



Return to Work and Duty to Cooperate

Final Policy Decision and Supporting Rationale

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Introduction

In the fall of 2024, *The Stronger Workplaces for Nova Scotia Act* resulted in changes to the Workers' Compensation Act (the "Act") that reinforce the WCB's responsibility for facilitating the safe and timely return to work of those injured on the job. At the same time, a new "duty to cooperate" was added to the Act that empowers the WCB to hold both workers and employers accountable for their collective participation during the early and safe return to work process (ESRTW).

In February 2025, in response to the changes to the Act, the WCB released a Discussion Paper and three draft policies on return to work and duty to cooperate. The WCB received feedback on these policies during 2 webinars (with over 250 participants), emailed comments through policy@wcb.ns.ca, input from the DTC survey, outreach meetings with stakeholders, and 14 formal written submissions – 10 from employers or employer organizations, and 4 from workers and labour.

This report includes:

- A summary of changes made to the draft policies based on the feedback received;
- A summary of WCB responses to feedback received that did not result in changes to the draft policies (Appendix A); and
- The WCB's final return to work and duty to cooperate policies (Appendix B).

This report concludes policy development on the topic of return to work and duty to cooperate.

Changes to policies in response to feedback

The WCB considered all stakeholder feedback received and made several changes to the draft policies in response. A summary of the changes is below.

Changes made throughout the policies

- Streamlined the preamble section of the policies.
- The definition of “RTW Team” was changed to make it clear that employers are always members of the RTW Team. Additionally, examples of worker “representative” were provided.
- A definition of maximum medical recovery (MMR) was added to all the policies.
- The phrase “workplace parties” was changed to “worker and employer” throughout the policies where appropriate.
- In the definition of “functional abilities”, the word “abilities” was moved to the front of the list of items that make up a person’s functional abilities. Also edited all the policies to ensure consistent use of the phrase “functional abilities”. Also removed most references to “restrictions” and “limitations” in the body of the policies because the concepts are included in the term “functional abilities”.
- Removed the phrase “objective medical information” and replaced it with “medical information”. This makes it clear that the WCB considers both objective and subjective medical information.
- Clarified that “health care provider” is a WCB approved health care provider.
- Changed the phrase “adaptive technologies” to “assistive devices” to be consistent with terminology typically used at the WCB.
- Fixed typos, grammar, sentence structure etc. Changed the order of some sections.

Policy 5.7.1 - Return to Work – Overview

- Clarified that workers are eligible for RTW services if the work-related injury prevents them from performing their regular job duties.
- Added an explanation of what is meant by ‘RTW services’.
- Clarified that the ESRTW period starts on the day of the injury and runs until the worker has recovered from their injury. Recovery generally means the worker has reached maximum medical recovery (MMR).
- Provided more context about an employers’ general duty to accommodate under the *Nova Scotia Human Rights Act* and the *Canadian Human Rights Act* and clarified that the WCB only has jurisdiction to deal with issues of accommodation for a compensable work-related injury. This is consistent with the information in the WCB’s re-employment policy.
- Clarified that accommodation/modifications during ESRTW are typically temporary or transitional in nature (this was also clarified in Policy 5.7.3).

Policy 5.7.2 – Early and Safe Return to Work – Roles and Responsibilities

Section 1 - Role of the WCB

- Added that when determining the expected duration of a worker's recovery as part of an ESRTW plan, both Policy 2.4.7R1- Normal Recovery Times **and** medical information for the worker is considered. While the Disability Duration Guidelines (DDG) adopted in that policy provide estimates for injuries generally, this makes it clear the WCB also considers relevant medical information for a particular worker in arriving at a recovery timeline. We also updated this in Section 2 (ESRTW plan) of Policy 5.7.3.
- We clarified that the WCB will support the employer in the development of the ESRTW plan, **if necessary**. This recognizes that some employers may not require extensive WCB support in this regard.

Section 2 - Role of the Worker

- Acknowledged that workers have existing general duties in the *Act*, (s.84 and s.113), to cooperate in the management of their claim, mitigate wage loss/ permanent medical impairment, and keep the WCB up to date on changes to their claim. These duties operate in conjunction with the new duty to cooperate in ESRTW.
- Added the worker's duty to notify the employer of their work-related injury as soon as practicable (as set out in s.83 of the *Act*) in the list of worker responsibilities.
- Removed the reference to doing other things as may be prescribed by regulation. If regulations are approved by government, we will update the policy.

Section 3 - Role of the Employer

- Streamlined the introduction.
- Added developing an ESRTW plan for a worker to the list of responsibilities to be consistent with the requirement to develop the plan set out in Policy 5.7.3.
- Removed the reference to doing other things as may be prescribed by regulation. If regulations are approved by government, we will update the policy.

Section 5 - Penalties for Workers and Employer Non-cooperation

- Clarified that when assessing cooperation, the WCB will generally look at the pattern of actions and behaviours of the worker and employer during the ESRTW process for the specific claim under consideration.
- Removed the reference to Policy 1.3.2R- Interruption of Medical Treatment – Circumstances Beyond Worker's Control. We agree with feedback that it may not always apply. Instead, we reference s.37 of the *Act* which requires earnings loss benefits be paid when the loss is caused by the work-related injury.
- Used plain language to better explain the nature of the employer penalties. An employer's penalty may be up to the total value of earnings loss benefits paid and other claims costs (e.g. health care) for the period of non-compliance. It was also clarified that an employer penalty is an amount owing added to the employer's account at the time it is levied.
- Included a statement making it clear that if WCB determines an employer or injured worker has not complied with their cooperation obligations, the employer or injured worker has the right to appeal the decision.

Section 6 - Role of other workplace parties

- Clarified that unions fulfil their positive duty to be part of the accommodation process by collaborating with the employer and worker to identify workplace solutions that support ESRTW.
- Clarified that s.100(1) of the *Act* applies to duty to cooperate in ESRTW. Therefore, removed the current reference to collective agreements and replaced it with the content of s.100(1) which states that if the terms of a collective agreement conflict with duty to cooperate in ESRTW in the *Act*, whichever provides the injured worker better return to work opportunities shall prevail, with the exception that seniority provisions set out in the collective agreement always prevail.

Policy 5.7.3 – Early and Safe Return to Work – Plans and Functional Abilities Information

Section 1 - Functional Abilities Information

- To be consistent with Policy 5.7.2, clarified that WCB healthcare providers must provide functional abilities information to employers, in addition to providing the information to workers and the WCB.

