



4.15 Workers' Compensation and Accident Leave

4.15.1 Sources of authority:

[Education Commission Determination 16 – Accident Leave – Workers Compensation Act 1926](#)
[Determination 1 of 2009 - Workers Compensation - Accident Leave](#)
[Determination 3 of 2009 - Annual Leave and Payment for Non-Attendance by Teachers in Non Term Weeks](#)
[Workers Compensation Act 1987](#)
[Workplace Injury Management and Worker Compensation Act 1998](#)
[Worker Compensation Legislation Amendment Act 2000](#)

4.15.2 General

For a work-related injury or illness, workers' compensation legislation requires the department's Fund Manager, Allianz, to commence making weekly payments by way of income support under provisional liability within 7 days of receiving an initial notification of workplace injury, unless there is evidence to support a reasonable excuse being applied.

The department processes workers compensation payments as *accident leave*.

Provisional liability allows the early provision of income support and injury management strategies to be made without admission of liability.

Teachers must report all workplace injuries, illnesses or health conditions as soon as possible but within 24 hours to the Incident Notification Hotline on 1800 811 523, or via an Incident/Injury Notification form sent by fax to 02 9266 8066. A delay in notification can impact on the Fund Manager's decision to make provisional payments.

The Principal must support employees to understand their responsibility to report using the above methods and to notify their supervisor., The Principal or supervisor may also make the notification on behalf of the injured staff member.

Consistent with DEC requirements, principals must provide a Register of Injuries in an accessible place. Teachers, or anyone acting on their behalf, may also enter particulars of any injury, illness or health condition in the Register and notify the Principal.

Following an initial notification, the departments Fund Manager, Allianz will generally, within 7 days, commence payments of weekly compensation for up to 12 weeks and reasonable medical expenses up to \$7,500, on a *provisional* basis, without admitting liability. Alternatively the Fund Manager will provide written notice to the teacher indicating that they have a reasonable excuse for not accepting provisional liability and commencing weekly payments.

Allianz will contact the teacher to clarify details. Inability to contact an injured individual can constitute a *reasonable excuse* for declining provisional liability payments.

The teacher is obliged to participate in any subsequent return-to-work plan that is developed for them and is required to provide WorkCover medical certificates to cover any period of absence for which payments have been or are to be made.



4.15.3 Eligibility

Teachers are generally eligible to claim workers' compensation if they:

- are injured at work or while travelling to and from work
- are injured while travelling on approved official business
- are injured outside school hours while on duty
- contract an infectious disease while at work
- have an injury or illness which is caused by or aggravated by conditions at work.

A teacher may not be entitled to benefits if:

- the teacher has deliberately injured himself or herself
- the injury is a result of their serious and wilful misconduct, unless death or serious and permanent disablement occurs
- the injury occurred on a journey to or from work and the teacher materially increased the risk of injury by interrupting or deviating from the journey, provided the interruption was not work related.

4.15.4 Entitlement

4.15.4.1 Leave and Pay Entitlements - First 26 Weeks of Absence

Upon notification of a workplace injury, illness or health condition for which liability has been accepted, teachers will be entitled to receive weekly compensation benefits which will be made under the classification of accident pay.

Where liability has not been accepted or a reasonable excuse has been applied, teachers are required to ensure that they have applied for sick leave, or long service leave/extended leave to cover the period of absence.

Payment during a workers' compensation absence is at the normal salary rate provided that:

- it does not exceed the maximum compensation amount as determined by The WorkCover Authority
- each period of absence is covered by a WorkCover medical certificate and the benefit payable is not in excess of entitlements defined under workers' compensation legislation.

If there is a shortfall between the maximum payable weekly compensation and normal gross weekly salary, the teacher may use available paid sick leave, or long service leave/extended leave to bridge the gap. A signed letter of authority will need to be provided to support the use of other leave.

