

## Operational Policy

Section  
Early and Safe Return to Work

Subject  
**Return to Work: Key Concepts, Definitions and Responsibilities**

## Policy

The workplace parties (workers and employers) are required to co-operate in the worker's early and safe return to suitable and available work that, when possible, restores the worker's pre-injury earnings.

The focus of the workplace parties' return to work activities should be to work with each other to identify and return the worker to suitable work that is most comparable in nature and earnings to his or her pre-injury job.

The WSIB supports the return to work efforts of the workplace parties by providing expert advice, assistance, dispute resolution, and by ensuring co-operation/re-employment if necessary.

## Key concepts and definitions

### Return to work as a process

The WSIB views return to work as a process, consisting of a series of activities along a timeline which generally

- starts the moment the employer learns that a worker has suffered a work-related injury/disease
- continues throughout the work-related injury/disease recovery and impairment period, and
- adapts to changes as they arise.

### Early return to work

"Early" return to work means that the return to work process is initiated immediately or soon after the worker suffers a work-related injury/disease.

An early return to work, i.e., as soon as the worker is functionally fit to return to some form of suitable work, encourages active recovery in the workplace. However, in those cases where the worker is not functionally fit to do any type of work, e.g., requires time to heal

- no offer of work is considered suitable, but
- the workplace parties are expected to maintain communication.

Therefore, the workplace parties should be focusing on both the timing and the appropriateness of their return to work activities. This requires the workplace parties to consider a number of factors when arranging a return to work, such as

- the nature of the worker's impairment
- his or her functional abilities/stage of recovery, and
- the capacity of the employer to provide suitable work and appropriate accommodations, if necessary.

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### Suitable work

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

### Safe

The following factors should be examined when considering whether post-injury work is safe

- the work does not pose an increased health or safety risk to the worker (e.g., should not cause re-injury or a new injury) or to co-workers
- the work is performed at a worksite that is covered by either the *Occupational Health and Safety Act* or the *Canada Labour Code*, 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 his or her capability for safe travel (e.g., a worker with a fractured upper leg, and on crutches, may not be able to walk on icy ground safely), 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 him or her or the general public (e.g., a worker with a broken right foot would not likely be capable of operating a motor vehicle safely).

### NOTES

1. Certain worksites are not covered under the *Occupational Health and Safety Act* or the *Canada Labour Code* (e.g., not-for-profit agencies' offices and a worker's permanent residence for work at home arrangements). In these cases, the workplace parties must satisfy the WSIB that they have taken appropriate steps to ensure that the workplace is safe.
2. Workers and 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 the worker has, or is able to acquire, the necessary skills to perform, and
- whose tasks provide an objective benefit to the employer's business.

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

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

Another relevant factor is whether the worker is performing productive tasks for the entire shift, or only a portion of the shift.

### **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 capabilities of the worker, or
- do not exceed the worker's physical/functional limitations or restrictions.

### **Pre-injury earnings**

In relevant cases, 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 example, see 18-02-06, Determining Average Earnings—Recurrences.

### **Available work**

Available work is work that exists with the accident employer at the pre-injury worksite, or at a comparable worksite arranged by the employer. To determine if a worksite is comparable to the pre-injury worksite, the following factors would generally be considered, i.e., whether

- travel or assignment to different worksites is a regular practice in the industry
- travel or assignment to a worksite other than the pre-injury worksite forms part of the employment contract
- the worker normally accepts employment assignments in various geographic areas
- the worksite's location has changed subsequent to the work-related injury/disease (i.e., due to relocation, amalgamation or division of business)
- the worksite is covered by either the *Occupational Health and Safety Act* or the *Canada Labour Code*.

(Not all of the above criteria need to be met for a worksite to be considered comparable.)

When the worker is offered work at a worksite that is not the pre-injury worksite, the following factors are considered to determine if the work is available

- whether the worker's work-related injury/disease restricts his or her capability to travel safely
- whether travelling to the comparable worksite is within the reasonable parameters of travel expected of any worker (roughly 50-60 kilometers each way)

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from the worker's principal residence—except if the worker normally travels more than 50-60 kilometers each way)

- what modes of transportation are available to the worker to travel to the comparable worksite (e.g., owns/leases vehicle, public transportation, car pooling), and
- if more than one job is available, is the employer offering the job that is closest in proximity to the worker's principal residence.

The WSIB generally expects the worker to return to a worksite that is comparable to the pre-injury worksite. Therefore, the WSIB only supports mutually-accepted **work at home arrangements** required as a result of the work-related impairment in limited circumstances. This is particularly the case if work at home is not the workplace norm for the type of work being offered.

