

SIRA

Guidelines for workplace return to work programs

These guidelines are made under section 52 of the *Workplace Injury Management and Workers Compensation Act 1998*

1 March 2021



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About these guidelines



These guidelines have been designed to help employers, workers and other stakeholders understand their legal obligations in relation to return to work programs for their workplace. Those obligations are outlined in the *Workers Compensation Act 1987* (1987 Act), the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act) and the *Workers Compensation Regulation 2016* (the 2016 Regulation).

Return to work programs support an organisational culture of recovery at work and help:

- workers stay active and return to health
- employers retain skills and knowledge
- create safe workplaces where workers are valued
- reduce the costs associated with extended time away from work.

Employers must comply with these guidelines, which are made and enforced by the NSW State Insurance Regulatory Authority (SIRA), under section 52 of the 1998 Act.

Employers should note that the guidelines contain obligations that must be adhered to as well as suggested best practice. Obligations are referenced as 'must' and best practice suggestions have been referenced as 'should' throughout the document.

Additional information about recovery at work can be found on the SIRA website www.sira.nsw.gov.au.

Scope

All NSW employers must have a return to work program in place within 12 months of becoming a category 1 or category 2 employer, and it must be consistent with the insurer's injury management program.

► **Clause 11 of the 2016 Regulation and section 52(1) of the 1998 Act**

These guidelines cover Category 1 employers (see page 4) and Category 2 employers (see page 10), as defined in the 1998 Act and the 2016 Regulation. The categories are based on the following criteria:

Category	Criteria	Return to work program requirements
1	<ul style="list-style-type: none"> Basic tariff premium over \$50,000 a year Self-insured. Insured by a specialised insurer and has more than 20 employees. 	<p>Must follow the four activities in these guidelines and comply with the regulations.</p> <ul style="list-style-type: none"> Part 6 of the 2016 Regulation and section 52(1) of the 1998 Act
2	<ul style="list-style-type: none"> Basic tariff premium of \$50,000 a year or less. Insured by a specialised insurer and has 20 employees or less. 	<p>Must either adopt SIRA standard return to work program for Category 2 employers (listed in the Appendix) or develop own program based on this.</p> <ul style="list-style-type: none"> Clause 13 of the 2016 Regulation

These guidelines apply to employers in the NSW coal industry except where there are legislative exemptions.

These guidelines do not apply to domestic or similar workers engaged by employers (including bodies corporate for strata or strata (leasehold) schemes), unless these workers are for the employer's trade or business.

These guidelines do not apply to employers that

- hold owner-builder permits under the *Home Building Act 1989 (NSW)* (for workers employed for the work the permits relate to)
- are corporations that only employ workers who are directors of the corporation
- only employ workers who are their family members
- only employ workers who work outside NSW
- have a written exemption from SIRA (to the extent specified in the exemption).

► Clause 21 of the 2016 Regulation

These guidelines do not address injury prevention.

For information on employer work, health and safety obligations please contact SafeWork NSW on 13 10 50 or visit www.safework.nsw.gov.au. For information on employer work health and safety obligations in the mining industry, please contact the NSW Department of Planning, Industry and Environment on 1300 305 695 or www.dpie.nsw.gov.au.

These guidelines take effect on 1 March 2021.

The guidelines apply to all workplace rehabilitation and return to work coordinator activities and replace the Guidelines for workplace return to work programs dated November 2019.

Information for the reader

Words defined in the NSW workers compensation legislation have the same meaning in these guidelines. References to applicable legislative provisions are made throughout the document where further information can be obtained.

Find out more

Employers, workers or unions with queries about these guidelines should contact SIRA on 13 10 50 or email contact@sira.nsw.gov.au.

SafeWork NSW inspectors are authorised by SIRA to review employer compliance with workers compensation law. Return to Work Inspectors can further advise and guide employers. Contact SafeWork NSW on 13 10 50 or email contact@safework.nsw.gov.au.

Category 1 employers

Category 1 employers meet one of the following criteria:

- The employer has a basic tariff premium over \$50,000 a year.
- The employer is self-insured.
- The employer is insured by a specialised insurer and employs more than 20 workers.

All employers must have a return to work (RTW) program in place within 12 months of becoming a Category 1 employer.

► Clause 11(1) of the 2016 Regulation

Return to work program

A summary of the system the employer will use to manage workers with work related injuries or illnesses.

