



NL FIREFIGHTERS STATUTORY REVIEW

FINANCIAL LOSS TO FIREFIGHTERS

International Association of Firefighters



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Issue for Review

Due to the unique environment that fire fighters work in we are requesting that this exceptionality should be recognized and as a result, fire fighters should be compensated for 100% of net pay when injured while responding to and working at an emergency incident. We further understand that the conditions around our station houses are for the most part controlled and therefore would not be applicable to the 100% coverage.

We are recommending that The Workplace Health, Safety and Compensation Act be amended to incorporate the following:

In the case of Firefighters who are injured, while responding to and engaged in emergency incidents, where the potential for injury exceeds the normal protection offered under the Occupational Health and Safety Act, the compensation payable shall be calculated on the basis of 100% of pre-injury earnings.

This proposed amendment would only cover injuries, which firefighters incur while responding too and engaged at emergency incidents. Other injuries not meeting these criteria would be compensated based on the appropriate income replacement rate provided by section 74 of the Act. This recommendation would encompass the parts of our occupation that are hazardous, unpredictable, and uncontrolled.

Why Should Fire Fighters Receive 100% of Net Pay

Firefighting is a unique and hazardous occupation. Our focus is on life safety and property conservation. In the course of fulfilling our duties we respond to a wide range of emergency incidents, which include, but not be limited to;

fire suppression and rescue, emergency medical responses, motor vehicle collisions, hazardous materials incidents, Rope/Helicopter rescue, cold-water rescue and confined space rescue. As you can see, the types of emergency calls we receive for assistance are not only diverse in nature, but also diverse in demand and necessity. The work environment of a fire fighter is constantly changing from one emergency incident to another and each incident presents with different hazards and safety concerns.

Further, we would suggest that the public has an expectation of protection which would include an aggressive intervention and mitigation of their emergency circumstances. The public does not expect fire fighters to refuse to work because the situation is hazardous and unsafe. It would seem evident that fire fighters often cannot refuse to enter an area because conditions are hazardous to their health and safety. This circumstance is somewhat unique to fire fighters.

We are often the first and primary responders for all types of emergency incidents in this province. Given that most of these emergency responses are as a result of, or have since become, totally uncontrolled events, fire fighters routinely put their lives in jeopardy and their personal safety in harm's way for the protection of the general public. Fire Fighters are faced with a variety of dangers daily.

Regardless of the situation, regardless of the consequences, our fire fighters are always on the front lines, 24 hours a day, 365 days a year and our commitment to the public is unwavering. As a result, unfortunately, fire fighters are sometimes injured while performing their duties and all too often pay the ultimate sacrifice for performing their work. We are frequently subjected to extreme heat, cold, smoke containing hazardous chemicals, not to mention being at risk of injury from structural collapse, vehicle accidents or a fall from heights. Whenever our members leave their respective stations, the environment they enter is unknown and unpredictable, but they perform their work with courage and without hesitation.

Occupational Health and Safety Factors

While our members rely upon the National Fire Protection Association (NFPA) standards to regulate the use of personal protective equipment, and response protocols our risk of injury is merely reduced, never eliminated. For example, though we wear Bunker Gear and other pieces of personal protective equipment (PPE) to protect us from fire's excessive heat, direct flame, and the elements, our equipment has limitations and is unable to protect us against all hazards that we face while responding to and working at a fire scene or other emergency incidents. Apart from having the proper equipment and the Department's Standard Operating Guidelines (SOGs) to protect us, we are at the mercy of the circumstances of each incident that we attend.

The provincial Occupational Health and Safety Act and Regulations dictate provision for workplace safety, however unlike other industries and businesses we are not always able to avail of the benefits of the OHS Act while attending to emergency incidents. At least not in the manner that is intended by the Act.

Right to Refuse

Section 45 of the Occupational Health and Safety Act states.

45. (1) A worker may refuse to do work that the worker has reasonable grounds to believe is dangerous to his or her health or safety, or the health and safety of another person at the workplace

(a) until remedial action has been taken by the employer to the worker's satisfaction;

(b) until the committee or worker health and safety representative has investigated the matter and advised the worker to return to work; or

(c) until an officer has investigated the matter and has advised the worker to return to work.

To refuse unsafe work, as intended and scripted by the OHS Act and Regulations, a firefighter would first have to report it to a supervisor. If not satisfied with the response it can be reported to the occupational health and safety committee. Finally, if not satisfied with the result it can be investigated by a provincial health and safety inspector. I would suggest that these provisions for refusal of unsafe work are more appropriate for staple controlled workplaces and are not practical for fire scenes and other emergency incidents where conditions are very fluid and uncontrolled. With the above information noted, we believe that while responding to and attending to emergency incidents fire fighters in this province do not have the same right of refusal privileges as other workers.

Further to the provisions of right to refuse in the OHS Act and Regulations it is fair to assume that the public we serve have a realistic expectation that we will respond to their call for assistance and mitigate their circumstances. They do not expect us to refuse to assist because the conditions are not safe.

