



Policy Amendment Proposal

RE-07-1 Compliance with the Re-Employment Obligation

This policy amendment proposal relating to compliance with the re-employment obligation 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 Compliance with the Re-Employment Obligation 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 information on re-employment obligations.

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

Board Orders/Regulations

N/A

Current policy

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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 provides information on re-employment obligations.

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

board means the Workers' Safety and Compensation Board

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

medically able to perform means a worker is able to perform work duties when the worker has the functional abilities to perform those duties

suitable employment means work that meets the following criteria:

- a. the work is within the worker's functional abilities;
- b. the worker has, or is reasonably able to acquire, the necessary skills to perform the work;
- c. the work does not pose a health or safety risk to the worker or co-workers; and



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- d. the work restores the worker's earnings, if possible

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

Section 118 of the Act sets out an employer's re-employment obligations. If the board determines that an employer has not complied with the employer's obligations under section 118, the board may make payments to the worker for a maximum of one year as if the worker were entitled to loss of earning benefits under the Act (subsection 118 (13)).

When a worker is medically able to perform the essential duties of the employment at the time of the work-related injury, an employer who is subject to a re-employment obligation must:

- a. offer to re-employ the worker in the position that the worker held prior to the work-related injury; or
- b. offer an alternative position which is comparable in nature and earnings to the worker's employment at the time of the work-related injury, (see policy [RE-05 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury](#)).

However, when a worker is medically unable to perform the essential duties of the worker's employment at the time of the work-related injury, but is able to perform suitable employment, the employer must offer the worker the first opportunity to accept suitable employment that may become available with the employer (see the Determining Suitable Employment section of policy [RE-04 Employer's Obligation to Re-Employ](#)).

The employer must accommodate the work or workplace for the worker to the extent determined by the board (see subsection 118 (6) of the Act and policy [RE-06 Accommodating Work or a Workplace](#)).

2. Duration of re-employment obligation

An employer, who has a re-employment obligation under section **118** of the Act, is obligated to re-employ the worker until the earliest of three dates:

- a. two years after the date of the work-related injury;
- b. one year after the date the worker is medically able to perform the essential duties of the employment they held at the time of the work-related injury (see the Determining When



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A Worker Is Unable To Work section in policy [RE-04 Employer's Obligation to Re-Employ](#));
or

- c. the date on which the worker reaches the age when they are eligible to apply for benefits under Part 1 of the *Old Age Security Act*.

Worker's notice of fitness to work

Under the Act and **board** policies, a worker is required to take all reasonable steps to provide the board with any health information and other information that the board requires and notify **the board** immediately of any change in circumstance that affects or may affect their claim, and maintain communication with their employer throughout the return to work process (see policy [RE-03 Mitigation of Loss](#)).

As a result of these requirements, the worker must immediately notify **the board** and the employer when they are able to perform:

- a. the essential duties of the employment at the **time of the work-related injury**; or
- b. suitable employment.

In turn, **the board** expects employers to offer to re-employ workers as part of the early and safe return to work process.

The board's notice of fitness to work

In the event the employer and worker cannot initially agree on the worker's level of fitness to work or subsequently disagree as to the worker's level of fitness to work, **the board** will provide notice (verbally, if possible, and in writing) of the worker's fitness to return to work.

Change in level of fitness to work

If a worker is able to perform suitable employment and is later able to perform the essential duties of the job at the **time of the work-related injury**, the worker must immediately inform **the board** and the employer of the improvement. The employer is then required to offer to re-employ the worker in the job at the **time of the work-related injury**, or alternative employment which is comparable in nature and earnings with employment at the **time of the work-related injury**,

The board will provide notice (verbally, if possible, and in writing) of the change in the level of the worker's fitness to work only if the worker and the employer do not agree on the level of the worker's fitness to work.

A notice of fitness to work or change in level of fitness to work provided by **the board** will include the following:



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- a. The employer will be notified of its obligation to re-employ the worker, and to immediately notify **the board** if the worker's employment is terminated within six months of the worker being re-employed by the employer; and
- b. The worker will be notified of **their** responsibility to accept an offer of re-employment that is in accordance with the relevant provisions of the Act and **board** policies, and to immediately notify **the board** if their employment is terminated within six months of being re-employed by the employer.

3. Determining compliance

The board may, or on the request of a worker **must**, determine whether the employer has met its re-employment obligations to a worker.

In making this determination, **the board** will review relevant information with the employer and worker to obtain the facts relevant to the issue(s), and will consider these facts to determine whether the employer:

- a. offered to re-employ the worker;
- b. offered employment consistent with the worker's ability to return to the job at the **time of the work-related injury**, or comparable employment, or suitable employment;
- c. was willing to accommodate the work or workplace to the needs of the worker; and
- d. offered to re-employ the worker for the duration of the re-employment obligation.

Request by worker to investigate non-compliance

Workers who are terminated within six months of re-employment have 30 days from the date of termination to request that **the board** investigate any alleged non-compliance with the re-employment obligation. If the request is made beyond 30 days from the date of termination, **the board** is not required to investigate.

Administrative penalties for non-compliance

Before **an administrative** penalty is levied against an employer for non-compliance with the re-employment obligation, the employer will be given an opportunity to respond to **the board** regarding the reason for non-compliance.

If **the board** finds that the employer has failed to meet the re-employment obligation and does not have a legitimate reason for doing so, **the board** will inform the employer (verbally, if possible, and in writing) of the amount of the potential administrative penalty (see policy [RE-07-2 Re-Employment Penalties and Payments](#)).



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If the employer fails to comply within one week of notification that the employer is in non-compliance with the re-employment obligation, the board may levy an **administrative** penalty. Where there is evidence that an employer has been formally notified in writing of the co-operation obligation in the past (either on the same claim or other claims) **the board** will not provide an additional notification.

Where the employer requires time to comply for a reason beyond the employer's control, a reasonable time will be allowed before a penalty is levied on the same or subsequent claim.

Related Policies

[RE-03 Mitigation of Loss](#)

[RE-04 Employer's Obligation to Re-Employ](#)

[RE-05 Alternative Employment Comparable to Employment at the Time of the Work-Related Injury](#)

[RE-06 Accommodating Work or a Workplace](#)

[RE-07-2 Re-Employment Penalties and Payments](#)