Section 2 – Early and safe return to work (ESRTW) plan

- Added wording to make it clear the employer will develop the plan with input from the worker; and the WCB will work with the employer and worker to make any necessary adjustments to the ESRTW plan.

Section 3 – Suitable and available work

- Clarified that suitable work is meaningful work and provided an overview of what is considered meaningful work. It was also made more explicit that a worker's ability to return to suitable work is done by comparing a worker's functional abilities to the work that has been offered.
- Clarified that available work is work that exists with the injury employer during the worker's recovery period, and not only work that is available at the time of the worker's injury. Circumstances may change and the same work that was available at the time of the injury may not be available when the worker is able to RTW.

Section 4 - Accommodations

- Removed the definition of "accommodation". The term is explained throughout all the policies, and the definition is not required.
- Updated and rationalized examples of modified work in section 4.2.
- Made it clear that modified work during ESRTW includes short-term training programs that lead to a job with the employer.

Section 5 Conclusion of ESRTW plan

- Simplified the section by making a general statement that worker non-compliance or abandonment is a factor in ending the plan, instead of listing specific types of non-compliance.
- Noted that employer non-compliance or abandonment of the plan can also lead to ending the plan.
- Removed the factor “worker is not going to benefit from further RTW services”. Instead, added that a WCB finding that suitable work with the employer is not available, or likely to be available, is a factor to be considered. This is a broader statement that can cover a variety of situations. For example, the worker’s injury is such that going back to work with the injury employer is impossible or a business is permanently closed, therefore no work is available.

- Clarified that the ESRTW plan ends if the WCB is satisfied the employer has offered suitable and available employment and the worker does not return to the job.
- Made it clear that if an ESRTW plan has ended, further steps in the RTW and compensation process may be implemented such as applying the re-employment provisions to the claim, vocational rehabilitation, relocation, or estimating earning capacity.
- Clarified that the worker is still obligated to cooperate in all aspects of their claim and RTW.

For a summary of the WCB’s response to feedback received that did not result in changes to the draft policies please see Appendix A.

Conclusion

The WCB values stakeholder participation in policy development and considered all feedback carefully. This report concludes policy development and consultation on Duty to Cooperate. The final decision and policies will be communicated broadly to stakeholders.

Appendix A - Stakeholder Feedback

The following is a summary of the feedback we received that did not result in changes to the policies. Some of this feedback was out of scope for the consultation and is not included in the table below. It includes:

- the WCB's use of WCB approved service providers;
- the WCB's interpretation and application of s.187 of the *Act* (the "benefit of the doubt" provision);
- the WCB's processes for the diagnosis and treatment of sprains and strain injuries;
- vocational rehabilitation;
- the role of unions more generally in RTW (outside of individual claims); and
- How a worker's pre-existing conditions are considered when identifying the need for accommodations.

This feedback has been provided to the appropriate WCB department for consideration.

We greatly appreciate the time and effort it takes to participate in policy consultation including webinar attendance, asking follow-up questions, and providing a formal submission. While we reviewed all the feedback in detail, we have focused on the common themes that were directly related to the content of the policies.

If you have any questions about a particular issue that is not specifically addressed here, please feel free to contact the Policy Team at policy@wcb.ns.ca and we would be happy to discuss it with you. We also recommend checking out the WCB's duty to cooperate section on the WCB's website, including the Q and A section.

Both employer and worker/labour

Stakeholder Feedback

WCB Comment

The duty to cooperate in ESRTW is not new.

In the fall of 2024, the *Stronger Workplaces for Nova Scotia Act* resulted in changes to the *Act* that introduced a new “duty to cooperate” in early and safe return to work process (ESRTW). We recognize that some employers and workers have been cooperating in ESRTW prior to the changes to the *Act*. However, prior to these changes, there was no specific duty to cooperate and no penalties for failure to meet these obligations during ESRTW.

Section 91 doesn’t apply to ESRTW.

The new duty to cooperate in ESRTW in s.89A comes after s.89 in the *Act*. Therefore, “Sections 89 to 101” includes s.89A. This means employers have a duty to accommodate (contained in s.91) workers to the point of undue hardship during ESRTW.

There should be details on how the WCB will apply penalties to workers and employers for non-compliance.

Penalties should be progressive in nature. The purpose of penalties should be to gain compliance and not punish.

Details of this nature are not typically included in policy. The WCB is preparing processes, procedures, and guidelines to aid in consistent and efficient administration of the penalty provisions for non-compliance with the duty to cooperate.

We agree that penalties should be used to gain, or re-gain compliance. Section 5 of *Policy 5.7.3* specifically states “The main goal is to gain, or regain, the employer’s/ worker’s co-operation.”

Stakeholder Feedback	WCB Comment
<p>The policies should include detailed requirements on how often workers and employers should communicate with each other during ESRTW, including situations when it may be harmful for the worker to be in contact with the employer. Who is responsible for settling disputes over what is appropriate communication?</p>	<p>Policies do not typically include specific standards for communication during ESRTW. The details on the frequency and manner of communication will be set out in the ESRTW plan to ensure the unique circumstances of each claim are accommodated. As set out in <i>Policy 5.7.2</i> the role of the WCB includes resolving disputes.</p>
<p>Workers or employers shouldn't be found to be non-compliant for having a dispute. Especially if the dispute is not related to the work-related injury.</p>	<p>One of the WCB's roles in ESRTW is dispute resolution. To enable us to carryout that role, worker's and employers are required to notify the WCB of a dispute between the worker and employer (and/or other workplace parties) which is impeding the ESRTW process. A dispute doesn't have to be directly related to circumstances of a worker's ESRTW to affect the RTW process (e.g. union action in the workplace, employer disciplining a worker). The WCB needs to understand the "big picture" to enable us to provide the best advice and make good choices to keep the ESRTW plan on track. If the dispute doesn't arise from, or result in, non-compliance with the worker or employer duty to cooperate – the WCB wouldn't seek to penalize the parties.</p>

Employers and employer organizations

Stakeholder Feedback

WCB Comment

The policies are too long and should be consolidated into 1 document.

In deciding to use 3 policies for RTW/ESRTW, we considered the nature of the topics, the amount of information to be communicated, and approaches taken by other WCB's on the topic. We decided at least 3 policies were necessary to adequately communicate RTW generally and the new duty to cooperate in ESRTW.

We believe this is consistent with the approach taken in other WCB's (they range from 1 to 6 policies) and provides the level of detail required to adequately communicate the requirements to stakeholders and staff.

