



Workers' Compensation Act Section 41 Employer's obligation to re-employ

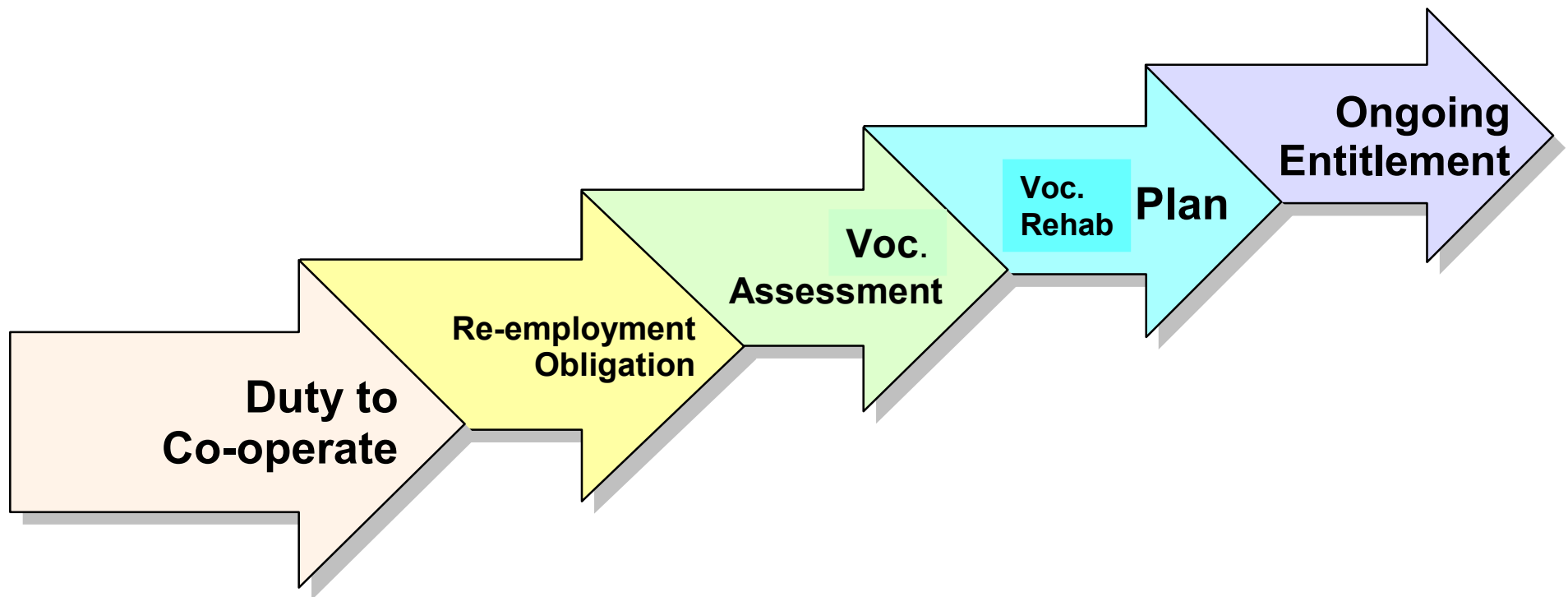
Presentation to:
Yukon Chamber of Commerce
November 17, 2010



