

Operational  
Policy

Section  
Early and Safe Return to Work

Subject  
**The WSIB's Role in Return to Work**

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## Policy

The WSIB actively supports the activities of the workplace parties in their efforts to achieve the best return to work outcome possible. The key roles of the WSIB in the return to work process include: education, case management, dispute resolution, ensuring compliance with co-operation and re-employment obligations, and providing labour market re-entry services.

## Guidelines

### Education

The WSIB recognizes that the workplace parties' ability to meet their return to work obligations is largely based on the parties being fully informed of, and understanding, those obligations.

Therefore, the WSIB **informs and educates** workplaces and workplace parties about

- their roles and responsibilities in the return to work process
- their return to work co-operation/re-employment obligations (if relevant) under the *Workplace Safety and Insurance Act* (the Act)
- the likely consequences when they do not meet their legal obligations, and
- relevant return to work good practices and return to work resources.

The WSIB also informs and educates health professionals about their roles and responsibilities in the return to work process, and the relevant return to work good practices and return to work resources.

### Case management

Case management is a collaborative process through which the WSIB assesses, plans, implements, co-ordinates and monitors the benefits and services an injured worker is entitled to with the goal of achieving the best recovery and return to work outcomes possible. As case manager, the WSIB collaborates with and, when needed, serves as liaison between the worker, employer and relevant health professionals.

The WSIB provides **case management** support by

- supporting the worker's recovery and appropriate health care treatment
- monitoring activities, progress and co-operation of the workplace parties, and documenting activities in the claim file
- ensuring the workplace parties are fulfilling their co-operation/re-employment obligations
- providing assistance such as suggesting an evaluation or a claim-specific return to work program
- intervening when the need arises, and
- making entitlement decisions, including, when necessary, decisions regarding the worker's level of fitness to return to work and the payment of wage loss benefits.

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### **Small business**

The WSIB recognizes that small businesses may not have the same knowledge, capability and/or experience as larger businesses in the return to work process. As a result, small businesses may require increased assistance and intervention from the WSIB to achieve positive return to work outcomes. As case manager, the WSIB is therefore sensitive to the needs of small businesses during the return to work process.

### **Assistance and dispute resolution**

#### **Return to work obstacles**

From time to time, employers and workers may encounter difficulties or obstacles during the return to work process. These obstacles may slow down or bring to a halt the workplace parties' return to work activities and efforts to achieve a positive return to work outcome.

Return to work obstacles generally fall into one of the four following categories

1. the workplace parties' lack of knowledge regarding their rights and obligations under the Act
2. misunderstanding of the worker's functional abilities
3. the lack of communication and/or understanding within the employer's business regarding disability management and proven return to work good practices
4. relationship issues between the injured worker and his or her employer.

When obstacles arise, the WSIB can assist the workplace parties by providing a number of services, including but not limited to

- information and education
- negotiation
- special evaluations (e.g., ergonomic assessment)
- dispute resolution services (e.g., mediation) (see, 19-02-05, Resolving Disputes Regarding the Suitability of Offered Work), and
- language/interpreter services.

Some of these service are discussed below.

#### **Evaluations**

To assist in the return to work process, the WSIB considers whether an evaluation may help in clarifying

- the worker's functional abilities and fitness to work
- the physical/cognitive demands of the work, and/or
- potential accommodations to the work and/or workplace.

Evaluations may include

- special functional abilities evaluations
- ergonomic assessments, and

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- physical demands information.

The WSIB may either make arrangements for the evaluation, or may recommend that the workplace parties make the necessary arrangements.

### **Mediation**

If the WSIB has been unsuccessful in negotiating a return to work, and the return to work dispute between the workplace parties persists, the WSIB may offer mediation services through the use of a WSIB mediator. A WSIB mediator is an impartial, neutral third party who helps the workplace parties resolve the conflict.

These cases include

- when one or both the workplace parties notify the WSIB of any difficulty or dispute concerning co-operation in the return to work process, or
- when the WSIB, on its own initiative, identifies difficulties or obstacles in the workplace parties' return to work activities and progress.

Participation of the workplace parties in mediation is voluntary and has to be agreed to by both parties. The information discussed in the mediation is confidential. Only the result of the mediation and the resolution (if reached) is documented to ensure mutual understanding.

