Final Report on the Newfoundland and Labrador Dialogue on Return to Work – Reflecting on What was Learned and Next Steps

Return to Work
Policy & Practice

Authors & Organizing Committee

Anya Keefe, M.Sc.
Barb Neis, Ph.D.
Kim Cullen, Ph.D.
Desai Shan, Ph.D.
Bill Hynd
Travis Perry

Acknowledgements

The organizing committee wishes to thank the worker, employer and WorkplaceNL representatives who participated in the Dialogue and shared their experiences of return to work in Newfoundland and Labrador, as well as the following individuals who presented their research and shared their expertise in Sessions 1 and 2 of the Dialogue:

Stephanie Premji, McMaster University; co-lead, Policy and Practice and Return to Work

Kim Cullen, Memorial University

Chris McLeod, University of British Columbia

Alec Farquhar, Inclusive Design for Employment Access

John Beckett, Employers' Forum and ICHCA International

Ellen MacEachen, University of Waterloo; co-lead, Policy and Practice and Return to Work

Robert Macpherson, University of British Columbia

Janet McLaughlin, Wilfred Laurier University

Stephanie Mayell, University of Toronto

Desai Shan, Memorial University

The Dialogue is part of the work of the *Policy and Practice in Return to Work After a Work Injury: Challenging Circumstances and Innovative Solutions* research team, a research partnership funded by the Social Sciences and Humanities Research Council of Canada (895-2018-4009), the Canadian Institutes of Health Research (159064), the University of Ottawa's Office of the Vice-President - Research and Innovation, multiple universities and partners.

Table of Contents

List of Tables

Executive Summary

The *Newfoundland and Labrador Dialogue on Return to Work* (the "Dialogue") started from the premise that while all might agree that early and safe return to work (ESRTW) and labour market re-entry programs are good for workers and employers and for the compensation system, attention needs to be paid to when and under what conditions they are most effective. In particular, consideration has to be given to how it works across different types of workplaces (i.e., small *vs*. large, mobile *vs.* static, and remote/rural *vs.* urban) and among different groups of workers across diverse industrial sectors and types of injuries/illnesses.

Co-sponsored by the *Policy and Practice in Return to Work Partnership* (PPRTW) based at the University of Ottawa and by Memorial University's SafetyNet Centre for Health and Safety Research, the NL Dialogue on RTW was a multi-stakeholder, multi-phased dialogue consisting of four, two-hour virtual sessions in fall 2022, winter and spring 2023 informed by findings from a literature review and an environmental scan of Newfoundland and Labrador policy and practices related to RTW compared with those in selected other Canadian provinces. Its overall goals and objectives were to:

a) transfer to Newfoundland and Labrador key findings from recent and ongoing research on RTW being carried out in other parts of Canada;

b) reflect on the potential relevance of these findings for our understanding and approach to RTW in Newfoundland and Labrador;

c) create an opportunity for multi-stakeholder commentary on findings from an environmental scan of policy and practices related to RTW across Canadian provinces compared to Newfoundland and Labrador; and,

d) facilitate a discussion of overall insights from the dialogue and future research priorities on RTW in Newfoundland and Labrador.

Two key findings emerged from the literature review and the environmental scan:

1. Despite a relatively large body of research on RTW, there are still gaps in our understanding of what works, for whom it works and why it works. However, the evidence indicates that what works best to sustainably return an injured or ill worker to work are multidisciplinary, well-coordinated and personalized approaches tailored to the ***individual*** worker.

2. The legislative and policy context for RTW generally – and for ESRTW specifically – is complex. Although the over-arching goal of rehabilitation and RTW programs is essentially the same in the provinces scanned, no jurisdiction has defined (in legislation or policy) what is meant by "*early and safe*" RTW. Across Canada, the legislative, policy and practice provisions appear to have been developed for standard workplaces, standard work relationships, and physical injuries or illnesses. With the exception of the construction sector, the legislation and policies in Newfoundland and Labrador do not explicitly address non-standard workplaces or non-standard work relationships. None of the jurisdictions scanned explicitly addressed how mental health injuries or illnesses are to be considered in the RTW process. Examining the policy context is useful for determining how ESRTW has been operationalized; however, it is not useful for determining whether the approach is effective and why it works (or doesn't).

Three key takeaways emerged from the Dialogue:

1. RTW is complex and challenging, particularly in non-standard workplaces and in non-standard work relationships. This is particularly relevant for Newfoundland and Labrador because of the growing number of small businesses in the province, the high rates of seasonal and precarious employment, its status as a labour exporting region and recent increases in reliance on international labour in-migrants with temporary work permits.
2. There are a number of work and non-work factors that can either facilitate or impede early and safe RTW. One barrier that is particularly relevant for Newfoundland and Labrador is the current labour shortage and turnover in healthcare. Although the WorkplaceNL policy framework for ESRTW addresses and incorporates some of the key facilitators, the lack of access to healthcare and other services is a critical barrier to successful RTW in the province.
3. There are still gaps in our understanding of what works in ESRTW, for whom it works, and why it works (in NL and elsewhere). This is particularly relevant for Newfoundland and Labrador because the policy suite on ESRTW is still relatively new, which creates an opportunity to evaluate how well they are working in comparison to other jurisdictions, as well as how effective they are at sustainably returning injured workers to work.

Moving forward from the Dialogue, it is absolutely essential to know what works in return to work and for whom, as well as how Newfoundland and Labrador compares to other jurisdictions. The province's lack of linked administrative data (that allows for linkage and analysis of datasets like healthcare utilization, workers' compensation and other data) and occupational health clinics were identified as critical gaps for effectively assessing ESRTW in Newfoundland and Labrador. The former would allow for deeper and independent analysis of RTW after injury/illness that captures those compensated for their injuries, those who are not and would make it possible to track the trajectories of workers once off of compensation; the latter might help improve access to healthcare services, the effectiveness of ESRTW policies and programs, and surveillance potential around assessing what works and what doesn't in different contexts.

Some suggested priorities for future RTW research in Newfoundland and Labrador include:

- Documenting and deepening what is known about RTW experiences and outcomes across diverse contexts and groups of workers in Newfoundland and Labrador.
- Examining how PRIME and Experience-based Rating might be affecting sustainable ESRTW in Newfoundland and Labrador.
- Identifying the best ways to strengthen the effective engagement of health care professionals/expertise in RTW in the Newfoundland and Labrador context.

Among stakeholders who participated, there was general agreement and an appetite for more dialogue. Future initiatives could take the form of focussed conversations between those who practice and deal with RTW on a regular basis. Regardless of the form, these could take place annually, bi-annually or semi-annually.

1 Introduction

The costs of workplace injury and illness are high. Sickness or injury-related absence from work leads to considerable economic and social costs to individual workers, to the workplace, and to society (Dembe, 2001; Tompa et al., 2021). These costs can be categorized as direct healthcare costs (i.e., formal healthcare, out-of-pocket, informal caregiving, healthcare administration), indirect costs (i.e., absenteeism and reduced ability to work, employer adjustment[1], home production[2], presenteeism, insurance administration), and intangible costs (i.e., health-related quality of life costs) (Tompa et al., 2021). Indirect costs account for the largest part of the economic burden, followed by direct costs and then intangible costs. There are no Canadian estimates of the economic burden of all work injuries and diseases; however, estimates from the United States, the United Kingdom and Australia illustrate the scale of the problem. The economic burden in the United States is estimated at $250B (1.8% of GDP), while that of the United Kingdom and Australia are estimated at £14B (1% of GDP) and $61B AUS (4.8% of GDP), respectively (Tompa et al., 2021).

The research on return to work (RTW) shows that there are financial benefits to effective disability management interventions and RTW initiatives (e.g., decreased duration and costs), but that multiple work absences and unsuccessful RTW (i.e., recurrences) are common (Berecki-Gisolf et al., 2012). This results in increased time away from work, as well as increased social and economic costs. When it works well, accommodated or gradual RTW[3] before full recovery can result in a safe, sustainable return to regular duties, but early or gradual RTW is not effective for everyone and in every circumstance (Maas et al., 2020; Maas et al., 2021).

1.1 About the Newfoundland and Labrador Dialogue on Return to Work

The *Newfoundland and Labrador Dialogue on Return to Work* (the "Dialogue") started from the premise that while all might agree that early and safe return to work (ESRTW) and labour market re-entry programs are good for workers and employers and for the compensation system, attention needs to be paid to when and under what conditions they are most effective. In particular, consideration has to be given to the types of workplaces (i.e., small *vs*. large, mobile *vs.* static, and remote/rural *vs.* urban) and to the situations of different groups of workers across diverse industrial sectors and to type of injury/illness. These factors have consistently been shown to influence when RTW is likely to be safe and effective in terms of protecting the physical and/or mental health and income of injured workers.

The overall goals and objectives of the Dialogue were to:

a) transfer to Newfoundland and Labrador key findings from recent and ongoing research on RTW being carried out in other parts of Canada;
b) reflect on the potential relevance of these findings for our understanding and approach to RTW in Newfoundland and Labrador;
c) carry out an environmental scan of RTW policy and practices across Canadian provinces compared to Newfoundland and Labrador

[1] Expenses related to replacing an injured or ill worker.
[2] Tasks related to the home.
[3] Accommodated or gradual RTW provides workers with the opportunity to gradually increase working hours and workload and to limit or modify work tasks while recovering from an injury. The goal of gradual RTW is to return the worker to full hours and duties.

d) create an opportunity for multi-stakeholder commentary on findings from the environmental scan; and,
e) facilitate a discussion of overall insights from the Dialogue about future research priorities and dialogue around RTW in Newfoundland and Labrador.

The Dialogue was co-sponsored by the *Policy and Practice in Return to Work Partnership* (PPRTW) based at the University of Ottawa and by Memorial University's SafetyNet Centre for Health and Safety Research. The PPRTW Partnership is jointly funded by the Social Sciences and Humanities Research Council and by the Canadian Institutes for Health Research. Originally established and led by the late Professor Katherine Lippel, Distinguished Research Chair in Occupational Health and Safety Law, PPRTW focuses on particular challenges around return to work for growing segments of the Canadian – and the Newfoundland and Labrador – labour force. These segments include the precariously employed, immigrant workers, and mobile workers (including temporary foreign workers).

1.2 How the Dialogue was structured

The NL Dialogue on RTW was a multi-stakeholder, multi-phased dialogue consisting of four, two-hour virtual sessions in fall 2022, winter and spring 2023.

- **Session 1:** This session introduced the larger project, *Policy and Practice and Return to Work* and kicked off the Dialogue with presentations that highlighted the complexity and some of the challenges of RTW after work-related injury and illness. Researchers from Newfoundland and Labrador and across Canada presented their findings on the processes that influence the success of RTW programs generally, for immigrant workers, and for workers with musculoskeletal or mental health conditions.
- **Session 2:** This session focussed on the challenges of implementing RTW programs in particular types of work situations, some of which are becoming more common in the Newfoundland and Labrador context. Researchers from Newfoundland and Labrador and across Canada presented their findings from studies of RTW in small businesses and among precariously employed workers, mobile workers (e.g., inter-provincial construction workers, seafarers working in the maritime industry), and workers with particular vulnerabilities (i.e., those employed under the Temporary Foreign Workers Program in agriculture and other sectors).
- **Session 3:** This session shifted the focus to other factors that might influence RTW and its outcomes for injured or ill workers – namely, the legislation, regulations, policies, procedures (i.e., administrative practices), and services that govern how RTW is managed in Newfoundland and Labrador and some other Canadian provinces. Using findings from a Dialogue-funded environmental scan, it included a presentation that compared certain aspects of the legislative and policy context for RTW in Newfoundland and Labrador to other provinces with a similar focus on "early and safe" return to work (i.e., Ontario and British Columbia); a panel discussion of the presentation's findings; and an open discussion and dialogue with the Session's participants. The session was organized around five key topics: how ESRTW is defined in legislation and policy; roles and obligations of the various workplace parties in the RTW process; to whom the legislation and policy apply (and to whom it does not); the penalties for non-compliance with legislative obligations; and what happens if there is a dispute between the workplace parties.

- **Session 4:** This session wrapped up the consultation, providing an opportunity for participants to reflect on what they had heard and learned throughout the Dialogue, and to brainstorm next steps. The session began with a presentation synthesizing (a) what had been learned from the research presentations in Sessions 1 and 2 and from systematic reviews on RTW published in the last five years; (b) what had been learned about the specific policy context for RTW in Newfoundland and Labrador and how the situation in Newfoundland and Labrador compared to other provinces; and (c) what had been heard from stakeholders about how RTW operates in Newfoundland and Labrador. Following the presentation, the participating stakeholders were engaged in a discussion of priorities for further research on ESRTW. The session concluded with participants being asked to provide input on whether there is a need for changes to existing policy and whether there is there a need for more dialogue.

Recorded versions of the presentations to the Dialogue Sessions and reports on individual Dialogue sessions can be found on the SafetyNet website at the following link: Newfoundland and Labrador Dialogue on Return to Work Program | SafetyNet | Memorial University of Newfoundland (mun.ca).

1.3 Organization of the report

This report synthesizes the outcomes of the entire project. It is organized into five parts:

Part 1 introduces the NL Dialogue on RTW and outlines how the report is structured.

Part 2 summarizes key research findings on RTW from systematic reviews published in the scientific literature and from the research presented in the first two sessions of the Dialogue. The information in this section is organized to flow from the more general (i.e., the research findings and theories that underpin the concept of 'early and safe RTW') to the more specific (i.e., what the research says about RTW for specific types of injuries and categories of workers). It concludes with a synthesis of the facilitators and barriers to successful and sustainable RTW.

Part 3 summarizes how RTW is operationalized in Newfoundland and Labrador. It compares the legislative and policy context in Newfoundland and Labrador with selected Canadian jurisdictions. This comparison is drawn from an environmental scan conducted for the Dialogue that sought to identify and compare the legislation and policy-related factors that might influence RTW and its outcomes for injured workers in Newfoundland and Labrador with those of four other Canadian provinces (Quebec, Ontario, Manitoba, and British Columbia). A high-level summary of the scan and a description of key findings are provided in Appendix A.

Part 4 summarizes what is known about how RTW works in practice in Newfoundland and Labrador. It synthesizes the perspectives of the key stakeholder groups who participated in the Dialogue and highlights key themes that emerged from the discussion.

Part 5 lays out a strategy for moving forward from the Dialogue. It begins by highlighting the reasons why it is important to get RTW right and three key takeaways from the Dialogue. It concludes with next steps, presenting some suggested priorities for future research on RTW in Newfoundland and Labrador and considering whether there is a need for policy change and for more dialogue.

The report includes one appendix:

Appendix A provides a high-level overview of findings from the legislative and policy scan. It begins with some background on the purpose of the scan and how it was conducted. It then briefly

introduces the legal frameworks governing RTW in Canada, lists the statutes and regulations with provisions that address or relate to RTW, and describes the legislation, policies and procedures for key aspects of ESRTW in Newfoundland and Labrador, Ontario, and British Columbia.

2 What does the research tell us about what works in RTW?

This section of the report summarizes key research findings on RTW from systematic reviews, as well as the research presented in the first two sessions of the Dialogue. The information in this section is organized to flow from the more general (i.e., the research findings and theories that underpin the concept of 'early and safe RTW') to the more specific (i.e., what the research says about RTW for specific types of injuries and categories of workers).

2.1 The conceptual basis of early RTW before full recovery

The practice of early RTW before full recovery grew partly out of research on back pain, psychosocial research, psychological theory on 'occupational bonding' and 'fear avoidance', and disability management (MacEachen E et al., 2007). Studies from these four fields of research showed that a) in cases of low back pain (with and without sciatica), it was better for patients to progressively resume activities than to rest in bed; b) the longer workers are away from work, the less likely it is for them to return to work and the more likely it is that they will experience mental health problems; and, c) the worker's occupational bond (i.e., the perception that they are valued employees who remain attached to the workplace) influences how their disability manifests (i.e., the less connected to the workplace, the greater the duration of lost time and the more severe the disability) (MacEachen E et al., 2007). In the context of 'early and safe return to work', these findings and theories underly the assumption that 'hurt' is pain experienced during recovery and that 'hurt' does not necessarily impede recovery and can improve it (MacEachen E et al., 2007).

However, research conducted by the Institute for Work and Health (IWH) in the early 2000s showed that in certain situations – namely when the workers' pain was not accommodated, when claimants had to wait for medical diagnoses, when claimants had to wait for financial benefits, when there was poor communication with claims adjudicators/case managers, when employers handled claims incorrectly – 'hurts' related to workers' experiences with RTW processes and the handling of workers' compensation claims hindered workers' ability to return to sustainable work and were linked to 'harms' such as stress/mental strain, illness chronicity, financial hardship/poverty, addiction to painkillers, and strained workplace relationships (MacEachen E et al., 2007). The research found that certain positive conditions must be in place for early RTW to be beneficial – these include, for example, social and labour relations in the workplace that are not strained, effective communication, minimal waiting times, and a desire and commitment on the part of the employer to support and invest in safely returning the injured work to work (MacEachen E et al., 2007). In other words, as Ellen MacEachen (the lead author of this article) noted in Session 2 of the Dialogue, successful early RTW requires 'good jobs, great employers, a positive social environment and many other things that do not exist in all workplaces'.

2.2 The complexities and challenges of implementing RTW in non-standard workplaces

In Sessions 1 and 2 of the Dialogue, researchers from across Canada presented on the challenges of RTW in non-standard workplaces and non-standard employment arrangements. Topics covered included RTW among inter-provincially mobile workers, immigrant workers, federally employed workers (such as

seafarers), and temporary foreign workers (in particular, those employed under the Seasonal Agricultural Workers Program, SAWP). Key messages from the presentations are summarized below.

2.2.1 RTW in small businesses and other non-standard workplaces

Small businesses employ large numbers of workers in Canada (and in Newfoundland and Labrador) and are significant drivers of the economy, nationally and regionally (Delgado et al., 2023). According to Statistics Canada, in December 2022 there were approximately 1.34 million businesses[4] in Canada with one or more employees (Statistics Canada, 2023a, 2023d, 2023e). Businesses with fewer than 50 and fewer than 20 employees comprised 95.2% (n=1.27 million) and 86.9% (n=1.16 million) of these businesses, respectively (Statistics Canada, 2023d). Similar patterns are seen in Newfoundland and Labrador. Of the 18,985 businesses[5] with employees in December 2022, businesses with fewer than 50 employees comprised 96.2% (n=18,250), while those with fewer than 20 employees comprised 89.3% (n=16,933) (Statistics Canada, 2023d). By size of workforce, the percentages (and number) of businesses in Newfoundland and Labrador break down as follows: 59% (n=11,198) employed 1 to 4 employees, 18.5% (n=3,515) employed 5 to 9 employees, 11.7% (n=2,220) employed 10 to 19 employees, and 6.9% (n=1,317) employed 20 to 49 employees (Statistics Canada, 2023d).

Qualitative research studies conducted by the IWH over the last 25 years have found that it is not easy to implement RTW policy in non-standard workplaces, such as small businesses (Billias et al., 2023; Eakin & MacEachen, 1998; Eakin et al., 2003; MacEachen et al., 2013; MacEachen et al., 2012; MacEachen et al., 2010; MacEachen et al., 2021; Senthanar et al., 2020). The lead author on several of these studies, Ellen MacEachen, presented an overview of these findings in Session 2 of the Dialogue. The researchers found that RTW in small business could introduce an element of 'moral rupture' in that RTW and injury management can interfere with established relationships (which are reported as often feeling like a family); employers can sometimes feel a loss of trust in the employee (particularly short-term employees); and workers do not always appreciate the accommodated work. The research identified three key challenges with the implementation of RTW policies in this context: extreme power differences between employers and workers (i.e., at one end, employers who are well-informed about the system strategically hiring workers on short-term contracts and workers who are inexperienced with navigating compensation and RTW at the other); attribution of injury to a particular job being challenged for workers with unsteady or precarious employment (e.g., changing jobs regularly or having multiple part-time jobs); and, workers not acting on their rights because of employment insecurity and fear of job loss.

2.2.2 RTW for inter-provincially mobile workers

Work-related mobility crosses a spectrum from working at home to those who engage in extended mobility for work across inter-jurisdictional, and international borders. Based on data from the 2016 Census, approximately 2.8 million workers (16.46% of Canada's employed labour force) are estimated to engage in extended/complex work-related mobility (Neis & Lippel, 2019). Of these, approximately 9% were workers with long commutes (i.e., more than one hour one-way), 1% were workers with

[4] An additional 3.02 million businesses had no employees.
[5] There are an additional 22,713 businesses in Newfoundland and Labrador without employees.

interprovincial commutes, 5% were transportation workers, and 2% were temporary residents with work permits (Neis & Lippel, 2019).

As noted in a 2020 report from the On the Move Partnership, interjurisdictional employment (IJE), while volatile, is common in Canada, with 408,755 workers earning a minimum of $1,000 outside of their jurisdiction of residence in 2016 (Neil & Neis, 2020). Within Canada, some jurisdictions send out more employees than they receive (as in Atlantic Canada) while others have more entering than leaving. Between 2002 and 2019, Newfoundland and Labrador, for example, sent out more inter-jurisdictional employees (IJEs), on average, than it received (i.e., 19,000 vs. 6,000 IJEs per year, respectively) (Qiu, 2023; Statistics Canada, 2023b). The top three industries of employment in 2016 for outgoing IJEs from Newfoundland and Labrador were: construction, oil and gas extraction and support activities, and, transportation and warehousing (Neil & Neis, 2020). Across Canada, IJEs from Newfoundland and Labrador tend to have the highest proportion of earnings from outside the province – with earnings from outside Newfoundland and Labrador accounting for between 76% and 84% of their total earnings over the 15-year period between 2002 and 2016 (Neil & Neis, 2020).

