



Duty to cooperate

Background

Part 5.1 of the *Workers' Compensation Act (WCA)* that includes the s.88.1 obligation for employers to return their injured workers to work will be repealed effective April 1, 2021. In its place, Bill 47 adds new cooperation requirements for employers and workers that come into force on April 1, 2021. The new sections (sections 89.1 to 89.3) are in Part 6 of the *WCA*, and the section title for Part 6 is now: "Vocational Rehabilitation and Duty to Cooperate."

Overview of changes

Here's a summary of what we propose:

- A new policy, Policy 04-11, *Duty to Cooperate*, brings several cooperation requirements together under one policy. These include the new Bill 47 return-to-work provisions, existing provisions for workers regarding attendance and participation in medical examinations and treatment, and some of WCB's expectations for treatment providers. Reporting and recording requirements are referenced, but the detailed policy on these requirements remain in Policy 01-05, *Recording and Reporting*.
- The policy defines what cooperation means in the return-to-work process and emphasizes that communication and participation are key to a successful outcome.
- In defining cooperation, the policy includes preferred actions for each stage of the process. However, it also recognizes there are circumstances when it may not be reasonable to expect the worker or employer to meet those expectations.
- If a worker fails to cooperate in a reasonable vocational (re-employment) plan for alternative work that minimizes earnings loss, the policy clarifies that WCB may estimate earning capacity as though the plan was completed or at minimum wage, depending on the circumstances.
- See attached draft of new Policy 04-11, *Duty to Cooperate*, for additional details.

Bill 47 legislative changes

Here is an excerpt of the new provisions coming into effect on April 1, 2021:



Part 6

Vocational Rehabilitation and Duty to Cooperate

Duties of worker to mitigate and cooperate

89.1 A worker shall

- (a) take all reasonable action to mitigate the worker's loss of earnings resulting from an injury, and
- (b) if the circumstances require, cooperate with the Board in the development of a vocational or other rehabilitation plan that is intended to return the worker to employment.

Duty of employer to cooperate

89.2 An employer of an injured worker shall cooperate with the Board and with the worker in efforts to achieve the early and safe return of the worker to the worker's employment.

Termination or reduction of compensation by the Board

89.3 If without good reason, a worker fails to cooperate in, or is not available for, a vocational or other rehabilitation program, the Board may reduce or suspend the compensation payable to that worker.

Note: Part 5.1 of the WCA is being repealed – this includes section 88.1 (Obligation to return injured workers to work) and section 88.2 (Continuation of employment benefits).

Section 152.1(1) is amended April 1, 2021, to reflect the repeal of Part 5.1 and the changes in Part 6 (see amendments in bold, below):

Administrative penalty

152.1(1) Where the Board is of the opinion that a person has contravened section 19, 33(1), 87, ~~88.1, 88.2(2), 89.2,~~ 103, 105, 106, 108, 109, 110, 138, 139, 140, 140.1, 145, 147(5) or 151.1, the Board may by notice in writing given to that person require that person to pay to the Board within the time specified in the notice an administrative penalty in respect of each contravention in the amount set out in the notice.

(2) A person who contravenes a provision referred to in subsection (1) is liable for the administrative penalty for each day or part of a day on which the contravention occurs and continues.

(3) ~~Subject to sections 88.1(13) and 88.2(5), an~~ **An** administrative penalty may not exceed \$25 000

- (a) for each contravention, or
- (b) for each day or part of a day on which the contravention occurs and continues,

as the case may be.



- (4)** *A notice of administrative penalty may not be issued more than 2 years after the later of*
- (a) the date on which the contravention to which the notice relates occurred, and*
 - (b) the date on which evidence of the contravention first came to the notice of the Board.*
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We welcome your feedback, ideas and suggestions.

This posting is open until February 15, 2021.

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DUTY TO COOPERATE

Authorization:

Date:

BoD Resolution

REFERENCE:

[Workers' Compensation Act, RSA 2000, Sections 32, 33, 34, 38, 39, 40, 54, 89.1, 89.2, and 152.1](#)

POLICY:

Successful recovery from a work injury and a successful return to work rely on collaboration between all parties including, but not limited to, injured workers, employers, treatment providers, and WCB.