Imminent Danger

Occupational Health and Safety Act Section 8 states:

Imminent danger

8. A worker shall not

(a) carry out work where there exists an imminent danger to his or her or another worker's health or safety or the health or safety of another person; or

(b) operate a tool, appliance or equipment that will create an imminent danger to his or her or another worker's health or safety or the health or safety of another person.

Again, we would suggest that these provisions are better suited for controlled workplaces and are not easily implemented on the fireground or at most emergency incidents. Fire fighters constantly perform work under imminently dangerous conditions. That is what we do, and this is where we work.

When a fire fighter dons a breathing apparatus and enters a burning structure, smoke-charged and superheated, impending danger and the potential for disaster is around every corner and at the end of every step. As we have indicated, this is the environment in which a fire fighter works and is exposed to at most every fire call. It is for this reason we feel that Section 8 of the OHS Act cannot be readily applied to our workplace.

Recognition for Rescue Work in WHSCC Act.

Section 79 of the Workplace Health Safety and Compensation Act entitled *Rescue Work* recognizes that special compensation should be awarded to those who are injured while performing rescue work at emergency incidents. It states,

In the case of a worker suffering injury arising out of and in the course of employment while doing rescue work for the saving of human life in a mine or in an industry or on the premises of either of them, during or immediately after an explosion, injury, fire, or other catastrophe the compensation payable in that case shall be calculated on the basis of 100% of the net earnings instead of the percentage otherwise provided in this Act.

The intent of this section of the Legislation was to recognize the inherent dangers involved in performing these actions and subsequently reward the individuals by increasing the compensation payable to a worker injured in the execution of these duties. Therefore, we can only extrapolate that the Commission has deemed that the act of saving a life, or attempting to save a life, under treacherous conditions, is worthy of recognition and incentive.

Unfortunately, however, the Commission saw fit to draft additional policy to exclude persons who put themselves at risk each day in the course of protecting the people. In Workplace NL Policy EL-01: Earnings Loss Benefits Calculation, the Commission expounded on the Act to interpret this section to unjustly eliminate fire fighters. The Commission added the words,

“Where a worker who is not normally required to perform rescue work suffers an injury... .”

It then goes on to list those occupations people depend on to protect them in their time of need by excluding them from equitable compensation in the event of injury.

Workers who are expected to perform rescue activities as part of their regular occupation, such as firefighters, police officers, and emergency services personnel, are compensated based on the appropriate income replacement rate provided by section 74.

It is our position that the policy drafted by the Commission to interpret Section 79 does not follow the intent of the Act. The language in Section 79 of the Act is clear and unequivocal and the Commission policy changes the intent of the legislation.

The Commission can develop policy to expand upon or further clarify a section of the Act, but it cannot create policy that changes the legislation, or the intent of the legislation. In light of these facts, we use the rationale that we are not in control of our work environment, we do not have the same right to refuse dangerous work as other workers, and that other workers are rewarded for doing what we do daily. Therefore, considering the unique circumstances surrounding the provision of fire and emergency services, we, the Firefighters of Newfoundland and Labrador, are requesting that Section 79 of the Workplace Health Safety and Compensation Act of Newfoundland and Labrador be applied to all fire fighters who are injured while responding to, and while engaged in, fire and emergency service activities at the same rate as other workers performing like duties; 100% of net pay.

Inherit Workplaces and Conditions

As fire fighters we respond to a wide variety of residential, business, and industrial properties. We have no control of the safety circumstances of

these properties. In essence we inherit other people's workplaces in 100% of our calls. We must rely on the safety measures of these occupancies for our own personal safety.

OHS Regulations Section 12 detail the requirements of an Occupational Health and Safety Program. This is also only applicable to stable workplaces such as our fire stations. However, we have no control of, or knowledge of OHS programs in the many occupancies we respond to in emergency situations. In most cases we have no knowledge of the conditions of the structures we respond and no knowledge of what is stored there.

The regulations also specify conditions to be followed when, working from heights, working from roofs, in visibly obscure environments, working from ladders and working in confined spaces. These provisions are very difficult to practice in the dynamic, hurried and rapidly changing environment in which we must work. In addition, we often find ourselves having to work in the presence of chemicals and toxins without knowing how they are stored or having safety data documents. In a lot of cases we are unaware of what is stored in the buildings we respond to.

Some examples of injuries because of responding to unsafe occupancies are:

- **Fire fighter falls 12 feet off a landing and fractures ribs.** Smoke conditions had obscured his vision and the contractors working on the building had forgotten to put a temporary railing around the landing.
- **Fire fighter injures his back when he fell through a hole in the floor.** The owners of the building had not had the hole covered. In smoke and blackout conditions the fire fighter toppled into the hole.
- **Fire Fighter entered an automotive repair shop in visibly obscure conditions, fell into floor pit and injured back.** Owners had neglected to cover the pit as required.
- **Fire fighter receives back injuries when superheated gases in a house fire exploded violently.**

As is indicated from just these few scenarios we inherit the unsafe workplaces of others without having the ability to identify these shortcomings until it is too late. What is even more disturbing is that sometimes we fall prey to the criminal element of society which,

unfortunately, is becoming more and more prevalent throughout this province.