We have, however, streamlined some language throughout the policy so please see section 2 of the paper for the changes we have made.

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The policy should provide details on how the requirements apply to specific industries (e.g. construction), injury types (e.g. psychological injury), organizational structures (e.g. multiple worksites), and/or business size (small vs. large).

Consistent with the approach in WCBs across the country, the policies are designed to be flexible enough to apply to all industries and injury types. Staff are receiving training on how the policies apply to a variety of workplaces and situations. The WCB will work with employer organizations and individual employers to support them in meeting their obligations in their work environments.

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The distinction between RTW and ESRTW is not appropriate and confusing. It gives the impression that cooperation is only required in ESRTW.

We agree that employers and workers need to cooperate broadly in the RTW process. This is supported by the recent revisions to the *Act* (new s.1A) that requires employers and workers to work collaboratively. However, the new duty to cooperate provisions in s.89A of the *Act* list very specific cooperation obligations for workers and employers during ESRTW. Therefore, we believe it is important to clearly communicate this fact.

Stakeholder Feedback	WCB Comment
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How will the WCB ensure timely access to health care given the current challenges in Nova Scotia’s health care system often causes delays in treatment.

Also, delays sometimes result from non-cooperation by service providers. The policy should address these issues.

These topics are not typically addressed in policy. From a timeliness perspective, the WCB has service level agreements with health care providers that require them to meet service standards.

The WCB has the responsibility to communicate with the RTW team which includes health care providers, manage the medical recovery of the worker, and ensure ESRTW plans are progressing appropriately.

The WCB, in its facilitation role, will take steps to educate and facilitate the exchange of information with health care providers to gain their cooperation.

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The WCB has an outsized role in ESRTW and too much control over the process.

The WCB should do most of the work of ESRTW.

The WCB has a legal responsibility to facilitate safe and timely return to work. That includes ESRTW during a worker’s recovery. While the duty to cooperate in ESRTW is a new legal requirement in the *Act*, some employers have well established RTW programs and have been providing workers with modified duties during the recovery period for many years. Alternatively, some employers have no experience with RTW or identifying modified duties. Therefore, the policies must be flexible enough to enable the WCB to provide the level of support and guidance required for RTW success – regardless of experience in RTW or the size of the business. We believe the role of the WCB as described in the policies is appropriate and it is consistent with that of other WCBs across the country.

Stakeholder Feedback	WCB Comment
<p>In the discussion paper the WCB has said that ESRTW is the recovery or “acute phase” of the injury. Employers need to understand what this means to know how long their duty to cooperate obligation lasts.</p> <p>At the end of the ESRTW process, where an employer has already backfilled the position, and re-employment obligations do not apply, what happens to the injured employee once they are healed?</p>	<p>In explaining what is meant by ESRTW the WCB used the phrase “acute phase” in the discussion paper and in our webinars. Unfortunately, this may have caused some confusion among stakeholders, who identified the “acute phase” is a distinct period of the overall recovery process. ESRTW is the period from the day of the injury until the worker has recovered (typically MMR).</p> <p>Consistent with the hierarchy of RTW in Policy 5.7.1 we would seek to RTW with a different employer.</p>
<p>The policies should include details on how the WCB will determine if an accommodation is an undue hardship for an employer.</p>	<p>The policies contain a level of detail consistent with that provided in policies in WCBs across Canada. However, we recognize that the WCB must apply the undue hardship provision in a manner consistent with best practice. As part of the WCB preparations to administer DTC we have developed tools and guidelines for staff to use when performing an undue hardship analysis.</p>
<p>As part of an appeal, employers should be able to request a stay of a decision to impose a penalty.</p>	<p><i>Policy 8.1.3R3- Internal Appeals</i> does not provide for stays, and states that an appeal to a Hearing Officer does not operate as a stay of proceedings in respect of the decision that is being appealed.</p>
<p>Penalties should be referred to as Administrative Penalties.</p> <p>Like the BC legislation, penalties should be limited to the maximum annual assessable earnings in place.</p> <p>Also add that administrative penalties will be paid into the accident fund.</p>	<p>The <i>Act</i> does not refer to the penalties as administrative. Therefore, we do not believe it is appropriate to describe them as such in the policies.</p> <p>The <i>Act</i> specifies the maximum penalties that can be applied. All employer premiums, interest and penalties are paid into the accident fund. We don't believe it is necessary to specify this in policy.</p>

Stakeholder Feedback	WCB Comment
In reference to penalties, this policy suggests that smaller employers would be given more leeway than would be afforded to larger employers.	The policies simply state that a death in the family or serious illness may have more of an impact on a small employer's ability to comply than a larger employer. It is not stating that they will receive preferential treatment. It is a factor that would be considered.
Will the WCB have more authority to terminate the claim if the worker is non-compliant as compared to the current approach with s.84 of the Act?	The WCB has always had the authority to suspend or terminate benefits if a worker was non-cooperative as set out s.84 of the Act. The new s.89A of the Act requires the worker and employer to cooperate with each other in specific ways during ESRTW. If either party is found to be non-compliant with those duties the WCB has the authority to level a penalty on an employer or reduce or suspend a worker's benefits.
The language in the RTW hierarchy of objectives is not consistent with the language throughout the policies.	The hierarchy of objects in <i>Policy 5.7.1</i> sets out the broad objectives (or "end goal") of RTW and is consistent with the approach taken in other WCBs. <i>Policies 5.7.2</i> and <i>5.7.3</i> have a narrower focus and address roles and responsibilities in ESRTW, as well as ESRTW plans.
Employers should be provided the same information the worker provides to the WCB about their ESRTW. Employers will not always have enough information to develop an ESRTW plan that complies with requirements – how can they be expected to create a plan?	Health care providers are required to provide employers with the functional abilities information they need to accommodate injured workers. If an employer is having difficulty obtaining the information they require to create an ESRTW plan they should contact their case worker. The WCB will ensure the employer receives the information.
A definition of "Suitable Work" should be added to the policies. Although a decision should not be made in a claim based off a definition, it may help guide workers, employers, and the WCB when making decisions on suitable work or when that issue is in dispute.	Section 3 of <i>Policy 5.7.3</i> provides a detailed explanation of the key characteristics of suitable and available work.

Stakeholder Feedback	WCB Comment
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The policies refer to a requirement for employers to use “adaptive technologies” during ESRTW. Does this mean employers will be required to buy equipment for temporary accommodations?

