NORTHWEST TERRITORIES & NUNAVUT

CODES OF PRACTICE

In accordance with the
Northwest Territories *Safety Act* and *Occupational Health and Safety Regulations*;
and Nunavut *Safety Act* and *General Safety Regulations*

RETURN TO WORK
PROGRAM DEVELOPMENT

WSCC Workers' Safety & Compensation Commission | ᐃᖅᑲᓇᐃᔭᖅᑎᓄᑦ ᐊᑦᑕᓇᖅᑐᓂᒃ ᐊᒻᒪ ᓇᓪᓕᐅᒃᑯᒫᓂᒃ ᖃᐅᔨᓴᖅᑏᑦ

SEPTEMBER 2015

Code of Practice

RETURN TO WORK

PROGRAM DEVELOPMENT

NORTHWEST TERRITORIES

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If you would like this code of practice in another language, please contact us.

FOREWORD

The Workers' Safety and Compensation Commission (WSCC) provides this industry code of practice in accordance with subsections 18(3) and 18(4) of the Northwest Territories and Nunavut *Safety Acts*.

The code of practice applies to all workplaces subject to the Northwest Territories and Nunavut *Safety Acts* and related *Regulations;* the *Workers' Compensation Act*; and the *Human Rights Acts.*

This code corresponds to Section 4 and 5 of the Nunavut and the Northwest Territories *Safety Act.* It is available from the WSCC online at **wscc.nt.ca** or **wscc.nu.ca**.

The *Return to Work Program Development Code of Practice* is effective September 30, 2015, as published in the *Northwest Territories Gazette* and *Nunavut Gazette*.

Chief Safety Officer, WSCC

Disclaimer
This publication refers to obligations under the workers' compensation and occupational health and safety legislation as administered by the Workers' Safety and Compensation Commission.
To ensure compliance with legal obligations always refer to the most recent legislation. This publication may refer to legislation that has been amended or repealed.
Check for information on the latest legislation at wscc.nt.ca or wscc.nu.ca,
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WHAT IS A CODE OF PRACTICE?

WSCC codes of practice provide practical guidance to achieve the safety requirements of the Northwest Territories and Nunavut *Safety Acts* and related *Regulations*.

As per subsection 18(3) of the Northwest Territories and Nunavut *Safety Acts*, "For the purpose of providing practical guidance with respect to the requirements of any provision of this Act or the regulations, the Chief Safety Office may approve and issue such codes of practice as he or she considers are suitable for that purpose."

WSCC codes of practice apply to workplaces in the Northwest Territories and Nunavut. The Chief Safety Office approves codes of practice for use by all occupational health and safety (OHS) stakeholders. Codes of practice come into effect in each territory on the day they are published in the *Northwest Territories Gazette* and *Nunavut Gazette*.

Codes of practice do not have the same legal force as the *Safety Acts* and related *Regulations*. A person or employer cannot face prosecution for failing to comply with a code of practice. However, in legal proceedings under the *Safety Acts* and related *Regulations*, failure to observe a code of practice may be a consideration when determining whether a worker or employer complies with the *Safety Acts* and related *Regulations*.

Employers and workers should follow WSCC codes of practice unless there is an alternative course of action that achieves the same or better occupational health and safety outcomes.

A Code of Practice

- Provides practical guidelines.
- Adapts to individual work sites.
- May serve as evidence.
- Should be followed unless there's a better way.

INTRODUCTION

Return to Work (RTW) programs benefit the injured or ill worker and the employer. A well-defined RTW program provides the framework to create successful, individual RTW plans to assist injured or ill workers safely return work as they recover from their injury or illness.

The key component of a RTW plan involves offering injured or ill workers modified duties to support their safe return to work. Within the Internal Responsibility System (IRS) – the underlying philosophy that everyone has a personal and shared responsibility to work safety for themselves and everyone in the workplace – the modified duties must not overextend their co-workers' duties, exposing them to increased risk of injury or illness. The employer must also address the hazard(s) that caused the injury or illness, reducing the risk of it happening again. Through the RTW program, the employer and workers identify modified and alternate work and adjust workloads to accommodate the recovering worker. Implementing the RTW program ensures that providing a recovering worker with modified or alternate duties considers the safety needs of everyone at the work site.

RTW programs, sometimes called injury management or claims management, aid the worker in their recovery and rehabilitation.

The on-going RTW process is flexible and adjusts to the worker's abilities while they receive medical treatment and rehabilitation. The goal of the program is to aid the worker in their recovery and, whenever possible, get them back to their pre-injury level of employment.

The *Safety Act* and *Workers' Compensation Act* requires employers to manage a worker's injury or illness and return to work. In the *NWT Human Rights Act* and *NU Human Rights Act,* under the *Duty to Accommodate* section*,* employers are legislated to accommodate injured and disabled workers. Employers must be able to demonstrate the steps they took to fulfil these legislative requirements.

Use this code of practice and the **WSCC *Employer's Guide to Return to Work*,** to:

- promote safe, accessible and healthy workplaces;
- understand the legal obligation to accommodate an injured or ill worker;
- establish an effective Return to Work program;
- care for injured or ill workers with continued access to safe work opportunities that can aid in their recovery or rehabilitation; and
- help minimize employer costs associated with injured or ill workers through an effective RTW program.