Collective Agreement Recognition

Prior to January 1993, and in effect since 1972, our Employer through our Collective Agreement approved a Memorandum of Understanding referencing Injury on Duty. In this MOU, it was agreed that in the event of an injury in the performance of one's duties, a fire fighter would receive from the Employer the difference of the fire fighter's regular salary(gross) and that received from Worker's Compensation.

Onus under City of St. John's Act

Apart from the right to refuse provisions and the working in imminent danger conditions that are not applicable to fire fighters during emergency incidents the St. John Fire Department Act also places an onus on fire fighters to not refuse work. This is noted in legal opinion provided by O'Dea Earle law firm. (**Attached Appendix A- Pg. 16**) If a fire fighter fails to comply with, or contravenes the provisions listed below is guilty of an offence and subject to discipline upon which could include dismissal, suspension, or reduction in rank.

Before 1992, Firefighters in St. Johns were governed by the same under the Provincial Government Department of Justice, and where governed by the St. Johns Fire Department Act. In 1992, the St. John's Fire Department became the St. John's Regional Fire Department under the municipal government of the City of St. John's. Because of this transition the Fire Department Act, is now municipal legislation in the St. John's Fire Department By-Law. This by law governs every firefighter and employee of the St. John's Regional Fire Department. Provisions relevant to this discussion are contained below, as stated by the city of St. Johns Act:

5. A member shall be courteous, obedient, loyal and efficient in the performance of his duties under the Act and the By-Law.

6. A member shall (a) perform within the City and at such other places in the Province as may be directed by the City, all firefighting duties of any kind whatsoever that may be assigned to the Department by the City from time to time;

7.(1) A member shall not

(a) disobey the lawful command of any member who is superior in rank or is in a supervisory capacity over the member;

(e) conduct himself by word or deed in an insubordinate manner in the course of his duties;

(f) shirk his duty at any fire;

(n) engage in conduct unbecoming a member and liable to bring discredit upon the Fire Department;

(3) A member who fails to comply with or otherwise contravenes any of the provisions of these regulations is guilty of an offence."

Pursuant to the provisions of the By-Law, upon conviction a member can be subject to a number of penalties, including (a) dismissal; (b) a reduction in rank; (c) suspension without pay for a period not exceeding six months; or (d) reprimand.

Benefits to the System

It is often assumed that if a fire fighter received 100% of pay while on injury on duty leave that this would be a deterrent to return to work. We now know that this is not the case and in fact the severe reduction in pay under the current compensation for compensable injuries has a negative impact on the compensation system.

When injured while on duty firefighters lose a tremendous amount of income. St. Johns Regional Firefighters income loses are as follows:

Rank	Annual Salary	Bi-Weekly Gross Pay	* Bi-Weekly Net Pay	*WHSCC Bi-Weekly Net Pay
Firefighter Level 3 (37 + months)	\$100,575.58	\$3,902.68	\$2,129.44	\$1,566.04
Fire Lieutenant	\$111,641.01	\$4,330.12	\$2,363.67	\$1,566.04
Fire Captain	\$121,698.89	\$4,722.56	\$2,576.62	\$1,566.04

For a more comprehensive version please view Appendix B- Pg. 20

The extreme loss of income often results in under reporting of injuries. Injuries are not reported until they become chronic because a fire fighter cannot afford the income loss. Fire Fighters will work as long as they can because of the financial impact on them and their families. Delayed reporting of injuries leads to longer healing times and more extensive treatment and rehabilitation. For example, a shoulder strain that might require a brief off work period and some physiotherapy becomes a chronic long-term injury that requires surgery and extensive rehabilitation.

Due to the income loss fire fighters who sustain injuries are likely to come back to work to soon and before the injury is healed. This often results in undo suffering for the injured person, neglected treatment or re-injury and a longer period off work.

Firefighters may also opt for other forms of compensation such as sick leave, long term disability insurance. This is particularly true for injuries that are not immediately disabling. In these cases, the employer may be paying 100% of the compensation. This only serves to worsen an already bad situation by shifting the workload and having workers unable to avail of long-term benefits due to non-reporting of injuries.

Injury prevention programs are often based on potential or known injuries. Unfortunately, due to the possibility of under reporting it is difficult to determine what is injuring our fire fighters and to develop a strategy for injury reduction.

Prevention and Rehabilitation

Fire fighters are very aware of the potential for injury and the personal financial impact of a workplace injury on them and their families. As a result, we are very active participants in the prevention of injuries and rehabilitation.