4.15.4.2 Leave and Pay Entitlements - After 26 Weeks of Absence

When the accumulative absence from work for an injury is more than 26 weeks compensation payments move to a fixed rate as provided for in the *Workers Compensation Act*. This is referred to as *the statutory rate* and for teachers will be less than their normal salary rate.

Teachers may only use available paid sick leave or other leave to top up those payments to a maximum of:



- a. 80% of the teacher's usual fortnightly salary from week 27 up to and including week 30 of the teacher's absence; and
- b. 60% of the teacher's usual fortnightly salary from week 31 up to and including week 34 of the teacher's absence.

Teachers absent on workers compensation benefits from day 1 of week 35 onwards will only be eligible to receive statutory workers' compensation payments.

4.15.4.3 Workers Compensation payment during non-term periods

These provisions should be read in conjunction with Determination 3 of 2009 - Annual Leave and Payment for Non-Attendance by Teachers in Non Term Weeks.

a) During the first calendar week of the school vacations, teachers shall receive:

- annual leave ; and
- workers compensation payments referred to at sections 4.17.3.1. or 4.17.3.2 as the case may be.

b) During the remaining calendar week(s) of the non-term periods, teachers shall only receive workers compensation payments provided at sections 4.17.3.1. or 4.17.3.2 as the case may be.

4.15.4.4 Partial Incapacity

The legislation mandates return-to-work at the earliest possible stage of recovery. The teacher will be contacted by the Injury Management Advisor, a contracted rehabilitation provider and/or a rehabilitation consultant employed by Allianz. The teacher may nominate their preferred rehabilitation provider.

A return-to-work plan will be developed for teachers working less than their pre-injury hours. This is referred to as partial incapacity.

Information about compensation payable to teachers who are partially incapacitated for work may be obtained from the Injury Management Centre on 02 9244 5253 or directly with the nominated Case Manager from Allianz.

4.15.4.5 Other Entitlements

Allianz will pay such medical, hospital and ambulance expenses reasonably incurred by the teacher in connection with the workplace injury, illness or health condition. This applies under provisional liability or if liability is accepted.

Teachers should not pay any accounts, nor submit accounts to Medicare or health funds for these services, but forward them directly to Allianz.

Provision also exists for payment of other items such as damaged clothing, spectacles and artificial aids. All damaged items claimed must be kept and forwarded to Allianz when requested, for inspection before approval.



4.15.5 Workers' compensation claim forms

Teachers only need to file a workers' compensation claim form if requested to do so by the Fund Manager, Allianz.

When a teacher has sustained a work-related injury (illness or health condition) they need to:

- Notify the workplace injury, illnesses or health conditions as soon as possible but within 24 hours – this can be done by calling the Incident Notification Hotline on 1800 811 523.
- Submit a leave application
- Enter, or arrange to have entered, the details in the Register of Injuries.
- Consult a doctor to arrange treatment where necessary and participate and cooperate in the development of the injury management plan.
- Obtain a WorkCover medical certificate and provide a copy to the supervisor or principal and the Injury Management Advisor.
- Authorise the doctor to provide relevant information to Allianz and DEC through signed consent.
- Make all reasonable efforts to return to work as soon as possible.

During the notification process the following minimum information is collected and then notified to Allianz:

- worker's name, address and date of birth
- employer's name and business address (usually DET)
- treating doctor's name or, if the worker is in hospital, the name of the hospital
- date of injury, how it happened and nature of the injury
- name of the person making the initial notification, contact details and relationship to the worker.

Once made a copy of the notification of injury/illness will be provided to the principal or supervisor, the Injury Management Advisor and Allianz. This supports early intervention from all parties to commence injury management and the return to work process.

Unless a *reasonable excuse* exists, as defined under the workers' compensation legislation, Allianz will commence appropriate support under the rules of provisional liability.

The Fund Manager will contact the injured teacher seeking to clarify details, establish an injury management plan, ask for a journey claim form to be filled out and/or request that a workers' compensation claim be submitted.