The RTW program must align with the employer's insurer's injury management program and be reviewed at least every two years. It should be written in plain English and the documented policies, procedures, roles, responsibilities and communications must support timely, safe and durable recovery at work.

► Section 52 of the 1998 Act

Injury management program

An insurer-developed strategy for managing all aspects of work related injuries and illnesses.

Establishing a RTW program doesn't need to be complicated, but it takes commitment from the employer and their workers to do things right.

For Category 1 employers, implementing an effective RTW program involves four main activities:

1. Appoint a return to work coordinator (see page 4)
2. Develop a return to work program (see page 5)
3. Consult workers and unions (see page 9)
4. Implement the return to work program (see page 9)

1. Appoint a return to work coordinator

The RTW coordinator carries out the day-to-day duties of the RTW program, and is the link between the worker and their support team. The employer must employ the RTW coordinator or engage them to do this (see page 5).

Training, skills and experience

Category 1 employers must appoint someone with the relevant training, skills and experience to perform the role and functions of a RTW coordinator.

Research regarding RTW coordination has identified competencies which help deliver effective outcomes for injured workers. These competencies include:

- effective communication skills - able to communicate clearly, actively listen to others and respond with respect
- the ability to consult with and influence stakeholders - collaborate with others and value their contribution
- negotiation and conflict resolution - gain consensus and commitment from others and resolve issues and conflicts
- being organised and skilled in time management
- the ability to think and solve problems - consider, analyse and develop solutions to barriers to recovery at work
- knowledge of NSW workers compensation legislation and the roles and responsibilities of stakeholders in the system
- an understanding of the legal obligations of NSW employers.

SIRA's online training modules can help employers assess RTW coordinator competency in the above areas.

Employers must retain evidence of their RTW coordinators' relevant qualifications.

► Clause 19(4) of the 2016 Regulation

Role and functions

The RTW coordinator must have the authority to represent and make decisions for the employer in relation to the functions specified below. The RTW coordinator does not make decisions on claims liability or funding for treatment - this is the insurer's responsibility.

The RTW program must outline the RTW coordinator's role in recovery at work planning, and managing workers with a work related injury or illness. These duties must include:

- compiling the initial notification information
- coordinating the worker's recovery at work, including identifying suitable work opportunities
- preparing, monitoring and reviewing a recovery at work plan (in consultation with key parties) that documents the worker's capacity and the duties available
- liaising with external stakeholders, such as the nominated treating doctor, insurer, treatment providers, union and workplace rehabilitation provider
- implementing the RTW program
- supporting the redeployment of workers (internally or externally) into suitable work when they cannot return to their pre-injury duties
- keeping injury and recovery at work statistics
- keeping confidential case notes and records in line with laws and guidelines
- promoting the health benefits of good work to the workforce
- contributing to the improvement of relevant policies and systems.

► Clause 20 of the 2016 Regulation

Employment arrangements

A RTW coordinator does not have to be a full-time worker who is dedicated solely to the role. But if the RTW coordinator has other roles within the organisation, employers must ensure the RTW coordinator can carry out the functions listed above and any actual or potential conflict of interest between roles is addressed.

Conflict of interest

A situation where a person's official duties conflict with their private wishes or needs, which may prevent them from fulfilling those duties impartially.

Employers should appoint a RTW coordinator who has well-established relationships with workers and a good understanding of all aspects of the workplace.

If an employer chooses to outsource this role or engage a RTW coordinator under a work arrangement or contract, they must ensure:

- the appointed person has the required training, skills and experience (see page 4)
- the arrangement will not disadvantage workers
- they consult the workforce before proceeding with the arrangement
- there is no perceived or actual conflict of interest for the person being engaged
- the RTW program details the arrangements, including the person's name, qualifications and experience
- the suitability of these arrangements is reviewed every two years as part of the RTW program review.

► Section 52 of the 1998 Act, Clause 19 of the 2016 Regulation

The employer must pay the cost of engaging a RTW coordinator. It is not a claims cost.

2. Develop a return to work program

Category 1 employers must ensure their RTW programs cover the following aspects:

- leadership and commitment
- workplace arrangements
- rights and obligations
- after an incident
- support for the worker
- recovery at work
- dispute prevention and resolution
- administration.

They can then use the Return to work program checklist for Category 1 employers (see Appendix) to ensure the RTW program complies with these guidelines.

These guidelines set out the minimum requirements for a RTW program. Employers should add any other relevant policies or procedures that reflect the business practices, culture and environment of their workplace, and refer to the NSW workers compensation laws to ensure compliance.

