

Replacement Order Transitional Arrangements Guide for Employers



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Disclaimer: This document is designed to support the NSW coal industry in preparing for the replacement of the Coal Services Health Monitoring Requirements for Coal Mine Workers Order No. 43 (Order 43).

It includes details relating to the draft replacement Order, which remains subject to approval and gazettal by the NSW Minister for Natural Resources. As such, the content is not final and may be subject to amendment. While every effort has been made to ensure the information provided reflects the intent of the replacement Order, the final gazetted Order may include substantive changes.

Users are encouraged to exercise judgment and take appropriate caution when applying the information to business planning or operations. Any actions taken should consider the potential for change after gazettal, noting that the final approved Order will take precedence.

Replacement Order: Transitional Arrangements Guide for Employers

Purpose

This document is designed to support NSW coal industry employers* in preparing for the replacement of the Coal Services Health Monitoring Requirements for Coal Mine Workers Order No. 43 (Order 43). It provides guidance to understand the transitional arrangements detailed in the replacement Order and can assist with business preparation activities to ensure a smooth transition.

CS Health recommends conducting an impact analysis to understand how the changes introduced by the replacement Order may affect your organisation's processes, systems, and compliance obligations. This will help identify potential risks and gaps, enabling the development of effective mitigation strategies and reducing the likelihood of issues arising post-implementation.

Transitional arrangements in the replacement Order

The replacement Order outlines transitional arrangements to ensure that medical assessments conducted under Order 43 continue to be recognised as valid health assessments once the replacement Order has been implemented.

These arrangements are designed to:

- > prevent duplication of health assessments
- > provide clarity for employers
- > ensure that coal mine workers remain compliant with the replacement Order during the transition.

The transitional arrangements apply only to coal mine workers who remain with their current employer following the implementation of the replacement Order. Coal mine workers who commence with a new employer will be required to complete a health assessment.

The transitional arrangements are:

- a) *If a coal mine worker has a current periodic medical assessment completed pursuant to the Coal Services Health Monitoring Requirements for Coal Mine Workers Order No. 43 under the Coal Industry Act 2001 (NSW), that periodic medical assessment is a health assessment under this Order subject to the periodic medical assessment being completed within the previous three (3) years.*

Explanation: If a coal mine worker has had a valid Order 43 periodic medical completed in the last 3 years, this will be considered to be a health assessment under the replacement Order.

- b) *If a coal mine worker has entered the New South Wales coal industry within three (3) years previous to the commencement of this Order and has not completed a periodic medical assessment, then the first pre-placement medical assessment completed pursuant to the Coal Services Health Monitoring Requirements for Coal Mine Workers Order No. 43 under the Coal Industry Act 2001 (NSW) is to be considered a health assessment for that coal mine worker under this Order.*

Explanation: If a coal mine worker entered the NSW coal industry in the last 3 years and has only completed pre-placement medicals under Order 43, the first pre-placement medical completed upon entry will be considered to be a health assessment under the replacement Order. The date of the first pre-placement medical will set the due date of the next health assessment.

*Throughout this document, references to an *employer* should be understood to mean a person conducting a business or undertaking (PCBU), as defined in the draft replacement Order.

Replacement Order health assessments

Under the replacement Order, a health assessment replaces the terms *Order 43 medical assessment*, *pre-placement medical* and *periodic medical assessment*. It comprises the health examination(s) of a coal mine worker that is assessed against the position and risk category. The replacement Order health assessment is valid for 3 years; the reference to 3 years means by 31 December of that third calendar year.

Note: For clarity, the terms *position* and *role* are considered equivalent. While titles of positions or roles may differ, the inherent requirements (tasks, functions, accountabilities, and responsibilities) must be consistent.

