

 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>
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## **TERMINATION AFTER RE-EMPLOYMENT**

***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 the 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.***

**This policy applies to employers who regularly employ 20 or more workers.**

### **GENERAL INFORMATION**

Return to work is a proactive approach to helping injured workers return to safe and productive work activities as soon as it is physically possible. It is a partnership involving employers, workers, health care providers, unions (where applicable) and the Yukon Workers' Compensation Health and Safety Board (YWCHSB). Section 41 of the *Workers' Compensation Act*, S.Y. 2008 (the "Act") sets out a new re-employment obligation that applies to certain employers. An employer who regularly employs 20 or more workers is obligated to re-employ an injured worker if that injured worker has been employed continuously with that employer for at least one year prior to the work-related injury, in accordance with the various provisions set out in section 41. These provisions apply to injuries occurring on or after January 1, 2011.

### **PURPOSE**

This policy provides direction to employers and assists workers in understanding their obligations and role in the re-employment process.

This policy outlines how YWCHSB determines whether an employer, who has a re-employment obligation, has failed to fulfill its re-employment obligations, when a worker has been terminated by the employer within six months of re-employment.

## DEFINITIONS

1. **Employer:** means an employer as defined by the *Act* and for purposes of this policy, who is also subject to the re-employment provisions of section 41 of the *Act* because the employer:
  - a) regularly employs 20 or more workers; and
  - b) is an employer of a worker who has been employed continuously with that employer for at least one year prior to the work-related injury.

See YWCHSB policy RE-04, “Employer’s Obligation to Re-employ - Overview” in determining when an employer and a worker are subject to the re-employment provisions of section 41 of the *Act*.

2. **Worker:** means a worker as defined by the *Act* who has been unable to work as a result of a work-related injury and who is also subject to the re-employment provisions of section 41 of the *Act*, because the worker had been employed in a continuous employment relationship for at least one year with the employer, on the date of the work-related injury.

See YWCHSB policy RE-04, “Employer’s Obligation to Re-employ - Overview” in determining when an employer and a worker are subject to the re-employment provisions of section 41 of the *Act*.

## 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

Section 41(10) of the *Act* states that where a worker is terminated within six months of re-employment, YWCHSB will presume that the employer has not fulfilled its re-employment obligation. YWCHSB must ensure that the work cessation is, in fact, a termination (e.g. severing the employment relationship) and not some other temporary cessation that is not intended to be a termination.

To rebut this presumption, the employer must show that the termination of the worker’s employment was not related to the work-related injury.

The presumption that the employer has not fulfilled its re-employment obligation does not change the obligation of YWCHSB to gather the information necessary to make the appropriate decision.

YWCHSB can make a determination on its own initiative that the employer breached its re-employment obligations or a worker can request YWCHSB make the determination.

To determine if the employer is in breach of the re-employment obligation, YWCHSB will examine:

- a) the terms of an applicable collective agreement (see YWCHSB policy RE-08, “Re-employment Provisions of Collective Agreements”);
- b) any applicable written employer policy;
- c) established practices of the employer; and
- d) other relevant evidence.

Evidence collected will be used to determine if the re-employment obligation has been met. If the facts do not support the employer’s decision to terminate the worker, YWCHSB will presume that the employer breached the re-employment obligation.

YWCHSB is not required to consider a request by a worker who has been re-employed and whose employment is terminated within six months, where the request is made more than 30 days after the date of termination of employment.

#### Termination after Six Months of Re-employment

Where a worker is terminated more than six months after re-employment, the presumption does not apply and a determination must be made as to whether the employer is in breach of its re-employment obligations by reviewing the circumstances of the termination where deemed appropriate by YWCHSB.

#### Consequences of a Breach

If YWCHSB determines that the employer has not fulfilled its re-employment obligations, a re-employment penalty will be levied and re-employment payments will be made to the worker (see YWCHSB policy RE-07-1, “Compliance with the Re-employment Obligation” and YWCHSB policy RE-07-2, “Re-employment Penalties and Payments”).

## **ROLES AND RESPONSIBILITIES**

### **YWCHSB**

Yukon Workers’ Compensation Health and Safety Board is responsible for communicating the requirements of the re-employment obligation to the worker and the employer and for ensuring compliance in accordance with the legislation and YWCHSB policies.

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YWCHSB is also responsible for determining whether there has been compliance with the re-employment obligation, and for levying the appropriate penalties where appropriate.

The relevant provisions of a collective agreement, if applicable in the circumstances, should be taken into consideration.

### **The Employer**

The employer is responsible for offering to re-employ workers, including accommodating the work or the workplace, in accordance with the relevant provisions of the *Act* and YWCHSB policies.

The relevant provisions of a collective agreement, if applicable in the circumstances, should be taken into consideration.

### **The Worker**

The worker is responsible for mitigating the loss caused by a work-related injury by taking all reasonable steps to reduce or eliminate any impairment and loss of earnings resulting from a work-related injury. This includes accepting offers of re-employment made by employers in accordance with the relevant provisions of the *Act*, and YWCHSB policies and cooperating with efforts taken to accommodate the work or the workplace in order to facilitate re-employment.

The relevant provisions of a collective agreement, if applicable in the circumstances, should be taken into consideration.

Workers are responsible for notifying the employer and YWCHSB of their fitness to work and any changes to the level of their fitness to work (see YWCHSB policy RE-03, "Mitigation of Loss").

It is the worker's responsibility to report his or her termination after re-employment to YWCHSB within 30 days of its occurrence so YWCHSB can readily obtain the facts.

### **Bargaining Agent**

The bargaining agent, as a party to a collective agreement, facilitates and encourages re-employment efforts of the workplace parties, including accommodation of the work or the workplace, in order to facilitate re-employment of the worker in accordance with the terms and conditions of the *Act* and YWCHSB.

The relevant provisions of a collective agreement, if applicable in the circumstances, should be taken into consideration.

## **APPLICATION**

This policy applies to the Board of Directors, President/CEO and staff of YWCHSB and to the Workers' Compensation Appeal Tribunal; employers who have a re-employment obligation under section 41 of the *Act* and workers of these employers. It applies to work-related injuries that occurred on or after January 1, 2011.

## **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, 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 section 53(1) of the *Act*, or any decision made under section 14(2) of the *Act* may be appealed directly to the Workers' Compensation Appeal Tribunal.

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*.

## **ACT REFERENCES**

Preamble and sections 14, 40, 41, 52,85

## **POLICY REFERENCES**

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

RE-01 to RE-13, Return to Work and Rehabilitation Policies

## **HISTORY**

RE-07-3, "Termination After Re-employment" effective January 1, 2011; revoked July 1, 2012