Generally, work at home arrangements are viewed as a short-term solution until the worker can physically travel to the worksite or until the frequency of required rest periods is reduced. In any work at home arrangement, the workplace parties must satisfy the WSIB that the work is **safe** and **productive**.

### Shared responsibility

Workers and employers are primarily responsible for planning return to work, identifying return to work opportunities, and identifying return to work issues in the workplace. However, there are other participants in the return to work process who play an important role. These participants may include

- the worker's direct supervisor
- a union representative or authorized worker representative
- an authorized employer representative
- the treating health professional(s)
- the WSIB, and
- co-workers.

Return to work is therefore a shared responsibility in which all participants work toward returning the worker to suitable work that is most comparable in nature and earnings to the worker's pre-injury job.

### WSIB responsibilities

The WSIB actively supports the activities of the workplace parties in their efforts to achieve the best return to work outcome possible. The key responsibilities of the WSIB in the return to work process include: education, case management, dispute resolution, ensuring co-operation/re-employment and providing labour market re-entry services. For more information on the WSIB's responsibilities in the return to work process see 19-02-03, The WSIB's Role in Return to Work.

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**Treating health professionals' responsibilities**

The treating health professional is responsible for

- diagnosing and treating the work-related injury/disease
- working closely with other health professionals involved in the worker's care, and
- providing the worker and the WSIB with relevant clinical information (see 17-02-02, Health Care Practitioner's Reports).

Additionally, the treating health professional supports the return to work activities of the workplace parties by

- discussing return to work with the worker throughout his or her recovery
- providing the workplace parties and the WSIB with functional abilities information (see 19-02-04, Functional Abilities Form for Timely Return to Work), and in relevant cases,
- re-assessing the use of prescription medications that may be impeding a worker's ability to return to work.

In turn, workers and employers should provide the treating health professional with any information which will assist the health professional to

- aid in the clarification of the worker's functional abilities, or
- provide more precise information when completing a functional abilities form, or other health care reports.

An example of such an information exchange is where the employer provides the treating health professional with a full description of the physical/cognitive demands associated with a specific offer of suitable work. This allows the treating health professional to provide functional abilities information that is directly relevant to actual work opportunities in the employer's workplace.

**NOTE**

Cognitive demands refer to aspects of the job that may be related 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.

**Representatives' responsibilities**

The workplace parties' representatives are encouraged to support, and whenever possible, facilitate the efforts of the workplace parties in the return to work process. In unionized workplaces, the WSIB recognizes and encourages union representatives' participation in the return to work process.

Unions also have obligations to injured workers under human rights legislation. For more information, see 19-02-07, Human Rights Legislation and Accommodation in the ESRTW/LMR Process.

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**The workplace parties' co-operation obligations**

The workplace parties must co-operate with each other in the return to work process by

- initiating early contact
- maintaining communication throughout the worker's recovery and impairment
- working towards identifying and securing a suitable and available job for the worker
- giving the WSIB all relevant information concerning the worker's return to work, and
- notifying the WSIB of any dispute or disagreement concerning the worker's return to work.

**NOTE**

The workplace parties may have a legitimate reason for not meeting some or all of their co-operation obligations in the return to work process. For more information see 19-02-06, Ensuring Workplace Parties' Co-operation Obligations.

**Initiating and maintaining communication**

The *Workplace Safety and Insurance Act* (the Act) requires the worker and the employer to contact the other party as soon as possible after the injury occurs and to maintain communication throughout the period of the worker's recovery and impairment.

The chart below sets out the **required activities** of workers and employers based on this legislative requirement.

<b>Worker</b>	<b>Employer</b>
To contact the employer as soon as possible after the work-related injury.	To contact the worker as soon as possible after the work-related injury.
To contact the employer as soon as possible after receiving initial health care treatment.	To provide the worker/WSIB with the company return to work contact(s), e.g., direct supervisor, company nurse.
To respond to written or telephone contacts from the employer within a reasonable time.	To respond to written or telephone contacts from the worker within a reasonable time.
To be available to communicate with the employer during regular work hours.	To be available to communicate with the worker during regular work hours.
To attend appointments/meetings with the employer.	To attend appointments/meetings with the worker.

**NOTE**

The frequency and method of communication between the employer and the worker will depend to some degree on the nature of the work-related injury/disease and on the nature of the employer's business.

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### Identifying and securing suitable work

The Act obligates employers to attempt to provide suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings. The corresponding obligation on workers is to assist the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities.

