



# Have You Been Injured at Work?

## employment law

### IF YOU HAVE SUFFERED A PHYSICAL OR PSYCHOLOGICAL INJURY AT WORK ...

how will your income be affected? Will you still be paid if you cannot work? Who pays for the medical treatment or rehabilitation you need? How will I get back into the workforce after my injury?

## PART 1: WORKERS COMPENSATION INSURANCE AND WORK-RELATED INJURY OR ILLNESS

### Have you been injured at work or suffered an illness at work?

If so, you may be entitled to benefits under the [Queensland Workers Compensation Scheme](#). This guide will explain those entitlements.

### Workers compensation insurance

It is compulsory for employers in Queensland to insure their workers against work-related injuries or illness. Employers can either self-insure or take out a policy with [WorkCover Queensland](#) (WorkCover). The WorkCover policy includes both no-fault claims and claims for damages due to the employer's negligence, and covers the cost of medical treatment and loss of income for workers who are injured or become ill as a result of their work.

Most employers in Queensland take out this insurance with WorkCover.

If your employer has failed to take out appropriate workers compensation insurance, you can still receive compensation through WorkCover.

### What does WorkCover cover?

Examples of expenses relating to an injury or illness at work that WorkCover may cover are:

- replacement of most of your lost income (usually called weekly benefits)
- the costs of medical treatment, aids and rehabilitation
- a lump-sum compensation if the injury is serious.

### Who is covered?

The workers' compensation scheme covers those who are considered to be a 'worker' under the [Workers' Compensation and Rehabilitation Act 2003 \(Qld\)](#) (Act).

Most workers who are employed to work for someone else are entitled to be covered by workers' compensation insurance.

Labour hire and 'on hire' workers, unpaid interns, apprentices and trainees are also entitled to be covered.

Some workers are specifically excluded from cover by the Act. Some examples are:

- professional sports persons
- persons who use a motor vehicle for tuition



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- members of a crew of a fishing vessel in certain circumstances.

A person can be considered a worker under the scheme even if they have an Australian Business Number or are responsible for their own tax.

However, a person is not a worker if they:

- carry out the work in the course of a business or trade they regularly carry on
- employ or subcontract someone else without performing any of the work themselves.

The difference between a worker and a person carrying on a business or trade is not always clear. The [Australian Taxation Office](#) provides a set of online tools to help determine if a worker is an employee or a contractor.

Volunteer workers can also be covered by workers compensation insurance if volunteering for a not-for-profit, religious or charitable organisation that has chosen to participate in the scheme.

### What is a work-related injury or illness?

A work-related injury is defined as 'a personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury'. Largely, injuries will occur in the workplace, but they can also occur in other circumstances and still be considered a work-related injury. Some examples are where the worker is:

- away from their usual workplace in the course of their work day (attending an off-site meeting, purchasing tools or equipment to carry out construction work)
- attending training that they are required by their employer to attend
- on a journey between home and workplace, or between their place of work with one employer and place of work with another employer, provided there is no substantial

delay, interruption or deviation from the journey.

Examples of different types of injuries or illness:

- physical injuries—such as lacerations, fractures, burns, industrial deafness
- psychiatric or psychological disorders—such as anxiety or depression
- diseases—such as Q-fever or work-related respiratory diseases
- aggravation of a pre-existing condition
- death from an injury or disease.

Employees may be covered while working from home, as long as the injury or illness arises out of, or in the course of, employment, and the employment is a significant contributing factor to the injury or illness.

Employees may be covered for an injury or illness sustained while working from home and on a recess break.

When you lodge a workers compensation claim, WorkCover will speak to you and your employer about circumstances of your injury or illness and make a determination of whether it is work related.

### Please Note

WorkCover is the insurer. Some employers self-insure under the scheme. Here is a [list of employers who self-insure](#). If you are making a claim with a self-insured employer, you will need to lodge the claim directly with that employer, not WorkCover. Your claim will still be governed by the same legislation, the [Workers' Compensation and Rehabilitation Act 2003 \(Qld\)](#), and your rights under that Act will be the same. For all other employers, you will need to lodge the claim with WorkCover.



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### PART 2: CLAIMING WORKERS COMPENSATION

If you have suffered an injury or illness at work and are covered by the workers compensation scheme, you are entitled to make a claim for workers compensation. The workers compensation scheme is a 'no fault system'. This means that an injured worker may make a claim for benefits and medical treatment regardless of who is at fault for their injuries.

#### How do I make a claim for my work injury or illness?

##### Remember

If your employer is self-insured, you will need to contact your employer to make a claim for workers compensation.

If you are unsure if your employer is self-insured, details can be found at [this website](#).

