

Chapter: Return to Work

Legislative authority: sections 91, 117

Prevention statement

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act (the '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.

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

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.

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

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.

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.

History

RE-02-4 Duty to Co-Operate, Part 4 of 4: Penalties for Non-Co-operation, effective July 1, 2012, revoked July 1, 2022

RE-02-4 Return to Work, Duty to Co-Operate: Part 4 of 4: Penalties for Non-Co-operation, effective January 1, 2010, revoked July 1, 2012

RE-02-4 Return to Work, Duty to Co-Operate: Part 4 of 4: Penalties for Non-Co-operation, effective July 1, 2008, revoked January 1, 2010