

Helping injured workers return to work

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1. Introduction

This booklet is designed to help employers understand what they need to do if one of their workers is injured. There are certain obligations that employers need to be aware of to help their injured worker stay at or return to work. The case manager from the employer's allocated claims agent will determine if the worker is eligible for compensation and will work with employers to ensure the employer and worker meet their responsibilities under the Workers Rehabilitation and Compensation Act 1986.

About WorkCover

WorkCoverSA manages the South Australian Workers Rehabilitation and Compensation Scheme (the Scheme), which provides protection to workers and employers in the event of workplace injury.

The premium an employer pays, once they have registered, goes towards helping WorkCover manage a balanced and financially sound system that rehabilitates, compensates and retains or returns injured workers to safe workplaces and the community.

The importance of return to work

Staying at work or returning to work can be a crucial part of an injured worker's rehabilitation - and better for an employer's business. It can increase productivity and may minimise business costs and reduce the cost of an employer's WorkCover premium. It also reduces the financial and emotional impact on workers and their families.

With a positive approach and the right support, the majority of injured workers can recover and remain or return to work. Helping improve South Australia's return to work rate is everyone's responsibility and we all have a role to play.

Further information

For more information about the Scheme, visit www.workcover.com.

WorkCover's service commitment to the employer

WorkCover wants to ensure that employers receive a high standard of service from both WorkCover and its claims agents. When employers need to contact WorkCover, they can expect the staff to treat them with integrity and respect. Along with the successful achievement of results and professional excellence, these are the core values of WorkCover. These values are demonstrated by:

- responding courteously and promptly
- · being clear about how WorkCover will help employers to resolve their issues
- · giving the employer information that is accurate, consistent and easy to understand
- · explaining what an employer needs to know, what they need to do, and what WorkCover will do
- ensuring that employers have easy access to information and resources
- providing services and information to employers in their preferred language and format
- · demonstrating respect and sensitivity to an employer's cultural beliefs and values
- · providing an interpreter to assist the employer if required
- · consulting with stakeholders to improve WorkCover's services where appropriate.

WorkCover will also:

• try to resolve each issue at the first point of contact

- respond to telephone messages within one business day
- reply to email enquires within three working days or advise of a response timeframe
- reply to written enquires within 10 business days or advise of a response timeframe
- confirm employer registrations within 10 business days of receiving an application

If an employer is unhappy about the conduct of WorkCover's staff, the services or the conduct of any agency linked to WorkCover, they have the option to lodge a complaint. Complaints are taken seriously and there are detailed procedures for processing and resolving complaints. (Please see page 10 for more details on how to make a complaint).

Further information

WorkCover's full service charter is available at www.workcover.com.

WorkCover's claims agents

WorkCover has contracts with two external claims agents, Employers Mutual SA and Gallagher Bassett Services Workers Compensation SA, to provide workers rehabilitation and compensation services to injured workers and registered employers. Employers can nominate their preferred claims agent by 30 November in each calendar year, to be effective from 1 January of the following year.

If one of the employer's workers is injured, the claim will be assigned a case manager from the employer's appointed claims agent, who is then responsible for the dayto-day management of the claim.

2. Claims and support for injured workers

What are the employer's obligations when a worker is injured?

Employers have certain legal obligations once a worker is injured. These are to:

- · report the worker's injury
- lodge an Employer report form and a copy of the worker's Claim form for compensation to the assigned WorkCover claims agent
- pay the worker's income maintenance for the first two weeks of incapacity (unless the employer qualifies for the liability to be waived) (see page 5).
- support the worker to stay at or return to work.

Employers should also:

- comply with the requirements of their worker's rehabilitation and return to work plan (see page 12 What is a rehabilitation and return to work plan?)
- stay in touch with the case manager

 continue to stay in contact with the
 case manager at least until the worker
 is doing their normal work and normal
 hours. This includes notifying the case
 manager if there is any change in the
 type of work or hours
- provide the worker with suitable employment that the worker is fit to perform and which is as far as reasonably practicable the same as, or equivalent to, the employment in which the worker was engaged before the worker was incapacitated
- not dismiss the worker without first giving the worker and the case manager at least 28 days' notice – if an employer does not provide the required notice they may be prosecuted and face a fine of up to \$15 000.

Employers can also help and support their injured worker in a variety of other ways (see page 6 Supporting the injured worker to stay at work or return to work).

What if an employer does not comply with their obligations?

