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Introduction

This booklet has been produced to assist you in your role as a workplace Union Representative dealing with Workers Compensation issues.

Union Representatives are also encouraged to visit the OHS website – www.unionsafe.labor.net.au – containing further information about compensation. This website also has a facility for **Frequently Asked Questions** so you can have your questions answered online.

Union Representative's role

It is very important for Union Representatives to take an **active role** in Workers Compensation.

The Union Representative should **assist** injured members with their Workers Compensation claim and return to work plans.

This booklet is designed to provide information to help Union Representatives resolve matters themselves. However, if they need further assistance matters can be referred to their union organiser.

If the Union Representative is unable to resolve an issue, it should be **referred to the Union Organiser**.

Unions will strongly support and educate Union Representatives in dealing with all compensation matters.

Refer to your union for information on training programs.

Workers Compensation – a new approach

Workers Compensation is an insurance scheme taken out by all employers, which covers all of their workers (and deemed workers) in the event of a work-related injury, accident or illness.

The Law states all employers **must have a Current Workers Compensation policy**. Unions can inspect these policies and also ensure that employers are paying the correct insurance.

Workers Compensation provides injured workers with:

- **Weekly payments** when there is loss of income
- Payment of **medical, hospital and other expenses** (including travel to and from treatment and rehabilitation expenses associated with return to work or retraining for another job)
- **Lump sums** if the injury causes a permanent loss or impairment and, for more significant losses, associated pain and suffering. There are also special lump sum death benefits
- **Damage to clothing** and artificial aides (such as glasses) where an accident has occurred.

Insurers manage claims and are paid a fee by the NSW Government to administer the WorkCover Scheme.

WorkCover licences all insurers

Unions will inform WorkCover of complaints against insurers.

All insurers, including self insurers, must comply with the WorkCover Laws and guidelines.

When are workers covered by compensation?

Workers and deemed workers (under a special schedule of the Act, deemed workers can be sub contractors, jockeys, the clergy, self employed, etc.) are covered for injuries sustained from the time a worker leaves for work until they return. They are covered both at the workplace and away from their workplace, where injury is sustained in the course of employment.

For example a person is covered:

- On a journey to and from work (but there are restrictions)
- Recess and lunch breaks
- When attending a picket line or at a strike meeting
- If they are a Union Representative attending a course or a meeting and they become injured they are covered in most cases
- If they are an apprentice or trainee attending TAFE or colleges.

It is important to note that work must be a significant contributing factor to any injury occurring. Examples are available on the OHS website www.unionsafe.labor.net.au



What does the employer have to do?

Under the Law the employer:

- **Must have** a current Workers Compensation policy
- **Must have** a return-to-work Program that covers all their workers, in case there is an injury. The program must comply with the WorkCover guidelines and be developed through consultation with your union
- **Must display** a summary of the Workers Compensation Legislation, and insurer's information
- **Must display** their return to work program or, if a smaller employer, have it available on request
- **Must have a Register of Injuries** book, where work related injuries are recorded
- **Must advise the insurance company** within 48 hours of becoming aware of a significant injury (7 days if not significant) and obtain a notification number (as a Rep you should also find out the notification number)
- **Must provide** a workers' compensation **claim form** and forward claim to the insurer (if a claim form is needed)
- **Must pass payment** on to injured worker as soon as possible
- **Must provide suitable duties** unless they can prove it is not practical. Refer to page 18 which provides practical examples
- **Must not sack** an injured worker. Refer to page 16.

WorkCover can prosecute employers for failure to comply with these Laws.

Union Representatives can notify their insurer about an injury, can give initial notification of an injury to the insurer and find out the notification number if the employer has not done this. This number will probably become the claim number. If there are any problems with the claim, the injured worker should quote this number so the insurance company can find the paperwork more easily.