Parts of this collaboration are specific requirements under the *Workers Compensation Act (WCA)*, while others are best practices that facilitate effective treatment and return to work. Specific requirements under the WCA include *reporting requirements, attendance and participation in medical treatment, and a duty to cooperate in return to work.*

This policy is effective April 1, 2021, and, as of that date, applies to all claims regardless of the date of accident unless noted otherwise in a specific policy section(s).

INTERPRETATION

1.0 Reporting Requirements

Sections 32, 33, and 34 set out specific duties and timelines for reporting work accidents for employers, workers, and physicians. Policy 01-05, *Recording and Reporting Accidents*, addresses these duties in detail.

2.0 Attendance and Participation in Medical Examinations and Treatment

When a worker makes a claim for compensation or at any point during the life of the claim, the worker may be required to have a medical examination so WCB can determine entitlement to compensation. Under s.39(1), the worker's employer can also ask WCB to arrange for a medical examination and, if WCB agrees, the worker is required to attend.

In addition to attending required medical examinations, workers have a responsibility under s.54 to cooperate in

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2.0 Medical Examinations and Treatment (continued)

their medical treatment by accepting medical treatment that, based on independent medical advice, WCB considers reasonably essential for the worker’s recovery. Workers also have a responsibility to avoid activities and behaviours that could prevent or delay their recovery.

3.0 Duty to Cooperate in Return to Work.

Employers and workers both have a duty to cooperate in return to work.

Under s.89.1, workers have a duty to take all reasonable action to mitigate any earnings loss caused by work injury and, if circumstances require it, to cooperate with WCB in the development of vocational or other rehabilitation plans.

Under s.89.2, employers have a duty to cooperate with the worker and WCB in efforts to achieve the worker’s early and safe return to work.

Please see Part II for additional information on the following subjects:

Application

1 – General

Previous versions

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APPLICATION 1: GENERAL

1. *What is a duty to cooperate?*

The worker’s recovery and return-to-work (RTW) journey consists of a series of activities and services that generally start as soon as the worker realises they may have a work-related injury or disease.

Cooperation includes the worker, employer, and service/treatment providers, and means full participation and disclosure, as required, in those activities and services at each stage of a claim. The goal is to act in good faith to maximize recovery and achieve return to work, or independence for workers who are medically unable to return to work.

2. *What are the cooperation requirements when establishing a claim?*

Timely reporting and information sharing are essential for timely and fair decision-making. Workers, employers, and physicians all have legislated obligations and play a critical role in getting the claim off to a positive start.

For details on reporting requirements, see Policy 01-05, *Recording and Reporting*.

3. *How do the parties cooperate in establishing a diagnosis and medical care plan?*

Employers and workers

Medical clarity is essential in ensuring timely access to the right benefits and services, and all parties have a role.

Cooperation in a medical care plan is a shared responsibility.

The employer’s role is to support the worker’s recovery and return to work by supporting the worker’s access to assessment and treatment, both before (when appropriate) and after the worker has returned to work in a modified or full capacity. A typical example is allowing workers to take time during the workday to attend necessary medical appointments that cannot reasonably be scheduled outside normal work hours.

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APPLICATION 1: GENERAL

*Establishing a diagnosis and
medical care plan
Employers and
workers (continued)*

The worker’s role is to participate fully in medical examinations, investigations and treatment that WCB considers reasonably essential for the worker’s recovery and refrain from behaviours that may delay recovery.

If a worker is unable to attend an appointment because of illness, family emergency, or other unavoidable circumstance, they should contact WCB as soon as possible so WCB can reschedule the appointment.

NOTE: If a medical investigation is necessary to determine entitlement, WCB may pay the worker compensation benefits, even though WCB has not yet confirmed the worker’s entitlement. Workers should discuss eligibility for these benefits with their claim adjudicator. If WCB does pay benefits during the medical investigation, employers may be eligible for cost relief (see Policy 05-02, Part II, Application 1, Question 16).

Dependants

When there is a fatality and WCB considers an autopsy necessary to determine the worker’s cause of death, WCB may ask for the dependants’ cooperation in authorizing an autopsy (s.40). If the worker’s dependants refuse to permit the autopsy, WCB may reject any claim for compensation if it is unable to confirm work causation without the autopsy (see Policy 02-01, Part II, Application 7).

