

Recognizing Time to Heal – Assessing Timely and Safe Return to Work

Purpose

Returning to work before full recovery and as soon as is safe following a work related injury or illness is often in the best interest of all parties involved: the worker, employer, workplace and the Workplace Safety and Insurance system. It is important to recognize that timely return to work does not always mean immediate return to work.

This document serves as a refresher for the decision-maker in assessing the appropriateness of timely and safe return to work.

Principles

- An injured worker’s ability to return to work beginning the day following the accident is to be determined based on an assessment of all relevant information. This includes information from the worker, the employer and the treating health practitioner(s).
- It is recognized that there are cases where “rest” is an appropriate form of treatment and required in order to speed recovery and facilitate a successful return to work. This should be determined based on an assessment of the nature and degree of the injury in each case.
- The decision-maker must be convinced on a balance of probabilities that:
 - (a) the job or duties offered by the employer is/are suitable in that they are within the worker’s physical and/or psychological and vocational capacity to perform and will not pose a safety risk to worker or others or impede the worker’s recovery, and,
 - (b) the job and the job duties have been clearly communicated to the injured worker prior to the worker beginning the job or job duties.
- In assessing the appropriateness of the return to work situation, the decision-maker must have regard for any collateral issues that may pose an obstacle to the worker. This includes such issues as the impact of the injury on the worker’s ability to travel to and from the worksite or the impact of medication on the worker’s capacity to perform work in a safe manner.

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Background

Any claim in which the worker is able to return to work the day following the accident is considered "no lost time". This return may be to regular duties or accommodated or modified work, at no wage loss. No Lost Time claims have minimal impact on an employer's experience rating, and are, therefore, desirable from an employer's point of view. Many mid to large sized employers have information posted in highly visible areas recording the number of days with no lost time claims.

From a worker's perspective, no lost time from work is also desirable. Research has demonstrated that the best recovery occurs in the workplace. Other positive benefits are no interruption in salary or employment benefits and minimal life disruption.

A number of factors over the last two decades have led to a philosophy in support of "no lost time" claims. These include:

- a) medical rehabilitation strategy of the early 1990's*
- b) service delivery model of the late 1990's, increased emphasis on employer education, particularly with the creation of the position of the account manager*
- c) employer incentive programs*
- d) the development of strong return to work programs in medium to large workplaces*
- e) passage of the Workplace Safety and Insurance Act with its emphasis on self-reliance and early and safe return to work and the development of the functional abilities form*
- f) a shift away from rest as being an acceptable form of treatment for soft tissue injuries*

The result has largely been positive. Rather than spending extended periods of time at home and becoming de-conditioned, many workers have had the opportunity to gradually reintegrate into the workplace, even though starting with very limited functional abilities and/or limited hours upon their initial return to work.

On the other hand, it is possible to lose sight of the fact that not everyone can return to work the day following the injury, even if the employer has a return to work program. This can be true even for soft tissue injuries and those injuries considered somewhat minor in nature.

The Impact of an Injury on RTW

Pain

The International Association for the Study of Pain defines pain as an unpleasant sensory and emotional experience associated with actual or potential tissue damage; or described in terms of such damage. Acute pain is a protective process against further damage, usually with a known local cause. Acute pain responds to analgesic, narcotic and/or anti-inflammatory medications (although these may not be indicated in all cases).

We cannot ignore the impact of pain on an individual and on their functional abilities, especially in the early stages of recovery.

A significant and growing proportion of injuries in Ontario are soft tissue injuries. The following is a summary of the soft tissue healing process.

Soft Tissue Injuries – The Healing Process and Recommended Treatment

Following this type of injury, inflammation develops during the first 48 hours and treatment may consist of rest, ice, compression, elevation and medication.

After the first 48 hours, the patient should usually start to mobilize the injury, to prevent unnecessary stiffening and loss of function. This means gently trying to regain the normal range of movement and strength of the affected part, which should be expected to cause some mild pain.

The patient should use common sense and listen to what his/her body is trying to tell him. The patient should not ignore the warning signs of overdoing it, or allow a mild increase in discomfort to put him/her off work. In general, exercises that encourage a good range of movement but avoid large or sudden forces are most suitable.

The patient may be advised to see a medical practitioner for specific advice to facilitate timely

recovery, either because of the severity of the initial injury, or if the recovery appears to be slower than expected.

