

Return to Work Inspectors

Helping employers get injured workers back to work

April 2011

Introduction

WorkSafe Victoria is responsible for administering and ensuring compliance with the accident compensation legislation in Victoria. We aim to promote and support employers and injured workers to achieve safe and sustainable return to work in the workplace.

Role of Return to Work Inspectors

The primary role of a Return to Work Inspector is to ensure that employers comply with their return to work obligations under the *Accident Compensation Act 1985* (the Act). They do this by providing advice and information to assist employers meet their obligations and enforcing the law. Return to Work Inspectors are appointed as inspectors under the Act.

Return to Work Inspectors also have a role in ensuring that hosts comply with their return to work obligations under the Act. Hosts engage workers through labour hire employers. A reference to an employer in this publication includes a reference to a host.

Return to work legislation

When visiting a workplace, Return to Work Inspectors are guided by:

- Part VIIIB of the Act, which relates to return to work.
- Section 101 of the Act, which requires an employer to keep a register of injuries and display an *If you are injured* poster.

Selection of workplace visits

Most visits by Return to Work Inspectors are to workplaces where an injured worker with an accepted WorkSafe claim has been unable to return to work.

Particular priority is given to visiting those workplaces where a worker has been certified as having a capacity to return to work, but has not yet been provided with pre-injury or suitable employment.

Return to Work Inspectors also visit employers who may not be complying with other return to work obligations.

Contact with the employer and the worker

A Return to Work Inspector may enter a workplace at any time during the operating hours of the workplace. The Act requires that upon entering the workplace, an Inspector immediately take reasonable steps to notify the employer of their entry and produce the Inspector's identity card.

Although not required under the Act, Return to Work Inspectors usually contact the employer before the visit to arrange a visit time. If the visit involves a particular injured worker's claim, the Inspector will also contact the worker to give them an opportunity to provide information on the planning or progress of their return to work.

If the injured worker is back at work, the Inspector will ask to speak to them during the visit.

Employer and injured worker rights during a visit

An employer can request the presence of a representative, such as an employer industry association representative or their WorkSafe Agent (Agent), at a visit by an Inspector. Injured workers can also have a representative or support person present during discussions, such as a union representative, their health and safety representative, a family member or work colleague.

What a WorkSafe Return to Work Inspector can do

At a workplace visit, a Return to Work Inspector may:

✓	Identify themselves to the Return to Work Coordinator (or other nominated employer representative) and explain the reason for their visit.
✓	Ask to see information relating to a worker's claim, if the visit is in relation to a specific claim.
✓	Ask to speak to the worker if they are at work.
✓	Review whether the employer is providing pre-injury or suitable employment to an injured worker consistent with their work capacity for the duration of the employment obligation period.
✓	Review what return to work planning has been undertaken including consultation.
✓	Review employer Return to Work Coordinator obligations.
✓	Review employer return to work information obligations.
✓	Where an employer is host, review whether they are cooperating with the labour hire employer to facilitate the worker's return to work.
✓	Review whether the employer has an agreed resolution of return to work issues procedure or is complying with the procedure in the Ministerial Direction.
✓	Provide advice and information to assist the employer to meet their return to work obligations and, where necessary, enforce the law.
✓	Ask to see the employer's register of injuries, and <i>If you are injured</i> poster, and discuss how they are working together with their agent to manage the worker's return to work.
✓	Provide an entry report as a record of the visit and summary of the inspector's observations. The entry report must be given to the employer's representative; however, inspectors may also give a copy/extract of the report to the injured worker and the Agent.

Return to Work Inspector powers upon entry to workplaces

The general powers of a Return to Work Inspector include the power to:

- inspect, make enquiries and examine any thing, including documents, at the workplace
- seize any thing at the workplace that may be evidence of an offence under the Act
- take photographs, measurements or make sketches or recordings, and
- do any other thing that is reasonably necessary for the purpose of performing or exercising the powers of an Inspector under the Act.

Inspectors can require a person to produce a document and can require that a person answer any questions put by the inspector. A person must not, without reasonable excuse, refuse or fail to comply with the requirement of the Inspector to produce or answer questions. An Inspector must inform the person that if answering the question may incriminate that person, the person may refuse to answer the question.

Actions that can be taken by Return to Work Inspectors

If a Return to Work Inspector believes that an employer is not meeting their return to work obligations, they are able to take action to enforce employer obligations by issuing a Return to Work Improvement Notice to the employer. The improvement notice will specify how the employer can comply and the date by which they must comply. Inspectors will reach their decision to issue a Return to Work Improvement Notice after making appropriate enquiries.

The decision to issue an improvement notice also takes into account:

- the nature and circumstances of the alleged contravention
- WorkSafe's compliance and enforcement policies.

Return to Work Improvement Notices will be issued by a Return to Work Inspector to the employer, as well as copies being provided to the employer's Agent where relevant. In the event that the notice is in relation to the return to work of a particular worker, a copy of the notice must also be provided to that worker.

Further investigation of contraventions may also be undertaken by WorkSafe to determine whether the non-compliance warrants prosecution or some other form of enforcement action. This includes circumstances where the employer has failed to comply with an improvement notice.

Applying for a review of Inspector's decisions

Return to Work Inspector decisions (or non-decisions) can be reviewed and either affirmed, varied or set aside. People eligible to request a review include an employer to whom an improvement notice is issued, a worker whose interests are directly affected by an Inspector's decision and an employer whose interests are affected by the Inspector's decision.

For further information about making an application for internal review or who is eligible to apply for a review, see WorkSafe's publication *Internal Review of Inspector Decisions*. Information on how to apply for an internal review is also included on every notice and entry report issued by an Inspector.

Feedback or complaints about Return to Work Inspector actions

Return to Work Inspectors are expected to comply with the Act and WorkSafe operational procedures. They are also expected to be professional, objective and consistent when assessing compliance.

If there is a need to inform WorkSafe of any aspect of an Inspector's performance, the appropriate manager's contact details are outlined in the Inspector's report.

Complaints about Inspector conduct will be investigated independently of the Inspector and their immediate manager.

Feedback should be given to:

Director, Return to Work Division
Injury Support & Service
WorkSafe Victoria
222 Exhibition Street
Melbourne VIC 3000

Offences against Return to Work Inspectors

It is a serious offence under the Act for anyone to do the following:

- intentionally obstruct or hinder a Return to Work Inspector exercising certain powers or performing functions under the Act
- without reasonable excuse, refuse or fail to provide assistance when reasonably required to do so by a Return to Work Inspector
- assault, intimidate, threaten, or attempt to assault, intimidate or threaten, a Return to Work Inspector or a person assisting an Inspector.

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Further information

For more information about employers' return to work obligations, please:

- visit our website at worksafe.vic.gov.au
- call the WorkSafe Advisory Service on **(03) 9641 1444** or freecall **1800 136 089**
- email info@worksafe.vic.gov.au
- Refer to the WorkSafe publication *What to do if a worker is injured – A guide for employers*
- Refer to WorkSafe's Return to Work Compliance Codes:
 - Compliance Code 1 of 4: Providing employment, planning and consulting about return to work*
 - Compliance Code 2 of 4: Return to Work Coordinators*
 - Compliance Code 3 of 4: Return to work information*
 - Compliance Code 4 of 4: Cooperating with labour hire employers about return to work*
- contact your Agent
- contact your industry group representative