Canadian workers who live in one jurisdiction (province/territory) and work in another, can encounter challenges with RTW after injury. In Session 2 of the Dialogue, Robert Macpherson presented on research that found RTW not only poses a challenge for inter-jurisdictionally mobile workers and their families, but also for their employers and workers' compensation boards. Challenges include identifying who is responsible for the recovery of these workers and trying to have work accommodations for workers who may be travelling long distances, working in camps and may have family elsewhere. Studies of interprovincially mobile workers have found that out of province workers tend to have longer disability duration and are less likely to come off disability benefits than workers who work within a particular province (Cherry et al., 2019; Cherry et al., 2020; Macpherson et al., 2020; Macpherson et al., 2021; Macpherson et al., 2022; Neis & Lippel, 2019). The research also shows that these interprovincially mobile workers have lower claims rates, but it is not clear whether they have less injuries or whether they are less likely to report their injuries.

2.2.3 RTW for immigrant workers

Racialized immigrant workers, including international students, comprise a growing share of the Canadian and Newfoundland and Labrador labour force (Crossman et al., 2021; Yssaad & Fields, 2018). Between 2006 and 2017, the core-aged immigrant population has increased in all provinces, with the share in Atlantic Canada[6] rising from 3% in 2006 to 6% (Yssaad & Fields, 2018). According to the Government of Canada Job Bank, there has been a significant increase in the pace of new immigrants arriving in Newfoundland and Labrador in recent years, as the province has actively focussed on immigration as a means of addressing labour market gaps (Government of Canada, 2023b). In 2021, recent immigrants[7] accounted for 30% of the immigrant population in Newfoundland and Labrador (Government of Canada, 2023b). Of the 4,270 recent immigrants who came to Newfoundland and Labrador, approximately 63% (n=2,680) were of working age (i.e., between 25 and 64 years old) and

[6] Includes Newfoundland and Labrador, Prince Edward Island, Nova Scotia, and New Brunswick. Because of small sample sizes, the numbers are aggregated into one group.

[7] Those that arrived between 2016 and 2021.

80% were from Africa and Asia[8] (Statistics Canada, 2022a). According to Statistics Canada, landed immigrants aged 25 to 54 (i.e., core working ages) accounted for 59.7% of the employment gains in Canada between 2016 and 2017 (Yssaad & Fields, 2018).

Canadian research indicates that immigrant workers tend to be at higher risk of injury and illness and experience particular challenges with accessing compensation and return to work supports (Premji et al., 2022; Senthanar et al., 2021a, 2021b; Senthanar et al., 2021c, 2023; Stephanie Premji et al., 2021; Yanar et al., 2022). These workers are often precariously employed and this, combined with lack of knowledge about their rights, constraints on their access to appropriate health services, linguistic and other challenges, need to be taken into account when identifying ways to protect their health and improve their access to compensation and to return to work after injury. In Session 1 of the Dialogue, Stephanie Premji presented findings from research documenting ways that delayed and non-reporting of work-related injuries can impact multiple things such as access to workers' compensation and ability to recover and rejoin the workforce due to lack of access to return to work supports. RTW challenges for these workers relate to limited access to suitable modified work; shortcomings in retraining programs related to labour market re-entry; and the exclusion of immigrant injured workers from decision-making processes.

2.2.4 RTW for migrant and temporary foreign workers:

Temporary foreign workers (TFWs)[9] and international students with work permits are an important source of labour in Canada and are increasingly important in Newfoundland and Labrador, with many employers relying on them to fill labour shortage gaps (Crossman et al., 2021; Lu & Hou, 2019). Between 2000 and 2021, the number of TFWs in Canada increased from 111,000 to 777,000; while the number of international students with T4 earnings increased over approximately the same period from 22,000 to 354,000 (Crossman et al., 2021; Lu & Hou, 2019; Statistics Canada, 2022b). According to a recent report from Statistics Canada, 57% of students intending to study in Newfoundland and Labrador reported earnings in 2018; this represented the highest share in the country (Crossman et al., 2021).

The number of TFWs in 2019 accounted for approximately 4% of the total number of T4 earners in Canada (Statistics Canada, 2022b). The three sectors that are most reliant on TFWs are agriculture (15%), accommodation and food services (10%), and administration and support/waste management and remediation services (10%) (Statistics Canada, 2022b). Preliminary data from Statistics Canada indicate that approximately 106,000 TFWs were employed in the agriculture and agri-food[10] sectors in 2022; of these, 70,365 were employed in agriculture (up from 60,992 in 2021) and 36,054 were employed in agri-food (up from 32,740 in 2021) (Statistics Canada, 2023c). According to the most recent data[11] on the Government of Canada's open government portal[12], there were 142,150 TFW Program

[8] These regions respectively accounted for 21.3% (n=910) and 59% (n=2,520) of recent immigrants to Newfoundland and Labrador.

[9] There are two types of TFW work permits employer-specific work permits (ESWPs) and open work permits (OWPs). Those with the former can work only in a designated firm or occupation, while those with the latter can work for any employer.

[10] Includes sectors related to the food and beverage manufacturing industry: animal food manufacturing, grain and oilseed milling, sugar and confectionary product manufacturing, fruit and vegetable preserving and specialty food manufacturing, dairy product manufacturing, meat product manufacturing, seafood product preparation and packaging, bakeries and tortilla manufacturing, other food manufacturing, beverage manufacturing.

[11] The data were current to the end of August 2023.

[12] https://open.canada.ca/data/en/dataset/360024f2-17e9-4558-bfc1-3616485d65b9

(TFWP) work permit holders and 692,550 International Mobility Program (IMP) work permit holders in Canada in 2023; Newfoundland and Labrador accounted for a total of 1,080 TFWP work permit holders and 3,585 IMP work permit holders in this time period (Immigration Refugees and Citizenship Canada, 2023a, 2023b). The highest number of TFWP work permits in Newfoundland and Labrador were held by fish and seafood plant workers (n=410) and labourers in fish and seafood processing (n=200); while the highest number of IMP work permits were held in "other occupations" (n=2,755) (Immigration Refugees and Citizenship Canada, 2023a, 2023b).

Canadian employers can hire migrant workers under four substreams of the Temporary Foreign Workers Program (TFWP), the largest of which is the Seasonal Agricultural Worker Program (SAWP). The conditions that characterize these programs create significant challenges for migrant workers' health and the protection of their rights (Cedillo et al., 2019). For example, their temporary status and work permits are tied to a single employer who can fire and deport them without any formal grievance process; they are often unable to refuse unsafe work and are reluctant to report situations of abuse for fear of deportation or not being asked back the following year by their employer; they experience barriers to accessing health care and often have to rely on employers for transportation (Cedillo et al., 2019; Janet McLaughlin et al., 2014; Jenna Hennebry et al., 2016; Jenna L. Hennebry, 2010; Stephanie Mayell et al., 2015). In Newfoundland and Labrador, the Atlantic Immigration Program assists designated employers[13] to hire skilled foreign workers and international graduates from a Canadian institution to fill positions they haven't been able to fill with local candidates (Government of Canada, 2023a, 2023c). The program offers a pathway to permanent residence in the four Atlantic provinces.

In Session 2 of the Dialogue, Janet McLaughlin and Stephanie Mayell summarized RTW findings from research to date with Seasonal Agricultural Worker Program (SAWP) workers in Ontario. Their studies found that the intersection of workers' temporary migration and employment status provide unique challenges for RTW for this population, especially since many injured and sick workers are repatriated prematurely prior to recovery, before receiving health care, compensation, or being accommodated in RTW (Caxaj et al., 2022; Eduardo Huesca et al., 2022; Janet McLaughlin et al., 2014; Jenna Hennebry & Janet McLaughlin, 2012; Jenna Hennebry et al., 2016; Jenna L. Hennebry, 2010; McLaughlin, 2010; McLaughlin & Hennebry, 2013; McLauglin, 2009; Mysyk et al., 2008; Narushima et al., 2016; Stephanie Mayell, 2016; Stephanie Mayell & Janet McLaughlin, 2016; Stephanie Mayell et al., 2022; Stephanie Mayell et al., 2015). As a result, these workers do not benefit from re-employment, re-training or re-integration into the labour market. McLaughlin and Mayell concluded their presentation with the following recommendations:

- Injured migrant workers should have greater RTW supports. Such supports should be accessible and provided in the preferred language of the worker.
- Workers unable to return to their previous jobs should be given opportunities to retrain and reintegrate into the Canadian labour market.
- Injured migrant agricultural workers should be able to stay in Canada to access all necessary health care.

[13] An employer designated by the Government of Newfoundland and Labrador to hire a worker under the Atlantic Immigration Program (AIP) must (a) not be in violation of the Canadian *Immigration and Refugee Protection Act* or the *Immigration and Refugee Protection Regulations*; (b) meet the criteria in the federal-provincial agreements for the AIP; and (c) comply with applicable labour laws, such as the Acts governing employment standards and occupational health and safety.

- Injured migrant agricultural workers who return home unable to work should be provided with fair loss of earning benefits that recognize their local labour market realities.
- No injured worker should return home before health care is pre-arranged.

Based on their research in Ontario, they also recommended that:

- Workers should be able to access their choice of health care providers back home. The Workplace Safety and Insurance Board (WSIB) and Ministry of Labour should work to ensure that all providers understand the WSIB system with direct reimbursement, and do not charge workers for services.
- The WSIB should review and consider adopting the recommendations to improving equitable access to benefits, as outlined in previous research. Although some positive changes have been made by the WISB since these reports were written, many are outstanding, and barriers to migrant workers fully and fairly accessing WSIB services persist.
- Migrant workers across Canada should be granted access to health care upon arrival.

These are issues that Newfoundland and Labrador will need to address going forward to ensure fair and equitable access to compensation and RTW among international migrant workers entering through the various federal international labour migration programs who are injured or killed as a result of their employment in the province.

2.2.5 RTW for seafarers

There are an estimated 30,000 seafarers in Canada many of whom live in Atlantic Canada. Seafarers are federally regulated but workers compensation is covered by provincial compensation boards, which creates challenges for RTW. In addition, inter-provincial commuting is common among this population of workers. Desai Shan reported on findings from a recent survey of Canadian seafarers that found that while more than 35% live in Atlantic Canada, only 17% work in Atlantic Canada. In contrast, while only 15% of seafarers live in British Columbia, 30% work there. Research shows that RTW in the maritime sector is challenging for a range of reasons – including conflicts between federal and provincial requirements for RTW, the difficulty of accommodating an injured or sick seafarer (particularly during an emergency situation), and the lack of availability of light or modified duties on ships (Lippel & Shan, 2019; Shan, 2020a, 2020b; Shan & Lippel, 2019).

As indicated by Shan, one regulatory requirement that creates particular challenges for RTW of seafarers is the marine medical certificate required by Transport Canada, which is neither a certificate of general health nor certification of the absence of illness, but is rather a certification that the seafarer is expected to be able to meet the minimal requirements to perform their routine and emergency duties at sea safely and effectively during the period of validity of the medical certificate. The medical professional issuing the certificate must establish whether the seafarer meets the minimum standards for their post and whether any duties will need to be modified to allow this. If Transport Canada provides a restriction on the marine medical certificate (such as no watch-keeping allowed), that can lead to a denial of future employment for the seafarer. It is widely acknowledged by the maritime employers and Transport Canada that the maritime medical certificate is crucial but research suggests that workers compensation boards may not agree with this. Seafarers caught between these two sets of regulatory organizations may be deemed fit for work by the workers' compensation board (resulting in a loss of wage benefits)

but they may not be able to get their marine medical certificate and, as a result, will not be able to return to seafaring.

2.3 The complexities of implementing RTW for workers with specific conditions

2.3.1 RTW for workers with mental health, musculoskeletal, and pain-related conditions

Researchers at the Institute for Work and Health (IWH) undertook a series of systematic reviews to examine what workplaces and system partners (i.e., compensation agencies, insurance, and healthcare authorities) can do to support workers with mental health, musculoskeletal, and pain-related conditions return to work after a period of absence (Cullen et al., 2018). A key finding from these evidence reviews is that what works best are multidisciplinary, well-coordinated approaches tailored to the individual worker (Cullen et al., 2018). The lead author of this review (Kim Cullen) presented a high-level synthesis of the findings in Session 1 of the Dialogue.

Cullen noted there is strong evidence that workplace-based RTW programs are effective in reducing time away from work due to these conditions when they incorporate at least two of the following three practices:

- **Provision of health services at work or in settings linked to work:** These are programs and practices designed to facilitate the delivery of health services to an injured or ill worker – either in the workplace or in settings linked to the workplace (e.g., visits to healthcare providers initiated by the workplace). Components may include: graded activity/exercises, medical assessments, functional capacity evaluations, physical therapy, occupational therapy, medication, (work-focused) cognitive behavioural therapy, other psychological therapy, work hardening, and/or psychosocial assessments.
- **RTW co-ordination:** These are programs and practices designed to better coordinate the delivery of, and access to, healthcare, workers' compensation, insurance and/or workplace services that will assist in the return to work of the injured or ill worker. Coordination involves improving communication among and between the workplace parties, healthcare providers and workers' compensation/insurance authorities involved, in consultation with the injured or ill worker. Components may include: development of RTW plans, offers of early intervention, case management and RTW coordination, early reporting of injury, and/or education and training.
- **Work modifications:** These are programs and practices that alter the organization of work or introduce accommodations for the injured or ill worker. Components may include: modified duties, modified working hours, equipment and/or workstation modifications, and/or supervisor training on work modifications.

Meeting these requirements sounds simple but can be really complex and challenging to achieve because of numerous barriers in each of these areas. These include: barriers to access to health care services and the quality of those services that vary across types of work and workers; service coordination barriers such as problematic internal workplace dynamics and challenges around access to training and other services that can delay return to work; and, potential barriers to achieving appropriate work modifications that tend to be greater for older workers, within small workplaces and in certain types of industries such as remote work and work offshore where workplace demands may be dynamic and changes related to, for example, weather that can affect the work that needs to be done.

2.3.2 RTW for workers with mental health conditions

Two scoping reviews examining RTW for workers with mental health conditions were published by Canadian researchers in 2020 (Corbière et al., 2020; MacEachen et al., 2020). One examined the role of stakeholders in the RTW process (Corbière et al., 2020); the other explored the impact and role of RTW coordinators (MacEachen et al., 2020). Key conclusions of each review are summarized below.

- **Role of Stakeholders:** Eleven sets of stakeholders across three systems (the workplace, healthcare, workers' compensation) were determined to have a role in RTW of workers on leave for mental health conditions. These include: workers on sick leave due to common mental disorders, employers/human resources, managers, occupational nurses/physicians, family/general physicians, psychiatrists/psychologists/psychotherapists, rehabilitation professionals, co-workers, insurers, return to work coordinators, and union representatives. Each stakeholder group has a specific role to play and specific actions to put in place along the RTW trajectory. The review illustrates, by way of an example of work accommodation, how the roles and actions of all the stakeholders are intertwined in both the early phases of RTW (i.e., treatment and rehabilitation, preparation for RTW) and the latter phases (i.e., gradual RTW and follow-up). One of the review's key conclusions was that the choice and implementation of work accommodations are crucial and should involve all stakeholders in a coordinated effort.
- **Role of RTW Coordinators:** The review found that there is a limited literature on the role, strategies, actions, impact of RTW coordinators in the RTW of individuals with mental health conditions[14]. Based on this limited literature, the review concluded that (a) the evidence base is limited on the role of RTW coordinators when dealing with these conditions; (b) there is no evidence on the strategies and actions that these coordinators employ; and (c) their impact on RTW in this population of injured workers is unclear. One of the review's conclusions was that it may be more time consuming to involve an RTW coordinator in interventions for mental health conditions than to take a conventional approach. Future research (that examines RTW coordinator competencies, as well as the strategies and actions used) would be helpful for addressing the gaps in the literature and for establishing best practices.

2.3.3 RTW for workers with chronic pain

A systematic review examining tertiary RTW interventions[15] for workers with chronic pain was published in 2020 by researchers in the United Kingdom (Wegrzynek et al., 2020). Most of the interventions included were multi-disciplinary and incorporated psychological, physical, and workplace elements. The primary outcome of interest was 'return to work', as measured by work status, number of hours worked, time until worker returns to work for contracted hours or pay; where available and assessed reliably, secondary outcomes of interest were pain, disability, and psychosocial factors. The reviewers concluded that, although multidisciplinary interventions seemed to be the most effective, there was no conclusive evidence to support any specific type of intervention for this population of workers. To better answer the question of what works in RTW for workers with chronic pain, more methodologically robust research studies are required.

[14] Only five articles (which were heterogeneous in design, purpose and findings) met the review's inclusion criteria.

[15] The review only included randomized controlled trials that evaluated the effectiveness of tertiary RTW interventions for individuals suffering from chronic pain.

2.4 Influence of personal, social, and organizational factors on RTW

Five systematic reviews published since 2018 have examined the impact of personal, social, and organizational factors on sustainable RTW (Dol et al., 2021; Etuknwa et al., 2019; Jansen et al., 2021; Johansson & Rissanen, 2021; White et al., 2019).

- **Personal and social factors:** Two systematic reviews examining the role of personal factors, social support and social integration factors in RTW confirmed the findings of previous research and other systematic reviews – namely that successful and sustainable RTW is influenced by an interplay of multiple factors, including support from leaders and co-workers, contact and communication, person-centred approaches, mutual trust, positive attitudes, high self-efficacy, social relationships and social integration (Etuknwa et al., 2019; White et al., 2019). These reviews also noted that the absence of these factors is a barrier to sustainable RTW. One of the reviews found that younger workers and those with higher levels of education were more likely to sustainably return to work (Etuknwa et al., 2019). Another systematic review examining RTW interventions among young working adults found that while there was a lack of research and policies on rehabilitation and RTW in this population, multi-disciplinary interventions resulted in less time loss (Johansson & Rissanen, 2021). All three reviews identified gaps in the evidence base and identified a need for more research and intervention studies to better understand the influence of personal and social factors on RTW.
- **Organizational factors:** Two systematic reviews examining organizational factors, such as the role of the employer and the impact of RTW coordinators[16], confirmed the findings of previous research and other systematic reviews – namely that supervisor involvement in work accommodation improved RTW and decreased long-term disability (Jansen et al., 2021) and that face-to-face contact with a RTW Coordinator improves RTW outcomes (i.e., reduces duration and costs, increases RTW rates) (Dol et al., 2021). The latter review found that when a RTW Coordinator is engaged in identifying the barriers and facilitators to RTW, duration and costs are also reduced (Dol et al., 2021). These reviews also identified gaps in the evidence base and recommended that more methodologically rigorous studies be undertaken to measure the impact of organizational factors on sustainable RTW outcomes, such as work absence, RTW rate, quality of life, etc.

2.5 Facilitators and barriers to successful RTW

2.5.1 Evidence-based principles for successful RTW

In the early 2000s, researchers at the IWH conducted a systematic review of research studies on RTW. That review, which looked at both quantitative (i.e., numbers-based) and qualitative (i.e., narrative-based) research studies, found that workplace-based RTW interventions have positive impacts on both the duration and costs of work disability (Franche et al., 2005; Franche RL et al., 2004; MacEachen et al., 2006). Based on these findings, the IWH developed the following seven principles for successful RTW (Institute for Work and Health, 2007 (revised 2014)).

1. The workplace has a strong commitment to health and safety, which is demonstrated by the

[16] The review defined a RTW Coordinator as "individuals who are responsible for coordinating and facilitating timely and safe RTW of workers who have been absent from work due to illness or injury".

behaviours of the workplace parties.

2. The employer makes an offer of modified work (also known as work accommodation) to injured/ill workers so they can return early and safely to work activities suitable to their abilities.
3. RTW planners ensure that the plan supports the returning worker without disadvantaging co-workers and supervisors.
4. Supervisors are trained in work disability prevention and are included in RTW planning.
5. The employer makes early and considerate contact with injured/ill workers.
6. Someone has the responsibility to coordinate RTW.
7. Employers and healthcare providers communicate with each other about the workplace demands, as needed, and with the worker's consent.

The research that underpins each principle is briefly summarized below.

Principle 1: The workplace has a strong commitment to health and safety, which is demonstrated by the behaviours of the workplace parties

The following behaviours (among others) are associated with good RTW outcomes: management buy-in and corporate investment (of both human and financial resources) in OHS and RTW; labour support for OHS policies and RTW programs; and an organizational commitment to OHS (Franche et al., 2005; Franche RL et al., 2004; MacEachen et al., 2006). Studies of disability management interventions found reductions in work disability duration and cost in workplaces where there was strong union support, while qualitative studies found that a collaborative approach between labour and management in planning and implementing an RTW program can minimize the potential for conflict between the collective agreement and RTW programming.

Principle 2: The employer makes an offer of modified work to injured/ill workers so they can return early and safely to work activities suitable to their abilities

Two core elements of disability management that lead to favourable RTW outcomes are (a) the offer of accommodated work and (b) ergonomic worksite visits (Franche et al., 2005; Franche RL et al., 2004; MacEachen et al., 2006). Studies have found that the RTW process can break down in situations where there is an awkward fit between the worker and the modified work environment. Ideally, a worker should be returned to a work area with which they are familiar. The research shows that in some cases it will be helpful to employ the services of someone with ergonomics expertise (e.g., when RTW planners encounter difficulty in creating an appropriate modified job).

Principle 3: RTW planners ensure that the plan supports the returning worker without disadvantaging co-workers and supervisors.

