

**POLICY NUMBER: POL-165**

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**Chapter:  
CLAIMS**

**Subject:  
EMPLOYER ROLE IN WORKER RECOVERY AND RETURN TO WORK**

**Effective Date:  
March 31, 2022**

**Last Update:  
March 31, 2022**

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**PURPOSE:**

The purpose of this policy is to set out the essential role and responsibilities of the employer in an injured worker's recovery and return to work.

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**REFERENCE:**

*Workers Compensation Act* R.S.P.E.I. 1988, Cap. W-7.1, s 2.1(2), 59(3), 86, 86.1 - 86.12  
Workers Compensation Board Policy, POL-64, Health Care Providers  
Workers Compensation Board Policy, POL-76, Worker Role in Recovery and Return to Work  
Workers Compensation Board Policy, POL-80, Fraud Prevention and Investigation  
Workers Compensation Board Policy, POL-93, Return to Work

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**DEFINITION:**

In this policy:

“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.

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

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“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 (WCB) works collaboratively with workers, employers, health care providers and other service providers, to assist with recovery from a workplace injury and to prevent work disability, including facilitating a safe and timely return to work.
2. The WCB is committed to fostering trust and accountability throughout the duration of a claim. This commitment is demonstrated through fair treatment, transparent decision-making and respectful communication between workers, employers and the WCB.
3. The WCB recognizes that work is good for physical and mental health, and that maintaining the connection to work following an injury can help the recovery process.
4. The employer’s active involvement in their worker’s claim and return to work is essential. This policy sets out the employer’s roles and responsibilities for open communication and full participation throughout the WCB claim.
5. The WCB will ensure employers understand the importance of their role and responsibilities.
6. Worker and health care provider roles and responsibilities are set out in WCB policies, POL-76, Worker Role in Recovery and Return to Work and POL-64, Health Care Providers.

**Employer Role and Responsibilities**

7. An employer’s role begins as soon as they are aware that their worker may have a work-related injury, and continues throughout their claim.

8. Employers' responsibilities include the following:

Communication

- Reporting the injury to the WCB as soon as possible after the injury occurs and within three days of being notified. Injuries must be reported on the Employer's Report - Form 7, with all information completed.
- Maintaining regular communication with their worker throughout their recovery.
- Providing full, accurate and timely information to the WCB as required for the claim, including job demands and earnings information.
- Maintaining open and respectful communication with the WCB throughout the duration of the claim. This includes being reasonably available to discuss the claim with the WCB, by telephone, electronically or in person, and keeping their contact information up to date.
- Promptly notifying the WCB of any changes in their worker's employment status, such as hours, duties, earnings, attendance and job availability, while the worker is off work or participating in a return to work program.

Return to Work

- Collaborating and co-operating in return to work processes, including assessments, plans and programs.
- If the injury is preventing the worker from remaining at work, working with the worker and the WCB to identify suitable work that is available and consistent with the worker's abilities, and where possible, restores the worker's pre-injury earnings.
- Offering their worker suitable work. This may include modified, transitional or alternative job duties as described in WCB policy, POL-93, Return to Work.
- Participating in discussions and meetings about the worker's return to work.
- Providing the WCB with any information requested in relation to a worker's return to work.
- Working with their worker to resolve any concerns throughout the return to work process. If the worker and employer are unable to come to an agreement,

they must notify the WCB. The WCB will work with the worker and employer and, if necessary, make the final determination on the issue.

### **Duty to Accommodate**

9. If a worker has reached a plateau in their recovery, but is unable to fully return to their pre-accident work, the employer has a duty to accommodate the worker with re-employment.
10. An employer has a duty to accommodate if all of the following criteria are met:
  - The employer regularly employs 20 or more workers.
  - The worker has been employed with the employer for 12 continuous months, or is a seasonal worker that has been employed for a full season and called to return to that employer for the next season.
  - The worker is able to perform some type of work.
11. The duty to accommodate means that the employer is required to re-employ the worker by reinstating them in their pre-accident employment or offering alternative employment.
  - When a worker is medically able to perform the essential duties of their pre-injury employment, but not all of their duties, the employer will reinstate them in the position that they held on the date of the accident. Accommodations may be required and could involve modifications, assistive devices, or a combination of these to ensure that the employment is suitable work.
  - When a worker is not medically able to perform the essential duties of their pre-injury employment, the employer is required to offer the worker the first available alternative employment. The alternative position must be suitable work and may involve modifications as required.
12. The WCB will work with employers and workers to identify essential duties, accommodations and suitable work.
13. If the *Workers Compensation Act* gives a worker better re-employment terms, the *Act* will prevail over the collective agreement.

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14. This policy is not intended to discourage, prevent or preclude a worker from exercising their rights under other legislation, including the *Human Rights Act*, related to the duty to accommodate.

Duration of the Employer's Duty to Accommodate

15. An employer has the duty to accommodate until the earlier of:
- The date the worker refused the employer's offer of suitable work.
  - Two years after the date of the accident
  - The date the worker reaches 65 years of age.

Exemptions

16. Employers of volunteer firefighters are exempt from the duty to accommodate workers with injuries related to firefighting.
17. The employer may be exempt from the duty to accommodate if the accommodation would result in undue hardship. In these cases, the employer is required to demonstrate, to the satisfaction of the WCB, how undue hardship would result.

**Compliance**

18. Because the employer's role is essential to the worker's recovery and return to work, failure or refusal to fulfil their responsibilities may result in a penalty to the employer.
19. In these cases, the WCB will advise the employer in writing of the amount of the penalty and add the amount to the employer's WCB assessments.

Return to Work

20. The penalty for the employer's non-compliance in return to work may include up to the full amount of the benefits payable to a worker plus associated costs during the period of the employer's non-compliance.

Duty to Accommodate

21. The penalty for the employer's non-compliance of the duty to accommodate may include up to the full amount of the worker's net average earnings for the 12 months prior to the loss of earning capacity. The WCB will make payments to the worker for a maximum of one year as if the worker were continuing to receive wage loss benefits.

Termination of Re-employment

22. If a worker's employment is terminated within six months of the date the re-employment began, it will be presumed that the termination was the result of the workplace injury and that the employer has not fulfilled their duty to accommodate.

If the employer does not agree, the employer will be required to supply evidence that supports that the termination of the worker's employment was unrelated to the injury.

The worker has three months from the date of termination to request that the WCB investigate.

Fraud or Misrepresentation

23. Non-compliance by an employer that includes evidence of fraud or misrepresentation may be addressed as set out in WCB policy, POL-80, Fraud Prevention and Investigation.

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**HISTORY:**

Board of Directors Approval Date: March 31, 2022. Relevant content moved and adapted from WCB policy, POL-93, Return to Work.