The St. Johns firefighters participate in an IAFF, IAFC joint wellness and fitness program which promotes and encourages wellness and fitness through medical and physical testing and nutrition. The program also emphasizes programs for mental and behavioral health. This provision is incorporated in our collective agreement and exercised by all members.

We are also actively engaged in training and the development and implementation of programs related to disability management and early and safe return to work. We have trained individuals who assist individuals with the early and safe return to work for workplace injuries and illness and non-work- related injury and illness. For example, if a fire fighter is off work or projected to be off work for four or more consecutive shifts they have to provide functional abilities information and be assessed for return to work opportunities by a committee consisting of employer and labour. Please see copy of Disability Management Program attached. (**Attached Appendix C-Pg. 21**)

Prior Recognition by Stat Review

The 2006 Statutory Review Committee recognized the uniqueness of first responders work environment and the need to upgrade compensation for workplace injuries. The Report of the 2006 Statutory Review Committee on the Workplace Health Safety and Compensation Act entitled "Finding the Balance" dated May 31, 2006, Recommendation 34, states the following:

"The Committee recommends the provincial government amend the Act to provide wage loss benefits at 100% of net pre-injury earnings for police officers, career firefighters, and correctional officers when injured while responding or engaged in an emergency situation where the potential for injury exceeds the normal protection offered under the Occupational Health Act."

Conclusion

We would like to again stress that our profession is a unique and an uncontrolled workplace which is quite diverse each time we respond. We have an elevated level of service that is expected by the public and, as a result, we would not be able to avail of the Right to Refuse, or at least not as outlined by the Act.

Apart from that, we do realize the inherent dangers of our profession and the reality that the public relies upon us to aggressively intervene in their time of need. What we would like, however, is the understanding and respect that our workplace is unique, where the 'typical day-at-the-office' is punctuated with periods of sheer terror and uncertainties, where exposure to

toxins and diseases, risk of mechanical injury, violent fire incidents, structural collapse, motor vehicle accidents, mental anguish, etc., is commonplace.

As a result of this we feel that fire fighters deserve additional compensation under the Act for injuries that arise out of responding to and attending to emergency incidents.

Appendix A

Via E-Mail:

8 April 2020

St. John's Fire Fighters Association
 IAFF Local 1075
 P.O. Box 38
 RPO Centennial Square
 Mount Pearl, NL
 A1N 2C2
 Attention: Jim O'Toole, Secretary

Dear Sir:

RE: Right of Refusal

We write further to your request for our opinion with regard to the capacity of Association members to refuse dangerous work, and the potential consequences to the same.

Occupational Health and Safety Act

Most employers and employees in the Province are governed by the *Occupational Health and Safety Act* RSNL1990 Ch. O-3. The main purpose of the Act is to protect workers from health and safety hazards on the job. It sets out duties for all workplace parties and rights for workers. It establishes procedures for dealing with workplace hazards and provides for enforcement of the law where compliance has not been achieved voluntarily.

One of the principles which appear in all comparable legislation in most jurisdictions is the right to refuse unsafe work. The principle is reflected in the Newfoundland and Labrador legislation at s. 45:

"Right to refuse to work

45. (1) A worker may refuse to do work that the worker has reasonable grounds to believe is dangerous to his or her health or safety, or the health and safety of another person at the workplace
- (a) until remedial action has been taken by the employer to the worker's satisfaction;
 - (b) until the committee or worker health and safety representative has investigated the matter and advised the worker to return to work; or
 - (c) until an officer has investigated the matter and has advised the worker to return to work.
- (2) Where a worker refuses to do work under subsection (1) his or her employer may reassign the worker to other work that is reasonably equivalent to the work he or she



normally performs and the worker shall accept the reassignment until he or she is able to return to work under subsection (1).

(3) Where a worker is reassigned to other work under subsection (2) the employer shall pay the worker the same wages or salary and grant him or her the same benefits the worker would have received had the worker continued in his or her normal work.

(4) Where a worker has reasonably refused to work under subsection (1) and has not been reassigned to other work under subsection (2) the employer shall pay the worker the same wages or salary and grant the worker the same benefits the worker would have received had the worker continued to work, until he or she is able to return to work under subsection (1).

(5) A reassignment of work under subsection (2) is not discriminatory action under section 49.”

However, the right to refuse unsafe work is not unlimited. Occupational health and safety schemes have recognized that some workplaces have inherent dangers and have imposed obligations on employers and employees which are designed to *reduce* risk while recognizing that risk cannot be eliminated in its entirety. For example, we see the language of the general employer duty as reflected in the regulations:

“General duties of employers

14. (1) An employer shall ensure, ***so far as is reasonably practicable***, that all buildings, structures, whether permanent or temporary, excavation, machinery, workstations, places of employment and equipment are capable of withstanding the stresses likely to be imposed upon them and of safely performing the functions for which they are used or intended.
- (2) An employer shall ensure that necessary protective clothing and devices are used for the health and safety of his or her workers.
- (3) The employer shall ensure that safe work procedures are followed at all workplaces.
- (4) An employer shall ensure, ***so far as is reasonably practicable***, that work procedures promote the safe interaction of workers and their work environment to minimize the potential for injury.”

