

POLICY NUMBER: POL-93

Summary of Proposed Amendments

An amendment to the policy, Return to Work (POL-93), is proposed in section 7 to increase the amount of wage loss benefits payable to worker who is able to participate in an ease back to work, but this is not available.

*The proposed amendment is indicated in the policy document below. New content is **bolded** and content to be deleted is shown with a ~~strikethrough~~.*

Chapter:

CLAIMS

Subject:

RETURN TO WORK

Effective Date:

November 27, 2002

Last Update:

~~January 10, 2019~~ **DRAFT January 24, 2019**

PURPOSE STATEMENT:

The purpose of this policy is to describe Workers Compensation Board support for return to work and to explain the responsibilities in assisting a worker in returning to work following a workplace injury.

REFERENCE:

Workers Compensation Act R.S.P.E.I. 1988 Cap. W-7.1, Section 2.1(2), 86, 86.1 - 86.12
Workers Compensation Board Policy, POL-03, Travel and Related Expenses
Workers Compensation Board Policy, POL-76, Responsibilities of Recovering Workers
Workers Compensation Board Policy, POL-86, Wage Loss Benefits

DEFINITION:

In this policy:

“Accident” means a chance event occasioned by a physical or natural cause that causes personal injury to a worker. This includes a wilful and intentional act that is not the act of the worker, any event arising out of and in the course of employment, or thing that is done and the doing of which arises out of and in the course of employment, and an occupational disease. Stress is included only when it is an acute reaction to a traumatic event arising out of and in the course of employment.

“Alternative employment” means employment that is comparable, as determined by the Workers Compensation Board, to the worker’s pre-injury work in nature, earnings, qualifications, opportunities and other respects.

“Average earnings” means the daily, weekly, monthly, or regular remuneration the worker was receiving at the time of the accident or any consecutive twelve month period during the two years preceding the date of accident, whichever, in the opinion of the Workers Compensation Board best represents the worker’s loss of earning capacity. This includes any remuneration the worker received as a result of the employment and Employment Insurance.

“Regularly employ” means the number of workers employed by the employer on the day of the accident.

“Return to work” means modified duties, alternate duties or tasks, or ease back, including approved employer-initiated ease backs. Return to work includes transition from light, alternative or modified duties and modified or alternative work.

“Suitable work” means work that a worker has the necessary skills to perform and is medically able to perform, and that does not pose health or safety hazards to the worker or co-workers, as determined by the Workers Compensation Board.

“Undue hardship” means a situation that creates onerous conditions for an employer such as, intolerable financial costs, serious disruption to business or health and safety risks. The onus of proof for a claim of undue hardship is the responsibility of the employer.

POLICY:

1. The Workers Compensation Board is committed to assisting workers with safe and timely return to work as an important component of recovery after a workplace injury.

Return to Work

2. If a workplace injury prevents a worker from performing regular job duties or regular work schedule, the Workers Compensation Board will work with the worker, employer and health care provider(s) to facilitate a stay at work or return to work plan based on the worker's functional abilities. Return to work plans include modified or alternate duties and ease back to work; modified or alternate duties may be components of an ease back to work. Stay at work can be achieved through early intervention with a stay at work plan, if required.

Modified or Alternate Duties

3. Modified duties allow a worker to work with some modifications to the pre-injury job. Alternate duties are suitable duties that are different from pre-injury work duties. Modified or alternate duties must match a worker's functional abilities based on objective medical evidence. Hours of work may vary depending on the availability of appropriate, meaningful tasks and the worker's skills and abilities.

Ease Back

4. An ease back to work allows a worker to gradually return to pre-injury work, while building their strength and tolerance for work. Work hours and duties may be modified to match a worker's functional abilities. The objective is to allow a steady progression of hours or duties, with the end result being a return to pre-injury job duties and regular work schedule. The worker is extra to the regular staff complement and may continue to receive wage loss benefits from the Workers Compensation Board during the ease back to work.
5. The Workers Compensation Board supports safe and timely employer-initiated return to work plans as part of an employer's established return to work program. The Workers Compensation Board will participate in ongoing monitoring of employer-initiated return to work plans which should include the following components:
 - an active occupational health and safety program in the workplace;
 - fair and equitable procedures in place for the employer's overall return to work program;
 - a documented return to work plan provided to the Workers Compensation Board;
 - adequate resources to administer the return to work plan;
 - appropriate and meaningful work designed to, wherever possible, gradually

return the worker to the pre-injury job or pre-injury work schedule.