THE WSCC'S *Employer's Guide to Return to Work* CAN ASSIST EMPLOYERS TO SET UP THEIR RTW PROGRAM. WSCC.NT.CA

DEFINITIONS

Accommodation – an adaptation or change to the job to meet the injured worker's functional abilities.

Alternate Work – job duties a worker does not normally perform.

Disability – the condition of having reduced physical or mental abilities caused by the worker's personal injury or disease.

Disability Management – the process in the workplace designed to facilitate the continued employment of workers with illness, injury, and disability. This is done through a coordinated effort taking into account the worker's functional abilities.

Duty to Accommodate – legal obligation under the *Human Rights Act* that involves accommodating workers with disabilities (including injuries and illnesses).

Employer – The *Workers' Compensation Act* defines an Employer as:

a) Any person or entity that employs one or more persons under a contract of service; and
b) Any person or entity that the Commission determines is responsible for performing the obligations of an employer… (ss.8(1)*)*.

Functional Abilities – a worker's physical and psychological capabilities. Refers to a worker's medical limitations and restrictions when determining what they are able to do.

Health Care Provider – a chiropractor, dentist, nurse, occupational therapist, optometrist, physical therapist, physician, psychologist, or other class of persons whose qualifications to practice and of the healing professions are accepted by the Commission (per ss.1(1) of the *Workers' Compensation Acts).*

Injury – physical or psychological harm or damage. An injury includes exposure to a foreign or contagious substance that may result in an immediate or delayed reaction.

Job Demands Analysis (JDA) – a procedure to quantify and evaluate the physical and environmental demands of a job that identifies and measures the essential and non-essential tasks. The JDA identifies quantifiable workplace demands including frequency of workplace activities, weights, distances, heights, positions etc. The JDA also includes observations related to other workplace factors including workstation design and psychosocial factors, which may impact the workplace environment.

Manager – the person responsible for assigning and monitoring job duties.

Supervisor - an individual who is authorized by an employer to oversee or direct workers.

Modified Work – altered job duties or methods of performing the job tasks to meet the worker's functional abilities.

Return to Work – a process to help injured workers return to safe, productive, and suitable employment as soon as safe and medically possible.

Return to Work Plan – a documented plan that outlines the arrangements made so that an injured worker can return to work as soon as safe and medically possible. This is one component of a return to work program.

Return to Work Program – a planned process to manage and minimize the impact of injury in the workplace. A return to work program includes policies, procedures, forms, and evaluation.

Suitable Work – job tasks within the worker's functional abilities that are safe and do not put the worker or their co-workers at risk or hinder recovery, and are meaningful (serve a purpose or valuable function to the organization).

Undue Hardship – beyond an employer's ability to accommodate a worker's return to work. This occurs when an employer cannot sustain the economic or efficiency costs of an accommodation. Determining undue hardship depends on the individual circumstances and takes into account health, safety, and financial considerations.

Stakeholder – individual or group who has an interest, or stake, in the return to work; includes, injured workers, employers, health care providers, the WSCC, and the union (if applicable).

Temporary Partial Disability – A work-related injury or disease that temporarily prevents a worker from returning to regular employment. However, medical evidence supports the worker returning to modified or other employment with temporary work restrictions.

Temporary Total Disability – A work-related injury or disease results in temporary work restrictions. Restrictions prevent the worker from performing any pre-incident job duties or currently returning to any type of employment. The worker's condition is not stable.

Worker – a person engaged in work for an employer, whether or not the employer pays them.

Worker's Safety and Compensation Commission (WSCC) – the agency of the Governments of the Northwest Territories and Nunavut that provides insurance to employers for workers who sustain workplace related injuries. If workplace injuries occur it is the responsibility of the employer to ensure these injuries are reported to the WSCC. WSCC provides services to ensure the worker recovers from their injuries and returns to work as soon as it is safe to do so. WSCC also provides services to prevent such incidents.

Workplace or Worksite – any building, mine, construction site, vehicle, field, road, forest, or other space where a worker is working, regardless of how frequently work occurs at the location.

BENEFITS OF RETURN TO WORK

As well as fulfilling legal requirements, there are financial and moral reasons for effective return to work.

Employer Benefits

- Retains experienced, skilled, and knowledgeable workers;
- Improves worker morale and relations;
- Demonstrates the value an organization places on their workers;
- Provides consistency in the treatment of injured workers;
- Decreases worker's time away from work, which reduces time loss claims;
- Reduces hiring and training costs;
- Improves the health and safety culture; and
- Reduces risk of similar injuries occurring through identifying and controlling hazards.

Worker Benefits

- Improves recovery and rehabilitation, and prevents disability;
- Maintains physical fitness and cardiovascular health;
- Maintains financial benefits (pension, Employment Insurance, medical and dental plans, vacation leave benefits);
- Increases worker morale; and
- Protects worker employability.

Other Benefits

- Reduced disability, reduced reliance on social benefits programs;
- More efficient use of health care resources; and
- Identification of safety hazards through the RTW process to prevent future injuries.

REGULATORY REQUIRMENTS

The *Safety Act* and related *Regulations* require the employer to provide a safe workplace for all employees, including those with injuries or disabilities.

Northwest Territories and Nunavut *Safety Act*
HEALTH AND SAFETY

4. (1) Every employer shall
- (a) maintain his or her establishment in such a manner that the health and safety of persons in the establishment are not likely to be endangered;
- (b) take all reasonable precautions and adopt and carry out all reasonable techniques and procedures to ensure the health and safety of every person in his or her establishment; and
- (c) provide the first aid service requirements set out in the regulations pertaining to his or her class of establishment.