Key considerations for employers

- > Pre-placement medicals conducted under Order 43 within the past 12 months **cannot** be transferred to a new employer under the replacement Order, meaning a new health assessment will be required.
- > Employers should confirm which coal mine workers hold a valid Order 43 assessment in accordance with the transitional arrangements.
- > Employers may elect to submit their coal mine worker list to Coal Services earlier than the replacement Order requirement of 30 September 2026 to verify who holds an Order 43 assessment in accordance with the transitional arrangements.
- > Employers should update any systems and/or processes to reflect the recognition of Order 43 assessments in accordance with the transitional arrangements.
- > Employers should communicate with coal mine workers the following:
 - changed and/or new requirements of the replacement Order
 - transitional arrangements and what they mean for them (including that valid Order 43 medical assessments will continue to be recognised under the replacement Order).
- > Employers should conduct a compliance check to ensure no coal mine workers fall through the gaps during the transition period to prevent non-compliance with the replacement Order.
- > Mine operators should update their health and safety management systems to reflect the recognition of Order 43 medical assessments in accordance with the transitional arrangements.
- > Mine operators should communicate any updated health and safety management system requirements to the relevant stakeholders, including induction companies, contractors, and labour-hire organisations.
- > When onboarding a new coal mine worker with an expired health assessment review, employers must ensure the health assessment review is completed as part of the onboarding process. Under the replacement Order, a health assessment review is a conditional clearance for the review period detailed in the health assessment certificate. If the health assessment review is not completed within the timeframe, the health assessment certificate is considered to be expired.

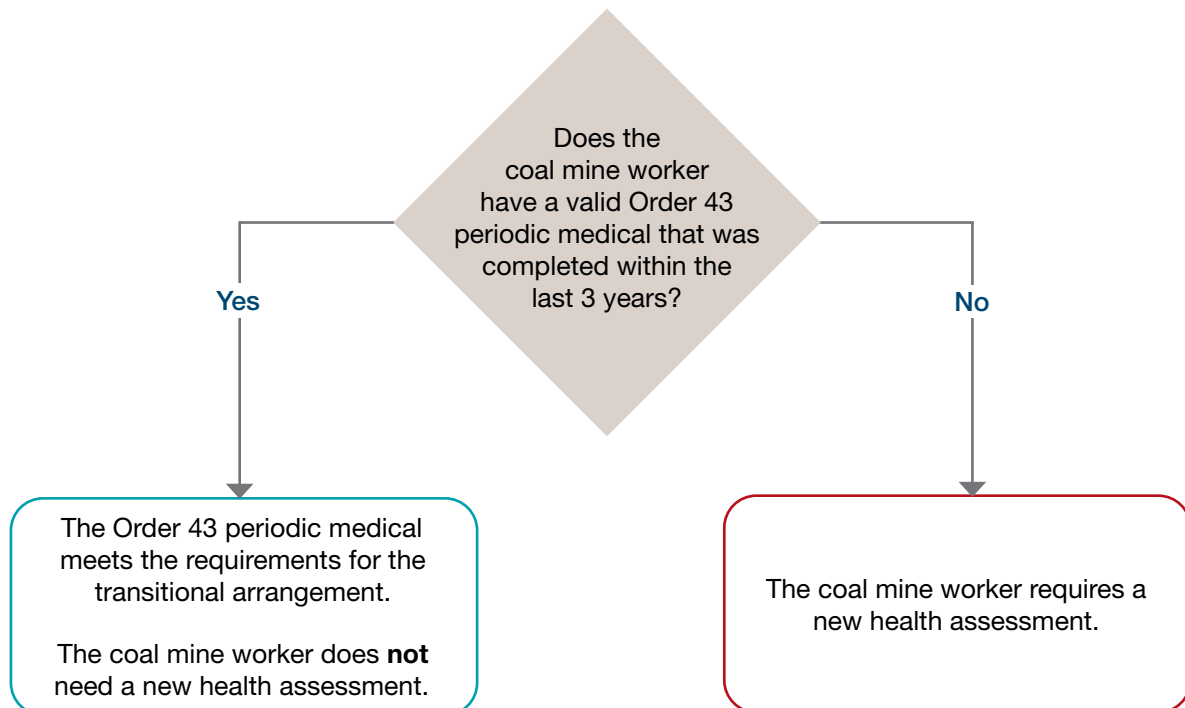
Risk of non-compliance with the replacement Order

Failure to recognise and apply the transitional arrangements correctly may result in being non-compliant with the replacement Order.

The [Coal Services website](#) has further information regarding the replacement Order, including a Replacement Order: Change Readiness Guide for Employers. This document is designed to help guide employers in preparing for the replacement Order.

Transitional arrangements flowcharts

Flowchart 1: Recognition of an Order 43 periodic medical under the replacement Order



Explanatory notes to flowchart 1

The transitional arrangements apply only to coal mine workers who remain with their current employer following the implementation of the replacement Order. Coal mine workers who commence with a new employer will be required to complete a new health assessment (see flowchart 3 on page 7).