If an employer fails to provide a safe workplace, they may face a fine or prosecution by SafeWork SA. If an employer does not comply with their requirements in a worker's rehabilitation and return to work plan, fails to provide suitable employment, or fails to give their worker and their case manager at least 28 days' notice of dismissal, they may be penalised and/or prosecuted by WorkCover.

Reporting the worker's injury

If an employer receives a verbal report of an injury from the worker, the employer should request the injured worker to complete a WorkCover *Claim form*. The *Claim form* can be used to:

- · report a workplace injury, and
- · seek compensation payments.

A worker should report an injury or illness to the employer either verbally or in writing within 24 hours, whether or not they intend to make a claim for compensation. The employer can help their worker by ensuring they fill in as much information on the *Claim form* as possible.

In accordance with section 52(5) of the Workers Rehabilitation and Compensation Act 1986 (the Act), it is a requirement that the employer notifies WorkCover or their claims agent within five business days of receiving a Claim form from a worker about a work-related injury or illness and provides

an Employer report form and a copy of the worker's Claim form within the same time. If the employer does not know who their claims agent is, they can refer to the claims agent lookup facility on the WorkCover website (www.workcover.com). Employers are only required to enter their employer number, claim number or employer name.

For information on where to get a *Claim form* and *Employer report form* and how to report an injury by phone, fax or post to a WorkCover claims agent see *Lodging a claim for compensation* (below).

Employers are required to report serious incidents to SafeWork SA

Some injuries at work need to be immediately reported to SafeWork SA. For contact details see page 15.

Lodging a claim for compensation

The sooner the worker's compensation claim is lodged, the earlier the employer can start planning to support them to stay at or return to work. Remember that the employer is required to notify WorkCover or their claims agent within five business days of receiving a report from a worker about a work-related injury or illness.

Ensure the worker (or their representative) ticks the box in the *Claim form* that indicates they are seeking compensation. The employer is also required to ensure the following documents are completed and/or are submitted:

- the WorkCover Claim form
- a WorkCover Medical Certificate which the doctor will give to the worker
- a WorkCover *Employer report form*.

There are financial incentives for employers who forward the worker's Claim form and the Employer report form within five calendar days of receiving the worker's Claim form. For more information, see page 6, Financial benefits of early reporting.

If the worker requires time off work, the employer will also be asked to provide their wage details, so the claims agent can calculate the amount the worker should be paid in income maintenance.

Please note: an employer cannot legally refuse to report a claim by a worker. Employers who delay or fail to report a claim may be penalised.

Further information

Claim forms and employer report forms are available at Australia Post offices in South Australia, WorkCover's claims agents, by phoning WorkCover on 13 18 55 or on the WorkCover website at www.workcover.com.

Keep claim forms in locations where they are readily available if a workplace incident occurs.

How to notify an injury or submit a claim

An employer can notify an injury or submit a claim to their WorkCover claims agent by phone, fax, post or online (see page 15 for details).

The next step after a claim has been lodged

When a worker is injured, a WorkCover claims agent will work with the employer to help them to stay at or return to work and to meet other relevant obligations.

What to expect from the case manager

The claim will be assigned a case manager by the employer's claims agent who will determine if the worker is eligible for workers compensation. The employer can expect their case manager to:

- · contact the employer or their rehabilitation and return to work coordinator (if the employer has one) to discuss the worker's case
- · manage the worker's claim for compensation
- give the employer information about rehabilitation and compensation services
- · contact health professionals where necessary
- manage and coordinate the worker's rehabilitation and return to work in conjunction with the employer.

The case manager will also work with the employer and the worker to determine entitlements. The worker may be entitled

- weekly payments
- medical expenses
- · rehabilitation services
- a lump sum payment if the injury causes permanent impairment.

The case manager will also ensure both the employer and the worker meet their responsibilities under the Act (see page 8 for more details).

The employer can also expect to get letters from their case manager about a variety of things associated with their worker's claim. Employers should talk to their case manager first if they have any queries or don't understand something.

Please note: at various stages during the claim process, there may be a change of case manager.

Determining a claim

If a worker has a workplace injury, the case manager from the employer's claims agent will be responsible for determining the claim i.e. deciding if weekly payments will commence and/or if medical expenses will be paid. A determination will be made, in most cases, within seven days.

If a decision cannot be made within that time, the claims agent must, in most cases, begin making provisional weekly payments to the worker so that the focus is on rehabilitation and return to work rather than concerns over payments. This process is called provisional liability and may include medical and like expenses. A decision by a case manager to make provisional weekly payments to a worker is not necessarily an indication that the claim will be ultimately accepted.