There is no specific requirement for employers to purchase equipment. Adaptive technologies (now called assistive devices) are a tool that can be used to modify the work to enable a worker to continue to work during ESRTW. Their use may or may not be appropriate depending on the circumstances. Employers are required to accommodate a worker to the point of undue hardship. If it is determined that an assistive device would enable the worker to stay at work during ESRTW, the WCB would consider whether the purchase of the device would be an undue hardship for the employer. If it is, the WCB would consider assisting the employer overcome this hardship.

In Section 2 of Policy 5.7.2 the following should be added to the list worker’s responsibilities: “living in reasonable proximity to the workplace to accept suitable work when it is available”

There is no requirement in the *Act* for a worker to live in proximity to the workplace to enable them to accept suitable work. Including such a requirement would be inconsistent with the *Act*. However, *Policy 5.7.3* sets out factors to be considered in determining if work is available to the worker.

Workers and labour/worker organizations

Stakeholder Feedback

WCB Comment

The RTW Specialist role should be a mandatory member of the RTW Team

The RTW Specialist is not required for every claim. If there are specific circumstances or challenges in a worker's RTW, the WCB can call on the RTW Specialist for expertise and advice.

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The policies should make it clear that s.93 of the *Act* does not apply to offers of modified duties during ESRTW. Some workers are concerned that if a worker refuses an offer of work during ESRTW, the employer will no longer have any cooperation obligations.

If a worker has refused an offer of modified duties during ESRTW the WCB would inquire into why the refusal has occurred. Sometimes, the refusal will be found to be reasonable (e.g. the work wasn't suitable because the worker didn't have the skills required or functional abilities). The WCB will work with the employer and worker to develop an offer of work that is both suitable and available. If the worker continued to refuse the work after it has been found to be suitable and available, the WCB may reduce or suspend the worker's benefits. Additionally, in these instances, the employer would have fulfilled their duty to cooperate. If a worker reconsiders their refusal, the WCB can examine the situation and determine if it would be an undue hardship for the employer to make the offer of work available again. For example, it has been a very short period of time since the initial offer, and the work is still available. However, each case must be considered on its own merits.

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The policy must lay out minimum standards for offers of ESRTW. It must be clear that a mere statement that suitable duties are available or will be provided is not enough to constitute a reasonable offer of return to work.

Detailed requirements for specific offers of suitable and available work in ESRTW are not typically included in policy. The ESRTW plan should establish how communication will take place – including how offers of suitable and available work will be communicated to, and accepted by, the worker. The WCB, in its facilitation and support role, will consider and resolve any disputes workers and employers may have in this regard.

Stakeholder Feedback	WCB Comment
<p>The policies must expand on the circumstances in which a worker’s refusal of suitable work may be reasonable and must provide examples.</p>	<p>We do not believe it is necessary to add examples of when it is reasonable to refuse suitable and available work. Including a list of circumstances may limit the WCB’s ability to consider circumstances not addressed in the policy. If a worker believes that the work they have been offered in ESRTW is not suitable and available the WCB will investigate and determine if the work meets the requirements, or if adjustments need to be made. If the WCB determines the work meets the requirements, the worker is expected to accept the work.</p>
<p>The policies introduce the “compelling reasons test” in section 5 of the Policy 5.7.3. The compelling reasons test should be highlighted.</p>	<p>Section 5 of the policy sets out some examples of compelling reasons for why a worker or an employer may not be able to comply with the duty to cooperate. Under limited compelling circumstances non-compliance with the duties may be appropriate. However, in circumstances such as these the WCB will be closely monitoring the situation to determine if the circumstances still apply and deciding if it is appropriate to expect compliance. We don’t believe it requires further elaboration.</p>
<p>The policies should state clearly that, during the WCB’s investigation into whether the worker has met their Duty to Cooperate, the worker is entitled to receive temporary earnings replacement benefits.</p>	<p>The WCB has no authority to reduce benefits until the worker has been found to be non-compliant – this includes an investigation period prior to a finding of non-compliance. If the WCB makes a finding of non-compliance we would, as stated in <i>Policy 5.7.2</i> “advise the worker of this finding as part of the WCB’s effort to gain, or regain, the worker’s cooperation.” If the worker continued to be non-compliant the WCB would reduce the worker’s benefits.</p>

Stakeholder Feedback	WCB Comment
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The polices should provide details on how the WCB determines what a worker’s functional abilities are and how the WCB determines if modified work is safe for the worker to perform. Also, define “restrictions” and “limitations”.

Consistent with WCB approaches across the country, the polices do not include detailed procedural and process elements. The WCB is re-designing processes to ensure timely and complete functional abilities information is available to compare to proposed modified work to ensure it is suitable (including safe) and available to the worker.

We believe the policy provides sufficient explanation of the terms – they describe what the worker can and cannot do.

ESRTW plans must always be rehabilitative – not only when possible.

Sometimes ESRTW plans can have a rehabilitative element. Some work sites and jobs lend themselves to duties or tasks that, for example, build strength, stamina and tolerance to work. However, this is not always the case, and we believe it’s important to recognize this fact.

The phrase “attempting to provide suitable work that is available” should be removed from the policies. Employers must provide the work.

S.89A (1)(b) of the new duty to cooperate in ESRTW in the *Act* states:

The employer of an injured worker shall co-operate in the early and safe return to work of the worker by ...(b) **attempting** to provide suitable work that is available and...”

It would be inconsistent with the *Act* to include “must”.

Policy 5.7.1 – Return to Work- Overview

Topic: Return to Work - Overview
Section: Return to Work
Subsection: General
Effective: TBA
Issued: TBA
Approved by Board of Directors: TBA

Preamble

As set out in Section 1A of the *Workers' Compensation Act* (the "Act") the WCB is mandated to facilitate the rehabilitation and the safe and timely return to work (RTW) of workers who sustain work-related injuries.

At its highest level, RTW is the act of maintaining or re-introducing injured workers to safe, timely, and meaningful work that eliminates or minimizes wage loss, as soon as it is safe to do so. This is vital to an injured worker's rehabilitation process and promotes recovery. RTW is facilitated using best practice approaches and legislated requirements like workplace accommodation, duty to cooperate in early and safe return to work (ESRTW), re-employment, and vocational rehabilitation. The purpose of this policy is to communicate the principles that guide RTW and provide an overview of the key concepts, obligations, approaches, and plans that underlie RTW. This policy should be read in conjunction with the following policies:

- *Policy 5.7.2 - Early and Safe Return to Work - Roles and Responsibilities*
- *Policy 5.7.3 - Early and Safe Return to Work - Plans and Functional Abilities Information*
- *Policy 5.6.1 – Re-employment: Obligation, Duties, and Penalties*

Definitions

"employer" means an employer as defined in section 2(n) of the *Workers' Compensation Act* (the "Act").