Does the coal mine worker have a valid Order 43 periodic medical that was completed within the last 3 years?

- > **If yes**, then the Order 43 medical is recognised as a valid health assessment under the replacement Order transitional arrangements. The coal mine worker does **not** need to complete a new health assessment.

Example: A coal mine worker completed an Order 43 periodic medical on **20 September 2023**. As the 2023 Order 43 periodic medical is within the 3-year window, it is considered valid under the replacement Order and the employer can recognise this as a health assessment. The coal mine worker's next health assessment will be due to be completed before 31 December 2026 (being 3 years from the 2023 medical year, with health assessments able to be completed up until the end of that calendar year).

- > **If no**, then the coal mine worker **requires** a new health assessment.

Health assessment timeframes

Example 1: A coal mine worker completed an Order 43 periodic medical on **10 July 2023**.

- > Under the replacement Order, the health assessment remains valid until **31 December 2026**.
- > The coal mine worker's next health assessment must be completed by **31 December 2026** (being 3 years from 2023, with health assessments able to be completed up until the end of that calendar year). However, if the coal mine worker changes employers, they will require a new health assessment.

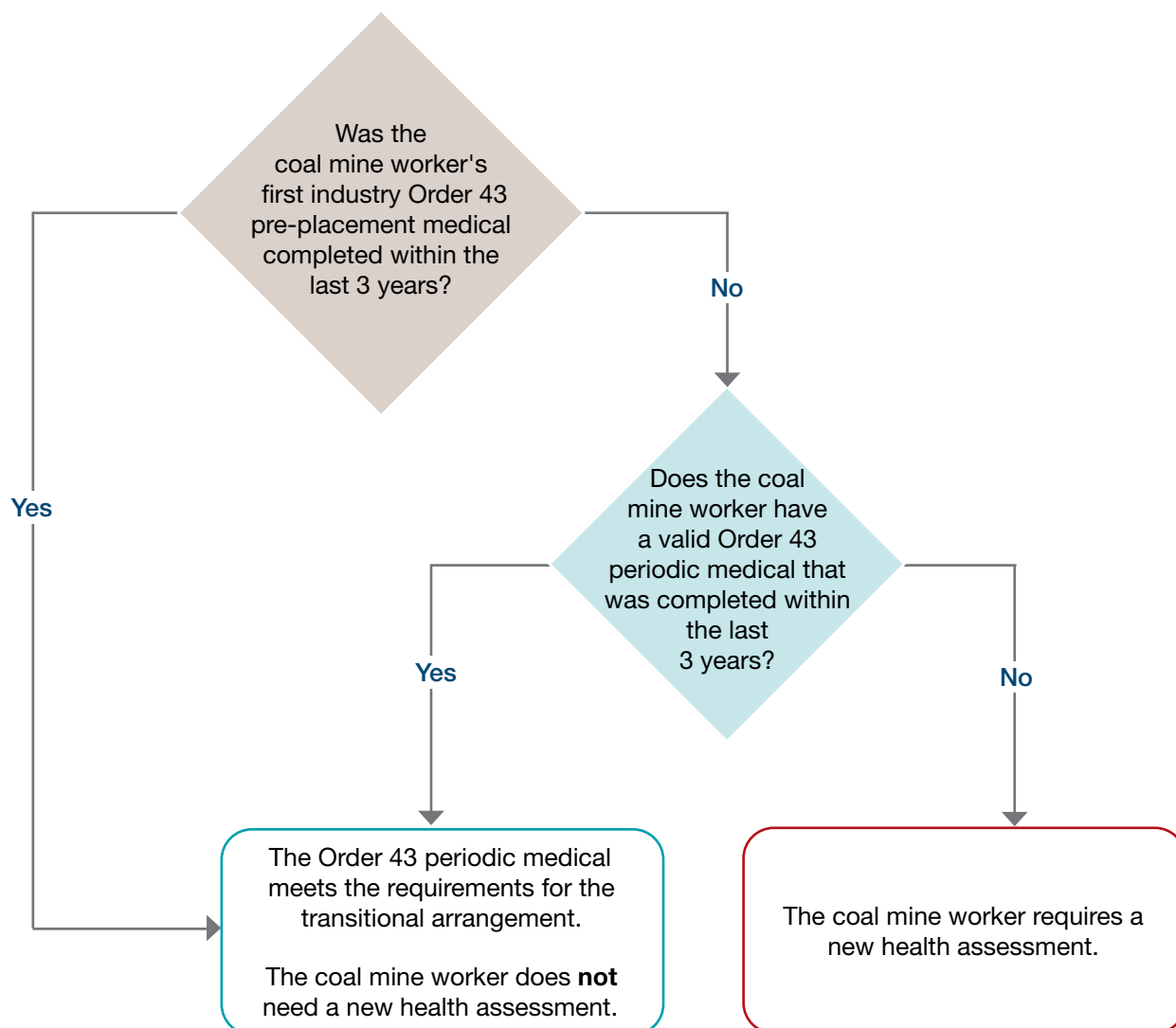
Example 2: A coal mine worker completed an Order 43 periodic medical on **5 March 2024**.

