

Return to Work Obligations

July 2013

Supporting your injured worker to return to safe and sustainable work as soon as possible is necessary to meet your legal obligations, is good for your worker and is good for business. It can help increase productivity and keep the cost of your WorkSafe Insurance premium down. It benefits your worker by reducing the financial, health and emotional impacts on them and their family.

Your legal obligations

When one of your workers has an incapacity for work, you have obligations under the law to help them return to work. These obligations are to:

✓	plan for your worker's return to work: <ul style="list-style-type: none">▪ obtain relevant information about your worker's capacity for work▪ consider reasonable workplace support, aids or modifications to assist in your worker's return to work▪ assess and propose options for suitable or pre-injury employment to your worker▪ provide your worker with clear, accurate and current details of their return to work arrangements▪ monitor your worker's progress
✓	consult directly with your worker about their return to work, with their treating health practitioner (subject to the consent of the worker) and occupational rehabilitation provider (if involved)
✓	for a period of 52 weeks, provide your injured worker with suitable employment if they have an incapacity for work and/or pre-injury or equivalent when they have returned to full capacity
✓	appoint a Return to Work Coordinator who has an appropriate level of seniority and is competent to assist you meet your return to work obligations
✓	make information about return to work available to all workers



if a host, cooperate with the labour hire employer's efforts to meet their return to work obligations and facilitate the worker's return to work

When an employer's return to work obligations start

Your return to work obligations start even before the claim has been accepted by your WorkSafe Agent (the Agent) – they commence when you receive your injured worker's WorkSafe *Certificate of Capacity* or claim for weekly payments, or from the date you are advised by your Agent that they have received these documents, whichever is earlier.

Other requirements

In addition to return to work obligations under Victorian workers compensation legislation, there are other State and Commonwealth laws that employers need to be aware of which apply to their workers. These are summarised below.

Occupational Health and Safety requirements

Employers have obligations under Victorian occupational health and safety (OHS) legislation, including to provide a safe work environment. Employers need to consider their obligations under OHS legislation when planning a worker's return to work.

Privacy and confidentiality requirements

Victoria's workers compensation legislation, information privacy legislation and health records legislation regulate the exchange of personal and health information. Employers should be familiar with these requirements as, in the course of managing a worker's return to work, employers will have access to confidential information about a worker.

Anti-discrimination and labour requirements

The legislation prohibits an employer or prospective employer from engaging in the following discriminatory conduct relating to a worker pursuing a claim for compensation or for notifying an employer or WorkSafe of an injury under this legislation:

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- dismissing, or threatening to dismiss, a worker from employment, or
- altering, or threatening to alter, the position of a worker to the worker's detriment, or
- treating a worker less favourably than another worker in relation to promotion or re-employment.

There are also other State and Commonwealth discrimination laws that require employers to make reasonable adjustments to hours, equipment and conditions to accommodate a worker's injury or illness regardless of its cause, nature or permanency. These laws apply to all workers, whether full-time, part-time, temporary, permanent or casual. It may be unlawful discrimination to treat any worker less favourably at work because of their illness or injury, or allow them to be treated less favourably by others.

In addition, employers need to comply with labour laws, industrial awards and agreements under which their employment arrangements are regulated. WorkSafe and its Agents are not able to provide advice regarding these laws and requirements. However, it is recommended that you become familiar with these and other relevant requirements.

Meeting your legal obligations

Everyone's circumstances and experiences may differ, but supporting your worker by appropriately planning their return to work can help their rehabilitation and get them back to their normal life.

As the employer, your attitude, support and understanding following an injury will affect the relationship between your organisation and your injured worker. Maintaining appropriate contact with your worker is crucial in helping them while they recover and return to work.

The following are some key actions you can take early in the process that will facilitate your worker's return to work:

- contact your worker to ask how they are and to offer support
- provide your worker with relevant return to work information
- let your worker know that your organisation takes health and safety seriously and what you are doing to address the hazards that led to their injury
- tell your worker who the Return to Work Coordinator is and that they should expect a call from the coordinator soon

- ensure your worker has received the brochure *Introducing WorkSafe, A guide for injured workers*
- be prepared to make appropriate workplace changes to accommodate your worker's return to work
- advise your other workers what you will do to support and assist them and their injured colleague during return to work and ask them to do what they can to support their colleague
- visit [worksafe.vic.gov.au/rtw](https://www.worksafe.vic.gov.au/rtw), which has helpful information for employers and workers about return to work.

Penalties

WorkSafe actively monitors and enforces compliance with the legislation. A Return to Work Inspector may visit your workplace to assess whether you are adequately complying with your return to work obligations. Inspectors will help ensure you are appropriately informed. If appropriate, they will issue an improvement notice requiring you to comply with your obligations.

For more information about Return to Work Inspectors, refer to WorkSafe's fact sheet *Return to Work Inspectors* or visit [worksafe.vic.gov.au](https://www.worksafe.vic.gov.au).

Employers who breach their return to work obligations also risk prosecution and financial penalties of up to 180 penalty units for a natural person and up to 900 penalty units for a body corporate per offence. For information about the value of penalty units, refer to [worksafe.vic.gov.au](https://www.worksafe.vic.gov.au).

Working together

A work-related injury or illness can have a big impact on what your injured worker is able to do. They may not be able to do what they did previously, either at work or at home. Your injured worker's return to work is a team effort. It involves you, your Agent, your worker, their treating health practitioner and occupational rehabilitation provider (if one is involved).

Workers also have return to work obligations, including to make reasonable efforts to return to work with their employer or, if necessary, another employer, and to actively participate and co-operate in the planning for return to work.

Further information

For more information about employers' return to work obligations, please:

- visit our website **worksafe.vic.gov.au**
- call the WorkSafe Advisory Service on **(03) 9641 1444** or freecall **1800 136 089**
- email **info@worksafe.vic.gov.au**
- Refer to the WorkSafe publications:
What to do if a worker is injured – A guide for employers and
Return to work coordination the basics you need to know,
available from the WorkSafe website
worksafe.vic.gov.au
- Refer to WorkSafe's Return to Work Compliance Codes:
Compliance Code 1 of 4: Providing employment, planning and consulting about return to work
Compliance Code 2 of 4: Return to Work Coordinators
Compliance Code 3 of 4: Return to work information
Compliance Code 4 of 4: Cooperating with labour hire employers about return to work
- contact your Agent
- contact your industry group representative.

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