Wage Loss Benefits

6. While a worker is participating in a return to work, the employer may pay wages directly to the worker. Workers who are not in receipt of full wages from their employer during a return to work may be entitled to wage loss benefits to compensate for the loss of earning capacity as per Workers Compensation Board policy, POL-86, "Wage Loss Benefits."
7. If objective medical or functional information supports that a worker is able to participate in an ease back to work, but this is not available, the Workers Compensation Board will provide the worker with ~~four~~**eight** weeks of wage loss benefits in lieu of the ease back.

Travel Expenses

8. A worker may be eligible for travel expense reimbursement when participating in a return to work, if the travel costs exceed what the worker would normally incur travelling to and from work, as per Workers Compensation Board policy, POL-03, "Travel and Related Expenses."

Roles and Responsibilities in Return to Work

9. Workers and employers are expected to participate and cooperate in the safe and timely return to work of a worker.

Workers' Responsibilities

10. Workers' responsibilities to co-operate in a safe and timely return to work are set out in Workers Compensation Board policy, POL-76, "Responsibilities of Recovering Workers."

Employers' Responsibilities

11. Employers are required to:
 - contact a worker as soon as possible after an injury occurs and maintain effective communication throughout the period of a worker's recovery;
 - provide suitable work that is available and consistent with a worker's functional

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- abilities, and that, where possible, restores a worker's pre-injury earnings;
- facilitate a return to work plan in which the worker, in many cases, is extra to the regular complement for a period of time; and
- provide the Workers Compensation Board with any information requested in relation to a worker's return to work.

Employers who regularly employ 20 or more workers have additional responsibilities to re-employ injured workers, as described in #16 to #30 of this policy. The construction industry and the employer of a volunteer firefighter are exempt from these additional responsibilities.

Monitoring of Progress

12. During a worker's return to work, the Workers Compensation Board may contact the employer to monitor progress and determine whether:
 - any assistance is required to facilitate the return to work; and
 - the worker and employer are fulfilling their responsibilities.

Dispute Resolution

13. Workers and employers are required to notify the Workers Compensation Board of difficulties or disputes that arise during a return to work.

If there is a dispute between the parties, the Workers Compensation Board shall, through consultation, attempt to resolve the dispute. Where consultation does not result in an agreement, the Workers Compensation Board will decide the matter in dispute.

Non-compliance

14. If a worker refuses or fails to participate in a return to work, benefits may be reduced, suspended or terminated, as per Workers Compensation Board policy, POL-76, "Responsibilities of Recovering Workers."
15. If an employer fails or refuses to fulfil their responsibilities in the return to work of a worker, the Workers Compensation Board may levy a penalty on the employer that may include up to the full amount of any compensation payable to a worker plus any expenditures incurred by the Workers Compensation Board in respect of a worker during the period of non-compliance.

Any penalty payable to the Workers Compensation Board, will be added to the employer's assessment and payment enforced as provided by the *Workers Compensation Act*.

Re-employment Obligations — Duty to Accommodate

16. This section applies only to employers who regularly employ 20 or more workers and who are not part of the construction industry or the employer of a volunteer firefighter. The Workers Compensation Board will identify the construction industry by using the Standard Industrial Classification (SIC) code assigned to employers for assessment purposes.

Employers whose operations are seasonal are included if there are 20 or more workers employed in the majority of the months for the full regular season of operation.

