

**Operational
Policy**

Section
Return To Work (RTW)

Subject
RTW Overview and Key Concepts

Policy

The return-to-work (RTW) process consists of a series of activities and services which generally start as soon as the injury employer learns that a worker has suffered a work-related injury/disease, and are adjusted as required throughout the recovery and impairment period.

The WSIB proactively supports the workplace parties in the RTW process and provides early support and services where recovery and RTW barriers occur.

The policies listed below provide an integrated set of guidelines for the RTW process that are consistent with the provisions of the *Workplace Safety and Insurance Act, 1997* and the applicable human rights legislation.

- 19-02-07, RTW Overview and Key Concepts
- 19-02-08, RTW Co-operation Obligations
- 19-02-09, Re-employment Obligations
- 19-02-10, RTW Assessments and Plans
- 19-05-02, Re-employment Obligations in the Construction Industry - Threshold, Duration and Specific Employer Requirements
- 19-05-03, Compliance with the Re-employment Obligations - Construction Industry
- 19-05-04, Re-employment Penalties and Payments - Construction Industry

Principles

The following key principles guide the RTW process:

- Appropriate and early RTW that maintains the dignity and productivity of a worker plays an important role in the worker's rehabilitation and recovery.
- Where recovery and RTW barriers occur, they must be addressed through early support and services.
- A worker's prospects for successful RTW in both the short and long term are often best achieved by maximizing opportunities for return to work with the injury employer, including retraining for a new job with that employer.
- A worker should be offered programs that are of a high quality and practical, and the WSIB will provide the worker with meaningful input and choice in relation to the programs offered.

Purpose

The purpose of this policy is to provide an overview of the RTW process, and provide guidance on some of the key concepts underlying the RTW process.

Guidelines

RTW Overview

Eligibility for RTW services

Workers may be eligible for RTW services when they are unable to return to their pre-injury job or require accommodations to return to their pre-injury job, due to their work-related injury/disease. This includes workers who do not lose any time from work but are performing accommodated work, and workers who incur lost time long after the date of injury, such as occupational disease cases, disablements, or recurrences.

RTW goal

Every effort should be made to enable a worker's return to their pre-injury job (with or without accommodation). However, when that is not possible, priority should generally be given to other suitable RTW opportunities with the injury employer before consideration is given to new employment in the local or broader labour market.

The WSIB and the workplace parties (injury employer and worker) should strive to return the worker to a job that:

- they have the skills to perform (e.g., worker has appropriate level of computer literacy, language proficiency)
- is safe, productive, and consistent with their functional abilities (i.e., worker's physical/cognitive capabilities), and
- restores their pre-injury earnings to the extent possible.

The RTW opportunity selected for the worker must take into account any required accommodations, and may be adjusted as required throughout the worker's recovery and impairment period.

Roles of the WSIB and workplace parties

The workplace parties are primarily responsible for planning the worker's RTW, identifying RTW opportunities, and identifying RTW issues in the workplace (e.g., barriers to accommodations).

The workplace parties have a duty to co-operate throughout the RTW process, see 19-02-08, RTW Co-operation Obligations. Injury employers must also comply with their re-employment obligations as applicable, see 19-02-09, Re-employment Obligations, and 19-05-02, Re-employment Obligations in the Construction Industry - Threshold, Duration and Specific Employer Requirements.

The WSIB's role is to support the workplace parties by providing health recovery support, education and advice, case management, accommodation assistance, dispute resolution, and ensuring compliance with co-operation obligations and re-employment obligations, if any.

RTW assessments and plans

If there are challenges that impact the worker's return to work that the workplace parties cannot resolve on their own, the WSIB conducts a RTW assessment.

The RTW assessment is initially used to determine if the worker is, or will be, medically able to return to their pre-injury job (with or without accommodation) or to a new job.

Following the RTW assessment, if necessary, the WSIB develops a RTW plan that outlines the assistance and services the worker requires to enable their return to work.

The WSIB conducts the RTW assessment and develops the RTW plan in collaboration with the workplace parties/authorized representatives and, where necessary, the worker's treating health professional.

Key RTW concepts

The following key concepts appear throughout the RTW policy suite.

Determining a worker's ability to return to work

The worker's ability to return to work can be determined based on the workplace parties' exchange of relevant information regarding the worker's functional abilities, or through a decision by the WSIB, either on its own initiative or by request of either workplace party.

In some cases the workplace parties are unsure or unable to agree on whether the worker can return to some form of work. Either party can contact the WSIB, and the WSIB will:

- assist them to reach consensus on the issue, or
- make a determination as to the worker's ability to return to work, and
- promptly give the workplace parties written notice of the determination.