As outlined earlier, there are cases where “rest” is an appropriate form of treatment, and required in order to speed recovery and facilitate a successful return to work.

Neither the WSIB nor the employer should insist on a return to work too early in these situations. Too early a return to work could cause damage, result in further injury for the worker, and more time away from work.

Medication

There are a number of drugs that may be prescribed to treat injuries. For example, the initial musculoskeletal drugs (under drug formulary 25WS), includes possible medications, all of which are automatically allowable and paid for as long as they relate to the work injury within the first 12 weeks. Some of these require prescriptions, and some are available over the counter.

Many of these medications have side effects that may impact the physical well-being and the behaviour of workers. The impact differs from person to person, based on factors such as individual sensitivity, body weight, and other drugs being taken. The Compendium of Pharmaceutical Specialties (CPS) may be helpful and the nurse case managers or medical consultants are available to assist the decision maker.

Return to work while taking certain medication may be in contravention of the Occupational Health & Safety Act, or local Health & Safety rules. This may not be evident to the employer or the decision-maker at the WSIB and careful questioning around medication is needed prior to developing a return to work plan.

Psychological Issues

Depending on how the injury happened, there may be psychological barriers to return to work. Sometimes an individual may feel concern over returning to work. For example, a worker may feel that his/her employer did not take every precaution possible to prevent injuries in the workplace. The worker may feel that the employer encouraged the use of “shortcuts” or did not pay attention to proper ongoing maintenance and repair of equipment, resulting in his/her accident. In these situations, the worker may be reluctant to return to work prior to a full recovery, particularly if it is perceived in some way as supporting the employer. This barrier may not be immediately evident to the decision-maker without careful questioning.

The injury may have resulted from an accident that was traumatic for the worker. For example, if a worker suffers a severe laceration, he/she may have a fear of returning to the workplace. This type of situation is not uncommon, and was one of the barriers to return to work identified in the in-house WSIB Return to Work education workshops. There is no easy solution and a sensitive approach is needed. Open discussion between the decision-maker and the worker is beneficial. Case conferencing with the nurse case manager and the return to work mediator can assist in the return to work process.

Travel to and from the Worksite

In those cases where a set of precautions have been identified by the health practitioner, the decision-maker must keep in mind issues such as the impact of the worker’s injury on the ability to travel to and from the worksite.

Travel to and from the Worksite

Example A

A worker has a work-related accident in which he fractures his lower right leg. His lower leg is casted past his knee. He cannot drive with the cast.

The employer has a job that would be suitable and within the worker's functional abilities, if the worker could safely get to work. The employer is not prepared to arrange taxi service or provide any other alternate transportation.

Although the employer does have work within the worker's functional abilities, it is not suitable since he is unable to get to work. Loss of earnings benefits would be payable in this case.

Example B

Another example might be an individual who habitually drives an hour or more to work each day, and has a precaution against prolonged sitting. Is the driving going to prolong his recovery? The decision-maker has to review the practicality of measures such as stopping by the road for a stretch break. What road is the person travelling on, and is this safe to do? What time of year is it? If using public transportation, is there the opportunity to sit down if needed, and are there other alternatives?

Example C

The job duties may be suitable but safe access to the worksite is not feasible. Example – The worker has to walk 300-400 yards across rough ground to get to the site of the modified work being offered. Noting the worker cannot reasonably get to the job, the work is not suitable. Another example might be a situation where the parking lot is so far away from the actual worksite that the worker has a significant risk of re-injury because of the amount of walking involved.

Factors to Consider When Determining Ability to Work

There are three primary sources of information that must be considered when assessing a worker's ability to return to work beginning the day following the accident:

- a) health and functional abilities information from treating health practitioner(s),
- b) information from the worker about the workplace and any job offered, and,
- c) information from the employer about the workplace and any job offered.

Treating Health Practitioner(s)

The health practitioner is required under the WSIA to promptly provide the WSIB with information as may be required. This may be done on the Form 8 – Health Professional's Report. Section E – Treatment Plan and Return to Work Information, Section 5 states the following: "Please indicate the patient's status and task limitations in relation to the diagnosis." This provides the option of no limitations, specified limitations, and no return to work.

