



A-Z OF EMPLOYING

OOS

Our guide for Employers and Managers

**SUPPORTING,
FACILITATING &
REPRESENTING
BUSINESS**

Business**Central** 

OOS

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This is only a guide.
It should not be a
substitute for
professional advice.

Please seek advice
from our AdviceLine
Team if you require
specific assistance.

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Use this guide to help you understand

- ▶ What Occupational Overuse Syndrome or OOS is and how it may apply to your business
- ▶ Understanding that OOS is a preventable harm that results from hazards in the workplace
- ▶ Your obligations when an employee is affected by an OOS condition in the workplace
- ▶ The circumstances where terminating an employee's employment for an OOS condition

What is Occupational Overuse Syndrome

OOS is the acronym for Occupational Overuse Syndrome; it used to be referred to as RSI or Repetitive Strain Injury. That term had, incorrectly, become inextricably linked with keyboard use and did not truly reflect the origins of the types of conditions covered by the term.

OOS is a term that refers to a group of medical conditions; it is not in itself a medical diagnosis. The group of medical conditions covers a range of medical problems, including dysfunction, pain, and injury.

OOS usually develops over a period of time and is caused by, or aggravated by, some types of work. The work that may produce OOS generally involves repetitive forceful movement and sustained or constrained posture. While the causes of OOS are not always certain in all instances, the common understanding is that sustained soft tissue (muscles, tendons and ligaments) fatigue, owing to repetitive forceful movement without adequate rest periods or variance in muscle group use, results in altered functioning and injury.

This **A-Z Guide** provides some information on how OOS should be managed. However the information should not be used in any employment situation where the need for particularised and specialist advice is indicated.

Prevention

You are obliged to take all reasonably practicable steps to ensure the safety of your employees while they are at work.

This duty is legislated for in the Health and Safety at Work Act 2015, and is also an implied term of employment under the Employment Relations Act 2000 and at common law.

This obligation requires you to identify and manage hazards so as to provide and maintain a safe working environment for employees. Some work practices and environments are hazardous and may harm an employee by causing an OOS condition to develop.

Preventing OOS is possible by undertaking a comprehensive workplace assessment (this means looking beyond the physical work environment) looking at:

The design of equipment and tasks

- ▶ Ergonomics - equipment, people, and movement

The organisation of work

- ▶ Job design - work flows

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- ▶ Work rates
- ▶ Piece rates and incentive bonuses

The work environment

- ▶ Social factors
- ▶ Physical factors

Training and education

- ▶ Safe working techniques
- ▶ Hazard awareness
- ▶ Early reporting procedures
- ▶ Optimising movement

Policies and procedures

- ▶ Safety rules
- ▶ Rest and breaks
- ▶ Reporting

Having identified and assessed the hazards in the workplace that may cause OOS, you are then obliged to manage them. Hazard management requires you to eliminate risks to health and safety, and where that is not practicable, then to minimise such risks so far as reasonably practicable.

WorkSafe New Zealand has published, and regulates, its Guidelines and the Approved Codes of Practice. The Approved Codes of Practice are published pursuant to the Health and Safety at Work Act 2015. If you decide not to follow the recommendations provided in an Approved Code of Practice you will not be in breach of the Act as long as you comply with your obligations under the legislation. However, as a general rule the guidelines specified an Approved Code of Practice, where relevant should be followed as they contain recommended best practice.

The following Guideline is available from WorkSafe New Zealand: [Code of Practice for Manual Handling: 2001](#)

There are other resources available from WorkSafe to assist you in preventing the occurrence of OOS in your workplace. You can obtain these resources from the WorkSafe website at: <http://www.business.govt.nz/WorkSafe/>

Refer to the **A-Z Guides on Health and Safety at Work** and **Hazard Identification and Management** for more information.

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Management

Preliminary comments

As noted above, OOS is not a diagnosis. It is a term that covers a range of medical conditions that have elements in common.