**DOES YOUR WORKPLACE HAVE A RETURN TO WORK PROGRAM?
IF YES, HAS IT BEEN AGREED BY THE UNION?**

What an injured worker needs to do if they are injured:

- **Advise the Union Representative**
- **Register any injury** whether serious or not, in the register of injury book
- **Give notice** of the injury as soon as possible to the employer, or anyone designated by the employer. Notice can be in writing or verbally. It must be given before an injured worker resigns voluntarily from the job where they were injured. (Notice of gradual hearing loss must be given in writing, but can be given after voluntarily resigning from a job)
- As a Union Representative **make sure** that the details entered in the employer's Register of Injuries are up to date
- **See a doctor** of their choice if treatment is needed and get a WorkCover medical certificate (**you are entitled to choose your own doctor**)
- **Comply** with the return to work plan (Refer to page 17)
- **Make a claim** by completing and giving to the employer a Workers Compensation claim form (a claim form is usually only needed if seeking benefits in excess of any authorised by the insurer under "provisional liability"). Your Union Representative can advise you on this
- **Co-operate with the insurer**, in particular, complies with any reasonable request to provide specified information in addition to that provided on the claim form
- **Attend** (if necessary) a medical examination with a medical practitioner arranged and paid for by the employer at a **reasonable time**
- **Provide** up to date WorkCover medical certificates.

If it is a significant injury (total or partial incapacity for a continuous period of more than 7 days, whether or not they are working days):

- **Advise** your insurer when asked to do so, who your Nominated Treating Doctor is (i.e. doctor of your choice)
- **Comply** with the insurer's Injury Management Treatment Plan.

Once the insurance company has provided the employer with a notification number, the employee should get and keep a copy of this number.

Your rights as an injured worker

You have the right:

- To choose your own doctor
- To choose your own rehabilitation provider
- To choose your own treatment provider, i.e. physio, chiropractor, etc
- To choose your own legal representatives (**contact your union for advice on legal and other referral services**)
- To have your union assist you with the progress of your claim and particularly on return to work issues.



What the insurance company must do

Unions worked hard to change the Law to make sure that insurance companies pay injured workers on time.

Insurance companies **must** now begin paying claims for weekly compensation within seven days after receiving an initial notification of injury (unless there is a “reasonable excuse”). **If an insurer fails to pay within 7 days, they can be fined \$5,000.**

The WorkCover guidelines set out “**what is a reasonable excuse**” and these are listed below.

- Unable to contact worker
- Insufficient medical evidence
- Worker is not an employee – for example a Director of a company
- Worker refuses to sign privacy clause on the claim form
- Injury is not work related
- Injury is notified after two months
- Injury is not significant.

As a Union Representative, if the insurer does not pay within the set time, you should contact the insurer or your union.

The seven days commences from the time the notification number is issued and not when the claim form is received. The notification number is issued over the telephone.

Under Provisional Liability:

- Weekly compensation payments can be made for up to **12 weeks** from the date of incapacity
- The length of time will depend on the type of injury and how long the person is likely to be off work
- The payments do not mean acceptance of liability for the claim
- Medical and treatment expenses can be **approved up to \$5,000.**

Rejected and fraudulent claims

If the insurer pays provisional liability benefits and later rejects the claim, they cannot get the money back, unless fraud is involved.

Note: there are severe penalties for fraud (a fine of up to \$55,000 and/or up to 2 years imprisonment).

Advising workers of their rights

Under the new rules, insurance companies must:

- Tell injured workers **within seven days** after the initial notification whether they will start weekly compensation payments or, if not, the reason why
- Ensure the weekly compensation payments have **begun on time**
- **Tell employees** they have the right to lodge a claim form and how to get help from their union, WorkCover or solicitor
- **Pay benefits promptly.**

Refer to your union for more information.



Benefits

While a worker is off work they are paid a weekly benefit. This benefit is calculated at the the applicable award or enterprise agreement rate.

If a worker is back at work on suitable duties they are entitled to make up pay from the insurer. The make up pay is calculated on the workers normal weekly rate, which includes overtime and penalty rates.