5. Every worker employed on or in connection with an establishment shall, in the course of his or her employment,
- (a) take all reasonable precautions to ensure his or her own safety and the safety of other persons in the establishment; and
- (b) as the circumstances require, use devices and articles of clothing or equipment that are intended for his or her protection and provided to the worker by his or her employer, or required pursuant to the regulations to be used or worn by the worker.

The *Workers' Compensation Act* defines injury reporting legislation for the employer, worker, and Health Care Provider. It ensures injured workers receive the appropriate benefits and medical treatment to assist in recovery and rehabilitation, and to mitigate injury.

Workers' Compensation Act
Northwest Territories and Nunavut

Purpose of Act

1.1. The purpose of this Act is to establish an open, fair and comprehensive system of compulsory no-fault mutual insurance for workers and employers that

(a) provides for the sustainable payment of compensation to injured or diseased workers, the mitigation of the effects of workplace injuries and disease, and the eventual return of these workers to the workplace to perform work of which they are capable;

(b) ensures the quick and secure payment of compensation, without regard to fault and without court proceedings, to injured or diseased workers or, in the case of a fatality, to the dependents of the worker;

(c) provides for the independent administration of this compensation system and the adjudication of claims in a manner that treats employers, workers and claimants fairly, compassionately and respectfully;

(d) ensures the compensation system is accountable, through the Minister and the Legislative Assembly, to the public for its decisions and for the administration of this Act; and

(e) is dedicated to the continued improvement of this compensation system and the ultimate goal of eliminating workplace injuries and diseases.

The NWT and NU *Human Rights Acts* outline the *Duty to Accommodate* that requires employers to accommodate injured and disabled workers up to the point of undue hardship. The human rights legislation and court decisions in case law establish that employers must accommodate workers.

Northwest Territories *Human Rights Act*
Prohibited Grounds of Discrimination and Intent

5. (2.1) Whenever this Act protects an individual from discrimination on the basis of disability, the protection includes the protection of an individual from discrimination on the basis that he or she
(a) has or has had a disability;
(b) is believed to have or have had a disability; or
(c) has or is believed to have a predisposition to developing a disability.

Employment

7. (1) No person shall on the basis of a prohibited ground of discrimination,
(a) refuse to employ or refuse to continue to employ an individual or a class of individual or
(b) discriminate against any individual or class of individuals in regard to employment or any term or condition of employment.

(4) In order for a practice described in subsection (1) to be considered based on a *bona fide* occupational requirement, it must be established that accommodation or the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

Nunavut *Human Rights Act*
Employment

9. (1) No person shall, on the basis of a prohibited ground of discrimination,
(a) refuse to employ or refuse to continue to employ an individual or a class of individuals; or
(b) discriminate against any individual or class of individuals in regard to employment or any term or condition of employment, whether the term or condition was prior to or is subsequent to the employment.

Duty to accommodate

9. (5) When a practice referred to in subsection (1) results in discrimination, in order for it to be considered to be based on a justified occupational requirement, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

When collecting and discussing the worker's injury and illness the information is personal and confidential and falls under the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

CONFIDENTIALITY

All medical information relating to the return to work plan is confidential. The employer may only access the medical information required to fulfil their legal obligations.

Medical information requests should be for one of these legitimate workplace objectives:

- To verify the existence of a disability;
- To understand an employee's abilities, limitations, and restrictions;
- To provide assurance that it is safe for the worker to return to work and that a return would not be a safety risk to themselves or others; or
- To determine if the employee's disability requires them to remain away from employment.

Health care providers complete medical reports which include a *Functional Abilities Form*. The may give the form to the worker, but must submit it to the WSCC, who shares it with the employer. The *Functional Abilities Form* contains information the employer needs, including prognosis, limitations, and restrictions.

The employer can expect and is entitled to the worker's cooperation. Information the worker provides to their physician must be accurate and truthful. The employer must maintain the confidentiality of the medical information.

Occupational Health and Safety Regulations
Northwest Territories

Medical Information

10. (1) Subject to subsection (2), a person who acquires information of a personal medical nature with respect to a worker shall not disclose that information unless the disclosure is

(a) to the worker;

(b) with the informed consent of the worker, to another person; or

(c) otherwise required by law.

(2) A medical professional who attends or treats a worker who is suffering from or is believed to be suffering from a medical condition that is listed in Schedule F and is related to the worker's present or past work shall, as soon as is reasonably possible, inform the Chief Safety Officer of

(a) the medical condition from which the worker is suffering or is believed to be suffering; and

(b) the name and address of the most recent work site where exposure related to the medical condition

EDUCATION

Ignorance of the applicable laws is not a defense for failing to fulfill obligations under these laws. All employees and management should receive education in their roles and responsibilities in the RTW process. Maintain training and education records. When an issue comes before the courts, documentation demonstrates due diligence.

Worker Education

Educating Workers about the RTW program raises awareness of the program, its benefits processes, and defines who is responsible for what. Workers need to know:

- Benefits of RTW;
- When and to whom they should report injuries;
- Who to contact, and what steps they must take to safely get back to work; and
- Their roles and responsibilities in the RTW process.

Workers must also receive appropriate training to properly perform the work (modified or alternate) identified in their RTW plan.

