

**Alberta WCB
Policies &
Information**

Chapter:

BENEFITS

Subject:

RETURN-TO-WORK SERVICES

Authorization:

Date:

BoD Resolution 2021/02/10

March 22, 2021

APPLICATION 4: TEMPORARY MODIFIED WORK PROGRAMS

1. *When does WCB place workers in temporary modified employment?*

A worker, while still recovering from a compensable injury, may benefit from temporary modified employment that helps the worker return to the pre-accident level of employment. In such cases WCB will seek and promote modified work opportunities for the injured worker.

When a worker is offered suitable modified employment that is appropriate to their physical and medical condition, WCB determines whether it is reasonable for the worker to accept the employment. If it is reasonable, WCB adjusts the worker's compensation benefits accordingly.

2. *What is temporary modified work?*

Temporary modified work includes any changes, restrictions, or limitations to a worker's regular job duties required as a result of a work-related injury. This includes changes in:

- tasks or functions - such as changes in the worker's regular tasks including redesigning, reorganizing, or eliminating tasks
- hours or work schedules - such as changes in the number of hours, shift cycles, or volume of work
- environment or work area - such as changes in location or access to the work area, restrictions to avoid exposure to heat, cold, or chemicals, etc.
- equipment - such as changes to the equipment used, including acquiring new equipment or modifying existing equipment to accommodate a work-related injury; this also includes the addition of personal protective devices (such as a filtration mask, etc.)

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*Temporary modified work
(continued)*

Temporary modified work may also include a suitable training opportunity, work which is normally performed by others, or work which has been specifically designed or designated as a modified work program.

For WCB purposes, preventative changes such as ergonomic adjustments to equipment, are not considered modified work if no work-related injury has occurred.

3. What is suitable modified work?

For work to be considered **suitable modified employment**, the following conditions must be met.

The work:

- accommodates the worker’s compensable medical restrictions so the worker can perform the duties without endangering their recovery or safety, or the safety of others
- contributes to the worker’s physical and vocational rehabilitation by keeping the worker active and involved in the workplace
- promotes the gradual restoration to the worker’s pre-accident level of employment
- must be a meaningful and productive part of the employer’s operations
- does not create financial hardship for the worker (for example, shift changes that require additional childcare costs, unreasonable travel to another location, etc.)

For claims with dates of accident from September 1, 2018, to March 31, 2021, see also Application 2, Question 14.

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4. *How does WCB determine if modified work is suitable?*

WCB will consult with the injured worker, employer, and physician to evaluate the proposal.

The evaluation is based on, but not limited to, a detailed description of the job being offered, including the physical requirements, and detailed medical information outlining the worker’s physical restrictions and medical requirements that must be accommodated in a modified work plan.

5. *How are benefits calculated for modified work?*

If WCB considers it reasonable for the worker to accept the modified work, compensation benefits will be adjusted in accordance with s.56(13) of the WCA. The basis of calculation is:

(a) the worker’s pre-accident biweekly net earnings calculated in accordance with the WCA and the *WC Regulation*,

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(b) the worker’s biweekly post-accident net earnings calculated in accordance with the WCA and the *WC Regulation*.

The temporary partial disability benefit will be a proportionate part of 90% of the earnings loss [the difference between (a) and (b)], based on WCB’s estimate of the degree to which the earnings loss is caused by the remaining disability.

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6. *What if the worker refuses the modified work?*

If the worker refuses to accept the modified work that is available, WCB will consider the reasons for refusal. If WCB considers it reasonable for the worker to accept the employment, the worker’s compensation benefits will be adjusted effective the date of the decision, as if the employment had been accepted.

The following are examples of possible reasonable grounds for refusal:

- medical evidence indicates the worker is not able to perform the required duties
- a significant discrepancy between the proposed and actual requirements of the work so the actual requirements do not meet the conditions described in Question 3, above

If the modified work does not meet WCB conditions for suitable work, WCB will try to arrange appropriate changes. If this is not possible, WCB will reinstate total temporary disability benefits for as long as necessary.