Hand and forearm	Elbow
Intersection syndrome De Quervain's tenosynovitis Carpal tunnel syndrome Guyon's canal syndrome Pronator teres syndrome Trigger finger Trigger thumb Tenosynovitis	Epicondylitis (tennis elbow) Radial tunnel syndrome Cubital tunnel syndrome
Upper spine	Shoulder
Cervical disc herniation Chiari malformation syndrome Supraspinatus tendonitis	Bicipital tendonitis (pain over anterior shoulder) Thoracic outlet syndrome Impingement syndrome Rotator cuff injury

The Accident Compensation Corporation classifies OOS conditions into three groups: localised inflammations; compression syndromes and pain syndromes.

Symptoms

There are a range of objective symptoms that are observable and that may indicate an OOS condition:

- ▶ Tissue swelling
- ▶ Altered skin colour
- ▶ Reduced range of motion
- ▶ Pain

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Medical expertise

If an employee is reporting these or any other symptoms as a result of the work the employee does, then you should investigate the matter further. This should include obtaining medical advice on the employee's current condition, how it was caused, and how it should be managed from a medical perspective.

You do not have to accept an employee's unsupported and uncorroborated view on a matter involving OOS as determinative.

If an employee is diagnosed with an OOS condition (see table above) then you will need specialist medical advice on how the employee should be managed in the workplace. If the employee is unable to work or is able to work but there are restrictions on that, then you should seek medical advice on the employee's prognosis.

If an employee is absent from work for a prolonged period of time then you may, in some circumstances, require the employee to provide medical confirmation that the employee is fit to return to work before accepting the employee back at work.

Refer to the **A-Z Guide on Medical Examinations** for more information.

Workplace assessment

If an employee is either complaining of the symptoms associated with OOS, or been diagnosed with an OOS condition, but is able to work, then you should investigate the matter further, as discussed above. At the very least you should assess the employee's work practices and complete a comprehensive workplace assessment to ensure that the risk of further harm is addressed.

A comprehensive workplace assessment should be completed before an injured employee, who has been unfit for work for a period, returns to work.

Rehabilitation

If an employee affected by an OOS condition has cover under the Accident Compensation Act 2001 for personal injury, then ACC will liaise with you about planning vocational rehabilitation for the affected employee.

The purpose of vocational rehabilitation is to help an incapacitated employee maintain employment, obtain employment, or regain or acquire vocational independence. The employment must be suitable for the particular employee and appropriate to the employee's levels of training and experience (an injured pianist cannot be expected to work in a factory).

Refer to the **A-Z Guide on ACC** for more information.

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Decisions Affecting Employment

At any one time you have obligations to your employee in respect of health and safety under legislation and the common law. Implied into every employment agreement are obligations of trust, confidence and fair dealing, and good faith.

If you are considering making any decision that will affect the employment of an employee because of an OOS condition, you should consider the following topics. You are also strongly encouraged to seek advice to ensure you have a current understanding of the requirements of procedural fairness.

It is important to note that an employee who has a disability may, or may not, be incapacitated by that disability. If an employee's employment is affected to the employee's detriment (including termination) in any way on the basis of the employee's disability or incapacity, then the provisions of the Human Rights Act 1993, Employment Relations Act 2000, and/or Accident Compensation Act 2001 may apply.

It is possible for an employer to be held liable under the Human Rights Act 1993 and the Employment Relations Act 2000 for the same action or decision affecting the employment of an employee.

Refer to the **A-Z Guides on Human Rights, Personal Grievances, and the Employment Relations Act 2000** for further information.

Disability

If an employee is disabled by an OOS condition (the employee is disabled and has a "disability" within the meaning of the Human Rights Act 1991) but is able to continue working, perhaps with some adjustment to the work he or she performs or the way in which the work is performed, and it will not cause unreasonable disruption in the workplace for you to make those adjustments, then you must do so.

The Human Rights Act 1993 stipulates that it is unlawful to discriminate in employment on the basis of disability. If an employee is qualified for the work that the employee was employed for, and any disability that the employee has or develops can be reasonably accommodated, then it is unlawful to terminate the employee's employment or subject the employee to any detriment because of the disability.

Refer to the **A-Z Guides on Disability and Discrimination in Employment** for more information.

Incapacity

The term incapacity in relation to termination of employment usually refers to an employee's inability to work at all, rather than the employee's ability to work in a reduced capacity. That is how the term is used under this heading.

