



Nova Scotia Federation of Labour

Office of the Worker Counsellor

Response to Nova Scotia WCB Policy Proposals

Vocational Rehabilitation

May 29, 2026

CONTENTS

Introduction 3

Positive Elements of Draft Policies 4

Employability vs. Competitive Employability 5

Subjective Criteria – Motivation and Commitment 6

Additional or revised VR plans 7

Clarification - Offer of Employment Curing VR Plan 8

Clarification - Conclusion of VR Plan Limits on Relocation 9

Preferred VR Plans 10

Time Limit on Employment Readiness 11

Conclusion 12

Summary of Recommendations 13

INTRODUCTION

We appreciate the opportunity to provide feedback on the proposed vocational rehabilitation (VR) policies. There is a great deal to like in the draft policies, including several changes that improve flexibility and recognize the importance of meaningful VR services.

At the same time, there are several significant concerns and oversights that should be addressed before the policies are finalized.

We also wish to note our concern about reports that the Board is already training staff in these policies and is scheduled to bring them before the Board of Directors next week. Neither circumstance gives us confidence in the sincerity of the consultation process or in the Board's intention to meaningfully review stakeholder recommendations for change prior to implementation.

Our recommendations are outlined in this document. Despite our reservations, we trust they will be given due consideration before the policies are finalized.

If you have any questions, feedback or comments, don't hesitate to contact Rachel Barbour, Worker Counsellor, at 902-476-3097 or rbarbour@workercounsellor.ca.

POSITIVE ELEMENTS OF DRAFT POLICIES

We strongly support several important aspects of the proposed policies, including:

- Recognition that employer return-to-work obligations continue even where VR services have begun.
- Removal of the requirement that a worker have or be likely to have a permanent impairment to be eligible for VR services.
- Allowing VR when the injury employer is not cooperating, and is unlikely to begin cooperating, in early and safe return to work or re-employment obligations.
- Allowing VR in cases where a return to the pre-injury job would likely cause further injury. We agree that workers who are technically able to resume their duties, but would be exposed to risk in doing so, should be eligible VR assistance. Supporting access to preventative VR measures is consistent with the Board’s commitment to workplace safety, and with the interests of stakeholders.
- Recognition that a realistic VR goal must be “of interest to the worker”.
- Statements that the VR goal should reflect the worker’s pre-injury employment circumstances, terms and conditions of employment, and personal circumstances. This ensures the VR goal is reasonably comparable to the worker’s pre-injury employment, demonstrating respect for their previous hard work, investments, and achievements.

These aspects must be present and undiminished in the final policy.

Recommendation:

- **Maintain these specific elements within the policies.**

EMPLOYABILITY VS COMPETITIVE EMPLOYABILITY

The policies repeatedly state the overall goal of VR is to return workers to employability. They define employability as being *capable of performing suitable employment that is reasonably available and will mitigate, as much as reasonably possible, loss of earnings due to the work-related injury*.

As it stands the policy fails to clearly acknowledge a requirement for competitive employability - that is **a real prospect of obtaining and maintaining employment in the labour market**.

A worker may be capable of an occupation on paper but have no realistic prospect of actually securing employment in practice. Competitive employability requires consideration of real-world factors including age, education, transferable skills, literacy, presentation, labour market realities, and the impact of the compensable condition. While aspects of these factors appear throughout the draft policies, there is no clear requirement that VR plans and employability determinations be assessed using a real-world standard.

This isn't an academic argument. This distinction between employability and competitive employability has been a longstanding issue in the workers' compensation system and has been repeatedly addressed by Workers' Compensation Appeals Tribunal (WCAT). WCAT decisions have consistently emphasized that a **real-world standard** must be applied when determining employability and vocational goals.

The volume, consistency, and duration of appellate consideration on this issue makes the point unmistakable. WCAT has addressed the requirement for a real-world approach to employability over and over again, across more than a decade of decisions, including 2011-657-AD, 2011-705-AD, 2012-440-AD, 2012-523-AD, 2013-54-AD, 2013-238-AD, 2013-609-AD, 2014-290-AD, 2014-518-AD, 2014-731-AD, 2015-114-AD, 2015-530-AD, 2015-600-AD, 2016-45-AD, 2016-179-AD, 2017-42-AD, 2017-253-AD, 2017-389-AD, 2018-284-AD, 2019-74-AD, 2020-73-AD, 2020-212-AD, 2021-165-AD, 2022-46-AD, 2022-287-AD, 2022-325-AD, 2023-90-AD, 2023-263-AD, 2023-337-AD, 2024-106-AD, 2024-142-AD, and 2024-156-AD. The list goes on.