Return to Work – No Limitations. If there are no task limitations, usually no further information is required from the health practitioner. If the worker, or less commonly the employer, is in disagreement, then further discussion may be needed. Resources such as the medical consultant or the nurse case manager may be called on for assistance as well. The Best Approaches Document, "Weighing of Medical Evidence", available on CONNEX is also a good resource.

Return to Work – Specific Limitations. If there are specified limitations, then information is needed from the worker and employer regarding return to work. It may be that both parties have arrived at an agreement about the work to be performed and the decision-maker does not need to intervene.

In other cases, the situation is not so clear. The document "Adjudicative Advice – Retrospective Return to Work (RTW) Situations" provides some guidance. If there are any outstanding questions about the functional abilities/precautions the employer should contact the WSIB to help clarify the situation.

If the health practitioner (HP) suggests that the worker is to be off work, and provides no rationale/limited information it maybe helpful for the decision-maker to consult with/involve the WSIB nurse case manager or medical consultant. Contact with the HP could assist in clarifying the reasons. The decision-maker should consider the duration of time off work. Is it a situation where 'rest' is a reasonable part of the treatment process? Has the worker been prescribed medication? What is the side effect/s? What is the method of transportation to work? Will he/she be a safety hazard to himself/herself or others?

Information from the Worker

There are a number of questions that can be asked of the worker, including:

- 1) What was their understanding of the direction given by his doctor?
- 2) What is the job being offered by the employer?
- 3) How was the job communicated, for example, verbally or in writing, and by whom?
- 4) Was he/she involved in the process of designing the job? (not necessary but very helpful)
- 5) What is his/her perception of the job being offered by the employer in terms of physical demands?

- 6) Prior to the injury, did he/she receive training on his/her responsibilities and rights following an accident?
- 7) When does the worker think he/she will be able to return to work?

The decision maker should also consider whether there are any language barriers that could impact the worker's understanding of the job offer.

Information from the Employer

Questions that can be asked of the employer include:

- 1) If there was any question about the medical precautions was the WSIB contacted to request clarification?
- 2) Was the worker advised of the particular job available? A blanket statement that any and all precautions or limitations will be accommodated is not sufficient.
- 3) Were details of the job, in terms of the physical demands, conveyed to the worker?
- 4) Was the offer made in writing? (not necessary, but very helpful)
- 5) Prior to the injury, did the worker receive training on rights and responsibilities following an accident?

Conclusion

Ultimately, the decision to pay lost time benefits rests with the decision-maker who will provide a detailed and clear rationale. There are a number of resources available, including the return to work mediator, ergonomist, nurse case manager and medical consultant. Useful resource documents are "Adjudicative Advice – Retrospective RTW Situations" and "Best Approaches – Weighing of Medical Evidence".

In addition to assessing the suitability of the job offered and the communication between the worker and employer around that offer, the decision-maker must review the medical information. The decision-maker should take into account the accident itself and any trauma around it, the period of acute pain, any medication the worker is taking, as well as the treatment recommended by the health practitioner. All of these elements must be considered prior to limiting loss of earnings benefits because of work offered by the employer.

Entitlement to loss of earnings benefits should only be limited when the decision-maker is satisfied, on balance of probabilities, that:

- (a) the job or duties offered by the employer is/are suitable in that they are within the worker's physical and vocational capacity to perform and will not pose a safety risk or impede the worker's recovery,
- (b) the job and the job duties have been communicated to the injured worker prior to the worker beginning the job or job duties.

Before Making a Return to Work Decision – Checklist

Before making a RTW decision, consider payment of LOE by comparing your set of facts to this checklist.

Information from Health Practitioner	
	What is the diagnosis and proposed treatment? Is a period of rest reasonable in these circumstances?
	Were the functional abilities clearly outlined?
	Were there any differences in opinion among the health practitioners?
	If there were differences, was the evidence weighed appropriately?
	What medication, if any, was the worker taking? Were the side effects and expected duration considered?
	Did the side effects impact the worker's ability to work safely and / or impact the safety of others?
	Did the injury or side effects of medication impact the worker's ability to travel?

Information from Worker	
	Was a functional abilities form provided?
	What was the job offered? Was it clear what was being offered?
	What was his/her understanding of functional abilities?
	Are there any transportation issues?
	Is he/she taking any medication that will impact his/her ability to work safely?
	Are there any psychological barriers to return to work? This might include such things as fear of re-injury, actual fear of re-entering the workplace.