Paying the first two weeks' wages after a claim

If a worker is off work, they may need to receive weekly payments. The worker's weekly payments for the first two weeks of incapacity are required to be paid by the employer. If a worker is off work for longer than two weeks, the Scheme will cover the cost.

Financial benefits of early reporting

If the employer reports the claim and provides the appropriate documentation (Claim form, Employer report form and WorkCover Medical Certificate) within five calendar days of receipt of the claim they may not have to pay the worker's weekly payments for the first two weeks of incapacity. If this is the case, the claims agent will make the payments or reimburse the payments to the employer.

If the employer does not report the claim and provide an *Employer report form* and a copy of the *Claim form* within five calendar days, the employer is required to pay the worker's weekly payments for the first two weeks of incapacity themself.

Paying injured workers during the compensation process

Generally speaking there are two ways a worker can be paid:

1. The employer continues to pay the worker weekly payments direct and seeks reimbursement from the claims agent by completing a *Weekly payment reimbursement request* form available at www.workcover.com.

2. The claims agent pays the worker weekly payments direct. While the employer can choose this option, it is usually best for the employer to keep paying the worker to ensure their connection with the workplace is maintained.

Supporting the worker to stay at work or return to work

Support for the worker

Keeping or returning the worker to work is very important.

It's good for workers – staying at work or returning to work with the doctor's consent is an important part of recovery for many people. Staying home until completely recovered is often not the best thing for the worker to do. If the worker is away from work for a long time, they can experience family relationship breakdowns, poor health, social isolation and depression – so it's important to get them back to work as soon as possible.

It's good for business – keeping the worker at work or returning them to work is also good for business, as it enables the employer to:

- maintain the skills and contribution of experienced or highly trained workers, who know the organisation and contribute to the employer's competitive edge
- demonstrate a commitment to their workforce and send a message that recovery and rehabilitation of workers is important and desirable.

If the employer is affected by a workplace injury, there are some simple things they can do to support the injured worker to stay at or return to work.

1. No blame

Avoid blaming anyone for the injury. Look at how to prevent future injuries and stay focused on helping the worker to recover and to either stay at or return to work. Keep in mind that the Scheme is a 'no-fault' scheme.

2. Stay in touch

Employers should keep in touch with the worker and stay informed of their treatment and estimated recovery time. Phone or visit them (to show that the employer cares), keep them updated with news of the office or worksite, or invite them to meetings, morning teas or social events. Reassure them that they are welcome back at work when they are ready and that the team is keen to have them back.

3. Enlist the support of their coworkers

Ask co-workers to stay in touch too. They could phone, email, visit or text. They might feel like they don't know what to say to the worker who is injured but reassure them that it doesn't really matter. It could be a chat about the footy tips or some general news that is going around. It's making the effort that counts and any positive contact is helpful.

4. Think about what they can do

Determine what the worker can do. Even with medical restrictions, there are often plenty of tasks they can undertake at work. Once the doctor has given the worker permission to return to work, the employer is obliged to provide suitable employment for them. The case manager, the worker, the rehabilitation and return to work coordinator (if the employer has one), the worker's health providers and/or workplace rehabilitation provider will all help the employer to identify suitable employment. (For more information, see below, Offering suitable employment to your worker).

If the employer cannot provide suitable employment for the worker, they are required to let the case manager know immediately. Failure to provide suitable employment may result in prosecution with a fine of up to \$25 000.

5. Prepare for the worker's return and notify colleagues

Employers should make any reasonable changes necessary to the workplace to ensure the worker is safe and comfortable. They should ensure that all staff in contact with the worker are aware of their impending return to work, even if it is returning to modified duties or reduced hours. Employers should let staff know how important it is for the worker's recovery, and that the doctor has given them advice that this should take place.

If co-workers are not well-informed, they can jump to conclusions that the worker is getting special treatment, or just being lazy.

6. Check how the worker is progressing

When the worker returns to work, the employer should regularly touch base to see how they are going and if there are any problems that the employer can solve to make their return to work successful. Employers should ensure the supervisor keeps them and the rehabilitation and return to work coordinator (if the employer has one) informed of the worker's progress. Employers must make sure they are aware of when the worker is going for treatment and/or a medical review. Remember, workers may need ongoing medical treatment or health care such as physiotherapy or psychological services.

Offering suitable employment to the worker

Once the doctor has given the worker permission to return to work with some degree of capacity, the employer is obliged to provide suitable employment for them.

Suitable employment is sustained long-term work that a worker can do, taking into account such information as their injury, their previous employment, their age, education, skills and work experience and where they live.

