

**POLICY NUMBER: POL-93**

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**Chapter:  
CLAIMS**

**Subject:  
RETURN TO WORK**

**Effective Date:  
November 27, 2002**

**Last Update:  
July 22, 2010**

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**REFERENCE:**

Workers Compensation Act R.S.P.E.I. 1988 Cap. W-7.1, Section 86, 86.1 - 86.12.  
Workers Compensation Board Policy, POL-03, "Travel And Related Expenses".

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**DEFINITION:**

In this policy:

"Accident" means a chance event occasioned by a physical or natural cause that causes personal injury to a worker. This includes a wilful and intentional act that is not the act of the worker, any event arising out of and in the course of employment, or thing that is done and the doing of which arises out of and in the course of employment, and an occupational disease. Stress is included only when it is an acute reaction to a traumatic event arising out of and in the course of employment.

"Alternative employment" means employment that is comparable, as determined by the Workers Compensation Board, to the worker's pre-injury work in nature, earnings, qualifications, opportunities and other respects.

"Average earnings" means the daily, weekly, monthly, or regular remuneration the worker was receiving at the time of the accident or any consecutive twelve month period during the two years preceding the date of accident, whichever, in the opinion of the Workers Compensation Board best represents the worker's loss of earning capacity. This includes any remuneration the worker received as a result of the employment and Employment Insurance.

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“Regularly employ” means the number of workers employed by the employer on the day of the accident.

“Return to work programs” means modified duties, alternate duties or tasks, or ease back, including approved employer initiated ease back programs. Return to work includes transition from light, alternative or modified duties and modified or alternative work.

“Suitable work” means work that a worker has the necessary skills to perform and is medically able to perform, and that does not pose health or safety hazards to the worker or co-workers, as determined by the Workers Compensation Board.

“Undue hardship” means a situation that creates onerous conditions for an employer such as, intolerable financial costs, serious disruption to business or health and safety risks. The onus of proof for a claim of undue hardship is the responsibility of the employer.

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**POLICY:**

1. The Workers Compensation Board is committed to assisting workers with early and safe return to work.
2. **Return To Work Programs**

The Workers Compensation Board facilitates the following return to work programs:

Modified Duties

Modified duties allow the worker to work regular hours with some modifications of the person’s pre-injury work duties. The modified duties match the worker’s functional abilities and require less physical exertion than the pre-injury job. Worker’s duties are limited according to the functional limitations as recommended by the health care provider. The employer may expect to pay up to full wages to workers on modified duties.

Alternate Duties/Tasks

While unable to perform regular duties, the worker may be able to perform suitable work or other duties within the worker’s skills or abilities that are different from pre-injury duties. Hours of work may vary depending on the availability of appropriate,

meaningful tasks and the worker's skills and abilities. The employer may pay full wages to workers performing alternate duties or tasks.

#### Ease Back

Ease back to regular work may be initiated by the Workers Compensation Board or by the employer. It allows workers to gradually return to their pre-injury work, while building their strength and tolerance for work. The work hours are reduced and duties may be modified to match the worker's tolerance level. The objective is to allow a steady progression of hours or duties with the end result being a return to full employment. Regular job duties are performed by or shared with another worker. The worker is an extra to the regular staff complement and continues to receive wage loss benefits from the Workers Compensation Board during ease back.

The Workers Compensation Board encourages employer initiated ease back programs. However, all employer initiated ease back programs require the approval of the Workers Compensation Board and must meet the following criteria:

- employers must have an occupational health and safety program operational in the workplace;
- employers must be willing to commit adequate resources to administer the ease back program;
- employers must ensure fair and equitable procedures are in place for the program;
- employers must provide for meaningful and respectful work designed to, wherever possible, gradually return the worker to his/her pre-injury job.

If the employer cannot accommodate an ease back the Workers Compensation Board will provide the worker with four (4) weeks of wage loss benefits in lieu of the ease back.

3. A worker who is participating in a return to work program may be eligible for transportation cost reimbursement pursuant to Workers Compensation Board Policy, POL-03, "Travel And Related Expenses".

4. **Right to Return to Work - Duty to Cooperate**

Workers and employers are expected to participate and cooperate in an early and safe return to work of a worker.

**5. Workers' obligations**

Workers are required to:

- contact their employer as soon as possible after the injury occurs and maintain effective communication throughout the period of recovery;
- assist their employer, as may be required or requested, to identify suitable work that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings;
- accept suitable work; and
- provide the Workers Compensation Board with any information requested concerning the worker's return to work.

**6. Employers' obligations**

Employers are required to:

- contact the worker as soon as possible after the injury occurs and maintain effective communication throughout the period of the worker's recovery;
- provide suitable work that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings; and
- provide the Workers Compensation Board with any information requested concerning the worker's return to work.

**7. Monitoring of progress**

During the Return to Work process the Workers Compensation Board may contact the employer and the worker to monitor the progress of the worker to determine whether:

- (a) the worker and employer are fulfilling their obligations to cooperate; and
- (b) assistance is required to facilitate the worker's return to work.