Information from Employer	
	Was a functional abilities form provided?
	Was contact made with the WSIB if clarification was needed about the workers medical precautions?
	Was a clear job offer made (e.g. with details about the work being offered)? Was it made verbally, or in writing?
	Was worker invited to come into work to view the job and provide input into what they would be doing?
	Are there any transportation issues or barriers to the actual worksite that you are aware of?

Putting It All Together

Scenario A - Sample Decision Memo to Worker - C. Reid

Issue: Payment of LOE for July 8, 2005

History:

On Thursday, July 7, 2005, this 42-year-old warehouse worker felt an immediate onset of low back pain while lifting a washing machine with a co-worker. He reported the pain immediately and left to go to the medical centre. He was given a Functional Abilities Form for Timely Return to Work (FAF) for completion. His employer advised him that they could accommodate any medical precautions. He returned to modified duties on Monday, July 11, 2005.

Medical:

The initial diagnosis was acute lumbo-sacral strain. He was advised to take Naproxen, rest as needed, and apply ice to the area. The doctor completed the FAF, recommending return to work with precautions on Monday, July 11th. The precautions were outlined on the FAF. A further medical appointment was set for July 18th.

Other Pertinent Facts:

Mr. Reid dropped off his FAF after his doctor's appointment. He declined an offer of modified duties, citing his doctor's recommendation that he stay off until Monday, along with the fact that he was in so much pain that he could hardly stand or walk. The employer feels that he should have returned to work right away and certainly on Friday.

Decision:

Mr. Reid experienced an acute onset of back pain that caused him to leave work immediately and go to the doctor. He was given an FAF, and had it completed, as requested. He returned to his place of employment with the FAF, and returned to modified duties on Monday as indicated by the doctor. Mr. Reid, by his own account, was in a great deal of pain.

From the evidence available, it appears that Mr. Reid was unable to work on Friday, July 8. He was in acute pain, and required a period of rest and icing prior to being able to return to light duties. LOE is payable for July 8th.

Decision Letter to Employer – Scenario A



Workplace Safety &
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Commission de la sécurité
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contre les accidents du travail

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200, rue Front Ouest
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ATS: 1-800-387-0050

Date

MR (FIRST NAME) CURTIS
COMPANY NAME
2345 ANYWHERE STREET
SOMEWHERE, ON 1D2 E3F

REID, First Name
Claim 12345678

When writing the WSIB please
quote the above file number.

Indiquez le numéro de dossier
dans toute correspondance
avec la CSPAAT.

Dear Mr. Curtis:

As we discussed today on the telephone, you have concerns about the payment of loss of earnings benefits (LOE) to Mr. Reid for July 8, 2005 because of the availability of modified work on that day. Mr. Reid did not return to work until Monday, July 11th.

A worker who has a loss of earnings as a result of a work-related injury or disease is entitled to loss of earnings (LOE) benefits.

Mr. Reid felt an immediate onset of pain when he was lifting a washing machine on July 7th, and left work right away to go to the medical centre. You gave him a Functional Abilities Form (FAF) that he had completed and brought back to you after his appointment. His doctor suggested a return to work with precautions on Monday, and rest and ice in the meantime. He did not recommend a return to work until then.

Mr. Reid's immediate supervisor, John Birch, asked him to remain at work on Thursday, and if not, then to return to work on Friday. Mr. Reid declined to do this, because of his doctor's recommendation along with the fact that he was in a great deal of pain.

I have considered your concerns regarding the payment of LOE for July 8.

Mr. Curtis, I feel that Mr. Reid's decision to decline modified work for the balance of July 7th and for July 8th was reasonable. His doctor had advised him to return to work on Monday, which he did. Mr. Reid was in a great deal of pain, and had difficulty standing or walking.

There is no evidence to suggest that Mr. Curtis was capable of light duties on July 8. Therefore, I have decided to pay LOE for that day.

REID, First Name
Claim 12345678
Date
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If you have any further information that you would like me to consider, please call me so we can talk about it

If you do not understand the reasons for the decision, or if you do not agree with the conclusions reached, please call me. I would be pleased to discuss your concerns.