Implicit in the language is a recognition that workplaces and working conditions vary, and that the obligation to provide a workplace free from danger is relative to the nature of the workplace.

Likewise, the employee’s right to refuse work is also relative to his or her workplace. While this has not been specifically reflected in our legislation (unlike some other jurisdictions), some



occupations have been recognized as exposing employees to dangers as part of the occupation, and while dangers must be mitigated against they cannot be eliminated. Generally speaking, the right to refuse work does not apply when the danger is inherent in the worker's work, is a normal condition of the worker's employment or if the worker's refusal to work would directly endanger the life, health or safety of another person. Refusal rights don't apply where danger is a normal part of the job.

An obvious example, and in response to your specific inquiry, fire fighters cannot refuse to respond to a fire out of fear that they'll suffer an injury. Like a physician's risk of exposure to infectious disease, or a correctional officer's risk of physical injury, a fire fighter has accepted a certain degree of risk of harm as a normal condition of employment, and a commensurate limitation on the right to refuse dangerous work. The process of assessing "danger" relative to refusal to work has been largely interpreted in case law as being residual in nature. The danger that remains after employers and employees have taken all steps they can take to eliminate, reduce or control the hazards, conditions or activities, will not be the basis upon which a fire fighter will be able to rely on his or her right to refuse.

With this limitation, it is possible for a member of the Association to be subject to discipline for failing to perform inherently dangerous work.

City of St. John's Act

Further, members may be subject to specific consequences under By-Law 1362 St. John's Fire Department By-Law passed pursuant to the City of St. John's Act. The By-Law provides for the organization of the St. John's Regional Fire Department and the basic procedural rules and administrative functions. As a paramilitary organization, the By-Law also provides a code of conduct and discipline for its members. Provisions relevant to this discussion are contained below:

“5. A member shall be courteous, obedient, loyal and efficient in the performance of his duties under the Act and the By-Law.

6. A member shall

(a) perform within the City and at such other places in the Province as may be directed by the City, all fire fighting duties of any kind whatsoever that may be assigned to the Department by the City from time to time;

7.(1) A member shall not

(a) disobey the lawful command of any member who is superior in rank or is in a supervisory capacity over the member;



(e) conduct himself by word or deed in an insubordinate manner in the course of his duties;

(f) shirk his duty at any fire;

(n) engage in conduct unbecoming a member and liable to bring discredit upon the Fire Department;

(3) A member who fails to comply with or otherwise contravenes any of the provisions of these regulations is guilty of an offence.”

Accordingly, in addition to the recognized restrictions to a member's right to refuse under occupational health and safety legislation, members also have professional employment obligations that compel them to put themselves in harm's way, or be subject to prosecution pursuant to the By-law. Pursuant to the provisions of the By-Law, upon conviction a member can be subject to a number of penalties, including (a) dismissal; (b) a reduction in rank; (c) suspension without pay for a period not exceeding six months; or (d) reprimand. In addition to the dedication to service of the public, the potential of discipline and the potential financial consequences of the same compel members to respond in inherently dangerous situations, which arguably increase the potential of suffering workplace injury.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours very truly,

O'DEA, EARLE

IAN S. PATEY

Enclosures

Appendix B

St. John’s Firefighter NET PAY VS. WORKERS COMPENSATION BENEFITS
As of March 2020

Maximum Compensable Earnings

- Maximum compensable earnings cap is \$66,980
- Maximum rate paid out is \$783.02/weekly or \$1,566.04/bi-weekly
- If salary under this cap, the maximum rate paid out is 85% of net pay

SJRFD Salary Scale

- Effective July 1, 2015 – current

BI-WEEKLY NET PAY VS WORKERS COMPENSATION BENEFITS

**Deductions for pension, union dues, health/dental, etc. are not included in the bi-weekly net pay amounts listed.*


Rank	Annual Salary	Bi-Weekly Gross Pay	* Bi-Weekly Net Pay	*WHSCC Bi-Weekly Net Pay
Firefighter Level 3 (37 + months)	\$100,575.58	\$3,902.68	\$2,129.44	\$1,566.04
Fire Lieutenant	\$111,641.01	\$4,330.12	\$2,363.67	\$1,566.04
Fire Captain	\$121,698.89	\$4,722.56	\$2,576.62	\$1,566.04

Appendix C

POLICES

Corporate and Operational Policy Manual

Passed By Council on: 2003/06/24
Last Revision Date:



Policy: 03-07-28

Disability Management Policy

Purpose

The City of St. John's Disability Management Policy is designed to promote employee health and recovery from disability (injury/illness) through early intervention and active case management along with opportunities for early and safe return to work. The effective reintegration of our employees with disabilities minimizes the loss of expertise and productive potential for the City. The Disability Management Program is co-operative, consistent and uses modified work, ease back, rehabilitation strategies, job placement and follow-up to ensure that a disabled employee remains at work or quickly returns to safe, productive and meaningful work. The employer is required to accommodate an employee up to the point of undue hardship as prescribed in the Workplace Health, Safety and Compensation Act and the Human Rights Act. For the purposes of this policy a Disability is defined as any impairment arising out of any work or non work related illness, injury or disease which prevents an employee from performing his/her essential job functions.

