



## Stakeholder Feedback

Online consultation on the topic below was posted from January 15 to February 15, 2021. The verbatim comments received by WCB-Alberta during online consultation are reproduced below.

### Bill 47 – Duty to cooperate - Policy 04-11, Part I and Part II, Application 1

<i>Stakeholder</i>	<i>Category</i>	<i>Comments</i>
Artis	Employer	This policy seems to be missing some examples as seen in some existing policies. EG, non-exhaustive examples to give guidance.
Cam Clark Automotive Group	Employer	I think this is a great first step, putting some of the responsibility back on the employee. The employee should carry some responsibility and accountability.
Individual	Employer	Proposed Section 89.2 is way too general and vague that it could be interpreted as still an obligation to reinstate except now much broader in that it doesn't state if the worker was employed for the previous 12 months. It could be read that the employer will have to reinstate ALL workers. This goes against what Bill 47 was intending to do. This is reinforced throughout Policy 04-11 Part II. This proposal does not change anything but rather makes it more onerous on the employer. Definitely not a balance for the employer or fairness.
STEP Energy Services	Employer	We have reviewed the summary and the detailed changes within this revision and fully support the changes in part 6 and note they will serve both the employer and worker in a well balanced return to work approach.
Suncor Energy Services Inc.	Employer	Suggestion to clarify that the term workers also include temporary workers and those working for a contractor.
PCL Industrial Management Inc.	Employer	PCL is in favour of this policy as it is more flexible than the duty to reinstate policy that was initially in place. This reverts back to more of a human rights issue with duty to accommodate that allows employers to make a suitable decision based on their business needs and the individual. It is appreciated that some onus is now put on the workers to be held accountable to participate and cooperate in the return to work process as there was frustration that the former policy was very one sided. The revision to the policy allows employer to make a decision without definitive penalty while understanding the wage loss payment will likely

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		<p>impact their premiums. Policy still lacks a clear timeline of the employers responsibility, last policy there was a potential to have to employ an injured worker indefinitely. In construction, work is project based and therefore never a guarantee and considered temporary. It is a burden for employers to be held responsible to find a position that an injured worker is not qualified for, nor was ever hired on a permanent basis. How many opportunities will the worker be given prior to WCB inactivating the claim as this is also unclear.</p> <p>We acknowledge that claims after April 1, 2021 will fall under new policy but how will existing claims be interpreted?</p>
WestJet	Employer	<p>References are made throughout the policy to worker and employer requirements for “consistent contact” and doing things in a “timely manner” in order to satisfy duty to cooperate. These should be further defined if possible. Alternately, there should be a requirement for the claim owner to confirm expectations for “consistent contact” and “timely response” with the worker and employer at the onset of a claim. There should also be expectations for the claim owners to work within specific timelines on decisions related to Duty to cooperate, so benefits are not continued indefinitely while concerns are evaluated.</p> <p>Page 2 of 2 #3 and elsewhere as appropriate - references should be expanded to include representatives acting on behalf of workers (e.g. unions/associations/consultants) as well as representatives acting on behalf of employers. Representatives should also have an obligation to not unduly delay or interfere with the process and/or return to work.</p> <p>Page 1 of 6 #3 references the employer allowing time off to attend appointments as an example of cooperation. A parallel worker example of cooperation should outline the requirement to arrange and attend appointments outside of scheduled work time when possible. Appointments during work hours should be an exception, not the norm.</p> <p>Page 2 of 6, Paragraph 3 - policy should state the employer WILL be (not MAY be) eligible for cost relief in accordance with the policy listed. If the policy criteria apply, there should be an automatic application of cost relief actioned by the claim owner rather than the employer having to request this.</p> <p>Page 3 of 6 second last bullet - one of the noted employer responsibilities is to participate in case conferences when needed. We question who makes the determination of whether a case conference is required? Can this be clarified in policy? Case conferences are not always necessary. If the employer has a valid reason not to proceed or participate with a case conference the board should accept the reasoning without penalizing the employer for noncooperation.</p>