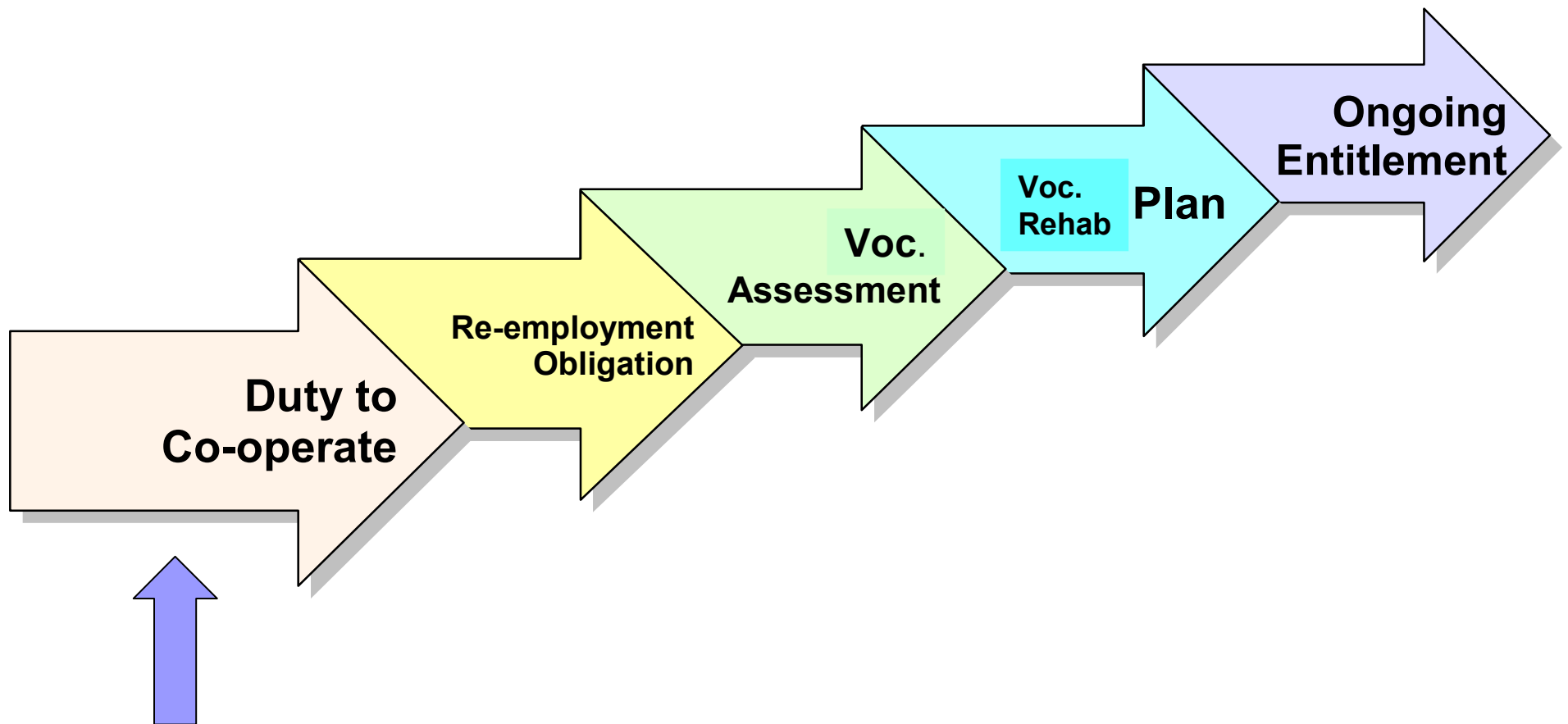
Agenda

- RTW Process Overview
- Review Section 40 – Duty to Co-operate
- Review Section 41 – Employer's Obligation to Re-employ
- Why re-employment provisions in the *Workers' Compensation Act*?
- Implementation