In view of these obligations, the focus of the workplace parties should be to identify and secure **suitable and available work** that is most comparable in nature and earnings to the worker's pre-injury job. Therefore, the return to work opportunities that the workplace parties should be striving for are

1. Pre-injury job (starting point and overall goal).
2. Pre-injury job accommodated.
3. Work comparable in nature and earnings to the pre-injury job (with accommodation if required).
4. Alternate work (with accommodation if required).

#### NOTE

The term "work" is used broadly and can include the combining of tasks/duties which together constitute a temporary or permanent job, as well as a short-term training program which leads to a job with the accident employer.

### Accommodation obligations

While the workplace parties are attempting to identify and secure suitable work, it may become apparent that the worker requires **accommodation**. If this is the case, everyone involved, including the employer, union, and the worker, is **required to co-operate** by

- sharing information, and
- actively seeking solutions that will make the accommodation process a success.

All employers have a duty to accommodate the work or workplace. This duty may arise through the

- obligation to re-employ set out in the Act (see 19-04-07, Accommodating Workers), and/or
- the *Ontario Human Rights Code* or *Canadian Human Rights Act* (see 19-02-07, Human Rights Legislation and Accommodation in the ESRTW/LMR Process).

During the return to work process, the WSIB expects employers, and when relevant the union and the worker, to

- comply with human rights legislation and associated policies
- make reasonable efforts to accommodate a worker's pre-existing and work-related disabilities/impairments in the absence of a re-employment obligation, and

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- where a re-employment obligation exists, accommodate the work or the workplace for the worker to the extent of undue hardship.

**Required activities to identify and secure suitable work**

The chart below sets out the **required activities** of workers and employers based on the legislative obligations, including accommodation obligations, set out in this section.

Worker	Employer
<p>To provide the employer with functional abilities information when requested.</p> <p>To identify work opportunities he or she believes match his or her functional abilities.</p> <p>To attend the worksite and attempt to perform those aspects of the work which both parties agree are safe.</p> <p>To discuss how the workplace or the available work could be accommodated.</p> <p>To report any difficulties during the RTW process to his or her supervisor.</p>	<p>To offer suitable work that is available (reason for not offering must be legitimate).</p> <p>In the absence of a re-employment obligation, to make reasonable efforts to accommodate a worker's pre-existing and work-related disabilities/impairments.</p> <p>To be specific about the offer of work , including clearly stating</p> <ul style="list-style-type: none"> <li>• what work is being offered</li> <li>• the nature of the work (required tasks/duties)</li> <li>• hours of work</li> <li>• associated remuneration, and</li> <li>• location of worksite.</li> </ul> <p>To discuss how the workplace or the available work could be accommodated and the accommodations they are able to provide.</p> <p>To discuss what suitable jobs are available.</p> <p>To monitor the worker's progress during the return to work process.</p>

**Ongoing monitoring and evaluation**

Because the workplace parties should strive to identify and secure suitable work that is *most comparable* in nature and earnings to the worker's pre-injury job,

- a job that was considered a suitable job when the worker first returned to work may not be the most comparable job several weeks later, and
- a job that was unsuitable early on, e.g., the pre-injury job, may become suitable through improvements in the worker's functional abilities.



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Therefore, ongoing monitoring and evaluation by the workplace parties increases the likelihood that the best return to work outcome is achieved at any given point.

In cases where frequent changes can be expected during the return to work process, e.g., where a graduated return to work program is in place, the workplace parties are encouraged to develop and use a written **return to work plan** to aid with the monitoring of the return work process.

The written return to work plan should identify regular, formal review dates so that all participants have an opportunity to

- discuss the worker's progress
- manage changes that result from updated functional abilities information
- identify obstacles and possible solutions
- make adjustments/accommodations to the work or the workplace, and
- revise the plan as circumstances may require.

These activities decrease the likelihood of a recurrence/aggravation of the work-related injury/disease and increase the likelihood of achieving the best return to work outcome possible.

### ***Moving return to work forward despite obstacles***

In cases where the workplace parties encounter difficulties or obstacles in arranging a return to work that is suitable and available, the WSIB is of the view that the return to work process should not come to a halt. Instead, the workplace parties should be looking to other return to work activities and work opportunities, which can be pursued while the original obstacle or difficulty is being resolved.

For example, where

- due to limited or conflicting functional abilities information, it is unclear whether a worker can perform a particular job, and where
  - the worker is scheduled for further health care tests in a few months
- the WSIB expects the workplace parties to be examining other return to work opportunities, such as different suitable work, or a graduated return to work program or transitional work, instead of simply waiting for the health care tests to occur.

For more information on pre- and post-injury return to work planning, workers and employers are encouraged to review the WSIB's *Return to Work Self-Assessment Guide for Ontario Workplaces* [LINK] and other return to work tools [LINK] available at [www.wsib.on.ca](http://www.wsib.on.ca).

