



Policy Amendment Proposal

RE-02-1 Duty to Co-Operate, Part 1 of 4 Early and Safe Return to Work Plans

This policy amendment proposal relating to the duty to cooperate and early and safe return to work plans 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 Duty to Co-Operate, Part 1 of 4, Early and Safe Return to Work Plans 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 explain the early and safe return to work process.

Relevant sections of the Act

The following sections of the Act are relevant:

- 117 return to work

Proposed minor changes to this policy are highlighted in yellow

- changes to section references, language and definitions

Board Orders/Regulations

N/A

Current policy

[RE-02-1 Duty to Co-Operate, Part 1 of 4, Early and Safe Return to Work Plans](#)



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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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Early and Safe Return to Work Plans

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 explains the early and safe return to work process.

Definitions

accommodation means the use of modified work or adaptive technologies to enable a worker to return to work following a work-related injury. Accommodation can include, but is not limited to, any of the options outlined in this policy or an appropriate combination thereof

available work means work that exists with the employer at the time of the work-related injury at the work site, or at a proposed work site, arranged by the employer, comparable to the work site at the time of the work-related injury. For determining if a proposed work site is comparable to the work site at the time of the work-related injury, the board's considerations include, but are not limited to, whether:

- a. assignment to a work site other than the injury site forms part of the employment contract;
- b. if travelling to the proposed job is within the normal parameters of travel expected of a worker; or
- c. if the worker or employer agree on the appropriateness of the conditions of work for the worker

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.



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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

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
- 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

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 corrective steps to encourage compliance.

2. Modified work

Modified work includes:

- a. **Alternate Duties:** Alternate duties are duties within the worker's functional abilities.
- b. **Alternative Work:** Alternative work is a suitable job or bundle of duties different from the job or duties that an employer provides to accommodate a worker who has temporary or permanent functional restrictions as a result of the injury. This could be used on a trial basis to determine a worker's functional abilities.



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- c. Graduated Early and Safe Return to Work: A gradual return to hours of work achieved by increasing the number of hours worked over a defined time frame agreed upon by the workplace parties utilizing the functional abilities information relating to the worker. While the hours of work vary, the duties are ideally the same. Modified duties may be used together with the Graduated Early and Safe Return to Work where needed to accommodate the worker's post-injury functional abilities.
- d. Modified Duties: Changing the job duties of the position in order to accommodate the worker's functional restrictions resulting from the work-related injury. Modified duties include altering or removing some or all duties.

3. Adaptive technologies

Adaptive technologies include:

- a. Assistive devices: Assistive devices include aids/attachments specifically designed for the worker and required by the worker to perform job-related activities.
- b. Modifications: Changes to job schedule, equipment, organization of work, or facilities required by the worker to perform job-related activities.

4. Return to work hierarchy of objectives

Early and Safe Return To Work (ESRTW) plans are developed according to the following sequential hierarchy of objectives to return the worker to work:

- a. employment held at time of work-related injury;
- b. employment held at time of work-related injury with modifications/assistive devices;
- c. employment held at time of work-related injury with modified duties (including different duties while maintaining up to 50 per cent of duties at the time of the work-related injury);
- d. graduated Early and Safe Return to Work;
- e. an alternate job with the same employer;
- f. a similar or different job with a different employer;
- g. a combination of any of the above, dependent upon circumstances.

The main goal of an ESRTW plan is to return the worker to their position through the provision of suitable and available employment. Where a worker's ESRTW plan starts at a level below this primary goal, the plan should progress toward the worker's employment held at the time of the



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work-related injury. ESRTW plans must accommodate the worker's altered functional abilities as a result of the work-related injury and, where appropriate, be rehabilitative in nature with respect to injury recovery.

5. Early and safe return to work process

Where a worker is eligible to receive loss of earnings benefits as a result of a work-related **injury**, the case manager shall consult with the worker and employer about an ESRTW plan. This process must begin as soon as possible following the work-related injury using the functional abilities information provided by the worker's health care provider(s) (see policy [RE-02-3 Duty to Co-operate, Part 3 of 4: Functional Abilities](#)). Where desired by the worker, employer or the board, the Case Management Team can be expanded to include other parties whose input can assist the development, implementation, monitoring or adjustment of the ESRTW plan.

6. Early and safe return to work plan

An ESRTW plan will address the following key elements:

- a. identification of the Case Management Team;
- b. functional abilities information attached to the ESRTW plan;
- c. identification of suitable and available work in accordance with the return to work hierarchy of objectives (including goals and a schedule of expected dates of progression);
- d. the need for modifications, assistive devices, modified duties, modified hours, if any, required to accommodate the worker's functional abilities;
- e. any additional assessments required before or during the ESRTW plan (e.g. ergonomic assessments, work station reviews, physical demands analyses);
- f. treatment schedules that must be accommodated within the ESRTW plan (e.g. physiotherapy appointments);
- g. recovery expectation date;
- h. information on the worker's pay during the ESRTW plan (see policy [RE-02-2 Duty to Co-operate, Part 2 of 4: Roles and Responsibilities](#)); and
- i. review dates, schedule of the team, responsibilities and milestones.

Research supports that virtually any return to work opportunity promotes rapid recovery for most injuries. **Board** staff will work with the worker, employer and other members of the Case Management Team if applicable, to design and support an early and safe return to work plan



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that recognizes the specific needs of the worker balanced with the impact return to work can have on the workplace.

7. Determining need for modifications and assistive devices

In determining the need for modifications or assistive devices, **the board** will consider:

- a. the tasks or activities to be performed;
- b. the worker's functional abilities;
- c. any non-work-related injury, handicap, or condition a worker may have;
- d. any modification or device necessary for the performance of job tasks or activities, and
- e. other factors in the work environment that affect the worker's ability to perform the job duties.

8. Costs of modifications and/or assistive devices

In cases where it is determined that **the board** will cover accommodations, this will include the purchase, installation and maintenance costs, and may also include the costs for repair or replacement of appropriate modifications and assistive devices, as necessary. The modifications or assistive devices remain the property of **the board** and may be recovered from the premises of the employer.

9. Conclusion of an early and safe return to work plan

An ESRTW plan is concluded by **the board**, with input from the Case Management Team, based on the following factors:

- a. the goals of return to work have been achieved as evidenced by progress reporting, evaluation, testing results and medical evidence validating that the worker is fit for **employment held at time of the work-related injury**;
- b. the worker is not going to benefit from continued return to work services as determined by the Case Management Team;
- c. the worker has reached medical maximum improvement but has not reached the goals of return to work (e.g. **employment held at time of the work-related injury** or earnings **at the time of the work-related injury**);
- d. the worker fails to co-operate with and/or abandons the ESRTW plan;
- e. the worker refuses to accept suitable employment;



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- f. the worker's choice to relocate to a place which significantly limits the ability of the board to continue with the provisions of the return to work plan; or
- g. the worker voluntarily ends employment or is terminated for just cause.

The conclusion of the ESRTW plan may lead to further steps in the compensation process, such as:

- h. employment readiness;
- i. determining suitable employment and earning capacity;
- j. vocational rehabilitation, where appropriate; or
- k. relocation.

Related Policies

[RE-02-2 Duty to Co-operate, Part 2 of 4: Roles and Responsibilities](#)

[RE-02-3 Duty to Co-operate, Part 3 of 4: Functional Abilities](#)
