

 Yukon Workers' Compensation Health and Safety Board	<b>Part:</b>	<b>Return to Work and Rehabilitation</b>		
	<b>Board Approval:</b>		<b>Effective Date:</b>	<b>July 1, 2012</b>
	<b>Number:</b>	<b>RE-02-3</b>	<b>Last Revised:</b>	
	<b>Board Order:</b>		<b>Review Date:</b>	

### **DUTY TO CO-OPERATE, PART 3 OF 4: FUNCTIONAL ABILITIES**

*When referencing any of the return to work policies (RE-01 to RE-13), 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**

All employers and workers are obliged under the *Workers' Compensation Act* S.Y. 2008 (the "Act") to co-operate in the worker's early and safe return to suitable and available employment during recovery from a work-related injury.

The Yukon Workers' Compensation Health and Safety Board (YWCHSB) provides return to work services and programs to an injured worker; the goal of which is to safely return the worker to employment or employability that is comparable to the pre-injury level and is functionally appropriate during recovery.

#### **PURPOSE**

This policy outlines the legislated responsibility of a health care provider, when requested, to provide the Yukon Workers' Compensation Health and Safety Board (YWCHSB), the worker and the employer, with information concerning the worker's functional abilities, as set out in section 42 of the *Act*.

#### **DEFINITIONS**

- 1. Case Management Team:** A team that assists the injured worker with their recovery, early and safe return to work plan and, if needed, vocational rehabilitation. The team always includes the injured worker and YWCHSB. Employers have a duty to co-operate in their injured 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

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representatives of the injured worker<sup>1</sup> (as desired by the injured worker), disability manager and the health care community. Other members may be added depending on their specific roles and responsibilities.

2. **Functional Abilities:** This refers to an injured worker's limitations and abilities (what the worker can and cannot do) with respect to a work-related injury.
3. **Functional Capacity Evaluation:** a series of tests that provides an independent assessment and job simulation of critical physical demands, a reliable prediction of functional physical tolerances and the frequency with which a worker can perform them.

### PREVENTION

Preventing workplace injuries is the responsibility of everyone in the workplace. When injuries do occur, it is important for workers and employers to minimize the impacts by:

- 1) When possible, keeping the worker at work in safe and productive work or
- 2) Returning the worker to safe and productive work as soon as it is functionally appropriate for the worker to do so.

Prevention of recurrences and further injuries once injured workers have returned to work is of utmost importance.

### POLICY STATEMENT

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

Functional abilities information is provided to workers, employers and YWCHSB by health care providers and is usually not directly tied to the workers' job duties by the health care provider unless the health care provider has specific knowledge of the worker's job, is qualified to provide such an assessment and has been requested to provide this information by the employer, worker, YWCHSB or, in the case of an appeal, by the hearing officer or Workers' Compensation Appeal Tribunal (Tribunal).

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<sup>1</sup> Note that the only type of representative who may make decisions on behalf of the worker is a lawyer retained by the worker or the worker's representative with power of attorney and/or power of personal attorney.

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Chair

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This information will be used to develop a RTW plan with the injured worker. The goal is to return the worker to their pre-injury job in accordance with the hierarchy of return to work objectives (see YWCHSB policy RE-01, “Return to Work – Overview”) while accommodating the worker’s functional abilities.

### 1. Functional Abilities Information

When requested to do so by the employer, worker or YWCHSB, the health care provider treating the worker must give the employer, worker and YWCHSB information concerning the worker’s functional abilities.

Functional abilities information regarding a particular injured worker can be provided in writing by using:

- a) the functional abilities information provided by the health care provider on YWCHSB’s “Functional Abilities Form”; and
- b) a form created by the employer which is specific to their own workplace should they wish to do so; or
- c) if required, a more comprehensive evaluation of functional ability, such as a functional capacity evaluation.

While generally a family physician is responsible for the ongoing care of the worker, other health care providers who treat and/or assess the worker may also be called upon to provide functional abilities information.

### 2. Payment For Functional Abilities Information

YWCHSB will pay health care providers for functional abilities information that is:

- a) provided on YWCHSB “Functional Abilities Form”; or
- b) in the opinion of YWCHSB, required to facilitate the early and safe return to work plan (e.g. a functional capacity evaluation).

YWCHSB will pay a health care provider a set amount for the provision of information under section 42 of the *Act*.

If an employer uses their own functional abilities form, or the Case Management Team desires a different evaluation of functional ability not required/approved by YWCHSB, the employer must cover the fee to complete the evaluation or form, and obtain separate consent from the worker, as the consent given to YWCHSB by the worker when filing a claim for compensation relates only to the disclosure of information on YWCHSB’s forms.

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Chair

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The employer's request for disclosure of functional abilities information shall be limited to that which is required for the purpose of aiding in the worker's return to work. Where the Case Management team recommends, and, in YWCHSB's opinion, a more comprehensive evaluation of functional ability is required, YWCHSB will arrange and pay for it.

### 3. Confidentiality of Report

With the consent of the worker, the employer or employer representatives may disclose the functional abilities information provided by the health care provider to a person assisting the return to work of the injured worker.

Anyone who releases this confidential information without a signed consent contravenes the confidentiality requirement and may be liable for a fine of up to five thousand dollars (\$5,000) or up to six months in jail, or both, in accordance with section 110 of the *Act*.

### APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of YWCHSB and to the 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 procedure cannot be applied or to do so would result in an unfair or an unintended result, YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB policy EN-02, "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 YWCHSB under this policy can be appealed in writing to the YWCHSB Hearing Officer in accordance with subsection 53(1) of the *Act*, or any decision made under subsection 14(2) of the *Act* may be appealed directly to the Workers' Compensation Appeal Tribunal (WCAT).

A notice of appeal must be filed within 24 months of the date of the decision by YWCHSB, in accordance with section 52 of the *Act*.

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Chair

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### **ACT REFERENCES**

Sections 14, 42, 52, 53, and 110

### **POLICY REFERENCES**

RE-01, "Return to Work – Overview"

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

### **HISTORY**

RE-02-3, "Return to Work, Duty to Co-operate: Part 3 of 4: Functional Abilities",  
effective January 1, 2010; revoked July 1, 2012

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