The sheer volume and consistency of appellate direction on this issue shows that competitive employability is a common concern, that it is well established legally, and that it must be an essential and distinct component of any VR policy.

The inclusion of a requirement for competitive employability also reinforces the Board's mandate to ensure return to work, essentially setting a standard of "competitive unemployability" for any full extended earnings replacement benefit.

Recommendation:

- **The term "employability" must be replaced with "competitive employability" throughout the policies. The definition of "competitive employability" must include reference to the real-world standard repeatedly recognized by WCAT.**

SUBJECTIVE CRITERIA – MOTIVATION AND COMMITMENT

The policies state that the Board will consider a worker’s “motivation” and “commitment” when deciding whether to approve a VR plan involving skills development or training.

These concepts are undefined, subjective, and highly vulnerable to inconsistent application, bias, and unfair assumptions.

There is a significant risk that workers may be unfairly judged based on a decision maker’s personal interpretations and perceptions. A worker who appears discouraged, anxious, hesitant, overwhelmed, or uncertain about retraining could be viewed as lacking “motivation,” even where those reactions are understandable consequences of workplace injury and loss of employment. Similarly, workers who ask questions, express concerns about a proposed plan, or require additional supports could be unfairly characterized as lacking “commitment.”

Because these terms are not defined in policy, they create too much discretion and increase the likelihood of inconsistent outcomes between workers with similar circumstances. They also risk shifting the focus away from whether a proposed plan is realistic, appropriate, and likely to support a sustainable return to work, and toward negative judgments about a worker’s attitude or personality.

These criteria should be removed from the policy. The later references to worker interest and requirements for participation and cooperation throughout the VR process already provide sufficient authority to ensure that workers engage meaningfully in planning and rehabilitation activities.

Retaining subjective criteria such as “motivation” and “commitment” adds little value while creating substantial potential for unfairness, inequity, and inconsistent decision-making.

Recommendation

- **References to a worker’s motivation and commitment must be removed from the policies. Alternatively, they must be defined to ensure they are assessed objectively, consistently, and fairly in all cases.**

ADDITIONAL OR REVISED VOCATIONAL REHABILITATION PLANS

The policy states that the WCB will “usually sponsor only one VR plan for a worker.”

While we understand the intent of this provision, the only exception identified in the draft policy - a determination that additional assistance will help mitigate remaining earnings loss - is too narrow.

Workers should never become locked into an unsuitable VR plan despite changing circumstances.

While we support the general principle that a worker will usually receive one VR plan, the policies must provide clearer guidance regarding when a plan may appropriately be modified, replaced, or revisited.

This should include circumstances where:

- the worker’s compensable condition deteriorates or improves
- new medical or functional information becomes available
- appeal outcomes alter accepted diagnoses, restrictions or limitations
- labour market conditions or employment opportunities significantly change
- developments during the rehabilitation process make the original plan inappropriate, unrealistic, or unworkable

Recommendation

- **The policies must expand and provide clear guidance on circumstances when a VR plan may be modified, replaced, or revisited.**

CLARIFICATION OF POLICY 2.7.5 - OFFER OF EMPLOYMENT DURING VR PLAN

The title “Offer of Employment during VR Plan” should be clarified, as the heading is broader than the provision that follows. It may create confusion regarding its intended application.

The text beneath this heading specifically states that a VR plan may be discontinued where an offer of employment is received during the development of the VR plan. However, this important limitation is not reflected in the section title itself.

It is reasonable for the Board to discontinue the development of a VR plan where suitable employment becomes available before the plan is finalized. However, it would be unreasonable for a late-stage or active VR plan to be interrupted solely because an offer of employment is received after substantial rehabilitation efforts and investments have already occurred.

We do not believe it is the Board’s intention to suggest that an active or partially completed VR plan could be discontinued due to a last-minute offer of employment. However, the section title should clearly reflect the limited scope of the provision in order to avoid confusion or misapplication.

Recommendation

- **The title of section 2.2 of Policy 2.7.5 should be revised to “Offer of Employment During VR Plan Development”.**

CLARIFICATION OF POLICY 2.7.5 – LIMITS ON RELOCATION

The policy allows the WCB to conclude a VR plan where a worker “*chooses to relocate to a place which significantly limits the ability of the WCB to continue with the provisions of the VR plan.*”

This provision represents a significant intrusion into a worker’s personal decision-making and requires substantial clarification.