After six months the weekly rate drops.

Refer to the benefits table on page 14-15.

Casuals

If a casual employee is injured, they are entitled to be paid:

- Their average weekly earnings – this is averaged out over the period of their employment
- This is paid until the person is fit to return to work
- If a casual employee works more than one job they are entitled to be paid for all of those jobs – again the wages of all these jobs are added together and averaged to get a weekly rate.

Annual leave and entitlements

A worker is entitled to receive, in addition to their Workers Compensation benefits:

- **Annual leave**
- **Public holidays** (this can be added to your annual leave)
- **Long service leave** pro rata, whilst employed and on benefits
- They cannot be paid **sick leave** and compensation at the same time.

Utilising sick pay and annual leave

A worker can use their holiday and sick leave entitlement whilst they are waiting for benefits to be paid or to top up their compensation if the rate drops. Refer to your award or enterprise agreement.

Medical and other related benefits

- An injured worker is entitled to claim the cost of **reasonably necessary** treatment that results from the injury such as medication and treatment including physio and surgery
- Unions have also been successful in getting the government to include payments for seriously injured workers to get access to **domestic care** when it is reasonably necessary and directly results from the injury. It can include work such as mowing lawns, house cleaning and child minding
- Workers can claim reasonable travel expenses to and from treatment, i.e. petrol, train and bus fares
- Where an accident results in damage to glasses or hearing aids etc., these aids can be repaired or replaced without the need for an injury to have occurred.



Weekly benefits under the Workers Compensation Act

Total Incapacity*

First 26 Weeks

Section 36 – A worker is entitled to receive their current weekly wage rate (CWWR) that they receive under their award or enterprise agreement, you are **only** entitled to the base amount, this does NOT include amounts for overtime or allowances.

You cannot receive any more than \$1,258.20 per week as at 1 October 2001. (This may change yearly).

After 26 weeks

An injured worker is now only entitled to the statutory rate, which is: (as of October 2001 – and subject to change yearly)

- \$296.20 per week plus:
- \$78.10 for a dependent spouse and
- \$55.80 per week for one dependent child (up to \$290.70 for 4 dependent children and \$83.90 for each child over 4)
- Although you cannot earn more than your CWWR – see box above.

This payment will be paid until the injured worker reaches retirement age (Maximum of 65) or is fit to return to pre-injury duties.

Employee Injured

Suitable Duties Available

Section 40 – Make-up pay is available to the injured employee. This payment is to cover any difference between: the weekly amount the worker would probably be earning, but for the injury and average weekly amount which the worker is earning or would be able to earn in some suitable employment from time to time after the injury.

After 26 weeks

An injured worker is only entitled to your current earnings plus make-up pay to a maximum of the statutory rate, which is \$296.20 per week. (This is at 1 October 2001). The maximum that you can receive is your average weekly earnings – set out above. This payment will be paid until the injured worker reaches retirement age (maximum of 65) or is fit to return to pre-injury duties.

Partial Incapacity**

No Suitable Duties Available

This is known as a Section 38 benefit, where you are entitled to receive your current weekly wage rate (CWWR) that you would have received under your award or enterprise agreement. This is a base rate and does not include any amounts for overtime or allowances.

After 26 weeks

An injured worker is now entitled to receive 80% of your current weekly wage rate (CWWR) – set out above.

This payment will be paid until the injured worker reaches retirement age (maximum of 65) or is fit to return to pre-injury duties.

12-month Review

Section 40 – if you are not at work after 12 months i.e. unemployed or you have been terminated, your benefit will be reassessed. The insurer will make a determination on what job you could get and only pay the difference between the pre-injury wage and the job they have assessed you as capable of doing, e.g. a storeman earning \$600 per week is injured and after 12 months is assessed by the insurance company as capable of doing a machine operators job, but the job only pays \$500 per week. The insurer will only pay the difference (in this example - \$100 per week) until the injured worker's retirement age or until they are fit for their pre-injury job.

