

WORKERS COMPENSATION AND INJURY MANAGEMENT FACT SHEET 2

INJURY MANAGEMENT AND RETURN-TO-WORK PROGRAMS

WHAT IS INJURY MANAGEMENT?

Injury management is about ensuring the prompt, safe and durable return-to-work of an injured worker. It includes treatment of the injury, rehabilitation back to work, retraining into a new skill or new job, management of the workers compensation claim and the employment practices of an employer.

Everyone involved is required to cooperate and participate in injury management, including the insurance company, employer, injured worker, treating doctor and all treating practitioners.

WHY SHOULD AN EMPLOYER GET INVOLVED IN INJURY MANAGEMENT?

Employers who work closely with the insurance company and the injured worker will be able to influence the progress of the worker's recovery. The earlier an injury is treated and managed, the sooner the worker will return to work and recover from the injury. This means less downtime and lost productivity, as well as a saving in claims costs (and therefore lower premiums) for employers.

WHAT RESPONSIBILITIES DOES AN EMPLOYER HAVE IN RELATION TO INJURY MANAGEMENT?

If a worker is injured, an employer must:

- attend to the injured worker as soon as possible,
- notify the insurance company within 48 hours of a significant injury occurring (ie. an injury that prevents a worker from doing their usual job continuously for seven or more calendar days),
- notify the insurance company of any other workplace injury within seven days,
(Note: effective 1 September 2003, workplace injuries must be notified to the insurer within 48 hours.)
- cooperate and participate with the insurance company to develop an injury management plan for the injured worker. The insurance company should contact the employer and the worker within three days of receiving notice of an injury, and

- implement and monitor a return-to-work plan for the injured worker.

WHAT IS A RETURN-TO-WORK PROGRAM?

- A return-to-work program consists of the formal policy and procedures that an organisation must have in place to help injured workers with their recovery and return to the workplace. It outlines an organisation's commitment to assist injured workers with accessing necessary treatment and rehabilitation, and specifies the steps to be taken to achieve a safe, timely and durable return-to-work.
- A return-to-work program must be consistent with the organisation's insurance company's policy and procedures for managing workplace injuries (ie. the injury management program).
- A return-to-work program must be displayed at workplaces and workers must be notified of the program.
- A copy of the program must be provided to any worker on request.
- All employers in NSW must develop a written return-to-work program within 12 months of becoming an employer. Failure to establish a return-to-work program is an offence under section 52 of the *Workplace Injury Management and Workers Compensation Act 1998*. Penalties apply.

Developing a program

- A return-to-work program must be developed in consultation with workers and any industrial union of employees representing those workers.
- For a **Category 1 employer**, that is an employer
 - with a base premium exceeding \$50,000, or
 - who is self insured, or
 - who is insured by a specialised insurer, and who employs more than 20 workers,

a return-to-work program must be developed in accordance with the *WorkCover Guidelines for Employers' Return-to-Work Programs* (Catalogue

No. 506) (available from the WorkCover website or the Publications Hotline). Programs must also be consistent with the employer's insurance company's injury management program.

- **Category 2 employers** (that is, any employer who is not a Category 1 employer) are permitted to adopt the standard return-to-work program prepared by WorkCover. However, it is better practice to establish a tailored program that is consistent with the requirements of the workplace.

Displaying the program and notifying workers about the program

- **Category 1 employers:** Return-to-work programs must be displayed at places of work under an employer's control and workers must be notified about the program.
- **Category 2 employers:** Return-to-work programs need not be displayed if another arrangement is made to ensure that workers have access to the program or a copy of the program is given to any worker who requests a copy, or who applies for compensation for an injury.
- Failure to display a program and/or notify workers about the program is an offence that carries penalties for employers.

Shared return-to-work programs

A group of two or more Category 1 employers may establish and use an outsourced or shared program if those employers provide WorkCover with a copy of their Return-to-work Plan and demonstrate:

- The employers have a common interest. An example of common interest could be employers in the same industry, or in the same geographical location such as an industrial park or office tower.
- The shared or outsourced arrangements will provide improvements in the provision of return-to-work services.
- Workers will not be disadvantaged.
- The return-to-work coordinator's qualifications and experience. A shared / engaged return-to-work coordinator must have significant experience in workplace-based occupational rehabilitation, preferably as a return-to-work coordinator. It is also preferable that a shared return-to-work coordinator has tertiary qualifications.

Category 2 employers are not required to appoint a return-to-work coordinator, however, employer associations and unions may establish shared return-to-work coordinator positions to assist smaller employers to

fulfil their obligations. Where a shared return-to-work coordinator is used by a Category 2 employer, they must:

- Have training and experience as specified in the *WorkCover Guidelines for Employers' Return-to-Work Programs*.
- Undertake the duties specified in these guidelines.
- Be registered with WorkCover to undertake these duties for a specific industry or geographical area.

In all instances, a shared program must comply with the WorkCover guidelines and must be approved by WorkCover NSW.

For further information on shared return-to-work programs, contact WorkCover or visit the WorkCover website.

WHAT IS A RETURN-TO-WORK COORDINATOR?

A return-to-work coordinator is an employee nominated by the employer (or a contractor engaged specifically for the role), whose principal purpose is to assist injured workers with returning to work in a safe and timely manner. The return-to-work coordinator ensures that the policy and procedures in the employer's return-to-work program are followed.

Only Category 1 employers are required to have a return-to-work coordinator.

The role of return-to-work coordinators

The role and functions of return-to-work coordinators are outlined in the *WorkCover Guidelines for Employers' Return-to-Work Programs*. However, specific duties are likely to reflect the needs of the workplace and its workers and should be outlined in the employer's return-to-work program.