Employer associations or approved workplace rehabilitation providers can help to develop a program, but employers must pay any associated costs.

Leadership and commitment

The RTW program must state the employer's commitment to help workers recover at work. This statement should reflect the organisation's structure and operating environment.

The RTW program must show its connection to work health and safety (WHS) policies and procedures under the *NSW Work Health and Safety Act 2011* (2011 WHS Act) and *Work Health and Safety Regulation 2017* (2017 WHS Regulation) and where applicable the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014*.

Employers must detail how, following an injury, they will review their WHS policies and procedures to identify gaps and opportunities for improvement.

The RTW program must detail how the organisation will develop a positive culture that promotes recovery at work. This includes:

- fostering positive attitudes towards workers recovering at work
- promoting the health benefits of good work.

Workplace arrangements

The RTW program must list the RTW coordinator's name and contact details or indicate where these details are located (for example, the intranet). It must explain the RTW coordinator's role and identify what authority and resources they have to negotiate, develop and implement activities.

The RTW coordinator must have reasonable access to workers and their workplace. See page 5 for more on the RTW coordinator's role.

Employers should nominate an approved workplace rehabilitation provider (provider) in the RTW program. In selecting the nominated provider(s) employers should consult with workers and any industrial union representing them. Visit our website for a list of [approved providers](#).

► Clause 16 of the 2016 Regulation

While the doctor, employer or insurer usually recommend a provider for each situation, workers must have the opportunity to refuse or request a change in provider. The RTW program must outline this procedure, including how workers will be told of this opportunity.

The RTW program must also document how the organisation will:

- cooperate with the provider
- ensure the unique needs and arrangements of the workplace are understood by the provider
- ensure reasonable access to the workplace and injured workers.

Employers must consult with workers, and any industrial union representing them when developing their RTW program. The RTW program must then outline how this will be done.

► Section 52(2)(b) of the 1998 Act

The RTW program must include staff communication and training about the program. This could include induction training, toolbox talks, intranet pages, staff development and other training programs.

It must also outline monitoring, review and display arrangements, including reviewing the RTW program every two years in consultation with workers and any union representing them.

Category 1 employers must display or notify the workplace of the RTW program by publishing it on a website or any other method authorised by the regulations - failing to do so is an offence. The RTW program must explain how the employer will do this.

► Section 52(2) of the 1998 Act and Clauses 16A and 17 of the 2016 Regulation

Rights and obligations

Employers must inform workers of their rights and obligations. The RTW program must detail how these will be communicated to workers throughout the recovery at work process.

Workers are obliged to:

- notify their employer as soon as possible after a work-related injury occurs
- participate and cooperate in establishing an injury management plan
- carry out the actions such a plan requires of them
- authorise their nominated treating doctor to provide relevant information to their insurer or employer using the certificate of capacity, claim form or other form of authority;
- make all reasonable efforts to recover at work.

Workers have the right to:

- nominate their own treating doctor
- employment that is both suitable and, so far as reasonably practicable, the same as or equivalent to their pre-injury employment
- be consulted and involved in identifying suitable work and developing their recover at work plan
- privacy and confidentiality
- access mechanisms for resolving complaints and disputes.

For more information, refer to [Injured at work: A recovery at work guide for workers](#) and the [Claims Management Guide](#).

► **Sections 44(1), 47(1-3) and (5), 48(1) and 49(2) and 270 of the 1998 Act**

The program must also outline the responsibilities and obligations of the worker's support team, including the:

- organisation's senior and middle management
- RTW coordinator (for more information refer to page 5 and [When a worker is injured: A workers compensation guide for employers](#))
- insurer (for more information refer to the Workers compensation guidelines)
- nominated treating doctor (for more information refer to the [Workers compensation guide for medical practitioners](#))
- approved workplace rehabilitation provider (for more information refer to our [website](#))
- any union representing workers.

After an incident

Employers must provide first aid equipment and trained personnel for the workplace. They must ensure all workers can access the equipment and there is sufficient access to facilities for administering first aid.

The RTW program must detail the organisation's first aid arrangements, or refer to these procedures if documented elsewhere.

► **Clause 42 of the 2017 WHS Regulation**

Employers must keep a register of injuries detailing all work related injuries or illnesses, whether or not they result in a workers compensation claim. They must also keep a record of each notifiable incident.

