

Early and Safe Return-to-Work

Facilitating recovery at work



WorkplaceNL

Health | Safety | Compensation



This booklet provides general information about the early and safe return-to-work (ESRTW) program. It does not cover every issue or exception. Please refer to the relevant legislation and regulations which are printed by the Queen's Printer or visit our website: workplacenl.ca.

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Introduction

One of your employees has been injured at work. Do you know what to do next?

Preventing injuries at work is everyone's responsibility. When a workplace injury occurs, it is important for employers and workers to facilitate recovery at work so the injured worker can return to safe and productive work as soon as it is medically possible. It's good for business to effectively manage return to work practices so that human and financial impacts are minimized.

This booklet will:

1. Explain the roles and responsibilities of all parties;
2. Show the benefits of Early and Safe Return-to-Work (ESRTW); and,
3. Outline legislative requirements.

A successful return-to-work plan requires the involvement and co-operation of all parties, including:

- injured workers;
- employers and supervisors;
- worker representatives/local union officials;
- health care providers;
- joint health and safety committees and worker representatives; and
- WorkplaceNL.

WorkplaceNL's role in ESRTW

WorkplaceNL provides guidance and support in establishing early and safe return-to-work or re-employment programs.

This can range from advising the employer when setting up effective disability management programs to becoming involved in the process (e.g. helping determine suitable employment). However, this is a self-reliant model and where possible, return-to-work solutions should be developed by the workplace parties.

Duty to co-operate in ESRTW

All employers and workers are obligated under Section 89 of the *Workplace Health, Safety and Compensation Act* (the *Act*) to co-operate in a worker's early and safe return to suitable and available employment with the injury employer.

Employers are required to:

1. Contact the worker as soon as possible after the injury occurs.

This greatly increases the opportunity to start a return-to-work program. Research shows that when a worker is off for more than six months, it diminishes their chance of returning to work.

2. Provide suitable and available employment.

Employers are required to provide suitable and available employment for an injured worker within three working days from receipt of the worker's functional abilities information. Suitable employment should commence as soon as possible, but no more than three working days after the employer has offered the work.

3. Demonstrate effective communication.

Maintaining regular contact between workplace parties should be ongoing during the ESRTW process. This should be documented within the ESRTW process.

Communication effectiveness will be largely dependent on the commitment of both workplace parties. WorkplaceNL recommends, at a minimum, that an employer representative contact the worker at least once a week during the ESRTW process.



4. Return-to-work plan.

Employers are required to provide WorkplaceNL with a written return-to-work plan within five days of receiving the worker's functional abilities information. It should outline an ongoing and progressive ESRTW plan. Employers must also provide written notification to WorkplaceNL of any changes in the ESRTW plan within one week of the change.

If issues arise between the worker and employer that cannot be resolved and could negatively impact return-to-work, ESRTW Facilitators are available to provide support, communicate with the workplace parties, monitor activities and progress, address compliance issues, and facilitate resolution of ESRTW issues.

Submitting ESRTW plans through **connect**

Employers can submit ESRTW plans through WorkplaceNL's **connect** web service ensuring plans are complete, more accurate, and reducing the need for follow-up. Some additional features include:

- A copy of the submitted form is saved in the **connect** system for easy access;

- Employers are prompted with specific questions so that critical ESRTW data is captured to facilitate the return to pre-injury process; and,
- Employers confirm that the worker has participated in the development of the ESRTW plan.

The form will facilitate a more timely submission to WorkplaceNL and ensure the work-to-recover process involves the worker and employer. Recent changes to the form – both paper and web – will provide more information to assist WorkplaceNL to ensure that the ESRTW process is occurring.

If your organization has a **connect** account, contact your Employer Administrator to get access to this service.

If you don't know if your organization has a **connect** account, call 1.800.563.9000 and an Information Officer will provide additional information on the new web service. They can also help you sign up for a **connect** account.

Suitable employment

In determining whether modified duties or early and safe return to work is suitable for an injured worker, consider the following:

1. The work is within the worker's functional abilities.

The functional abilities reported by the health care provider will assist in determining the work capabilities. The worker is responsible for providing the employer copy of their health care provider's report to their employer. Any offer of ESRTW should include the job duties, physical requirements, length of time spent in each duty, accommodations and/or modifications, if any, to offset functional restrictions. If, as part of the employer's return-to-work program, an analysis of physical requirements has been completed, that information can also be used to determine if the work is suitable for a particular injured worker. This should occur within one business day of receiving the functional abilities information.

2. The worker has, or is reasonably able to acquire, the necessary skills to perform the work.

The duty to co-operate does not require extensive retraining or skill development in order for the injured worker to participate. In considering whether the worker can reasonably acquire the skills, the timeliness of the early and safe return-to-work process must be a critical factor.

In most cases, the employer should be aware of an employees' skills, attributes and abilities. If not, the employer and worker must discuss these in relation to the employment being offered. Where an employee requires new skills, consider the following:

- the worker can acquire these skills within a one-week period;
- the worker can attain the skills at the workplace or through a local training provider (within 25 kilometers (one way) of the pre-injury workplace or comparable worksite proposed);
- the cost to the employer to train the worker is affordable; and,
- the injured worker has the physical functional and cognitive capacity to participate in the training and in the proposed return-to-work program.

3. The work does not pose a health or safety risk to the worker or co-workers.

The Occupational Health and Safety Act outlines the legislative requirements of employers and workers to ensure a safe and healthy workplace. The employer is responsible for ensuring that the cause of a workplace injury has been rectified. As well, any offer of suitable employment must be safe for the injured worker and his/her co-workers.



