

Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006
Senate Standing Committee on Employment, Workplace Relations and Education
Public Hearing – Melbourne – 31 January 2007

Question on Notice, asked by Senator Marshall.

As a result of the SRCOLA amendments if an employee suffers an injury while travelling to or from work or while on a recess break they will no longer be entitled to workers compensation. If they are absent from work in these circumstances will that leave be authorised leave, and if not, is there any obligation for an employer to keep that job open for the employee? At what point in time is the employee terminated?

DEWR response:

Authorised leave

For the purposes of the *Workplace Relations Act 1996* (the Act) authorised leave means leave or an absence, whether paid or unpaid, which is authorised by the employer, by a term or condition of the employee's employment, or by a Commonwealth, State or Territory law (section 228). This means that an employee who is absent from work due to an injury suffered while on a journey or recess break may or may not be on authorised leave, depending on what has been agreed with their employer and the terms of the instrument under which they are employed.

Dismissal

The Act protects all employees from being dismissed for certain prohibited reasons, which include temporary absence from work because of illness or injury within the meaning of the regulations (section 659(2)(a)).

However, if the an absence extends for more than three months or totals more than three months within any one year this absence will not be a temporary absence within the meaning of the Regulations, unless the employee is on paid sick leave for the duration of the absence (Regulation 12.8(2)(b)). Note that this position was not changed by the WorkChoices amendments. Further, WorkChoices has not excluded any State law that may have provided protection to Commonwealth employees in these circumstances.