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		<p>Page 3 of 6 last bullet, Page 4 of 6 first bullet, - the policy should recognize there may be situations where the employer has an operational or business reason for not returning the worker to modified work or to their regular job duties. In the event that the employer has a valid reason for not providing modified work or the worker’s regular work the employer should not be penalized for noncooperation.</p> <p>Page 4 of 6 #4 - worker cooperation responsibilities should include compliance with internal employer practices/policies and terms of employment (e.g. drug and alcohol compliance, safety policies, workplace bullying and harassment, etc.)</p>
ITF	Employer Association	<ul style="list-style-type: none"> <li>• References are made throughout the policy to worker and employer requirements for “consistent contact” and doing things in a “timely manner” in order to satisfy the duty to cooperate. These should be further defined if feasible. Alternately there should be a requirement that the claim owner will confirm expectations for consistent contact and timely response with the worker and employer at the outset of a claim.</li> <li>• There should also be timelines spelled out for making decisions related to Duty to Cooperate so benefits are not continued indefinitely as concerns are being evaluated.</li> <li>• Page 2 of 2 #3 and elsewhere as appropriate - references should be expanded to include representatives acting on behalf of workers (e.g. unions/associations/consultants) as well as representatives acting on behalf of employers. Worker representatives have an obligation to not unduly delay or interfere with the process and/or return to work. Although this is often discussed it is not reflected in the policy.</li> <li>• Page 1 of 6 #1 and elsewhere as appropriate - reference should be made to the return to work being both timely and safe.</li> <li>• Page 1 of 6 #1 - the last sentence of the second paragraph appears to reference workers who are permanently disabled. For this reason, we propose the following edit <ul style="list-style-type: none"> <li>“The goal is to act in good faith to maximize recovery and achieve return to work, or independence for workers who are medically unable to return to any form of work”.</li> </ul> </li> <li>• Page 1 of 6 #3 makes reference to the employer allowing time off to attend appointments as an example of cooperation. The parallel worker example of cooperation should reflect consideration being given to arranging for and attending appointments outside of scheduled work time where requested.</li> <li>• Page 2 of 6, Paragraph 3 - policy should be explicit that the employer WILL be (not MAY be) eligible for cost relief in accordance with</li> </ul>

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		<p>the policy listed. If the policy criteria apply there should be an automatic application of cost relief actioned by the claim owner rather than the employer having to request this.</p> <ul style="list-style-type: none"> <li>• How will treatment providers be advised of their roles and responsibilities under this policy, and how will they be held accountable? We suggest there be an addition to the policy to address this.</li> <li>• Page 3 of 6 second last bullet - one of the noted employer responsibilities is to participate in case conferences when needed. We question who makes the determination of whether a case conference is necessary and suggest this should be determined by mutual agreement. Members have raised concerns that case conferences are often not necessary when WCB requests one. We want to avoid any ambiguity so employers are not penalized for not cooperating when they do not see a valid reason for the added costs and time required for a case conference.</li> <li>• Page 3 of 6 last bullet, Page 4 of 6 first bullet, - the policy should recognize in these paragraphs that there may be situations where the employer has an operational or business reason for deciding not to return the worker to modified work or to their regular job duties. Using return to modified duties or return to work as an example of employer cooperation creates an unrealistic expectation and potential for conflict in those situations where it is not reasonable for the employer to return the worker. The policy wording should recognize and reflect the difference between the previous Obligation to Reinstate and the Duty to Cooperate.</li> <li>• Page 4 of 6 #4 - worker cooperation responsibilities must include compliance with employer policies and terms of employment (e.g. drug and alcohol compliance, safety policies, workplace bullying and harassment, etc.) as well as any professional obligations and any reasonable measures to address non- compensable barriers.</li> <li>• Page 4 of 6 #4 - with respect to appointments for ongoing treatment, or appointments that will take place during a part time work schedule, worker cooperation should include arranging appointments outside of scheduled work time where feasible. Our members have expressed concerns in the past about appointments being scheduled during a 3 or 4 hour work shift, and once travel time is included this essentially means the worker does not work on that day. There are occasions where the employer has no concerns with an appointment being scheduled during a work shift (e.g. a specialists appointment or IME) but policy should reflect this as an exception rather than the norm.</li> <li>• Page 5 of 6 - Administrative penalties for failure to cooperate should not be applied in situations where the employer has made the determination to not return a worker for business or operational reasons. It is important the policy reflect the significant differences between the</li> </ul>