**8. Dispute Resolution**

Workers and employers are required to notify the Workers Compensation Board of difficulties or disputes which arise during the return to work process.

If there is a dispute, the Workers Compensation Board shall, through consultation,

attempt to resolve the dispute between the parties, and where the parties are unable to come to an agreement through consultation, decide the matter in dispute.

**9. Non-compliance**

Where, in the opinion of the Workers Compensation Board, a worker fails or refuses to comply with their return to work, the worker shall not be entitled to compensation until, in the opinion of the Workers Compensation Board, the worker has complied. Where, in the opinion of the Workers Compensation Board, an employer fails or refuses to cooperate in their return to work obligations, the Workers Compensation Board may levy a penalty on the employer that may include up to the full amount of any compensation payable to the worker plus any expenditures incurred by the Workers Compensation Board in respect of the worker during the period of non-compliance.

Any penalty payable to the Workers Compensation Board, will be added to the employer's assessment and payment enforced as provided by the *Workers Compensation Act*.

**10. Re-employment**

Note: This section applies only to employers who regularly employ 20 or more workers and are not part of the construction industry. The Workers Compensation Board will identify the construction industry by using the Statistics Canada Industrial Classification code assigned to employers for assessment purpose. Employers whose operations are seasonal are included if there are twenty or more workers employed in the majority of the months for the full regular season of operation.

Where a worker has been unable to work as a result of an accident and has been employed by the employer, at the date of the injury, for at least 12 continuous months, the employer shall offer to re-employ a worker when the worker is medically able to return to work.

Workers employed in seasonal work are eligible for re-employment if they have been employed by a seasonal employer for a full season and called to return to that employer for the next season.

The Workers Compensation Board may determine whether an injured worker who has not returned to work with an employer, is medically able to perform the essential duties of the worker's pre-injury employment or suitable work. The Workers Compensation

Board may, from time to time, revise this determination.

The employer's obligations to re-employ begin on the date, as determined by the Workers Compensation Board, that the worker is able to perform the essential duties of the pre-injury job or suitable work.

An employer is obligated until the earlier of:

- (a) two years after the date of the accident; and
- (b) the date on which the worker attains 65 years of age.

**11. Re-instatement**

When a worker is medically able to perform the essential duties of the worker's pre-injury employment, the employer shall offer to reinstate the worker in the position that the worker held on the date of the accident.

**12. Alternative employment**

Where the Workers Compensation Board is satisfied the employer is unable to reinstate the worker, the employer shall offer alternative employment to the worker.

**13. Suitable work**

Where a worker is medically able to perform suitable work but is unable to perform the essential duties of the worker's pre-injury employment, the employer shall offer to the worker the first available suitable work with the employer.

**14. Accommodation of the workplace**

An employer shall accommodate the work or workplace to the needs of a worker who requires accommodation as a result of the injury to the extent that the accommodation does not cause the employer undue hardship. Such accommodations may involve any modification, assistive devices, or combination of these.

**15. Termination of employer's obligation**

Where an employer has offered re-employment to a worker and the worker has refused the employer's offer, the employer's obligation to re-employ is ended.

**16. Termination of worker's employment**

Where an employer re-employs a worker and terminates the worker's employment within six months of the date the re-employment began, the employer is deemed not to have fulfilled their re-employment obligation unless the Workers Compensation Board is satisfied the termination of the worker's employment was not related to the injury.

A worker who was terminated within six months of re-employment will have three months from the date of termination to request in writing that the Workers Compensation Board investigate the alleged non-compliance with the re-employment obligation.

**17. Non-compliance**

If an employer fails to fulfill its return to work obligations, the Workers Compensation Board may:

- levy a penalty on the employer not exceeding the amount of the worker's net average earnings for the 12 months preceding the beginning of the loss of earning capacity as a result of the accident; and
- make payments to the worker for a maximum of one year as if the worker were continuing to receive wage loss benefits.

Any penalty payable to the Workers Compensation Board, may be added to the employer's assessment and payment enforced as provided by the *Workers Compensation Act*.

If the Workers Compensation Board finds that an employer has failed to meet their obligations, the Workers Compensation Board will inform the employer verbally and in writing of the amount of the re-employment penalty.

**18. Objection to penalty**

A re-employment penalty is not suspended if an employer applies for reconsideration and appeal of the decision.

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**19. Re-employment and collective agreement conflicts**

Where a conflict exists between a collective agreement and the re-employment terms of the *Workers Compensation Act*, and the *Workers Compensation Act* gives a worker better re-employment terms, the Act shall prevail over the collective agreement.

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**HISTORY:**

July 22, 2010 - Amended to clarify that if the employer is unable to accommodate an ease back program, the Workers Compensation Board will provide 4 weeks of wage loss benefits in lieu of the ease back.

April 27, 2006 - Amended to clarify “alternate employment” and definition of “undue hardship”.

March 27, 2003 - Amended to ensure the definition of “accident” is consistent with the definition provided in the *Workers Compensation Act*.

Board of Directors Approval Date: November 27, 2002