"functional abilities" means a worker's abilities, limitations, and restrictions (what the worker can and cannot do) with respect to a work-related injury.

"health care provider" means a WCB-approved health care service provider.

"injury employer" is the employer the worker is working for when they experience a work-related injury.

“maximum medical recovery (MMR)” – means the point at which further medical treatment or intervention will not, in the opinion of the WCB, result in a significant improvement in the worker’s medical condition.

“Return to Work Team” means a team that assists the worker with their recovery, return to work, and if needed, vocational rehabilitation. The team always includes the worker, the employer, the WCB case worker and the union, where applicable. The team can also include a worker representative chosen by the worker (e.g. a family member), and health care providers. Other members may be added depending on their specific roles and responsibilities.

“worker” means a worker as defined in s.2(ae) of the Act.

Policy Statement

1. Guiding principles

The following key principles guide the RTW process:

- Safe and timely RTW plays an important role in the worker’s rehabilitation and recovery.
- Where recovery and RTW barriers arise, they must be addressed through early support and services.
- A worker’s prospects for successful RTW in both the short and long term, are often best achieved by maximizing opportunities with the injury employer. This might even include retraining for a different job with that employer.

2. Eligibility for return-to-work services

Workers are eligible for RTW services if:

- a) They have an accepted workers compensation claim; and
- b) Their workplace injury prevents them from performing their regular job duties, as supported by medical information.

RTW services include case management, accommodation assistance, vocational rehabilitation services, dispute resolution, and ensuring compliance with co-operation obligations and any existing re-employment obligations.

References: Workers’ Compensation Act (Chapter 10, Acts of 1994-95), Sections 10(1), 12, 112.

3. Return to work hierarchy of objectives

Generally, RTW efforts are provided according to the following sequential hierarchy of objectives:

- a) Return to the same job with the same employer.
- b) Return to a similar or comparable job with the same employer.
- c) Return to a different but suitable job with the same employer.
- d) Return to work in a similar or comparable job with a different employer.
- e) Return to work in a different but suitable job with a different employer.
- f) Retraining for jobs that are suitable and reasonably available.
- g) Self-employment.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 112.

4. Early and safe return to work (ESRTW)

As set out in Section 89A of the Act, **all employers and workers** have a duty to cooperate in ESRTW. ESRTW is the process and plans implemented concurrent with active medical treatment to facilitate stay at work (when possible) and return to work with the injury employer. This usually involves **temporary modifications** to the worker's pre-injury work. Failure to comply with these cooperation obligations may result in penalties for the employer and a suspension, reduction, termination, or withholding of benefits for the worker.

The ESRTW period begins on the day of the work-related injury and usually ends when the worker has recovered from their injury. Recovery is generally considered to have occurred when the worker has reached maximum medical recovery (MMR) for their work-related injury.

ESRTW plans guide the work of the Return to Work Team and are the foundation of a successful RTW. ESRTW plans set out specific start and end dates and include progression to pre-injury duties in accordance with expected functional improvement.

For more information on ESRTW, see policies:

- *Policy 5.7.2 - Early and Safe Return to Work - Roles and Responsibilities*
- *Policy 5.7.3 - Early and Safe Return to Work - Plans and Functional Abilities Information*

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 89A.

5. Re-employment

All employers, except those in the construction industry and those who are determined by the WCB to regularly employ fewer than twenty employees, are covered by the re-employment obligations in the Act. Re-employment is intended to return the worker to a place in the labour market resembling, as closely as possible, the position held at the time of their injury.

Re-employment is different from the duty to cooperate in ESRTW in that:

- 1) it applies only to the employers that meet the criteria described above; and
- 2) it is triggered once the employer is advised by the WCB that the worker has recovered sufficiently from their work-related injury to do the essential duties of their pre-injury employment or suitable employment on a **permanent basis**.

For more information on re-employment see *Policy 5.6.1- Re-employment - Obligation, Duties, and Penalties*.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Sections 89 to 101.

6. Duty to accommodate

Under human rights law, all employers have a duty to accommodate workers with disabilities. Accommodation means the use of modified work or assistive devices to stay at work or enable a worker to return to work following a work-related injury. In Nova Scotia, the *Nova Scotia Human Rights Act* and (for federally regulated employers) the *Canadian Human Rights Act* applies. However, the WCB's jurisdiction to deal with issues of accommodation applies only to workplace accommodation required for the compensable work injury. As per s.91 of the *Act*, injury employers are required to accommodate the injured worker to the extent that the accommodation does not cause the employer undue hardship during ESRTW and re-employment (when applicable).

If the worker also requires accommodation under the *Nova Scotia Human Rights Act* or the *Canadian Human Rights Act*, employers may have additional accommodation requirements that coincide with actions taken as part of the WCB ESRTW and re-employment processes. Complaints about accommodation for those other protected grounds should be made to the *Nova Scotia Human Rights Commission* or the *Canadian Human Rights Commission*.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 91.

7. Vocational rehabilitation

Some workers may require vocational rehabilitation (e.g. employment readiness services, academic upgrading, re-training, on the job training) to enable them, to the greatest extent possible, to achieve their pre-injury earnings level. Vocational rehabilitation services may be provided to achieve RTW with the injury employer (the primary goal), a different employer if that isn't possible, or help the worker return to employability.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Sections 112, 113.

8. Estimating earnings capacity

The WCB's goal is to return workers to their pre-injury employability status to the greatest extent possible. This is achieved through ESRTW, re-employment, and vocational rehabilitation, in conjunction with the provision of appropriate health care treatment, products and services as determined by the WCB.

In some cases, the WCB must estimate a worker's earning capacity where the worker has recovered and is not earning at their pre-injury level but is employable. See policies *3.5.1- Definition of Suitable Employment*, *3.5.2- Definition of Reasonably Available Employment*, *3.5.3- Wage Rate to be Used in Estimating Earning Ability* for more information.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Sections 37, 38.

Application

This policy applies to decisions made on or after July 15, 2025.

