

**Chapter: Return to Work**

**Legislative authority: section 118**

*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.*

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## Purpose

This policy provides an overview of the obligation of an employer who has a re-employment obligation to provide a worker with alternative work/employment of a nature and with earnings comparable to the worker's employment at the time of the work-related injury.

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## 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.

**average earnings** means the average earnings of a workers as determined by the board

**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

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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

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## Policy statement

### 1. General

Where an employer has a re-employment obligation to offer to re-employ the worker in the position that they held on the date of the work-related injury and that position is not available, the employer has the obligation to offer to provide the worker with alternative employment of a nature and at earnings comparable to the employment the worker held on the date of the work-related injury.

The employer and worker are responsible for determining whether the alternative employment is of a nature and at earnings comparable to the employment the worker held on the date of the work-related injury. If the employer and worker cannot agree, the board will make the final determination.

## 2. Determining alternative employment comparable

### *2.1 Determining comparable nature*

When comparing employment the worker held at the time of the work-related injury to comparable alternative employment the employer and work and/or the board may consider the following factors:

- a. duties to be performed;
- b. skills, qualifications and experience required;
- c. degree of physical and cognitive effort;
- d. level of responsibility and supervision of other workers;
- e. rights and privileges associated with the position;
- f. wages and benefits;
- g. working conditions, hours of work, and right to work overtime;
- h. geographic location of the worksite;
- i. opportunities for advancement and promotion;
- j. whether the employment is covered by a collective agreement; and
- k. other relevant factors.

### *2.2 Geographic location*

The following factors will be considered in determining whether the geographic location of the alternative employment is comparable:

- a. travel or assignment to different job sites is the normal practice of the industry;
- b. travel or assignment to a job site other than the injury work site forms part of the employment contract;
- c. the worker normally accepts employment assignments in various geographic areas;
- d. travelling to the alternative employment falls within the normal parameters of travel expected of the worker; and
- e. the reasonableness of the offer.

### *2.3 Determining comparable earnings*

Gross earnings in the alternative employment must be at least 90% of the gross earnings of the worker's employment at the time of the work-related injury in order to be considered comparable (see policy 3.1 Loss of Earnings Benefits in determining earnings. Also see policy 4.9 Compliance with the Re-Employment Obligation).

For the purposes of this provision, a worker's earnings in the employment they held at the time of the work-related injury and the earnings in the comparable alternative employment are not subject to the maximum annual earnings amount.

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## History

- RE-05 Alternative Employment Comparable to Pre-Injury Employment, effective July 1, 2012, revoked July 1, 2022
- RE-05 Alternative Employment Comparable to Pre-Injury Employment, effective January 1, 2011, revoked July 1, 2012