Workers' Compensation Act
Northwest Territories and Nunavut

35 (1) A worker who is receiving, or is entitled to receive, compensation for a disability other than a permanent total disability shall

(a) take reasonable measures to mitigate the disability; and

(b) cooperate with such vocational rehabilitation for suitable and meaningful employment as the commission may reasonable require

Supervisor Education

Supervisors play a key role in the success of a worker's recovery and RTW due to their proximity to the worker and ability to manage the immediate RTW environment. Research[1],[2] shows that equipping supervisors and managers with knowledge and skills to communicate with workers and identify suitable work improves the success of a return to work.

Doing nothing to assist the worker's safe return to work constitutes non-compliance with the *Safety Act and related Regulations, Workers' Compensation Act* and the *Human Rights Act.*

Supervisory Education should include:

- Injury reporting requirements;
- Identifying suitable work, and developing and monitoring RTW plans; and
- How to communicate with the worker and the WSCC.

[1] Arnetz BB, Sjogren B, Rydehn B, Meisel R. Early workplace intervention for employees with musculoskeletal-related absenteeism: A prospective controlled intervention study. J Occup Environ Med 2003;45:499-506.

[2] Baril R, Clarke J, Friesen M, Stock S, Cole D, Bombardier C et al. Management of return-to-work programs for workers with musculoskeletal disorders: A qualitative study in three Canadian provinces. Social Science & Medicine 2003;57:2101-14.

RETURN TO WORK POLICY

A RTW policy should clearly state the organization's commitment to worker safety, health, and wellness. When senior management supports safety and return to work policies, the number of injuries decreases while injured workers successfully returning to the workplace increases[3,4]. Update policies as required, or at least every three years, and include the signature of the current highest ranking official of an organization to demonstrate continued commitment to worker health and safety.

It must state what the organization wants to achieve with the program; the values and the philosophy of the program; how the program will operate; and who it will affect. It must be easily available to workers.

RETURN TO WORK PROGRAM

An RTW program, developed by the employer with worker input, ensures employers and workers manage a worker's injury or illness towards rehabilitation and recovery. The goal of the program is to safely return affected workers to their pre-injury work through individual plans that also prevent recurrence of the injury or illness.

Having a program in place ensures that an individual Return to Work Plan can begin immediately when an injury or illness occurs. The plan addresses the worker's needs and guides them through the process of recovering from their injury or illness and safely getting back to work.

Developing a program

An RTW program should include:

1. A designated RTW Coordinator or Committee;
2. A RTW policy;
3. RTW procedures;
4. A RTW team (made up of management, the injured worker, health care providers, the union, if applicable, and the WSCC) with clearly assigned roles and responsibilities;
5. RTW education; and
6. Review and evaluation.

When designing the program, consider:

- Nature of the work within the organization;
- Worksite locations;
- Injury risk;
- The types of injuries or illnesses that may occur (for example, back strains);
- Circumstances that may cause injury or illness;
- Injury history: frequency and severity of injuries or illness; and
- The physical demands of each position in the workplace.

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[3] Amick BCI, Habeck RV, Hunt A, Fossel AH, Chapin A, Keller RB et al. Measuring the impact of organizational behaviors on work disability prevention and management. *Journal of Occupational Rehabilitation* 2000;10:21-38.

[4] Habeck RV, Scully SM, VanTol B, Hunt HA. Successful employer strategies for preventing and managing disability. 21906. *Rehab Counselling Bull 1998*; 42:144-61.

Inform management and workers about the Return to Work program so they know where to find it, understand how it works, and understand that it applies to everyone.

RETURN TO WORK PROCEDURE

A Return to Work Procedure outlines the steps to take when a worker is injured or becomes ill. The procedure assigns roles and responsibilities to employers, managers, supervisors, and workers to help them work in compliance with the relevant legislation. The RTW procedures begin as soon as a worker has been injured or become ill.

The following outlines the basic steps in a RTW procedure and discusses the rationale for each step.

STEP 1

GET MEDICAL ATTENTION

PROCEDURE

- A first aid attendant, site medic, or health care provider administers first aid to the injured worker.
- When needed, the employer must provide the worker with transportation to a health care facility, and back to work, or to the worker's residence, as appropriate.
- The health care provider fully completes and submits the WSCC *First Medical Report* form, and gives a copy of the worker's *Functional Abilities* form to your worker.

RATIONALE

The worksite must be ready and able to provide first aid to workers at the work site as per safety regulations.

> ***Occupational Health and Safety Regulations***
> **Northwest Territories**
> **PART 5: FIRST AID**
>
> **56**. Subject to section 57, an employer shall:
> a) provide first aid attendants, supplies, equipment, facilities and transportation required by this Part to render prompt and appropriate first aid to workers at a worksite.

Both the *Occupational Health and Safety Regulations* and *Workers' Compensation Act* outline that employers must provide transportation for the injured worker to get to a health care provider.

> ***Workers' Compensation Act***
> **Northwest Territories and Nunavut**
>
> **32**. (1) If a worker is injured during the course of employment and requires transportation to receive medical aid, the employer shall, at its own expense, provide the worker with immediate transportation to a healthcare provider, a health care facility or such other place as the commission considers appropriate.

> ***Occupational Health and Safety Regulations***
> **Northwest Territories**
>
> **65.** (1) An employer shall ensure that a means of transportation for injured workers to a medical facility or hospital is available.