7. *How long do modified work programs usually last?*

Normally, a modified work plan will not last longer than 6 months. However, the length of the program depends on the worker’s recovery. Revisions to the modified work may be made as the worker’s medical condition changes, until the worker is considered medically fit to return to pre-accident employment or permanent work restrictions are identified.

If the medical prognosis changes and the worker is expected to have permanent work restrictions, WCB will re-evaluate the modified work program to determine whether it is still an appropriate part of the long-term rehabilitation plan.

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8. *What if the modified work program ends?*

If the modified work program ends before the worker is fully recovered, any on-going entitlement will depend on the remaining disability, the level of work restrictions and the reason the modified work program ended. See below, and also Question 6 (worker refuses modified work), Question 9 (egregious conduct), and Question 13 (strikes and lockouts).

If the modified work program ends because the employer terminated the worker’s employment or withdrew the modified work, s.56(14) of the WCA directs WCB to pay the worker temporary total disability benefits until WCB determines that the worker is capable of other suitable employment. WCB’s determination will take into consideration the worker’s remaining work restrictions and their impact on the worker’s competitiveness in the labour market, as well as any other relevant factors.

For the purpose of s.56(14), WCB does not consider it a withdrawal of modified work if the employer temporarily suspends the worker for disciplinary reasons, provided the period of suspension is consistent with the employer’s normal practices.

Effective January 1, 2021, s.56(14) does not apply when the employer terminated or withdrew the modified work because of the worker’s egregious conduct (see Questions 9, 10, and 11, below).

Each case will be judged on its own merits.

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9. *What is the exception for egregious conduct, and how does it affect workers' temporary disability benefits?*

The exception for egregious conduct is effective January 1, 2021, and applies to all claims regardless of the date of accident for egregious conduct occurring on or after January 1, 2021.

Effective January 1, 2021, there is an exception under s.56(15.1) which provides that when an employer withdraws or terminates modified work because of a worker's egregious conduct the direction under s.56(14) to pay the worker temporary total disability benefits does not apply. Instead, WCB is directed to pay benefits in accordance with s.56(13)(a) as if the worker was continuing to work.

This means the worker is not placed on temporary total disability benefits when the modified work ends and:

- if the worker's earnings while on modified work resulted in no compensable earnings loss, the worker is not eligible for any temporary wage loss benefits when the modified work ends
- if the worker's earnings on modified work were supplemented by temporary partial disability benefits, WCB will continue to pay the temporary partial disability benefit while the temporary disability lasts

The worker is eligible for continuing temporary partial disability benefits even if the benefit was paid on assignment to the employer while the modified work was in place.

Although the worker may not be eligible for wage loss benefits, the worker continues to be eligible for medical aid and any other appropriate benefits. In all cases, WCB will monitor the worker's recovery and will adjust benefits as necessary. The egregious conduct provision in s.56(15.1) applies only to temporary disability benefits and does not affect benefit eligibility if the injury results in permanent disability.

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10. What is egregious conduct?

Canadian courts have considered the phrase “*egregious conduct*” and have defined it as conduct that is “flagrantly bad” or “staggeringly bad, or obviously wrong, beyond any reasonable degree”.

To trigger the financial consequences of s.56(15.1), the worker’s conduct must be shockingly bad to a reasonable person (see note at the end of this question).

To determine if a worker’s conduct meets the definition of egregious conduct, WCB must consider the context in which the behaviour occurred. Would the facts of the behaviour and context lead a reasonable person, from society at large, to consider the behaviour shockingly bad? To provide the proper context for a decision WCB will consider, but is not limited to, the following factors:

- If impairment was involved, did it make the worker physically and mentally incapable of performing their duties? How was impairment determined and validated? Medical test? Visual identification? What is the reliability of the mechanism?
- Was the conduct a deliberate, intentional act, or an unintentional error?
- What are the policies that were not followed? Are those policies well known and consistently enforced? Has the worker engaged in this conduct before? If so what disciplinary measures were taken?
- What were the actual or potential consequences of the conduct? Did it endanger the worker or others and/or cause injury or property damage?
- Are there any mitigating factors?