Duties may include, but are not limited to:

- Developing and implementing the return-to-work program, educating the workforce, keeping injury and return-to-work statistics, and developing policies to improve systems.
- Providing information on the return-to-work process and workers compensation benefits to injured workers.
- Determining the injured worker's needs by discussion with the worker, the nominated treating doctor and other treatment practitioners.
- Working with the insurance company as they develop an injury management plan for the injured worker.
- Identifying appropriate suitable duties and assisting the injured worker to return to work as soon as possible.

- Preparing a return-to-work plan to document suitable duties and work restrictions so that all parties are informed and managing the return-to-work process.
- Being the focal point for all contact relating to the injured worker.
- Coordinating and monitoring progress in treatment, rehabilitation services and return-to-work plans.
- Maintaining confidential case records.

Training and skills for return-to-work coordinators

Category 1 employers must employ or contract their own trained return-to-work coordinator. The return-to-work coordinator must hold:

- a WorkCover certificate, certifying attendance at the WorkCover accredited two-day course *Introduction to Return-to-Work Coordination*, or
- a WorkCover certificate, certifying attendance at a two-day WorkCover accredited training course for rehabilitation coordinators that was conducted prior to February 1995, or
- a letter from WorkCover's Injury Management Branch, agreeing to exempt the return-to-work coordinator from the requirement to participate in WorkCover accredited training.

Return-to-work coordinators should possess the following knowledge and skills:

- ability to develop a return-to-work program consistent with workplace requirements,
- ability to develop a return-to-work plan,
- ability to implement and explain workers compensation legislation,
- ability to identify and coordinate suitable duties for injured workers,
- case and caseload management skills, including problem-solving abilities,
- excellent written and verbal communication skills, including training, negotiation and listening skills, and
- organisational and time management skills.

WHAT IS THE DIFFERENCE BETWEEN AN INJURY MANAGEMENT PLAN AND A RETURN-TO-WORK PLAN?

There are two types of plans intended to help an injured worker recover and return to work as soon as possible. One is drawn up by the insurance company and is called an injury management plan; the other is written by the return-to-work coordinator or accredited rehabilitation provider and is called a return-to-work plan.

Injury management plan

The insurance company is required to consult with the injured worker, the employer and the treating doctor prior to developing the injury management plan. The insurance company must complete the injury management plan no more than 20 days after notification that a worker has had a significant injury.

The injury management plan outlines all the services required to return the injured worker to the workplace. It includes details about the worker and employer, information about the injury, the rehabilitation goal, and the actions required by the worker, employer, nominated treating doctor, rehabilitation provider, and insurance company.

After participating and cooperating in the establishment of the injury management plan, the employer and the injured worker receive a copy of the plan from the insurance company, and they both have an obligation to comply with it.

Return-to-work plan

The return-to-work plan is the written, formal offer of suitable duties by the employer to the injured worker. It is designed to make clear what the worker can and cannot do when they return to work, and when this will be reviewed. The plan must be agreed by all relevant parties – the worker, supervisor, nominated treating doctor, return-to-work coordinator, worker representative (if appropriate), and accredited rehabilitation provider (if applicable).

A sample format for a return-to-work plan can be found in the *Guidelines to Employers' Return-to-Work Programs*.

WHAT ARE SUITABLE DUTIES?

Suitable duties are short-term work duties, agreed between the employer and the injured worker to assist the injured worker's rehabilitation. Suitable duties must comply with a current medical certificate, and may include:

- parts of the job the worker was doing before the injury,
- the same job, but on reduced hours,
- different duties altogether,
- duties at a different site,
- training opportunities, or
- a combination of some or all the above.

The definition of suitable employment (duties) states that the following must be taken into account:

- the medical certificate – the treating doctor will list work capabilities,
- the age, education and work skills of the injured worker,
- where the worker lives,
- the duties must be useful to the employer's trade or business,
- the duties must comply with the injury management plan, and
- the duties must not be demeaning or token jobs.

The employer's return-to-work program must contain a description of how suitable duties are organised by that employer. All offers of suitable duties must be in writing and must be described in a return-to-work plan.

An employer who is having difficulty identifying suitable duties can request assistance from an accredited rehabilitation provider, or the insurance company.

MUST AN EMPLOYER ALWAYS PROVIDE SUITABLE DUTIES TO AN INJURED WORKER?

Yes. Failure to provide suitable duties when it is reasonably possible to do so may affect an employer in two ways:

- The cost of the claim can increase – the worker is entitled to special weekly compensation (known as section 38 benefits) for up to 52 weeks and may need rehabilitation to find another job. The increased cost of claims can result in an increase in the employer's annual workers compensation premium; and

- The Workers Compensation Commission may impose a penalty of up to \$5,000 for not complying with chapter 3 of the *Workplace Injury Management and Workers Compensation Act 1998*.

The employer does not have to provide suitable duties if:

- the worker voluntarily resigns, or
- the employer terminates the worker's employment after the injury for justifiable reasons, other than the injury or fitness for work.

MUST AN INJURED WORKER ACCEPT SUITABLE DUTIES?

Yes. The workers compensation benefits of an injured worker who refuses a reasonable offer of suitable duties may be stopped or reduced.

KEY POINTS

- Injury management helps injured workers get back to work quickly and safely.
- The cooperation and participation of the employer, the worker, the treating doctor and the insurance company in the injury management process is essential for achieving the best possible outcomes.
- Having policies and procedures in place before an injury happens, and knowing how to develop plans to help injured workers, is the responsibility of both the employer and the insurance company.

Further information about injury management and return-to-work programs is available from:

- WorkCover website www.workcover.nsw.gov.au
- WorkCover Assistance Service on **13 10 50**.

Disclaimer

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au) or by contacting the free hotline service on 02 9321 3333.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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