The RTW process can significantly impact workplace relationships and routines, potentially leading to resentment and/or a lack of cooperation if others (e.g., co-workers, supervisors) feel disadvantaged by the plan (Franche RL et al., 2004; MacEachen et al., 2006). Examples include situations where co-workers perceive that they have to cover for the injured worker who has "managed to get an 'easier' job" and supervisors feel their increased workload (from accommodating an injured worker while

continuing to meet production quotas) is not adequately recognized. The research suggests that individual RTW plans that anticipate these challenges and take into account the social fragility of the RTW process are likely to have better outcomes

Principle 4: Supervisors are trained in work disability prevention and are included in RTW planning.

Because they interact directly with the injured worker and have oversight of the immediate work environment, supervisors are key to successful RTW (Franche et al., 2005; Franche RL et al., 2004; MacEachen et al., 2006). For example, supervisors left out of the planning process report feeling "ill-equipped to accommodate returning workers". The systematic review highlighted successful RTW outcomes reported by a program in which supervisors were not only trained in safety and ergonomics, but also taught how to constructively participate in the RTW process.

Principle 5: The employer makes early and considerate contact with injured/ill workers.

Early contact with the injured worker is another core component of many disability management programs – and a key facilitator of successful RTW (Franche et al., 2005; Franche RL et al., 2004; MacEachen et al., 2006). The timeline for such contact is not fixed and should reflect the worker's specific situation. In other words, contact within the first few weeks following an injury is only a guideline. Ideally, the injured worker's immediate supervisor is the one to make contact. Generally, early contact is successful when it conveys concern for the worker's health and well-being, when issues of causation or blame are avoided, and when it builds on a positive workplace culture and environment.

Principle 6: Someone has the responsibility to coordinate RTW.

Successful RTW programs involve (a) an individual (who may be either internal or external to the company) with dedicated responsibility for coordinating the RTW process, and (b) a process that considers the needs of all affected parties[17] (Franche et al., 2005; Franche RL et al., 2004; MacEachen et al., 2006). Coordination of RTW includes ensuring that: the process is worker-centric (i.e., individualized plans adapted to the worker's specific needs); all affected parties stay in communication as needed throughout the process; and, all affected parties not only understand the process, but also their role in it.

Principle 7: Employers and healthcare providers communicate with each other about the workplace demands, as needed, and with the worker's consent.

Work disability duration is reduced by contact between workplaces and healthcare providers (which might include physicians, chiropractors, ergonomists, kinesiologists, occupational therapists, physiotherapists, and nurses) (Franche et al., 2005; Franche RL et al., 2004). An individual healthcare provider or a multi-disciplinary team of providers can play a significant role in the RTW process as the injured worker is likely to look to their healthcare provider(s) for information about their condition and for advice on returning to work. Therefore, a healthcare provider's ability to advise the worker

[17] Includes the injured worker and other workplace parties (i.e., co-workers, supervisors, managers), healthcare providers, disability managers, and workers' compensation authorities.

and participate in informed RTW decision-making is improved by understanding not only what the worker does in their job, but also the workplace's capacity to accommodate the injured worker.

Research shows that contact may not be necessary in situations where the worker's return is uncomplicated; but, in other cases, it should happen with the permission of the worker. The degree and nature of the contact can vary on a case-by-case basis, depending on individual circumstances. Examples include: a paper-based or electronic exchange of information, a telephone conversation, a workplace visit by a healthcare provider, or an RTW program that fully integrates clinical (i.e., medical assessment, follow-up and monitoring) and occupational (i.e., jobsite evaluations, ergonomic interventions) processes. In cases where family physicians do not have time to consult with the workplace or make a workplace visit, it may be helpful for other rehabilitation and occupational health professionals to act as intermediaries between the workplace and the healthcare system and assist with RTW planning.

These seven principles were first published in 2007 and were updated in 2014 to reflect the results of new research. On its website, the IWH highlights the impact of the seven principles and illustrates, using a case study, how they have been used to help build successful RTW programs (Institute for Work and Health, 2017). In the highlighted case study, management and union representatives at Niagara Health collaboratively developed (with support from external advisors) a new RTW/accommodation policy that incorporated components of the Seven Principles. After the policy was implemented in 2012, Niagara Health saw a 45 percent improvement in the duration of disability in the three years after the change, compared to the three years before. The average number of days off work following a work-related injury in the three year period after the policy was implemented was 10.9 days, compared to 19.4 days in the three years prior to implementation (Institute for Work and Health, 2017). In contrast, a peer group of 29 hospitals only saw a 25 percent improvement over the same time period (Institute for Work and Health, 2017).

2.5.2 Summary of the facilitators and barriers to successful RTW

One of the key takeaways from the research presented in Sessions 1 and 2 of the Dialogue and from the findings from systematic reviews and other literature synthesized in this report is that RTW is complex and challenging, particularly in non-standard workplaces or for non-standard work relationships. There are a number of work and non-work-factors that can either facilitate or impede successful RTW.

The **facilitators** to successful and sustainable RTW include:

- Positive conditions: positive social environment and high-quality labour relations in the workplace, employer commitment and desire to invest in returning injured worker to work
- Strong commitment to OHS: investment of resources and time to promote safety and coordinated RTW, strong union support, safety accepted as the norm across the organization
- Collaborative approaches: labour and management working together to plan and implement RTW
- Accommodation of injured/ill worker: modified work duties, modified work environment, ergonomic assessments and expertise

- Individualized RTW plan that supports the returning worker but does not disadvantage co-workers and supervisors
- Trained and educated supervisors and managers: safety training, participatory ergonomics, empathy, accommodation, problem solving
- Early and considerate contact by immediate supervisor, based on individual/specific situation
- RTW coordinator with dedicated responsibility for coordinating RTW: individualized planning, ongoing communication, understanding of roles
- Communication between the employer and healthcare provider, as needed and with worker's consent
- Engaged healthcare providers who understand what the worker does and the workplace's capacity to accommodate injured worker.

The **barriers** to successful and sustainable RTW include:

- Isolated working environments with limited access to health care and supports (e.g., oil rigs, ships, and remote working camps)
- Organizational factors such as lack of organizational commitment to OHS, an RTW plan that disadvantages co-workers and supervisors, supervisors excluded from RTW planning process, toxic work environments
- RTW plans that are not personalized to the worker's individual circumstances ("one size fits all approach")
- Awkward fit between worker and modified work environment
- Inappropriate contact between workplace parties that is not responsive to individual needs
- Lack of or inappropriate communication between employer and healthcare provider
- Lack of access to health care and other services.

While there are still gaps in our understanding of what works, for whom it works and why it works, the evidence indicates that what works best to sustainably return an injured or ill worker to work are multidisciplinary, well-coordinated and personalized approaches tailored to the ***individual*** worker. Key questions include how to achieve these across diverse work environments (such as mobile work, construction work, seasonal work, seafaring, and small businesses) and for workers with varying rights, resources and options (such as international migrant workers and the precariously employed).

3 How is RTW operationalized in policy and practice?

This part of the report provides a high-level overview of the policy context for ESRTW in Newfoundland and Labrador, and compares it to other jurisdictions with similar provisions. Information was drawn from the findings of an intensive environmental scan undertaken to examine and compare RTW policies and procedures in five provinces: Newfoundland and Labrador, Quebec, Ontario, Manitoba, and British Columbia. An overview of the environmental scan methods and more detailed descriptions of the relevant legislative and/or policy requirements are provided in Appendix A.

3.1 The legislative and policy context for RTW

In Newfoundland and Labrador, as in the rest of Canada, provisions governing RTW are principally found in three legal frameworks: workers' compensation, occupational health and safety, and human rights.

- **Workers' Compensation:** Laws and policies made in the context of this legal framework are intended to achieve the over-arching goal of RTW – namely, to enable an injured worker to safely return to work, ideally in their pre-injury employment or suitable alternate employment at their pre-injury wages. Quebec is the only province that enshrines RTW as a worker's *right* to be reinstated in their pre-injury employment or to be reassigned to equivalent employment. In Canada, each level of government (i.e., provincial, territorial, and federal) has its own workers' compensation statute. At the federal level, injured workers are entitled to receive compensation benefits at the same rates and under the same conditions as provincially regulated workers working in the same jurisdiction.
- **Occupational Health and Safety:** Laws and policies made in the context of this legal framework are intended to achieve the principle that all workers have the right to a safe work environment. In Canada, these laws are based on the internal responsibility system (IRS), the philosophy that all workplace parties[18] share direct responsibility for ensuring a safe and healthy worksite. One of the core features of an IRS is that responsibilities increase with increasing authority and control, with employers typically having the most responsibilities. The specific workplace parties deemed to have a role are reflected in the general duty clauses of the *Occupational Health and Safety Act* and regulations – and vary by province. For example, the *Act* and regulations in Newfoundland and Labrador set out general duty clauses that apply to employers, workers, supervisors, suppliers, prime/principal contractors, self-employed persons, and owners.
- **Human Rights:** Laws and policies made in the context of this legal framework are intended to achieve the principle that all persons should have equal opportunity "to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society…". Under these laws, discrimination in employment based on disability is prohibited. In Canada, human rights are protected under the Constitution and by federal, provincial, and territorial legislation. The rights afforded under this legislation are consistent with those set out in international and multilateral treaties to which Canada is a party (e.g., United Nations human rights covenants and conventions, International Labour Organization conventions, among others).

In addition to these three frameworks, there are some legal and policy provisions in Canada that protect temporary foreign workers with implications for RTW. Some are federal, others are provincial.

- **Temporary Foreign Workers (TFWs):** Laws and policies made in the context of this legal framework are intended to reinforce that the rights of all workers, including TFWs, are protected by law and that temporary foreign workers have the same rights and protections as Canadians and permanent residents. In Canada, the federal government and two provincial governments (Quebec and British Columbia) have enacted legislation or regulations that explicitly enshrine these rights and protections in law. In British Columbia, the law requires that

[18] Includes employers, supervisors, workers, suppliers, service providers, owners, contractors, prime contractors, self-employed persons and temporary staffing agencies.

these workers be provided with information on their statutory rights and provides them protection from unlawful deportation and other threatening or punitive actions (such as intimidation, coercion, discrimination, monetary penalties, job loss, refusal to employ) if they participate in an investigation/proceeding or make a complaint/inquiry to any government or law enforcement agency. In Quebec, temporary foreign workers, at the time of recruitment, must be given information concerning worker rights and employer obligations. In addition, the Minister will refuse to approve applications from employers wishing to hire foreign nationals if the employer has been convicted of certain offences under the workers compensation statute or the occupational health and safety statute. In Ontario, the Workplace Safety and Insurance Board (WSIB) has issued a policy statement clarifying that workers participating in the "Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program" have WSIB coverage, which begins as soon as they reach the agreed-upon point of departure in their homeland and remains in place until they return home. *There is nothing in either legislation or policy that explicitly addresses the health and safety (and return to work) of TFWs in Newfoundland and Labrador*.

Across the one federal and five provincial jurisdictions scanned[19], provisions governing specific aspects of RTW were identified in 14 statutes (11 provincial, 3 federal) and 11 regulations (8 provincial, 3 federal). Those provisions that appeared to be relevant to the application and/or implementation of RTW programs were also included. Table A-1, Appendix A, lists these statutes and regulations by name. At the time of the original policy scan, a total of 137 documents were identified with information on how RTW is operationalized by the workers compensation authorities in the five provinces scanned[20] (Table 1, below). Of these, 87 are internally facing (72 policies interpreting the legislation and the regulations, 15 procedures and administrative practice documents) and 50 are externally facing (i.e., informational resources directed at the various parties with specific roles in the RTW process). Newfoundland and Labrador has the greatest number of policies on RTW (n=19), followed by Quebec (n=18) and British Columbia[21] (n=18). At the time of the scan, it also had the greatest number of administrative documents explaining the procedures for return to work (n=14). British Columbia has the greatest number of externally facing informational resources on RTW (n=17), followed by Newfoundland and Labrador (n=11), Manitoba (n=9), Quebec (n=8), and Ontario (n=5).

Table 1: Number of policy instruments and additional resources, by jurisdiction

	NL	QC	ON	MB	BC
Internally facing documents					
Number of policies	19	18	11	6	18
Number of procedures (Note 1)	14				
Number of administrative practice documents			1		
Externally facing documents					
Number of supplemental informational resources	11	8	5	9	17

Notes:

1 It appears that some parts of the RTW policy/procedure suite in Newfoundland and Labrador were updated and/or revised between the date of the original scan and the writing of this report. At the time of the original policy scan, there were 14 procedures posted online; at the writing of this report, there were 12.

[19] Newfoundland and Labrador, Quebec, Ontario, Manitoba, British Columbia, and Government of Canada.

[20] Federal jurisdiction is not included as claims involving RTW are adjudicated and managed by the provincial and territorial workers' compensation boards through negotiated Service Agreements

[21] These policies do not interpret the legislative provisions on RTW that received royal assent in November 2022.

3.2 The statutory / policy goals and principles of RTW

All five provinces have language in either legislation or policy that articulates the principles and goals of rehabilitation and RTW programs. Three of the five provinces (Newfoundland and Labrador, Quebec, and British Columbia) include language in their workers' compensation statute stating that the Board/Commission has jurisdiction to provide rehabilitation or vocational rehabilitation to aid an injured worker's return to work or to lessen/remove disability. Quebec is the only jurisdiction that enshrines rehabilitation and RTW in legislation as a worker's right.

Although the exact policy language varies by jurisdiction, the over-arching goal of rehabilitation and RTW programs is essentially the same – namely, to enable an injured worker to safely return to work, ideally in their pre-injury employment or suitable alternate employment at their pre-injury wages. Quebec is the only province that enshrines in legislation a worker's right to be reinstated in their pre-injury employment or to be reassigned to equivalent employment. In their policies, the provinces articulate a variety of principles underpinning their approach to rehabilitation and RTW. These include:

- RTW should be consistent with the worker's post-injury functional abilities (Newfoundland and Labrador, Manitoba and British Columbia);
- Successful RTW is achieved by maximizing opportunities with the injury employer (Ontario);
- Vocational rehabilitation should be initiated without delay and proceed in conjunction with medical treatment and physical rehabilitation (British Columbia);
- Rehabilitation and RTW should be responsive and adapted to the unique needs of the individual (British Columbia);
- RTW processes should be collaborative and require the involvement and commitment of all concerned participants (British Columbia).

The policies on vocational rehabilitation in two provinces (British Columbia and Manitoba) set out six sequential steps for the process: return to same work with same employer, return to same work (modified) with same employer, return to different (alternate) work with same employer, return to similar work with different employer, return to different work with different employer, and development of new occupational skills (i.e., retraining and re-education). Manitoba refers to these steps as the "hierarchy of objectives" of a vocational rehabilitation program.

3.3 How key legislative and policy provisions for ESRTW are operationalized

While all workers' compensation authorities in Canada incorporate a "return to work" and/or "vocational rehabilitation" model into their legal framework in order to minimize the impacts of work-related injury or disease, not all enshrine the concept of "early RTW before full recovery" or "early and safe RTW" into their legislation and policies. As the concept of "early and safe" is one of the core principles that underpins the legal framework for RTW in Newfoundland and Labrador, this section of the report compares what is done in Newfoundland and Labrador with Ontario and British Columbia, the only two other provinces scanned in the project that have requirements for "early and safe" RTW. It is organized to respond to the following seven questions:

1. What is meant by 'early and safe' RTW (ESRTW)?

2. Who has a role in ESRTW?
3. What are the duties and obligations of the workplace parties?
4. Are there exceptions to the statutory duties and obligations?
5. What programs and practices are required by law and/or policy?
6. What policies are in place for workers in non-standard employment relationships?
7. What happens if the workplace parties don't comply with their obligations?

3.3.1 What is meant by "early and safe" RTW?

In Newfoundland and Labrador, the legislative provisions governing rehabilitation and "early and safe" RTW (ESRTW) are found in Part VII (Sections 99 to 103) of the *Workplace Health, Safety and Compensation Act* and are interpreted in 19 policies and 12 procedures[22]. Neither the legislation nor the downstream policy/practice instruments provide a formal definition of what is meant by "early and safe" RTW. In Policy RE-01 (Overview – Return to Work), WorkplaceNL articulates that the goal is to "safely return the worker to employment or employability that is comparable to the pre-injury level as soon as possible" and provides the following examples of what ESRTW could involve: modified work, easeback to regular work, transfer to an alternate job, or trial work to assess the worker's capability. Some of these terms, which are defined in Policy RE-18 (Hierarchy of Return to Work and Accommodation), are reprinted verbatim below.

- **Modified work:** Changing the job duties of the pre-injury position required to accommodate the worker's functional restrictions as a result of the injury. Modified work includes altering or removing some duties; however, the worker is still working primarily in his or her pre-injury position.
- **Easeback to regular work:** 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 utilizing the functional abilities information relating to the worker. While the pre-injury hours of work vary, the pre-injury duties are the same.
- **Alternative work:** A different job or bundle of duties (not the pre-injury job or duties) that are suitable and are provided to accommodate a worker who has temporary or permanent functional restrictions as a result of the injury.
- **Alternative duties:** Alternative duties are non-pre-injury duties within the worker's functional abilities.

In Ontario, the legislative provisions governing ESRTW are found in Sections 40 to 42 of the *Workplace Safety and Insurance Act* and are interpreted by 11 policies and 1 administrative practice. In British Columbia, the legislative provisions governing ESRTW are found in Sections 154.1 to 154.6 of Bill 41, *Workers Compensation Amendment Act (No.2), 2022*, which received royal assent in November 2022. These amendments come into effect on January 1, 2024 and WorkSafeBC completed a stakeholder

[22] At the time of the original policy scan, there were 19 policies and 14 procedures. Some of the policies were updated and/or revised between the date of the original scan and the writing of this report.

consultation[23] on 4 proposed new policies on September 1, 2023. Like Newfoundland and Labrador, neither the legislation nor the downstream policy instruments in Ontario and British Columbia provide a formal definition of the meaning of "early and safe".

3.3.2 Who has a role in ESRTW?

In all three jurisdictions, the role of the various workplace parties in the RTW process is addressed in either legislation and/or policy. Newfoundland and Labrador is the only jurisdiction that also sets out the role of the worker, the employer, the healthcare provider, and the workers' compensation authority in policy *and* procedure. Ontario's policies describe the role of the worker, the employer and the workers' compensation authority; while British Columbia's describe the role of the workers' compensation authority in the context of vocational rehabilitation and RTW. No jurisdiction explicitly addresses the role of the supervisor in the ESRTW process or in RTW more generally. A more detailed description of the relevant legislative and/or policy requirements is provided in Appendix A4.

3.3.3 What are the duties and obligations of the workplace parties?

For the three provinces with requirements for "early and safe" RTW, the roles and obligations for each of the workplace parties are summarized below. A more detailed description of the relevant legislative and/or policy requirements is provided in Appendix A4.

- **Employer's duties and obligations:** In Newfoundland and Labrador, the *Workplace Health, Safety and Compensation Act* imposes a duty on the employer to co-operate in ESRTW, an obligation to re-employ an injured worker, and a duty to accommodate the work or the workplace for the injured worker. Similar duties and obligations are seen in the Ontario legislation and in the recent legislative amendments in British Columbia[24] – although there are subtle differences in how the provisions are worded. At present, there are only two provinces with policies that make it explicit that the obligation to re-employ also applies to the construction industry (Newfoundland and Labrador, Ontario).
- **Worker's duties and obligations:** In Newfoundland and Labrador, the *Workplace Health, Safety and Compensation Act* sets out that the worker has a duty to co-operate in ESRTW. A similar duty is seen in the Ontario legislation and in the recent legislative amendments in British Columbia. Although Manitoba's legislative and policy framework does not include provisions for "early and safe" RTW, it does impose a duty for the worker to co-operate in RTW, rehabilitation, and disability management. As previously mentioned, Quebec is the only province that enshrines RTW as a worker's *right* to be reinstated in their pre-injury employment or to be reassigned to equivalent employment.
- **Healthcare providers' duties and obligations:** Newfoundland and Labrador is the only province that sets out in policy the role of the healthcare provider in the ESRTW process. All others have supplemental resources on their websites that describe their specific roles in the RTW process. Policy RE-02 (The Goal of Early and Safe Return to Work and the Roles of the Parties) states that

[23] The discussion paper can be viewed here: https://www.worksafebc.com/resources/law-policy/discussion-papers/rtw-obligations-duty-to-cooperate-and-duty-to-maintain-employment-23-jul?lang=en

[24] WorkSafeBC's website notes that the duty to co-operate will retroactively apply to claims with injury dates up to two years before January 1, 2024 and the duty to maintain employment will retroactively apply to claims with injury dates up to six months before January 1, 2024.

the healthcare provider is responsible for providing the workplace parties and WorkplaceNL with functional abilities information; for providing the worker and WorkplaceNL with medical information, identifying the most appropriate method of treatment for the injury, ensuring the worker receives timely treatment; and for ensuring RTW is discussed throughout recovery. Procedure 33 (Workplace Party Cooperation to Early and Safe Return to Work) clarifies the steps to be taken if a Case Manager determines that a healthcare provider is not meeting these responsibilities.

