



Policy Amendment Proposal

RE-02-4 Duty to Co-operate, Part 4 of 4

Penalties for Non Co-Operation

This policy amendment proposal relating to penalties for non co-operation 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 Duty to Co-Operate, Part 4 of 4, Penalties for Non Co-operation 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 explain the consequences for workers or employers when their responsibilities and obligations are not met with respect to the duty to co-operate in the early and safe return to work of a worker with a work-related injury.

Relevant sections of the Act

The following sections of the Act are relevant:

- 91 duty to mitigate
- 117 return to work

Proposed minor changes to this policy are highlighted in yellow

- changes to section references, language and definitions
- modify to incorporate new language in section 117 return to work
- modify to clarify that an administrative penalty is now required to penalize an employer for a violation
- incorporates penalty amount from Board Order 2008/23
- removal of objection process as reconsideration process will be applicable
- incorporates suspension, reduction or termination of benefits section into worker non-cooperation section



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Board Orders/Regulations

The following board order/regulation will be revoked as content has been incorporated into the policy amendment proposal.

- [Board Order 2008/23 Penalty for Employer Failure to Comply with Return to Work](#)

Current policy

[RE-02-4 Duty to Co-operate, Part 4 of 4: Penalties for Non Co-operation](#)

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
2. Emailing comments directly to 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



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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 explains the consequences for workers or employers when their responsibilities and obligations are not met with respect to the duty to co-operate in the early and safe return to work of a worker with a work-related injury.

Definitions

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.

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.



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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

The board encourages workers, health care providers, employers and other parties to work co-operatively as a Case Management Team to explore all reasonable, creative and flexible solutions to design plans that 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.

When the employer or the worker does not fulfill the required obligations in relation to the early and safe return to work process, the system breaks down and fails to progress efficiently. The board manages these inefficiencies in the best interests of the employer and worker and takes steps to encourage compliance.

2. Worker non-co-operation (new title)

A worker must co-operate in their early and safe return to work by:

- a. contacting their employer as soon as possible after the work-related injury occurs and maintaining communication with them through the period of their recovery;
- b. assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's average earnings before the work-related injury;
- c. accepting suitable employment that is identified under paragraph (b);
- d. giving the board any information that the board may request concerning their return to work; and
- e. doing any other things that the board may determine in order to facilitate their early and safe return to work.

If the board determines that a worker is not co-operating with Early and Safety Return to Work (ESRTW) activities, the main goal is to gain, or regain, the worker's co-operation. This is done in the first instance by determining the reasons for non co-operation. Where, in the opinion of the board, the worker does not have a legitimate reason for not co-operating, the board will inform the worker, in writing, of the benefits of ESRTW, their responsibilities under the Act, the finding of non co-operation and the consequences of this finding.



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For example, the board may apply the provisions of this policy in situations such as when a worker voluntarily resigns from their job at the time of the work-related injury or is terminated or suspended for just cause by the employer at the time of the work-related injury.

When there has been a finding of non co-operation, the worker's earnings loss benefits may be reduced or suspended, as determined appropriate by the board, for the period of non co-operation.

3. Employer non co-operation (new title)

An employer must co-operate in the early and safe return to work of a worker who suffers a work-related injury while performing work for the employer by:

- a. contacting the worker as soon as possible after the work-related injury occurs and maintaining communication with them throughout the period of their recovery;
- b. providing suitable employment that is available and consistent with the worker's functional abilities and that, if possible, restores their average earnings before the work-related injury;
- c. giving the board any information that the board may request concerning the worker's return to work; and
- d. doing any other things that the board may determine in order to facilitate the worker's early and safe return to work.

If the board determines that an employer is not co-operating in the ESRTW process and does not have a legitimate reason, the employer will be notified (verbally, if possible, and in writing) of the obligation to co-operate in early and safe return to work, the finding of non co-operation, and the consequences of this finding.

Where there has been a contravention of section 117 of the Act, the board may levy an administrative penalty on the employer up to the amount of the worker's loss of earnings benefits paid by the board to the worker during the period of non co-operation.

A contravention may be found when the employer at the time of the work-related injury fires or suspends an injured worker subsequent to the injury without just cause.

The administrative penalty is an amount owing to the board at the time that it is levied and will be added to the employer's assessment.



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4. Misrepresentation by parties

Any misrepresentation by any of the parties during the early and safe return to work process will be considered as non co-operation. Before any decision is rendered for misrepresentation, the party will be given an opportunity to respond. Depending on the nature of the misrepresentation, the case may be referred for criminal prosecution. See policy [GN-04 Investigations and Fraud](#).

Related Policies

[GN-04 Investigations and Fraud](#)