Identifying appropriate work for an injured worker might seem a little daunting, but the employer's case manager will help, as will the doctor (to give advice on capability and restrictions) and in some cases, a workplace rehabilitation provider may visit the workplace to assess work opportunities. If the employer has a rehabilitation and return to work coordinator, they should enlist their help as well.

Before the employer finds suitable employment for the worker, they may be able to find suitable duties for them to do as an interim measure. Suitable alternative duties are meaningful workrelated tasks the worker could do at work which keeps them in contact with their workplace until a sustained long-term opportunity is established.

Below are four things for employers to consider in the interim that might help to identify suitable employment for the worker.

1. Medical information

What information does the WorkCover Medical Certificate provide? Is there something the worker can do within their capacity?

2. Modified duties

Consider modifying the worker's usual job what aspects of their job can they perform within their current capacity? Could they safely perform some or all of their normal duties with assistance (e.g. special tools, aids or a buddy system)?

3. Suitable alternative duties

If the worker can't do their old job there may be tasks they can do in the short term. Are there any suitable duties available that the worker may be able to safely perform? Is there any other meaningful work that needs to be done in the workplace that they could do? Employers need to think about ways in which the worker could gradually return to the workplace to help build their confidence. Finding suitable alternative duties is often the first step for a worker to stay at or return to the workplace.

4. Think about the 'complete' person

How does the worker's age, education, skills, work experience and personal circumstances impact upon their return to work? Consider whether duties, other than those they used to do before they were injured, may be suitable for them to perform. Also, think about where they live. Has the injury impacted upon their ability to get to and from work? Will they require travel assistance to help them stay at or return to work?

Once the employer has considered all the information and identified suitable options, they should discuss this with the worker and the case manager. If no suitable employment or alternative duties are available or can be identified, the employer will need to contact their case manager as soon as possible.

Employer's rights and responsibilities

The employer has a right to:

- receive notice prompt decision-making on a claim
- ask the case manager to:
 - » review a claim if they believe that weekly payments to the worker should be stopped or reduced
 - » arrange for the worker to attend an examination by a recognised medical expert
 - » provide them with copies of medical reports upon making a written request and ask for a report on the worker's medical progress and capacity for work
 - » take into consideration any other relevant factors

- file a notice of dispute with the Workers Compensation Tribunal to review decisions made about their worker's claim
- lodge a complaint with their claims agent and/or WorkCover if they are dissatisfied with the service they have received (see page 10 for details)
- be consulted during the preparation of the worker's rehabilitation and return to work plan and be provided with a copy of the plan
- have an interpreter present at meetings, appointments or over the phone if necessary
- seek legal representation at any time and choose to be represented by a solicitor or an employer advocate
- be treated with dignity and respect
- have their cultural and ethnic practices respected
- be kept updated on the progress of the worker's claim.

The employer can also contact the worker's doctor, only with the worker's consent, to discuss:

- the diagnosis or prognosis for matters strictly relating to the current claim
- how they can help the worker's recovery and help the worker stay at or return to work.

The employer has a responsibility to:

- provide a safe working environment
- provide suitable employment and be actively involved in the worker's rehabilitation
- comply with the requirements of the worker's rehabilitation and return to work plan (if the worker has one)

- keep in touch with the case manager at least until the worker is doing their normal work and normal hours (this includes notifying the case manager if there is any change in the type of work or hours)
- not dismiss the worker without giving them and their case manager at least 28 days' notice
- pay weekly payments for the first two weeks of incapacity after a claim is accepted (if required).

Please note: Failure of an employer to fulfil their responsibilities may result in the employer being penalised and/or prosecuted.

Injured worker's rights and responsibilities

The worker has the right to:

- make a claim for compensation
- have prompt decisions made regarding their claim
- have a decision made about provisional liability within seven calendar days (in most cases) of a claim for compensation being made
- · choose or change their doctor
- have someone else with them as support at any meeting to talk about their claim
- have all personal information kept confidential
- get advice before signing anything
- be provided with a copy of all medical reports about their claim within seven days of the case manager receiving a report

- · be provided with a copy of their rehabilitation and return to work plan and be consulted during its preparation
- have reasonable out-of-pocket expenses reimbursed within 14 days
- · have an interpreter present at meetings, appointments or over the phone
- use an advocate, seek legal advice at any time and choose to be represented by a solicitor or an employee advocate
- lodge a complaint with their claims agent, self-insured employer and/or WorkCover if they are dissatisfied with the service they receive (see page 10 for details)
- file a notice of dispute with the Workers Compensation Tribunal to review decisions made about their claim
- ask for a second opinion about medical issues
- be treated with dignity and respect
- · have their cultural practices respected
- · be kept updated on the progress of their claim.

