



New South Wales

Workers Compensation (Workplace Rehabilitation Programs) Amendment Regulation 1997

under the

Workers Compensation Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987*.

J. W. SHAW, Q.C., M.L.C.,

Minister for Industrial Relations

Explanatory note

The object of this Regulation is to amend the *Workers Compensation (Workplace Rehabilitation Programs) Regulation 1995*:

- (a) to change the way in which employers are categorised for the purposes of provisions of the Regulation relating to obligations of employers to establish rehabilitation programs and return-to-work plans for injured employees (Schedule 1 [1]-[6]), and
- (b) to require certain employers to employ a rehabilitation co-ordinator for injured workers (Schedule 1 [8]), and
- (c) to require an employer to provide a return-to-work plan for a worker who is totally incapacitated for 12 weeks or more (Schedule 1 [9]).

The Regulation makes other amendments of a consequential nature (Schedule 1 [7]) and providing for the exemption of certain persons (Schedule 1 [10]).

This Regulation is made under the *Workers Compensation Act 1987*, including section 280 (the general regulation-making power) and sections 152 and 152A.

Workers Compensation (Workplace Rehabilitation Programs) Amendment Regulation 1997

1 Name of Regulation

This Regulation is the *Workers Compensation (Workplace Rehabilitation Programs) Amendment Regulation 1997*.

2 Commencement

This Regulation commences on 1 July 1997.

3 Amendment of Workers Compensation (Workplace Rehabilitation Programs) Regulation 1995

The *Workers Compensation (Workplace Rehabilitation Programs) Regulation 1995* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

[1] Clause 3 Definitions

[2] Clause 3

category 1 employer means:

- category 2 employer** means an employer who is not a category 1 employer.

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[3] Clauses 4 (1), 5 and 10

Omit "large" wherever occurring. Insert instead "category 1".

[4] Clause 4 (1)

Omit "an employer", Insert instead "a category 1 employer".

[5] Clause 4 (2)

Omit "an employer". Insert instead "a category 2 employer".

[6] Clauses 4 (2), 5, 6 (1), 7 (2), 10 and 11

Omit "small" wherever occurring. Insert instead "category 2".

[7] Clauses 8 (1) and 9

Omit "under section 152 (a) of the Act" wherever occurring.

[8] Clause 11A

Insert after clause 11:

11A Offence—failure to appoint rehabilitation co-ordinator

- (1) A category 1 employer must employ a person to be a rehabilitation co-ordinator for injured workers of the employer.

Maximum penalty: 20 penalty units.

- (2) A category 1 employer may only employ a person for the purposes of subclause (1) if the person has undergone training in accordance with the guidelines.

11B Functions of rehabilitation co-ordinators

An employer's rehabilitation co-ordinator or an industry rehabilitation co-ordinator referred to in clause 12B (2) has, in addition to his or her functions under that subclause, such other functions as may be specified in the guidelines.

[9] Part 2A

Omit clause 12. Insert instead:

Part 2A Return-to-work plans

12 Offence—failure to provide return-to-work plan for seriously injured worker

An employer who, without reasonable excuse, fails to provide a return-to-work plan to an injured worker in accordance with this Regulation is guilty of an offence.

Maximum penalty: In the case of a category 1 employer, 20 penalty units; in the case of a category 2 employer, 5 penalty units.

12A Time within which return-to-work plan must be provided

- (1) In this clause, *12-week certificate* for an injured worker means a medical certificate indicating that, in the opinion of the medical practitioner who prepared the certificate, the worker will be totally incapacitated for work as a result of the relevant injury:
 - (a) for a period of 12 weeks or more, or
 - (b) for a period which, when added to any other period of total incapacity in respect of the same injury for which a medical certificate was given to the employer, would be 12 weeks or more.
- (2) If a worker gives the worker's employer a 12-week certificate for the worker, the employer must prepare a return-to-work plan for the worker before the end of the period of
 - (a) 12 weeks from the date that the injured worker concerned became incapacitated, or
 - (b) 4 weeks from the date on which the certificate was received by the employer,whichever is the later.
- (3) A worker's employer is, for the purposes of this clause, taken to have been given a medical certificate if the employer's insurer has been given the certificate and the employer has received notification of that fact from the worker or the employer's insurer.

12B Preparation of return-to-work plan

- (1) A return-to-work plan for an injured worker required to be provided by a category 1 employer must be prepared by one of the following persons in consultation with a medical practitioner who is treating the worker for the injury concerned:
 - (a) the employer's rehabilitation co-ordinator,
 - (b) the holder of a certificate of accreditation under Part 3,
 - (c) a person approved, or of a class of persons approved, by the Authority to prepare such plans.
- (2) A return-to-work plan required to be provided by a category 2 employer must be prepared by one of the following persons in consultation with a medical practitioner who is treating the worker for the injury concerned:
 - (a) the employer's rehabilitation co-ordinator, being a person who is employed by the employer and has undergone training in accordance with the guidelines,
 - (b) an industry rehabilitation co-ordinator, being a person who has undergone training in accordance with the guidelines and is employed or otherwise engaged by an association of employers or employees,
 - (c) the holder of a certificate of accreditation under Part 3,
 - (d) a person approved, or of a class of persons approved, by the Authority to prepare such plans.
- (3) The return-to-work plan must:
 - (a) identify, if practicable, suitable employment (within the meaning of section 43A of the Act) that is or will be available for the injured worker when he or she is no longer totally incapacitated for work, and

- (b) include an outline of the steps that will be taken by or on behalf of the employer to facilitate the worker's return to work, and
 - (c) specify a date when the return-to-work plan will be reviewed, and
 - (d) include any other matter required by the guidelines.
- (4) The requirement for consultation in subsection (1) or (2) does not apply in a case where the person authorised to prepare a return-to-work plan for a worker is a medical practitioner who is treating the worker for the injury concerned.

[10] Clause 27

Insert after clause 26:

27 Exemptions

The following classes of employers, to the extent indicated, are exempt from the requirement to establish a workplace rehabilitation program under section 152 of the Act and from clauses 11A and 12:

- (a) employers (including bodies corporate for strata schemes or strata (leasehold) schemes) who employ domestic or similar workers otherwise than for the purposes of the employer's trade or business (but only to the extent of the workers concerned),
- (b) employers who hold owner-builders' permits under the *Building Services Corporation Act 1989* (but only to the extent of workers employed for the purposes of the work to which the permits relate),
- (c) employers (being corporations) who only employ workers who are directors of the corporation,

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- (d) employers who only employ workers who are members of the employer's family,
- (e) employers who only employ workers who perform work while outside New South Wales,
- (f) employers exempted in writing by the Authority (but only to the extent specified in the exemption).