Different WHS notification requirements apply to mining workplaces.

Notifiable incident

A death, serious injury or illness, or dangerous incident that results from a business' conduct or an action at a workplace.

The register may be written or electronic and the RTW program must describe how the employer will inform workers about procedures for completing it.

► **Sections 63 and 256 of the 1998 Act and clause 40 of the 2016 Regulation**

An injured worker must report the injury to their employer as soon as possible after sustaining it. Employers must then notify the insurer within 48 hours of receiving report of a work related injury.

The RTW program must include procedures for early reporting by workers and to the insurer, and describe how the employer will inform workers of these procedures.

► **Sections 44(1) and (2) of the 1998 Act**

Employers must report any notifiable incidents to the WHS regulator. The RTW program must explain how the employer will inform the WHS regulator of any notifiable incidents, or refer to this procedure if documented elsewhere.

► **Section 38 of the 2011 WHS Act**

► **Section 14 of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013***

Support for the worker

Understanding a worker's situation and offering them support will positively affect the worker's response to their injury and enable successful recovery at work.

Appropriate communication is essential to facilitate recovery at work for a worker. The RTW program must document how the organisation will maintain positive and effective communication with workers and the RTW team, and who will be responsible for this.

The RTW program must detail how the employer will gain the worker's informed consent to gather and exchange information about the work related injury and recovery at work.

To give informed consent, a worker needs to understand the implications of agreeing or refusing.

The RTW program must describe:

- how the employer will gain consent to release and exchange information about a worker's recovery at work
- what kind of information will be exchanged
- who is authorised to exchange this information
- how the worker will be informed of the benefits of information exchange and their associated rights, obligations and potential implications for recovery at work when consent is not given.

For more on consent, see the Appendix. Employers may use the sample consent form for obtaining/releasing personal information (see Appendix) or on the [SIRA website](#).

To ensure workers' weekly payments are prompt and correct, the RTW program must include procedures for:

- advising the insurer of the worker's pre-injury average weekly earnings (PIAWE)
- making weekly payments at the usual times wages are paid
- passing other payments on to the worker as soon as practicable after receiving them from the insurer
- advising the worker of dispute resolution mechanisms.

► **Section 264(2) and (3) of the 1998 Act and section 84 of the 1987 Act**

Employers must not refuse or delay passing on entitlements to a worker. They may incur a penalty if they do so.

► **Section 69(1)(c) and section 264(3) of the 1998 Act**

After being notified of a significant injury or illness, the employer must participate and cooperate while the insurer writes an injury management plan for the affected worker. The RTW program must detail how the employer will work with the insurer to develop this plan, including an offer of suitable work.

Significant injury

An injury likely to make the worker unable to work for more than seven continuous days, whether or not those are work days, and whether or not the worker's incapacity is total, partial or a combination of both.

► **Sections 46(1) and 42 of the 1998 Act**

Recovery at work

Employers must offer workers suitable work, where reasonably practicable, so they have the opportunity to recover at work. The employment may be either full time or part time and, where reasonably practicable, the same as or equivalent to the worker's pre-injury employment.

This may be the same job with different hours or modified duties, a different job at the same or a different workplace, training opportunities or a combination of these. This is also referred to as suitable, alternate, modified or light duties.

Employers must provide suitable work, where reasonably practicable, even when a claim is in dispute.

The RTW program must document the policies and procedures for providing suitable work, including:

- who is responsible for identifying suitable work, and how they will do so
- how the employer will consult with the worker
- in what circumstances the employer would engage a workplace rehabilitation provider

- the process for resolving disputes if parties disagree
- strategies to manage instances where no suitable work can be identified.

► **Sections 41A and 49 of the 1998 Act and section 32A of the 1987 Act**

When a worker is injured: [A workers compensation guide for employers](#)

A step-by-step guide to identifying suitable work and developing a recover available on our [website](#).

Tailored planning is essential to a successful work outcome for both employer and worker. This involves developing and maintaining a recover at work plan. The RTW program must detail the employer's policies and procedures for:

- including the worker in the development of the plan
- what each plan should contain
- managing the worker's appointments for treatment and rehabilitation
- who should have a copy of the plan
- monitoring and reviewing the plan
- notifying relevant parties of changes to the plan.

Recover at work plan

An individual plan that the employer develops in consultation with the worker to manage recovery at work. Additional information including an example plan is available on our [website](#).