2-Year Review

If you have received 104 weeks of Partial Incapacity benefits and are not seeking suitable employment, having unreasonably rejected suitable employment or have not been able to find suitable employment because of the state of the labour market, your compensation payments may be discontinued by the insurance company.

* Total incapacity – you are unable to perform any duties at all.

** Partial incapacity – you are fit for suitable duties.

Return-to-work obligations – suitable duties

Under the Law, the employer **must**

1. **Provide** an injured worker with suitable duties, unless the employer can prove it is not possible
2. **Not dismiss** an injured worker within 6 months of the injury
3. Have a return-to-work program, which complies with WorkCover guidelines and has been agreed to by the union. **It is important for you as a Union Representative** to ensure that the union has agreed in writing the program and that you have been involved in the selection of rehabilitation providers for your workplace.

Workers back at work on suitable duties

- The worker's treating doctor must sign off on any return to work plan
- If workers require treatment i.e. physiotherapy, etc., this should be included in the return to work plan. The worker should be given adequate time to attend treatment.

Supervisors **cannot request** that a worker go outside of the requirements of the return-to-work plan.

The worker must follow the return-to-work plan, however, if there is an issue, seek assistance from their Union Representative.

Workers are entitled to make-up pay while they are back on suitable duties. The make-up pay has to take into account penalty rates and overtime.

An example of a return-to-work plan is shown on the next page.

Return-to-work plan

The following return-to-work (RTW) plan has been developed for:

1. Name: _____
2. Return-to-work goal: _____
3. Job title: _____
4. Work location: _____
5. Supervisor: _____
6. Duties considerations/restrictions

Specific duties to be avoided

7. Hours/days of work _____

8. Treatment arrangements (dates, times, treatment service) _____

9. Commencement date return-to-work _____

10. Length of return-to-work plan _____

11. Review dates return-to-work plan _____

12. General comments _____

13. The following parties have agreed to the above plan for suitable duties

Injured worker _____ Date: _____

Supervisor _____ Date: _____

Return-to-work coordinator _____ Date: _____

Nominated treating doctor _____ Date: _____

Union Representative _____ Date: _____

Suitable duties – what does this mean?

Suitable duties:

- Must be consistent with the worker's medical condition i.e what they are able to physically do
- Are provided when a worker is not able to return to their normal job
- Must be meaningful and not demeaning
- Must take into account their age and location (i.e. where the person lives, travel time, etc)
- Could include parts of the worker's usual job
- Could be in a different area, i.e. closer to the worker's home
- Could be a special project, for example an opportunity for an injured worker to undergo refresher training, etc
- Could be with another employer closer to home.

It is important to remember that suitable duties are temporary and should help the worker recover. Suitable duties are outlined in a return-to-work plan. An example of this is on page 17.

Your doctor must approve your return to work plan. In addition your Union Representative can refer you to a specialist rehab provider if necessary, who will assist you with your return-to-work plan.



Retraining

If an injured worker is not able to return to their pre injury occupation, they may require **retraining or upskilling** (e.g learning computer skills) for another job. Priority must be given to retraining or upskilling with the original employer and prior to looking outside at other employment options. This is organised by their rehabilitation provider or the employer's return to work coordinator. The insurance company covers the cost of retraining.

The union representative should ensure that the worker is referred to the provider agreed by the union in the return to work program.

Disputes over suitable duties

Unions lobbied the government to ensure that disputes where an employer has not provided suitable duties can be dealt with appropriately.

The Government has established a special division in the new Workers Compensation Commission to deal with all disputes relating to suitable duties. For example, if the employer refuses to provide suitable duties, the union can lodge a dispute with the Commission. The employer must then prove that they do not have suitable duties. The union will organise the evidence to support the injured worker.

The union can also take other disputes, such as, a worker not being able to choose their own provider or a dispute over a return to work plan on behalf of their members to the Commission.