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*Egregious conduct
(continued)*

Circumstances that may involve egregious conduct include, but are not limited to: a breach of an employer or professional safety standard, rule, or policy; violence, including aggressive, threatening behaviour; sexual harassment or assault involving coercion, threats, or violence; deliberate destruction of property; and fraud or embezzlement.

WCB will also consider any other circumstances that may arise.

NOTE: WCB’s decision is made only for the purpose of applying s.56(15.1). It does not affect the employer’s ability to set company policies or its right to discipline its workers for actions that are contrary to those policies.

11. *What should an employer do if considering withdrawing modified work or terminating an injured worker because of conduct the employer believes is egregious?*

Employers may contact WCB at any time to determine whether the exception to s.56(14) due to egregious conduct will apply.

If WCB determines the worker’s conduct does not meet the criteria for egregious conduct, it will consider whether the conduct is considered a failure to cooperate (see Policy 04-11).

NOTE: If an employer terminates or withdraws a worker’s temporary modified work and WCB determines the worker’s behaviour was not egregious conduct, s.56(14) directs WCB to place the worker on full wage loss benefits (see Question 8).

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12. What are the reporting requirements when modified work is made available?

No Time Loss

All accidents are to be recorded as required by Occupational Health and Safety regulations and First Aid Regulation.

If a worker’s employment is modified beyond the day of the accident to accommodate a compensable injury, the accident must be reported to WCB, even if there is no time loss or loss of earnings.

WCB will be satisfied with the worker accepting a modified work program immediately, provided the attending physician, employer, and worker agree on suitable modified employment. WCB will review the suitability of the program when the accident reports are received.

Time Loss

All injuries with time loss for more than the day of the accident must be reported to WCB in accordance with the WCA.

Usually, WCB will review proposed modified work plans before the injured worker returns to modified employment. If, however:

- a) the worker misses only a short period beyond the day of the accident and is declared medically fit to return to modified employment before a WCB claim has been established, and
- b) the attending physician, employer, and worker agree on suitable modified employment,

then the worker may begin the modified work program. WCB will review the suitability of the program when the accident reports are received.

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13. *What happens during a strike or lockout?*

WCB considers temporary modified work unavailable through no fault of the worker during legal strikes and/or lockouts of the worker’s bargaining unit. Any ongoing entitlement will depend upon the remaining disability and level of work restrictions.

Rehabilitation and medical services continue with any modifications necessary to achieve employability.

(Note: In cases of no time loss injuries, if a worker’s temporary modified work program is interrupted by a labour dispute, WCB may consider the claim as no time lost for reporting purposes.)

14. *What happens when there are business disruptions during a local or provincial state of emergency?*

When a local or provincial state of emergency is declared under the *Emergency Management Act*, and the state of emergency prevents employers from continuing to provide temporary modified work, WCB will determine ongoing entitlement based on the remaining disability and level of work restrictions.

For additional information see Policy 07-02, Part II, Application 2, Question 14.

15. *When is this policy application effective?*

This policy application (Application 4 – Temporary Modified Work Programs) is effective January 1, 2021, except when noted otherwise in a specific policy section(s).

[Document History](#)

Previous versions

- [Policy 0405 Part II, Application 4 - September 2018](#)

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- [Policy 0405 Part II, Application 2 - April 2018](#)
- [Policy 0405 Part II, Application 2 - December 2016](#)
- [Policy 0405 Part II, Application 2 - August 2015](#)
- [Policy 0405 Part II, Application 2 - April 2004](#)
- [Policy 0405 Part II, Application 2 - January 2004](#)
- [Policy 0405 Part II, Application 2 - June 2003](#)
- [Policy 0405 Part II, Application 2 - January 2002](#)
- [Policy 0405 Part II, Application 2 - September 2001](#)
- [Policy 0405 Part II, Application 2 - October 1997](#)
- [Policy 0405 Part II, Application 2 \(consolidated manual 1st Issue\) - February 1997](#)