

 Yukon Workers' Compensation Health and Safety Board	Part:	Return to Work and Rehabilitation		
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MITIGATION OF LOSS

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

The *Workers Compensation Act* S.Y. 2008 (the “Act”) is administered by the Yukon Workers’ Compensation Health and Safety Board (YWCHSB) and provides an employer-funded system of no-fault insurance to workers in return for giving up their right to sue their employer in the event of a work-related injury. The intent of the *Act* is to ensure that workers receive rehabilitation and other benefits that are necessary to assist in their recovery and return to work. As an integral part of the recovery and return to work team, injured workers are responsible to co-operate and participate with maximum effort, that is, to mitigate their loss as a result of the work-related injury.

PURPOSE

The purpose of this policy is to:

- a) explain a worker’s legislated responsibilities under the *Act* to reduce or eliminate any work-related impairment and/or loss of earnings to the greatest extent possible, and to act in a manner that is consistent with recovery and early and safe return to work; and
- b) provide direction that will assist workers, who are failing to mitigate their loss, to meet their legislated responsibilities.

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 representatives of the injured worker¹ (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. Personal Health Care Factor:** A personal health care factor is one which has an impact on the recovery and return to work of the worker and which the worker is in a position to influence in a positive way through altering some aspect of their personal behavior. Examples would include a worker requiring and agreeing to surgery, but who is not participating in medical rehabilitation or who refuses to take the doctor's advice concerning recovery.

PREVENTION

An injured worker shares the responsibility for identifying and reducing factors which increase the risk of further harm or secondary injury (see YWCHSB policy EN-10, "Subsequent Disorders or Conditions Resulting from a Work-related Injury") during recovery or return to work following a work-related injury. YWCHSB will work in co-operation with the worker, employer, health care providers and other members of the Case Management Team (for a full description of the team, see YWCHSB policy RE-01, "Return to Work – Overview") to facilitate recovery and prevent secondary conditions including, but not limited to, depression, chronic pain, long term disability. Co-operation by the worker is key to the worker's recovery from the work-related injury and the prevention of further work-related injuries.

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.

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

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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.

Section 14 of the *Act* requires an injured worker to take all reasonable steps to:

- a) reduce or eliminate any impairment and loss of earnings resulting from a work-related injury;
- b) seek out and co-operate in any health care assistance or treatment that, in the opinion of YWCHSB, promotes recovery and return to work;
- c) submit to medical and other examinations as required;
- d) maintain level of functioning;
- e) take all reasonable steps to provide to YWCHSB full and accurate information on any relevant matter; and
- f) notify YWCHSB immediately of a change in circumstances that may affect entitlement to compensation.

If a worker fails to comply with this section, it will negatively impact the worker's recovery and/or return to work; therefore, YWCHSB will make every effort to assist the worker to meet their obligations. Where a worker fails to mitigate their loss as a result of a work-related injury, YWCHSB will take further action including suspension, reduction or termination of a worker's compensation benefits.

1. Worker's Responsibilities to Mitigate Loss

A worker is responsible for taking all reasonable steps to reduce or eliminate any impairment and/or loss of earnings resulting from a work-related injury and seek out and co-operate in any treatment and rehabilitation that, in the opinion of YWCHSB, promotes the worker's recovery and early and safe return to work.

a) Treatment and Rehabilitation

The worker's involvement in their own healing, recovery and treatment is pivotal as they are in the best position to ensure compliance with proper, effective and appropriate treatment. A worker can assist in the healing and

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recovery process by participating with maximum effort, co-operating with health care providers and YWCHSB and acting in a manner conducive to lessening the effects of the injuries sustained. In this light, a worker has a duty to:

- i) undergo appropriate medical, surgical, or other therapeutic treatment that is considered necessary for the worker's recovery and return to work;
- ii) immediately communicate any concerns regarding treatment, recovery or return to work with YWCHSB; and
- iii) participate actively in the rehabilitation process (e.g. following home exercise programs, asking questions of health care providers, give maximum effort, disclose all relevant information) and fulfill the requirements of the return to work or vocational rehabilitation plan (Early and Safe Return to Work Plan or Vocational Rehabilitation Plan).

b) Injurious Practices

One of the objects of the workers' compensation system is to assist workers to overcome the effects of work-related injuries. The activities and actions of the worker can either inhibit or enhance this process; it is in the best interest of the worker to act in a manner that enhances recovery and healing. Given the importance of a worker's efforts in recovery, the *Act* sets out that a worker has a duty to:

- i) co-operate without delay in seeking and attending health care treatment appropriate for the work-related injury;
- ii) refrain from any activity or condition which is likely to directly impede recovery and/or the ability to work following a work-related injury;
- iii) attempt to eliminate or reduce negative personal health care factors where not dealing with the factors is likely injurious to recovery from the work-related injury and return to work; and
- iv) refrain from treatments that YWCHSB considers experimental, unproven or inappropriate for the worker, or which may cause increased impairment or prolonged and/or increased loss of earning capacity.

c) Medical Examinations

Medical examinations are a critical component in developing the appropriate treatment plan for an injured worker's recovery and return to work. Workers are required to attend and fully participate in medical examinations unless they have a legitimate reason for not attending/participating in the examination, as determined by YWCHSB.