Some workers will not be able to return to their pre-injury workplace. The RTW program must outline the support and steps the employer will offer, including retraining and job placement.

The RTW program must also describe how the employer will inform workers of their rights regarding dismissal under workers compensation law. There are protections in place for workers against dismissal because of a work related injury or illness within six months (or the length of any accident pay in the worker's award or agreement) after the worker first becomes unfit for employment.

If an employer dismisses a worker because of a work related injury at any stage in the claim, the worker may apply to the employer to be reinstated. If the employer replaces the worker within two years of dismissing them, the employer must inform the replacement worker that the dismissed worker may be entitled to be reinstated to the role.

► **Sections 241(1), 247 and 248 of the 1987 Act**

Dispute prevention and resolution

To prevent and resolve disputes, employer RTW programs must detail:

- how they will prevent disputes
- what processes they will use to resolve disputes about injury management, suitable work or recover at work planning
- how they will advise workers of the workplace dispute resolution arrangements and formal dispute mechanisms available through the workers compensation system.

Administration

Employers should familiarise themselves with their legal obligations when collecting, using, and disclosing an individual's personal and health information.

Particular caution should be exercised when dealing with an individual's health information, including any medical advice or opinions about the person. Such information should only be collected and retained when necessary, and should only be disclosed after careful consideration of applicable privacy principles, including whether the individual has consented to the disclosure.

- ▶ [Section 243 of the 1998 Act, Privacy Act 1988 \(Cth\) for Australian Privacy Principles, Health Records and Information Privacy Act 2002 \(NSW\) and Privacy and Personal Information Protection Act 1998 \(NSW\)](#)

The RTW program must include confidentiality and record keeping procedures for:

- obtaining the worker's informed consent to exchange information
- establishing and maintaining a confidential file for each injured worker
- restricting access to the files and storing them securely.

3. Consult workers and unions

Effective and successful RTW programs involve consultation with workers.

Consultation promotes a positive culture around recovery at work and workers compensation, and gives everyone an opportunity to influence policies and procedures. It is in the employer's interest to give workers clear information to avoid misunderstandings and uncertainty.

Employers must consult their workers (and any industrial union that represents them) when developing their RTW program. Consultation arrangements should ensure that the communication needs of all workers are considered. This will ensure that all workers are able to participate equally. For example, consultation arrangements should accommodate the needs of workers who do not speak English or workers with disability.

Consultation can be facilitated through health and safety committees or their representatives, unions or other agreed means. The RTW program must explain how the employer meets this requirement.

- ▶ [Section 52\(2\)\(b\) of the 1998 Act](#)

4. Implement the return to work program

After considering feedback gathered during consultation, the employer must finalise the RTW program and arrange for it to be implemented.

This includes informing workers of their rights, obligations and the procedures for workplace rehabilitation and recovery at work. Employers may do this through induction programs, training courses, staff meetings, newsletters and noticeboards, and should consider the needs of workers who do not speak English or require assistance.

Employers must display or notify the workplace of the RTW program - failing to do so is an offence.

- ▶ [Clause 17 of the 2016 Regulation](#)

Employers should then continually review the RTW program, in consultation with the relevant parties, to ensure it is effective. The RTW program must specify review dates that suit workplace circumstances.

Employers must review their RTW program at least every two years.

Category 2 employers

Category 2 employers are any employers that are not Category 1 employers (refer to page 3).

Return to work program

A summary of the system the employer will use to manage workers with work related injuries or illnesses.

All employers must have a RTW program in place within 12 months of becoming a Category 2 employer.

► Clause 11(2) of the 2016 Regulation

Establishing a RTW program doesn't need to be complicated, but it takes commitment from the employer and their workers to do things right.

Employers must consult with their workers and any industrial union that represents them when developing and reviewing their RTW program.

► Section 52(2) of the 1998 Act

For Category 2 employers, implementing a successful RTW program involves three main activities:

1. Nominate the person responsible for recovery at work
2. Develop a return to work program
3. Implement the return to work program

1. Nominate the person responsible for recovery at work

Category 2 employers do not need to appoint a RTW coordinator, but they should nominate someone to manage any workers compensation and recovery at work activities that arise. This may be an existing employee or a RTW coordinator who is engaged through a work arrangement or contract.

Category 2 employers may also set up a shared arrangement with other employers. In such an arrangement, an employer association, a union, or a group of employers in the same business or location could share a RTW coordinator.