You have to lodge your claim with WorkCover by either:

- calling WorkCover directly on 1300 362 128 and ask to lodge a new claim
- asking your general practitioner to lodge a medical certificate for you with WorkCover
- completing an [online claim form](#) and submitting it by:
  - using an [online uploading service](#)
  - faxing it to 1300 651 387
  - posting it to GPO Box 2459, Brisbane Qld 4001.

To ensure a quick claim determination:

- complete and sign your form to lodge the claim

- let WorkCover know if your injury, condition or treatment changes
- ensure WorkCover has copies of all of your current workers compensation medical certificates.

#### How long do I have to make a no-fault claim?

You should lodge your claim for workers compensation with WorkCover as soon as possible after an injury or illness occurs.

If you have sustained a work-related injury on a specific date, then you have to apply for compensation within six months from the injury. If you have sustained a work-related injury or illness over a period of time, then the six-month period typically commences from the date of the relevant health practitioner consultation for the alleged injury or illness.

If a claim is lodged outside of this six-month timeframe, it may still be accepted if:

- there are special circumstances of a medical nature decided by a medical assessment tribunal
- WorkCover is satisfied the failure to lodge the claim within six months was due to a mistake, the claimant being absent from Queensland or some other reasonable cause.

If your claim is lodged within 20 business days from the date your work-related injury occurred, and is accepted, WorkCover will reimburse any payments you have made for medical treatment for the work-related injury and may also reimburse you for lost wages in those 20 days. If your claim is lodged after 20 days, then there are some restrictions on the reimbursements for losses you incurred before you lodged your claim.



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### What happens after the application form is submitted?

Once you have lodged your claim, WorkCover will consider if:

- you are a Queensland worker
- your application has been lodged in time
- you have an injury
- a work-related event caused your injury.

WorkCover will carefully review the information provided and contact you directly to discuss the claim. You can expect them to ask you details of your employment and the circumstances that led to your injury or illness.

WorkCover will review the medical information available in relation to your injury and may require additional information such as an independent medical expert opinion. They will also speak to your employer regarding the circumstances of the injury. This information will be used for claim determination.

If your claim is for a psychological injury, additional information will usually be required by WorkCover. Typically, with psychological claims, you will be asked to write down, in your own words, the details of your injury and how it occurred.

The law that governs workers compensation in Queensland requires you to cooperate with WorkCover, your employer and your doctors. It is important that all relevant information and documents regarding your injury are provided to WorkCover.

WorkCover has 20 business days after the claim is lodged to make a decision to accept or reject a claim.

### What if my claim is rejected?

If your claim is rejected, a claims representative will speak to you and explain why that decision has been made. A letter will be sent

to you explaining the information considered and the reason why your claim was rejected. The letter will provide you with information about your appeal rights if applicable.

More information about the process and the applicable timeframes can be found on the [WorkSafe Queensland website](#).

### My claim has been accepted. Now what happens?

When your claim is accepted, WorkCover will contact you to let you know. You will be allocated a claim manager who will talk to you and your treatment providers about the treatment and rehabilitation required for your injury. They will be your point of contact for the duration of your claim.

Your claim manager should consult with your health care providers and employer to develop a plan to ensure that you receive the treatment you need to recover from your injury while you continue working. You may be provided with suitable duties that you can perform while you recover. If you are temporarily unable to work due to your injury, the plan should be designed to help you return to work as soon as possible.

You can expect to discuss:

- replacement of lost income (weekly benefits), if applicable
- medical and rehabilitation needs
- your return to work.

The law that governs workers compensation in Queensland requires you to ensure:

- all information provided to WorkCover is true and not misleading (e.g. you must inform WorkCover if you are receiving Centrelink payments)
- you participate in rehabilitation programs if required



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- you tell WorkCover if you are returning to work of any kind. This includes self-employment, a second job or working for another person. This applies whether or not you are paid for performing the activity (e.g. volunteer work).

Penalties can apply if you do not comply with these requirements. WorkCover can suspend benefits or, in the most serious of cases and if found of fraud, you will lose of the right to seek damages. Penalties will not apply if you participate in rehabilitation or can provide a reasonable excuse for not participating.

### What am I entitled to?

The benefits that you will receive will depend on your circumstances and needs but may include payment or reimbursement of:

- weekly compensation (for lost wages)
- medical, surgical and hospital expenses and medicines
- rehabilitation treatment and aids, or services
- travelling expenses
- death benefits and funeral expenses.

Once a claim is accepted, where an injury prevents a worker attending work and earning their usual wages, WorkCover pays weekly benefits in place of your usual wages. They do not pay 100% of your wages. This part of the legislation is complex. Typically, you can expect:

- 85% of the worker's normal weekly earnings for the first 26 weeks
- 75% of the worker's normal weekly earnings between 26 weeks and five years.