- **Workers' compensation authorities' duties and obligations:** In Newfoundland and Labrador, the *Workplace Health, Safety and Compensation Act* sets out that the role of the workers' compensation authority in the ESRTW process includes facilitating the rehabilitation and RTW of injured workers, monitoring the progress of the workplace parties on returning the worker to work, resolving disputes or disagreements, and, levying penalties against the employer and/or the worker where it is determined that the workplace parties have failed to comply with their obligations in the ESRTW process. In Ontario, the *Workplace Safety and Insurance Act* sets out similar roles for the WSIB. In British Columbia, WorkSafeBC has outlined the following roles in relation to ESRTW: determining if either of the workplace parties have failed to comply with their statutory obligations in the ESRTW process; resolving disputes regarding compliance; making a determination on whether (a) the worker is fit to carry out suitable work or fit to carry out the essential duties of the worker's pre-injury work; (b) whether suitable work is available, where the employer and the worker disagree with each other; and, c) imposing an administrative penalty on an employer if it is satisfied on a balance of probabilities that the employer has failed to comply with the duty to co-operate or the duty to maintain employment.

3.3.4 Are there exceptions to the statutory duties and obligations?

In Newfoundland and Labrador, as in the other two provinces with ESRTW, the statutory duty to co-operate in the RTW process applies to all workers and all employers, including those in the construction industry[25]. The same is not true, however, for the employers' obligation to re-employ or the duty to accommodate.

- **Exceptions to the duty to re-employ:** In Newfoundland and Labrador, under Section 101.(3) of the Act, employers who regularly employ fewer than 20 workers are excluded from the obligation to re-employ, as are employers who were not in an employment relationship with the injured worker for a continuous period of one year immediately prior to the date of injury (Table 2). A similar exclusion applies in Ontario, British Columbia[26], and Manitoba (although the threshold for exclusion in Manitoba is higher than in the other provinces). A more detailed description of the specific conditions that apply to the re-employment obligation (including restrictions and when the obligation is terminated) is found in Appendix A4.1.

[25] This is explicitly stated in Newfoundland and Labrador and Ontario, but not in British Columbia.

[26] WorkSafeBC's website notes that the duty to maintain employment will retroactively apply to claims with injury dates up to six months before the effective date of January 1, 2024. In other words, employers are exempted from this requirement if the date of injury preceded July 1, 2023.

Table 2: Classes of workers and workplaces excluded from the obligation to re-employ

	NL	ON	MB	BC
Classes of Employers				
Employers who employ fewer than 25 full-time or regular part-time workers			X	
Employers who employ fewer than 20 workers	X	X		X
Classes of Workers				
Workers who were not employed continuously for 1 year immediately prior to injury	X	X		X
Casual emergency workers			X	
Learners			X	
Volunteers deemed to be workers			X	
Persons in work experience program			X	
Worker who is a worker only because they are deemed to be a worker under the Act				X

- **Exceptions to the duty to accommodate:** The statutory obligation placed on the employer to accommodate the work or the workplace for the injured worker includes the proviso that accommodation does not cause the employer undue hardship. Four of the provinces have relatively similar definitions of "accommodation" (Newfoundland and Labrador, Ontario, Manitoba, and British Columbia), although there is some variation in the specific words and examples used. All provide guidance on how to determine what constitutes undue hardship and place the onus of proof onto the employer for demonstrating that undue hardship exists. The policies in all provinces reference the relevant human rights statutes and include a list of factors that are to be taken into consideration in the determination of undue hardship. With the exception of the "health and safety of the worker" and "financial costs of the accommodation", there is very little overlap in the factors that each jurisdiction considers. See Appendix A4.1 for more information.

3.3.5 What programs and practices are required by law and/or policy?

All five provinces examined in the environmental scan have legislative and/or policy requirements for programs and practices to (a) facilitate the delivery of services to an injured worker; (b) better coordinate the delivery of and access to services that assist the injured worker's RTW; and, (c) alter the organization of work or accommodate an injured worker.

- **Provision of health services at work or in settings linked to work:** Four of the five jurisdictions (all but Manitoba) require functional and/or employability assessments for physical injuries[27] in either legislation or policy. In Newfoundland and Labrador and Ontario, there is a requirement for a functional assessment to be completed. In Ontario, this is done via the Functional Abilities Form for Early and Safe Return to Work (FAF), which assesses abilities (i.e., walking, standing, sitting, lifting from floor to waist, lifting from waist to shoulder, stairclimbing, ladder climbing, travel to work) and/or restrictions (i.e., bending/twisting, work at or above shoulder activity, chemical exposure, environmental exposure, limited use of hands, limited pushing/pulling ability, operating motorized equipment, potential side effects from medications, exposure to vibration). The various metrics used to assess specific abilities and restrictions are shown in Table 4, below. The FAF also includes an overall evaluation (i.e., patient is capable of returning to work with no restrictions, patient is capable of returning to work with restrictions, patient is

[27] These forms apply only to physical claims. At present, there are no explicit processes or equivalent forms available to judge the suitability of work or necessary restrictions for mental health claims.

physically unable to return to work at this time), the length of time that the assessment applies (i.e., 1-2 days, 3-7 days, 8-14 days, and 14+ days), and recommendations for work hours (i.e., regular full-time hours, modified hours, graduated hours) and start date. The worker must give consent for their treating health care professional to disclose their functional abilities information to the injury employer to assist in RTW.

Table 3: Metrics used in the Functional Abilities Form (FAF) to assess abilities and restrictions

Abilities				
Walking	Full abilities	Up to 100 m	100 – 200 m	Other
Standing	Full abilities	Up to 15 min	15 – 30 min	Other
Sitting	Full abilities	Up to 30 min	30 – 60 min	Other
Lifting from floor to waist	Full abilities	Up to 5 kg	5 – 10 kg	Other
Lifting from waist to shoulder	Full abilities	Up to 5kg	5 – 10 kg	Other
Stairclimbing	Full abilities	Up to 5 steps	5 – 10 steps	Other
Ladder climbing	Full abilities	1 – 3 steps	4 – 6 steps	Other
Travel to work	Use transit – yes	Use transit – no	Drive car – yes	Drive car – no
Restrictions				
Limited use of hands	Gripping – left	Gripping – right	Pinching – left	Pinching – right
Limited pushing/pulling	Left arm	Right arm		Other

In Newfoundland, information on functional abilities can be obtained via Form 8/10 Chiropractor's Report, a form created by the workplace parties that is specific to their workplace, or a more comprehensive functional capacity evaluation. If the employer or workplace parties use their own form or a different evaluation of capacity, the employer must pay the fee for the form to be completed and obtain separate consent from the worker (because, as noted in Policy RE-03, the consent given by the worker when filing a claim only relates to the disclosure of information on WorkplaceNL's forms). Form 8/10, which is similar (but far less detailed) than Ontario's FAF, includes a section that assesses lifting restrictions (i.e., <10 lbs, <20 lbs, <50 lbs, avoid repetitive lifting, no lifting), bending/twisting restrictions (i.e., no bending/twisting, avoid repetitive bending/twisting), standing restrictions, kneeling/crouching restrictions, walking restrictions, climbing stairs/ladders restrictions, sitting restrictions, upper extremity restrictions, restrictions due to medications, and limitations due to environment. All questions, with the exception of the lifting restrictions, are open-ended.

- **RTW co-ordination:** There are no legislative and policy provisions in the three provinces that explicitly require that the employer hire or appoint an individual with dedicated responsibility for coordinating the RTW process.
- **Work modifications:** Three jurisdictions (Newfoundland and Labrador, Ontario, and Manitoba) provide definitions of accommodation in policy. Although there are slight differences in wording, accommodation is essentially defined as a change, adaptation or modification to the terms and conditions of work (e.g., reorganization or reduction of work hours), work duties or workplace (e.g., modified duties, physical changes to the work area), or equipment required to perform the job. Newfoundland and Labrador's policy[28] sets out the following considerations for determining the need for modifications or assistive devices: the tasks or activities to be performed; the worker's functional abilities; any nonwork-related disability, handicap, or condition the worker

[28] Policy RE-18 – Hierarchy of Return to Work and Accommodation.

may have; any modification or device necessary for the performance of the job tasks or activities; and other factors that may affect the worker's ability to perform the job duties. Although all five provinces have legislative or policy requirements for functional and employability assessments to be completed, there is nothing that explicitly requires that worksite visits be undertaken and/or that ergonomic assessments be performed.

3.3.6 What policies are in place for workers in non-standard employment relationships?

In Newfoundland and Labrador, Ontario and British Columbia, an employer with a re-employment obligation must offer to re-employ an injured worker who (a) had been *continuously employed* by the employer for one year immediately prior to the injury date and (b) is medically cleared to work. The policies clarify the meaning of continuously employed and the conditions by which seasonal workers, casual workers, and contract workers would be considered to be continuously employed. A more detailed description of the relevant policy requirements is provided in Appendix A5.

Ontario also clarifies how the obligation to re-employ is applied in other special cases, like for emergency workers, employees of temporary employment agencies, and successor employers. Ontario is the only jurisdiction with a policy that says that temporary foreign workers participating in the "Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program" have WSIB coverage which begins as soon as they reach the agreed-upon point of departure in their homeland and remains in place until they return home. This means that temporary foreign agricultural workers would be entitled to ESRTW provided other requirements of the RTW policy suite are met.

3.3.7 What happens if the workplace parties don't comply with their obligations?

The Acts in all three provinces with ESRTW allow for administrative penalties to be levied for non-compliance with both the obligation to co-operate and the obligation to re-employ. In Newfoundland and Labrador, penalties will be levied against a worker or employer for not co-operating when it is determined they don't have a "legitimate" reason. Neither the policy nor the procedure provides examples of "legitimate" reasons. In Ontario, workers and employers may be penalized for not co-operating if it is determined that they don't have a "compelling" reason. Policy 19-02-08 provides examples of compelling reasons for both employer and worker non-compliance. Ontario is the only province that sets out in policy its approach to applying a penalty for an employer's concurrent failure to comply with both the duty to co-operate and the duty to re-employ. In British Columbia, a worker's benefits may be reduced or suspended for failure to co-operate. An administrative penalty may be imposed on an employer if WorkSafeBC is satisfied on a balance of probabilities that the employer has failed to co-operate. The three provinces also include provisions under their legislation for resolving disputes and disagreements in the ESRTW process between the workplace parties. These disputes and disagreements may be in regards to the duty to co-operate or the obligation to re-employ. A more detailed description of the relevant legislative and/or policy requirements is provided in Appendix A6.

3.4 Key takeaways from the policy comparison

- The legislative and policy context for RTW generally – and for ESRTW specifically – is complex.
- Although the over-arching goal of rehabilitation and RTW programs is essentially the same in the provinces scanned – namely, to enable an injured worker to safely RTW, ideally in their pre-

injury employment or suitable alternate employment at their pre-injury wages – no jurisdiction has defined (in legislation or policy) what is meant by "*early and safe*" RTW.

- For the most part, the legislative, policy and practice provisions appear to have been developed for standard workplaces and work relationships. With the exception of the construction sector, the legislation and policies in Newfoundland and Labrador do not explicitly address non-standard workplaces or non-standard work relationships.
- The legislative and policy framework for RTW appears to be focussed on physical injuries (as demonstrated, for example, by the functional and employability assessments). Although many jurisdictions in Canada provide entitlement for mental health claims, consideration of mental health injuries or illnesses was not explicitly embedded within the ESRTW legislation or policy suite in any of the jurisdictions scanned.
- Examining the policy context is useful for determining how ESRTW has been operationalized; however, it is not useful for determining whether the approach is effective and why it works (or doesn't).

4. What do we know about how RTW works in practice in Newfoundland and Labrador?

Throughout the Dialogue, participants shared their experiences and perceptions of how ESRTW in Newfoundland and Labrador works in practice. This part of the report synthesizes the perspectives shared by stakeholders who participated in the panel discussion in Session 3, following the presentation of high-level findings from the multi-province environmental scan of policy and practice around ESRTW. Panelists included representatives of WorkplaceNL, organized labour, employers/management, a safety sector council, as well as a Newfoundland and Labrador human rights expert. All highlighted, with examples from their frontline experience, the complexities of the process and the challenges they encounter in getting injured workers safely – and sustainably – back to work. Many of the issues they identified, particularly in non-standard workplaces (like construction), align with the challenges identified in the scan of existing research, including in systematic reviews discussed above. Others reflect the labour and healthcare context of Newfoundland and Labrador.

4.1 The perspectives of key stakeholder groups

4.1.1 WorkplaceNL

The two panelists who spoke on behalf of WorkplaceNL indicated they were glad to see that the environmental scan of legislation and policy has showed the framework for ESRTW in Newfoundland and Labrador is very comprehensive. In their view, however, the success of ESRTW is determined largely by how the framework is applied on the ground. The policies are designed to support a model based on self-reliance within which workers and employers are expected to communicate and participate. However, at present, they think there is too much reliance on WorkplaceNL and on healthcare providers who are often put in a gate-keeper position (i.e., they are required to submit information and/or documentation and may be the sole people determining RTW). This reliance on the healthcare system creates challenges because (a) the system is very busy and is almost nonexistent for many rural people; (b) individual physicians are very busy and may not always have time to complete reports; (c) physicians often lack training in assessing functionality; and, (d) physicians are generally reliant on their client's subjective reporting. As a result, they tend to report on the worker's ability to return to pre-injury work

without taking into account that, while the injured worker may not be able to do the same work, there might be alternative work they could do. In their experience, when workers and employers are educated about RTW before the injury happens, things will work better and there will be more trust. For example, employers who understand the benefits of RTW will have their own functional abilities form for healthcare providers, will often work with the healthcare providers rather than rely on WorkplaceNL, and will have more open communication with their workers. Workers who understand the value of RTW will offer suggestions for RTW and both workplace parties will be able to adapt quickly to changes.

4.1.2 Labour

The two panelists representing labour described their experience helping injured workers through the ESRTW process. Workers' experiences with ESRTW will vary depending on their circumstances and those of their employer, but in Newfoundland and Labrador as a whole, ESRTW occurs when the injured worker can return to safe and feasible work as soon as it is medically possible. In that context, medical clearance is key. However, the lack of family doctors in the province creates critical challenges for injured workers and RTW. The Panelists noted they hear regularly from some of their workplaces about workers saying they have been hurt (e.g., they sustained a back injury) but they can't see their doctor. If they go to emergency, they will be waiting for hours, so they decide to just take time off, take a muscle relaxant and hope they will be good enough for the next shift rather than filing a compensation claim.

Labour representatives described a range of challenges with early RTW and work accommodations. For example, a physician may identify a suite of duties they think an injured worker can do in ESRTW, but the employer looks at the suite of duties, picks one and expects the injured worker to do that task all day. Workers returning to work while still injured or sick may not have the ability to do a single task for an unlimited period of time. The Panelists noted that there has to be an appreciation of this on the employer side and with the case managers at WorkplaceNL. They need to take measured approaches and avoid situations where a worker comes back and ends up worse off. They also talked about employers using consultants who apply undue pressure on attending physicians and on workers to return to work. It was suggested there should be severe repercussions in these situations because this kind of pressure is detrimental to the process.

Worker advisors see a lot of loopholes in the ESRTW program and a lot of non-cooperation with employer obligations. They agreed that ESRTW is more effective and helps injured workers get back to work when employers have an ESRTW program in place, but they think WorkplaceNL's PRIME[29] program is not catching problems and it could be doing more to help injured workers through ESRTW and dispute revolution. As advisors, they are usually advocating for mediation when things get rough, and it can sometimes take some effort to get there. While they agreed with getting back to work safely and

[29] PRIME is the acronym for the "**P**revention and **R**eturn-to-Work **I**nsurance **M**anagement for **E**mployers/Employees" Program. It is an incentive program offered by WorkplaceNL whereby employers who meet the PRIME practice requirements and manage claims costs through ESRTW programs can lower their assessment rates. Under PRIME, employers can receive a PRIME Practice Incentive or a PRIME Experience Incentive. The former is a 5% refund for qualifying employers on their average annual assessment provided they meet requirements for OHS and OHS education, as well as RTW practices. The latter is determined based on a comparison of the employer's actual claims costs to their experience rating category: if their claims cost is below the bottom of their range, they receive an experience refund; if their claims costs are above the top of their range, they receive an experience surcharge; if their claims costs are within their range, they receive neither a refund nor a surcharge. In order to receive a refund via the PRIME Experience Incentive, employers must qualify for the Practice Incentive. More information on PRIME can be found at https://workplacenl.ca/employers/manage-my-account/prime/

sooner, they have seen some workers being pushed back to work too soon and then they get reinjured or are injured anew.

In their view, the PRIME program encourages claim suppression. In addition, they see employers who, because of the PRIME program, are quick to initially accommodate the worker back to work because it saves on claims costs but where there are severe injuries and there is a delay in RTW, injured workers will get recycled to the Labour Market Re-entry (LMR) program and end up on the street. A worker advisor also noted they have seen only one employer penalized for non-cooperation in 20 years of helping workers, but thousands of injured workers. In their opinion, the scales are tipped towards the employer. They have also found that it is very hard to get an injured worker back to work with small employers (i.e., those with 20 or less workers). In these situations, workers usually end up with lower wages and end up being displaced.

4.1.3 Employers/management

The employer/management panelist (who was a health and safety manager in a large firm in Atlantic Canada) focussed on three key messages: the lack of a clear definition of ESRTW; the roles of the various parties in ESRTW, including the role of the supervisor; and, the role of education in ESRTW. They noted that while there is a framework for ESRTW in Newfoundland and Labrador, there is no clear definition and the parameters are currently quite large. This opens up the possibility for things to be unclear or missed and needs to be addressed. They also noted that there is nothing in the regulations and policies about the role of the supervisor, although supervisors are referenced a fair bit in Newfoundland and Labrador's occupational health and safety legislation. As a large company, they have a lot of supervisors across the industry and dealing with ESRTW often comes down to the responsibility of the supervisor and team leaders. Finally, they highlighted with some examples why education and awareness training are very important aspects of ESRTW and why it's important to (a) ensure the attending physician is aware that the company has an ESRTW program and (b) provide RTW awareness with all their employees. In their company, mental health is always considered around ESRTW. They noted that some say people are forced back too early, but the word "forced" will not come up if the employer has the right conversation with the workers.

Their company has a joint union-management ESRTW committee that, when a worker comes back with their form, discusses what modified work they can provide and the timeframe for that work. In the view of this Panelist, it is wrong for management to say, "These are the duties we want you to do." The committee needs to hear from employees or they need to do an audit. They should write down all of the suggestions and before they leave the committee meeting, should have come to an agreement about what the worker will be doing for X period of time, because some of the duties might not last for the full period of RTW. Their ESRTW committee doesn't just sit with the injured worker and supervisor when the worker returns, they meet weekly to go over what is working and what isn't. The Panelist noted a huge roadblock for their ESRTW program is that their company is not getting full information on functional abilities from healthcare providers. The committee cannot do anything without those functional abilities and the amount of work they can provide is very limited without that information. Therefore, healthcare providers (such as physicians, chiropractors, etc.) need to be educated about the ESRTW program and about functional abilities, in particular.

The Panelist also commented on the value of awareness training. They don't know what other employers do, but at their company, they find it beneficial to do ESRTW awareness training with all of their workers. Prior to the training, they were still getting 3 to 4 lost time injuries every year. Since the training, workers know that if there is an injury or incident, they have to report it as soon as possible. They know that the longer a worker is off, the harder it is to come back; they want to protect the well-being of the worker and remain in constant contact with them.

4.1.4 Safety sector association

The safety sector association panelist began by clarifying how ESRTW applies to the construction sector in Newfoundland and Labrador, noting that it was the first province in Canada to have legislated RTW in construction in 2001. They reflected that when the provisions were first introduced, there were likely a lot of concerns in the sector because the nature of construction work[30] presents limited opportunities for light work and construction also sometimes entails remote work. Although it is not unique to the industry, remote work creates challenges for RTW. For instance, a Voisey's Bay injured worker cannot recover at work because they likely will not have access to physiotherapy or medical care while on site. Also, it's not possible to go offshore and work for only two hours a day. In construction, 90% of employers have 20 or less employees. While the obligation to re-employ does not apply in their case, they still have a duty to cooperate. With those small employers, there is less diversity in tasks on the site, making it difficult to accommodate an injured worker. There are also continuity of care issues when so many access healthcare through the emergency department. Some of these issues may be unique to the construction industry but some are not.

The Panelist noted that others had talked about the importance of educating the health care providers, as well as workers and employers, and they look at that as really important in the construction industry. Small employers often look at an injured worker and say, "Well, I can't give him John's job or Jim's job." They do not look at it from the perspective that there may be things Jim and John are doing the injured worker could do. They tend to be very narrow in terms of how they view suitable and available work so educating them is very important. Sometimes injured workers who are trying to recover at work can get jammed into particular jobs and that can affect their mental health. Education on ESRTW is part of the safety sector association's Certificate of Recognition program, which has been in place for many years. They have included ESRTW in the orientation of companies for core certification, but because of the volume of information covering it fully can be overwhelming. ESRTW is required training for large employers and with the new PRIME program, they are looking at training for small employers.

4.1.5 Human rights expert

The human rights expert panelist noted they only see issues around ESRTW when there is a problem, so they only get negative stories. The failure to accommodate employees at work is consistently the number one issue they see at human rights commissions across the country. They have noticed that cases are the most complicated in situations where issues are due to mental health or there is a mental health overlay to the case. They have also noticed that the impact of workplace injuries and RTW is particularly significant among precariously employed, foreign and racialized workers, and among those with mental health issues.

[30] Work in this sector is often seasonal and time-limited by contract, both of which creates additional RTW challenges.

