N/A

#### Current policy

[RE-05 Alternative Employment Comparable to Pre-Injury Employment](#)

---



## Policy Amendment Proposal

### RE-05 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury

---

The Board of Directors is providing this policy amendment proposal to stakeholders seeking their input, comments, questions and suggestions.

Some questions for consideration:

1. Are there any general comments about this policy proposal?
2. Are there any gaps in this policy proposal?
3. Additional comments?

The views of our stakeholders are important to us. All feedback will be considered prior to the Board of Directors approving any amendments.

Engagement on this policy proposal closes on **May 31, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) our website and sending it as an attachment to [Policy.Feedback@wcb.yk.ca](mailto:Policy.Feedback@wcb.yk.ca)
2. Emailing comments directly to [Policy.Feedback@wcb.yk.ca](mailto:Policy.Feedback@wcb.yk.ca)
3. Receipt in our building by May 31, 2022, by mail or drop off at  
*Yukon Workers' Compensation Health and Safety Board*  
*401 Strickland Street*  
*Whitehorse, Yukon Y1A 5N8*

By the end of June a summary of all feedback on this policy amendment proposal will be published on our website at [www.wcb.yk.ca](http://www.wcb.yk.ca)

---



## Policy Amendment Proposal

### RE-05 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury

---

**Preventing** work-related injuries is the most important job in any workplace. The *Workers' Safety and Compensation Act* establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

---

#### **Purpose**

This policy provides an overview of the obligation of an employer who has a re-employment obligation to provide a worker with alternative work/employment of a nature and with earnings comparable to the worker's employment at the time of the work-related injury.

---

#### **Definitions**

**available work** means work that exists with the employer at the time of the work-related injury at the site or at a proposed work site arranged by the employer that is comparable to the work site at the time of the work-related injury. In determining if a proposed work site is comparable to the work site at the time of the work-related injury, the considerations include, but are not limited to, whether:

- a. assignment to a work site other than the injury work site forms part of the employment contract;
- b. travelling to the proposed job is within the normal parameters of travel expected of a worker; or
- c. the worker and the employer agree on appropriateness of the conditions of work for the worker.

**average earnings** means the average earnings of a workers as determined by the board

**board** means the Workers' Safety and Compensation Board

**case management team** means a team that assists the worker with their recovery, early and safe return to work plan and, if needed, vocational rehabilitation. The team always includes the worker and the board. Employers have a duty to co-operate in their 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 worker (chosen by the worker), case manager and the health care providers. Other members may be added depending on their specific roles and responsibilities.



## Policy Amendment Proposal

### RE-05 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury

**employer** means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

**health care provider** means

- a. a medical practitioner; or
- b. a health care provider recognized by the board.

**medical practitioner** means

- a. a person who is entitled to practice medicine in Yukon pursuant to the *Medical Profession Act*; or
- b. a person entitled to practice medicine under the laws of another province.

**worker** means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

---

## Policy Statement

### 1. General

Where an employer has a re-employment obligation to offer to re-employ the worker in the position that they held on the date of the work-related injury and that position is not available, the employer has the obligation to offer to provide the worker with alternative employment of a nature and at earnings comparable to the employment the worker held on the date of the work-related injury.

The employer and worker are responsible for determining whether the alternative employment is of a nature and at earnings comparable to the employment the worker held on the date of the work-related injury. If the employer and worker cannot agree, **the board** will make the final determination.

### 2. Determining alternative employment comparable

#### *Determining comparable nature*

When comparing **employment the worker held at the time of the work-related injury** to comparable alternative employment the employer and work and/or **the board may** consider the following factors:



## Policy Amendment Proposal

### RE-05 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury

- a. duties to be performed;
- b. skills, qualifications and experience required;
- c. degree of physical and cognitive effort;
- d. level of responsibility and supervision of other **workers**;
- e. rights and privileges associated with the position;
- f. wages and benefits;
- g. working conditions, hours of work, and right to work overtime;
- h. geographic location of the worksite;
- i. opportunities for advancement and promotion;
- j. whether the employment is covered by a collective agreement; and
- k. other relevant factors.

#### ***Geographic location***

The following factors will be considered in determining whether the geographic location of the alternative employment is comparable:

- a. travel or assignment to different job sites is the normal practice of the industry;
- b. travel or assignment to a job site other than the injury work site forms part of the employment contract;
- c. the worker normally accepts employment assignments in various geographic areas;
- d. travelling to the alternative employment falls within the normal parameters of travel expected of the worker; and
- e. the reasonableness of the offer.

#### ***Determining comparable earnings***

Gross earnings in the alternative employment must be at least 90% of the gross earnings of the worker's **employment at the time of the work-related injury** in order to be considered comparable (see policy [EL-01 Loss of Earnings Benefits](#) in determining earnings. Also see policy [RE-07-1 Compliance with the Re-employment Obligation](#)).



## Policy Amendment Proposal

### RE-05 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury

For the purposes of this provision, a worker's earnings in the **employment they held at the time of the work-related injury** and the earnings in the comparable alternative employment are not subject to the maximum **annual earnings amount**.

---

#### Related Policies

[EL-01 Loss of Earnings Benefits](#)

[RE-07-1 Compliance with the Re-employment Obligation](#)

---