The injured worker has a responsibility to:

- · report their injury to their employer as soon as possible
- · get treatment for their injury
- be actively involved in their treatment and rehabilitation
- · comply with the requirements of a rehabilitation and return to work plan (if they have one)
- do suitable tasks their doctor says they are fit to do

- · attend an examination by a doctor (for an assessment only) or workplace rehabilitation provider nominated by their case manager
- · advise their case manager if they change their address or phone numbers
- · advise their case manager of any earnings they receive while they are in receipt of weekly payments
- attend an appointment with a Medical Panel (see Glossary on page 13) and/ or an independent medical examiner if this has been organised by their case manager.

Please note: Failure of a worker to fulfil their responsibilities may result in a claim being rejected or may impact their entitlement to weekly payments.

RISE – an incentive for employers

The Re-employment Incentive Scheme for Employers (RISE), supports employers (other than the worker's pre-injury employer) to provide a job to injured workers who cannot return to their previous employer. Sometimes a worker's injury makes it difficult for them to return to their old job although they are capable of doing a different job with a new employer.

By providing a job to an injured worker, the employer may be eligible for a significant financial incentive and support through RISE. The employer will also have access to a pool of skilled workers who may be suitable for their industry and workplace.

By providing an injured worker with a 'second chance' and an opportunity to return to meaningful and ongoing employment, the employer is assisting them in this important step in their recovery. Returning injured workers to the workplace benefits everyone.

What are the benefits?

By employing an injured worker through the RISE program the employer may qualify for a range of benefits and support, including:

- reimbursement of 40 per cent of the RISE employee's gross wages for up to 52 weeks of employment
- · access to support from a workplace rehabilitation provider to ensure the transition into the new job is smooth for the worker and employer
- consideration of payments to cover costs such as minor workplace modifications and equipment to assist the worker.

It is important to note that if the RISE worker aggravates their pre-existing injury, and it is medically established that it is an aggravation, then in most cases the costs of the claim will not be recorded against the RISE employer.

Further information

If an employer has a job vacancy, they should contact their workplace rehabilitation provider or a WorkCover claims agent. For general information relating to the RISE program, visit www.workcover.com.

3. Other claim related information

Complaints or concerns

If the employer is dissatisfied about the conduct of WorkCover staff, the conduct of any agency linked to WorkCover's services, or a product or service, the employer can lodge a complaint. All complaints are taken seriously, and WorkCover has a resolution process to ensure they are addressed. Self-insured employers have their own individual complaints handling process.

The following grievances may arise during the term of the injury and below are some suggested courses of action that the employer can take.

Issue 1: Service from the claims agent

- Lodge a complaint with the case manager's team leader by phone or email.
- Escalate the complaint to WorkCover, email info@workcover.com or phone 13 18 55.
- Escalate the complaint to the WorkCover Ombudsman, phone (08) 8463 6593, toll free 1800 195 202, email owo@sa.gov.au, or visit www.wcombudsmansa.com.au.

Issue 2: Service from WorkCover or concerns about the Scheme

- · The employer should discuss their concerns or lodge a complaint with WorkCover, phone 13 18 55 or email info@workcover.com.
- · Lodge a complaint with the WorkCover Ombudsman, phone (08) 8463 6593, toll free 1800 195 202, email owo@sa.gov.au, or visit www.wcombudsmansa.com.au.

Issue 3: Registration issues

· The employer should discuss their concerns with WorkCover on 13 18 55, or email info@workcover.com.

Lodging a notice of dispute

If an employer is dissatisfied with a decision about their injured worker's claim, they can lodge a notice of dispute with the Workers Compensation Tribunal, within one month of being notified or receiving a copy of the decision. The Tribunal has a structured system to resolve disputes once a notice of dispute has been lodged.

The injured worker is also entitled to lodge a notice of dispute if they are dissatisfied with a decision about their claim.

The notice of dispute form can be downloaded from the SA Industrial Relations Tribunals website at www.industrialcourt.sa.gov.au.

A dispute can be resolved at any of the following stages:

Reconsideration

When the Tribunal directs the claims agent or the self-insured employer to reconsider the decision.

Conciliation

Compulsory conferences with the parties to try to negotiate a resolution. Representation is recommended at this stage.

Judicial determination

A formal hearing where evidence is heard and arguments are put before a presidential member of the Tribunal. Legal representation is highly recommended at this stage.