Workers may relocate after an injury for many legitimate reasons, including financial pressures, housing instability, family needs, or life transitions. The policy potentially limits a worker’s ability to relocate without clearly explaining the circumstances in which relocation may affect entitlement or continuation of VR services.

The policy also fails to distinguish between relocation before VR begins and relocation after a plan has been chosen or is underway. It provides no guidance on whether and when a worker must seek approval to relocate, how such approval would be obtained, what criteria decision-makers are expected to apply, or how the Board will determine whether relocation will significantly limit the continuation of the VR Plan.

Such a significant discretionary power must be clearly articulated and supported by transparent criteria and procedural guidance for both workers and decision-makers.

At minimum, the policy should clearly explain:

- when relocation may impact entitlement
- what factors will be considered
- what obligations the worker has to notify the Board of a planned move
- whether Board approval affects the application of this provision
- how the Board will assess whether rehabilitation can continue in the new location.

Recommendation

- **The policy must provide clear guidance regarding how relocation after an injury may affect VR entitlement, including the factors, procedures and decision-making criteria that will apply.**

PREFERRED VR PLANS

The draft policy does not provide any mechanism for workers to pursue a VR plan that differs from the plan selected or approved by the Vocational Rehabilitation Consultant.

There may be times when a worker may wish to pursue a modified occupational goal, a slower or more thorough pathway, a different educational institution, a higher qualification, or additional training beyond what the WCB is prepared to fund.

Other jurisdictions permit workers limited access to “Preferred VR plans”.

Preferred Plans typically include safeguards and high standards, such as:

- The worker submitting a detailed alternative proposal, including evidence they have the necessary support and funding to pursue their preferred plan
- The Board confirming the proposal is feasible and vocationally appropriate
- The worker acknowledging that the preferred plan constitutes their sole VR Plan and that the Board bears no responsibility if the plan is unsuccessful
- The Board contributing funding only up to the amount it would otherwise have spent on the Board-approved plan.

Similar to self-employment plans, this would likely be a rare option in VR services. But including such an option would provide greater flexibility, encourage worker engagement, respect worker preferences where reasonable, and support more individualized rehabilitation outcomes, while still protecting the Board from unreasonable costs or liability.

Recommendation

- **The policies must make provision for Preferred VR Plans in appropriate circumstances.**

TIME LIMIT ON EMPLOYMENT READINESS

The draft policy defines employment readiness as “a maximum 14-week program.”

Policy is intended to provide overall direction and guiding principles, not rigid operational timelines. We believe this time limitation is unnecessary and overly restrictive and should not appear in policy itself.

Employment readiness is a new program. Changes and updates may become necessary as it matures. By limiting the program duration in policy, the Board reduces the ability to alter it should it become necessary.

There may be circumstances where additional flexibility is required depending on the worker’s barriers, labour market circumstances, or rehabilitation needs.

The Board can create a 14-week benchmark operationally or within the program contract. It is inappropriate, unnecessary and unwise to embed it in policy.

Recommendation

- **The definition of employment readiness should be changed to remove the 14-week maximum.**

CONCLUSION

Overall, the proposed policies contain several positive and modernizing elements.

However, they require important clarification and safeguards to ensure fairness, flexibility, transparency and consistency.

We urge the Board to revise the policies to address the concerns identified above before implementation.

SUMMARY OF RECOMMENDATIONS

Page	Subject	Recommendation
4	Positive Elements of Draft Policies	Maintain specific elements as outlined on page within the policies.
5	Employability vs. Competitive Employability	The term “employability” must be replaced with “competitive employability” throughout the policies. The definition of “competitive employability” must include reference to the real-world standard established repeatedly by WCAT.
6	Subjective Criteria – Motivation and Commitment	References to a worker’s motivation and commitment must be removed from the policies. Alternatively, they must be defined to ensure they are assessed objectively, consistently, and fairly in all cases
7	Additional or Revised VR Plans	The policies must expand and provide clear guidance on circumstances when a VR plan may be modified, replaced or revisited.
8	Clarification of Offer of Employment During VR Plan	The title of section 2.2 of Policy 2.7.5 should be revised to “Offer of Employment During VR Plan Development”.
9	Clarification of Limits on Relocation	The policy must provide clear guidance regarding how relocation after an injury may affect VR entitlement, including the factors, procedures and decision-making criteria that will apply.
10	Preferred VR Plans	The policies must make provision for Preferred VR Plans in appropriate circumstances.
11	Time Limit on Employment Readiness	The definition of employment readiness should be changed to remove the 14-week maximum.



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