I also wish to inform you that the Workplace Safety and Insurance Act imposes time limits on appeals. If you plan to appeal the decision, the Act requires that you notify me in writing by (insert six month deadline).

Yours sincerely,

Adjudicator's Name
Adjudicator
Service Delivery Division

Phone Number

Copy: Worker
Representative, if applicable

Scenario B

The following is a second possible scenario, resulting in an adverse decision to the worker. A sample letter follows.

On July 7, 2005 (Thursday) this 42-year-old warehouse worker, Mr. Reid, felt an immediate onset of low back pain while lifting a washing machine with a co-worker. He reported the pain immediately and left to go to the medical centre. He was given a Functional Abilities Form for Timely Return to Work (FAF) for completion and he dropped it off to his employer after his doctor's appointment.

New information:

- The initial diagnosis was acute lumbo-sacral strain. Mr. Reid was advised to rest as needed, and apply ice to the area for the remainder of the day. No medication was prescribed. The doctor completed the FAF, recommending return to work with precautions. The precautions were outlined on the FAF. A further medical appointment was set for July 18th.
- Mr. Reid's employer prepared a written job description following the return of the FAF on July 7th, and offered to go over it with Mr. Reid on Friday morning (July 8th) prior to him starting the job. The employer indicated a willingness to show the worker the job and amend the job activities if necessary.
- The work was at no wage loss
- Mr. Reid indicated his doctor had told him to take it easy for a few days. As a result he felt he was entitled to have a longer rest period with a return to work on Monday morning.
- The physician was contacted. There was no information in the medical record pertaining to a direction around rest.

Decision Letter to Mr. Worker – Based on Scenario B



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Date

MR (FIRST NAME) REID
123 MAIN STREET
SOMEWHERE, ON 1A2 B3C

REID, First Name
Claim 12345678

When writing the WSIB please
quote the above file number.

Indiquez le numéro de dossier
dans toute correspondance
avec la CSPAAT.

Dear Mr. Reid:

This letter is to confirm our telephone conversation about payment of loss of earnings (LOE) benefits for July 8, 2005, related to your accident of July 7, 2005.

Section 43 of the *Workplace Safety and Insurance Act* (the *Act*) states that a worker who has a loss of earnings as a result of an injury is entitled to payments beginning when the loss of earnings begins. The payments continue until the earliest of:

1. the day on which the worker's loss of earnings ceases,
2. there is no longer an impairment, or,
3. an age requirement (usually age 65) is met.

If your employer is able to provide you with suitable work at your regular pay, then any wage loss is unrelated to your injury, and I cannot pay you LOE benefits.

You were seen at the medical centre on July 7, 2005 and advised to ice the affected area and rest for the balance of that day. The doctor indicated you would be able to work within the precautions outlined on the Functional Abilities Form (FAF). On July 7, when you brought the FAF to your employer, he advised he would prepare a written job description for you to discuss on July 8. He indicated a willingness to show you the job and amend it if you had any concerns.

Mr. Reid, I asked you why you did not return to work on July 8 to meet with your employer. You told me you did not want to meet with your employer that day because your doctor had indicated to take it easy for a few days. You felt you required the extra time to rest.

I explained to you that the medical report from your physician indicates that you would be able to return to work as long as you did not exceed the precautions provided. I could not verify that there was medical direction to not work at all for a few days.

REID, First Name
Claim 12345678
Date
Page 2

We discussed the work offered by your employer. You did agree that your employer has a modified work program, and that when you did return to work on Monday, July 11, the work duties were within your functional abilities.

It is my decision that you should have returned to work on Friday, July 8 to attempt the work. The job would have been the same work that you were able to perform on Monday, July 11. There has been no medical evidence provided to indicate you were not physically able to do the work on Friday. For these reasons I am unable to pay LOE benefits for July 8.

If you have further information that you would like me to consider, please call me.

If you do not understand the reasons for the decision, or if you do not agree with the conclusions reached, I would be pleased to discuss your concerns.

I also wish to inform you that the Workplace Safety and Insurance Act (the Act) imposes time limits on appeals. If you plan to appeal the decision, the Act requires that you notify me in writing by (insert six month deadline).

Yours sincerely,

Adjudicator's Name
Adjudicator
Service Delivery Division

Phone Number

Copy: Employer
Representative, if applicable