Practice Directive #C5-5

Selective/Light Employment

General principles

Selective/light employment is temporary alternative work, typically offered by the employer to the worker on or soon after the date of injury, often before a WorkSafeBC officer is involved.

Where a worker (or their physician) and employer disagree on the safety or terms of the selective/light employment offer, WorkSafeBC will determine whether the offer is suitable.

The WorkSafeBC officer must consider the reasons for refusal and determine if they were reasonable.

Merits and justice

WorkSafeBC must make its decision based on the merits and justice of the case, but in so doing WorkSafeBC must apply policy that is applicable.

In making decisions, WorkSafeBC must take into account all relevant facts and circumstances relating to the case before it, including the worker's individual circumstances. In doing so, WorkSafeBC must consider the relevant provisions of the *Workers Compensation Act* (the "*Act*") and the relevant policies.

If there are specific directions in the *Act* or policy that are relevant to those facts and circumstances, WorkSafeBC applies them.

Where the *Act* and policy provide for discretion, the officer is also required to exercise that discretion based on the merits and justice of the case, in accordance with the *Act* and applicable policy.

What is selective/light employment?

Selective/light employment is temporary alternative work that is intended to gradually restore the worker to their pre-injury level of employment and maintain the worker's connection to their workplace. Selective/light employment offers are generally characterized by duties different from the pre-injury employment or by some modification of the pre-injury duties and/or hours of work. They may also involve a change in the work location or work environment. In some cases, where appropriate, the alternate work location may be the worker's home.

Selective/light employment arrangements are meant to minimize the consequences of the compensable injury by aiding in recovery and eliminating or reducing the worker's loss of income during the early stages of a temporary disability.

Selective/light employment is typically offered verbally or in writing by the employer to the worker on or soon after the date of injury, often prior to WorkSafeBC's involvement in the claim. Graduated return-to-work opportunities offered some time after the injury, and generally closer to recovery or the date of plateau, are distinct from selective/light employment offers.[1]

The development of selective/light employment opportunities depends on the cooperation of all parties in the workplace and may involve consultation between the worker, the employer, the attending physician, a health care provider, and the worker's union.

Intervention by WorkSafeBC

Most selective/light employment arrangements are developed without the assistance of WorkSafeBC. However, where there is a disagreement regarding the suitability of the offer, policy directs WorkSafeBC to intervene. A WorkSafeBC officer intervenes when:

- the worker and/or the attending physician disagree with the employer's position that the work is safe;
- the worker and the employer disagree over the terms of the return to work;
- there is a request by either the employer or the worker for WorkSafeBC to intervene; or
- WorkSafeBC considers that further inquiry is required.

WorkSafeBC's evaluation of the selective/light employment offer is based on, but not limited to, a detailed description of the employment offered, including:

- the requirements of the employment offered; and
- detailed medical information regarding the worker's medical restrictions, physical limitations and abilities.

The officer may need to gather evidence on the nature and suitability of the duties and on the worker's current medical capabilities (i.e., restrictions and limitations) including, but not limited to, the worker's statements, specific details of the selective/light employment offer from the employer, reports from the treating physician, and functional assessments.

When adjudicating a worker's refusal of an offer of selective/light employment, the officer first considers whether there is an offer. Next, the officer considers the suitability of the offer. To do this, the officer reviews the nature of the offer and then determines whether the arrangement is safe and within the

[1] Where there is a refusal of modified duties at a later point in the claim (e.g., following discharge from a treatment program) RSCM policy items #35.21 (*Suitable Occupation for Temporary Partial Disability Compensation*) and #35.20 (*Amount of Compensation for Temporary Partial Disability*) should be considered.

worker's capabilities. If the offer is suitable, the officer then considers the reasonableness of the worker's refusal.

What is an offer?

There must be evidence that an offer of selective/light employment was made by the employer and that

the worker was appropriately informed about the offer. It is not enough for the employer to simply state that light duties are available or that the arrangement is still under development. The employer's offer must provide sufficient detail to allow the worker and the officer to determine whether the duties are productive, safe, and in keeping with the worker's capabilities. The officer must have a clear understanding of the offered alternate/modified duties to determine whether they are safe for the worker to perform.