Employers must pay the cost of engaging or sharing a RTW coordinator. It is not a claims cost.

Employers that choose engaged or shared arrangements must ensure:

- the appointed person has relevant training, skills and experience (see page 4)
- they provide reasonable access to workers and the workplace
- the arrangement will not disadvantage workers
- they consult the workforce before proceeding
- there is no perceived or actual conflict of interest for the appointed person
- the other employers in a shared arrangement are in the same business or location
- the RTW program details the arrangements, including the person's name, qualifications and experience
- the suitability of the arrangement is reviewed every two years as part of the RTW program review.

Conflict of interest

A situation where a person's official duties conflict with their private wishes or needs, which may prevent them from fulfilling those duties impartially.

2. Develop a return to work program

Category 2 employers can meet their legal obligations by adopting or customising the standard return to work program for Category 2 employers (see Appendix) for their workplace.

This RTW program outlines general procedures for handling work related injuries and illnesses, and represents an employer's commitment to the health, safety and recovery of workers following a work related injury or illness.

► Clause 13(2) of the 2016 Regulation and section 52(2) of the 1998 Act



Category 2 employers can also develop their own RTW program, using the standard RTW program as a guide.

Employers must consult their workers (and any union that represents them) when developing their RTW program. They should ensure the communication needs of all workers are considered so everyone is able to participate equally. This includes workers who do not speak English and those with a disability.

Consultation can be facilitated through health and safety committees or their representatives, unions or other agreed means.

3. Implement the return to work program

When Category 2 employers implement their RTW program, they must inform workers of their rights, obligations and the procedures for workplace rehabilitation and recovery at work.

Employers must make copies of the RTW program available to their workers, and provide a copy to any worker who requests it or has a workers compensation claim. If these arrangements are in place, Category 2 employers are not required to display their RTW program.

► Clause 18 of the 2016 Regulation

Employers should continually review the RTW program, in consultation with the relevant parties, to ensure it is effective. The RTW program should specify review dates that suit workplace circumstances.

Employers must review their RTW programs at least every two years.

Provision of information to workers

An employer must ensure that certain information is accessible at all times to their workers. This information includes a summary of the requirements of the 1998 Act with regard to how to notify the employer of an injury and make a claim for workers compensation. The employer must also provide information about the workers compensation insurance policy help by the employer, or if the employer is a self-insurer, a statement to this effect. The regulations may prescribe further information to be made available to workers by employers.

The information can be made available to workers by publishing it on a website or by way of a computer program designed for use on a smartphone or other mobile device.

An employer can meet this requirement by using the [If you get injured at work](#) poster, but are not limited to this format.

► Section 231 of the 1998 Act

Appendix

Return to work program checklist for Category 1 employers

Employers developing, implementing or reviewing a return to work program can use this checklist to ensure their program:

- covers the required content as outlined in the Guidelines for workplace return to work programs
- complies with workers compensation laws.

Leadership and commitment

State employer's commitment to helping workers to recover at work
Refer to page 6 of these Guidelines

Show program's connection to WHS policies and procedures
Refer to page 6 of these Guidelines

Detail how organisation will develop a positive culture that promotes recovery at work
Refer to page 6 of these Guidelines

Workplace arrangements

List RTW coordinator's name, contact details, role, resources and authority
Refer to page 5-6 of these Guidelines

Nominate approved workplace rehabilitation provider and give their details
Refer to page 6 of these Guidelines

Describe arrangements for consulting workers and their unions
Refer to page 6 and 9 of these Guidelines

Outline communication and training arrangements for the program
Refer to page 6 of these Guidelines

Detail monitoring, review, and display/notification arrangements
Refer to page 5,6 and 9 of these Guidelines

Rights and obligations

Describe how workers will be informed of their rights and obligations
Refer to page 6 and 9 of these Guidelines

Outline obligations for the worker's support team
Refer to page 7 of these Guidelines

