



# **Return to Work Programs**

## **CUPE Local 1004**

Presented by:

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# Overview of Presentation

There are different kinds of RTW programs. This presentation briefly reviews common characteristics, including WCB RTW plans.

- When is a RTW Required and Who Participates?
- Questions to be Asked
- What about Employee Privacy?
- Restrictions or Limitations?
- Life Cycle of a WorkSafeBC (“WCB”) Claim

# RTW – What is Included?

- Problems and Concerns
- Role of Medical / Physicians
- Special Considerations:
  - Chronic Pain
  - Psychological Conditions and Mental Stress
  - Mature Workers – Age 65 and Beyond
  - Medical Issues – Obtaining the Evidence
  - RTW – the Union's Role

# When is a RTW Required?

- RTWs can arise out of WCB claims, ICBC claims, sick leave, chronic illnesses, Chronic Pain, and Duty to Accommodate (“DTA”) situations.
- An LTD carrier may have very different RTW plan policies than WCB Policy or Collective Agreement language. We need to know the common characteristics.

# Who Participates?

- Who participates depends on numerous factors:
  - Type of absence e.g. WCB vs. ICBC
  - Is there also a DTA?
  - Unionized or non-Unionized environment
  - Wording of Collective Agreement language

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# Who Participates? (Continued)

- Employee
- Union (if it is a unionized workplace)
- Human Resources
- WCB, as applicable
- Employee's supervisor, as applicable (and subject to the need for maintaining strict confidentiality and privacy)

# Questions to be Asked

- Is this a WCB related RTW? Sort the issues.
- Are there overlapping DTA issues?
- Is there a Collective Agreement that applies?
- Are there different requirements for sick leave, short term disability, medium term disability, long term disability, Workers Compensation, CPP, EI Sick Leave, OH&S issues, safety issues, Duty to Accommodate, etc. Each case is unique.

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# Questions to be Asked (Continued)

- How do we protect employee privacy?
- How do we get the best medical evidence?
- What is the RTW Plan? Where are we in six (6) months or a year?
- Does the employer have at least two job descriptions for RTWs – one for severe restrictions / limitations and one for less severe scenarios?

# Questions to be Asked (Continued)

- Are employees aware that there is a RTW plan / transitional duty plan available?
- Is it via WCB, LTD or the employer?
- Does it comply with the Collective Agreement?
- Is the Union involved at every stage?
- What is the disability management contract provider's involvement?

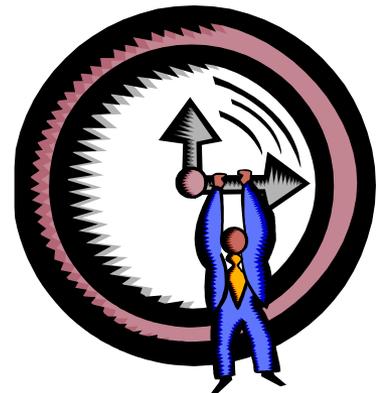
# Restrictions vs. Limitations

- **Restrictions** are duties that should not be performed.
- **Limitations** are tasks that cannot be performed.
- These need to be reviewed every 30 days
- If no full return to work after 30 days, is a case management meeting needed?