## **Providing information to the WSIB**

The Act requires both workplace parties to give the WSIB such information as the WSIB may request concerning the worker's return to work.

The chart below sets out the **required activities** of workers and employers based on this legislative requirement

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Worker	Employer
<p>To notify the WSIB of any difficulty or dispute concerning his or her co-operation with the employer in the return to work process.</p>	<p>To provide the WSIB with the company return to work contact(s), e.g., direct supervisor, company nurse.</p>
<p>To notify the WSIB if an offer of suitable work has been made, and to provide details if requested.</p>	<p>To notify the WSIB of any difficulty or dispute concerning the employer's co-operation with the worker in the return to work process.</p>
<p>To provide the WSIB, when requested, with relevant information and/or copies of any documented exchanges (e.g., documented negotiations, return to work plans, written description of job offered).</p>	<p>To notify the WSIB if an offer of suitable work has been made, and to provide details if requested.</p> <p>To provide the WSIB, when requested, with relevant information and/or copies of any documented exchanges (e.g., documented negotiations, return to work plans, written description of job offered).</p>
<p>To advise the WSIB of any increase/decrease in hours and/or pay.</p>	<p>To advise the WSIB of any increase/decrease in hours and/or pay.</p>
<p>To notify the WSIB of any significant change in his or her level of fitness (improvement or deterioration).</p>	<p>To notify the WSIB of any significant change in the worker's level of fitness (improvement or deterioration).</p>
<p>To respond to written or telephone contacts from the WSIB within a reasonable time and to be available to communicate with the WSIB during regular work hours.</p>	<p>To respond to written or telephone contacts from the WSIB within a reasonable time and to be available to communicate with the WSIB during regular work hours.</p>

**Ensuring co-operation**

The WSIB informs and educates the workplace parties about their obligations to co-operate in the worker's early and safe return to work, and assists them, when necessary, to perform the required return to work activities noted above.

In those cases where education, case management, mediation (where appropriate) and a warning have failed to bring either or both workplace parties into compliance with their required return to work activities, the WSIB may

- reduce or suspend the worker's benefits, and/or
- levy a penalty on the employer that is equivalent to the costs of providing benefits to the worker.

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For more information see 19-02-06, Ensuring Workplace Parties' Co-operation Obligations.

## **Sustained return to work**

In cases where a worker has a permanent impairment (present or likely), and

- his or her clinical condition is stable, and
- he or she is unable to return to the pre-injury job, or
- is only able to return to the pre-injury job with accommodations

the workplace parties and the WSIB consider whether the work the worker is currently performing is sustainable, i.e., is likely to restore pre-injury earnings on a long-term basis. Generally speaking, unless the post-accident work is sustainable, it will likely not represent the best return to work outcome in view of all the circumstances.

Consideration should be given to the following factors to determine whether the post-accident work is sustainable:

- significant work or workplace accommodations have been made, (see 19-03-07, Workplace Modifications and Assistive Devices),
- the rate of pay is significantly higher than what the employer pays for similar jobs
- the productivity required of the worker is significantly lower than would normally be expected, and/or
- the job was created especially for the worker, and therefore, if such a job were no longer available, it would be difficult for the worker to find new employment with similar clinical restrictions/accommodations in the general labour market.

In these cases, the WSIB will discuss with the workplace parties whether to provide a labour market re-entry (LMR) assessment to the worker in order to determine whether a better return to work outcome can be achieved.

Where sustainability concerns are present, the provision of an LMR assessment can be used to ascertain if other work more comparable in nature and earnings to the pre-injury job is available with

- the accident employer, and if not
- in the general labour market.

With respect to LMR assessments that look to the general labour market, the benefits and advantages associated with employment at the accident employer (such as seniority rights and/or entitlement to employment/retirement benefits) should be carefully considered by the worker, in conjunction with the WSIB, when considering his or her best long-term option.

For more information on LMR assessments, see 19-03-02, LMR Assessments.

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**NOTE**

Where the sustainability of the post-injury work is an issue, the WSIB informs the worker that an LMR assessment and plan are generally only available to the worker prior to the final review of his or her wage loss benefits. For more information, and for limited exceptions, see 18-03-03, Reviewing LOE Benefits and 18-04-14, Reviewing FEL Benefits.

**Application date**

[Prospective date to be determined]

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**References**

**Legislative authority**

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 21, 23, 33, 37, 40, 41, 42, 43, 44, 77, 102, 108

*Workers' Compensation Act, R.S.O. 1990*, as amended  
Sections 22.1, 37, 43, 50, 51, 54, 103, 109.1, 133, 137

**Minute**