

 Yukon Workers' Compensation Health and Safety Board	<b>Part:</b>	<b>Return to Work and Rehabilitation</b>		
	<b>Board Approval:</b>		<b>Effective Date:</b>	<b>July 1, 2012</b>
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## **RE-EMPLOYMENT PROVISIONS OF COLLECTIVE AGREEMENTS**

***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 the 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.***

**This policy applies to employers who regularly employ 20 or more workers.**

### **GENERAL INFORMATION**

Return to work is a proactive approach to helping injured workers return to safe and productive work activities as soon as it is physically possible. It is a partnership involving employers, workers, health care providers, unions (where applicable) and the Yukon Workers' Compensation Health and Safety Board (YWCHSB). Section 41 of the *Workers' Compensation Act*, S.Y. 2008 (the "Act") sets out a new re-employment obligation that applies to certain employers. An employer who regularly employs 20 or more workers is obligated to re-employ an injured worker if that injured worker has been employed continuously with that employer for at least one year prior to the work-related injury, in accordance with the various provisions set out in section 41. These provisions apply to injuries occurring on or after January 1, 2011.

### **PURPOSE**

This policy provides direction to employers and assists workers in understanding their obligations and role in the re-employment process.

This policy addresses how collective agreements work in conjunction with the section 41 re-employment provisions of the *Act*.

## DEFINITIONS

1. **Employer:** means an employer as defined by the *Act* and for purposes of this policy, who is also subject to the re-employment provisions of section 41 of the *Act* because the employer:
  - a) regularly employs 20 or more workers; and
  - b) is an employer of a worker who has been employed continuously with that employer for at least one year prior to the work-related injury.

See YWCHSB policy RE-04, “Employer’s Obligation to Re-employ - Overview” in determining when an employer and a worker are subject to the re-employment provisions of section 41 of the *Act*.

2. **Worker:** means a worker as defined by the *Act* who has been unable to work as a result of a work-related injury and who is also subject to the re-employment provisions of section 41 of the *Act*, because the worker had been employed in a continuous employment relationship for at least one year with the employer, on the date of the work-related injury.

See YWCHSB policy RE-04, “Employer’s Obligation to Re-employ - Overview” in determining when an employer and a worker are subject to the re-employment provisions of section 41 of the *Act*.

## PREVENTION

Preventing work-related 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.

Prevention of recurrences and further injuries once workers have returned to work is of utmost importance.

## POLICY STATEMENT

When a worker is covered by the re-employment provisions of both a collective agreement and the *Act*, the provisions of the *Act* shall be applied, except where the workplace parties, in consultation with the bargaining agent or union representative, as the case may be, determine that the provisions of the collective agreement give the worker greater rights.

In such cases, the provisions of the collective agreement shall prevail and the workplace parties shall notify YWCHSB in writing of this finding as soon as possible.

## Seniority Provisions

Section 41(17) of the *Act* states:

*Section (16) shall not operate to displace the seniority provisions of a collective agreement.*

This section of the *Act* means that the re-employment provisions under the *Act* as it relates to the worker's return to work, do not displace the seniority provisions of the collective agreement. The application of the re-employment obligation is subject to the level of accumulated seniority in relation to co-workers, and the specific seniority provisions of the collective agreement.

## **ROLES AND RESPONSIBILITIES**

### **YWCHSB**

Yukon Workers' Compensation Health and Safety Board is responsible for communicating the requirements of the re-employment obligation to the worker and the employer and for ensuring compliance in accordance with the legislation and YWCHSB policies.

The relevant provisions of a collective agreement, if applicable in the circumstances, should be taken into consideration.

YWCHSB is responsible for assisting the workplace parties, giving advice and direction as required, and where necessary interpreting the collective agreement provisions of the *Act* in relation to collective agreement provisions.

### **The Employer**

The employer is responsible for offering to re-employ workers in accordance with the relevant provisions of the *Act*, and YWCHSB policies.

The relevant provisions of a collective agreement, if applicable in the circumstances, should be taken into consideration.

Employers are also responsible for accommodating the work or the workplace for the worker in order to support the re-employment of the worker.

### **The Worker**

The worker is responsible for mitigating the loss caused by a work-related injury by taking all reasonable steps to reduce or eliminate any impairment and loss of earnings resulting from a work-related injury. This includes accepting offers of re-employment made by employers in accordance with the relevant provisions of the *Act* and YWCHSB

policies and cooperating with efforts taken to accommodate the work or the workplace in order to facilitate re-employment.

The relevant provisions of a collective agreement, if applicable in the circumstances, should be taken into consideration.

### **Bargaining Agent**

The bargaining agent, as a party to a collective agreement, facilitates and encourages re-employment efforts of the workplace parties, including accommodation of the work or the workplace, in order to facilitate re-employment, of the worker in accordance with the terms and conditions of the *Act* and YWCHSB policies.

The relevant provisions of a collective agreement, if applicable in the circumstances, should be taken into consideration.

### **APPLICATION**

This policy applies to the Board of Directors, President/CEO and staff of YWCHSB and to the Workers' Compensation Appeal Tribunal; employers who have a re-employment obligation under section 41 of the *Act* and workers of these employers. It applies to work-related injuries that occurred on or after January 1, 2011.

### **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 an unfair or an unintended result, YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB policy EN-02, "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 section 53(1) of the *Act*, or any decision made under section 14(2) of the *Act* may be appealed directly to the Workers' Compensation Appeal Tribunal.

A notice of appeal must be filed within 24 months of the date of the decision by YWCHSB, in accordance with section 52 of the *Act*.

### **ACT REFERENCES**

Preamble and sections 14, 40, 41, 52, 85

**POLICY REFERENCES**

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

RE-01 to RE-13, Return to Work and Rehabilitation Policies

**HISTORY**

RE-08, "Re-employment Provisions of Collective Agreements" effective January 1, 2011; revoked July 1, 2012