Policy 5.7.2 - Early and Safe Return to Work - Roles and Responsibilities

Policy Number: 5.7.2
Topic: Early and Safe Return to Work - Roles and Responsibilities
Section: Return to Work
Subsection: Early and Safe Return to Work **Effective:** TBD
Issued: TBD
Approved by WCB of Directors: TBD

Preamble

As set out in Section 89A of the *Workers' Compensation Act* (the "Act"), all employers and workers have a duty to cooperate in a worker's early and safe return work (ESRTW). ESRTW is the process and plans implemented concurrent with active medical treatment to facilitate stay at work (when possible) and return to work (RTW) with the injury employer. ESRTW begins on the day of the work-related injury and usually ends when the worker has recovered from their injury. Recovery is generally considered to have occurred when the worker has reached maximum medical recovery (MMR) for their work-related injury.

Workers and employers, and where appropriate, health care providers, unions and other parties, are responsible for resolving return to work issues in the workplace with support from the WCB. In unionized work environments, WCB encourages and promotes union representatives' participation in the process.

This policy outlines the roles and responsibilities of the worker, employer, union, health care providers and the WCB in supporting the ESRTW of workers. This policy also sets out penalties for workers and employers who do not fulfill their duty to cooperate obligations during ESRTW.

Definitions

"employer" means an employer as defined in s.2(n) of the *Workers' Compensation Act* (the "Act").

"functional abilities" means a worker's abilities, limitations, and restrictions (what the worker can and cannot do) with respect to a work-related injury.

"health care provider" means a WCB-approved health care service provider.

"injury employer" is the employer the worker is working for when they experience a work-related injury.

“maximum medical recovery (MMR)” – means the point at which further medical treatment or intervention will not, in the opinion of the WCB, result in a significant improvement in the worker’s medical condition.

“Return to Work Team” means a team that assists the worker with their recovery, return to work, and if needed, vocational rehabilitation. The team always includes the worker, the employer, the WCB case worker and the union, where applicable. The team can also include a worker representative chosen by the worker (e.g. a family member), and health care providers. Other members may be added depending on their specific roles and responsibilities.

“worker” means a worker as defined in s.2(ae) of the Act.

Policy Statement

1. Role of the WCB

In order to facilitate ESRTW, the WCB will:

- a) establish and communicate regularly and effectively with the Return to Work Team.
- b) communicate to the employer and worker their statutory obligations to co-operate in the ESRTW process and monitor compliance with the duty to cooperate.
- c) support the employer, as necessary, in developing an ESRTW plan.
- d) communicate to the worker’s union (if applicable) their obligations in the ESRTW process.
- e) manage the medical recovery of the worker by:
 - i. determining the expected duration of injury recovery considering Policy 2.4.7R1- Normal Recovery Times and medical information for the worker;
 - ii. monitoring health care reports and communicating appropriate information to the Return to Work Team;
 - iii. expediting health care appointments; and
 - iv. determining when the worker has recovered (reached MMR).
- f) ensure ESRTW plans are progressing in a manner consistent with the worker’s functional abilities and are rehabilitative in nature, where possible;
- g) resolve disputes; and
- h) determine when the ESRTW plan is completed.

References: Workers’ Compensation Act (Chapter 10, Acts of 1994-95), Sections 1A, 89A, 102, 104.112.

2. Role of the worker

In conjunction with their general duties to cooperate in the management of their claim and mitigate earnings loss/permanent medical impairment outlined in s.84 and s.113 of the *Act*, workers are also required to cooperate in ESRTW. **Workers cooperate in ESRTW to work by:**

- a) initiating early contact with the injury employer, including notifying their employer of a work-related injury as soon as practicable;
- b) maintaining appropriate communication with the injury employer throughout recovery from the work-related injury as per the ESRTW plan;
- c) assisting the employer, as may be required or requested, to identify suitable work that is available and, where possible, restores the worker's pre-injury earnings;
- d) accepting suitable work when it has been made available by the employer; and
- e) giving the WCB all relevant information concerning their ESRTW.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Sections 83, 84, 89A(2), 113.

3. Role of the Employer

Cooperation and commitment by the employer in the ESRTW process is essential. **Employers cooperate in ESRTW to work by:**

- a) initiating early contact with the worker;
- b) developing an ESRTW plan for a worker;
- c) maintaining appropriate communication with the worker throughout their recovery as per the ESRTW plan;
- d) attempting to provide suitable work that is available and where possible, restores the worker pre-injury earnings; and
- e) giving the WCB all relevant information concerning the worker's ESRTW.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 86, 89A(1).

4. Accommodation and undue hardship

Employers have a duty to modify the work and/or the workplace to accommodate the needs of the worker to the extent of undue hardship during ESRTW. During ESRTW this usually involves **temporary modifications** to the worker's pre-injury work. Where the employer claims that an accommodation will cause undue hardship, the onus is on the employer to show adequate evidence of the detrimental impact on productivity, the operation, or the profitability of the business. There are general principles that set out the factors usually considered when assessing undue hardship, but the finding of undue hardship will vary according to the specific circumstances. What is undue hardship for one employer may not be for another. The WCB will consider several factors when determining whether the accommodation would pose an undue hardship. These factors may include:

- a) employee and customer safety;
- b) financial cost and benefits of the accommodation;
- c) interchangeability of the workforce and facilities;
- d) disruption of services to the public; and
- e) the size of the employer's operation.

Where the WCB is satisfied that the accommodation will cause undue hardship, it may assist the employer in overcoming the hardship and/or may assist the worker directly.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 91.

5. Penalties for Worker and Employer Non-cooperation

At the request of a workplace party, or on its own initiative, the WCB can review whether an employer and/or worker has complied with their ESRTW cooperation obligations.

In assessing whether cooperation has taken place, the WCB generally looks to the pattern of actions and behaviours of the worker and employer during the ESRTW process for the claim. The WCB considers and weighs all the relevant facts and circumstances, including the capability to carry out the obligation and the degree to which the workplace party has initiated/participated in required activities.

Failure to comply with cooperation obligations may result in a penalty for a worker and/or employer. The worker and/or employer has the right to appeal the WCB's finding of non-compliance.

5.1 Worker non co-operation

If the WCB determines that a worker is not co-operating in the ESRTW process, and does not have a compelling reason, the WCB will advise the worker of this finding as part of the WCB's effort to gain, or regain, the worker's cooperation.

Compelling reasons for workers being unable to co-operate are generally limited to post-injury non-work-related changes in circumstances such as an unexpected illness or injury, death in the family or jury duty. These circumstances are typically of short duration and wage loss benefits may be adjusted as per s.37 of the *Act*.