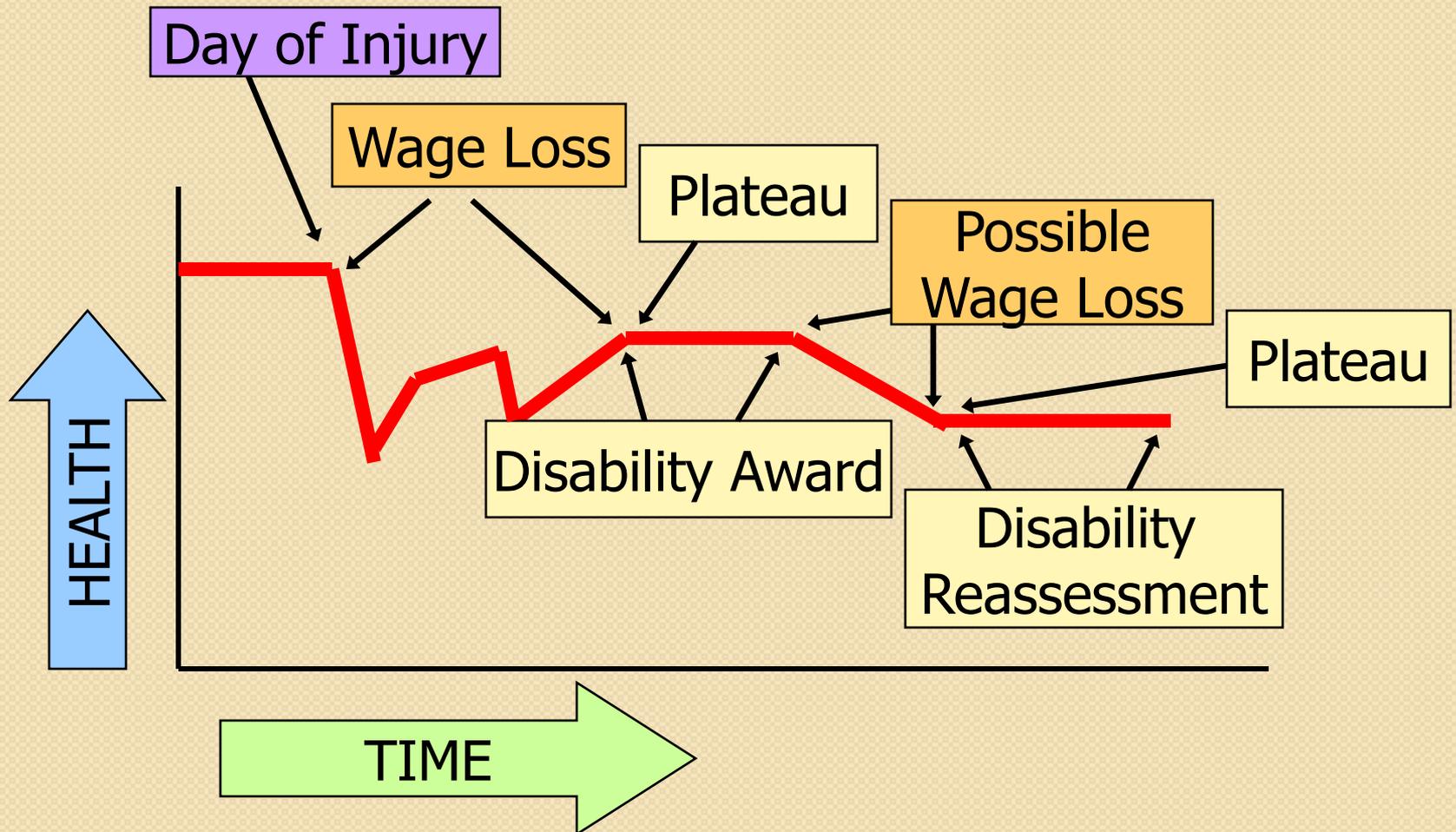
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# Restrictions vs. Limitations (Continued)

- While the WCB looks primarily at limitations, both need to be addressed.
- Both subjective and objective evidence should be included in the assessment and equal weight afforded to each.

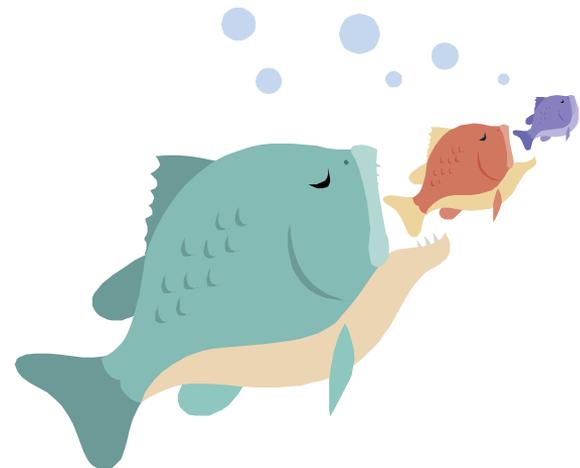


# Life of a WCB Claim – Where Does RTW Fit In?



# Life of a Claim – Where Does RTW Fit In?

- A RTW can occur anywhere in the lifecycle of a WCB claim.
- What if an employee is receiving Vocational Rehabilitation (“VR”) by the WCB?



# What if WCB Sponsored Vocational Rehabilitation is Occurring?

- VR is not a bar to RTW programs occurring. They should be coordinated though.
- Phase I is the most common time when RTW as related to WCB claims may occur, but, is where Case Managers are involved.

# 5 Steps to the Vocational Rehabilitation Process – At What Stage Can An RTW Commence?

**Phase 1** – return to same job with same employer

**Phase 2** – modified or different job, same employer

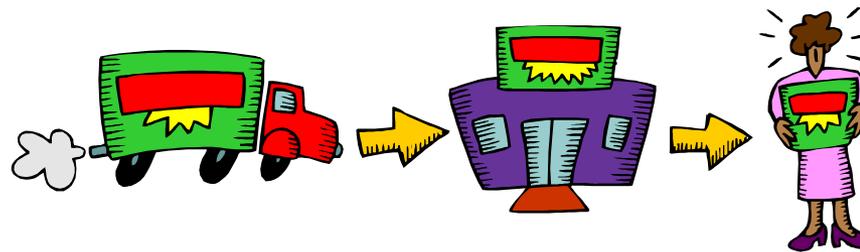
**Phase 3** – different job, new employer, same industry

**Phase 4** – different job, new employer, all industries

**Phase 5** – consider new occupational skill development

# Duty to Accommodate and RTW

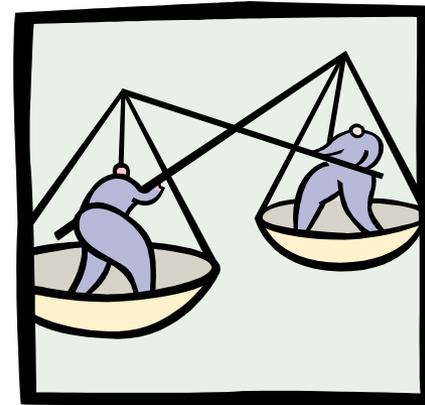
- DTAs are unique considerations.
- Always ask if a DTA is required.
- DTA = RTW? Not always the same.
- A RTW may be part of the DTA process.