Overall, what they at human rights commissions see is that, while the vast majority of businesses have policies, procedures and resources for ESRTW, issues arise when there is a breakdown in the relationship between employers and workers. When this happens, the process can go off the rails quickly regardless of the existing policies and procedures, and the effects are amplified in workplaces that were already toxic prior to the injury and where there is poor management in place. Not a lot of work has been done on the role of the supervisor, including how important that person is to the success of ESRTW. If there is an unhealthy work relationship and the RTW process starts off badly when the workplace injury happens, often the first thing you will hear from the employer is that this is a fraudulent claim. They will hire consultants to manage it and the process becomes more adversarial. In the view of this Panelist, what this symbolizes is that the workplace was not healthy to begin with.

In their experience, the accommodation process is generally long and cumbersome. It requires people to manage it with empathy and care and it takes time. They have had to do that for their own employees in the past. It takes a lot of time if the organization wants to invest in maintaining the relationship when it becomes fractured. In some cases, there is an existing toxic relationship that gets exacerbated within the ESRTW process; in other cases, employers are just trying to keep the lights on and they are trying to do their best to manage the process but it doesn't all work out. With respect to the question of undue hardship (what does it mean and how would an employer know they have met that test?), the Panelist's perspective was that it really depends. While it is good that WorkplaceNL has a framework, the application of the framework depends on the situation and it is hard for the law to give guidance. People phone the NL Human Rights Commission all the time asking how much more they need to do to meet the requirements for undue hardship, but they can't give legal advice in part because they need to understand the context.

A lot of Human Rights Commission complaints get bogged down in the need to have medical information to support the claim. It is an indication of a problem with breakdown in the relationship between the worker and the workplace if they feel they need to have all of the medical documentation in place to act. This can unnecessarily complicate things. Similarly, the duty to accommodate can be challenging. In the Panelist's view, the whole conversation around the duty to accommodate needs to shift away from reliance on a heavy medical, bureaucratic, medicalization model to focus more on how to provide more support to people to do a good job and how to support them in their communities. When people return to work, there is often no focus on how to fix what happened and no thought directed towards how to repair the employment relationship. In some cases where RTW is successful, the worker is subsequently fired and then they come to the Human Rights Commission.

Finally, the Panelist commented on the issue of concurrent jurisdiction. A lot of administrative bodies are responsible for managing RTW and dealing with issues around failure to accommodate. Things might not get so tangly if there was a way to streamline this process and responsibilities.

4.2 Key themes that emerged from stakeholder discussions

One of the common threads of the discussion following the panel comments was that there are some significant challenges around the assessment of functional abilities, with several Dialogue participants noting that healthcare providers do not provide sufficient information on a worker's functional abilities. WorkplaceNL noted that a lack of completion is probably the biggest issue they have around their

functional ability forms. A question was raised whether this issue is related to the healthcare system's capacity to manage medical assessments for ESRTW or whether the form itself has contributed to a lack of willingness to complete. As noted in Section 3.3.5 of this report, the environmental scan found that these assessments are handled differently in different jurisdictions. For example, the form in Ontario is quite detailed and includes metrics (with cut points) to help the healthcare provider assess where the patient is in their recovery (see Table 3). In contrast, the form in Newfoundland and Labrador is a lot less detailed and many of the questions are open-ended. WorkplaceNL acknowledged that it might help to have a more detailed form – it depends on the appetite of clinicians to fill out the forms fully and correctly – and indicated they will be going out to their stakeholders to ask about improvements around their forms. Challenges with RTW and medical fitness certificates in offshore/remote environments were also discussed.

Another common thread in the discussion was the importance of supervisor involvement, as well as the need for supervisor training, in the RTW process. WorkplaceNL noted that they already have a voluntary training package for employers – which is a useful tool – but one of the recommendations in the statutory review was to make that training mandatory for the province. They acknowledged that there is an appetite to make that change, but that the pace of legislative and regulatory change is slow. Labour noted that, in their view, training for supervisors is necessary, but that management should not be given incentives for getting people back to work early.

A labour representative observed that the lack of access to timely healthcare is a key challenge for RTW. Comprehensive occupational health clinic(s) for the province, such as those in Ontario, would help address many of the challenges with ESRTW identified in the policy scan and by Dialogue participants. When properly constituted, occupational health clinics have healthcare providers on staff who exclusively deal with injuries at work. The occupational health clinics in Ontario, which use a collaborative approach, provide benefits not only to the compensation system, but also to injured workers, to workplaces, and to society at large by reducing the strain on the public health system. The establishment of occupational health clinics was recommended in both the most recent statutory review and in the recent Health Accord report to the provincial government.

5. Moving forward from the NL Dialogue on RTW

5.1 Key takeaways from the Dialogue

Three key takeaways emerged from the Dialogue:

1. RTW is complex and challenging, particularly in non-standard workplaces and in non-standard work relationships. This is particularly relevant for Newfoundland and Labrador because of the growing number of small businesses in the province, the high rates of seasonal and precarious employment, its status as a labour exporting region and recent increases in reliance on international labour migrants with temporary work permits. See Section 2.2 of the report for relevant statistics.
2. There are a number of work and non-work factors that can either facilitate or impede early and safe RTW. One barrier that is particularly relevant for Newfoundland and Labrador is the labour shortage and turnover in healthcare. Although the WorkplaceNL policy framework for ESRTW addresses and incorporates some of the key facilitators,

the lack of access to healthcare and other services is a critical barrier to successful RTW in the province.

3. There are still gaps in our understanding of what works in ESRTW, for whom it works, and why it works (in NL and elsewhere). This is particularly relevant for Newfoundland and Labrador because the policy suite on ESRTW is still relatively new, which creates an opportunity to evaluate how well they are working in comparison to other jurisdictions, as well as how effective they are at sustainably returning injured workers to work.

5.2 Next steps

At the end of the final session of the Dialogue, three questions were posed to the participants:

1. Is there a need for more – or different – policy?
2. What should the priorities be for further research on ESRTW?
3. Is there a need for more dialogue?

5.2.1 Is there a need for more – or different – policy?

There are still gaps in our understanding of how the suite of RTW policies in Newfoundland and Labrador works and whether it is effective. Examples include:

- What do we know about how effective our policies and practices are in facilitating RTW across these diverse contexts and groups in Newfoundland and Labrador?
- Are the policies and practices conducive to an individualized and comprehensive approach to RTW across diverse situations and groups?
- Are our policies and practices appropriate for the changing labour force and changing nature of work here and elsewhere?

To answer these questions, policy-focused research is required. As noted above, participants agreed that it is also absolutely essential to know how Newfoundland and Labrador compares to other jurisdictions. At present, three provinces in Canada have a legislative and policy framework for ESRTW, each implemented at different points in time. Ontario has the most established suite of policies; Newfoundland and Labrador has a relatively recently introduced suite of policies; and, British Columbia has an even newer suite of policies. There are researchers in Canada (at the UBC Partnership for Work, Health and Safety, the Institute for Work and Health, and at SafetyNet) with relevant expertise who could undertake comparative research on RTW legislation and policy in these three jurisdictions.

5.2.2 What should the priorities be for further research on ESRTW?

It was noted that while there is research on how RTW works elsewhere in Canada, there is no research on the Newfoundland and Labrador context. This was identified as a critical gap. Participants agreed that it is absolutely essential to know what works in RTW and for whom – and how Newfoundland and Labrador compares to other jurisdictions.

Some suggested priorities for future research included:

- Documenting and deepening what is known about RTW experiences and outcomes across diverse contexts and groups of workers in Newfoundland and Labrador. For example, what is the role of gender, age, business size/type, mobility, length of absence, job contract/security, racialization, and immigration status in sustainable RTW? Some potential areas of study include: the temporary/vicarious/casual/part-time workforce, the fishing industry, seasonality of work employment, literacy levels of the workforce, and mental health.
- Examining how PRIME and Experience-based Rating might be affecting sustainable ESRTW in Newfoundland and Labrador.
- Identifying the best ways to strengthen the effective engagement of health care professionals/expertise in RTW in the Newfoundland and Labrador context. Some potential areas of study include: physician qualifications (i.e., are there ways they could improve their ability to perform functional assessments, are they being asked to do something it is not realistic for them to do given expertise, time constraints and staff shortages), what is the role of external consultants in ESRTW in Newfoundland and Labrador and how might one or more occupational health clinics improve the effectiveness of ESRTW and reduce costs in the province?

The lack of linked administrative data (that allows analysis of linked healthcare utilization, workers' compensation and other data) was identified as a critical gap for effectively analyzing ESRTW in Newfoundland and Labrador. As articulated by Chris McLeod in his Dialogue presentation, a database like PopDataBC[31], which allows the linkage of administrative datasets like workers' compensation data with healthcare utilization and other data and is accessible to university researchers, would allow for deeper and independent analysis of RTW after injury/illness that captures those compensated for their injuries and those who are not, and would make it possible to track the trajectories of workers once off of compensation (Smith et al., 2010). The development of one or more occupational health clinics in Newfoundland and Labrador like those in Ontario and Manitoba[32] might also help both improve the effectiveness of ESRTW policies and programs and improve surveillance potential around assessing what works and what doesn't in different contexts.

5.2.3 Is there a need for more dialogue?

Participants were asked if there was a need for more dialogue and if so, what form should it take and who should initiate it? There was general agreement and an appetite for more dialogue. It could take the form of focussed conversations between those who practice and deal with RTW on a regular basis. Regardless of the form, it could take place annually, bi-annually or semi-annually.

[31] PopDataBC is the acronym for Population Data BC, a "multi-university, data and education resource facilitating interdisciplinary research on the determinants of human health, well-being and development". It includes the following eight categories of data: demographic, education, environment and resources, health, justice, social, transportation, work and income. Linkage of these datasets allow information on an individual in one data set to be linked with information in another source, giving a more comprehensive picture of an individual's trajectory over time than can be obtained from a single data source. Information on its data holdings can be found here: https://www.popdata.bc.ca/data.

[32] Information on the Occupational Health Clinics for Ontario Workers can be found here: https://www.ohcow.on.ca/. Information on the MFL Occupational Health Centre (Manitoba) can be found here: https://ohcmb.ca/.

References

Berecki-Gisolf, J., Clay, F. J., Collie, A., & McClure, R. J. (2012). Predictors of Sustained Return to Work After Work-Related Injury or Disease: Insights from Workers' Compensation Claims Records. *Journal of Occupational Rehabilitation*, *22*(3), 283-291. https://doi.org/https://doi.org/10.1007/s10926-011-9344-y

Billias, N., MacEachen, E., & Sherifali, S. (2023). "I grabbed my stuff and walked out": Precarious workers' responses and next steps when faced with procedural unfairness during work injury and claims processes. *Journal of Occupational Rehabilitation*, *33*(1), 160-169. https://doi.org/https://doi.org/10.1007/s10926-022-10058-3

Caxaj, S., Tran, M., Mayell, S., Tew, M., McLaughlin, J., Rawal, S., Vosko, L. F., & Cole, D. (2022). Migrant agricultural workers' deaths in Ontario from January 2020 to June 2021: a qualitative descriptive study. *International Journal for Equity in Health*, *21*(1), 98. https://doi.org/https://doi.org/10.1186/s12939-022-01692-7

Cedillo, L., Lippel, K., & Nakache, D. (2019). Factors Influencing the Health and Safety of Temporary Foreign Workers in Skilled and Low-Skilled Occupations in Canada. *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy*, *29*(3), 422-458. https://doi.org/https://doi.org/10.1177/1048291119867757

Cherry, N., Galarneau, J.-M., Haan, M., Haynes, W., & Lippel, K. (2019). Work injuries in internal migrants to Alberta, Canada. Do workers' compensation records provide an unbiased estimate of risk? *American Journal of Industrial Medicine*, *62*(6), 486-495. https://doi.org/https://doi.org/10.1002/ajim.22981

Cherry, N., Galarneau, J.-M., & Haynes, W. (2020). Total disability days in interprovincial and home-province workers injured in Alberta, Canada: A mixed-methods study with matched-pair analysis of compensation data and participant interviews. *American Journal of Industrial Medicine*, *63*(2), 146-155. https://doi.org/https://doi.org/10.1002/ajim.23065

Corbière, M., Mazaniello-Chézol, M., Bastien, M.-F., Wathieu, E., Bouchard, R., Panaccio, A., Guay, S., & Lecomte, T. (2020). Stakeholders' Role and Actions in the Return-to-Work Process of Workers on Sick-Leave Due to Common Mental Disorders: A Scoping Review. *Journal of Occupational Rehabilitation*, *30*(3), 381-419. https://doi.org/https://doi.org/10.1007/s10926-019-09861-2

Crossman, E., Choi, Y., & Hou, F. (2021). *International Students as a Source of Labour Supply: Engagement in the Labour Market During the Period of Study. Catalogue no. 36-28-0001*. https://www150.statcan.gc.ca/n1/pub/36-28-0001/2021011/article/00001-eng.htm

Cullen, K. L., Irvin, E., Collie, A., Clay, F., Gensby, U., Jennings, P. A., Hogg-Johnson, S., Kristman, V., Laberge, M., McKenzie, D., Newnam, S., Palagyi, A., Ruseckaite, R., Sheppard, D. M., Shourie, S., Steenstra, I., Van Eerd, D., & Amick, B. C., 3rd. (2018). Effectiveness of Workplace Interventions in Return-to-Work for Musculoskeletal, Pain-Related and Mental Health Conditions: An Update of the Evidence and Messages for Practitioners. *Journal of Occupational Rehabilitation*, *28*(1), 1-15. https://doi.org/https://doi.org/10.1007/s10926-016-9690-x

Delgado, E., Fair, R., & Johnston, C. (2023). *Analysis in Brief. Analysis on Small Businesses in Canada, First Quarter of 2023. Catalogue no. 11-621-M*. https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2023003-eng.htm

Dembe, A. E. (2001). The social consequences of occupational injuries and illnesses. *American Journal of Industrial Medicine*, *40*(4), 403-417. https://doi.org/https://doi.org/10.1002/ajim.1113

Dol, M., Varatharajan, S., Neiterman, E., McKnight, E., Crouch, M., McDonald, E., Malachowski, C., Dali, N., Giau, E., & MacEachen, E. (2021). Systematic Review of the Impact on Return to Work of Return-to-Work Coordinators. *Journal of Occupational Rehabilitation*, *31*(4), 675-698. https://doi.org/https://doi.org/10.1007/s10926-021-09975-6

Eakin, J. M., & MacEachen, E. (1998). Health and the Social Relations of Work: A Study of the Health-related Experiences of Employees in Small Workplaces. *Sociology of Health & Illness*, *20*(6), 896-914. https://doi.org/https://doi.org/10.1111/1467-9566.00134

Eakin, J. M., MacEachen, E., & Clarke, J. (2003). 'Playing it smart' with return to work: small workplace experience under Ontario's policy of self-reliance and early return. *Policy and Practice in Health and Safety*, *1*(2), 19-41. https://doi.org/https://doi.org/10.1080/14774003.2003.11667635

Eduardo Huesca, Leonor Cedillo, Cynthia Mora, Stephanie Mayell, Mavra Qamar, Calum Thompson, Taina Roberts, & Christine Khalil. (2022). *Mental Health & Psychosocial Supports for International Agricultural Workers in Ontario. Report prepared by the Occupational Health Clinics for Ontario Workers (OHCOW) for the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)*. https://www.ohcow.on.ca/wp-content/uploads/2022/04/mental-health-phsychosocial-supports-for-IAWs_EH_04_2022.pdf

Etuknwa, A., Daniels, K., & Eib, C. (2019). Sustainable Return to Work: A Systematic Review Focusing on Personal and Social Factors. *Journal of Occupational Rehabilitation*, *29*(4), 679-700. https://doi.org/https://doi.org/10.1007/s10926-019-09832-7

Franche, R.-L., Cullen, K., Clarke, J., Irvin, E., Sinclair, S., Frank, J., & The Institute for Work & Health (IWH) Workplace-Based RTW Intervention Literature Review Research Team. (2005). Workplace-Based Return-to-Work Interventions: A Systematic Review of the Quantitative Literature. *Journal of Occupational Rehabilitation*, *15*(4), 607-631. https://doi.org/https://doi.org/10.1007/s10926-005-8038-8

Franche RL, Cullen KL, Clarke J, MacEachen E, Frank JW, Sinclair S, & Reardon R. (2004). *Workplace-based Return-to-Work Interventions: a Systematic Review of the Quantitative and Qualitative Literature (Full Report)*. https://www.iwh.on.ca/scientific-reports/workplace-based-return-to-work-interventions-systematic-review-of-quantitative-and-qualitative-literature-full-report

Government of Canada. (2023a). *Atlantic Immigration Program*. Retrieved October 6, 2023 from https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/atlantic-immigration.html

Government of Canada. (2023b). *Economic Scan - Newfoundland and Labrador: 2023*. Retrieved August 5, 2023 from https://www.jobbank.gc.ca/trend-analysis/job-market-reports/newfoundland/environmental-scan

Government of Canada. (2023c). *Hire Through the Atlantic Immigration Program: How the Program Works for Employers*. Retrieved October 6, 2023 from https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/atlantic-immigration/hire-immigrant.html

Immigration Refugees and Citizenship Canada. (2023a). *Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates - Canada - International Mobility Program work permit holders by province/territory, intended occupation and year in which permit(s) became effective*. Retrieved October 6, 2023 from https://www.cic.gc.ca/opendata-donneesouvertes/data/EN_ODP-TR-Work-IMP_PT_NOC4.xlsx

Immigration Refugees and Citizenship Canada. (2023b). *Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates - Canada - Temporary Foreign Worker Program work permit holders by province/territory of intended destination, intended occupation (4-digit NOC 2011) and year in which permit(s) became effective* Retrieved October 6, 2023 from https://www.cic.gc.ca/opendata-donneesouvertes/data/EN_ODP-TR-Work-TFWP_PT_NOC4_sign.xlsx

Institute for Work and Health. (2007 (revised 2014)). Seven 'Principles' for Successful Return to Work. https://www.iwh.on.ca/tools-and-guides/seven-principles-for-successful-return-to-work

Institute for Work and Health. (2017). *Impact Case Studies. Seven "Principles" used in Return-to-Work Policies and Practices.* https://www.iwh.on.ca/impact-case-studies/seven-principles-guidelines-used-in-return-to-work-policies-and-practices

Janet McLaughlin, Jenna Hennebry, Donald Cole, & Williams, G. (2014). The Migrant Farmworker Health Journey: Stages and Strategies. *IMRC Policy Points. Issue 06*. https://scholars.wlu.ca/imrc/9/

Jansen, J., van Ooijen, R., Koning, P. W. C., Boot, C. R. L., & Brouwer, S. (2021). The Role of the Employer in Supporting Work Participation of Workers with Disabilities: A Systematic Literature Review Using an Interdisciplinary Approach. *Journal of Occupational Rehabilitation*, *31*(4), 916-949. https://doi.org/https://doi.org/10.1007/s10926-021-09978-3

Jenna Hennebry, & Janet McLaughlin. (2012). *Responding to Temporary Migration in Ontario's Agricultural Workplaces. Final research report submitted to the Workplace Safety and Insurance Board (WSIB) Research Advisory Council.*

Jenna Hennebry, Janet McLaughlin, & Kerry Preibisch. (2016). Out of the Loop: (In)access to Health Care for Migrant Workers in Canada. *Journal of International Migration and Integration*, *17*(2), 521-538. https://doi.org/https://doi.org/10.1007/s12134-015-0417-1

Jenna L. Hennebry. (2010). Not Just a Few Bad Apples: Vulnerability, Health and Temporary Migration in Canada. *Canadian Issues*, 73-77. https://www.proquest.com/scholarly-journals/not-just-few-bad-apples-vulnerability-health/docview/610779561/se-2?accountid=14656

Johansson, M. K., & Rissanen, R. (2021). Interventions for return to work following work-related injuries among young adults: A systematic literature review. *Work*, *69*, 795-806. https://doi.org/https://doi.org/10.3233/WOR-205028

Lippel, K., & Shan, D. (2019). Occupational Health and Safety Challenges from Employment-Related Geographical Mobility Among Canadian Seafarers on the Great Lakes and St. Lawrence Seaway. *SSRN Electronic Journal*. https://doi.org/https://doi.org/10.2139/ssrn.3585419

Lu, Y., & Hou, F. (2019). *Economic Insights. Temporary Foreign Workers in the Canadian Labour Force: Open Versus Employer-specific Work Permits. 11-626-X No. 102*. https://www150.statcan.gc.ca/n1/pub/11-626-x/11-626-x2019016-eng.htm

Maas, E. T., Koehoorn, M., & McLeod, C. B. (2020). Descriptive Epidemiology of Gradual Return to Work for Workers With a Work-Acquired Musculoskeletal Disorder in British Columbia, Canada. *Journal of Occupational and Environmental Medicine*, *62*(2), 113-123. https://doi.org/https://doi.org/10.1097/jom.0000000000001768

Maas, E. T., Koehoorn, M., & McLeod, C. B. (2021). Does gradually returning to work improve time to sustainable work after a work-acquired musculoskeletal disorder in British Columbia, Canada? A matched cohort effectiveness study. *Occupational and Environmental Medicine*, *78*(10), 715-723. https://doi.org/https://doi.org/10.1136/oemed-2020-107014

MacEachen E, Ferrier S, Kosny A, & Chambers L. (2007). A Deliberation on 'Hurt Versus Harm' Logic in Early-Return-to-Work Policy. *Policy and Practice in Health and Safety*, *5*(2), 41-62. https://doi.org/https://doi.org/10.1080/14774003.2007.11667693

MacEachen, E., Clarke, J., Franche, R.-L., Irvin, E., & Workplace-based Return to Work Literature Review Group. (2006). Systematic review of the qualitative literature on return to work after injury. *Scandinavian Journal of Work, Environment & Health*(4), 257-269. https://www.sjweh.fi/show_abstract.php?abstract_id=1009