Without a compelling reason, failure or refusal to comply with the duty to cooperate may result in reduction, suspension, termination, or withholding of the worker's benefits. While each case must be judged on its individual merits, the following is a non-exhaustive list of **examples** of non-cooperation:

The worker

- a) refuses to provide relevant information to the WCB within the reasonable time frames specified by the WCB;
- b) refuses to accept an offer of suitable and available employment from the employer;
- c) fails to assist the employer in identifying suitable and available employment options when requested to do so;
- d) fails to attend or participate in an evaluation determined appropriate by the WCB and/or health care provider (e.g., functional capacity evaluation) to progress the ESRTW plan; or
- e) fails to notify the WCB of a dispute between the worker and employer (and/or other workplace parties) which is impeding the ESRTW process.

5.2 Employer non co-operation

If the WCB determines that an employer is not co-operating in the ESRTW process and does not have a compelling reason, the employer will be notified of the obligation to co-operate in ESRTW, the finding of non-co-operation, and the consequences of this finding. The main goal is to gain, or regain, the employer's co-operation.

Compelling reasons for employers being unable to co-operate are generally limited to circumstances such as a seasonal shutdown, general layoff, strike or lockout, and/or corporate reorganization. In the case of small employers, such circumstances may also include a death in the family or an unexpected illness or accident. These circumstances are typically of short duration.

Failure or refusal by an employer to comply with the duty to cooperate may result in a penalty on the employer not exceeding the total of:

- a) the full cost of the earnings loss benefits payable to the worker during the period of non-compliance; and
- b) any other claims costs incurred during the period of non-compliance.

The non-cooperation penalty is charged to the employer's account at the time it is levied.

While each case must be judged on its individual merits, the following is a non-exhaustive list of some **examples** of employer non-cooperation that may result in the imposition of a penalty:

The employer

- a) has suitable work available but fails to offer it to the worker;
- b) fails to communicate with the worker as per the ESRTW plan;
- c) refuses to pay the salary earned during the ESRTW process;
- d) fails to provide the WCB with a written ESRTW plan in the time frames agreed to; or
- e) fails to notify the WCB of a dispute between the worker and employer (and/or other workplace parties) which is impeding the early and safe return to work process.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Sections 37, 89A(3), 89A(4), and 197.

6. Role of other workplace parties

6.1 Union

In unionized work environments, the WCB promotes union representatives' participation in ESRTW. As reflected in the Supreme Court of Canada's Renaud¹ decision, while the employer has the primary duty to accommodate workers, the union also has a positive duty to be a part of the accommodation process, including collaborating with the employer and worker to identify workplace solutions that support ESRTW, and not unreasonably resisting the employer's proposed accommodation/s.

If an injured worker is a member of a union, the WCB will advise the worker they may wish to contact their local union shop steward to get information regarding the collective agreement provisions that may impact return to work in that particular workplace. The WCB will work with union representatives to:

- a) assist the worker in identifying suitable work that is available and, where possible, restores the worker's pre-injury earnings;
- b) advise the worker of collective agreement provisions that may impact the accommodation process; and
- c) assist the worker in responding to employer accommodation proposals.

Where the terms of a collective agreement conflict with duty to cooperate in ESRTW in the *Act*, whichever provides the injured worker better RTW opportunities shall prevail, with the exception that seniority provisions set out in the collective agreement always prevail.

¹ *Renaud v. Central Okanagan School District No.23*, [1992] 2 S.C.R. 970

6.2 Role of the health care provider

In addition to diagnosing and treating the worker, WCB approved service providers are required to:

- a) provide the employer, worker, and the WCB with functional abilities information;
- b) provide the worker and the WCB with relevant medical information;
- c) identify the most appropriate method of treatment for the work-related injury;
- d) ensure the worker receives timely treatment; and
- e) ensure the benefits of ESRTW are discussed, encouraged and supported throughout recovery.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 101(1),109.

Application

This policy applies to decisions made on or after July 15, 2025.

Policy 5.7.3 - Early and Safe Return to Work – Plans and Functional Abilities Information

Policy Number: 5.7.3
Topic: Early and Safe Return to Work – Plans and Functional Abilities Information
Section: Return to Work
Subsection: General Effective: TBD
Issued: TBD
Approved by Board of Directors: TBD

Preamble

The development and implementation of the ESRTW plan must begin as soon as possible following a work-related injury to prevent the worker from becoming disconnected from the workplace. The Employer leads the development of the ESRTW plan, with input from the worker and support from the WCB. The ESRTW plan sets out how and when the worker will be returned to their pre-injury position by considering information about the worker's functional abilities, their job, the workplace and possible accommodations.

This policy provides an overview of the content of a "reasonable" ESRTW plan, types of accommodations available to support ESRTW, the criteria for determining when an ESRTW plan has ended, as well as information on the source and handling of injured worker functional abilities information.

Definitions

"functional abilities" means a worker's abilities, limitations and restrictions (what the worker can and cannot do) with respect to a work-related injury.

"functional capacity evaluation" means a series of tests that provide an independent assessment and job simulation of critical physical demands, a reliable prediction of functional tolerances and the frequency with which a worker can perform them.

"health care provider" means a WCB-approved health care service provider.

"maximum medical recovery (MMR)" – means the point at which further medical treatment or intervention will not, in the opinion of the WCB, result in a significant improvement in the worker's medical condition.

"Return to Work Team" means a team that assists the worker with their recovery, return to work, and if needed, vocational rehabilitation. The team always includes the worker, the employer, the WCB case worker and the union, where applicable. The team can also include a worker representative chosen by the worker (e.g. a family member), and health care providers. Other members may be added depending on their specific roles and responsibilities.

Policy Statement

1. Functional abilities information

Functional abilities information is used to identify the work a worker can, and cannot, do and is used in the creation of an ESRTW plan. A health care provider who assesses and treats a worker who has, or may have had, a work-related injury must send a report on the workers' functional abilities to the WCB and the employer. The health care provider must also send progress reports to the WCB as required by the WCB's service level agreements. Functional abilities information provided by health care providers includes:

- a) An objective assessment of the worker's overall physical and/or psychological abilities.
- b) A clear outline of the abilities of the worker.

While generally a family physician may be responsible for the ongoing care of the worker, other health care providers who treat and/or assess the worker may provide functional abilities information. If required, a more comprehensive evaluation of functional ability, such as a functional capacity evaluation may be carried out.

