



# WORKERS' COMPENSATION LEGISLATION AND PSYCHOLOGICAL INJURY

## FACT SHEET

### Overview

This fact sheet provides a general overview of the employer's role under workers' compensation legislation in relation to psychological injuries.

All jurisdictions have separate workers' compensation acts and regulations. Refer to the regulator information in your jurisdiction listed in Appendix A.



## Introduction

The workers' compensation acts and supporting regulations (workers' compensation laws) in each jurisdiction support workers in the event of a work-related injury.

To assist employers to create a healthy workplace, identify the early signs of psychological distress and provide suitable support, several jurisdictions have published guidance on early intervention, workers' compensation duties, claims management and return to work programs. Links to some of this material can be found at the end of this fact sheet.

## What is a psychological injury?

Psychological injury or mental injury includes a range of cognitive, emotional and behavioural symptoms that interfere with a worker's life and can significantly affect how they feel, think, behave and interact with others.

Psychological injury may include such disorders as depression, anxiety or post-traumatic stress disorder.

Job stress is commonly used to describe physical and emotional symptoms which arise in response to work situations but it is not in itself a disorder or a psychological injury

## Early intervention

Employers or their delegates can intervene to manage a work situation whenever signs of job stress or distress are first noticed. Early signs may include increased unplanned absences, withdrawal or deteriorating work performance. Intervention at this early stage such as providing appropriate support and identifying and addressing workplace issues that may be causing or contributing to psychological distress can often prevent a situation deteriorating and a worker developing a psychological injury.

Further information on prevention and early intervention can be found in the guidance material listed at the end of this fact sheet.

## Workers' compensation laws

All jurisdictions have workers' compensation laws which establish a no-fault scheme for the compensation and management of work-related injuries. Workers' compensation laws impose a levy or premium on employers to fund potential liability for workers injured at work. The levy or premium payments can vary in amounts payable or rules for calculation in each jurisdiction.

These laws, although similar in all jurisdictions, have some variations so it is important you refer to your jurisdiction to ensure you are compliant with the laws applying to you (see Appendix A).

The *[Comparison of Workers' Compensation Arrangements in Australia and New Zealand](#)* document provides an outline of the different legal requirements in each jurisdiction in relation to workers' compensation. The document includes links to the relevant legislation and contact details for each jurisdiction.

## When is a psychological injury compensable?

In all jurisdictions an injury is only compensable if it arose out of or in the course of employment. Workers' compensation laws qualify this further by stating that the employment must have been a significant, material, substantial or the major contributing factor to the injury. Claims for psychological injury are generally not accepted if they are related to reasonable action taken by the employer in relation to dismissal, retrenchment, transfer, performance appraisal, disciplinary action or deployment.

A summary of the jurisdictions' definition of injury and relationship to employment is in the *[Comparison of Workers' Compensation Arrangements in Australia and New Zealand](#)*.

## What benefits are covered by workers' compensation?

Workers' compensation payments can include:

- medical expenses - doctors, psychiatrists, psychologists or counsellors
- income replacement payments to injured workers
- costs associated with rehabilitation
- costs associated with retraining for other employment or duties, or
- lump sum payment for any permanent injury or disability.

## Workers' compensation claims management

Workers' compensation claims management is a co-ordinated program supporting an injured worker commencing at the initial report or notification of the injury to the workplace through to return to work, where possible.

## **Notification**

Workers who have incurred an injury at work and are intending to make a workers' compensation claim must provide the employer or insurer with information about their injury.

In most jurisdictions, the employer must then notify the insurer of the claim within a specified time. Refer to your regulator to find out what rules apply to you.

Prompt notification of a claim initiates the management of the claim and early intervention practices that may assist a worker with a psychological injury.

## **Rehabilitation and return to work**

Return to work means assisting injured workers in staying at or getting back to work. The aim of the return to work and rehabilitation provisions in workers' compensation legislation is to provide for the safe, timely and durable return to work of the injured worker having regard to the worker's injury.

The return to work plan involves the employer, the worker and the insurer and may also involve workplace rehabilitation coordinators, rehabilitation providers, medical and other health professionals. This will depend on the workers' compensation legislation in each jurisdiction and the severity of the worker's injury.

A successful return to work can be assisted by the following factors:

- ensuring that workplace psychological hazards are addressed appropriately
- early intervention
- an effective workplace-based rehabilitation program and return to work plan
- effective claims management, and
- co-operation, collaboration and consultation between all parties involved.

Each jurisdiction has a process for returning an injured worker to work. If you are unsure of your obligations and to ensure you are complying with the workers' compensation laws in your jurisdiction, refer to your regulator for information.

