

Municipal Councillors

Information for employers

From 1 July 2010, a Municipal Councillor injured while carrying out duties as a councillor may be entitled to claim workers compensation following changes to the *Accident Compensation Act 1985* (the Act).

The new provisions are intended to extend coverage to Municipal Councillors and ensure protection to a greater number of Victorian workers.

Who is the employer of a Municipal Councillor?

A council will be deemed to be the employer of a Municipal Councillor while they are carrying out duties as a councillor.

When is a Municipal Councillor considered to be carrying out duties as a councillor?

This will depend on a range of circumstances. The *Municipal Councillors Ministerial Guideline 2010* will outline the circumstances in which a Councillor is considered to be carrying out duties as a councillor. This is a guidance tool only, and each case will be determined based on individual circumstances.

When will the Ministerial Guideline be available?

The Ministerial Guideline will be effective from 1 July 2010 and will be available on the WorkSafe web site, worksafe.vic.gov.au, and published in the Government Gazette.

Are payments to Municipal Councillors included in a council's premium calculation?

Any remuneration provided by a council to a Councillor, such as an allowance, is rateable and is to be included in a council's estimated and certified rateable remuneration.

However, reimbursement of a Councillor's expenses, such as travel and other out-of-pocket expenses, is not remuneration and should not be included in the estimate.

Will the claims cost impact a council's premium?

As of 1 July 2010, if a Councillor makes a claim against a council, the costs of that claim will impact the council's premium calculation. This includes claims costs paid to date and estimated future costs.

What are the return to work obligations of a council in relation to an injured Municipal Councillor?

A Councillor, who is injured while carrying out duties as a councillor, will be considered a worker of the council.

As an employer, a council must meet their return to work obligations under the Act.

This includes obligations to:

✓	Provide suitable or pre-injury employment
✓	Plan a worker's return to work
✓	Consult about the return to work of a worker
✓	Nominate and appoint a Return to Work Coordinator who has the appropriate seniority and competencies to assist them meet their return to work obligations
✓	Make specific return to work information available to Councillors as their workers.

For more information regarding an employer's return to work obligations, refer to *What to do if a worker is injured – A guide for employers*.

What is considered 'suitable employment' for an injured Municipal Councillor?

Under the Act, an employer must, to the extent that it is reasonable to do so, provide an injured worker with suitable or pre-injury employment for a period of 52 weeks that the worker has an incapacity for work.

This 52 week period starts from the time the council receives a *WorkSafe Medical Certificate of Capacity* or a claim for weekly payments from an injured councillor, or is advised by the WorkSafe Agent that they have received these documents - whichever is first.

Determining whether providing suitable employment is considered reasonable is dependent on the circumstances of the employer.

For a council, it would not be considered reasonable to provide suitable employment to an injured Councillor that comprised of duties that would disqualify the Councillor from their elected office under the *Local Government Act 1989*. For example, providing duties within the administrative area of council would not be considered suitable employment.

Suitable employment may however include other options such as modified duties or reduced hours within the Councillor's existing role as an elected Councillor.

It is important, that the council considers options when assessing and proposing suitable employment for an injured Councillor. In some circumstances, suitable training or vocational re-education may be appropriate. Councils are encouraged to contact their Agent to seek assistance in those instances where they are having difficulty identifying suitable employment options.

Who can perform the role of a Return to Work Coordinator in relation to a Municipal Councillor?

The role may be performed by the council's existing Return to Work Coordinator, or another appropriately qualified person engaged by the council. This may include outsourcing the Return to Work Coordinator's role. It is important that the nominated Return to Work Coordinator meets the requirements under the Act to be competent and have the appropriate seniority to perform the role.

Where a council has outsourced the role:

✓	the council will need to ensure that the provider appointed does not have a conflict of interest, particularly where the role has been outsourced to an occupational rehabilitation provider;
✓	the cost of outsourcing the Return to Work Coordinator role will need to be met by the council and is not considered a claim-related expense.

Will a Municipal Councillor be treated as a direct payee?

No. The council will be deemed to be the employer of the injured Councillor, therefore the council will be responsible for paying any entitlements to the Councillor.