You will pay tax on the benefits you are paid. Information about taxation of benefit payments is available at this [WorkSafe Queensland website](#).

You will need a current medical certificate from your treating doctor to cover any time away from work and the treatment needed. Treatment is directed by your treating doctor, who will usually be your general practitioner or your treating specialist. WorkCover can only cover the cost of treatment if a claim is accepted.

WorkCover will not cover the cost of:

- damage to clothing or jewellery
- vehicle damage if the injury occurred when travelling to or from work
- unauthorised medical treatment or hospitalisation costs, aids or services.

### Physical injury support—what is available?

If your claim is accepted, WorkCover will pay reasonable medical and rehabilitation expenses relating to your claim. These expenses may include:

- medical treatment provided by a registered person (e.g. a doctor, dentist or physiotherapist)
- surgical and hospital expenses
- medications essential to your recovery (e.g. bandages or prescription drugs)
- rehabilitation treatment, equipment or services to help you recover ((e.g. wheelchairs, crutches, or services) including return to work
- travelling expenses relating to your treatment and rehabilitation.

WorkCover has a list of set fees for most medical, hospital and rehabilitation treatments, which are set out in a Medical Table of Costs or an Allied Health Table of Costs. WorkCover will pay up to the amount for that service. If you attend a medical or





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allied health practitioner who charges above the amount set out in the Table, you will be responsible for paying the difference in the fee charged.

### Psychological injury support—what is available?

If your claim for a psychological injury is accepted, WorkCover will pay reasonable medical and rehabilitation expenses relating to your claim. You may be referred to a psychologist, a psychiatrist or both. WorkCover will be guided by your treatment specialists in regards to the treatment that you need.

#### *What to expect when you see a psychologist or psychiatrist*

If you see a psychologist, they will ask questions at your first appointment about the circumstances of your injury and your symptoms. This will help them understand you and your situation. If necessary, the psychiatrist will develop a plan for your treatment that will include what type of treatment is required and for how long.

#### *What if I need treatment but my claim has not been determined?*

As a general rule, WorkCover has 20 business days to make a determination in relation to a claim for psychological injury. If you have suffered a psychological injury at work, treatment may be obtained before acceptance of your claim.

To begin seeking treatment, you could contact:

- the confidential mental health telephone triage service for Queenslanders on 1300 642 255. This service provides the first point of contact to public mental health services

- Lifeline on 13 11 14
- Beyond Blue on 1300 224 636
- the Workers' Psychological Support Service on 1800 370 732 or at [info@wpss.org.au](mailto:info@wpss.org.au). Queenslanders experiencing a work-related psychological injury can access support from a social worker. Book a long consultation with your general practitioner (GP) so you have enough time to discuss your situation without feeling rushed
- the Employee Assistance Program. Many employers have a counselling program that employees can access for free for a limited number of sessions
- your GP. They may:
  - recommend or refer you to a specific psychologist. You can also find a fully qualified, independent psychologist through the Australian Psychological Society
  - develop a mental health treatment plan with you so you can be referred to a mental health professional such as a psychiatrist or psychologist
  - use GP mental health treatment items in the Medicare Benefits Schedule that are generally either low cost or free for patients. You can check whether there will be any cost when you make the appointment.

### How will medical treatment be paid for?

In most cases, once your claim has been accepted, you can provide your medical or health practitioner with your WorkCover claim number and they will charge WorkCover



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directly. Occasionally, you may have to pay for services at the time of treatment but can claim the expenses later.

If you pay for services, keep all original receipts. Mark your receipts and invoices very clearly with your name and claim number, and send them to WorkCover by:

- uploading the documents online
- faxing the documents to 1300 651 387
- mailing them to GPO Box 2459, Brisbane Qld 4001.

If your claim has been accepted and the costs are directly associated with the injury, WorkCover will reimburse you directly into your nominated bank account.

### Note

If your employer is a self-insurer, you will need to contact them for information on where to lodge your invoices and receipts for reimbursement.

### Who pays for hospital costs?

WorkCover may cover the hospital costs of a work-related injury for:

- non-elective hospitalisation up to four days
- non-elective hospitalisation for more than four days when agreed between WorkCover and the worker before the hospitalisation or any extension of the hospitalisation
- elective hospitalisation when agreed to between WorkCover and the worker before the hospitalisation.

Non-elective hospitalisation is the treatment of life-threatening injuries or injuries that may result in the loss of, or serious damage to, a limb or organ.

Elective hospitalisation is a treatment or procedure that you and your treating doctor decide on for the treatment of your injury.

### What expenses are not covered?

WorkCover does not cover:

- treatment by a non-registered person. This includes most alternative medicine treatments (e.g. massage and acupuncture unless provided by a registered practitioner such as a physiotherapist, doctor or Chinese medicine practitioner registered for acupuncture). If you are unsure about whether the treatment you want is covered, you should contact your claim manager to discuss this
- some travel expenses, such as trips less than 20 km one way, or if there is a closer treatment provider, but you choose to attend another further away
- unauthorised hospital costs.