#### ***If mediation is declined***

If one or both of the workplace parties chooses not to participate in the mediation process, the WSIB proceeds to render a decision regarding the return to work dispute. This decision is made within 60 calendar days of the WSIB being notified of the workplace parties' return to work dispute, or within a longer period, as determined by the WSIB.

#### ***If mediation is successful***

If mediation is successful, the terms of the mediated agreement are confirmed in writing, shared with both workplace parties, and honoured by all WSIB staff. Following mediation, the workplace parties continue their return to work activities, and the WSIB continues to monitor the workplace parties' return to work progress.

#### ***If mediation is unsuccessful***

If mediation is not successful, the WSIB mediator may, with the workplace parties' agreement, render a decision regarding the return to work dispute (i.e., compliance with re-employment and/or co-operation obligations or job suitability). If both parties do not agree to have the WSIB mediator render a decision, the WSIB proceeds to render a decision regarding the return to work dispute. In either case, a decision regarding the return to work dispute must be made within 60 calendar days of the WSIB being notified of the workplace parties' return to work dispute, or within a longer period, as determined by the WSIB.

### **NOTE**

The WSIB may employ alternate methods to assist in resolving return to work disputes—such as referral to an ergonomist or other specialists in return to work—where appropriate.

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## Accommodation

An employer's duty to accommodate the work or workplace may arise through

- a re-employment obligation under the *Workplace Safety and Insurance 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).

If an employer does not have a duty to accommodate under the re-employment obligation, but workplace modifications or assistive devices would allow a worker to return to suitable work, the WSIB may provide financial assistance for those accommodations to an employer in need (see 19-03-07, Workplace Modifications and Assistive Devices).

## Ensuring compliance with co-operation and re-employment obligations

The WSIB ensures that the workplace parties are complying with their return to work obligations through **information and education**, and if necessary, through

- the adjustment, reduction or suspension of an injured worker's benefits due to the refusal of suitable work and/or non-co-operation (see 19-02-05, Resolving Disputes Regarding the Suitability of Offered Work and 19-02-06, Ensuring Workplace Parties' Co-operation Obligations), and
- the levying of non-co-operation and/or re-employment penalties against employers (see 19-02-06, Ensuring Workplace Parties' Co-operation Obligations; and 19-04-02 to 19-04-10, Re-employment Provisions).

## Labour market re-entry threshold

In those cases where the worker has a likely or present work-related permanent impairment and information on file indicates that the worker requires assistance to re-enter the labour market and reduce or eliminate the loss of earnings that may result from the work-related injury/disease, the WSIB is responsible for facilitating labour market re-entry (LMR). For information about the LMR threshold, and when an LMR assessment may be conducted, see 19-03-02, LMR Assessments.

## Special cases

### Workers with optional insurance

For workers who have purchased optional insurance as an independent operator or sole proprietor (see 12-03-02, Optional Insurance), the WSIB becomes involved in the return to work process if the worker is fit for suitable work and continues to suffer a wage loss due to the work-related injury/disease.

In these cases the WSIB determines

- whether the pre-injury job can be accommodated to allow the worker to perform the essential duties

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- an estimate of the worker's current working abilities, expressed as a percentage, in relationship to the pre-injury duties, and
- whether the worker will continue to experience a wage loss after reaching maximum medical recovery (MMR).

If the WSIB determines that the worker will continue to experience a wage loss due to the work-related injury/disease after reaching MMR, the WSIB conducts an LMR assessment (see 19-03-02, LMR Assessments).

**NOTE**

For the purposes of this policy, a sole proprietor means an individual owning an unincorporated business that does not employ workers, or a (sole) executive officer of a corporation that does not employ workers.

All other workers with optional insurance, including partners, and executive officers of corporations who employ workers, are to be treated in the same manner as workers employed by employers.

**Application date**

[Prospective date to be determined]

**Document history**

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19-02-05 dated June 15, 1999

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**References**

**Legislative authority**

*Workplace Safety and Insurance Act, 1997, as amended*  
Sections 40, 102, 108, 122, 159(2)

*Workers' Compensation Act, R.S.O. 1990, as amended*  
Sections 37, 52, 53

**Minute**