With the consent of the worker, the employer or employer representatives may disclose the functional abilities information provided by the health care provider to a person assisting in the ESRTW of the worker.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), S. 109, 192.

2. Early and safe return to work (ESRTW) plan

ESRTW planning occurs when the worker and employer work together, as required by the duty to cooperate in Section 89A of the Workers Compensation Act (the "Act"), to identify how the worker's pre-injury job needs to change to temporarily and safely adapt to the worker's functional abilities after the injury. ESRTW plans are clear, written documentation of what the worker will be doing at the workplace in support of the goal of full return to all pre-injury duties and earnings within expected timelines.

ESRTW plans should be developed by the employer, with input from the worker and other workplace parties (where appropriate) and support from the WCB. The WCB will review ESRTW plans for "reasonableness", work with the employer and worker to make any necessary adjustments and confirm the plan with the worker.

A reasonable ESRTW plan typically meets the following criteria:

- a) Starts on, or as close to, the date of injury as possible;
- b) Includes a path to the worker's pre-injury work;
- c) Identifies suitable and available work consistent with the RTW hierarchy of objectives;
- d) Respects the worker's functional abilities. This may include, for example, the identification of the need for modifications like assistive devices, modified duties, or modified hours;
- e) Includes regular communication, both within the workplace, and with the WCB;
- f) Sets out how the plan will be monitored and adjusted as needed;
- g) Defines the salary to be earned by the worker during the ESRTW plan; and
- h) Has an end date consistent within the timelines set out in *Policy 2.4.7R1- Normal Recovery Times* and medical information for the worker.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), 89A, 112, 113.

3. Suitable and available work

3.1 Suitable work

Section 89A of the Act requires employers to cooperate in ESRTW by attempting to provide suitable work that is available and where possible, restores the worker to pre-injury earnings. In the context of ESRTW, suitable work is work:

- a) the worker has the necessary skills to perform;
- b) the worker is medically able to perform; and
- c) that does not pose a health or safety risk to the worker or co-workers.

To determine whether the worker can return to suitable work, the worker's functional abilities are compared to the demands of the work.

Suitable work must be meaningful, by contributing to the productivity or efficiency of the business operations and/or by developing the worker's job skills. Productive work is work that consists of tasks that provide an objective benefit to the employer's business. This includes, but is not limited to, tasks that:

- a) form part of the employer's regular business operation;
- b) generate revenue (aside from reducing WCB claims costs); and/or
- c) increase business efficiency or lead to business improvements.

During ESRTW, the primary focus is on temporary work modifications to enable the worker to recover at work. As the worker recovers, the nature of, or need for, work modification is expected to change. Please see Section 4 "Accommodations" for the typical modifications that may be made to enable the employer to provide suitable work during ESRTW.

3.2 Available work

Available work is work that exists with the injury employer during the worker's recovery period at the work site, or at a proposed worksite, arranged by the employer, comparable to the worksite at the time of the work-related injury.

For determining if a proposed work site is comparable to the worksite at the time of the work-related injury, the WCB's considerations include, but are not limited to, whether:

- a) assignment to a worksite other than the injury site forms part of the employment contract;
- b) travelling to the proposed job is within the normal parameters of travel expected of a worker; or
- c) the worker and employer agree on the appropriateness of the conditions of work for the worker.

4. Accommodations

An accommodation is any change in the job duties, reorganization or reduction of work hours, physical changes to the work area, or changes in the use/type of equipment that are necessary to enable a worker to perform suitable and available work. Accommodations include modified work and assistive devices. ESRTW plans accommodate the worker's altered functional abilities as a result of the work-related injury.

4.1 Determining need for modifications and assistive devices

In determining the need for modifications or assistive devices, the WCB will consider:

- a) the tasks or activities to be performed;
- b) the worker's functional abilities;
- c) any non-work-related injury, limitation, or condition a worker may have;
- d) any modification or device necessary for the performance of job tasks or activities; and
- e) other factors in the work environment that affect the worker's ability to perform the job duties.

4.2 Modified Work

Modified work is offered when a worker is able to return to work but is unable to do all of the duties of the pre-injury job without help. During ESRTW modifications are typically temporary, or transitional, in nature and are intended to enable the worker to safely stay or return to work as they recover. It may involve a modification to the job, task, function, hours of work, worksite, or any combination of the above to accommodate the worker's functional abilities and includes:

- a) Modified Duties: Changing the pre-injury job duties of the position. This includes altering or removing some or all duties.
- b) Alternate Duties: Alternate duties are duties not included in the worker's usual job.
- c) Modified hours: Adjustments to a worker's schedule.
- d) Graduated ESRTW: A gradual return to pre-injury hours of work achieved by increasing the number of hours worked over a defined time frame agreed upon by the workplace parties using the functional abilities information relating to the worker. While the hours of work vary, the duties are ideally the same. Modified duties may be used together with the graduated ESRTW where needed.
- e) Alternative Work: Alternative work is a job or bundle of duties different from the worker's pre-injury job or duties.

Modified work during ESRTW also includes short-term training programs that lead to a job with the injury employer.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), 91, 112, 113.

5. Conclusion of ESRTW plan

An ESRTW plan is concluded by the WCB, with input from the Return to Work Team, based on the following factors:

- a) the goals of the plan have been achieved as evidenced by progress reporting, evaluation, testing results and medical evidence validating that the worker is fit for their pre-injury job;
- b) the WCB is satisfied that suitable work with the injury employer is not available, will likely not become available, or will not continue to exist in the reasonably foreseeable future;
- c) the worker has recovered (MMR) but has not reached the goals of the plan (e.g. the work or earnings at the time of the work-related injury).
- d) the worker and/or employer fails to cooperate and/or abandons the ESRTW plan;
- e) the worker refuses to accept suitable and available employment;
- f) the worker chooses to relocate to a place which significantly limits the ability of the WCB to continue with the provisions of the ESRTW plan; or
- g) the worker voluntarily ends employment or is terminated for just cause.

Conclusion of the ESRTW plan may lead to further steps in the RTW and compensation process, such as:

- a) application of the re-employment provisions in *Policy 5.6.1 Re-employment: Obligation, Duties, and Penalties* if applicable;
- b) vocational rehabilitation;
- c) relocation;
- d) determining suitable employment and earning capacity.

The worker is obligated to continue to cooperate in all aspects of their claim and RTW regardless of the ESRTW plan ending.

References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), 84, 89A, 113.

Application

This policy applies to decisions made on or after July 15, 2025