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# Duty to Accommodate and RTW (Continued)

- Like RTWs, accommodation may include:
  - Training
  - Assistive devices
  - Bundling of duties
  - Modifying duties
  - Changing hours
  - Ergonomic or physical layout changes



# Key barriers to the RTW process included:

- (i) Quality of light duty jobs
- (ii) Supervisor buy in
- (iii) Co-worker buy in
- (iv) Morale in general
- (v) Size of employer

# RTW and Forced Participation

- Workers are at risk of re-injury, short term RTW, secondary absences and new claims where forced to participate in a RTW.
- Carriers have an enhanced ability to force RTW prematurely as they may cancel benefits.
- 13% of workers had a second absence as a result of being forced to participate in a RTW.

# RTW and IMEs

- The use of and role of IMEs should be extremely limited. In BC, employers are increasingly attempting to use IMEs, often without Union knowledge, for a variety of circumstances.
- The worker should have the choice of their physician, not an insurer or employer.

# RTW & Factors in Medical Care

- (i) Identifying the appropriate job duties that can be performed as part of a RTW
- (ii) Independent Medical Examinations (“IMEs”) were a crucial part of the RTW process
- (iii) The choice of physician
- (iv) The quality of communications between the Parties
- (v) The physician’s familiarity with the worker’s job duties

# Special Considerations

## (i) Chronic Pain

- **Chronic Pain** (and **Complex Regional Pain Syndrome**) may be present.
- These conditions may complicate or delay a RTW.



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# Chronic Pain and RTW (Continued)

- Includes the diagnosis of pain disorder, per the DSM-5 (American Psychiatric Association 2010).
- Multidisciplinary treatment and rehabilitation may assist in RTW.
- Always clarify the diagnosis and impact on both limitations and restrictions.

## (ii) Mental Stress and RTW – How Are Psychological Issues Addressed?

- How does that affect RTW?
- Stress and psychological conditions can arise out of employment and non-work related sick leave.
- May be both physical and psychological elements.



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## (iii) Mature Workers - Age 65 and Beyond

- More workers are working beyond age 65.
- Mature workers are still covered by the Act.
- Mature workers may require a more thorough examination of RTW options with care to not engage in age discrimination.



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# Mature Workers – Age 65 and Beyond (Continued)

- The most recent IAIABC (UC Berkeley) study on the aging workforce and attendant injuries stated that:

“...under reporting increases substantially after workers reach 65. As a rough estimate, a worker over the age of 64 is 40% to 60% less likely to report an occupational injury than a similar worker 55-64 in the same job working the same number of hours...” *more...*

# Age 65 and WCB Coverage (Continued)

And,

*“Gender and injury*



Between the ages of 25 and 64, women have injury rates 20% to 40% higher than men in the same job, working the same number of hours...”



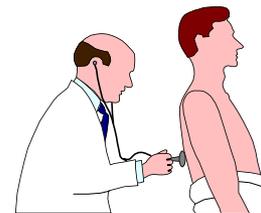
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# Age 65 and WCB Coverage (Continued)

- How can a RTW be initiated when the reporting of the injury fails to occur?
- Employers need to ensure that employees know RTW programs are available – regardless of age.

# Obtaining Medical Evidence – Role of Union Advocates

- When corresponding with the physicians, include an authorization form signed by worker.
- Include the worker's name and WCB claim number.
- Identify yourself.
- Clearly explain the issue(s) and why the opinion is required.



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# Obtaining Medical Evidence (Continued)

- Provide a brief background. Outline issues.
- List questions.
- Attach relevant medical reports.
- Confirm price and method of payment.
- Thank the practitioner in advance.
- Physicians cannot act as advocates.
- **PRIVACY, PRIVACY, PRIVACY!**



# WCB Advocacy and Section 12 of the BC Labour Relations Code

- Unions are not required to represent members in WCB appeals or WCB related RTW initiatives unless the obligations arise out of the Collective Agreement as per Section 12 of the BC Labour Relations Code.



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# However...

If a Union chooses to assist in areas which are outside of its statutory obligation, they will be responsible for any error that constitutes simple negligence. So Unions have a broader spectrum of liability for potential errors or negligence.



# Conclusion & Questions

- Disability and privacy law changes frequently.
- Each case requires a factual analysis.
- Be “big picture” oriented.