Medical examinations include:

- i) consultations with family physicians, medical consultants, or specialists;
- ii) appointments with health care providers for assessments to plan treatment activities; or
- iii) assessments used by YWCHSB (such as vocational assessments, functional capacity evaluations and the like) to determine the worker's abilities and to plan and carry out return to work and vocational rehabilitation activities.

d) Providing Information

YWCHSB relies on the worker to provide relevant information at any time during the claim cycle. A worker has a duty to provide full and accurate information, as requested by YWCHSB, within three days.

This information includes, but is not limited to:

- information related to a worker's address and contact information;
- the worker's work-related injury;
- pre and post injury earnings information; and
- Canada Pension Plan disability benefits and information regarding retirement of the worker.

In addition, the worker has a duty to provide information on relevant pre-existing medical conditions that may negatively impact recovery and return to work. The three-day limit applies from when the worker knows or ought reasonably to have known about the potential negative impact of a relevant pre-existing medical condition. If a worker is in doubt whether information needs to be reported, the worker should immediately contact YWCHSB for clarification.

Further, a worker must notify YWCHSB within three days of any change in circumstance that affects or may affect the worker's claim for compensation including, but not limited to, changes in:

- i) health condition;
- ii) fitness for return to work;
- iii) employment income;
- iv) receipt of other income or governmental benefits; and/or
- v) address and contact information (including bank information if the worker is receiving compensation benefits via direct deposit).

Failure to advise YWCHSB of changes in address, contact information and/or banking information, if applicable, may result in a worker's benefits being reduced, suspended or terminated.

2. Consequences of a Worker's Failure to Mitigate

The worker is in control of many key activities in the recovery process such as attending medical examinations, attending appointments, updating YWCHSB with relevant and timely information regarding the claim, and not participating in injurious activities.

When an injured worker fails to comply with any of the requirements of section 14 of the *Act*, YWCHSB will ask the worker to provide a reason. Based on this information, YWCHSB will decide if, there is a legitimate reason for the failure to comply. If there is no legitimate reason, YWCHSB may take appropriate corrective action, ranging from providing the worker with the opportunity to comply to termination of benefits.

YWCHSB will consider the reasons and explanation of the worker in good faith before deciding to suspend, reduce, or terminate the worker's loss of earnings benefits.

YWCHSB may consider such reasons to be justifiable if an unexpected and unforeseen event arises such as:

- a) compelling personal reasons (such as a personal or family medical emergency) requiring the injured worker's immediate attention and response; or
- b) transportation difficulty that is beyond the control of the injured worker and for which there is evidence that a reasonable attempt was made to secure an alternate means of transportation; or

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- c) some other emergency requiring the worker's immediate attention.

In reducing, suspending or terminating loss of earnings benefits, YWCHSB has discretionary authority and will consider the:

- a) significance of the failure to co-operate, attend treatments, or otherwise comply with section 14 in terms of the worker's ability to recover and return to work;
- b) ability to reschedule the treatment or appointment in a timely way;
- c) attendance and participation record of the injured worker; and
- d) explanation of the worker for failing to comply with section 14 of the *Act* (for example, any lack of diligence or insincerity on the worker's part).

The decision to suspend or reduce a worker's loss of earnings benefits will be in writing and will include the conditions under which benefits will be reinstated. The decision to terminate a worker's benefits will be in writing.

3. Resuming Payments

If compensation has been reduced or suspended because of a worker's actions, payment may be resumed when the reason for the reduction or suspension no longer applies, in which case the payment resumes from the date the reason no longer applies.

When a worker's loss of earnings benefits have been terminated (due to the seriousness of the worker's failure to mitigate loss and/or as a last resort to gain compliance following education, reduction and/or suspension of loss of earnings benefits) payments will not be reinstated at any point in the future with respect to the work-related injury at the time of non-compliance.

APPLICATION

This policy applies to all injured workers in receipt of loss of earnings benefits on or after July 1, 2008, regardless of the date of injury.

This policy applies to the Board of Directors, President/CEO and staff of YWCHSB and to the Workers' Compensation Appeal Tribunal; and all workers and employers covered by the *Act*.

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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 unfair or unintended result, YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB policy EN-2, "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 the YWCHSB, in accordance with section 52 of the *Act*.

ACT REFERENCES

Sections 14, 40, 41, 42, 52 and 54

POLICY REFERENCES

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

EN-10, "Subsequent Disorders or Conditions Resulting from a Work-related Injury"

RE-01, "Return to Work – Overview"

HISTORY

RE-03, "Mitigation of Loss", effective January 1, 2010; revoked July 1, 2012.

RE-03, "Mitigation of Loss", effective July 1, 2008; revoked January 1, 2010.

CL-30, "Suspension, Reduction and Termination of Compensation", effective May 10, 1994, revoked July 1, 2008.

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