

## Duty of Care



*Duty of care* refers to the obligations and responsibilities that people in authority have for those in their charge. Whether a duty of care is owed depends in part on the position of the person in authority, particularly his or her status as an expert with superior knowledge. Proof that a duty of care has been breached generally leads to a court awarding damages to the injured party to compensate for financial loss.

### Duty of care in child care

Obviously people who work in child care owe a duty of care to the children in their care. When they are trained they are seen as experts, although this varies depending on the level and extent of the training. Duty of care is owed not only to the children, but also to their parents and families, who expect carers to use their expertise to care for their children.

The level of the duty of care owed depends in part on the status of the person to whom it is owed. An extremely high duty of care is owed to children generally because of their limited ability to care for themselves, and the younger the child the higher is the duty of care.

### Proving a breach of the duty of care

When there is a complaint, the first step is to establish that there is a duty of care. The next step is to prove that it has been breached. In doing so the court looks at what a reasonable person would have expected in the circumstances.

Carers must comply with written obligations set out in agreements they have with the scheme or service, contracts with parents, legislation, licensing regulations and any other obligations that accompany the duty of care owed to a child. Failure to comply with any of these makes it easy to prove that there has been a breach of the duty of care.

### Proving a loss as a result of breach of the duty of care

Proving a loss is not always simple. First the loss must have been foreseeable. A fairly simple example would be where a child has an accident while in care, one that resulted from an obvious breach of the carer's duty of care to the child. The parent is contacted to let him or her know about the accident and that the child is being taken to hospital by ambulance. While travelling at high speed to the hospital, the parent goes through a red light, has a serious accident and is unable to work for three months.

What can the parent claim as loss? It is quite obviously foreseeable that there will be some medical expenses for the child and perhaps some extra care required. The more controversial issue is what happens if the parent claims the loss of three months' wages and his or her own medical expenses. Only a court can decide what a foreseeable loss is, and again, the decision will be based on what a reasonable person would have done in the circumstances.

### Conflicts

A situation can arise in there is a conflict within a carer's duty of care. For example, the obligation to maintain confidentiality about children and parents may conflict with a situation where an issue arises which would normally require complete confidentiality but where failure to disclose the information to the parents of other children could put those children at risk and cause a breach in the duty of care.

### Conclusion

To avoid problems, it is important that employers and self-employed carers carry adequate insurance and comply with its terms. In addition, carers must comply with all obligations imposed by the scheme, sponsor, or service, as well as agreements with parents and licensing regulations. Open communication between parents and carers about roles and responsibilities allows parents to voice any concerns they have and be reassured that their child is in good hands.

**This Parent Fact Sheet is available in different community languages and can be downloaded for printing from the Early Childhood Connections website. [www.ecconnections.com.au](http://www.ecconnections.com.au)**

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