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## LEGISLATIVE UPDATE

### **Transitional arrangements for Code of Practice for First Aid in the Workplace**

It has been proposed that the 12 month transitional period for the new Code of Practice for First Aid in the Workplace (the 'Code') endorsed by the Advisory Committee will be brought forward to allow businesses to apply certain flexible aspects of the Code on a voluntary basis, such as the improved first aid kits. The 12 month transitional period is expected to start on 10 December 2009 and will continue until 10 December 2010. During the transitional period, compliance with the current Code will continue to be accepted by inspectors but businesses would be put on notice of the need to comply with the new Code by 10 December 2010.

#### **Working space – what are your legal requirements?**

A working space that an employee occupies can be critical in reducing any workplace injuries. The provisions of an adequate working space will allow an employee to perform their duties in a safe manner and be able to move freely and perform their tasks with no risk to their health or safety.

As specified in the *Occupation Health, Safety and Welfare Regulations 1995*, 'working space' means a floor area, excluding any area taken up by furniture, fittings or equipment, that is kept available for the person's use and that includes the place where the person must stand or sit plus the area that is immediately adjacent to that place. If the work is carried out at a desk (other than a desk situated in a cashier's booth or compartment), a minimum of three square metres of working space must be provided.

A working space needs to be designed, providing the employee with a clear view of their tasks, allowing the employee to remain upright, in a comfortable position, and with the flexibility for the employee to adjust or change their position regularly.

Therefore, when determining the adequate working space the following considerations are required: the -

- Type of work area;
- Physical actions required to perform the task;
- Mobility requirements of the work performed; and
- Other ergonomic factors which could affect performance of the task in a safe manner.



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In addition to the working space, the distance from floor to ceiling where an employee works on a regular basis must be at least 2.3 metres.

### **Terminating employees under workers' compensation**

Terminating an employee who has been injured at work and is receiving workers' compensation payments, regardless if they are partaking in a return to work program, can be complex. However, fundamentally, terminating an injured employee should only occur in serious circumstances, such as on the ground of serious and willful misconduct.

If an employer does decide to terminate an employee, they must first contact their claims agent who will advise the employer on what to do and who will, in turn, advise of the termination to the SA WorkCover Corporation.

Under the *Workers Rehabilitation and Compensation Act 1986*, an employer must not terminate the employee's employment without first giving SA WorkCover and the employee at least 28 days' notice of the proposed termination unless the following applies.

- the employment is properly terminated on the ground of serious and wilful misconduct;
- the employee is neither receiving compensation, nor participating in a rehabilitation program, for the disability; and
- the employee's rights to compensation for the disability have been exhausted or the time for making a claim for compensation has expired.

Serious misconduct may include:

willful or deliberate behaviour by an employee that is inconsistent with the continuation of the employment contract; and conduct that causes imminent and serious risk to the health or safety of a person, or the reputation, viability or profitability of the employer's business.

In the case where SA WorkCover offers the injured employee a one-off payment (known as a 'redemption') to finalise the claim for the employee who has not and will not return to such work, employers are reminded that this does not constitute a termination of the employee's employment contract.

When an employer is advised that redemption will be made, they can suggest to the employee that they resign from their position.

It is strongly recommended that before terminating an employee who is receiving workers' compensation benefits an employer must contact their employer advocate &/or seek legal assistance.



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## **ROLE OF OHSW REPS (OHSR's)**

An occupational health and safety representative (OHSR) is an employee of an organisation elected by a group of fellow employees, and is part of a work group, to represent the work group on health, safety and welfare issues in their workplace.

Representatives are not legally required but can assist in the management of health and safety issues in the workplace between the employer and employees. According to the *Occupational Health, Safety and Welfare Act 1986*, the role of the representative includes:

- inspecting the workplace;
- accompanying an inspector during an inspection of a workplace;
- investigating any complaints on health and safety issues made by an employee in the work group;
- being present at interviews related to accident/incident investigation; and
- Representing members in their work group.

Although representatives have legal rights and responsibilities in order to carry out their role in protecting and representing other employees of the organisation, they are not legally responsible for their actions or lack of actions in their role. However, if a representative misuses their power or information obtained from their role, they may be guilty of an offence.

A representative can represent the work group for a three year term unless they resign from the group or as the representative, or are disqualified from the group or as the representative by two-thirds of the members of the work group. A representative will also be entitled to attend five days training per year to assist in their role.

### **Is your business informed regarding the necessary compliance requirements?**

Ensure your business is following the necessary legislative requirements and obligations with Scaled Management Systems' 'E-Newsletter Service' - Acts and Regulations. For more information call 8256 0944.



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