A claim form is only required if:

- a reasonable excuse notice has been given and the reason continues to exist
- compensation is claimed or payable beyond the provisional liability period for weekly payments or where medical expenses exceed \$7,500 and there is insufficient evidence to determine ongoing liability
- an injury notification has been made but there is insufficient information to determine liability.

If requested to make a workers' compensation claim, the teacher will need to:



- Report the injury to the principal or manager should they not already have done so.
- Obtain and complete a compensation claim form from Allianz.
- Complete the *journey claim form* if appropriate.
- Provide a WorkCover medical certificate from their treating doctor, stating the nature of the injury, illness or disease and the anticipated period of absence from work, if any.
- Provide, where appropriate, statements of witness to an injury.
- For any work absence, secure continuing pay entitlements while the claim is being processed by completing a leave application form (the leave is re-credited when liability is accepted).
- Submit all forms to the principal or manager.

4.15.6 Entitlements during non-term periods

Accident leave shall count as service for the purpose of calculating the payment during non term weeks provided that the period of incapacity is covered by a valid WorkCover medical certificate.

4.15.7 Public Holidays

Normal salary plus compensation is paid for public holidays occurring during a period for which workers' compensation has been authorised.

4.15.8 Incremental Progression

All accident leave shall count as service for the purpose of incremental salary progression as if the teacher were on duty.

4.15.9 Permanent Incapacity

A teacher who is on accident leave but as a result of the workplace injury, illness or health condition is permanently unfit to work, may be medically retired from the Education Teaching Service. See Chapter 11, Separation from the Service for further details.

Legislative changes have curtailed access to the commutation of long-term workers' compensation claims. For most claims that occur in association with the DEC workers' compensation system prior arrangements available for commutation will not apply. Further details can be found in section 87EA of the NSW Workers Compensation Act 1987.

4.15.10 Declined or reasonably excused claims

Where a workers' compensation claim has been declined or reasonably excused but DEC is satisfied that the teacher is unfit for duty, the teacher is eligible to utilise their paid sick leave, followed by extended leave if requested or sick leave without pay.

4.15.11 Rehabilitation

Occupational rehabilitation aims at ensuring that, as far as possible, workers who have an injury, illness or health condition are rehabilitated to their fullest physical, psychological and social well-being.

Where appropriate, the return to work program should commence as soon as possible after a workplace injury has occurred so that the teacher can return to work and commence workplace-based



rehabilitation consistent with medical advice.

The return to work hierarchy states the goal of the return to work program starting with the goal of returning the teacher to their pre-injury duties at the same workplace. Where this goal is not able to be achieved, the goals to be implemented under the hierarchy are as follows:

- Same job, same employer
- Similar job, same employer
- Different job, same employer
- Same job, different employer
- Similar job, different employer
- Different job, different employer.

Suitable duties will be provided for the injured teacher where available and practicable. Such duties are to be both meaningful for the teacher's rehabilitation and productive for DEC and will be documented within a return to work plan.

Dependent on medical advice every effort will be made to fully rehabilitate teachers in their substantive positions. It is a requirement under workers' compensation legislation that the injured person reasonably complies with their injury management obligations. A teacher who fails unreasonably to comply with a requirement of Chapter 3 of the 1998 act may put at risk their entitlement to weekly payments.

Vocational retraining will be considered for an injured teacher where rehabilitation in the substantive position has been unsuccessful. Where appropriate, this may result in the teacher being relocated into an alternative position in line with the return to work hierarchy and their medical restrictions.

4.15.12 Workers' Compensation Liability - Joint Programs

Teachers who wish to participate in joint programs between DEC and other government departments, agencies or in School Industry Link Programs must first obtain the approval of their supervisor or principal. If teachers are injured while participating in these programs they will be covered by DEC's workers' compensation arrangements.

4.15.13 References and Advice

For further advice, please contact the regional Work Health and Safety Manager at the school education office or the nominated case manager from Allianz.

Further information is also available on the Work Health and Safety Directorate intranet site.

For information about claims refer to: WorkCover Claims Assistance Service on 131050 or Email: contact@workcover.nsw.gov.au