MacEachen, E., Kosny, A., Ferrier, S., Lippel, K., Neilson, C., Franche, R.-L., & Pugliese, D. (2013). The ideal of consumer choice in social services: challenges with implementation in an Ontario injured worker vocational retraining programme. *Disability and Rehabilitation*, *35*(25), 2171-2179. https://doi.org/https://doi.org/10.3109/09638288.2013.771704

MacEachen, E., Kosny, A., Ferrier, S., Lippel, K., Neilson, C., Franche, R. L., & Pugliese, D. (2012). The 'Ability' Paradigm in Vocational Rehabilitation: Challenges in an Ontario Injured Worker

Retraining Program. *Journal of Occupational Rehabilitation*, *22*(1), 105-117. https://doi.org/https://doi.org/10.1007/s10926-011-9329-x

MacEachen, E., Kosny, A., Scott-Dixon, K., Facey, M., Chambers, L., Breslin, C., Kyle, N., Irvin, E., Mahood, Q., & The Small Business Systematic Review, T. (2010). Workplace Health Understandings and Processes in Small Businesses: A Systematic Review of the Qualitative Literature. *Journal of Occupational Rehabilitation*, *20*(2), 180-198. https://doi.org/https://doi.org/10.1007/s10926-009-9227-7

MacEachen, E., McDonald, E., Neiterman, E., McKnight, E., Malachowski, C., Crouch, M., Varatharajan, S., Dali, N., & Giau, E. (2020). Return to Work for Mental Ill-Health: A Scoping Review Exploring the Impact and Role of Return-to-Work Coordinators. *Journal of Occupational Rehabilitation*, *30*(3), 455-465. https://doi.org/https://doi.org/10.1007/s10926-020-09873-3

MacEachen, E., Senthanar, S., & Lippel, K. (2021). Workers' compensation claims for precariously employed workers in Ontario: employer resistance and workers' limited voice. *PISTES*, *23*(1), 1-17. https://doi.org/https://doi.org/10.4000/pistes.7173

Macpherson, R. A., Amick, B. C. I., Collie, A., Hogg-Johnson, S., Koehoorn, M., Smith, P. M., & McLeod, C. B. (2020). Urban-Rural Differences in the Duration of Injury-Related Work Disability in Six Canadian Provinces. *Journal of Occupational and Environmental Medicine*, *62*(5), e200-e207. https://doi.org/https://doi.org/10.1097/jom.0000000000001850

Macpherson, R. A., Koehoorn, M., Neis, B., & McLeod, C. B. (2021). Do differences in work disability duration by interjurisdictional claim status vary by industry and jurisdictional context? *Occupational and Environmental Medicine*, *78*(8), 583-592. https://doi.org/https://doi.org/10.1136/oemed-2020-106917

Macpherson, R. A., Neis, B., & McLeod, C. B. (2022). Differences in workers' compensation claim rates for within-province and out-of-province workers in British Columbia, Canada, 2010–2017. *American Journal of Industrial Medicine*, *65*(3), 214-227. https://doi.org/https://doi.org/10.1002/ajim.23327

McLaughlin, J. (2010). Determinants of Health of Migrant Farm Workers in Canada. *Health Studies 3*. https://scholars.wlu.ca/brantford_hs/3

McLaughlin, J., & Hennebry, J. (2013). Pathways to Precarity: Structural Vulnerabilities and Lived Consequences for Migrant Farmworkers in Canada. In L. Goldring & P. Landolt (Eds.), *Producing and Negotiating Non-Citizenship* (pp. 175-194). University of Toronto Press. http://www.jstor.org/stable/10.3138/j.ctt2ttkpx.15

McLaughlin, J. E. (2009). *Trouble in our fields: Health and Human Rights among Mexican and Caribbean migrant farm workers in Canada* University of Toronto]. Toronto, ON. https://hdl.handle.net/1807/24317

Mysyk, A., England, M., & Gallegos, J. A. A. (2008). Nerves as Embodied Metaphor in the Canada/Mexico Seasonal Agricultural Workers Program. *Medical Anthropology*, *27*(4), 383-404. https://doi.org/https://doi.org/10.1080/01459740802427729

Narushima, M., McLaughlin, J., & Barrett-Greene, J. (2016). Needs, Risks, and Context in Sexual Health Among Temporary Foreign Migrant Farmworkers in Canada: A Pilot Study with Mexican and Caribbean Workers. *Journal of Immigrant and Minority Health*, *18*(2), 374-381. https://doi.org/https://doi.org/10.1007/s10903-015-0189-x

Neil, K., & Neis, B. (2020). *Interjurisdictional Employment in Canada, 2002-2016*. https://canadacommons.ca/artifacts/2003219/september-2020-interjurisdictional-employment-in-canada-2002-2016-by/2754984/

Neis, B., & Lippel, K. (2019). Occupational Health and Safety and the Mobile Workforce: Insights From a Canadian Research Program. *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy*, *29*(3), 297-316. https://doi.org/https://doi.org/10.1177/1048291119876681

Premji, S., Begum, M., & Medley, A. (2022). Language Accommodations in Workers' Compensation: Comparing Ontario and Quebec. *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy*, *31*(4), 452-459. https://doi.org/https://doi.org/10.1177/10482911211053020

Qiu, H. (2023). *Economic and Social Reports. Interjurisdictional Employment in Canada, 2002 to 2019. Catalogue no. 36-28-0001*. https://www150.statcan.gc.ca/n1/pub/36-28-0001/2023003/article/00004-eng.htm

Senthanar, S., Koehoorn, M., Tamburic, L., Premji, S., Bültmann, U., & McLeod, C. (2021a). O-208 Immigrant workers and work disability duration in British Columbia, Canada. *Occupational and Environmental Medicine*, *78*(Suppl 1), A49-A49. https://doi.org/https://doi.org/10.1136/oem-2021-epi.130

Senthanar, S., Koehoorn, M., Tamburic, L., Premji, S., Bültmann, U., & McLeod, C. (2021b). RF-326 Does participation in modified return to work differ for immigrant compared to Canadian-born workers in British Columbia, Canada? *Occupational and Environmental Medicine*, *78*(Suppl 1), A144-A144. https://doi.org/https://doi.org/10.1136/oem-2021-epi.394

Senthanar, S., Koehoorn, M., Tamburic, L., Premji, S., Bültmann, U., & McLeod, C. B. (2021c). Differences in Work Disability Duration for Immigrants and Canadian-Born Workers in British Columbia, Canada. *International Journal of Environmental Research and Public Health*, *18*(22), 11794. https://doi.org/https://doi.org/10.3390/ijerph182211794

Senthanar, S., Koehoorn, M., Tamburic, L., Premji, S., Bültmann, U., & McLeod, C. B. (2023). Differences in Modified-Return-to-Work by Immigration Characteristics Among a Cohort of Workers in British Columbia, Canada. *Journal of Occupational Rehabilitation*, *33*(2), 341-351. https://doi.org/https://doi.org/10.1007/s10926-022-10077-0

Senthanar, S., MacEachen, E., & Lippel, K. (2020). Return to Work and Ripple Effects on Family of Precariously Employed Injured Workers. *Journal of Occupational Rehabilitation*, *30*(1), 72-83. https://doi.org/https://doi.org/10.1007/s10926-019-09847-0

Shan, D. (2020a). Mapping the Maritime Occupational Health and Safety Challenges Faced by Canadian Seafarers. In A. Chircop, F. Goerlandt, C. Aporta, & R. Pelot (Eds.), *Governance of Arctic Shipping: Rethinking Risk, Human Impacts and Regulation* (pp. 191-205). Springer International Publishing. https://doi.org/https://doi.org/10.1007/978-3-030-44975-9_10

Shan, D. (2020b). The Need to Enhance Marine Occupational Health and Safety in Canada. *Ocean Yearbook Online*, *34*(1), 526-544. https://doi.org/https://doi.org/10.1163/9789004426214_022

Shan, D., & Lippel, K. (2019). Occupational Health and Safety Challenges From Employment-Related Geographical Mobility Among Canadian Seafarers on the Great Lakes and St. Lawrence Seaway. *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy*, *29*(3), 371-396. https://doi.org/https://doi.org/10.1177/1048291119870762

Smith, P. M., Stock, S. R., McLeod, C. B., Koehoorn, M., Marchand, A., & Mustard, C. A. (2010). Research Opportunities Using Administrative Databases and Existing Surveys for New Knowledge in Occupational Health and Safety in Canada, Quebec, Ontario and British Columbia. *Canadian Journal of Public Health*, *101*, S46-52. https://link.springer.com/article/10.1007/BF03403846

Statistics Canada. (2022a). *Focus on Geography Series, 2021 Census of Population. Newfoundland and Labrador*. Statistics Canada. Retrieved August 5, 2023 from https://www12.statcan.gc.ca/census-recensement/2021/as-sa/fogs-spg/page.cfm?topic=9&lang=E&dguid=2021A000210

Statistics Canada. (2022b). *Research to Insights: Immigration as a Source of Labour Supply. A Presentation Series from Statistics Canada About the Economy, Environment and Society. 11-631-X2022003*. https://www150.statcan.gc.ca/n1/en/pub/11-631-x/11-631-x2022003-eng.pdf?st=dZhCredV

Statistics Canada. (2023a). *Canadian Business Counts, December 2022*. Statistics Canada. Retrieved August 5, 2023 from https://www150.statcan.gc.ca/n1/daily-quotidien/230220/dq230220f-eng.htm

Statistics Canada. (2023b). *Table 14-10-0433-01. Count of Interjurisdictional Employees and Resident Employees by Age Group and Sex, 2002-2019*. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410043301

Statistics Canada. (2023c). *Table 32-10-0218-01. Temporary Foreign Workers in the Agriculture and Agri-food Sectors, by Industry*. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210021801

Statistics Canada. (2023d). *Table 33-10-0661-01. Canadian Business Counts, with Employees, December 2022*. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3310066101

Statistics Canada. (2023e). *Table 33-10-0662-01 Canadian Business Counts, without Employees, December 2022*. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3310066201

Stephanie Mayell. (2016). *Up-rooted Lives, Deep-rooted Memories: Stress and Resilience among Jamaican Agricultural Workers in Southern Ontario* McMaster University]. Hamilton, ON. http://hdl.handle.net/11375/19499

Stephanie Mayell, & Janet McLaughlin. (2016). Migrating to Work at What Cost?: The Cumulative Health Consequences of Contemporary Labour Migration. In Felicity Thomas (Ed.), *Handbook of Migration and Health* (pp. 230-252). Edward Elgar Publishing. https://doi.org/https://doi.org/10.4337/9781784714789

Stephanie Mayell, Janet McLaughlin, C. Susana Caxaj, Donald Cole, Leah F. Vosko, Tanya Basok, & Anelyse Weiler. (2022). Ontario must do more to protect migrant workers. Here's how. *TVO Today*. https://www.tvo.org/article/ontario-must-do-more-to-protect-migrant-workers-heres-how

Stephanie Mayell, Janet McLaughlin, & Michelle Tew. (2015). *Migrant agricultural workers and Canada's "not so universal" health care system: lessons learned from an effort to improve access to health care in the province of Ontario* International Congress on Rural Health, Lodi, Italy. https://www.ragusashwa.it/lodi/pdf/EBOOK-ISBN%20978-88-941207-0-7-WEB.pdf

Stephanie Premji, Momtaz Begum, Alex Medley, Ellen MacEachen, Daniel Côté, & Ron Saunders. (2021). Return-to-Work in a Language Barrier Context: Comparing Quebec's and Ontario's Workers' Compensation Policies and Practices. *Perspectives interdisciplinaires sur le travail et la santé*, *23*(1). https://doi.org/https://doi.org/10.4000/pistes.7144

Tompa, E., Mofidi, A., van den Heuvel, S., van Bree, T., Michaelsen, F., Jung, Y., Porsch, L., & van Emmerik, M. (2021). Economic burden of work injuries and diseases: a framework and application in five European Union countries. *BMC Public Health*, *21*(1), 49. https://doi.org/https://doi.org/10.1186/s12889-020-10050-7

Wegrzynek, P. A., Wainwright, E., & Ravalier, J. (2020). Return to work interventions for chronic pain: a systematic review. *Occupational Medicine*, *70*(4), 268-277. https://doi.org/https://doi.org/10.1093/occmed/kqaa066

White, C., Green, R. A., Ferguson, S., Anderson, S. L., Howe, C., Sun, J., & Buys, N. (2019). The Influence of Social Support and Social Integration Factors on Return to Work Outcomes for Individuals with Work-Related Injuries: A Systematic Review. *Journal of Occupational Rehabilitation*, *29*(3), 636-659. https://doi.org/https://doi.org/10.1007/s10926-018-09826-x

Yanar, B., Nasir, K., Massoud, A., Usmani, S., Premji, S., & Smith, P. (2022). Employers' experiences with safe work integration of recent immigrants and refugees. *Safety Science*, *155*, 105856. https://doi.org/https://doi.org/10.1016/j.ssci.2022.105856

Yssaad, L., & Fields, A. (2018). *The Immigrant Labour Force Analysis Series.The Canadian Immigrant Labour Market: Recent Trends from 2006 to 2017. Catalogue no. 71-606-X*. https://www150.statcan.gc.ca/n1/en/pub/71-606-x/71-606-x2018001-eng.pdf?st=21exZ33c

Appendix A – High level overview of the legislative and policy scan

A1. Background: purpose of the scan and how it was conducted

The scan sought to identify and compare the legislation and policy-related factors that might influence RTW and its outcomes for injured workers in Newfoundland and Labrador with those of four other Canadian provinces (Quebec, Ontario, Manitoba, and British Columbia). Information was collected from online sources. For each province, enabling statutes and downstream policy instruments[33] were identified and retrieved using searches of official government and workers' compensation authority websites, as well as online portals that gather information on legislation and policy[34]. Sites were bookmarked and any relevant documents were downloaded. To ensure that the findings were also inclusive of workers under federal jurisdiction, relevant policy instruments at the federal level were also scanned.

Relevant legislation and regulations were first examined in detail to identify any provisions related to RTW. Downstream policy and administrative practice documents were then reviewed to determine how the five systems have operationalized RTW under their statutory duty to serve injured workers and their employers. Information was then summarized in a series of tables that compared specific aspects of the RTW process. The scan did not include a comparison of the types of compensation paid (e.g., wage loss, functional impairment, etc.), the types of benefits payable (e.g., lump sum payments, disability awards, etc.), or other procedural issues (e.g., early acceptance, waiting periods, the measurement of earnings' loss, the establishment of compensation rates, treatment approaches, etc.).

A2. Brief description of the legal frameworks governing RTW in Canada

A2.1 Workers' compensation

Laws and policies made in the context of this legal framework are intended to achieve the over-arching goal of RTW – namely, to enable an injured worker to safely return to work, ideally in their pre-injury employment or suitable alternate employment at their pre-injury wages. Quebec is the only province that enshrines RTW as a worker's *right* to be reinstated in their pre-injury employment or to be reassigned to equivalent employment. In Canada, each level of government (i.e., provincial, territorial, and federal) has its own workers' compensation statute. At the federal level, injured workers are entitled to receive compensation benefits at the same rates and under the same conditions as provincially regulated workers working in the same jurisdiction. While a department of the federal government is responsible for administering the *Government Employees Compensation Act* (*GECA*), claims filed by workers covered under the Act are adjudicated and managed by the provincial and territorial workers' compensation boards through negotiated Service Agreements. Pursuant to these agreements, provincial and territorial workers' compensation boards are granted authority to apply the relevant *Workers Compensation Act* and related policy in order to administer the *GECA* in their jurisdiction.

[33] Includes regulations, policies, procedures, practice directives and guidelines.

[34] The Canadian Legal Information Institute (https://www.canlii.org/en/) and the Association of Workers' Compensation Boards of Canada (https://awcbc.org/en/).

A2.2 Occupational health and safety

Laws and policies made in the context of this legal framework are intended to achieve the principle that all workers have the right to a safe work environment. In Canada, these laws are based on the internal responsibility system (IRS), the philosophy that all workplace parties[35] share direct responsibility for ensuring a safe and healthy worksite. One of the core features of an IRS is that responsibilities increase with increasing authority and control, with employers typically having the most responsibilities. The specific workplace parties deemed to have a role are reflected in the general duty clauses of the *Occupational Health and Safety Act* and regulations – and vary by province. For example, the *Act* and regulations in Newfoundland and Labrador set out general duty clauses that apply to employers, workers, supervisors, suppliers, prime/principal contractors, self-employed persons, and owners. In Alberta, the general duty clauses not only apply to most of these parties, but also to temporary staffing agencies.

A2.3 Human rights

Laws and policies made in the context of this legal framework are intended to achieve the principle that all persons should have equal opportunity "to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society…". Under these laws, discrimination in employment based on disability is prohibited. In Canada, human rights are protected under the Constitution and by federal, provincial, and territorial legislation. The rights afforded under this legislation are consistent with those set out in international and multilateral treaties to which Canada is a party (e.g., United Nations human rights convenants and conventions, International Labour Organization conventions, among others).

A2.4 Temporary foreign workers

Laws and policies made in the context of this legal framework are intended to reinforce that the rights of all workers, including temporary foreign workers, are protected by law and that temporary foreign workers have the same rights and protections as Canadians and permanent residents. In Canada, the federal government and two provincial governments (Quebec and British Columbia have enacted legislation or regulations that explicitly enshrine these rights and protections in law. In British Columbia, the law requires that these workers be provided with information on their statutory rights and provides them protection from unlawful deportation and other threatening or punitive actions (such as intimidation, coercion, discrimination, monetary penalties, job loss, refusal to employ) if they participate in an investigation/proceeding or make a complaint/inquiry to any government or law enforcement agency. In Quebec, temporary foreign workers, at the time of recruitment, must be given information concerning worker rights and employer obligations. In addition, the Minister will refuse to approve applications from employers wishing to hire foreign nationals if the employer has been convicted of certain offences under the workers compensation statute or the occupational health and safety statute. In Ontario, the Workplace Safety and Insurance Board (WSIB) has issued a policy statement clarifying that workers participating in the "Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program" have WSIB coverage, which begins as soon as they reach the agreed-upon point of departure

[35] Includes employers, supervisors, workers, suppliers, service providers, owners, contractors, prime contractors, self-employed persons and temporary staffing agencies.

in their homeland and remains in place until they return home. There are no laws or policies in Newfoundland and Labrador that specifically address the health and safety of TFWs.

A3. Statutes and regulations with provisions that address or relate to RTW

Table A-1: List of statutes and regulations with relevant RTW provisions

	NL	QC	ON	MB	BC	CA
Workers Compensation						
Statutes						
Workplace Health, Safety and Compensation Act	X					
Act respecting industrial accidents and occupational diseases		X				
Workplace Safety and Insurance Act			X			
Workers Compensation Act				X	X	
Government Employees Compensation Act						X
Regulations						
Workplace Health, Safety and Compensation Regulations	X					
Conditions for granting a subsidy to an employer hiring a worker who has suffered an employment injury		X				
Return to Work and Re-employment – Construction Industry			X			
Functional Abilities Form			X			
Excluded Industries, Employers and Workers Regulation				X		
Interest and Financial Matters Regulation				X		
Reports of Injuries Regulation					X	
Government Employees Compensation Place of Employment Regulations						X
Government Employees Compensation Regulations						X
Human Rights						
Statutes						
Human Rights Act	X					X
Charter of Human Rights and Freedoms		X				
Human Rights Code			X	X	X	
Temporary Foreign Workers						
Statutes						
Temporary Foreign Worker Protection Act					X	
Immigration and Refugee Protection Act						X
Regulations						
Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers		X				
Immigration and Refugee Protection Regulations						X

Notes: CA = Canada (applies to workers under federal jurisdiction)

A4. Statutory duties and obligations of the workplace parties

A4.1 Employer's duties and obligations

In the three provinces that reference "early and safe" RTW, the following duties and obligations are imposed on the employer: a duty to co-operate in ESRTW, an obligation to re-employ an injured worker, and a duty to accommodate the work or the workplace for the injured worker.

Employer's duty to co-operate:

In Newfoundland and Labrador, Section 100.(1) of the *Workplace Health, Safety and Compensation Act* imposes a duty on employers to co-operate in the ESRTW of a worker injured in their employment. Under this section, an employer is required to contact the worker as soon as possible after the injury

occurs, maintain communication throughout the period of the worker's recovery, provide suitable employment that is available and consistent with the worker's functional abilities and that where possible restores the worker's pre-injury earnings, give WorkplaceNL information it may request concerning the worker's RTW, and do other things that may be prescribed in regulations. Policy RE-19 (Construction Industry) clarifies that the duty to co-operate applies to employers engaged primarily in construction and their workers who perform construction work. Policy RE-02 (The Goal of Early & Safe Return to Work and the Roles of the Parties) sets out that all employers are "obligated to co-operate in worker's early and safe return to suitable and available employment while the worker is receiving active medical rehabilitation for a work injury". It also defines some of the terms that appear in the legislation and the over-arching policy statement and clarifies that 'any information requested by WorkplaceNL' includes information about any disputes or disagreements which arise during the ESRTW process. The policy also states, in regards to the employer's obligation to provide suitable and available employment, that the employer is responsible to pay the worker's salary earned during the ESRTW process and notes that WorkplaceNL will pay the differential, if any, between the salary earned during ESRTW and 85% of the worker's net pre-injury earnings subject to the maximum compensable ceiling.