Appeal to the Full Bench of the Tribunal

Can only be made on a question of law if dissatisfied with the judicial determination. Legal representation is highly recommended at this stage.

Appeal to the Full Court of the Supreme Court

Can only be made on a question of law if dissatisfied with the decision of the Full Bench of the Tribunal and only with permission of the Supreme Court. Legal representation is highly recommended at this stage.

Further information

For more information on dispute resolution see Chapter 16 of the Claims Operation Guidelines at www.workcover.com.

Legal representation and support

The employer has a right to representation at any time. In some cases, they may need representation if they lodge a notice of dispute with the Workers Compensation Tribunal. The employer should be aware that legal services are not free, although some costs incurred in respect of a notice of dispute may be covered by WorkCover.

Employers can also check with their industry association regarding any representative services they may provide.

Dishonesty and noncompliance

What is dishonesty?

Dishonesty involves an intention to knowingly deceive or mislead. In the Scheme this may result in the receipt or payment of a benefit that a person would not otherwise be entitled to.

Examples of dishonesty committed by employers include intentionally or knowingly:

- · claiming more than they are entitled to for reimbursement of weekly payments
- overstating income maintenance for an injured worker
- making a false statement regarding a claim.

Examples of dishonesty committed by workers include intentionally or knowingly:

- · making a claim for an injury that does not exist
- exaggerating the extent of an injury that results in a payment or benefit which they otherwise would not have been entitled to
- · claiming for an injury that is not related to employment, for example, if a worker injured themselves at a weekend sporting event
- earning wages and claiming weekly payments without advising their case manager of their income
- · altering medical certificates to obtain weekly payments
- · providing false information for a claim.

Are claims investigated?

Investigations are often conducted to clarify or seek further information about a claim. They are also conducted because an allegation of dishonest behaviour has been received. Dishonest conduct can be committed by workers, employers and service providers.

WorkCover, the claims agents and self-insured employers take dishonest conduct seriously. WorkCover will assess the information it receives about a claim and if any evidence is found of dishonesty, the claim will be investigated for noncompliance with the Act in order to protect the integrity of the Scheme. If the employer is prosecuted and taken to court and dishonesty is found to have occurred, the employer may be convicted and ordered to pay WorkCover the amount received dishonestly and WorkCover's costs of prosecuting the matter.

If the employer suspects someone is committing fraud against the Scheme, they should contact WorkCover's Investigations and Recoveries Unit on (08) 8233 2229. If preferred, the employer can remain anonymous.

What is noncompliance?

Noncompliance is when a person does not meet their obligations under the Act regardless of whether the person deliberately avoided, or simply failed to meet their legal responsibilities.

Examples of employer non-compliance include:

- failing to register as an employer
- providing false or misleading information at the time of registering
- · failing to submit returns in the nominated timeframes
- providing false or misleading information regarding remuneration paid during a financial year
- · providing false information for the purpose of evading premium payments.
- · failing to report a claim for compensation and provide an Employer report form, or failing to do so within five business days
- failing to pay an injured worker weekly payments for the first two weeks of incapacity
- · failing to provide suitable employment to injured workers.

If an employer does not comply, they may be penalised or prosecuted by WorkCover. Examples of injured worker non-compliance include:

- · refusing proper medical treatment for their condition
- not participating in their rehabilitation and return to work plan
- failing to undertake work they have been offered and are capable of performing.

If an injured worker does not comply, their weekly payments may be stopped.

Frequently asked questions

Who is covered by WorkCover?

WorkCover applies to all workers, whether they are full-time, part-time or casual. Directors who work in the business are usually covered in respect of their employee functions.

Under Section 103A of the Act, volunteer workers are covered if their work is considered to be for the benefit of the State. This includes volunteer fire-fighters, members of the South Australian Country Fire Service, fire control officers under the Fire and Emergency Country Services Act 2005, members of the South Australian State Emergency Service and volunteer marine rescue members of a marine rescue association.

Who is not covered by WorkCover?

Generally speaking, when there is no remuneration paid to a worker, it is not considered a contract of service and therefore those persons or volunteers are not covered under the Act. Volunteers of other organisations (not mentioned above); sporting participants, umpires and referees; and work experience students may also be excluded from the operation of the Act. Enquiries from students/ employers should be directed to Centrelink or insurance companies to establish which insurance schemes cover students who are on work experience. Also, self-employed contractors may not be covered.

For more information, see WorkCover's Guide to miscellaneous classes at www.workcover.com.

What is a rehabilitation and return to work plan?