17. Where a worker has been unable to work as a result of an accident and has been employed by the employer, at the date of the injury, for at least 12 continuous months, the employer shall offer a return to work plan and re-employ a worker when the worker is medically able to return to work.
18. Workers employed in seasonal work are eligible for return to work plans and re-employment if they have been employed by a seasonal employer for a full season and called to return to that employer for the next season.
19. The Workers Compensation Board may determine whether an injured worker who has not returned to work with an employer, is medically able to perform the essential duties of the worker's pre-injury employment or suitable work. The Workers Compensation Board may, from time to time, revise this determination.

Medical ability to return to work is determined by examining and weighing all medical and functional evidence.

20. The employer's obligation to offer return to work plans and re-employ a worker begins on the date that objective medical evidence supports that a worker is able to perform the essential duties of the pre-injury job or suitable work.

An employer is obligated until the earlier of:

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- (a) two years after the date of the accident; and
- (b) the date on which the worker attains 65 years of age.

Re-instatement

- 21. When a worker is medically able to perform the essential duties of the pre-injury employment, the employer shall offer to reinstate them in the position that they held on the date of the accident.

Alternative Employment

- 22. Where the Workers Compensation Board is satisfied the employer is unable to reinstate the worker, the employer shall offer alternative employment to the worker.

Suitable Work

- 23. Where a worker is medically able to perform suitable work but is unable to perform the essential duties of the worker's pre-injury employment, the employer shall offer to the worker the first available suitable work with the employer.

Accommodation of Work or the Workplace

- 24. An employer shall accommodate the work or workplace to the needs of a worker who requires accommodation as a result of the injury to the extent that the accommodation does not cause the employer undue hardship. Such accommodations may involve any modification, assistive devices, or combination of these.

Termination of Employer's Obligation

- 25. Where an employer has offered re-employment to a worker and the worker has refused the employer's offer, the employer's obligation to re-employ is ended.

Termination of Worker's Employment

- 26. Where an employer re-employs a worker and terminates the worker's employment within six months of the date the re-employment began, the employer is deemed not to have fulfilled their re-employment obligation unless evidence supports that the termination of the worker's employment was unrelated to the injury.

A worker who was terminated within six months of re-employment will have three months from the date of termination to request in writing that the Workers Compensation Board investigate the alleged non-compliance with the re-employment obligation as stated in Sec. 86.7 of the *Workers Compensation Act*.

Failure to Fulfil Re-employment Obligations

27. If an employer fails to fulfil its re-employment obligations, the Workers Compensation Board may:
- levy a penalty on the employer not exceeding the amount of the worker's net average earnings for the 12 months preceding the beginning of the loss of earning capacity as a result of the accident; and
 - make payments to the worker for a maximum of one year as if the worker were continuing to receive wage loss benefits.

Any penalty payable to the Workers Compensation Board may be added to the employer's assessment and payment enforced as provided by the *Workers Compensation Act*.

If the Workers Compensation Board finds that an employer has failed to meet their obligations, the Workers Compensation Board will inform the employer verbally and in writing of the amount of the re-employment penalty.

Objection to Penalty

28. A re-employment penalty is not suspended if an employer applies for reconsideration and appeal of the decision.

Re-employment and Collective Agreement Conflicts

29. Where a conflict exists between a collective agreement and the re-employment terms of the *Workers Compensation Act*, and the *Workers Compensation Act* gives a worker better re-employment terms, the Act shall prevail over the collective agreement.

HISTORY:

January 10, 2019 – Non-substantive changes to reflect legislative amendments excluding

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employers of volunteer firefighters from re-employment obligations, effective January 1, 2019.

May 31, 2018 – Amended to provide clarification on the support for return to work, entitlement to wage loss benefits and travel expenses, and the responsibilities of injured workers and employers.

July 22, 2010 - Amended to clarify that if the employer is unable to accommodate an ease back program, the Workers Compensation Board will provide 4 weeks of wage loss benefits in lieu of the ease back.

April 27, 2006 - Amended to clarify “alternate employment” and definition of “undue hardship”.

March 27, 2003 - Amended to ensure the definition of “accident” is consistent with the definition provided in the *Workers Compensation Act*.

Board of Directors Approval Date: November 27, 2002