An offer of modified duties does not have to be made in writing; however, a written offer from the employer and confirmation of receipt from the worker provides strong evidence that the worker was made aware of the parameters of the offered duties. A written offer also allows the worker to bring the document to their physician or other health care provider for an opinion on the suitability of the proposed duties.

In determining whether the employer's offer provides sufficient detail and whether the worker was made aware of the parameters of the offered duties, the officer may consider:

- Did the employer provide any documentation detailing the selective/light employment offer that the worker was instructed to take to their physician?
- Are modified duties regularly discussed at safety or staff meetings?
- Did the worker have prior knowledge of the employer's modified duties program?

Determining suitability of the selective/light employment offer

Policy provides that a selective/light employment offer is considered suitable when:

- the work is productive;
- the work is safe and cannot harm or slow the worker's recovery, and must be within the worker's medical restrictions, physical limitations, and abilities;
- the worker is capable of undertaking the light duties; and,
- within reasonable limits, the worker agrees to the arrangement.

Determining whether the selective/light employment offer is productive

To determine whether the selective/light employment offer can be properly characterized as productive work, the officer considers not only the physical requirements of the work but also the purpose of those activities. The officer considers factors such as:

- how the work will benefit the employer;

- whether the task is normally done by a non-injured worker;
- whether the work is something that, at another time, the employer would pay someone to do; and
- if training-related, whether it is the type of training that the employer would pay the worker to undertake at another time.

A suitable selective/light employment arrangement must not be token or demeaning. Token employment involves tasks that represent no more than symbolic effort and are limited in their practical effect. Such tasks are considered detrimental to the worker's rehabilitation. Whether or not a work task is demeaning is a subjective determination. Therefore, such a determination should be considered within the larger context of the worker's usual roles and responsibilities with that employer.

The officer considers whether the offer is a sincere effort to provide the worker with an appropriate selective/light employment arrangement. It cannot be punitive, degrading, or non-productive. If the officer decides that the selective/light employment offer is any of the above, then the offer is not suitable. The officer must notify the employer and explain why the offer is not suitable.

A meeting or conversation between the worker and employer to discuss or develop a selective/light duty offer or to explore suitable options, while important in arranging suitable employment, would not in itself be considered productive work. The selective/light duties must be available to be considered productive work. Thus, if the employer can arrange appropriate selective/light employment that commences on the same day as the meeting, the worker's benefit entitlement would be determined as temporary partial disability payments (under section 192 of the Act), when work commences. Where a worker requires orientation or training to be able to complete the selective/light duties, such training/orientation is generally considered productive work.

Determining whether the selective/light employment offer is safe and within the capabilities of the worker

Although not limited to these questions, in determining whether an offer of selective/light employment is safe and unlikely to delay recovery, the officer considers the following employment factors:

- Would the safety of the worker or any co-workers be compromised by the worker completing the work tasks offered by the employer?
- What are the worker's current restrictions and limitations? Are there activities that are contraindicated by the worker's injury?
- How do the worker's current restrictions and limitations compare to the physical requirements of the selective/light work being offered?
- Does the selective/light employment offer allow the ability to "self-pace" where this is medically required or recommended? (e.g., The worker can take rest breaks or stretch breaks as needed.)

WorkSafeBC clinical advisors can assist by providing an opinion on whether the worker's current functional capabilities match the demands of the work being offered.

In situations where the clinical advisor is of the opinion that the selective/light employment is within the worker's capabilities but the worker's treating physician has provided a contrary opinion, the clinical

advisor contacts the worker's physician to confirm that the worker's physician's understanding of the worker's capabilities and the requirements of the selective/light employment is the same as that of WorkSafeBC. The officer weighs all the medical evidence, including the treating physician's opinion, and determines the suitability of the offer.

If an officer determines that the proposed offer is not suitable, the officer notifies the employer and explains why. The officer may work with the employer to improve the selective/light employment offer.

Determining whether the refusal is reasonable

When a worker refuses to accept a selective/light work offer, the officer considers the reasons for the refusal and determines whether they are reasonable.

