

WORKPLACE INJURY REHABILITATION AND COMPENSATION ACT 2013

Return to Work Obligations

The *WIRC Act* places obligations on employers and workers consistent with its focus on rehabilitation in preference to compensation. The employer's obligations are to:

- reinstate a worker to their pre-injury or equivalent position if they cease to be incapacitated for work within the first 52 weeks from acceptance of the claim.
- provide a worker with suitable employment, to the extent reasonable to do so, should a worker be fit for such employment in the first 52 weeks of incapacity from the date when an employer ought reasonably to have known of the incapacity.
- in consultation with all employees, make information about return to work available to them outlining how injured workers will be returned to work. The information must contain matters contained in the legislation about the obligations and rights of employers and workers, the employer's WorkCover insurance agent, the return to work coordinator and the issue resolution procedure.
- to the extent reasonable, the employer must plan a return to work in consultation with the worker, their treating medical practitioner, rehabilitation provider and any other representative of the worker.
- nominate a competent person with seniority as return to work coordinator. This requirement applies to employers over \$2 million per annum in remuneration, but for employers of less remuneration the coordinator is nominated when notice of incapacity is received and only for the duration of the incapacity.
- host employers are also required to cooperate with the employer of a worker injured in the host's workplace in the employer's efforts to provide for a return to work.

Workers, for their part, must make every reasonable effort to participate in suitable employment. They must:

- cooperate with their employer and WorkCover agent in planning a return to work;
- attend assessments of their rehabilitation potential arranged by the employer or the agent;
- use occupational rehabilitation services;
- participate in any offer of suitable employment made by any person; and
- make every effort to seek suitable employment with another employer if the original employer cannot provide suitable employment.

The penalty for workers who fail to observe the rules is that on 14 to 60 days written notice from the WorkCover Insurance Agent their entitlement to weekly payments is suspended for 28 days or until they commence to comply. If after 28 days they remain non-compliant payments cease.

Benefits of return to work

The benefits to the employer if a return to work can be achieved decline the longer the claim remains operative. If a worker can be retained at work or returned within 10 days, the claim may

not exceed the excess and no estimate will apply to increase premiums. Award requirements for Accident Make-up Pay¹⁰ is a payment for no productive return and even a restricted return to work mitigates this loss.

Once a claim exceeds the excess, an estimate is placed on it and affects the premium. At 13 weeks, the insurance Agent must determine if the worker has a capacity for suitable employment or no current capacity for suitable employment. If a worker is back at work in some capacity, the payment will be 80 per cent and estimated to 130 weeks. If not, the payment will be 80 per cent and costed to the workers 65th birthday. Offers of employment made six months after injury are of limited benefit because by that time as most of the premium damage has been done and most of the make-up pay has been paid out. By that time the worker will have developed a resistance to a return to work, lost fitness and conditioning and will require an extended period of graduated duties.

After 52 weeks commencing from the date the claim was accepted, the employer has no obligation to offer suitable employment, has normally exhausted make-up pay obligations and incurred maximum premium consequences. There is little incentive to offer or to continue to offer suitable employment unless the worker can make a productive contribution to the business.

By making a bona-fide offer to return an injured worker to suitable employment the employer has created a situation where one of the following must occur:

- the worker resumes work.
- the worker's payments cease because the person could have, but did not, resume work.
- the worker is able to satisfy the agent that they could not accept the work offered.

The consequences of not offering employment are:

- the worker remains on weekly payments; and
- the employer may face substantial penalties.

WorkCover will pay for rehabilitation services, including retraining and job placement assistance, for injured workers. If an employer finds the process of return-to-work excessively complex, it may be easier for them to engage a rehabilitation provider to assist with communication between the treating doctor and worker and to advise on a return-to-work plan. Your Insurance Agent may recommend a provider or you may already have an association with a provider in your area. The worker must be given the choice from a list of at least three providers given to them by the employer or the Agent.

¹⁰ Make-up is an award obligation on employers to pay any difference between the workers compensation paid and the ordinary time earnings of the worker. Depending on the award this obligation (if any) may be for 26, 39 or 52 weeks.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced health, safety and wellbeing and workplace relations advisors can assist members with a range of health, safety, wellbeing, employment, human resources and industrial relations issues.

Our experienced health, safety and wellbeing and workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide health, safety and wellbeing consulting and training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Advice Line on **(03) 8662 5222**.

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