After an incident	
Detail organisation's arrangements for providing first aid Refer to page 7 of these Guidelines	
Describe register of injuries and how workers will be trained to use it Refer to page 7 of these Guidelines	
Include procedures for workers to report an injury and for the employer to notify the insurer Refer to page 7 of these Guidelines	
Explain process for reporting notifiable incidents to the WHS regulator Refer to page 7 of these Guidelines	
Support for the worker	
Outline plan to maintain positive communication with workers and support team Refer to page 7 of these Guidelines	
Describe how employer will request worker's informed consent Refer to page 7 of these Guidelines	
Give procedures for managing weekly payments Refer to page 8 of these Guidelines	
State employer's commitment to participating and cooperating in developing injury management plan Refer to page 8 of these Guidelines	
Recovery at work	
Describe plan for identifying and providing suitable work Refer to page 9 of these Guidelines	
Outline procedures for developing and maintaining a recover a work plan Refer to page 8 of these Guidelines	
Describe how employer will manage the dismissal of injured workers within NSW law Refer to page 8 of these Guidelines	
Dispute prevention and resolution	
Detail plan for preventing and resolving disputes Refer to page 9 of these Guidelines	
Explain how employer will advise workers of formal and informal mechanisms for resolving disputes Refer to page 9 of these Guidelines	
Administration	
Include procedures for keeping records and maintaining confidentiality Refer to page 9 of these Guidelines	

Requesting consent to release and exchange personal and health information

Employers will need to collect, use and disclose a worker's personal and health information to facilitate their return to work and recovery. Employers should obtain a worker's consent before collecting, using or disclosing their personal health and information.

When doing so, employers have obligations to comply with privacy laws that deal with the collection, use, storage and disclosure of personal and health information. The privacy law(s) that may apply will vary depending on the insurer type and the type of information being dealt with.

Generally, the following principles apply to how employers handle a worker's personal and health information.

What is personal and health information?

Personal information is any information or opinion that can identify an individual.

Health information includes any information or opinion about a worker's physical or mental health or disability, or the provision of other health services.

Common examples include a worker's return to work plan, doctor's report, or even information about their medical appointment.

How should a worker's claim information be stored?

Employers must have strict rules regarding the secure storage of information about a worker's claim. This applies to both paper and electronic records.

Paper records must be held securely (commonly under lock and key) and electronic records must form part of a secure computerised database.

Employers must limit access to a worker's personal and health information so that only those directly responsible for coordinating and monitoring their recovery at work can access the information.

Why is consent required?

Consent promotes good communication and transparent decision-making between the worker, the employer and the RTW team.

Good communication can increase adherence to treatment, improve long-term outcomes, hasten recovery and reduce emotional distress.

What is valid consent?

For consent to be valid it must be voluntary, informed, specific, current and given by a person with capacity to do so. The worker should be properly and clearly informed about how their personal and health information will be handled so they can decide whether to give consent. This includes the worker being given all the relevant information including the benefits of providing consent and risks of not doing so.

A worker's consent is only genuine and valid if they have been given this information and can understand, provide and communicate their consent. This includes accommodating the needs of workers with a disability and those who do not speak English.

When requesting a worker's consent, employers should ensure the worker knows and understands:

- their rights and obligations
- what type of information will be exchanged
- who will have access to their information
- the importance and benefits of the support team being able to exchange information
- the possible impact of not providing their consent.

Note: Under section 47(5) of the 1998 Act, the worker must authorise the worker's nominated treating doctor to provide relevant information to the insurer or the employer for the purposes of an injury management plan for the worker. However, any further authority provided by the worker must be given voluntarily.

► Section 47 (5) of the 1998 Act

This is a sample consent form only, which may be used by a worker to give permission to their employer to collect and disclose their personal and health information in accordance with the terms of the consent.

For consent to be valid it must be voluntary, informed, specific, current, and given by a person with capacity to do so.

Sample form for obtaining/releasing personal information

Worker details

Claim number

Given name(s)

Surname

Employer details

Organisation

Contact name

Position

Phone

Email

Worker's declaration

I have discussed this consent form with my employer. I understand that any information collected will be kept in a confidential case file, with access restricted to those who are directly responsible for coordinating and monitoring my recovery at work.

I understand that my employer will:

- only collect personal and health information that is relevant and necessary to manage my recovery at work and facilitate the workers compensation claim
- only use and disclose information for the purpose for which it was collected
- keep any information collected separate from my other personnel records
- take reasonable steps to protect my information by ensuring it is stored securely, kept no longer than necessary and disposed of appropriately
- allow me to access my information without unreasonable delay, unless providing access would be unlawful or pose a serious threat to another person's life or health.

Considering the above, I authorise and consent to my employer collecting, using and disclosing personal and health information relevant to managing my recovery at work and workers compensation claim with my support team identified below:

Role	Insert specific names
Nominated treating doctor	
Allied health treatment practitioner	
Workplace rehabilitation provider	
Other representative (specify)	

I understand my consent is voluntary and I may change or withdraw this consent at any time by notifying my employer.