Policy Statement

Goals and Objectives

1. In conjunction with Occupational Health and Safety Committees, to prevent and decrease the incidence of injuries/illnesses and magnitude of disability on the worker.
2. To provide early and safe return to meaningful employment, in turn reducing human cost of disability.
3. To increase awareness of disability issues through educating employees, management, union and the Disability Management Committee.
4. To comply with current and future legislative requirements such as: Workplace Health, Safety and Compensation Commission (WHSCC), Collective Agreements and Human Rights Legislation.
5. To improve and enhance employee morale by valuing employee contributions.
6. To establish and promote an effective joint labour workplace based disability management program that will work with the disabled worker in all phases of the Return to Work Plan.

Success in the above objectives will be achieved through the collaboration, co-operation, communication, and commitment between all employees, management, union and other team members. Any case of non-compliance by any party will be taken seriously and reviewed individually. Failure to comply with this policy will be subject to disciplinary action as per City's Policy, Collective Agreements and Workplace Health and Safety Legislation.

Roles and Responsibilities

I Senior Management

For the purpose of this policy Senior Management includes: Council, Chief Commissioner, Associate Commissioner and Directors.

Responsibilities:

1. Provides visible support, commitment and, when required, participation in the Disability Management Program in conjunction with current legislation and collective agreements.
2. Within normal budgetary restraints provides recommended resources to ensure success of the Disability Management Program.
3. Provides support and empowerment to the Joint Disability Management Committee in carrying out the objectives of the Disability Management Program.
4. Arranges for the necessary resources to enable supervisors to carry out accommodations recommended by the Disability Case Manager.

II Supervisor

For the purpose of this policy a supervisor is defined as:

1. In the case of the initial reporting of an on-the-job injury/illness, the first non union supervisory employee to whom an employee reports.
2. In all other cases the person to whom the employee normally reports or has been instructed to report.

Responsibilities - Work Related Injury/Illness

1. Follows up with the injured/ill worker immediately to obtain details of work related injury/illness to facilitate the investigation process and completes the accident investigation form. Ensures employee seeks first aid or medical treatment if needed.
2. Completes a Form 7 within 48 hours of notification of a work related injury/illness resulting in lost time (time lost beyond the day of injury) or medical aid (a work related injury resulting in a medical visit without lost time beyond the day of the incident). Forwards a copy of Form 7 to the Disability Case Manager. Provides employee with Form 6 to complete.
3. Identifies transitional/modified work options, job accommodations or modifications that will assist in an early and safe return to work planning.
4. Assists the Disability Case Manager and Occupational Therapist when necessary for arranging and completing job site analyses.
5. Informs co-workers of job modifications and/or restrictions/accommodations for the returning employee.
6. Monitors recovery process and attendance of injured/ill employee to ensure compliance with the return to work plan and to prevent further disability. Faxes Employee Assessment Form on a weekly basis to Disability Case Manager.

7. Discusses with the Disability Case Manager and injured/ill employee any concerns with work duties or safety.
8. At the request of the Disability Case Manager, attends all meetings related to the return to work plan.
9. Completes an evaluation form on the return to work process.

Responsibilities - Non Work Related Injury/Illness

1. Notifies the Disability Case Manager of all absences in excess of **ten** consecutive working days. In the case of fire suppression personnel, such notification must take place in excess of **four** consecutive shifts.
2. Identifies transitional work options, tasks, job accommodations or modifications that will assist in an early and safe return to work planning.
3. Assists the Disability Case Manager and Occupational Therapist when necessary for arranging and completing job site analyses.
4. Informs co-workers of job modifications, restrictions and accommodations for returning employee.
5. Monitors recovery process and attendance of the injured/ill employee to ensure compliance with the return to work plan and to prevent further disability. Faxes Employee Assessment Form on a weekly basis to the Disability Case Manager.
6. Discusses with the injured/ill employee any concerns/issues with work duties or safety.
7. At the request of the Disability Case Manager, attends all meetings related to the return to work plan.
8. Completes an evaluation form on the return to work process.

III Employee

For the purpose of this policy an **employee** is any person employed by the City of St. John's including both non union and union as defined in appropriate collective agreements.

Responsibilities - Work related Injury/Illness

1. Reports all work related illness, injury or disability to his/her supervisor immediately. Seeks appropriate first aid or medical aid.
2. In the event of a medical aid (a work related injury resulting in a medical visit without lost time beyond the day of the incident) or lost time injury/illness(time lost beyond the day of injury), completes a WHSCC form 6 and forwards to WHSCC or to the Disability Case Manager who can forward for the employee. These forms can be obtained at the supervisor's office or from the Intranet.
3. Contacts his/her respective Early and Safe Return To Work Representative to assist with his/her Return To Work process.