- > Under the replacement Order, the health assessment remains valid until **31 December 2027**.
- > The coal mine worker's next health assessment must be completed by **31 December 2027** (being 3 years from 2024, with health assessments able to be completed up until the end of that calendar year). However, if the coal mine worker changes employers, they will require a new health assessment.

Example 3: A coal mine worker completed an Order 43 periodic medical on **11 November 2025**.

- > Under the replacement Order, the health assessment remains valid until **31 December 2028**.
- > The coal mine worker's next health assessment must be completed by **31 December 2028** (being 3 years from 2025, with health assessments able to be completed up until the end of that calendar year). However, if the coal mine worker changes employers, they will require a new health assessment.

Flowchart 2: Recognition of the first Order 43 pre-placement medical under the replacement Order



Explanatory notes to flowchart 2

The transitional arrangements apply only to coal mine workers who remain with their current employer following the implementation of the replacement Order. Coal mine workers who commence with a new employer will be required to complete a new health assessment (see flowchart 3 on page 7).

Was the coal mine worker's first industry Order 43 pre-placement medical completed within the last 3 years?

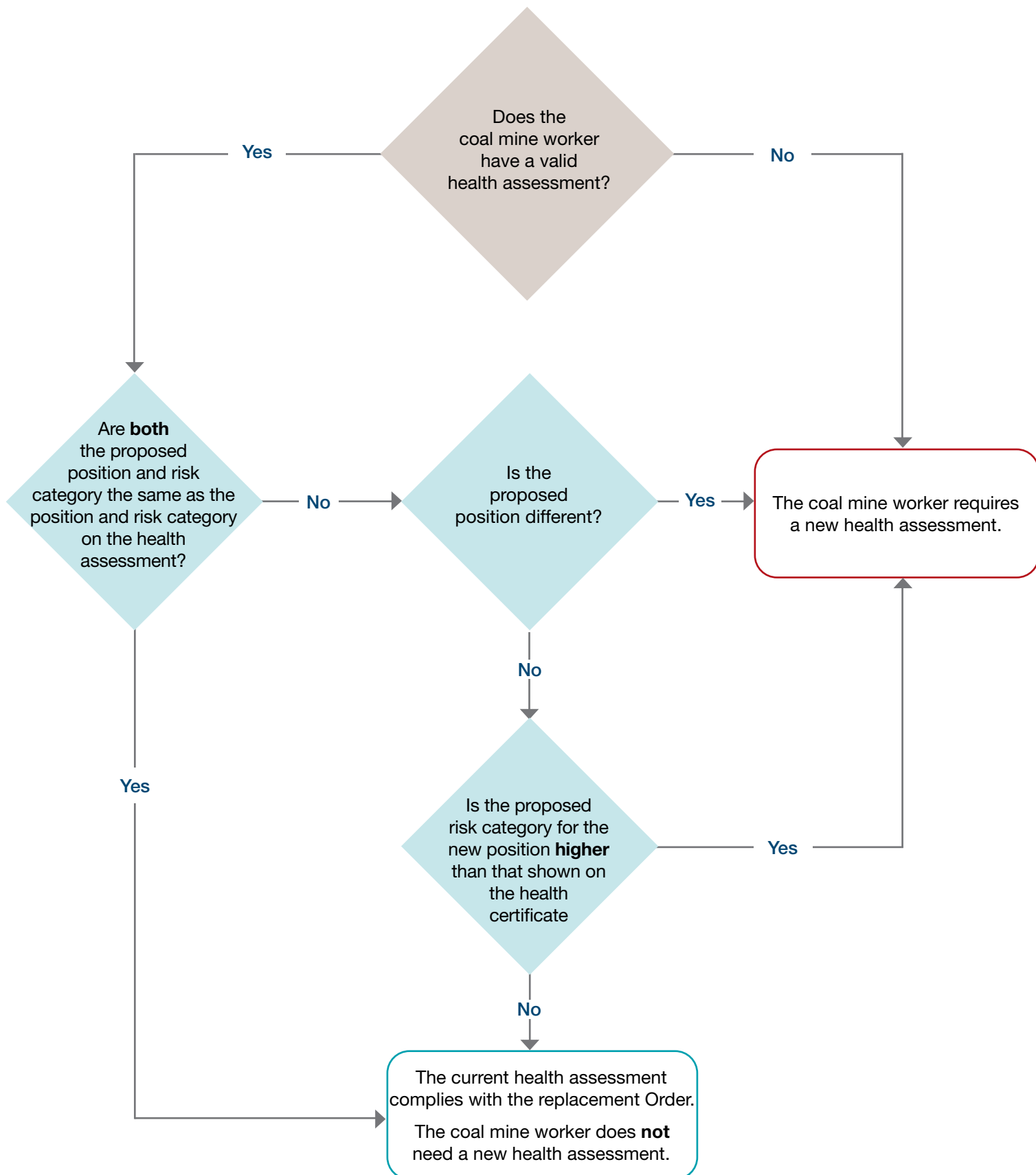
- > **If yes**, the coal mine worker's first pre-placement medical under Order 43 was within 3 years of the replacement Order's implementation, then it is recognised as a health assessment under the replacement Order. The date of the first Order 43 pre-placement medical will set the due date for the next health assessment.