In Ontario, Section 40(1) of the *Workplace Safety and Insurance Act* imposes a duty on the employer of an injured worker to co-operate in the ESRTW of the worker; Section 40(3) imposes a duty to co-operate on employers engaged primarily in construction; and, Section 40(4) imposes a duty to co-operate on the actual employer of an emergency worker, not on their deemed employer. Under Section 40(1), an employer is required to contact the worker as soon as possible after the injury occurs, maintain communication throughout the period of the worker's recovery and impairment, attempt to provide suitable employment that is available and consistent with the worker's functional abilities and that when possible restores the worker's pre-injury earnings, give the WSIB such information as it may request concerning the worker's RTW, and do other things that may be prescribed. Policy 19-02-08 (RTW Co-operation Obligations) states that "the injury employer and worker are expected to work together to return the worker to their pre-injury job with any necessary accommodation or to another job within the worker's functional abilities". It also defines some of the terms used in the legislation and clarifies that injury employers are obliged to co-operate by initiating early contact with the worker, maintaining appropriate communication with the worker throughout their recovery, to offer the worker the job when an available job is identified as suitable for the worker, and to give the WSIB all relevant information concerning the worker's RTW. The policy notes that in cases where the worker is not functionally capable of performing any type of work, the injury employer is expected to maintain regular communication with the worker in preparation for a future return to work. It also sets out the length of time that the co-operation obligations apply to the workplace parties – namely, from the date of injury until the earlier of: the worker's loss of earnings (LOE) benefits can no longer be reviewed by the WSIB[36]; there is no longer an employment relationship between the workplace parties[37]; the WSIB 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; or the WSIB is satisfied that the injury employer has met its co-operation obligations by offering suitable work and the worker does not return to the job following the finding that the job is suitable.

[36] According to the policy, this is usually at 72 months post injury; but the co-operation obligations may apply longer if the LOE benefits quality to be reviewed post 72 months.

[37] Because the worker voluntarily quits or the injury employer terminates the employment for reasons unrelated to the work-related injury/disease or the worker's claims for benefits.

In British Columbia, Section 154.2(1) of Bill 41, *Workers Compensation Amendment Act (No.2), 2022* imposes a duty on an employer to cooperate with the injured worker and WorkSafeBC in the worker's early and safe return to, or continuation of, work. Under this section, an employer is required to contact the worker as soon as practicable after the worker is injured; maintain communication with the worker; identify suitable work that, if possible, restores the full wages the worker was earning at their pre-injury work; provide WorkSafeBC with information it requires in relation to the worker's return to, or continuation of, work; do any other thing required by WorkSafeBC. Section 154.2(3) further states that these obligations do not apply if, "having regard to all of the circumstances, contact and communication between the employer and the worker are likely to imperil or delay the worker's recovery". A proposed new policy in British Columbia[38] clarifies the employer's duty to cooperate in a worker's "timely and safe return to, or continuation of, work" and explicitly states that all employers have an obligation to comply with applicable human rights legislation. If adopted, the policy will apply to injuries, occupational diseases and mental disorders. The policy further notes that if the legislative provisions of Section 154.2 conflict with the terms of a collective agreement, they will prevail if they afford a worker a greater benefit than the collective agreement; they do not, however, displace the seniority provisions of a collective agreement. The policy requires the employer to cooperate by: contacting the worker "as soon as practicable" after the worker is injured; maintaining communication with the worker throughout the recovery period, as appropriate; identifying suitable work that, if possible, restores the worker's full pre-injury wages; providing the Board with information it requires in relation to the worker's return to, or continuation of, work; and, where reasonable, making available the suitable work the employer has identified. The policy also defines the following terms: "as soon as practicable" to mean "as soon as is reasonably capable of being done"; "suitable work" to mean "work that is safe[39], productive[40], and consistent with the worker's functional abilities[41] and skills[42]". The employer's duty to cooperate begins from the injury date and continues throughout the duration of the worker's claim. WorkSafeBC's website notes that the duty to co-operate will retroactively apply to claims with injury dates up to two years before January 1, 2024.

Newfoundland and Labrador is the only jurisdiction to define the meaning of "co-operation" in both policy and procedure. Policy RE-02 defines co-operation to mean "maintaining effective communication throughout the period of the worker's recovery, working towards identifying suitable and available employment for the worker, and fulfilling reporting obligations". Procedure 33 (Workplace Party Cooperation to Early and Safe Return to Work) reiterates that "in general" this is what co-operation means. It goes on to state that the workplace parties are considered to be co-operating when "they are arranging early and safe return to work, participating in early and safe return to work, and resolving issues related to early and safe return to work". Procedure 33 defines the following additional terms: effective communication, reasonable assistance (in the context of the requirement that the worker assist the employer to identify and provide suitable employment), and return to work plans.

[38] WorkSafeBC completed a stakeholder consultation on proposed new policies on September 1, 2023. The discussion paper can be viewed here: https://www.worksafebc.com/resources/law-policy/discussion-papers/rtw-obligations-duty-to-cooperate-and-duty-to-maintain-employment-23-jul?lang=en

[39] The policy clarifies that safe work is work that "does not pose a health and safety risk to the worker (e.g., it will neither harm the worker nor slow recovery) or to other workers at the workplace".

[40] The policy clarifies that "token or demeaning tasks are considered detrimental to the worker's rehabilitation".

[41] The policy clarifies that "the work must be within the worker's funcational abilities and medical restrictions".

[42] The policy clarifies that the "worker has, or is reasonably able to acquire, the necessary skills, competencies or qualifications to perform the work".

- **Effective communication:** The procedure does not prescribe the frequency, method, and content of communication between the workplace parties prior to and during the ESRTW process, but recommends that they make telephone contact at least once per week during the ESRTW process.
- **Reasonable assistance:** Examples of reasonable assistance include: providing information, suggesting modifications to the pre-injury job, or reviewing work sites and processes to identify suitable employment opportunities.
- **Return to work plans:** The procedure indicates that ESRTW plans are "progressive, outline suitable employment for the worker, and are received by WorkplaceNL from the employer within one week of receiving the worker's functional ability information".

Employer's obligation to re-employ:

In Newfoundland and Labrador, under Section 101.(1) of the *Workplace Health, Safety and Compensation Act*, an employer of a worker who has been unable to work as a result of an injury must offer to re-employ the worker. This requirement only applies if the worker was employed continuously for at least one year immediately prior to the date of injury and if the employer regularly employs more than 20 workers. For employers with a duty to re-employ, the *Act* also sets out conditions of re-employment in two specific circumstances: the first is when a worker is medically able to perform the essential duties of their pre-injury employment; the second is when a worker is medically able to perform suitable work but is unable to perform the essential duties of his or her pre-injury employment. In the former, the employer must offer to (a) re-employ the worker in the position that the worker held on the date of injury or (b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the date of injury. In the latter, the employer must offer the worker the first opportunity to accept suitable employment that may become available with the employer. Under Section 101.(8), the employer's obligation lasts for two years after the date of disability, one year after the worker is medically able to perform the essential duties of their pre-injury employment, or the date on which the worker reaches 65 years of age – whichever is earliest. Policy RE-19 (Construction Industry) also makes it explicit that the obligation to re-employ applies to employers engaged primarily in construction and their workers who perform construction work.

The *Workplace Safety and Insurance Act* in Ontario also requires an employer of an injured worker to re-employ them as part of the RTW process. The legislative provisions in Ontario regarding the obligation to re-employ and the duration of the obligation are worded exactly the same as those in Newfoundland and Labrador. Policy 19-02-09 (Re-employment Obligations) clarifies that an injury employer's obligation starts when it receives notice that a worker is medically able to perform the essential duties of either their pre-injury employment, or suitable work. Policy 19-05-02 (Re-employment Obligation in the Construction Industry) also makes it explicit that construction employers are required to offer to re-employ their injured construction workers who have been unable to work due to a work-related injury or disease. It also clarifies that the employer's obligation to re-employ begins when it is notified that an injured construction worker is medically able to perform the essential duties of their pre-injury job, suitable construction work, or suitable non-construction work.

In British Columbia, Bill 41, *Workers Compensation Amendment Act (No.2), 2022* also has a requirement that an employer of an injured worker re-employ them as part of the RTW process. While the legislative

provisions have the same intent as Newfoundland and Labrador and Ontario, there are some subtle differences in wording. For example, under Section 154.3(1), the worker has to have been employed by the employer on a full- or part-time basis for a continuous period of at least 12 months before the date of injury. In contrast to the legislation in Newfoundland and Labrador and Ontario which refers to the worker being "medically able" to perform (a) the essential duties of their pre-injury employment or (b) suitable work but being unable to perform the essential duties of their pre-injury employment, the legislation in British Columbia refers to the worker being "fit to work" in the same circumstances. The legislation does not define "fit to work" and at present, there are only draft policies that interpret its meaning[28]. All of the employer's obligations to re-employ end on the second anniversary of the date the worker was injured, if the worker has not returned to work by that date. Where an employer re-employed a worker deemed fit to carry out the essential duties of their pre-injury work, their obligations end on the second anniversary of the injury date if the worker is carrying out suitable work by that date. A proposed new policy (Duty to Maintain Employment) clarifies that in addition to the duty to cooperate, some employers also have a duty to "maintain employment"[43] and, it explicitly states that all employers have an obligation to comply with applicable human rights legislation. The policy notes that maintaining employment "may involve returning the worker to their pre-injury work, providing alternate work, or providing suitable work" (depending on the circumstances) and that the employer's duty includes "making any change to the work or workplace necessary to accommodate a worker to the point of undue hardship". The policy clarifies that the employer's obligations depend on whether the worker is "fit to carry out the essential duties of the pre-injury work or fit to work in some other capacity". The policy also defines "essential duties" and "alternative work". "Essential duties" are defined as those "necessary to achieve the intended outcome of the job" and the factors to be considered in determining those duties "include, but are not limited to: how often each duty is undertaken; the proportion of time spent on each duty; the effect on the job outcome if a duty is removed; the effect on the work process before or after a duty, if a duty is removed; the current job description; whether the duty is critical to safety; and the normal productivity expected in the job (rate, range or level of production or service expected for the job)". "Alternative work" is defined as "a job that is different from, but comparable to, the worker's pre-injury work and wages from that work" and the factors that the Board may consider in making its determination (in addition to wages) include: "job duties; skills, qualification and experience required; degree of physical and cognitive effort required; level of responsibility and supervision of other workers; rights and privileges associated with the position; bargaining unit status; geographic location of the alternative worksite; hours of work, working conditions, and right to work overtime; employee benefits including vacation, health care, life insurance and pension benefits; and any other factor the Board considers relevant in a particular circumstance". Where a worker is deemed fit to work in some capacity (but is not fit to carry out essential duties of their pre-injury work, with or without accommodation), the employer must offer the worker the first suitable work that becomes available. WorkSafeBC's website notes that the duty to maintain employment will retroactively apply to claims with injury dates up to six months before January 1, 2024.

Employer's duty to accommodate:

In Newfoundland and Labrador, an employer with a re-employment obligation under the Act has a duty

[43] A general policy states that employers have concurrent duties and that employers "with a duty to maintain employment also have a duty to cooperate".

to accommodate the worker[44] (by modifying the workplace and the work) to the extent that the accommodation does not cause the employer undue hardship. The legislation in Ontario has a similarly worded duty to accommodate, while the legislation in British Columbia states that the employer must "to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker".

All three provinces provide definitions of accommodation in policy[45]. Although there are slight differences in wording, two provinces (Newfoundland and Labrador, Ontario) define accommodation as a change, adaptation or modification to the terms and conditions of work (e.g., reorganization or reduction of work hours), work duties or workplace (e.g., modified duties, physical changes to the work area), or equipment required to perform the job. In its draft policy, British Columbia defines it as "the process of changing the work and/or workplace to be consistent with the worker's functional abilities". In Newfoundland and Labrador, Policy RE-18 (Hierarchy of return to work and accommodation) sets out the following considerations for determining the need for modifications or assistive devices: the tasks or activities to be performed; the worker's functional abilities; any non-work related disability, handicap, or condition the worker may have; any modification or device necessary for the performance of the job tasks or activities; and other factors that may affect the worker's ability to perform the job duties. In Ontario, Policy 19-02-07 (RTW Overview and Key Concepts) emphasizes that accommodation results in a job that is consistent with the worker's functional abilities and that it is an "individualized process and fact dependent, taking into account the nature of the work/workplace, the worker's abilities and limitations, and the essential duties and requirements of the worker's pre-injury job and other jobs with the injury employer". Under the policies in Ontario and British Columbia, if a worker can perform the essential duties of their pre-injury job with accommodation (or if a job becomes available that can be made suitable through accommodation) and the accommodation does not cause the employer undue hardship, the employer must provide the accommodation to allow the worker to remain at or return to work. The proposed policy in British Columbia also states that an accommodation (a) may be temporary or permanent and (b) doesn't have to be the change most preferred by the worker; and, that the obligation to accommodate changes with changes in the worker's level of function.

The policies on accommodation in Newfoundland and Labrador and Ontario and the new RTW policy suite in British Columbia make reference to their respective human rights statutes and/or the *Canadian Human Rights Act*. For example, Newfoundland and Labrador's policies note that under human rights legislation, employers have an obligation to accommodate and re-employ injured and disabled workers, while Ontario's policies note that the workplace parties are expected to comply with relevant provincial and federal legislation during the RTW process. British Columbia's policies state that all employers have an obligation to comply with applicable human rights legislation. Under the provincial human rights codes, physical and/or mental disability/handicap is a prohibited grounds of discrimination. Employers and other workplace parties (including employment agencies) are prohibited from discriminating on the basis of disability and prohibited actions include the refusal to employ, the refusal to continue to employ, harassment and other forms of discrimination.

All three provinces provide guidance on how to determine what constitutes undue hardship and place the onus of proof onto the employer for demonstrating that undue hardship exists. In Newfoundland

[44] This requirement is found in Section 101(7).
[45] In British Columbia, the policy has not yet been adopted.

and Labrador, Policy RE-07 (Undue Hardship) requires the following factors to be taken into consideration in the determination of undue hardship: the health and safety of the worker or co-workers; the nature and cost of the accommodation needed; the overall financial resources of the employer making the reasonable accommodation; the number of persons employed by the employer; the effect on expenses and resources of the employer; the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity); the type of operation of the employer, including the structure and functions of the employer's workforce; the geographic relationship between the worker's current employment and that of the proposed accommodation offered by the employer; the impact of the accommodation on the employer's operations; and other relevant factors. In Ontario, Policy 19-02-07 (RTW Overview and Key Concepts) sets out that the three factors listed in the Ontario Human Rights Code are to be considered: the cost of accommodation, the health and safety needs of employees and/or customers, and any outside sources of funding that may be available to the injury employer. Under the policy, the employer is expected to provide supporting evidence to demonstrate this (e.g., a cost-benefit analysis that includes the long-term financial impact if the claimed undue hardship is financial). British Columbia's proposed policy defines "undue hardship" as "the point at which it is too difficult, unsafe, or expensive for the employer to accommodate the worker" and notes that the determination of "what constitutes undue hardship will be based on all relevant facts and circumstances of each case". Any or all of the following factors may be considered to make the determination: "safety risks to the worker, other workers, or others; financial ability to accommodate; disruption of operations; interchangeability of the work force and facilities; size of the employer's operation; and impact on other workers". Under the policy, where it is deemed that accommodation would result in undue hardship for the employer, the Board may consider paying for some or all of the cost of accommodating an injured worker "where such payments are consistent with the *Act* and policy".

A4.2 Worker's duties and obligations

In all three provinces, a duty to co-operate in ESRTW is also imposed on the worker. In Newfoundland and Labrador, Section 100.(2) of the *Workplace Health, Safety and Compensation Act* imposes a duty on workers to co-operate in their ESRTW. Under this section, a worker is required to contact the employer as soon as possible after the injury occurs; maintain communication throughout the period of their recovery; assist the employer, as may be required or requested, to identify suitable employment that is available and consistent with their functional abilities and that, where possible, restores their pre-injury earnings; accept suitable employment when identified; give WorkplaceNL the information it may request concerning their RTW, and do other things that may be prescribed in regulations. As noted above, Policy RE-02 (The Goal of Early & Safe Return to Work and the Roles of the Parties) sets out that all workers are "obligated to co-operate in worker's early and safe return to suitable and available employment while the worker is receiving active medical rehabilitation for a work injury". The policy states that "workers are eligible to receive appropriate benefits while co-operating in their active medical rehabilitation and in the progressive early and safe return to work process" and clarifies that "any information requested by WorkplaceNL' includes information about any disputes or disagreements which arise during the ESRTW process.

In Ontario, Section 40(2) of the *Workplace Safety and Insurance Act* imposes a duty on the injured worker to co-operate in their ESRTW; Section 40(3) imposes a similar duty to co-operate on workers who perform construction work. Under the first section, a worker is required to contact the employer as

soon as possible after the injury occurs; maintain communication throughout the period of their recovery and impairment; assist the employer, as may be required or requested, to identify suitable employment that is available and consistent with their functional abilities and that, when possible, restores their pre-injury earnings; give the WSIB such information as it may request concerning the worker's RTW, and do other things that may be prescribed. As noted above, Policy 19-02-08 (RTW Co-operation Obligations) states that "the injury employer and worker are expected to work together to return the worker to their pre-injury job with any necessary accommodation or to another job within the worker's functional abilities". It further clarifies that workers are obliged to co-operate by initiating early contact with the injury employer, maintaining appropriate communication with the injury employer throughout their recovery, assisting the injury employer (as required or requested) to identify suitable work that is available and consistent with their functional abilities, giving the WSIB all relevant information concerning their RTW, and participating in all aspects of their RTW assessments and plans. The policy also notes that in cases where the worker is not functionally capable of performing any type of work, they are expected to maintain regular communication with their injury employer in preparation for a future return to work.

In British Columbia, Section 154.2(2) of Bill 41, *Workers Compensation Amendment Act (No.2), 2022* imposes a duty on a worker to cooperate with the employer and WorkSafeBC in their early and safe return to, or continuation of, work. Under this section, a worker is required to contact the employer as soon as practicable after the injury; maintain communication with the employer; assist the employer, on request of the employer, to identify suitable work that, if possible, restores the full wages the worker was earning at their pre-injury work; provide WorkSafeBC with information it requires in relation to the worker's return to, or continuation of, work; do any other thing required by WorkSafeBC. Section 154.2(3) further states that these obligations do not apply if, "having regard to all of the circumstances, contact and communication between the employer and the worker are likely to imperil or delay the worker's recovery". As noted previously[35], these provisions do not come into effect until January 1, 2024. The proposed policy restates the legislative obligations imposed on a worker and defines "as soon as practicable" to mean "as soon as is reasonably capable of being done". It further notes that the Board requires the worker to "cooperate with the Board by not unreasonably refusing suitable work when it has been made available by any employer". As noted above (in Section A4.1), the proposed policy also defines the meaning of "suitable work". WorkSafeBC's website notes that the duty to co-operate will retroactively apply to claims with injury dates up to two years before January 1, 2024.

A4.3 Healthcare provider's duties

Newfoundland and Labrador is the only province that sets out in policy the role of the healthcare provider in the ESRTW process. All others have supplemental resources on their websites that describe their specific roles in the RTW process. Policy RE-02 (The Goal of Early and Safe Return to Work and the Roles of the Parties) states that the healthcare provider is responsible for providing the workplace parties and WorkplaceNL with functional abilities information, providing the worker and WorkplaceNL with medical information, identifying the most appropriate method of treatment for the injury, ensuring the worker receives timely treatment, and ensuring RTW is discussed throughout recovery. Procedure 33 (Workplace Party Cooperation to Early and Safe Return to Work) clarifies the steps to be taken if a Case Manager determines that a healthcare provider is not meeting these responsibilities.

A4.4 Workers' compensation authority's duties

In Newfoundland and Labrador, the *Workplace Health, Safety and Compensation Act* sets out that the role of the workers' compensation authority in the ESRTW process includes facilitating the rehabilitation and RTW of injured workers, monitoring the progress of the workplace parties on returning the worker to work, resolving disputes or disagreements, and, levying penalties against the employer and/or the worker where it is determined that the workplace parties have failed to comply with their obligations in the ESRTW process. Section 100(3) provides that WorkplaceNL may contact both of the workplace parties to monitor their progress on returning the worker to work, to determine compliance with their obligation to co-operate, and to determine whether any assistance is required to facilitate the RTW process. Policy RE-02 further clarifies that WorkplaceNL has responsibility for facilitating the shared responsibilities of the workplace parties in ESRTW by: communicating to the workplace parties their statutory obligations to co-operate; ensuring that RTW plans achieve the hierarchy of RTW priorities[46]; monitoring activities, progress, and co-operation of the workplace parties; proactively managing the medical rehabilitation of the worker in consultation with the worker and the healthcare provider(s); determining compliance with the statutory obligations to co-operate and re-employ (where applicable); offering/providing dispute resolution; and communicating regularly and effectively with the workplace parties and healthcare providers. The policy also states that where disputes or disagreements arise, WorkplaceNL will facilitate self-reliance of the workplace parties and remove barriers in the ESRTW process by providing information to assist in assessing the workplace[47], information regarding job/workplace accommodations, and the offer of mediation services[48].

In Ontario, the *Workplace Safety and Insurance Act* sets out similar roles for the WSIB. Policy 19-02-07 clarifies that the role of the WSIB is to proactively support the workplace parties in the RTW process and provide early support and services where recovery and RTW barriers occur. Specifically, its role is to support the workplace parties by providing health recovery support, education and advice, case management, accommodation assistance, dispute resolution, and ensuring compliance with co-operation obligations and re-employment obligations (if any). If challenges arise that impact the worker's RTW that the workplace parties cannot resolve on their own, the WSIB first conducts a RTW assessment that is initially used to determine if the worker is or will be medically able to return to their pre-injury job (with or without accommodation) or to a new job, and then (if necessary) develops a RTW plan that outlines the assistance and services the worker requires to enable their return to work. Both activities are done in collaboration with the workplace parties (or authorized representatives) and the worker's treating healthcare professional (where necessary).