Further information on the process in each jurisdiction and links to jurisdictional guidance material is in Chapter 5 of the [\*Comparison of Workers' Compensation Arrangements in Australia and New Zealand\*](#).

While workers' compensation legal requirements differ between jurisdictions, generally the employer has a duty to:

- consult with the worker and other involved parties
- develop or be involved in the development of a return to work plan, and
- provide suitable duties.

Employers also have duties under work health and safety laws to ensure the health and safety of workers as far as is reasonably practicable.

## **What is a return to work plan?**

A return to work plan is developed in consultation with the employer, worker and other relevant parties such as rehabilitation providers aimed at achieving the timely, safe and durable return to work of the injured worker. It usually includes clear objectives, a list of actions to be taken to enable return to work, and the person responsible for each action. It may include:

- suitable duties being offered including modified or alternative duties
- hours of work including work breaks
- support, aids or modifications to the workplace
- relevant contact details
- time frames, and
- processes to monitor progress.

## **What are suitable or alternative duties?**

Suitable duties refer to work that is suited to the worker's current capacity taking account of their medical condition, age, skills, work experience and pre-injury employment. Suitable duties may involve reasonable adjustment, for example:

- flexible working arrangements - varying start and finish times or allowing extra or longer work breaks
- modifying some aspect of the job or work tasks - simplifying tasks, providing greater support - writing down instructions, developing standard operating procedures, using diagrams
- modifying the workstation or work area - relocating the workstation to a quieter location or using privacy screens.

Suitable duties must be meaningful. An injured worker should not be discriminated against because of their injury, including when being offered suitable duties.

## Further information

- Fact Sheet – *Preventing psychological injury under work health and safety laws*
- Your jurisdictional workers' compensation or work health and safety authority
- Queensland: *Work-related stress tip sheets*
- Comcare: *Early Intervention to support psychological health and wellbeing*
- WorkCover South Australia. *Managing Psychological Injuries: a Guide for Rehabilitation and Return to Work Coordinators*
- Australian Services Union. *Employers Guide to Best Practice Return to Work for a Stress Injury*
- Australian Human Rights Commission: *Workers with a mental illness: a practical guide for managers*
- Beyond Blue: *Supporting the return to work of workers with a mental illness*
- Beyond Blue: *Resources – In the Workplace*

## Appendix A Workers' Compensation Authorities and Legislation

Jurisdiction	Workers' Compensation Authority	Legislation
New South Wales	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Phone: 13 10 50	<i>Workplace Injury Management and Workers Compensation Act 1998</i>  <i>Workers Compensation Act 1987</i>
Victoria	<a href="http://www.worksafe.vic.gov.au">www.worksafe.vic.gov.au</a> Phone: (03) 9641 1444 1800 136 089	<i>Accident Compensation Act 1985</i>  <i>Accident Compensation (WorkCover Insurance) Act 1993</i>  From 1 July 2014 the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i>
Queensland	<a href="http://www.workcoverqld.com.au">www.workcoverqld.com.au</a> Phone: 1300 362 128	<i>Workers' Compensation and Rehabilitation Act 2003</i>
Western Australia	<a href="http://www.workcover.wa.gov.au">www.workcover.wa.gov.au</a> Phone: 1300 794 744	<i>Workers' Compensation and Injury Management Act 1981</i>
South Australia	<a href="http://www.workcover.com">www.workcover.com</a> Phone: 13 18 55	<i>Workers Rehabilitation and Compensation Act 1986</i>  <i>WorkCover Corporation Act 1994</i>
Tasmania	<a href="http://www.workcover.tas.gov.au">www.workcover.tas.gov.au</a> Phone: 1300 366 327 From outside Tasmania: (03) 6166 4600	<i>Workers Rehabilitation and Compensation Act 1988</i>
Northern Territory	<a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a> Phone: 1800 250 713	<i>Workers Rehabilitation and Compensation Act 2013</i>
ACT	<a href="http://www.worksafe.act.gov.au">www.worksafe.act.gov.au</a> Phone: (02) 6207 3000	<i>Workers Compensation Act 1951</i>
Commonwealth	<a href="http://www.comcare.gov.au">www.comcare.gov.au</a> Phone: 1300 366 979	<i>Safety, Rehabilitation and Compensation Act 1988</i>
Seacare	<a href="http://www.seacare.gov.au/">www.seacare.gov.au/</a> Phone: (02) 6275 0070	<i>Seafarers Rehabilitation and Compensation Act 1992</i>