

EMPLOYERS' RESPONSIBILITIES – INJURED WORKERS

All employers should have a clear and accessible 'action plan' in the event of workplace injuries. The plan ought to address practical issues, like first aid and emergency response, counselling and potential media enquiries, as well as the many and onerous legal duties and risks.

This short article is not intended as a comprehensive list of legal duties and risks but provides some general guidance in regard to handling injured workers.

Employers' Responsibilities

It is important to be aware that criminal prosecution may be pursued if employees are permitted to perform hazardous work. Post-injury safety assessment and investigations are vital and we recommend initiating this only after seeking legal advice so that, potentially, the results are subject to legal professional privilege.

Employers must proceed with caution. In Queensland, WorkCover must be notified immediately of any injury for which compensation may be payable. It is advisable to encourage the employee to obtain a medical assessment from an independent medical practitioner, and not to assume the cause of injury, to avoid subsequent claims of bias.

Once the immediate injury and safety issues are contained, in preparation for defending against possible discrimination or unlawful dismissal complaints, an employer should also collect and retain all records of attempts to find alternative or modified duties for an injured worker.

Legislation

- The *Fair Work Act 2009* prohibits employers from taking adverse action, including terminating the employment, because of a temporary absence from work due to illness or injury. Contravention gives rise to a potential 'general protections' claim for

compensation and penalties, including against individual directors or managers 'knowingly involved'.

- The *Workers' Compensation and Rehabilitation Act* (WorkCover) extends the prohibition against termination to one year of a compensable injury if the termination arises "solely or mainly" because the employee is not fit for work. Contravention attracts a max. fine of 40 p.u. (i.e. currently \$4,400).
- Also, anti-discrimination legislation in most States prohibits discrimination on the basis of impairment. Naturally, a court is likely to take a particularly harsh view of discrimination by an employer where the impairment arose from a workplace accident.

Courses of Action

Employers should also consider guarding against stress, anxiety or depression related illnesses in the workplace. These are particularly difficult to defend against, they are becoming increasingly common, and damages can be as much or more than any physical injury. Take all reasonable steps to assist an injured employee in returning to work, including considering the potential for other duties. Termination can only be considered as a last resort, and must follow a complete inquiry, including a functional capacity assessment and safety risk analysis.

Having a clear plan before an injury occurs is infinitely better than trying to address these issues 'on the fly'.

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