In British Columbia, Bill 41, *Workers Compensation Amendment Act (No.2), 2022* sets out the following roles for WorkSafeBC in relation to ESRTW: determining if either of the workplace parties have failed to comply with their statutory obligations in the ESRTW process; resolving disputes regarding compliance; making a determination on whether (a) the worker is fit to carry out suitable work or fit to carry out the essential duties of the worker's pre-injury work and (b) suitable work is available, where the employer and the worker disagree with each other; and, imposing an administrative penalty on an employer if it is

[46] As set out in Policy RE-18 (Hierarchy of Return to Work and Accommodation), the priorities in the hierarchy are as follows: pre-injury job with modifications, essential duties of pre-injury job, pre-injury job modified work, ease back to pre-injury job, and alternate work.

[47] In terms of the worker's functional abilities, skills, knowledge, and fitness to work.

[48] If requested by either of the workplace parties or if determined by WorkplaceNL that it would be helpful.

satisfied on a balance of probabilities that the employer has failed to comply with the duty to co-operate or the duty to maintain employment. As previously noted, these amendments have not yet taken effect[28]. As set out in the proposed policies, the Board must resolve disputes regarding compliance with the duty to cooperate within 60 days of being notified of the dispute (or within a longer period determined by the Board). The policy also makes explicit that the Board has the authority to determine compliance with the legislated duties and obligations at any time. The proposed policy language regarding reduction or suspension of worker benefits for failure to cooperate requires the Board in all cases to "make the worker aware of the reasons for the reduction or suspension of compensation payments". In determining whether an employer has complied with its duty to maintain employment, the Board will consider "whether the employer: offered work consistent with the worker's fitness to return to the pre-injury work, alternative work, or other suitable work; made any changes to the work and/or workplace to accommodate the worker, to the point of undue hardship; and maintained employment for the duration required". The proposed policy also states that the Board is not required to consider the worker's request if it considers the request has no merit. The proposed policy on administrative penalties for an employer's failure to comply states that if the penalty is reduced or cancelled[49], the Board must refund the employer and pay interest on the refunded amount.

A5. Policies and procedures for workers in non-standard employment relationships

In all three provinces, an employer with a re-employment obligation must offer to re-employ an injured worker who (a) had been continuously employed by the employer for one year immediately prior to the injury date and (b) is medically cleared to work. The policies clarify the situations in which an employment relationship was interrupted and the conditions under which seasonal, casual and contract workers would be considered to be continuously employed.

- **Interruption of employment relationship:** In Newfoundland and Labrador, Policy RE-05 (Re-employment Obligation) clarifies that workers who are hired one year or more before the date of injury are considered to be continuously employed, unless the year was interrupted by a work cessation[50] intended by the worker or the injury employer to sever the employment relationship. In Ontario, Policy 19-02-09 (Re-employment Obligations) clarifies that workers are considered unable to work if, because of the work-related injury/disease, they are absent from work, work less than regular hours, and/or require accommodated work that pays, or normally pays, less than their regular pay, regardless of whether the injury employer reimburses a worker for an actual loss of earnings or not. Under the policy, workers who are hired one year or more before the date of injury are considered to be continuously employed, unless the year was interrupted by a work cessation[51] intended by the worker or the injury employer to break the

[49] Reasons for reduction or cancellation include: a Board decision, a review decision, or an appeal decision.

[50] Under Policy RE-05, the employment relationship is not considered to be broken by the following types of work cessation: strikes and lock-outs; sabbaticals, sick leaves, parental leaves, leaves of absence, and vacations; work-related injuries resulting in time off work; layoffs of less than three months, if the worker returns to work for the employer through an employer's offer of re-employment at the time of layoff, or through a union hall's hiring process; or layoffs of more than three months, if the worker returns to the employer through an offer of re-employment or a union hall hiring process, and a date of recall was stipulated, and the recall occurs, the employer continued to pay the worker, the employer continued to make benefit payments for the worker pursuant to the provisions of a retirement, pension, or employee insurance plan, or, the employee received, or was entitled to, supplementary employment insurance benefits.

[51] The WSIB does not consider the employment relationship to be broken by the following types of work cessation: strikes and lock-outs; sabbaticals, sick leaves, parental leaves, leaves of absence, and vacations; work-related injuries/diseases resulting in time off work; layoffs of less than three months, if it is shown that the intention of the workplace parties was for the

employment relationship. The policy states that generally the number of workers employed by the injury employer on the date of injury is considered the number of workers regularly employed. It also clarifies that "in cases where the injury employer has numerous geographically distinct plants or branches, or employs workers who work outside Ontario or outside of Canada, only workers whose earnings must be reported to the WSIB for premium purposes are included when determining the number of workers regularly employed". British Columbia's proposed policy on the duty to maintain employment has language similar to Ontario, except that it applies to workers continuously employed by the employer on a full- or part-time basis. It includes examples of work cessations that do not sever the employment relationship[52] that are similar to both Ontario and Newfoundland and Labrador.

- **Conditions of continuous employment:** In Newfoundland and Labrador, Policy RE-05 (Re-employment Obligation) sets out the conditions by which seasonal workers, casual workers, and contract workers would be considered to be continuously employed. In Ontario, Policy 19-02-09 (Re-employment Obligations) sets out how the obligation to re-employ is applied in special cases, like fixed term contracts, emergency workers, seasonal employment, temporary employment agencies, and successor employers. In British Columbia, the proposed policy on the duty to maintain employment explains the circumstances under which a worker with a recurring pattern of employment contracts is considered to be continuously employed[53] and notes that recurring contracts may be consecutive, seasonal, or with minor breaks between periods of employment. It does not go into the same level of detail that the policies in Ontario or Newfoundland and Labrador do.
    - **Fixed term contracts:** In Ontario, the injury employer of a fixed term contract worker is only required to re-employ the worker in the pre-injury job, an alternate job that is comparable, or suitable work, for the remainder of the fixed term employment contract that was interrupted by the work-related injury/disease. However, in cases where an injury employer has routinely extended or renewed a worker's fixed term employment contract in the past, with no actual break in employment, the WSIB may conclude that the re-employment obligations extend beyond the end of the fixed term employment contract for the normal duration of the re-employment obligation. A similar approach is taken in Newfoundland and Labrador.
    - **Emergency workers:** Under Ontario legislation and the policy, if an emergency worker is the employee of a regular employer covered under the *Workplace Safety and Insurance Act* and receives benefits, the regular employer is responsible for complying with the re-employment obligation. The deemed (emergency) employer however, reimburses the regular employer for the costs of meeting the re-employment obligation. This

worker to return to work for the injury employer, or through a union hall's hiring process; or layoffs of more than three months, if the recall date was stipulated, and the recall occurs.

[52] Examples include, but are not limited to, time off work due to a compensable injury/mental disorder/occupational disease, layoffs of less than 3 months (if the intention was for the worker to return to work for the employer), layoffs of more than 3 months (if the recall date was stipulated and the recall occurs), sabbaticals/sick leaves/parental leaves/leaves of absence/vacations, or strikes and lockouts.

[53] Under the proposed policy, a worker with a recurring pattern of employment contracts with an employer is considered to be continuously employed where "there is a demonstrated pattern of extending or renewing the worker's employment over a period of at least 12 months before the date of injury; and the evidence does not show that the employment was officially terminated with no intention to rehire the worker in the future".

requirement applies to a member of a municipal volunteer brigade, a volunteer ambulance brigade, or an auxiliary member of a police force, as these workers are considered as though they are emergency workers for re-employment purposes. There is no policy language in Newfoundland and Labrador that specifically addresses re-employment of emergency workers.

- **Seasonal employment:** Under the Ontario policy, the WSIB reviews the past hiring practices of the injury employer to determine whether the employer intended to continuously employ the seasonal worker for the purposes of establishing if the condition of one year of continuous employment before the date of injury has been met. If the workplace parties or the WSIB questions whether the number of workers employed on the date of the worker's injury fairly represents the number of workers regularly employed, the WSIB determines the average number of workers employed in each of the 12 or fewer months that make up the full regular season of the injury employer's operation before the date of the injury. If there are 20 or more workers in the majority of the months of the full regular season, the 20 or more workers re-employment condition is considered to have been met. When calculating the length of the re-employment obligation period, the off-season period is not excluded. However, during the off-season period the injury employer's re-employment obligation is not in effect, nor is the employer subject to a re-employment penalty. A similar approach is taken in Newfoundland and Labrador. However, Policy RE-05 (Re-employment Obligation) specifically addresses some issues that are particular to the Newfoundland and Labrador context (i.e., the definition of "full regular season of operation" and when an injured worker is considered regularly employed with a fishing employer).
- **Temporary employment agencies:** Under the Ontario policy, the re-employment obligation applies to temporary employment agencies if the worker was continuously on the temporary employment agency's placement roster for at least 12 months prior to the date of injury. It is not necessary that the worker be continuously on work assignments during this period. A temporary employment agency meets the re-employment obligation to offer the *pre-injury job, or an alternate job that is comparable*, by returning the worker to the employment placement roster for normal rotation to job assignments. The temporary employment agency meets the re-employment obligation to offer *suitable work* by returning the worker to the employment placement roster and attempting to place the worker in the first opportunity for suitable work that becomes available. A similar approach is taken in Newfoundland and Labrador for casual workers and workers at temporary employment agencies (who may be considered casual workers under Policy RE-05).
- **Successor employers:** Under the Ontario policy, if the successor employer is the same legal entity as the original employer, re-employment obligations generally attach to the successor employer. If, however, the successor employer is a different legal entity than the original employer, re-employment obligations generally do not attach to the successor employer. There is no policy language in Newfoundland and Labrador that specifically addresses successor employers.

- **Temporary Foreign Workers:** In Ontario, Policy 12-04-08 says that workers participating in the "Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program" have WSIB

coverage, which begins as soon as they reach the agreed-upon point of departure in their homeland and remains in place until they return home. This means that temporary foreign agricultural workers would be entitled to ESRTW provided other requirements of the RTW policy suite are met. There are no similar policies in either Newfoundland and Labrador or British Columbia.

A6. Policies and procedures for addressing non-compliance

The Acts in all three provinces with ESRTW allow for administrative penalties to be levied for non-compliance with both the obligation to co-operate and the obligation to re-employ. They also include provisions under their legislation for resolving disputes and disagreements in the ESRTW process between the workplace parties.

A6.1 Penalties for failure to co-operate

In Newfoundland and Labrador, penalties will be levied against a worker or employer for not co-operating when it is determined they do not have a "legitimate" reason. Neither the policy nor the procedure provides examples of "legitimate" reasons.

- **Worker penalties:** Under Policy RE-02, the worker's benefits shall be reduced, suspended or terminated "where within one week from the notification by WorkplaceNL, the worker fails to demonstrate co-operation to the satisfaction of WorkplaceNL and does not have a legitimate reason for not co-operating". However, Procedure 33 notes that "usually, a worker's benefits would not be suspended due to non-cooperation – they would be reduced or terminated. Benefits will be terminated when a finding of non-cooperation has been applied against a worker. Where there are legitimate reasons for non-cooperation, benefits may be reduced or suspended in accordance with other appropriate policies."
- **Employer penalties:** Under Policy RE-02, a financial penalty will be levied on the employer "where within one week from the notification by WorkplaceNL, the employer fails to demonstrate co-operation to the satisfaction of WorkplaceNL and does not have a legitimate reason for not co-operating". Penalties levied are for the period of non-cooperation and could include the worker's full wage loss benefits paid by WorkplaceNL to the worker[54]; the full cost of the labour market re-entry assessment, if required; or the full cost of the labour market re-entry plan, if one is required to help the worker become market ready. These penalties continue until the date the employer cooperates, the worker's benefit entitlement ends, or the worker's wage loss benefit entitlement ends – whichever comes first.

In Ontario, workers and employers may be penalized for not co-operating if it is determined that they do not have a "compelling" reason. Under Ontario's Policy 19-02-08, compelling reasons for employer non-compliance include: summer or holiday shutdown, general layoff, strike or lockout, and/or corporate reorganization; and in the case of small employers, a death in the family or an unexpected illness or accident. Examples of compelling reasons for worker non-compliance include: post-accident non-work-related changes in circumstances such as an unexpected illness or injury, death in the family, or jury

[54]Procedure 33 notes that this penalty will be levied on a bi-weekly basis. For all wage loss benefit penalties levied, an additional penalty amounting to 12.5% of wage loss benefits will also be charged against the employer on a bi-weekly basis.

duty. The policy notes that for both worker and employer non-compliance, these circumstances are typically of short duration.

- **Worker penalties:** Under Policy 19-02-08, worker penalties are levied in a phased approach. An initial penalty is levied ten calendar days after the date of the written notice, reducing the worker's wage loss benefits by 50%. This penalty continues for 14 calendar days or until the worker starts co-operating again, whichever is earlier. If non-cooperation continues beyond 14 days after the initial penalty, a full penalty is levied. The amount of the full penalty is determined by whether the non-cooperation impacts an RTW plan with training or other RTW plan/activity. In the former case, the RTW assessment and/or the plan is terminated and the worker's wage loss benefits are reduced to reflect the earnings the worker would have been capable of earning had they completed the plan. In the latter case, the WSIB suspends the worker's wage loss benefits. Wage loss benefits remain reduced or suspended until the worker starts co-operating again. Wage loss benefits are increased or started again as of the date there is evidence confirming the worker's renewed co-operation.
- **Employer penalties:** Under Policy 19-02-08, employer penalties are also levied in a phased approach. The WSIB levies the full penalty if the non-co-operation continues beyond 14 calendar days after the date of the initial penalty. The full penalty is based on the following: 100% of the cost of the wage loss benefits payable to the worker, plus 100% of any costs associated with providing RTW services to the worker. The full penalty continues to be levied until the date the injury employer starts co-operating again, the date no further wage loss benefits are payable and no RTW services are being provided, or 12 months from the date the initial penalty was levied – whichever comes first.

In British Columbia, a worker's benefits may be reduced or suspended for failure to co-operate. An administrative penalty may be imposed on an employer if WorkSafeBC is satisfied on a balance of probabilities that the employer has failed to co-operate. The penalty must not be greater than the maximum wage rate as determined under the *Workers Compensation Act*.

- **Worker penalties:** The proposed new policy (Duty to Cooperate) clarifies the legislative language regarding penalties imposed on the worker. If the Board imposes a penalty on the worker, the worker must be made aware of the reasons for doing so. The policy notes that, generally, payments will be reinstated prospectively from the date the worker starts to comply with their duty to cooperate. A refusal of suitable work will generally be deemed a failure to comply with the duty to cooperate if the Board determines that the refusal is not "reasonable". This will result in benefits being reduced effective the date that Board determines the work was suitable and available. Benefits will be suspended if the worker fails to comply with the following obligations: "contacting the employer as soon as practicable after the worker is injured; maintaining communication with the employer; on request of the employer, assisting the employer to identify suitable work that, if possible, restores the full wages the worker was earning at the worker's pre-injury work; and providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work". Before suspending payments, the Board is required to (a) communicate with the worker (i.e., inform them of their duty to cooperate and identify the specific obligations where there is non-compliance) and (b) provide the worker with a "reasonable opportunity to comply".
- **Employer penalties:** As set out in the proposed new policy (Penalties for Failure to Comply with

the Duty to Cooperate or Duty to Maintain Employment), the Board "will generally not impose an administrative penalty if the employer has taken all reasonable steps[55] to comply with its obligations". Before issuing the penalty, the Board is required to (a) communicate with the employer (i.e., inform them of their duties under the *Act*, identify the specific obligations where there is non-compliance, and advise that an administrative penalty may be imposed) and (b) provide the employer with a "reasonable opportunity to comply and/or provide an explanation for non-compliance". If the employer does not comply, the Board will issue a decision letter[56] advising that a penalty is being imposed. The penalty levied will "generally be equal to the cost of any compensation payable to the worker" under relevant sections of the *Act* during the period of non-compliance and will be "charged at the end of each month that the employer is non-compliant, up to a total amount not exceeding the maximum wage rate" under the *Act*.

A6.2 Penalties for failure to comply with the obligation to re-employ

In Newfoundland and Labrador, the *Workplace Health, Safety and Compensation Act* states that where WorkplaceNL decides that an employer has not fulfilled their obligations to re-employ the injured worker, a penalty may be levied on the employer in an amount not exceeding the amount of the worker's net average earnings for the 12 months immediately preceding the beginning of the loss of earnings as a result of the injury. WorkplaceNL may also make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 74 of the Act. Policy RE-09 (Re-employment Penalties and Payments) clarifies that generally the penalty is based on the worker's actual net average earnings with the pre-injury employer and that the amount is not subject to the maximum compensable earnings amount. The penalty is applied from the start date of the re-employment obligation. The penalty may be reduced if the employer subsequently meets the re-employment obligation, or does not meet the re-employment obligation, but offers the worker suitable work. In the former case, the reduced penalty is calculated on the basis of the number of weeks (or part weeks) that the employer does not meet the re-employment obligation. In the latter case, the penalty will be reduced by 50% or by 75% respectively if the employer does not meet the re-employment obligation but offers the worker suitable work at a wage loss or at no wage loss.

A similar penalty may be levied in Ontario under the *Workplace Safety and Insurance Act* if the WSIB decides that the employer has not fulfilled the employer's obligations to the worker. Policy 19-02-09 (Re-employment Obligations) clarifies that generally, a re-employment penalty is levied based on the amount of the worker's actual net average earnings for the year before the injury. This amount is not subject to the ceiling used in the calculation of LOE benefits. When a re-employment penalty is applied, it is apportioned based on the length of the remaining obligation period at the time the breach occurs. The penalty may be reduced for injury employers who have breached their re-employment obligations but subsequently come into full or partial compliance. In the former case, if the injury employer subsequently comes into full compliance and continues to comply fully for the remainder of the obligation period, the penalty will be based on the number of weeks the employer did not meet their re-employment obligations. In the latter case, if the injury employer subsequently comes into partial compliance the penalty may be reduced by 50% if the employer offers suitable work at no wage loss, or

[55] The Board will determine this by considering what a reasonable person would have done in the circumstances.

[56] The letter will provide the following information: the duty the employer failed to comply with, the penalty amount, and the right to have the decision reviewed or appealed.

by 25% if the employer offers suitable work at a wage loss. The penalty is only reduced if the employment is maintained for the remainder of the obligation period.

In British Columbia, WorkSafeBC may pay to a worker, for a period of up to one year, an amount equal to the compensation to which the worker was entitled under the *Workers Compensation Act* for *temporary total disability or temporary partial disability,* as applicable. The process for levying this penalty is the same as that described above. The penalty amount will "generally be based on the greater of: the worker's average net earnings for the 12-month period immediately preceding the date of the worker's injury, up to the maximum wage rate…or an amount equal to 50% of the maximum wage rate" under the relevant section of the Act. The policy notes that the penalty may be reduced for a non-compliant employer who subsequently comes into compliance and that if reduced, "the penalty amount may be pro-rated based on the number of weeks the employer was non-compliant following the Board's decision to impose the penalty, up to a maximum of 52 weeks".

A6.3 Penalties for concurrent failure to comply with the duty to co-operate and to re-employ

The policies in Ontario state that if an injury employer breaches both a co-operation and re-employment obligation during overlapping periods in the same claim, the WSIB will apply a single penalty. In these cases, the WSIB will levy the higher penalty. The proposed policy in British Columbia takes a similar approach. However, the British Columbia policy also states that the Board may impose more than one administrative penalty if an employer fails to comply at different periods in the same claim. There is no similar language in the Newfoundland and Labrador policies.

A6.4 Policies and procedures for resolving disputes between the parties

All three provinces have similar provisions under their legislation for resolving disputes and disagreements in the ESRTW process between the workplace parties. These disputes and disagreements may be in regards to the duty to co-operate or the obligation to re-employ. In each province, the Act requires that (a) the worker or the employer notify the workers' compensation authority and (b) that the authority first attempt to resolve the dispute through mediation. Where mediation is not successful, the Act requires that the workers' compensation authority decide the matter within 60 days after receiving the notice or within such longer period as the Board determines.

In Ontario, Policy 19-02-08 (RTW Co-operation Obligations) clarifies that (a) disputes over the suitability of a job offered are not considered acts of non-cooperation and (b) non-cooperation is not meant to apply to workers who raise a health and safety concern under the provincial *Occupational Health and Safety Act* or the federal *Canada Labour Code*. Policy 19-02-09 (Re-employment Obligations) notes that "in some cases, the workplace parties may be unsure or unable to agree on whether the worker can return to some form of work, and if so, whether the worker is fit for essential duties of the pre-injury job, or fit for suitable work" and indicates that, in this situation, either party can contact the WSIB. The policy then lays out a general process for how the dispute will be handled – namely, that the WSIB will assist them to reach consensus on the issue or will make a determination as to the worker's level of fitness to return to work, followed by prompt written notice to the workplace parties of the determination.

In British Columbia, the proposed policy on the duty to cooperate clarifies that where a worker's refusal of suitable work is deemed reasonable, it will not be considered an act of non-cooperation. However,

failure to provide details of the work duties to a recognized health care professional (e.g., physician, qualified practitioner) will generally be considered an unreasonable refusal in disputes over whether the work that has been made available is within the worker's functional abilities or medical restrictions.