4. Returns the Form 810 - Physicians Report of Injury (pink copy) to the Disability Case Manager as per Workplace Health and Compensation Legislation. Discusses functional abilities with the Disability Case Manager.
5. In consultation with Disability Case Manager attends all scheduled medical, rehabilitation and return to work plan appointments and/or meetings.
6. Takes an active role in initiating, developing and participating in safe and timely return to work opportunities.
7. Complies with recommendations of treatment providers. A Treatment Provider can be defined as: any medical professional that is presently providing treatment in assisting the injured worker in the recovery/rehabilitation period, e.g. physicians, chiropractors, physiotherapists, occupational therapists.
8. Advises the supervisor of any problems encountered with transitional work duties, safe work practices etc..
9. Co-operates with the WHSCC and current legislation in providing requested information regarding the return to work process, disputes or disagreements arising out of the return to work process.
10. If an injured/ill employee is unable to participate in his/her return to work plan due to sickness or any other reason, the employee must notify his/her supervisor or as per collective agreement.
11. In the event that an employee is determined unfit to return to his/her pre-injury job due to a work related disability, the employee is obligated to accept identified suitable and available employment as per Workers Compensation Early and Safe Return To Work Legislation(section 89.1& 89.2). Hierarchy of return to work options will be explored in accommodating employees.
12. Completes an Employee Assessment Form on a daily basis. This form will be sent to the Disability Case Manager at the end of the week by his/her supervisor.
13. Completes an evaluation form on the return to work process upon completion of program.

Responsibilities - Non Work Related Injury/Illness

1. Reports all non work related illness, injury or disability to his/her supervisor immediately or as per current procedure in place or collective agreement.
2. Employee contacts his/her respected Early and Safe Return To Work Representative, as needed, to assist with the Return To Work process.
3. In the event of non work related disability beyond **10** consecutive working days or fire suppression **4** consecutive shifts, the employee will be given a Functional Abilities Form to be completed by his/her Attending Physician. The Physician is paid by the employer for completion of the form. These forms are forwarded to the Disability Case Manager as soon as possible after a medical visit. The employee may be assessed and monitored by the City's Medical Officer for fitness to work as per current City Policy.

4. In consultation with the Disability Case Manager, attends all scheduled medical, rehabilitation and return to work plan appointments and/or meetings.
5. Takes an active role in initiating, developing and participating in safe and timely return to work opportunities.
6. Complies with recommendations of treatment providers. A Treatment Provider is defined as: any medical professional that is presently providing treatment in assisting the injured worker in the recovery/rehabilitation period, e.g. physicians, chiropractors, physiotherapists, occupational therapists.
7. Notifies the Disability Case Manager or his/her supervisor of any concerns with treatment or problems encountered as it pertains to his/her present injury/illness during the Return To Work Process.
8. If an employee is unable to participate in his/her return to work plan due to sickness or any other reason, the employee must notify his/her supervisor or as per collective agreement or current procedure in place.
9. Employee will complete an Employee Assessment Form sheet on a daily basis. This form will be sent to the Disability Case Manager at the end of the week by his/her supervisor.
10. Completes an evaluation form on the return to work process upon completion of program.

IV Disability Case Manager

Responsibilities (Non Work Related & Work Related)

1. Upon notification from the supervisor, contacts the injured/ill employee to ensure early intervention as per the Disability Management Policy.
2. Upon receipt of Functional Abilities Form, reviews information and contacts injured/ill employee to discuss functional abilities and fitness for work . Offers assistance and support through such programs as modified duties and easeback.
3. Works with the injured/ill employee to develop a safe return to work plan.
4. Co-ordinates and educates all participants in the return to work plan including: employee, supervisors, union representatives/ Early and Safe Return To Work Representative, health care providers, Human Resources personnel, payroll personnel and WHSCC.
5. Documents and monitors each case and the ongoing return to work plan. Provides copies of Return To Work Plans to: supervisor, employee and Early and Safe Return To Work Representative as needed.
6. Develops and maintains open communication with all parties involved in the injured/ill employee's return to work process.
7. Maintains confidentiality of employee information. Only functional abilities such as restrictions/limitations will be shared with his/her supervisor. Develops and maintains an atmosphere of trust and mutual support ensuring that rights are respected.

8. Facilitates appropriate assessments such as: Occupational Therapy, Functional Capacity Evaluations and Job Site Analysis.
9. Arranges for assistive devices and workplace modifications as indicated to facilitate and ensure a safe return to work.
10. Notifies the supervisor and/or the WHSCC Case Manager of any non compliance with the return to work process.
11. Updates database information and provides monthly reports and updates to relevant individuals on progress of cases. Such reports/updates will not contain confidential medical information.
12. In the event that an employee is determined unfit to return to the pre-injury job due to a non work related disability, any requests for accommodation will be reviewed by the Department of Human Resources in conjunction with unions, management and the Disability Management Committee outlined in the hierarchy of return to work options.
13. Provides information and support to employee and family if needed. Advises employee of Employee, Family and Assistance Program and makes referrals if necessary.
14. Works with the Disability Management Committee in developing tasks to assist an injured/ill employee back to work.

