

Injured at work?

Who may claim workers compensation?

Any person considered a worker under the *Workers Compensation Act 1998* may claim benefits. This includes those working away from the employer's premises, casual or part-time workers, outworkers, contractors, sub-contractors, taxi drivers and some rural workers. Generally you are eligible if you receive wages or commission regardless of the number of hours you work each week.

When can I make a compensation claim?

Compensation is payable if you have suffered an injury which is work related (this may include psychological injury); if you have suffered from a disease where your work has contributed to or aggravated the condition, for example industrial deafness or chemical-induced asthma; or where there has been a recurrence of a previous injury.

Benefits are also payable for injuries sustained on a normal journey to or from work (without significant interruption or diversion), to any other place you are required to attend for work-related reasons or during an authorised recess, providing you did not expose yourself to any abnormal risk of injury.

What benefits am I entitled to?

In most cases 'provisional' weekly payments should start within seven days of your employer's notifying the insurance company of your injury, and may be made for up to a maximum of 12 weeks. Provisional payments are designed to reduce the impact of injury and illness; they are not an admission of liability by the insurance company or employer. In the same way, a claim for medical expenses compensation of up to \$5,000 may be accepted provisionally.

If your claim is accepted by the insurance company you may be eligible for your weekly award rate for the first 26 weeks of total incapacity, if you are unable to do any work.

After 26 weeks you receive another rate called the statutory rate (usually lower than the award rate) until you are fit to resume normal work or some work.

If you are partially incapacitated and you resume work or are fit to resume work on light or selected duties you may be entitled to compensation for the restriction in your earning capacity. This is termed "make-up pay".

You may claim reasonable medical, hospital, physiotherapy, chemist and certain other costs, including loss of personal items damaged in an accident and travel costs for medical treatment.

You may receive a lump sum payment for permanent impairment. In some cases you can also receive a lump sum payment for pain, distress and anxiety suffered.

How do I claim?

Since 1 January 2002 in most cases you do not need to submit a claim form if you suffer a work-related injury. To claim you must:

- Report the injury or work-related illness to your employer or supervisor as soon as possible and before voluntarily leaving a job where you were injured;
- Enter details of your injuries in your employer's register of injuries or ask your employer or supervisor to do so (every workplace should have a register of injuries);
- Obtain a *WorkCover* medical certificate from your treating doctor and give it to your employer along with any bills or receipts for treatment;
- Ask your employer to notify their workers compensation insurer of your injury. You will be asked for some details and given a notification number from the insurance company;
- If unable to return to your usual job for more than seven days after the injury (which is called a "significant injury"), you have the right to nominate a treating doctor to manage your injury in consultation with your employer and the insurance company.

If payments do not commence within seven days, you should contact your employer, your employer's insurance company or your legal advisers.

When do I need to fill in a claim form?

You may need to complete a workers compensation claim form if your employer's insurance company asks you to; if you require benefits that exceed the entitlement to 12 weeks' payments and medical expenses up to \$5,000; or if the insurance company has stopped making provisional payments and you think that you are entitled to more benefits.

What must my employer do?

Your employer has two days to notify their insurance company and seven days to forward the associated documents to the insurer, and must do so even if not in agreement that the injury is work related.

Your employer must provide the name and address of the insurance company to you if you request it and pay you any money received for workers compensation benefits as soon as practicable.

Your employer must also help establish an injury management plan. The insurance company should contact you and your employer within three days of notice of injury to discuss your treatment needs and suitable duties you can perform in lieu of normal duties.

How soon is the decision on a claim?

If a claim form has been lodged the insurance company must make a decision whether to accept liability or dispute the claim within 21 days of receiving it. However, if provisional weekly payments have commenced, the time frame in which the claim must be determined may be extended to the end of the period approved for the provisional payments.

You should seek the advice of your Solicitor about any additional rights that you may have, in particular to lump sum compensation.

What happens if my claim is rejected?

If an insurer denies liability or further liability for a claim, the insurance company must write to you, giving reasons. You are entitled to make a request to the Workers Compensation Commission to conciliate the dispute if you are unhappy with the decision. This affects all claims lodged after 1 January 2002. The Workers Compensation Commission handles disputes through an inquiry conducted by an arbitrator/conciliator who may call for formal evidence and submissions.

Damages at common law

If you were injured because your employer or a co-worker was negligent, you may be entitled to sue your employer for damages. Common law damages are only available for loss of past and future wages. You must have received the statutory lump sum entitlements for permanent impairment and "pain and suffering" for 15 per cent whole person impairment before you can sue for loss of wages. Damages for loss of wages are only available up to the age of entitlement to the age pension. You cannot recover treatment expenses.

How can my Solicitor help me?

Your Solicitor can:

- Advise you about the procedures which must be followed to pursue your claim successfully.
- Take action on your behalf if your payments do not commence within seven days.

- Take action if conciliation by the *WorkCover* Authority on your claim has been unsuccessful.
- Gather necessary evidence to successfully pursue your claim when an insurer declines liability.
- Argue your case at the Workers Compensation Commission.
- Advise you when it may be possible to make a late claim.

These brief notes are for your general information. They are not a definitive analysis of the subject and professional legal advice should be taken before any course of action is pursued. Your Solicitors at Barry F. Cosier & Associates can advise you further regarding any matters of this nature.



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