

OCCUPATIONAL HEALTH & SAFETY ALERT

Accidents in the workplace: A new way to notify

Employers and occupiers need to be aware of important changes to requirements to notify WorkCover about workplace accidents under the *Occupational Health & Safety Act 2000* (NSW) (OHS Act) and *Occupational Health and Safety Regulation 2001* (NSW) (OHS Regulation).

These changes have been brought about as a result of the *Workplace Compensation Legislation Amendment Bill 2003* (WCLAB) and the *Occupational Health and Safety Amendments (Incident Notification) Regulation 2003* (OHSAR). These changes come into effect on **1 September 2003**.

The most important change is in relation to the reporting of a **serious incident** or **incident** (these were previously referred to as a "non-disturbance occurrence" and "occurrence").

The definitions of **serious incident** and **incident** remain the same as those previously given to "non disturbance occurrence" and "occurrence" with the exception of the OHSAR clarifying the type of incidents in relation to violence that must be reported. Regulation 341(i) of the OHS Regulation has been amended so that the following incidents must be notified to WorkCover under section 86(1)(b) of the Act:

- i. the use or threatened use of a weapon that involves a risk of serious injury to, or illness of, a person,
- i1. a robbery that involves a risk of serious injury to, or illness of, a person,
- i2. electric shock that involves a risk of serious injury to a person.

This replaces the previous type of incident regarding violence that had to be reported, which was "any incidence of violence at a place of work (supported by a medical certificate) that results in an employee being unfit, for a continuous period of at least 7 days, to

attend the employee's usual place of work or to perform his or her usual duties at that place of work".

In terms of reporting **serious incidents** and **incidents**, the Act previously stated that notice had to be given "in writing in the form approved by WorkCover". The newly inserted OHS Regulation 341A states that notice under section 86 of the OHS Act must now be given in any of the following ways:

- a. by electronic communication (using a mode of electronic communication approved by WorkCover) providing the information requested by WorkCover,
- b. by telephone to WorkCover, giving such information as may be requested of the caller.

The incident report form is no longer used to notify WorkCover of work-related incidents. Rather, depending on whether it is a **serious incident** or **incident**, WorkCover should be notified by phone (**13 10 50**) with a report also being submitted online at www.workcover.nsw.gov.au.

However, employers and occupiers are not required to notify WorkCover of a work-related incident where the incident has already been reported to the workers' compensation insurer as a **significant injury** under section 44(2) of the *Workplace Injury Management and Workers Compensation Act 1998*. A **significant injury** is defined under this Act as a workplace injury that is likely to result in the worker being incapacitated (total or partial) for work for a continuous period of more than 7 days (including non-work days).

The flowcharts on the following pages will assist employers and occupiers to be aware of their notification obligations to both their workers' compensation insurers and WorkCover according to the type of injury sustained.

For further information in relation to this important change please contact:

Andrew Saxton, Partner

Tel: +61 2 9234 2311

Email: asaxton@ebsworth.com.au

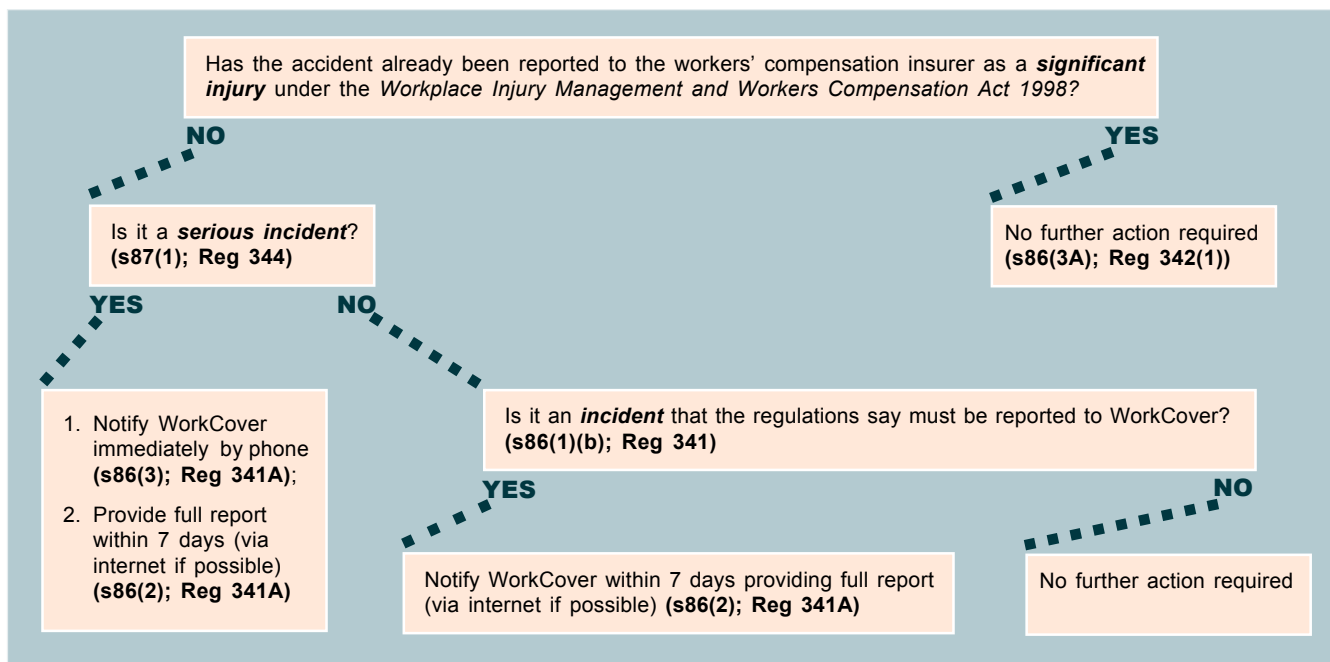
Daniel Miller, Lawyer

Tel: +61 2 9234 2293

Email: dmiller@ebsworth.com.au

Obligations of Employers and Occupiers

NOTIFICATIONS TO WORKCOVER – OCCUPATIONAL HEALTH & SAFETY ACT 2000 (NSW)