If the officer determines that the refusal is unreasonable, the officer notifies the worker and explains why. Benefit entitlement is then determined as temporary partial disability payments (under section 192 of the *Act*) and adjusted using the date the officer determined the selective/light employment was considered suitable and available.

Refusal based on the selective/light employment offer

When a worker refuses an offer of selective/light employment based on the suitability of the offer, WorkSafeBC compares the worker's restrictions and limitations to the requirements of the selective/light work being offered, to ensure the duties are safe and within the worker's capabilities. The officer may need to gather evidence from the worker and their treating clinicians (i.e., physician, specialist, and physiotherapist) to clarify the worker's functional abilities.

The officer also considers whether the worker was appropriately informed about the offer, either verbally or in writing, and whether sufficient detail was provided to allow the worker to conclude that the duties are safe and in keeping with their abilities.

A successful selective/light employment arrangement depends on the cooperation of all the parties in the workplace. This applies both in the development of such an arrangement, and during the on-going management of and participation in the plan. The employer is expected to adhere to the agreed upon work duties and the worker is expected to cooperate and participate in a way that is consistent with the selective/light employment offer and its goals. Inappropriate behaviour by the worker during a selective/light employment arrangement may be interpreted as a refusal to participate and the worker's entitlement to temporary partial disability payments (i.e., section 192 benefits) will be determined accordingly. Conversely, if the worker refuses to continue participating in the selective/light arrangement because of changes made by the employer to the required work duties, the officer considers the worker's reasons for the refusal at the time and determines whether the refusal to continue the arrangement is reasonable.

Refusal based on treating physician's opinion

When a worker refuses an offer of selective/light employment based on the recommendation of the treating physician, such a refusal is often considered reasonable. Most patients place considerable faith in their physicians, so acting in accordance with that opinion is reasonable in most cases, provided the physician is aware of the duties being offered. However, this factor alone is not determinative of whether the worker's refusal is reasonable.

In cases where there is an opinion from the treating physician stating that the worker is unfit for any work and the worker refuses the selective/light employment on that basis, the officer, after weighing all the evidence, may find the refusal to be unreasonable. This may occur when:

- The officer determines the physician was not made aware of the availability or the specific details of the selective/light employment offer. The officer may not place significant weight on the treating physician's opinion that the worker is not ready to return to work.
- A layperson can reasonably determine that the work is safe and within the capabilities of the worker, despite the fact that the physician had said the worker was unfit for any work. For example, a worker with a minor ankle strain can safely perform work tasks that do not involve standing or walking and allow the worker to elevate the injured ankle. If the worker refuses such an offer based solely on the fact that their treating physician advised them to remain off work until the next medical appointment, such a refusal is likely to be considered unreasonable.

Where there is an offer of selective/light employment and the treating physician has indicated that the worker is not fit for any type of work and the recommendation appears inconsistent with the worker's disability, the clinical advisor contacts the treating physician to discuss the worker's abilities.

Refusal based on other factors

To determine if the refusal is reasonable, officers can consider factors other than the worker's physical suitability to the selective/light employment offer. The officer considers any relevant factors specific to the worker's individual circumstances. For example:

- If the work location or schedule is different from the worker's normal employment arrangement, are there transportation or childcare issues that prevent the worker from participating in the offer?
- If the worker is on medication, is its use compatible with completion of the work tasks?
- Are there any non-compensable medical conditions that affect the worker's ability to complete the work tasks?
- Are there other concerns that would impact the worker's ability to participate in the offered tasks? (e.g., English as a second language or labour relations issues).

Worker's actions hinder the selective/light employment plan

When the worker unreasonably refuses to cooperate with the employer's efforts to establish a viable selective/light employment position, the worker may be considered to be unreasonably refusing the offer. Three examples are:

- a worker fails to provide the selective/light duties to the attending physician;

- a worker refuses the selective/light employment offer even after it has been approved by the physician; and
- a worker fails to attend a return-to-work meeting or in some way intentionally obstructs or delays the development of the selective/light employment offer.