4. The work restores the worker's pre-injury earnings, if possible.

The employer is responsible for paying the salary earned by a worker during the early and safe return-to-work process. These earnings are taxable and must be paid directly to the worker by the employer. WorkplaceNL will pay the worker the differential, if any, between the salary earned during the early and safe return-to-work process and 80 per cent of net pre-injury earnings, to the maximum compensable earnings level.

It is in the long-term financial interest of employers to provide suitable employment that, if possible, restores the worker's pre-injury earnings. Any wage loss paid by WorkplaceNL to workers will be applied to the employer's PRIME experience costs.

Available employment

Work that exists

The duty to co-operate provisions of the *Act* do not require employers to create work where none exists. However, a job vacancy does not have to exist in order for available work to exist. The pre-injury position will always be the most suitable employment where the worker is physically capable of performing in the position. As a result, the worker's return to the pre-injury position should be explored before the position is filled by the employer. Where an employer has multiple job sites, the suitable work may be available at a site comparable to the injured worker's pre-injury site. However, injured workers are not expected to travel unreasonable distances to avail of suitable employment.

Return-to-work options

Modified duties

Modified work may incorporate, but is not necessarily limited to, the worker's regular duties. The need for modified work is usually temporary, but it may be required on a permanent basis in some cases.

The duties, work and treatment schedule are planned and agreed to by the injured worker, employer and health care provider as appropriate. This approach allows normal life activities to continue while active medical treatment for the injury proceeds.

Easeback

Easeback allows injured workers to return to their pre-injury jobs gradually, while building up strength and tolerance in the process. Like modified work, easebacks may be planned in conjunction with medical treatment. The objective is to allow a steady progression of hours and/or duties leading to a return



to full employment. Generally, programs will continue over weeks, but may last longer if the worker has been significantly disabled. Each easeback is developed on its individual merit.

Obligation to re-employ

The second component of the return-to-work model deals with re-employment obligations in accordance with the Section 89.1 of the *Act*. This obligation applies for injuries occurring on or after January 1, 2002.

The employer of a worker who is unable to work in his/her pre-injury job as a result of a workplace injury, is required to re-employ the worker within a maximum of two years from the date the worker lost time from work if:

1. The employer regularly employs 20 or more workers;
2. The worker was employed with the injury employer for a continuous period of one year immediately prior to the date of injury; and,
3. The worker is medically able to perform the essential duties of the pre-injury employment or to perform suitable work.

An employer is obligated to re-employ the worker until the earliest of two years after the date of injury, one year after the worker is fit for the essential duties of the pre-injury job, or until the worker reaches age 65. The date of injury for re-employment purposes is the date the worker experiences loss of earnings capacity from the injury.



When a worker is cleared for the essential duties of the pre-injury job, he/she will notify the employer, WorkplaceNL, and return to work. If the pre-injury job is not available, the workplace parties are responsible for determining whether the alternative employment offered is comparable to the pre-injury job. If the workplace parties cannot agree, WorkplaceNL will make the final determination.

Where, following medical recovery from the injury, a worker is medically able to perform suitable work but is unable to perform the essential duties of the pre-injury job, the employer must offer the worker suitable employment that exists or becomes available throughout the period of the re-employment period. If the worker has returned to suitable work and subsequently becomes fit for essential duties within the re-employment obligation period, the employer must re-employ the worker in the pre-injury or comparable job.

WorkplaceNL has established procedures to determine whether a re-employment obligation exists for seasonal, casual, contractual, part-time and temporary workers. When an injury occurs, the employer and worker will be notified by WorkplaceNL if the employer has a re-employment obligation to the injured worker.

Employers also have an obligation to accommodate and re-employ injured and disabled workers under provincial human rights legislation.

Penalties for employers

Employers who do not meet their co-operation and/or re-employment obligations are subject to financial penalties.

Failure to co-operate

WorkplaceNL may levy a penalty on an employer not exceeding the cost of the worker's benefits, return-to-work and labour market re-entry services if they fail to co-operate in return to work. The penalty is applied from the start of non-co-operation and shall be added to the employer's assessment account.

Penalties levied against the employer could include:

- 1. The worker's full wage-loss benefits paid by WorkplaceNL to the worker.**

This penalty will be levied against the employer's assessment account on a bi-weekly basis. For all wage-loss benefit penalties, an additional penalty of 12.5 per cent of wage-loss benefits will be charged on a bi-weekly basis to cover the administrative cost to WorkplaceNL of providing the worker with benefits.

- 2. The full cost of the labour market re-entry assessment, if required, levied against the employer's assessment account when the assessment is completed.**

These costs including tuition, books, accommodations, travel, tools and equipment are levied against the employer's assessment account.

These penalties will continue until the earliest date that:

- the employer co-operates; or
- the worker's entitlement to temporary earnings benefits ends.

Failure to re-employ

If WorkplaceNL determines that the employer has not fulfilled the re-employment obligation, it shall, in all but exceptional cases, levy a penalty not exceeding the amount of the worker's net average earnings for the 12 months immediately preceding the beginning of the loss of earnings as a result of the injury (i.e. net average earnings). This amount is not subject to the maximum compensable earnings amount.

The penalty is applied from the start of the re-employment obligation and shall be added to the employer's assessment.

Penalties for workers

Where the worker fails to demonstrate co-operation to the satisfaction of WorkplaceNL and does not have a legitimate reason for not co-operating, the worker's benefits shall be reduced, suspended or terminated, as determined appropriate by WorkplaceNL.



WorkplaceNL has three regional service offices

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