Worker

Signature

Date (DD/MM/YYYY)

Employer representative

Signature

Date (DD/MM/YYYY)

Interpreter

Signature

Date (DD/MM/YYYY)

Name

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. An employer is responsible for ensuring that they comply with the relevant privacy laws.

You should seek independent legal advice if you need assistance on the application of the law to your situation.

Sample of Standard return to work program for Category 2 Employers

This document describes the steps that we, [name of organisation], will take if a worker sustains a work related injury or illness at work.

Our commitment

From injury prevention to when an injury occurs, through the insurance claims process and as our workers recover at work, we will:

- provide a safe and healthy working environment for all workers
- promote a positive attitude toward workers compensation claims and recovery at work
- consult our workers and, where applicable, unions to ensure this RTW program is implemented successfully
- review this RTW program at least every two years to ensure it remains current
- have procedures to help workers achieve the best health, work and recovery outcomes.

Our workers compensation policy covers all of our workers in case they suffer a work related injury or illness.

The procedures we will use to fulfil our commitments are outlined in the following pages.

Person responsible for recovery at work in our business

Name

Phone

Email

Our workers compensation insurer

Name

Phone

Website

After an incident

We will:

- provide immediate first aid (where appropriate) and medical treatment (if required) when a worker becomes injured or ill at work
- require all injuries to be reported as soon as possible and recorded in the register of injuries
- notify [name of insurer] of all work related injuries and illnesses within 48 hours
- immediately notify SafeWork NSW on 13 10 50 if an incident involves a death, serious injury or illness, or is a dangerous incident.

Support for the worker

We will:

- contact the worker regularly throughout their recovery
- inform the worker of their rights and obligations, and give them our workers compensation insurer's details
- make early contact with the worker's doctor to discuss the worker's normal duties, suitable work that is available, and opportunities for workplace modifications or assistive equipment
- contribute to the worker's injury management plan, which will be written by our insurer, and meet our obligations stated in the plan
- if necessary, arrange for an approved workplace rehabilitation provider to help the worker to recover at work
- not dismiss the worker for six months after they become unfit for employment because of a work related injury, as the law requires.
- if we dismiss a worker because they are unfit for employment due to the injury, the worker make apply to us within two years to be reinstated.

► Sections 241 and 248 of the *Workers Compensation Act 1987 (NSW)*

Recovery at work

We will provide suitable full-time or part-time employment for workers with the capacity to recover at work, as far as reasonably practicable. This work will be consistent with medical advice, productive and appropriate for the worker's physical and psychological condition. It may include parts of the same job, the same job with different hours or modified duties, a different job at the same or a different workplace, training opportunities or a combination of these.

We will also:

- provide other support if necessary, such as equipment, workplace modifications or changes in practices to reduce work demands and aid the worker's recovery at work
- begin planning for the worker's recovery at work as soon as we are notified of a work related injury or illness
- consult the worker, insurer, doctor (where possible) and workplace rehabilitation provider (where applicable) to write a tailored recover at work plan
- monitor the worker's progress and update the recover at work plan as required
- keep all documents about the workers compensation claim in a confidential file.

Dispute prevention and resolution

We will:

- seek help from the insurer or an approved workplace rehabilitation provider if the worker's recovery at work is difficult or progress has stalled
- work with the worker and their representative to resolve any disputes, and seek help from the insurer if necessary.

If there is a dispute, we will give the worker the insurer's contact details as well as the following useful contacts:

SIRA Customer Service Centre

Phone 13 10 50 or visit www.sira.nsw.gov.au

Independent Review Officer (IRO)

Phone 13 94 76 or visit www.iro.nsw.gov.au

Personal Injury Commission (PIC)

Phone 1800 742 679 or visit www.pi.nsw.gov.au

Declaration

The parties have consulted and understand the procedures detailed in this RTW program:

Employer representative

Name	Position
<div></div>	<div></div>
Signature	Date (DD/MM/YYYY)
<div></div>	<div></div>

Worker representative

Name	
<div></div>	
Signature	Date (DD/MM/YYYY)
<div></div>	<div></div>

Employers must review their RTW programs at least every two years.

This RTW program will be reviewed on:

Date (DD/MM/YYYY)

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However, to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website www.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. This material may be displayed, printed and reproduced without amendment for personal, in-house or non-commercial use.

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