In determining whether a worker intentionally obstructed or delayed the development of the selective/light employment offer, the officer may consider:

- Did the employer provide any documentation detailing the selective/light employment offer that the worker was instructed to take to their physician?
- Was the worker instructed to take the information to their physician and did they comply?
- Are modified duties regularly discussed at safety or staff meetings?
- Did the worker have prior knowledge of the employer's modified duties program?
- Did the worker ignore reasonable efforts by the employer to set up a selective/light employment arrangement?

Entitling wage-loss benefits during and after an investigation of an offer of selective/light employment

Where WorkSafeBC is required to intervene and investigate the selective/light employment offer and the reasonableness of the worker's refusal, the worker is entitled to receive wage-loss benefits while the investigation is carried out.[2] Wage-loss benefits are issued as temporary total disability benefits (section 191 of the *Act)* as of the start date of the investigation. If not already paid, the worker's entitlement to wage-loss benefits between the effective date of the selective/light employment and the start of the investigation is held pending the results of the investigation.

Reasonable refusal

If the officer determines the worker's refusal was reasonable, the worker's entitlement to wage-loss benefits is not affected.

The officer may conclude that the worker's refusal at the time the selective/light employment was first offered was reasonable. However, after further discussion and clarification with their physician and the officer, the worker's continuing refusal may no longer be considered reasonable. In such cases, the adjustment from temporary total disability payments to temporary partial disability payments would be effective the date the worker's refusal was no longer considered reasonable.

[2] Policy item #34.11 provides that *"Wage-loss benefits will be adjusted effective the date the selective/light employment was suitable and available, as determined by the Board."* This means that the policy criteria must be met and the selective/light employment offer deemed suitable before benefits are adjusted. When a worker participates in selective/light employment, wage loss benefits are determined as temporary partial disability payments under section 192 of the *Act*.

Unreasonable refusal

If the officer determines the selective/light employment duties were available and suitable, and the refusal was unreasonable, the worker's entitlement to wage-loss benefits will be determined as temporary partial disability payments (under section 192 of the *Act*). The officer may deem the worker capable of earning what the worker would have earned had they accepted the offer of selective/light employment.

The wage-loss benefits are adjusted effective the date the officer determines that the selective/light employment was considered suitable and available. If, following the investigation, the officer determines the worker's refusal was unreasonable, the reconsideration provisions apply. The benefits are not recovered from the worker and the employer is relieved of the costs.

In some cases, the officer may conclude that the selective/light employment offer was suitable, and the worker's refusal was unreasonable, before the claim was established with WorkSafeBC. There is no requirement that the worker be made aware of the criteria of policy item #34.11 and the consequences for refusal prior to the effective date of the adjustment from temporary total disability to temporary partial disability payments (section 192).[3]

Unlike suspension of benefits, workers do not need to be warned that their benefits may be affected if they choose not to accept a suitable selective/light employment offer. If the worker was presented with a suitable selective/light employment opportunity and unreasonably declined to participate, the officer can adjust the worker's benefit entitlement for the period in question to reflect the earnings the worker was deemed capable of earning.

Cross References

RSCM Policy	#34.11, *Selective/Light Employment*
	#35.20, *Amount of Compensation for Temporary Partial Disability*
	#35.21, *Suitable Occupation for Temporary Partial Disability Compensation*

History: This Practice Directive was developed to provide guidance on policy item #34.11, *Selective/Light Employment*. Additional information was added on May 5, 2014 to clarify the application of policy item #34.11 when the employer and worker meet to develop a selective/light duties plan and the employer is able to offer appropriate duties that commence later that same day. On December 2, 2019, the practice directive was amended to emphasize consideration of the merits and justice of the case, and to address the payment of wage-loss benefits while the WorkSafeBC officer conducts an investigation of the suitability of the selective/light employment offer and/or the reasonableness of the worker's refusal. The amendment included a reorganization of the content. This Practice

[3] Policy item #34.11 can be applied to situations that have occurred in the past.

Directive was amended to reflect changes made to the *Workers Compensation Act* made effective on April 6, 2020 as part of a standard statute revision process. This Practice Directive was updated on December 30, 2021 to reflect changes in WorkSafeBC's organizational structure.

Application: The adjudicative guidelines are relevant to all decisions made on and after December 2, 2019.