To determine whether the worker can return to work, the worker's functional abilities and limitations are compared to the demands of the particular job. Since the nature of the worker's impairment can change over time, the workplace parties and the WSIB monitor the worker's functional abilities to ensure that appropriate RTW activities occur at appropriate times.

Workers must notify the WSIB and the injury employer if their functional abilities change to ensure that appropriate RTW activities occur at appropriate times. This includes the employer attempting to provide suitable work that is available or, if appropriate, arranging a return to the essential duties of their pre-injury job. For more information about the obligation, see 22-01-02, Material Change in Circumstances – Worker and 19-02-08, RTW Co-operation Obligations.

Functional abilities form (FAF)

The workplace parties can obtain written functional abilities information by using the WSIB's Functional Abilities Form for Planning Early and Safe Return to Work (FAF). The workplace parties may use a FAF to help determine a worker's ability to return to work, to identify suitable work that is consistent with the worker's functional abilities, and to identify work and/or workplace accommodation(s) that can be provided to enable or enhance certain abilities or mitigate limitations. While the FAF does not contain clinical or diagnostic information, its purpose is to highlight the worker's functional abilities and limitations.

When filing a claim for accidents on or after January 1, 1998 (including no lost time claims), the worker must give consent for their treating health care professional to disclose their functional abilities information to the injury employer to assist in RTW. See 15-01-03, Workers' Requirement to Claim and Consent.

Requesting a FAF

Upon request from the injury employer or worker, the treating health professional must complete the FAF and provide it to the workplace parties and the WSIB in a timely manner.

In some cases, more than one health professional may treat a worker (e.g., a general practitioner and a physiotherapist, two specialists). If the workplace parties believe that each health professional can provide useful functional abilities information, then each health professional may complete a separate FAF.

Payment for FAF

The WSIB pays for the completion of the FAF, and does not limit the number of times a FAF is completed over the course of the worker's recovery. Health professionals are not permitted to charge workers for completion of the form. The payment is shown on the injury employer's accident cost statement.

The WSIB also pays for a completed FAF in claims that are pending or that are subsequently rejected. For more information, see 17-02-03, Payment of Clinical Assessments/Reports Requested for Adjudication.

If the treating health professional is employed by the injury employer, the employer must pay the costs for completing the form directly.

Using a form created by a workplace party

Workplace parties may decide to create their own form to obtain functional abilities information. If so, the injury employer must obtain a separate consent from the worker (on a non-WSIB form) and is responsible for paying the health professional directly.

Suitable work

Suitable work means post-injury work that is **safe, productive, consistent with the worker's functional abilities**, and that restores the worker's **pre-injury earnings**, to the greatest extent possible.

Safe

The following factors should be considered when determining whether post-injury work is safe:

- The work does not pose a health or safety risk to the worker (e.g., should not cause re-injury or a new injury either physically or psychologically), to co-workers, or to third parties.
- The work is performed at a worksite that is covered by either the *Occupational Health and Safety Act* or the *Canada Labour Code*. If a worksite is not covered under these provisions, the workplace parties must satisfy the WSIB that they have taken appropriate steps to ensure that the workplace is safe (e.g., not-for-profit agency offices and a worker's permanent residence for work at home arrangements), and
- The worker has the functional ability to travel safely to and from the proposed worksite. To determine the worker's ability to travel safely, the following factors should be considered:
 - whether the worker's work-related injury/disease restricts their capability for safe travel, and
 - whether the mode of transportation the worker is required to use to travel to the proposed worksite poses a health or safety risk to them or to the general public.

Workers and injury employers are encouraged to jointly resolve expense issues relating to travel to work wherever possible. The basic premise is that workers should not incur additional travel expenses because the work-related injury/disease temporarily dictates a particular mode of travel.

Productive

Productive work is work that consists of work tasks that provide an objective benefit to the injury employer's business, and are performed for the worker's entire work shift.

The general type of work tasks that can be expected to provide an objective benefit to the injury employer's business include, but are not limited to, tasks that:

- form part of the injury employer's regular business operation
- permit the worker to acquire new job skills
- generate revenue (aside from reducing WSIB costs), or
- increase business efficiency or lead to business improvements.

The term "work" is used broadly and may include the combining of tasks/duties that together may constitute temporary work, as well as short-term training programs that lead to a job with the injury employer.