Return to Work Model



Return to Work Model



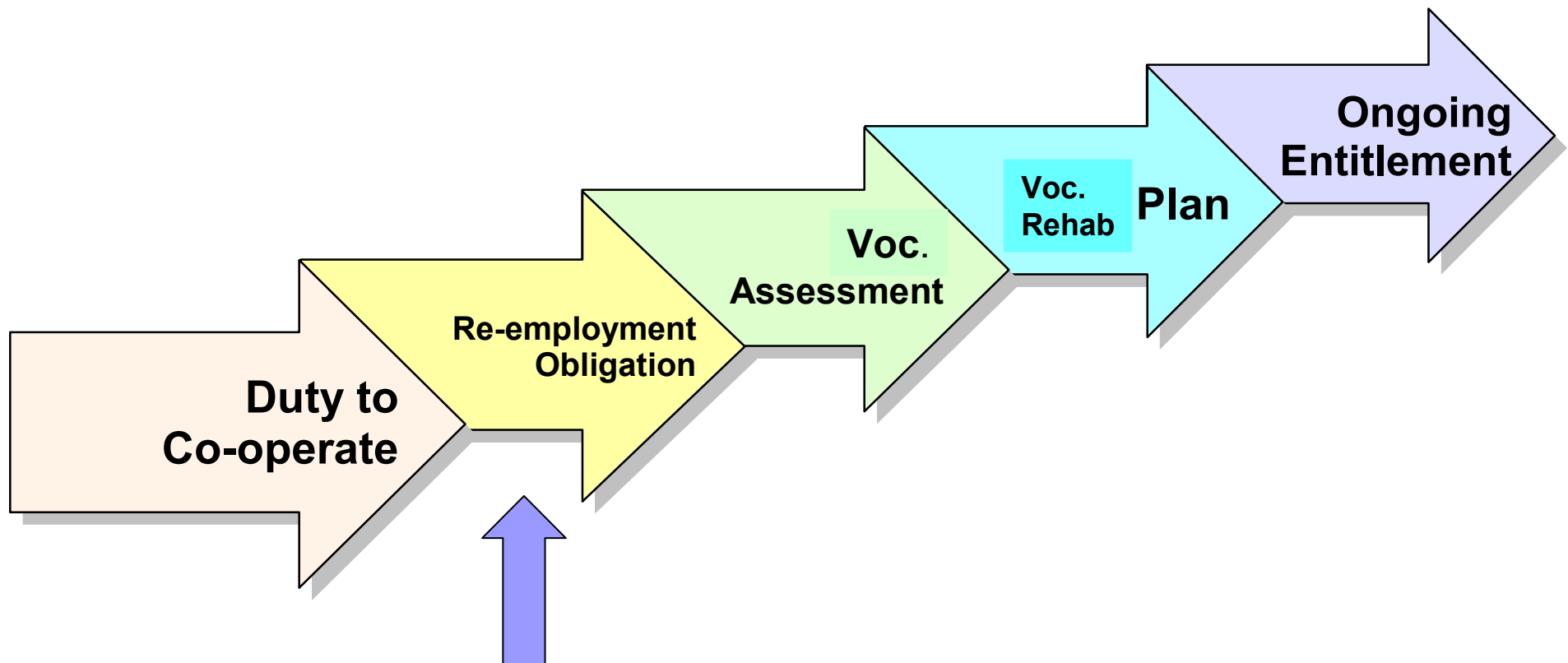


Duty to Co-operate

■ Duty to Co-operate

- Section 40 of the WCA, July 1, 2008
- to reconnect the worker to the workplace to ensure medical recovery and return to work occur concurrently
- return the worker to the injury employer during recovery through suitable and available employment
- applies to all employers and all workers

Return to Work Model





Re-employment Obligation

- Applies if

- the employer regularly employs 20 or more workers, AND
- the worker was in a continuous employment relationship with the employer for the 12 months prior to the injury

- occurs when

- worker is cleared for the essential duties of his pre-injury position, OR
- worker has medically plateaued and can work but is not cleared for the essential duties of his pre-injury position



Re-employment Obligation

- From date of injury to the earliest of:
 - two years;
 - 12 months from clearance to perform essential duties of pre-injury position, or
 - worker turns age of entitlement for benefits under Part 1 of the *Old Age Security Act*.



Re-employment Obligation

- If the worker is cleared for pre-injury job
 - Employer's obligation is to provide pre-injury or comparable job
- If the worker is cleared for the essential duties of the pre-injury job
 - Employer's obligation is to provide pre-injury or comparable job
- If the worker is cleared for suitable work
 - Employer's obligation is to provide the most suitable work that becomes available



Section 41

- An employer to whom this section applies shall accommodate the work or the workplace for the worker to the extent determined by the board.



Section 41

- (7) An employer to whom this section applies shall be liable for the payment of up to a maximum of \$1,000 in expenses related to the accommodation of the work or the workplace for the worker as the board considers appropriate to enable the worker to return to work. The board shall pay the expenses in excess of \$1,000 which are related to the accommodation of the work or workplace for the worker, as the board considers appropriate, to enable the worker to return to work.



Section 41

- (9) Where an employer has offered reemployment to a worker in accordance with this section and the worker has refused the employer's offer, the employer is no longer bound by the provisions of this section in relation to that worker.



Section 41

- (10) Where an employer re-employs a worker in accordance with this section and then terminates the employment within six months, subject to subsection (9), the employer is presumed not to have fulfilled the employer's obligations under this section.



Section 41

- (14) Where the board decides that an employer has not fulfilled the employer's obligations to a worker, the board may
 - a) levy a penalty on the employer not exceeding the amount of the worker's net average earnings for the 12 months immediately preceding the beginning of the loss of earnings as a result of the work-related injury; and
 - b) make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 22.



Section 41

- (16) Where this section conflicts with a collective agreement that is binding upon an employer, and the employer's obligations under this section give a worker greater re-employment terms than does the collective agreement, this section prevails over the collective agreement.



Section 41

- (17) Subsection (16) shall not operate to displace the seniority provisions of a collective agreement.



Why a re-employment obligation in the *Workers' Compensation Act*?

- Employability versus employment
 - Lessens need for vocational assessments and plans
 - Employment obligation on the employer – not on the YWCHSB
- Provides an impetus for early intervention
- Provides clarity for employers and workers
 - Time frames
 - Specific obligations
- Facilitates accommodation by limiting employer's direct expenses to \$1,000
- Complements *Human Rights Act*
 - All employers have accommodation and non-discrimination obligations under the HRA
 - WCA provides a shorter, more defined process with known, limited awards
 - Workers must exhaust their rights under WCA before Human Rights will consider a case
 - Human Rights will consider any penalties and payments made under the WCA in their review



Section 41 Implementation

- Effective January 1, 2011
- Injuries occurring on or after January 1, 2011
- Seven section 41 policies
- Communication Strategy
 - in conjunction with Yukon Chamber of Commerce
 - Direct to ~175 affected employers



Questions & Discussion