Treatment Providers

The worker’s access to the right support at the right time relies on timely, regular, evidence-based reporting of progress. Cooperation and communication with the claim owner will ensure the worker receives the benefits they need and return-to-work plans reflect the best options for success.

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4. *What are the cooperation requirements for workers and employers in return-to-work planning?*

For workers who are medically able to return to work, the goals are to achieve a safe return to work and maximum income recovery.

Workers and employers have legislated responsibilities under s.89.1 and s.89.2, respectively, to cooperate in good faith with WCB and other parties to achieve these goals. Regular communication and joint problem solving to achieve a safe return to work as early as possible are fundamental expectations for successful return-to-work planning.

To meet their obligations, both employers and workers should:

- Maintain consistent contact with each other and WCB
- Provide WCB with required information in a timely manner
- Work together to resolve problems as they arise and, if unable to do so, contact WCB as soon as possible to discuss options
- Participate in discussions and meetings about modified work, and suggest modified work options
- Follow the modified work agreement

Specific employer cooperation responsibilities:

- Participate in case conferences with service providers when needed
- Provide timely, suitable temporary modified work while the worker is recovering from the injury and, when possible to do so, support participation in hybrid return-to-work programs (where a worker participates in both medical rehabilitation and work)

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*Cooperation requirements
for workers and employers in
return-to-work planning
(continued)*

- Return the worker to their pre-accident job when the worker is fit for full duties
- If the worker has permanent work restrictions and cannot return to pre-accident duties, consider suitable modified work, work assessment, training-on-the-job, or other opportunities to keep the worker job attached and maximize income recovery, as appropriate

Specific worker cooperation responsibilities:

- Maintain consistent contact with their service providers
- Accept suitable temporary modified work offers
- Return to full duties when medically fit
- If unable to return to pre-accident duties because of permanent work restrictions, work with WCB to develop and actively participate in a vocational plan that minimizes job loss and maximizes income recovery

5. What happens if an employer or worker fails to cooperate?

WCB will work with employers and workers to ensure they understand their cooperation requirements. There may be cases where it is an unreasonable expectation that cooperation can occur and WCB will make every reasonable effort to understand what has happened. There may be valid reasons why a worker or employer is not able to fulfil their obligations.

There may be circumstances outside the worker’s control such as illness or a family emergency that affect the worker’s ability to participate in return-to-work plans for a period of time. Some employers may not be able to provide modified work or other work opportunities because of the size of their business, the nature of their

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APPLICATION 1: GENERAL

Employer or worker fails to cooperate (continued)

operations, or other factors. It is not a failure to cooperate when the worker or employer has good reason and is acting in good faith.

When there are valid reasons preventing the worker or employer from meeting cooperation expectations, it is important they contact WCB and explain the situation.

If it appears there is no valid reason for failing to cooperate and the worker or employer continues to be uncooperative, they may face financial penalties. WCB will try to work with the worker or employer to resolve issues before applying a penalty.

If a worker is not cooperating, WCB may, depending on the nature of the failure to cooperate and the relevant section of the WCA (sections 38, 39, 54, and 89.3), either suspend or reduce the worker’s compensation benefits until the worker cooperates.

If a worker with permanent work restrictions does not participate or cooperate in vocational plans or training that would maximize income recovery, WCB may estimate their post-accident earning capacity as though the worker has successfully completed the vocational plan (see Policy 04-04, Part II, Application 1, Questions 4 and 5) with earnings not lower than minimum wage.

If an employer is not making a reasonable attempt to cooperate in efforts to return their employee to suitable employment, WCB may levy an administrative penalty under s.152.1.

NOTE: If an employer terminates or withdraws a worker’s temporary modified work, WCB will place the

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APPLICATION 1: GENERAL

Employer or worker fails to cooperate (continued)

worker on full wage loss benefits, as required by s.56(14), unless the termination or withdrawal is due to the worker's egregious conduct [s.56(15.1)]. See Policy 04-05, Part II, Application 4, Questions 8 – 10 for more information.

5. When is this policy application effective?

This policy application (Application 1 – General) is effective April 1, 2021, and, as of that date, applies to all claims regardless of the date of accident, unless noted otherwise in a specific policy section(s).

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