V Union Representatives/Early and Safe Return To Work Representative

For the purpose of this policy the Union means unions and associations which are recognized bargaining units doing business with the City of St. John’s. A union representative/Early and Safe Return To Work Representative is defined as an employee appointed by his/her union or management.

Responsibilities

1. Assists their members to seek appropriate help when injured, ill or disabled. Maintains confidentiality and ensures documents are kept secured
2. Assists the Disability Case Manager and supervisor to monitor the recovery progress of the injured/ill employee.
3. Participates in identifying early and safe return to work opportunities such as modified duties.
4. Supports and educates their members who are participating in return to work opportunities.
5. Provides feedback on the Disability Management Program.
6. Supports disability prevention initiatives by promoting safe work practices and reinforces the efforts of the occupational health and safety committees.
7. Understands and supports goals, objectives and benefits of the Disability Management Program and communicates it to their co-workers.
8. Strives to protect and provide for the Disability Management Program’s development and maintenance within the collective agreements.

VI Health Care Provider

The Health Care Provider is the attending Physician, Chiropractor, Physiotherapist, Psychologist, Psychiatrist, Occupational Therapist or other member of the rehabilitation team. The Attending Physician must provide the necessary information about the employee's expected return to work date, the functional abilities which will assist the employer in returning an employee safely back to work. It is essential that ongoing communication occurs between the Attending Physician, employee, Disability Case Manager and Early and Safe Return To Work Representative. This prevents misunderstandings and unnecessary prolonged absences. The Attending Physician or City's Medical Officer will complete Functional Abilities Form and alert to job demands that might cause re-injury or aggravation of an existing condition.

V11 Joint Disability Management Committee

For the purpose of this policy the Joint Disability Management Committee is comprised of representatives from the employer and employee groups (union and non union).

Role of the Joint Disability Management Committee

1. Defines the program, mission statement and specific objectives. Reviews and formalizes the Disability Management Policy and procedures on an ongoing basis.
2. Participates in the implementation, monitoring and evaluation of the Disability Management Program.
3. Ensures that all stakeholders are educated and aware of their roles and responsibilities.
4. Ensures that the Disability Management Policy and Program does not conflict with the language of the collective agreements.
5. Assists in the resolution of disputes arising from the return to work process and setting up procedures to deal with each one effectively.
6. Participates and assists in the development of return to work plans for more complex cases.
7. Updates Management and union groups on program's progress.
8. Develops creative job tasks/modified tasks which will enable injured/ill individuals to participate in the workplace.
9. When the hierarchy of return to work options have been exhausted and return to work requires cross union placement, there shall be a letter of understanding between the bargaining unit and the City stating the terms and conditions of the placement of the injured or ill employee. Each case will be reviewed by the appropriate Early and Safe Return To Work Representatives and will be examined individually depending on the circumstances and potential impacts to other bargaining unit members.
10. Modifies the Disability Management Program procedures and objectives based on feedback from the evaluations of the program.
11. Supports the work of the Disability Case Manager.

12. Works with other committees or individuals to prevent injuries/illnesses where possible in creating a healthy workplace.

Dispute Resolution Policy

An inevitable part of any collaboration process is disagreements between participants. When conflicts cannot be resolved easily a dispute policy should be in place to assist the participants.

Whenever there is a dispute the following steps can be taken:

1. Reviews Disability Management Policy and procedures as laid out for intervention, etc. If errors were made, then steps will be taken by the Joint Disability Management Committee to correct the situation.
2. In case of a dispute over the actual disability (medical dispute):
 - a. Reviews Functional Abilities Form on the injured/ill employee.
 - b. In the case of continued dispute after the review in (1), refers the employee back to medical professionals involved and, if warranted, assessment by the City's Medical Officer.
3. Seniority/collective agreement disputes will be referred to the Union Local and Management Personnel- Labour Relations.
4. If the dispute is involving a work related injury there is also a mediation process that is available upon request through WHSCC.

Program Evaluation

1. Defines methods of measuring the performance of the Disability Management Program.
2. Develops standard forms to collect the information required (i.e., satisfaction questionnaires)
3. Establishes procedures to look at any problems identified by the evaluation process.
4. The Disability Case Manager and Joint Disability Management Committee should be responsive to constructive criticism to ensure the Disability Case Management Program is meeting the needs of the employees, union and employer.

Approvals

Finance and Administration Standing Committee report - June 17, 2003; Regular Meeting of Council - June 24, 2003.

Responsibility

Department of Human Resources, all employees.

Appendix/Appendices