



Policy Amendment Proposal

RE-03 Mitigation of Loss

This policy amendment proposal relating to mitigation of loss 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 Mitigation of Loss 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 a worker's responsibilities to reduce or eliminate any impairment and loss of earning capacity that results from a work-related injury to the greatest extent possible.

Relevant sections of the Act

The following sections of the Act are relevant:

- 91 duty to mitigate

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-03 Mitigation of Loss](#)



Policy Amendment Proposal RE-03 Mitigation of Loss

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



Policy Amendment Proposal RE-03 Mitigation of Loss

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 a worker's responsibilities to reduce or eliminate any impairment and loss of earning capacity that results from a work-related injury to the greatest extent possible.

Definitions

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.

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.

personal health care factor means a factor 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 behaviour. Examples include a worker requiring and



Policy Amendment Proposal RE-03 Mitigation of Loss

agreeing to surgery, but who is not participating in medical rehabilitation or who refuses to take the doctor's advice concerning recovery

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

Every worker must:

- a. take all reasonable steps to reduce or eliminate any impairment and loss of earning capacity that results from a work-related injury;
- b. seek out and co-operate in any health care assistance or treatment that, in the opinion of the board, promotes the worker's recovery or return to work;
- c. if required by the board, submit to a medical or other health care examination, independent medical examination or other evaluation;
- d. take all reasonable steps to provide the board with any health information and other information that the board requires for the purposes of the Act; and
- e. notify the board immediately of any change in circumstance that affects or may affect the worker's initial or continuing entitlement to compensation.

The board may refuse to determine a worker's claim for compensation, or may suspend, reduce or terminate compensation to a worker, if the worker fails to comply with these requirements.

The board will encourage 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.

If a worker fails to comply with section 91 of the Act, it will negatively impact the worker's recovery and return to work; therefore, the board 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, the board will take further action including suspension, reduction or termination of a worker's compensation benefits.



Policy Amendment Proposal

RE-03 Mitigation of Loss

2. Worker's responsibilities to mitigate loss

A worker is responsible for taking all reasonable steps to reduce or eliminate any impairment and 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 **the board**, promotes the worker's recovery and early and safe return to work.

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

- a. undergo appropriate medical, surgical, or other therapeutic treatment that is considered necessary for the worker's recovery and return to work;
- b. immediately communicate any concerns regarding treatment, recovery or return to work with **the board**; and
- c. 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).

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, a worker has a duty to:

- a. co-operate without delay in seeking and attending health care treatment appropriate for the work-related injury;
- b. refrain from any activity or condition which is likely to directly impede recovery and the ability to work following a work-related injury;
- c. 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



Policy Amendment Proposal

RE-03 Mitigation of Loss

- d. refrain from treatments that **the board** considers experimental, unproven or inappropriate for the worker, or which may cause increased impairment or prolonged or increased loss of earning capacity.

Medical examinations

Medical examinations are a critical component in developing the appropriate treatment plan for a 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 **the board**.

Medical examinations include:

- a. consultations with family physicians, medical consultants, or specialists;
- b. appointments with health care providers for assessments to plan treatment activities; or
- c. assessments used by **the board** (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.

Providing information

The board 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 **the board**, within three days.

This information includes, but is not limited to:

- a. information related to a worker's address and contact information;
- b. the worker's work-related injury;
- c. pre and post injury earnings information; and
- d. 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 **the board** for clarification.



Policy Amendment Proposal

RE-03 Mitigation of Loss

Further, a worker must notify **the board** 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:

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

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

3. 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 **the board** with relevant and timely information regarding the claim, and not participating in injurious activities.

When a worker fails to comply with any of the requirements of section 91 of the Act, **the board** will ask the worker to provide a reason. Based on this information, **the board** will decide if there is a legitimate reason for the failure to comply. If there is no legitimate reason, **the board** may take appropriate corrective action, ranging from providing the worker with the opportunity to comply to the termination of benefits.

The board 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.

The board 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 worker's immediate attention and response; or
- b. transportation difficulty that is beyond the control of the worker and for which there is evidence that a reasonable attempt was made to secure an alternate means of transportation; or
- c. some other emergency requiring the worker's immediate attention.



Policy Amendment Proposal

RE-03 Mitigation of Loss

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

- d. significance of the failure to co-operate, attend treatments, or otherwise comply with section **91** in terms of the worker's ability to recover and return to work;
- e. ability to reschedule the treatment or appointment in a timely way;
- f. attendance and participation record of the worker; and
- g. explanation of the worker for failing to comply with section **91** 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.

4. 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.