Under the *Workers' Compensation Act*, health care providers must submit a *First Medical Report* to the WSCC within three days following treatment.

Workers' Compensation Act
Northwest Territories and Nunavut

25. (1) A health care provider who examines or treats a worker under this Act shall submit a report to the commission.

(2) The report must be submitted within three days after the examination or treatment, and must contain the information required by the commission.

STEP 2

REPORT THE INJURY OR ILLNESS

PROCEDURE

Employers and workers must know their legal injury and incident reporting requirements.

- Worker reports the injury to their supervisor.
- Worker fully completes and submits to WSCC Claims Services *Worker's Report of Injury* form. (A WSCC claims representative can assist workers to properly complete the form if required.)
- Employer fully completes and submits to WSCC Claims Services the *Employer's Report of Injury* form (provide a copy to your worker).
- Worker provides their employer with a copy of the *Functional Abilities* form received from their health care provider.

RATIONALE

The *Workers' Compensation Act* requires workers and employers to report injuries and illnesses to the WSCC.

Workers' Compensation Act
Northwest Territories and Nunavut

17. A worker who suffers a personal injury or disease arising out of and during the course of his or her employment shall, as soon as is practicable, report the injury or disease to his or her employer and to the Commission.

18. (1) An employer who has reason to believe that a worker in its employ has suffered a personal injury, disease or death arising out of and during the course of the worker's employment, shall send to the Commission a written report describing the injury, disease or death.

(2) The report must be sent within three days after the employer first has reason to believe the personal injury, disease or death has occurred.

(3) The employer shall send a copy of the report to the worker, unless the worker has died.

(4) If the worker has died, the Commission shall make its best efforts to notify any persons who may been titled to compensation under this Act of the death and of their entitlement to compensation.

141. (1) An employer shall pay a prescribed penalty to the Commission, if the Commission determines that the employer

(c) failed to reply to the Commission's communications regarding the personal injury, disease or death of a person within the time frame required by the commission.

Occupational Health and Safety Regulations
Northwest Territories

Accidents Causing Serious Bodily Injury

8. (1) An employer shall, as soon as is reasonably possible, give notice to the Chief Safety Officer of an accident causing serious bodily injury.

(2) A notice given under subsection (1) must include
(a) the name of each injured or deceased individual;
(b) the name of the employer of each injured or deceased worker;
(c) the date, time and location of the accident;
(d) the circumstances of the accident;
(e) the apparent injuries; and
(f) the name, telephone number and facsimile number of the employer or an individual designated by the employer to be contacted for additional information.

(3) An employer shall provide a copy of the notice required by subsection (1), without names of the injured or deceased individuals, to the Committee or representative.

The worker must provide information regarding their functional abilities, limitations, and restrictions to the employer to determine if there is safe, suitable work the injured worker can perform.

STEP 3

COMMUNICATE AND COLLABORATE

PROCEDURE

- Communicate with your worker as soon as possible after the injury.
- If the worker can't go back to work immediately, the employer and worker schedule regular communication throughout the absence from work (at least bi-weekly or as agreed to). Document communications in a communications log.
- Contact the WSCC regularly (bi-weekly) to provide updates on worker prognosis and modified work options. Document communications.
- Conduct a Job Demands Analysis (JDA) or reference an injured worker's job description to identify suitable (modified or alternate) work. A JDA, along with the medical reports, helps the WSCC determine if the worker is capable of returning to work. Ideally each position in an organization has a JDA.

FIND JOB DEMANDS ANALYSIS TEMPLATES IN APPENDIX A AND ON THE WSCC WEBSITE UNDER RETURN TO WORK: *RTW Forms and Templates for Employers.*

RATIONALE

Research[5,6] supports that early, frequent, and effective communication increases return to work success. The employer should contact the worker as soon as possible following the injury or illness and maintain contact throughout the recovery period. Communication helps ensure both the employer and the worker fulfill reporting requirements outlined in Step 2.

Regular contact should focus on the worker's wellbeing, and should not involve issues such as why the injury occurred or on the employer's finances or time lost claims.

The employer and worker regularly communicate with the WSCC Case Manager or Adjudicator. Sharing updates on the worker's recovery and abilities allows for progressive suitable work adjustments.

The employer should assign someone to coordinate the RTW program to ensure regular contact with the worker, and that members of the RTW team understand what to expect and what is expected of them. The Institute for Work and Health's systematic literature[4] identifies this as a key principle for successful return to work.

Maintaining documentation of communication provides an accessible summary to help ensure actions are complete; provides a record of events if a key player leaves the organization; and demonstrates due diligence should the question of fulfilling legal obligations arise. See Appendix C Communication Log Sample.

MAINTAIN A COMMUNICATION LOG THAT INCLUDES:

DATE	METHOD OF CONTACT (i.e. phone, meeting, email)	CONTACT MADE BY:	PERSON CONTACTED:	DETAILED SUMMARY	FOLLOW UP ACTIONS REQUIRED:

STEP 4

Identify Suitable Work and Create Worker's Individual RTW Plan

PROCEDURE

- Review functional abilities, job demands analyses, and transferable skills to identify suitable modified work options or alternate work.
- Meet with worker and union representative (if applicable) to discuss goals, timelines, and suitable work.
- Discuss the functional abilities, suitable work goals, and timelines with the WSCC.
- Document the RTW plan and ensure the employer, worker, and union representative (if applicable) sign it.
- Submit RTW plan to the WSCC.