In such disputes, the Commission will be able to:

- Attempt to conciliate
- Direct that an injury management consultant or other qualified person (paid by the employer) carry out a workplace assessment
- Refer it to WorkCover
- Make a recommendation on the matter.

Under the Law the employer is required to provide suitable duties. **OHS Representatives/Union Representatives should develop a list of suitable duties for their workgroup.**

Can I be sacked while I'm on compensation?

It's important for Union Representatives and workers to know:

- A worker **cannot be dismissed within six months** of becoming unfit for employment under NSW Laws because they are not fit for work due to injury
- If a worker is dismissed because of the injury and they later become fit for their pre injury job, **the union can apply for them to be reinstated** under the NSW Law. This means providing a medical certificate confirming they are fit for their employment. The union has up to 2 years to make this application
- The union will often advise the employer of their intention to make this application at the time the worker is terminated.

Refer to your union for advice.

An application can be made to the Industrial Relations Commission of NSW for reinstatement by an injured worker who has been sacked within 2 years of the termination of employment. A worker can be reinstated to the same or different type of work.



How to make a claim if you suffer a permanent injury

In addition to claiming for the loss of your income and also medical, hospital and treatment expenses such as physiotherapy expenses, you may also be able to make a claim if you have suffered a permanent injury. For example, if you have an operation on your knee and you do not recover the full range of movement then you may be entitled to make a claim for what is known as a permanent impairment.

How do I know if I am eligible to make a claim?

If you have suffered an injury and the permanent impairment can be determined quickly, such as loss of sight in one eye, or hearing loss or had a partial limb amputation, **you are entitled to make an application for a lump sum immediately.**

If you have a severe back or knee injury then these types of injuries can take up to 12 months to be determined.

This is on the basis that certain injuries take this amount of time to stabilise or settle down.



Are there any additional benefits?

Yes, if a person has sustained a very severe injury and they are awarded over a 10% whole of body permanent impairment, they are entitled to claim an additional lump sum benefit under a pain and suffering provision.

This benefit is up to a maximum of \$50,000.

The claimant would be eligible to receive a portion of this lump sum benefit.

The union assists members in making these claims.

Other special benefits

There are also other special benefits for death and injuries where the employer is negligent, under common Law. Members should be referred to the union for advice in relation to these benefits.

What does it cost?

If you are a member of a union, absolutely nothing.

This is one of the specialist services provided by the union to their members.

Superannuation

If a person is terminated by their employer because they cannot return to their pre injury employment, they may be entitled to a lump sum under their superannuation benefits scheme. The union will assist members in pursuing this entitlement.

New options for disputes

Changes to the Workers Compensation Laws have affected how disputes are handled. The Workers Compensation Commission was created in January 2002, and hears all disputed matters that were not before the Compensation Court before 1 April 2002. This includes:

- Return to work disputes (including disputes about suitable duties)
- Medical disputes – including permanent impairment
- Other disputes (including payment of weekly benefits).

Having return to work disputes included as a matter for the Commission is especially important. **The unions got the government to agree to include a dispute resolution arm in the new Commission.**

For further information

This is a guide to the new Workers' Compensation Laws, produced by the Labor Council of New South Wales.

For more information about the new Laws, contact your union. Contact details are provided on the inside cover of the OHS Handbook attached to this booklet.



Workers Compensation checklist

- Does your employer have a rehabilitation program?
- Has the union been involved in selecting suitable duties?
- Have you developed a list of suitable duties for your workgroup?
- Is there a poster of what to do if there is an injury, displayed in your work area?
- Is there an Injury Register?
- Have you found out what the Injury Reporting Mechanisms are?
- Do you have your Union Representatives kit and access to weekly fact sheets?
- Are you able to access the UnionSafe OHS site?
- Does your employer have a current Workers Compensation policy?
- Have you been to the union's training course on Workers Compensation?