A rehabilitation and return to work plan is required for a worker when they are receiving weekly payments and is, or is likely to be, incapacitated for work for 13 weeks or more (but have some prospect of returning to work). It is an action plan, showing the intended outcome of the plan, responsibilities of all the parties involved in achieving that outcome, dates by which actions need to be undertaken or met and relevant costs. The case manager is responsible for coordinating the plan with all parties including the employer.

Who will treat and assist the injured worker?

The worker may be treated by a variety of health providers including a general practitioner, physiotherapist, chiropractor, psychologist and other health practitioners. They may also be assisted by a workplace rehabilitation provider who coordinates return to work services. Providers are there to help the worker, but they are also a valuable source of information and advice to help the employer too.

Can employers talk to their injured worker's doctor?

Employers can talk to their worker's doctor but only if they have the worker's consent to do so. The employer can only discuss:

- the worker's diagnosis or prognosis
- matters strictly relating to their current
- how they can help the worker's recovery and help them stay at or return to work.

What if an employer thinks a claim is dishonest?

The WorkCover Scheme in South Australia is a no-fault scheme. This means that all workers have the right to claim for compensation, regardless of who or what caused their workplace injury.

Often there is no witness to the injury. An employer may think that the claim is dishonest but in most cases this is incorrect and all it does is cast doubt and suspicion on the worker, which delays their return to work.

If the employer thinks a claim is dishonest, they should discuss this with their case manager in the first instance. Based on the information received, the claims agent will assess what action is required. This may involve investigating allegations of dishonesty and non-compliance with the Act. WorkCover takes dishonesty very seriously and thoroughly investigate allegations to protect the integrity of the Scheme and people's confidence in it. If dishonesty is found to have occurred, the person who behaved dishonestly may be prosecuted.

If the employer suspects someone of committing a dishonest act, they should contact WorkCover's Investigations and Recoveries Unit on (08) 8233 2229. If preferred, the employer can remain anonymous.

Is the worker's privacy protected?

The Act is very specific about disclosure of information. WorkCover, the claims agents and self-insured employers have strict policies about who is entitled to see claimant information. Other providers are also bound by the Act and by the Commonwealth Privacy Act 1988.

What if it's taking too long to make a decision on a claim?

The case manager is generally required to make a decision about whether a claim is accepted or rejected within ten business days of receiving the claim.

If a claim has not been determined within a reasonable period (which will depend on the circumstances), the employer or the worker can apply to the Workers Compensation Tribunal for what is called an 'expedited decision'.

This means that the Tribunal gives WorkCover's claims agents a time limit to make a decision. If this doesn't happen, the Tribunal may determine the claim.

Can the employer request access to information?

The employer can request a report on a worker's medical progress and incapacity for work. They can also request a copy of a worker's medical reports relevant to the injury. For more information, they should talk to their case manager.

Glossary

Case manager

A case manager is employed by WorkCover's claims agents, or a selfinsured employer to work directly with injured workers and their employers to manage workers rehabilitation and compensation matters.

Claims agent

An external organisation contracted by WorkCover and responsible for the day-today decisions about claims for registered employers.

Determination

A decision as to whether a claim is accepted or rejected and/or a decision about entitlements.

Dishonesty

The act of claiming or obtaining any payment or benefit by deception or dishonest means, dishonestly making a statement about a claim or dishonestly making an application or return required by the Act.

Health provider

Health professionals (such as medical practitioners or physiotherapists) who treat injured workers and assist them to recover and stay at or return to work.

Medical Panels SA

Medical Panels SA is an independent body specifically set up to provide opinions in respect of workers compensation medical questions.

Premium

A liability payable by an employer in relation to a particular period.

Provisional liability

Provisional liability is the process by which a claims agent or the self-insured employer is required to begin making weekly payments within seven calendar days (in most cases) of an injury being reported if a claim has not been determined.

Registered employers

Employers whose workers compensation claims are managed and costs are covered by WorkCover through the Scheme.

Rehabilitation and return to work coordinator

Employers with 30 or more workers are required to employ a coordinator to help manage injury and illness in the workplace and facilitate recovery and return to work.

Rehabilitation provider

Either health professionals (e.g. physiotherapists, occupational therapists etc.) or workplace rehabilitation providers, whose aim is to help injured workers recover and return to work.

Return to work

Return to work means the worker has gone back to work in their job, or another job for about their usual hours and pre-injury wages, as a regular wage earner.

Rehabilitation and return to work plan

A workplace rehabilitation plan established by the claims agent for an injured worker who is incapacitated for work by a compensable injury. It identifies the rehabilitation and return to work objectives and goals to return the worker to suitable, safe employment.