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[5] Franche, R.-L., Cullen, K., Clarke, J., MacEachen, E., Frank, J., Sinclair, S., and the Workplace based return-to-work literature review group. Workplace-based return-to work interventions: A systematic review of the quantitative and qualitative literature. Institute for Work & Health. 2004.

[6] Franche,R.L.,Cullen,K.,Clarke,J.,Irvin,E.,Sinclair,S.,Frank.J. et al (2005). Workplace-based Return-to-Work Interventions: a Systematic Review of the Quantitative Literature. Journal of Occupational Rehabilitation, 15, 4, 607-631.

RATIONALE

Offering suitable work is a fundamental component of a Return to Work Program. To maintain a safe work environment, it is important that the job demands match the worker's functional abilities, skills, and education.

To identify suitable work consider the:

- Demands of the job through a job demands analysis;
- Worker's functional abilities and prognosis for recovery;
- Worker's skills, abilities, and education; and
- Goals and timelines.

When facilitating early and safe return to work, the employer should be aware of possible return to work options across the organization. In some cases, the worker may be able to return to their own job without any changes to the duties. In other cases, the worker may require modifications to the job tasks, workstation or work environment, or alternate work. Employers must ensure workers receive appropriate training for any task their functional abilities allow them to perform.

Conducting a Job Demands Analyses (JDA) helps determine requirements to support the worker's ability to perform job tasks. JDAs also help identify or develop appropriate modifications that prevent making the injury or illness worse. The injured worker should be involved in identifying suitable work. Their participation in the process increases the chance of a successful RTW. The Supreme Court of Canada[7] has established that accommodations (RTW plans) must be individualized. Each person must be considered, assessed, and accommodated based on their unique set of circumstances.

Having the worker perform duties that are not suitable can lead to a breakdown in the process. It may be unsafe for the worker and their co-workers, delay recovery, or cause re-injury.

STEP 5

Implement and Monitor Worker's *RTW Plan*

PROCEDURE

- Discuss any necessary changes to work tools, equipment, or work designs and requirements with the WSCC before implementing them.
- Worker returns to the job to perform the identified suitable work.
- Worker and employer meet regularly (initially daily, then weekly at a minimum) to discuss and evaluate RTW plan.
- Health care providers monitor and evaluate the injured worker's recovery and rehabilitation. The employer may request updated functional abilities information.
- Adjust the RTW plan according to the recovery process and business operations. Submit any plan updates to the WSCC.
- Report progress, hours worked, and concerns to the WSCC bi-weekly, at a minimum.

[7] Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City), [2000] 185 D.L.R. (4th) 385 (S.C.C.).

RATIONALE

Monitoring the RTW plan ensures that it continues to meet the needs of the injured worker and organization. As a worker recovers, their functional abilities, limitations, and restrictions will change and may differ from the anticipated recovery plan. Concerns such as business operations, productivity, workload, safety, recovery, and co-workers may arise.

Informal daily check-ins and formal reviews help track the appropriateness of the individual RTW plan. The team adjusts the RTW plan to reflect the worker's actual progress. They document, sign, and submit the revised plan to the WSCC.

Occupational Health and Safety Regulations
Northwest Territories

General Duties of Employers
12. An employer shall, in respect of a work site,
(a) provide and maintain systems of work and working environments that ensure, as far as is reasonably possible, the health and safety of workers

Suitable and Adequate Equipment
89. (1) If it is not reasonably possible to protect the health and safety of a worker by design of a plant and work processes, suitable work practices or administrative controls, an employer shall ensure that the worker wears or uses suitable and adequate personal protective equipment.

(2) If personal protective equipment will not effectively protect a worker, an employer shall, if reasonably possible, provide alternative work arrangements for the worker.

The employer must report the injured worker's progress, and the number of hours they work to the WSCC for the case manager or adjudicator to accurately administer benefits.

Throughout the return to work process the injured worker attends medical and rehabilitation appointments. This ensures that the RTW plan is contributing to recovery and rehabilitation.

Workers' Compensation Act

34 (2) Medical aid must be provided to a worker from the time he or she suffers the personal injury or disease and during the period of disability.

35 (1) A worker who is receiving, or is entitled to receive, compensation for a disability other than a permanent total disability, shall

a) take reasonable measures to mitigate the disability; and

b) cooperate with such vocational rehabilitation for suitable and meaningful employment as the commission may reasonably require.

STEP 6

RTW Completion

PROCEDURE

Worker completes their RTW plan.

- Worker fully recovers, and returns to pre-injury job; or
- Worker may require permanent accommodation due to the injury or illness.

RATIONALE

The RTW process concludes when the worker is able to return to their pre-injury job or when their work is redefined to accommodate any permanent restrictions that may have resulted from the injury or illness. The employer, the worker, health care provider, and the WSCC explore and define long-term or permanent accommodation options. There may be other services the employer and injured worker can access to assist with an accommodation.

STEP 7

Review and Evaluate the RTW Program

PROCEDURE

- Evaluate the RTW procedure. What went well? What didn't? Assess how participants overcame challenges, and make recommendations for improving future plans and the overall RTW program.
- Review the RTW program as required or at least every three years to ensure it is effective. Ensure you address and implement changes to address any gaps identified through your evaluation.
- Communicate any changes to the RTW program with all workers.

