



WHAT IS 'SUITABLE' EMPLOYMENT?

A worker's capacity to earn in suitable employment (1987 Act: S.32A, S.35)

Determining a worker's current work capacity and the amount they are able to earn in suitable employment are work capacity decisions that insurers may make.

Suitable duties in the workplace are duties identified that are able to accommodate an injured worker's work restrictions due to their injury and to facilitate their return to work. These can be in an existing role or may be a role created by the employer to assist the worker in their efforts to rehabilitate and return to work.

Suitable employment however has a different meaning.

Suitable employment, in relation to a worker, is defined in Section 32A of the 1987 Act as:

"employment in work for which the worker is currently suited:

(a) having regard to:

- (i) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, any certificate of capacity supplied by the worker (under section 44B), and
- (ii) the worker's age, education, skills and work experience, and
- (iii) any plan or document prepared as part of the return to work planning process, including an injury management plan under Chapter 3 of the 1998 Act, and
- (iv) any occupational rehabilitation services that are being, or have been, provided to or for the worker, &
- (v) such other matters as the Work Cover Guidelines may specify, and

(b) regardless of

- (i) whether the work or employment is available, and
- (ii) whether the work or the employment is of a type or nature that is generally available in the employment market, and
- (iii) the nature of the worker's pre-injury employment

If a worker is able to demonstrate they are fit for some type of work over a period of time (not necessarily their pre injury position) then the insurer has the ability to discontinue weekly payments and medicals.

Example of suitable employment extracted from WorkCover publication "Work Capacity Guidelines for insurers": "A truck driver is provided with administrative duties to accommodate his physical restrictions. The worker has the transferrable skills to undertake these duties, as his previous employment and education history included managing his own business, which involved administrative tasks, and completing a MYOB and Certificate IV in Office Management. The employer advises they can no longer provide suitable duties. The worker has been compliant with all his injury management requirements under Section 48 of the 1987 Act. The worker has capacity to work, and has demonstrated this capacity for 6 months."

According to the Guide there should be sufficient evidence in this situation for the insurer to deem an administrative role as suitable employment for the worker. The insurer can make a decision under Section 35 of the 1987 Act to reduce or discontinue the worker's weekly payments accordingly on the basis he has capacity to perform some type of work.

In accordance with the new legislation this type of decision can be made regardless of:

- whether the work or employment is available, and
- whether the work or the employment is of a type or nature that is generally available in the employment market, and

- the nature of the worker's pre-injury employment, and
- the worker's place of residence

You can raise these as objections though if they apply to your situation.

For further information please contact:

Workers Health Centre on 02 9749 7666 admin@workershealth.com.au or www.workershealth.com.au

Your Union organiser or Unions NSW on 1800 688 919

Your legal representative

State Insurance Regulatory Authority Assistance Service on 131 050 or www.sira.nsw.gov.au/

Independent Review Officer on 13 94 76 or www.iro.nsw.gov.au/