- > **If no**, the coal mine worker does not have a valid pre-placement medical, does the coal mine worker have a valid Order 43 periodic medical that was completed within the last 3 years?
 - **If yes**, the coal mine worker **does have** a valid Order 43 periodic medical, then it is recognised as a valid health assessment under the replacement Order transitional arrangements. The coal mine worker does not need to complete a new health assessment.
 - **If no**, the coal mine worker **does not** have a valid Order 43 periodic medical, then the coal mine worker requires a new health assessment.

Example 1: A coal mine worker had their first industry pre-placement medical on **17 April 2023**.

- > Under the replacement Order, this pre-placement medical is recognised as a health assessment and will remain valid until **31 December 2026**.
- > The coal mine worker's next health assessment must be completed by **31 December 2026** (being 3 years from 2023, with health assessments able to be completed up until the end of that calendar year). However, if the coal mine worker changes employers after the replacement Order is implemented, they will require a new health assessment.

Flowchart 3: Coal mine workers changing employers – replacement Order requirements (post-implementation)



Note: For clarity, the terms *position* and *role* are considered equivalent. While titles of positions or roles may differ, the inherent requirements (tasks, functions, accountabilities, and responsibilities) must be consistent.

Explanatory notes to flowchart 3

The transitional arrangements apply only to coal mine workers who remain with their current employer following implementation of the replacement Order. Coal mine workers who commence with a new employer after the implementation of the replacement Order will be required to complete a new health assessment.

Does the coal mine worker have a valid health assessment?

- > **If no**, the coal mine worker **does not** have a valid health assessment, then they will require a new health assessment.
- > **If yes**, the coal mine worker **does have** a valid health assessment, are **both** the proposed position and risk category the same as the position and risk category shown on the health assessment certificate?
 - **If yes**, the current health assessment is compliant with the replacement Order. The health assessment is portable should the coal mine worker change employers before their next health assessment due date (provided the proposed position and risk category remain the same for their new position).
 - **If no**, the coal mine worker does not have a valid health assessment, is the coal mine worker's proposed position different?
 - **If yes**, the proposed position is different, then the coal mine worker requires a new health assessment.
 - **If no**, the proposed position is not different, is the proposed risk category for the new position higher than that shown on the health assessment certificate?
 - If the proposed risk category **is higher** than that shown on the current health assessment certificate, the health assessment is not compliant with the replacement Order. The coal mine worker requires a new health assessment.
 - If the proposed risk category **is the same as or lower** than that shown on the current health assessment certificate, the health assessment is compliant with the replacement Order. The health assessment is portable should the coal mine worker change employers before their next health assessment due date.

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