RATIONALE

Reviewing and monitoring individual plans can identify areas for improvement for subsequent RTW plans. Improving the process has financial benefits to the organization and improves worker's recovery.

Legislation requirements and best practices change. It is important to review the program so it remains current and continues to meet organizational obligations and due diligence.

Reviewing and updating the policy and program demonstrates a continued commitment to safety.

WSCC'S *Employer's Guide to Return to Work*, LISTS WAYS TO QUANTITATIVELY AND QUALITATIVELY ANALYZE THE RETURN TO WORK PROGRAM.

RETURN TO WORK PLAN

Once you develop your worker's RTW plan, document, sign, and submit it to the WSCC. Both the employer and worker must sign the plan.

The RTW plan should include:

- Dates – start date and the anticipated end date;
- Recovery targets and associated timelines;
- Work schedule;
- Appointment dates and times, if the worker will miss work;
- Limitations and restrictions – include job duties and tasks that your worker should not perform;
- Job duties – tasks your worker will perform;
- Modifications, tools, and equipment required to complete the duties, if any;
- Supervisor injured worker will report to;
- Remuneration, if different from pre-injury;
- Monitoring and follow-up schedule;
- Action for addressing worker, employer, and the WSCC concerns; and
- Signature block for employer and worker.

Documenting and signing the RTW plan demonstrates commitment. The plan should outline the job tasks that the worker will perform, job tasks the worker must avoid, and what to do if concerns arise. Documenting and having the worker sign off on it is also part of the internal responsibility system, ensuring the worker's involvement. The employer submits the plan to the WSCC, who ensures it is safe for the worker.

Have a RTW plan template (see sample in WSCC *Employer's Guide to Return to Work*) ready to use. Fill it out with the worker and sign right away.

ROLES AND RESPONSIBILITIES

A successful RTW program includes a team made up of management, the injured worker, health care providers, the union (if applicable), and the WSCC. Assigning and communicating roles and responsibilities helps ensure consistent implementation of the RTW procedures.

THE WSCC'S *Employer's Guide to Return to Work* DESCRIBES THE KEY ROLES AND RESPONSIBILITIES. WSCC.NT.CA

UNDUE HARDSHIP

Employers must provide accommodation up to the point of undue hardship. Employers may not claim or assume undue hardship and declare that the cost is too unreasonable or creates health and safety risks without substantial evidence[8]. Having an RTW program gives employers the tools to develop RTW plans for modified or alternate work, or demonstrate their limitations in providing for the affected worker.

In *Central Alberta Dairy Pool*[9]*,* the Supreme Court developed a list of factors that are relevant in assessing undue hardship which includes, but is not limited to:

- Financial cost
- Impact on collective agreement
- Problems of employee morale
- Interchangeability of the work force and facilities
- Size of the employer's operations
- Safety

Case law has evaluated the factors above differently. For example, in the question of worker's morale in *Renaud*[10]*,* the Supreme Court stated they will only consider concerns based on rights being affected; objections based on attitudes inconsistent with human rights are an irrelevant consideration.

Other factors such as the state of the economy can influence an employer's ability to provide certain methods of accommodation. What may be entirely reasonable in times of prosperity could impose an unreasonable financial burden upon an employer in times of economic restraint[11]. Each case must be assessed individually and based upon the specific circumstances.

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[8] Hodkin v. SCM Supply Chain Management Inc., 2013 HRTO 923 (CanLII), Saunders v. Syncrude Canada Ltd., 2013 AHRC 11 (CanLII), Vargas v. University of Waterloo, 2013 HRTO 1161 (CanLII), JP v. London Athletic Club (South) Incorporated, 2012 HRTO 1758 (CanLII)

[9] *Central Alberta Dairy pool V Alberta* (1990), 72 D.L.R. (4th) 417 (S.C.C.)

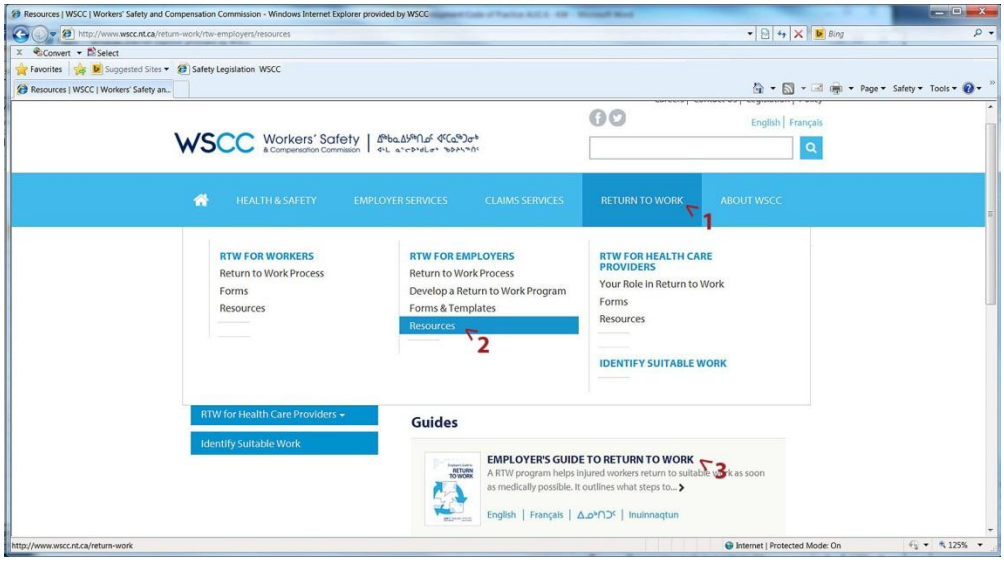
[10] *Central Okanagan School District No 23 v Renaud* (1992), 95 D.L.R. (4th) 577, at p.585 (S.C.C.)

