

Managing injured staff in schools and preschools: risks and best practice

Key notes taken from the SASSLA State Conference

\$24 million is spent each year on workers compensation claims in the Department for Education. Around 24% are claims for psychological injury and the remainder are due to a physical injury. The majority of staff on a workers compensation claim successfully return to work.

Once a claim is lodged, a Return to Work (RTW) Consultant investigates site reports, medical information and talks with the site leader. A paper trail will be formed along with a chronology of events.

Under the RTW Act, a diagnosis of psychological injury needs to meet two tests:

1. The injury must have arisen from employment and it must be the substantial cause. If other factors are involved i.e. personal stress due to divorce or a death in the family, the claim will likely be rejected.
2. It cannot arise out of reasonable administrative action taken by a leader or the department e.g. performance management conducted in a proper manner. As long as the leader ensures the administrative action is reasonable and there are records that can be relied on, the claim will likely be rejected.

If the claim is accepted, the RTW Consultant becomes involved with the rehabilitation process with the primary focus being a successful return to work.

If the claim is rejected, the claimant has the right of appeal via the South Australian Employment Tribunal (SAET). This process can take several months and may include conciliation conferences to determine substantial issues or settlement options.

If the conciliation process is not successful the matter can be heard by a judge at the SAET. It is essential that leaders keep accurate records as evidence may need to be given to the SAET, especially if performance management is involved. Leaders may be required to give evidence based on their recollection of events if records are not available or incomplete.

If the rejection of the claim is upheld by the judge, the primary focus of the department is still to successfully return the worker back to work. Reasonable restrictions must be looked at even if the claim is rejected. The leader must still manage medical restrictions and the welfare of the worker and other staff. The RTW Consultant will work with doctors, psychologists and leaders to assess if restrictions are reasonable. The question of what is reasonable is a balancing act, every case is different. The worker may opt to apply for redemption of their Total and Permanent Disability cover or take their leave entitlements whilst they recover.

If the claim is accepted at trial then the department must ensure that the worker receives any back pay owing and continue with the RTW process. Redemption of the claim may also be an option open to the employee. If an employee takes a redemption they are precluded from working for the state government for a period of three years.

[Section 18 of the Return to Work Act](#) states that the employer must provide suitable employment for the worker (the employment being employment for which the worker is fit and, subject to that qualification and this section, so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was working immediately before the incapacity). On occasion, the injured worker may need to move sites; however, the worker must still be able to fulfil the job description of a teacher, with reasonable modifications in place if necessary.

There is a misconception by staff that if a claim for bullying and harassment by the leader is accepted then it must have occurred. This is incorrect and only means that the worker has a psychological injury arising from their employment and does not make findings as to whether bullying occurred.

The new RTW Act has limits of up to two years of weekly income maintenance and up to three years of medical costs. Gaining a successful return to work is the clear focus of the legislation.