Consistent with the worker's functional abilities

A job is considered consistent with the worker's functional abilities when the tasks and/or duties associated with the job can be performed within the reported physical/cognitive capabilities of the worker. Cognitive capabilities refer to a worker's mental alertness, reasoning, judgement or short-term memory - all of which may be impaired because of the work-related injury/disease, or because of medication used to treat the work-related injury/disease.

Restores the worker's pre-injury earnings

The worker's pre-injury earnings may refer to either the worker's average earnings at the time of the injury, or any appropriate recalculation of those earnings. For more information, see 18-02-01, Overview.

Available work as it relates to the employer

Available work is work that exists with the injury employer at the pre-injury worksite, or at another worksite arranged by the employer.

The factors the WSIB examines to determine if suitable work is "available" at the pre-injury worksite, or at another worksite, include but are not limited to:

- whether a job vacancy has been posted, advertised or otherwise communicated, or
- evidence of hirings or transfers that occur on or after the date the worker is fit for suitable work.

In addition, when determining whether existing suitable work is available when offered at a worksite location that is not the pre-injury worksite, the WSIB considers factors, such as, whether:

- the distance to travel to an alternate worksite location is reasonable, taking into account both the mode(s) of travel available to the worker and the amount of travel that was required before the injury
- the worker's injury restricts their capability to travel safely, and
- the job offered at an alternate worksite is more suitable than work available at the pre-injury worksite.

When determining if suitable work is available in a unionized environment, the WSIB strives to respect the terms of the collective agreement whenever possible. In certain circumstances, the WSIB may determine that to meet their obligations, the workplace parties may need to adapt or modify the operation of specific provisions of the collective agreement.

Accommodation

An accommodation can be a modification to the terms and conditions of the work or the workplace (e.g., reduced hours, provision of assistive devices) that results in a job that is consistent with the worker's functional abilities.

Accommodation is an individualized process and fact dependent, taking into account the nature of the work/workplace, the worker's abilities and limitations, and the essential duties and requirements of the worker's pre-injury job and other jobs with the injury employer.

Duty to accommodate

During the RTW process, employers and, when relevant, unions and workers are expected to comply with the *Ontario Human Rights Code*, and for federally regulated employers, the *Canadian Human Rights Act*.

Injury employers with co-operation and re-employment obligations (if applicable) have a duty to modify the work to accommodate the needs of the worker to the extent of undue hardship. If the injury employer has control of the workplace, they also have a duty to modify the workplace as required by the worker, to the extent of undue hardship.

If a worker can perform the essential duties of their pre-injury job with accommodation, or if a job becomes available that can be made suitable through accommodation, and the accommodation does not cause the injury employer undue hardship, the employer must provide the accommodation to allow the worker to remain at or return to work. A worker's accommodation requirements may be temporary or permanent.

During the co-operation and re-employment obligation periods, injury employers may have accommodation requirements beyond the work-related injury/disease. Human rights legislation protects workers from discrimination on a number of grounds including disability, sex (pregnancy, gender identity), creed, ethnicity, family status and age.

Undue hardship

When determining what constitutes undue hardship, the *Ontario Human Rights Code* provides that consideration is given to:

- the cost of accommodation
- the health and safety needs of employees and/or customers, and
- any outside sources of funding that may be available to the injury employer.

If the injury employer believes that accommodating a worker would result in undue hardship, the employer is expected to provide supporting evidence to demonstrate this (e.g., a cost-benefit analysis that includes the long-term financial impact if the claimed undue hardship is financial).

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If the WSIB determines that a proposed accommodation would create undue hardship, the injury employer is not required to provide that accommodation. However, the injury employer is required to consider if there are other options that would accommodate the worker without undue hardship.

WSIB financial support for accommodation

In cases where the expense to accommodate the work or the workplace will result in undue hardship for an injury employer, the WSIB will consider paying for a portion or the entire cost of the accommodation. The WSIB will provide financial support if this allows the worker to return to their pre-injury job or a permanent suitable job within the worker's abilities, and restores the worker's pre-injury earnings to the greatest extent possible.

Application date

This policy applies to all decisions made on or after November 30, 2020.

Policy review schedule

This policy will be reviewed within five years of the application date.

Document history

This is a new document.

This document replaces 19-02-01 dated December 1, 2012, and 19-02-04 dated January 2, 2015.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 21, 22(5), 23, 33, 37, 40, 41, 42, 43, 44, 77, 86, 159(2)(h)

O. Reg. 35/08

O. Reg. 456/97

Canadian Human Rights Act, R.S.C., 1985, c. H-6

Human Rights Code, R.S.O. 1990, c. H.19

Minute

Administrative
#1, October 22, 2020, Page 578