

Operational  
Policy

Section  
Early and Safe Return to Work

Subject  
**Resolving Disputes Regarding the Suitability of Offered Work**

## Policy

In all instances, workers and employers are encouraged to resolve disputes regarding the suitability of offered work through their own efforts and initiatives. However, when the workplace parties are not successful in resolving the dispute themselves, the WSIB will

- assist the workplace parties to reach consensus on the issue, or
- make a determination as to whether the offered work is suitable or not.

In its efforts to resolve the dispute, the WSIB can utilize a number of resources/services at its disposal, including mediators and/or ergonomists.

While the WSIB is attempting to resolve the dispute, the workplace parties are encouraged to explore and pursue other return to work opportunities, including

- another suitable job, or
  - a return to work program such as transitional work,
- so that their disagreement does not bring the return to work process to a halt.

## Guidelines

### Definition

**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**.

For more information on suitable work see 19-02-02, Return to Work: Key Concepts, Definitions and Responsibilities.

### Resolving disputes over suitable work: workplace parties

#### Workers encouraged to *attempt* to perform the offered job

The *Workplace Safety and Insurance Act* places an obligation on workers 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. Based on this obligation, when a job is offered that a worker feels is not suitable, he or she can assist the employer to identify suitable work by attempting to perform those aspects of the job that both parties agree

- are safe
- the worker is capable of performing, and
- do not pose a risk of re-injury or new injury.

Through this attempt the workplace parties are given the opportunity to

- establish components of the job the worker is capable of performing
- use these components as a starting point towards further accommodation
- remove or accommodate the components of the job that are problematic, and

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- consider other jobs/work that may be suitable and available.

### Dispute resolution steps

In cases where the workplace parties cannot agree on whether an offered job is suitable, (whether the worker has attempted to perform the offered job or not), the following steps should take place whenever reasonably possible:

1. The worker notifies the employer that the offered job is not suitable and provides reasons.
2. The employer considers the reasons and, through dialogue with the worker, considers further accommodations.
3. In the event that agreement cannot be achieved, *both* workplace parties promptly **notify the WSIB** and provide all information relevant to the dispute.

### Resolving disputes over suitable work: WSIB

Once notified of the dispute, the WSIB

- discusses the offer of work with the worker and employer to ensure both parties have knowledge of their return to work rights and obligations
- considers whether the parties had adequate information (e.g., functional abilities information or information relating to the physical/cognitive demands associated with a particular job), to guide their return to work decision-making
- where conflicting or inaccurate information exists regarding the suitability of the offered work, considers requesting an ergonomic assessment, and
- considers whether mediation, or some alternate form of resolution, might be the most practical way to resolve the dispute (see **NOTE** below).

When determining whether an offered job is suitable, the WSIB considers

- all relevant functional abilities/health care information
- all available information regarding the job description/list of tasks as well as all relevant information pertaining to the physical/cognitive demands associated with the offered job
- the worker's ability to travel to the proposed worksite safely, and
- other relevant considerations, such as whether changes in the location of work and/or in work hours/shift will negatively impact the worker (e.g., the worker is required to make alternative child/elder care arrangements on short notice).

### NOTE

In cases where the dispute is resolved through mediation, the terms of the mediated agreement are confirmed in writing, shared with both workplace parties, and honoured by all WSIB staff. For more information about mediation services, see 19-02-03, The WSIB's Role in Return to Work.

### Where offered job is found to be suitable—adjusting wage loss benefits

If the WSIB determines that the job offered is suitable, a finding is made that the worker is able to earn the earnings associated with the suitable job. The WSIB then

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- verbally informs both parties of its decision,
- adjusts the worker's wage loss benefits, and
- confirms its decision in writing.

The worker's wage loss benefits are generally adjusted as of the date of the worker's next available shift. An alternate date may be selected based on factors including but not limited to

- whether a workplace party needs some time to make reasonable arrangements for return to work (e.g., an employer needs time to arrange for a workplace accommodation, or a worker needs time to arrange for child or elder care)
- if resolution of the dispute involves a mediated settlement, or
- whether return to work arrangements were unreasonably hindered by one workplace party or the other (e.g., a worker was in a position to accept a job on the day it was offered and his or her concerns about suitability proved not to be reasonable).

When an appropriate adjustment date is selected, the worker's wage loss benefits are adjusted by deducting the earnings associated with the suitable work from the pre-injury earnings—whether the worker has accepted the suitable job offer or not.

**NOTE**

As long as the workplace parties are co-operating in all other aspects of their early and safe return to work (see 19-02-02, Return to Work: Key Concepts, Definitions and Responsibilities), a benefit adjustment following a refusal of suitable work is adjudicated under this policy. Where co-operation issues arise, however, wage loss benefits are generally adjusted under the relevant co-operation policy (see 19-02-06, Ensuring Workplace Parties' Co-operation Obligations).

In cases where co-operation issues arise at the same time as a refusal of suitable work, the WSIB, wherever possible, adjudicates the refusal of suitable work issue first.

**Where offered job is found not to be suitable—maintaining wage loss benefits**

In the event the WSIB determines that the offered job is not suitable, the WSIB continues to pay the worker full wage loss benefits as long as the worker continues to demonstrate co-operation with the employer and the WSIB in the return to work process.

**Application date**

[Prospective date to be determined]

**Document history**

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11.4 dated January 1, 1998.

## **References**

### **Legislative authority**

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 40, 43, 102, 108, 122

*Workers' Compensation Act, R.S.O. 1990*, as amended  
Sections 36, 37, 43, 72.1, 103, 137

### **Minute**