IMPORTANT DEFINITIONS

Regulation 341: Incidents to be reported to WorkCover:

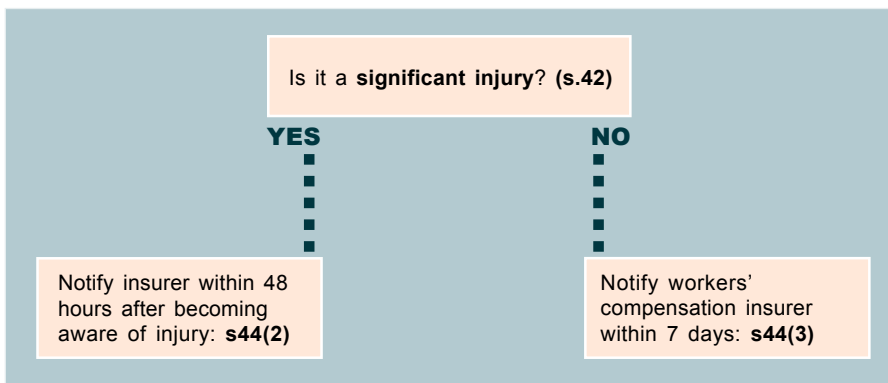
- a. an injury to a person (supported by a medical certificate) that results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work, to perform his or her usual duties at his or her place of work or, in the case of a non-employee, to carry out his or her usual activities,
- b. an illness of a person (supported by a medical certificate) that is related to work processes and results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work or to perform his or her usual duties at that place of work,
- c. damage to any plant, equipment, building or structure or other thing that impedes safe operation,
- d. an uncontrolled explosion or fire,
- e. an uncontrolled escape of gas, dangerous goods or steam,
- f. a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
- g. removal of workers from lead risk work (as defined in Part 7.6) due to excessive blood lead levels,
- h. exposure to bodily fluids that present a risk of transmission of blood-borne diseases,
- i. the use or threatened use of a weapon that involves a risk of serious injury to, or illness of, a person:
 - i1. a robbery that involves a risk of serious injury to, or illness of, a person,
 - i2. electric shock that involves a risk of serious injury to a person,
- j. any other incident that involves a risk of:
 - i. explosion or fire, or
 - ii. escape of gas, dangerous goods or steam, or
 - iii. serious injury to, or illness of, a person, or
 - iv. substantial property damage.

Regulation 344: What amounts to a serious incident other than a person being killed:

- a. an injury to a person that results in the amputation of a limb,
- b. the placing of a person on a life support system,
- c. any event or circumstance listed below that presents an immediate threat to life:
 - i. the loss of consciousness of a person caused by impact of physical force, exposure to hazardous substances, electric shock or lack of oxygen,
 - ii. major damage to any plant, equipment, building or structure,
 - iii. an uncontrolled explosion or fire,
 - iv. an uncontrolled escape of gas, dangerous goods or steam,
 - v. imminent risk of explosion or fire,
 - vi. imminent risk of an escape of gas, dangerous goods or steam,
 - vii. a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
 - viii. entrapment of a person in a confined space,
 - ix. collapse of an excavation,
 - x. entrapment of a person in machinery,
 - xi. serious burns to a person.

Obligations of Employers and Occupiers

NOTIFICATIONS TO WORKERS COMPENSATION INSURERS – *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*



IMPORTANT DEFINITIONS

Section 42 defines a **significant injury** as a workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both.

*By Andrew Saxton, Partner and
Daniel Miller, Lawyer*

SYDNEY

Julie Hamblin, Partner
jhamblin@ebsworth.com.au
Andrew Saxton, Partner
asaxton@ebsworth.com.au
Kerrie Chambers, Partner
kchambers@ebsworth.com.au
Paul Baker, Partner
pbaker@ebsworth.com.au
Marianne Nicolle, Partner
mnicolle@ebsworth.com.au

135 King Street
Sydney NSW 2000
Australia

GPO Box 713
Sydney NSW 2001
Australia

Tel (61-2) 9234 2366
Fax (61-2) 9235 3606
DX 103 Sydney

MELBOURNE

Philip Rowell, Partner
prowell@ebsworth.com.au

George Triantopoulos, Partner
gtriantopoulos@ebsworth.com.au

Robert Tuck, Partner
rtuck@ebsworth.com.au

Rialto South Tower
525 Collins Street
Melbourne VIC 3000
Australia

GPO Box 4542
Melbourne VIC 3001
Australia

Tel (61-3) 8624 2000
Fax (61-3) 8624 2031
DX 640 Melbourne

BRISBANE

Dennis Cronin, Partner
dcronin@ebsworth.com.au

Simone Nichols, Partner
snichols@ebsworth.com.au

Brett Solomon, Partner
bsolomon@ebsworth.com.au

Riverside Centre
123 Eagle Street
Brisbane QLD 4000
Australia

PO Box 7081
Riverside Centre QLD 4001
Australia

Tel (61-7) 3303 8888
Fax (61-7) 3303 8822
DX 282 Brisbane

www.ebsworth.com.au

Liability limited by the
Solicitors' Scheme,
approved under the
*Professional Standards
Act 1994* (NSW).

We regularly produce
publications to keep our
clients up-to-date with legal
developments. If you do
not wish to receive this
publication in the future,
please email us at
publications@ebsworth.com.au