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		<p>Obligation to Reinstate and the Duty to Cooperate. Where an employer makes this determination it should be accepted by the WCB; it is not feasible for case managers to evaluate and make determinations regarding the merits of decisions under duty to cooperate where issues have labour relations or human resources overtones. This is outside their area of expertise.</p>
<p><b>Alberta Forest Products Association</b></p>	<p><b>Employer Association</b></p>	<p>References are made throughout the policy to worker and employer requirements for “consistent contact” and doing things in a “timely manner” in order to satisfy duty to cooperate. These should be further defined if feasible. Alternately there should be a requirement that the claim owner will confirm expectations for consistent contact and timely response with the worker and employer at the outset of a claim.</p> <p>&gt;There should be timelines spelled out for making decisions related to Duty to Cooperate so benefits are not continued indefinitely while concerns are being evaluated.</p> <p>&gt;Page 2 of 2 #3 and elsewhere as appropriate - references should be expanded to include representatives acting on behalf of workers (e.g. unions/associations/consultants) as well as representatives acting on behalf of employers. Worker representatives have an obligation to not unduly delay or interfere with the process and/or return to work and although this is often discussed it is not reflected in the policy.</p> <p>&gt;Page 1 of 6 #1 and elsewhere as appropriate - reference should be made to the return to work being both timely and safe.</p> <ul style="list-style-type: none"> <li>• Page 1 of 6 #1 - the last sentence of the second paragraph appears to reference workers who are permanently disabled. For this reason, we propose the following edit: <p style="margin-left: 40px;">“The goal is to act in good faith to maximize recovery and achieve return to work, or independence for workers who are medically unable to return to any form of work”.</p> </li> </ul> <p>&gt;Page 1 of 6 #3 makes reference to the employer allowing time off to attend appointments as an example of cooperation. The parallel worker example of cooperation should reflect consideration being given to arranging for and attending appointments outside of scheduled work time where requested.</p> <p>&gt;Page 2 of 6, Paragraph 3 - policy should be explicit that the employer WILL be (not MAY be) eligible for cost relief in accordance with the policy listed. If the policy criteria apply there should be an automatic application of cost relief actioned by the claim owner rather than the employer having to request this.</p> <p>&gt;How will treatment providers be advised of their roles and responsibilities</p>

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		<p>under this policy, and how will they be held accountable? Should there be an addition to the policy to address this? &gt;Page 3 of 6 second last bullet - one of the noted employer responsibilities is to participate in case conferences when needed. Who makes the determination of whether a case conference is necessary? It's important to avoid any ambiguity so employers are not penalized for not cooperating when they do not see a valid reason for the added costs and time required for a case conference.</p> <p>&gt;Page 3 of 6 last bullet, Page 4 of 6 first bullet, - the policy should recognize in these paragraphs that there may be situations where the employer has an operational or business reason for deciding not to return the worker to modified work or to their regular job duties. Using return to modified duties or return to work as an example of employer cooperation creates an unrealistic expectation and potential for conflict in those situations where it is not reasonable for the employer to return the worker. The policy wording should recognize and reflect the difference between the Obligation to Reinstate and the Duty to Cooperate.</p> <p>&gt;Page 4 of 6 #4 - worker cooperation responsibilities must include compliance with employer policies and terms of employment (e.g. drug and alcohol compliance, safety policies, workplace bullying and harassment, etc.) as well as any professional obligations and any reasonable measures address non-compensable barriers.</p> <p>&gt;Page 4 of 6 #4 - with respect to appointments for ongoing treatment, or appointments that will take place during a part time work schedule, worker cooperation should include arranging appointments outside of scheduled work time where feasible. There are occasions where the employer has no concerns with an appointment being scheduled during a work shift (e.g. a specialists appointment or IME) but policy should reflect this as an exception rather than the norm.</p> <p>&gt;Page 5 of 6 - Administrative penalties for failure to cooperate should not be applied in situations where the employer has made the determination to not return a worker for business or operational reasons. It is important the policy reflect the significant differences between the Obligation to Reinstate and the Duty to Cooperate. Where an employer makes this determination it should be accepted by the WCB; it is not feasible for case managers to evaluate and make determinations regarding the merits of decisions under duty to cooperate where issues have labour relations or human resources overtones. This is outside their area of expertise.</p>
<b>Health Sciences Association of Alberta</b>	<b>Labour Union</b>	<p>Duty to Cooperate:</p> <p>I believe the draft policy covers the intent of the duty to cooperate. I also believe the draft policy reflects the feedback already provided by the working groups.</p>