[11] *Chambly v. Bergevin* [1994] 2 S.C.R. 525, at p. 546

APPENDIX A: Employer's Guide to Return to Work

The *Employer's Guide to Return to Work* provides a complete overview and detailed information on the steps to develop a RTW program. It offers resources, samples, and templates employers can use. WSCC also has a Return to Work Specialist who can offer assistance to employers in developing their program, while WSCC Case Managers guide employers and workers for individual plans.

To link to the guide on the WSCC website click here, or download the guide following the links noted on the image below:



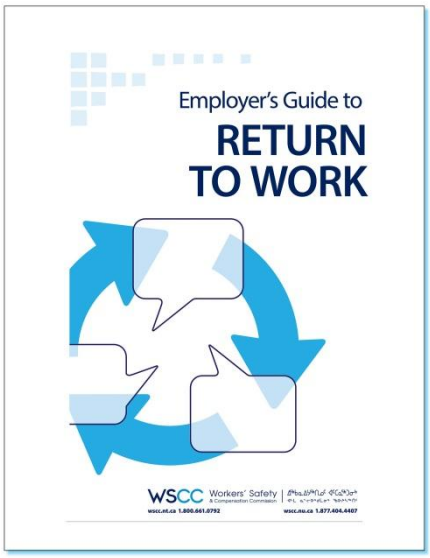
INSIDE THE EMPLOYER'S GUIDE:

PART 1 – AN INTRODUCTION TO RETURN TO WORK
- What are the Benefits of RTW?
- What is the RTW Procedure?
- What is a RTW Program?

PART 2 – HOW TO DEVELOP A RTW PROGRAM
- What should I include in a RTW Program?
- 1. Designate a RTW Coordinator or Committee
- 2. Develop a RTW Policy
- 3. Develop your RTW Procedures
- 4. Assign Roles and Responsibilities
- 5. Provide RTW Education
- 6. Review and Evaluate RTW Program

PART 3 – IMPLEMENT YOUR RTW PROGRAM
- Be Prepared
- Keep Track of Communication
- Identify Suitable Work
- Work Together to Create your Worker's RTW Plan
- Submit your Worker's RTW Plan to the WSCC
- Monitor your Worker's RTW Plan

PART 4 – RESOURCES, SAMPLES, AND TEMPLATES
- Common RTW Questions
- Definitions
- Samples and Templates



APPENDIX B: RTW FORMS AND TEMPLATES FOR EMPLOYERS

When an injury occurs it can be a difficult and confusing time for everybody involved. To make the RTW process easier, print the necessary forms in advance and have them packaged along with instructions.

TEMPLATES

The following templates can be found on the WSCC web site under the Return to Work *Forms & Templates* tab for employers.

Prompts for Identifying Suitable Work

The following prompts may help you in thinking of alternative work that is of value to the organization. Remember, if the worker is unable to perform their usual job duties with or without modifications then first look for suitable work within the division before looking across the whole organization.

English | Français | ᐃᓄᒃᑎᑐᑦ | Inuinnaqtun

Sample Job Demands Summary (1)

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Sample Job Demands Summary (2)

English | Français | ᐃᓄᒃᑎᑐᑦ | Inuinnaqtun

Sample Checklist for Managing Return to Work

Note: The checklist may alter depending upon your organization's procedures.

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Sample Return to Work Plan Closure Evaluation

The intent of this evaluation form is to help the organization improve future RTW plans and the RTW program.

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Sample Return to Work Plan Monitoring Form

Employers and workers, use this form to assist in tracking progress throughout the RTW plan.

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Sample Return to Work Plan

English | Français | ᐃᓄᒃᑎᑐᑦ | Inuinnaqtun

Sample Communications Log

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Sample Letter to Health Care Provider

Note: This is a sample letter only

English | Français | ᐃᓄᒃᑎᑐᑦ | Inuinnaqtun

Procedure Development Advice

Procedures outline the who, what, when, and how questions for each step in the process.

English | Français | ᐃᓄᒃᑎᑐᑦ | Inuinnaqtun

Sample Return to Work Policy

Note: This is a sample letter only.

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Return to Work Program Checklist

Use this checklist to ensure that your RTW program has the minimum requirements.

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Injured Worker Example Scenario

English | Français | ᐃᓄᒃᑎᑐᑦ | Inuinnaqtun

Code of Practice

RETURN TO WORK

PROGRAM DEVELOPMENT

WSCC Workers' Safety & Compensation Commission | ᐃᖅᑲᓇᐃᔭᖅᑎᓄᑦ ᐊᑦᑕᓇᖅᑐᓂᒃ ᐊᒻᒪ ᓇᓪᓕᐅᒃᑯᒪᓂᒃ ᖃᐅᔨᓴᖅᑏᑦ

WSCC Emergency Reporting

24-hour Incident Reporting Line

1 800 661-0792