Self-insured employer

Self-insured employers are responsible for the financial costs and management of their own claims.

Suitable duties

Duties which are suitable for the injured worker to perform that enable the injured worker to either remain at, or return to work. These can include pre-injury duties, alternative duties or modified duties.

Suitable employment

This includes a worker's pre-injury or alternative employment, full-time or parttime, based on the medical assessment of their capabilities and other factors.

The Scheme

South Australia's Workers Rehabilitation and Compensation Scheme.

Weekly payments

What the Scheme pays workers to compensate for the income they may lose as a result of their injury. It is sometimes called income maintenance.

WorkCover Medical Certificate

This is a legal form that is required to be completed by a treating doctor where a worker has a medical condition (injury) that may be related to their work. A WorkCover Medical Certificate is required to support the claim for compensation. In addition, it may be required by a case manager e.g. to certify absence from work or continuing incapacity.

WorkCover Ombudsman

The WorkCover Ombudsman is authorised to receive, investigate and resolve complaints arising from the administration of the Act. The WorkCover Ombudsman reports to the Minister for Workers' Rehabilitation and is responsible for assessing the fairness of decisions to cease weekly payments.

Worker

The Workers Rehabilitation and Compensation Act 1986 (the Act) defines a worker as a person by whom work is done under a contract of service (whether or not as an employee); a person who is a worker by virtue of section 103A of the Act; a self-employed worker, and includes a former worker and the legal personal representative of a deceased worker.

Workers Compensation Tribunal

The Workers Compensation Tribunal can help workers with undetermined claims or review decisions made about a claim by the claims agent which a worker or employer is not prepared to accept. There are several conciliation options once a notice of dispute is lodged with the Tribunal.

Workers Rehabilitation and Compensation Act 1986 (the Act)

This Act provides for the rehabilitation and compensation of workers (and in some cases their families) who suffer workplace injury, illness or death.

Workplace rehabilitation provider

A registered rehabilitation provider is allocated to the injured worker by the case manager and will work with the injured worker as part of their return to work plan (previously known as vocational rehabilitation provider).

Claims agents

Employers Mutual SA

Phone (08) 8127 1100 or free call 1300 365 105

(08) 8127 1200 Fax

GPO Box 2575, Adelaide SA 5001 Postal address

Email newclaims@employersmutualsa.com.au

Online www.employersmutual.com.au

Gallagher Bassett Services Workers Compensation SA

Phone (08) 8177 8450 or free call 1800 664 079

Fax (08) 8177 8451

Postal address GPO Box 1772, Adelaide SA 5001 Email newclaimswcsa@gbtpa.com.au Online www.gallagherbassett.com.au

Useful contacts

WorkCover Ombudsman

If an employer has an issue relating to the operation of the WorkCover Scheme, they can contact the WorkCover Ombudsman who runs an independent office set up to investigate complaints.

Phone (08) 8463 6593 Toll free 1800 195 202

Postal address GPO Box 464, Adelaide SA 5001

Email owo@sa.gov.au

Online www.wcombudsmansa.com.au

Workers Compensation Tribunal

For more information on the Workers Compensation Tribunal:

Phone (08) 8207 0999

PO Box 8046, Station Arcade SA 5000 Postal address

Industrial Tribunals@sa.gov.au Email Online www.industrialcourt.sa.gov.au

SafeWork SA's Help Centre

Phone 1300 365 255

Email help@safework.sa.gov.au Online www.safework.sa.gov.au

WorkCoverSA

Enquiries: 13 18 55 400 King William Street Adelaide SA 5000 Fax: (08) 8233 2466 info@workcover.com www.workcover.com

The following free information support services are available:

If you are deaf or have a hearing or speech impairment you can call WorkCoverSA through the National Relay Service (NRS):

- TTY users can phone 13 36 77 then ask for 13 18 55.
- Speak & Listen (speech-to-speech) users can phone 1300 555 727 then ask for 13 18 55.
- Internet relay users can connect to NRS on www.relayservice.com.au then ask for 13 18 55.

For languages other than English call the Interpreting and Translating Centre (08) 8226 1990 and ask for an interpreter to call WorkCoverSA on 13 18 55. For Braille, audio or e-text call 13 18 55.

The information in this publication is compiled by WorkCover Corporation of South Australia. The data and facts referred to are correct at the time of publishing and provided as general information only. It is not intended that any opinion as to the meaning of legislation referred to is to be relied upon by readers. You should seek independent or legal advice as to any specific issues that are relevant to you, your workplace or organisation.

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