



WorkCover



Return to work assist program for micro employers – guidelines

Disclaimer

This publication may contain work 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 legislation.nsw.gov.au

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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Introduction

There is strong evidence that work promotes recovery and reduces the risk of long term disability and work loss¹. The focus of the workers compensation system in NSW is returning workers to health and work following injury.

The *Workplace Injury Management and Workers Compensation Act* (WIMWC Act) outlines return to work obligations for employers and workers that encourage a timely and meaningful return to work for injured people who have a proven capacity to work.

Return to work obligations

A worker who is able to work must, in co-operation with the employer and insurer, make reasonable efforts to return to work in suitable employment, and may request their employer to provide such suitable employment. The employer must comply with this request so far as it is reasonably practicable.

WorkCover NSW inspectors are authorised to issue Employer Improvement Notices (EIN) if they believe the employer is not meeting their obligations in this regard. In addition, it is an offence for an employer if, having received an EIN, they still fail to meet their obligations. The penalty can be up to \$11,000.

A micro employer in NSW is one who has five workers or less and has a basic premium tariff of \$30,000 or less. A micro employer with an injured worker may experience financial difficulties when returning the worker to work, as they may need to pay for a casual worker to complete the usual duties of the injured worker, while also having to pay wages to the injured worker who is performing suitable duties. WorkCover acknowledges that for many micro employers this is a financial burden that they cannot afford or sustain, and the consequence is often that duties are not offered and return to work for the injured worker is delayed.

The return to work assist program for micro employers (the program) supports eligible micro employers to offer duties to an injured worker through a graded return to work plan, while minimising the financial burden to the employer. The program allows:

- the employer to maintain the alternate work arrangement put in place to cover the duties of the injured worker (eg employing a casual or staff undertaking overtime), and at the same time
- the injured worker to continue to receive their weekly payments from the insurer while they participate in a graded return to work plan.

Worker eligibility

The worker is eligible to participate in the program if:

- they are certified as having current work capacity
- they are currently receiving weekly payments of compensation under the WC Act
- they have not exceeded 13 weeks from date of injury.

Employer eligibility

A micro employer is eligible to participate in the program if:

- they have an eligible injured worker
- they have five full time (or equivalent) workers or less and can provide evidence to the insurer confirming this
- they have a basic premium tariff of \$30,000 or less
- they can demonstrate that alternative arrangements for the completion of the injured worker's pre-injury duties have been made – for example, a casual worker being employed to complete the duties or other workers undertaking overtime to complete the duties – and these arrangements have resulted in financial difficulty
- they demonstrate a commitment to the return to work and injury management of the injured worker.

¹ Waddell, G and Burton, AK. *Is Work Good for Your Health and Well Being?* Norwich, UK: The Stationery Office. 2006; Foreman, P. Murphy, G., & Swerissen, H. (2006). Barriers and facilitators to return to work: A literature review. Australian Institute for Primary Care, La Trobe University, Melbourne.

Weekly payments

For the duration of the program, the injured worker will receive their weekly payment of compensation entitlements from their insurer. As the program must take place within the 13 weeks from the date of injury, a worker's entitlement will be the lesser of 95 per cent of their pre-injury average weekly earnings or the maximum weekly compensation amount.

At the completion of the program, if the worker continues to have only partial capacity for work, normal weekly payment arrangements will apply – that is, the employer will commence paying wages for the duties performed by the worker, and the insurer will continue to pay appropriate weekly payment entitlements, in accordance with the WC Act.

Initiating the program

An approved workplace rehabilitation provider must ensure that the following activities are completed:

1. Workplace assessment

A workplace assessment by an approved workplace rehabilitation provider is an important component in establishing a return to work plan. The workplace assessment provides the opportunity to determine the suitability and safety of the duties being offered. It is essential that the injured worker and employer are present and involved in the workplace assessment.

Any concerns identified during, or as a result of, the workplace assessment should be discussed with the worker and the employer, and a satisfactory solution developed. For some workers, specific equipment or modifications to the workplace may be required to achieve a safe and durable return to work – see the *Retraining, equipment and workplace modification guidelines* (catalogue no. WC02807) for full details. Requests for equipment or workplace modifications should be made before the program commences.

2. Return to work plan

A return to work plan is developed by the workplace rehabilitation provider in consultation with the injured worker, the employer and the nominated treating doctor.

The return to work plan must be clearly linked to the worker's return to work goal and outline clear opportunities for upgrading the worker's capacity. The return to work plan may be up to six weeks in duration.

The employer and worker must both agree to the return to work plan to confirm their commitment to returning the injured worker back to work in a safe and timely manner.

3. Eligibility confirmation and endorsement of the program

Before the program starts, the insurer must confirm that the worker and the employer meet the respective eligibility criteria and that the use of the program is an integral part of the worker's return to work strategy. Once confirmed, the insurer must sign the *Vocational program: Details* form (catalogue no. WC02811) confirming the eligibility of the parties and their support for the program. A copy of the signed form must be forwarded to WorkCover.

Once the workplace rehabilitation provider is informed by the insurer that the employer can utilise the program, the rehabilitation provider informs the worker and employer and ensures each party has a copy of the completed *Vocational program: Details* form (catalogue no. WC02811) and their return to work plan.

4. Quality assurance review

WorkCover requires workplace rehabilitation providers to implement an internal quality assurance process for the review of all program proposals. Prior to submitting the proposal to the insurer, the provider follows its quality assurance process to review each proposal to ensure the program is an appropriate return to work strategy for the injured worker, the employer and that the proposal is in accordance with these guidelines.

5. Monitoring

The provider is responsible for undertaking appropriate reviews to ensure that work duties are performed safely and in accordance with the return to work plan. The workplace rehabilitation provider, worker, insurer and employer, should communicate at appropriate intervals to review upgrades in work capacity and confirm progress towards the return to work goal.

6. Travel

During the program, the injured worker is entitled to receive reimbursement for travel costs to and from the workplace. A *Vocational program: Claim for payment* form (catalogue no. WC02874) will need to be completed and sent to the insurer to claim the reimbursement.

7. Completion of the program

On completion of the program, the workplace rehabilitation provider must evaluate the success of the return to work plan against the goals of the program. The rehabilitation provider must submit a *Vocational program: Closure report* (catalogue no. WC02875) to the insurer and WorkCover by fax (02) 9287 4321 or email claims.design@workcover.nsw.gov.au within five working days of completion of the program. An analysis of the closure reports enables WorkCover to evaluate the benefits of the program and identify program improvements.

If, after the completion of the program, the worker continues to participate in a return to work plan to upgrade their capacity, weekly payment arrangements will apply as normal in accordance with the WC Act.

More information

Visit workcover.nsw.gov.au to find the relevant forms required as part of this program.

- *Retraining, equipment and workplace modifications guidelines* (catalogue no. WC02807)
- *Vocational program: Details* form (catalogue no. WC02811)
- *Vocational program: Claim for payment* form (catalogue no. WC02874)
- *Vocational program: Closure report* (catalogue no. WC02875).

For general information about workers compensation or for help with making your workplace safe, go to workcover.nsw.gov.au or call us on 13 10 50.

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