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		<p>Additional Comments:</p> <p>Communication and participation are key to the successful outcome but can be difficult to analyze at times due to lack of transparency. In order to achieve a successful outcome, the duty of both parties to cooperate in a return to work requires full participation and disclosure of the efforts made for the return to work.</p> <p>#4 in the policy states workers and employers have legislated responsibilities under section 89.1 and section 89.2.</p> <p>#5 in the policy states the WCB will work with employers and workers to ensure they understand their cooperation requirements.</p> <p>Regarding both #4 &amp; #5 it will be important for workers and employers to clearly understand what their role and responsibilities are with the duty to cooperate.</p>
BCL Consulting Group Inc.	Other	<p>Draft Policy 04-11, Part I provides the following in part:</p> <p>“Successful recovery from a work injury and a successful return to work relies on collaboration between all parties including, but not limited to, injured workers, employers, treatment providers and WCB.”</p> <p>Through review of draft Policy 04-11 Part II, Application 1, there are no references to cooperation requirements or consequences for lack of cooperation in relation to treatment providers or WCB staff who are uncooperative during the life of a claim.</p> <p><b>Treatment providers:</b></p> <p>Historically speaking claim processes have been significantly delayed and frustrated by treatment providers not providing timely reporting, legible reporting, or submitting incomplete and/or contradictory reporting etc.</p> <p>It appears there are no defined cooperation requirements or documented consequences within this draft policy to manage situations where treatment providers are uncooperative.</p> <p>We suggest adding a section of policy which defines treatment provider cooperation requirements and measures that will be implemented when treatment providers are not cooperative in their reporting requirements to the employer, worker and the WCB.</p> <p><b>WCB staff:</b></p> <p>There are situations where WCB has been unwilling, for example, to gather relevant clarification on documented medical opinions directly from the IME physicians, General Practitioners or Medical Advisors, as the case may be.</p> <p>This lack of cooperation by WCB staff leads to medical uncertainty and</p>

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		<p>delays during a claim.</p> <p>We suggest the addition of a section in this policy that defines the cooperation requirements of Workers' Compensation staff during the life of a claim and measures to manage same.</p> <p>—</p> <p>Under draft Policy 04-11 Part II, Application 1, Question 4 "What are the cooperation requirements for workers and employer in return-to-work planning? - <i>Specific worker cooperation responsibilities:</i>"</p> <p>We would suggest documented clarification that the worker <b>accept and participate fully, cooperatively and productively</b> in suitable temporary modified work in keeping with the modified work offer and physician's restrictions.</p> <p>We believe that where there has been uncooperative behavior by workers, treatment providers or the WCB and that uncooperative behavior leads to unnecessarily increased claim costs, the costs should be charged to industry as opposed to being borne by the employer.</p>
Individual	Other	<p>There was nothing wrong with Section 88.1 of the WCA and in fact, was beneficial to workers and employers. Should have never been rescinded.</p>
Individual	Other	<p>Duty to Cooperate Disagree with the following section: 'If a worker with permanent work restrictions does not participate or cooperate in vocational plans or training that would maximize income recovery, WCB may estimate their post-accident earning capacity as though the worker has successfully completed the vocational plan (see Policy 04-04, Part II, Application 1, Questions 4 and 5) with earnings not lower than minimum wage.' Disagree on the basis that 'estimation of post-accident earning capacity as though the worker has successfully completed the vocational plan' does NOT in any way encourage workers to complete the plan as required; and may actually result in workers not completing the plan (because there is potentially no perceived benefit to putting in the time required to complete the plan when their earnings will be assessed as if they did either way).</p>
Individual	Worker	<p>It seems the wcb is continually attempting to erode worker rights. This is another example of such legislation meant to undercut the help a worker needs during recovery. Returning back to work needs to be changed to return to meaningful work, not a parking lot attendant or truck dispatcher! To force people to enter into these back to work practices is dangerous and proven unhealthy for the worker and unproductive for the employer. You are only ever interested in the dollar amounts of everything so much so that you forget who actually pays your bills, THE WORKERS! The wcb, in my opinion needs to be revamped from the ground up and all the</p>

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		executives need to be fired and replaced with medical people not insurance salesmen!

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