If an employee is incapacitated by an OOS condition and this incapacity is supported by medical advice (the employee may also be "incapacitated" within the meaning of the Accident Compensation Act 2001) which establishes that the employee will be unable to work either indefinitely or for a prolonged period of time, then you may consider terminating the employment relationship on the grounds of incapacity.

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There are guidelines, provided by case law, as to what employers must consider before reaching the decision to dismiss an employee for incapacity and rules of procedural fairness that must be followed.

Refer to the **A-Z Guide on Incapacity** for more information.

Liability

Your potential liability under the Employment Relations Act 2000 for unjustifiable dismissal and the Human Rights Act 1993 for unlawful discrimination, have been touched on. Under this heading, your potential liability relates to the failure to provide a safe workplace.

If an employee suffers harm in the workplace, but has cover under the Accident Compensation Act 2001 for personal injury, then the employee will be unable to recover general damages for that injury under the Employment Relations Act 2000. However, it is unclear whether or not the employee may be able to pursue a claim for exemplary damages, which are not barred by Accident Compensation Act 2001. Exemplary damages differ from general damages as they are designed to punish a defendant for reckless, malicious, or deceitful negligence.

In *Morritt v Jespersen* [1998] 1 ERNZ 1, a case decided during the life of the Employment Contracts Act 1991, the Employment Court awarded \$20,000 in exemplary damages in an OOS case. In awarding that, the Court stated:

I accept, as I must, that negligence alone will not do. I agree with the general proposition that it will be enough to show recklessness in the sense of conduct so uncaring as to the safety of or consequences for others as to be capable, for all practical purposes, of being equated with intentional conduct...I think the defendant's conduct has been adequately shown to have been outrageous. One of the dictionary meanings of outrageous is grossly cruel. I am afraid that the defendants did use the plaintiff with conspicuous cruelty.

WorkSafe New Zealand

Regardless of whether an employee has cover under the Accident Compensation Act 2001, WorkSafe New Zealand may prosecute you if you have breached any of the duties expressed in the Health and Safety at Work Act 2015 or Regulations.

OSH does not have an interest in prosecuting someone in relation to every occurrence of OOS or every occurrence of an OOS related condition. OSH does have an interest in the occurrence of an OOS related condition that is serious harm, and is required to be notified about that.

Employment Relations Act 2000

Whether or not an employee suffers harm, an employee may raise a personal grievance on the basis of either unjustified dismissal or, unjustified action causing disadvantage in employment, if you fail to provide the employee with a safe workplace.

There have been many cases under the Employment Relations Act 2000 and its predecessor where a breach of the implied (and sometimes expressed) duty to provide a safe workplace has resulted in a finding that an employee has a personal grievance.

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If you do not comply with your obligations under the Health and Safety at Work Act 2015 or do not respond appropriately to an employee's complaint of OOS symptoms, then you may be found to be liable under this Act to your employee.

Refer to the **A-Z Guide on Health and Safety at Work** for more information.

Conclusion

Occupational Overuse Syndrome is preventable and treatable, and in most cases is resolved. Very rarely nowadays does OOS cause permanent disabilities.

If you are aware of how OOS may be caused, and how you and your employees can work together to prevent its occurrence, then you will not only meet your obligations at law but you will also have a safe and healthy workplace.

If you have an ongoing problem with employees reporting OOS-like symptoms then you may like to consider engaging an external consultant to review your workplace and provide you with advice. Alternatively, if you are experiencing difficulty in managing an employee's absences or performance because of an OOS condition, then you may benefit from some up-to-date advice on managing employment relationships. Either way, Business Central Advice can help.

Remember:

- ▶ Always call AdviceLine to check you have the latest guide (refer to the publication date below).
- ▶ Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- ▶ Use our AdviceLine employment advisors as a sounding board to test your views.
- ▶ Get one of our consultants to draft an agreement template that's tailor-made for your business.
- ▶ Visit our website www.businesscentral.org.nz regularly.
- ▶ Attend our member briefings to keep up to date with all changes.
- ▶ Send your staff to Business Central Learning courses and conferences designed for those who manage employees.

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