If WorkCover cannot fund your surgery or treatment, there may be other options available to enable you to access further treatment. You can speak to your claim manager and your treating practitioner about this.

If your claim has not been accepted, you will be responsible for paying medical and rehabilitation costs.

### What assistance is available to me in a regional area?

If you live in regional Queensland, you can access available medical and rehabilitation services locally. If you require treatment that cannot be provided in your local area, WorkCover may cover the costs of travel for you to access those services elsewhere, once your claim is accepted.

Occasionally you may be required to undergo a medical assessment with a specialist. If there are no medical specialists available



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to carry out the assessment in your area, WorkCover will pay for the costs of your travel for assessment.

WorkCover has a network of return-to-work service providers who work locally to provide you with assistance to return to work. You can discuss this with your claim manager.

### **What are my rights if I am unhappy about decisions made in relation to my claim?**

Some decisions that WorkCover make, such as a decision to reject a claim or a decision to cease a claim, can be reviewed with the Workers Compensation Regulator. You will be advised of your right to review when these decisions are made.

If you are unhappy about the way your claim is being handled, you can raise your concerns with your claim manager. You may be able to ask WorkCover for written reasons for decision within 20 business days of the decision being made. If you are not happy with the reasons set out in that document, you may then be able to lodge an application for review with the Office of Industrial Relations within three months of receiving the reasons for decision.

Alternatively, you can raise your concerns through the Workers Compensation Regulator's review process.

You can call 1300 362 128 or speak to your WorkCover claims representative or customer advisor directly if you have any questions about your rights and responsibilities in Queensland. More information about independent review of a claim decisions can be found on the WorkSafe Queensland website.

### **What about my employer?**

Your employer has a responsibility to notify WorkCover immediately of any injury sustained by an employee for which

compensation may be payable. It is your decision, not your employers, to proceed with a claim for compensation.

Your employer does have a right to raise concerns with the claims manager about the claim, and they have the right to make an official complaint. If your employer disagrees with a decision WorkCover has made, such as the acceptance of your claim, they can seek a review with the Workers Compensation Regulator. You can discuss this with your claim manager for more information.

### **How is my privacy and the information that will be given to my employer protected?**

Details about your privacy and the information you provide to WorkCover can be found at [this WorkSafe Queensland website](#).

During the claim process, some of your personal information may need to be released in order to manage your claim.

WorkCover may release information to:

- your employer or host employer—only information relating to your capacity to work if the document is necessary to secure your rehabilitation or early return to work
- medical and allied health providers—only information where your consent has been obtained
- other agencies—only information with your consent or if required by law.

## **PART 3: RETURNING TO WORK AFTER INJURY**

Many workers who are injured at work will not need any time off work or may be able to return to work soon after the injury.

Other workers may need significant ongoing treatment and rehabilitation, and be off work





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for a long time. Decisions about your return to work should be guided by your health care providers.

WorkCover must take all reasonable steps to ensure your rehabilitation and early return to suitable duties. Your employer is required to cooperate with WorkCover and must take all reasonable steps to assist with your rehabilitation.

Your employer is prohibited from dismissing you for 12 months after the injury under the Act. You cannot be dismissed during that period if the reason for dismissal is that you are unable to come to work due to the injury.

### **Return to work and workplace rehabilitation**

Returning to work following a workplace injury can help you recover from your injury. WorkCover, your treatment providers and your employer all have a part to play in the return-to-work process.

Workplace rehabilitation is the process of providing guidance and support to help you get back to work after the injury. Your employer should manage your rehabilitation with the goal of getting you back to your pre-injury job as soon as possible.

A rehabilitation and return-to-work plan should be provided by WorkCover in consultation with you, your health care providers and your employer.

Your employer should keep in regular contact with you and promptly follow the steps in the rehabilitation and return to work plan. The implementation of the steps under the plan and your progress should be regularly reviewed by WorkCover.

### **Suitable duties**

If your injury is minor, or if you recover quickly, you will be provided with rehabilitation support to get you back to your pre-injury role.

If you have suffered a more serious injury, or if your recovery is taking some time, it may not be safe or practical for you to perform your pre-injury duties. If this is the case, your employer may be able to provide a range of other tasks that you can safely perform taking into account any restrictions your doctor or specialist has identified. These are called 'suitable duties'.

Suitable duties are tasks or responsibilities at work that you can perform even though they may not be part of your normal job. Performing suitable duties can be beneficial to your recovery and assist you to return to your pre-injury role.

### **Host employer**

Sometimes your employer will be unable to provide suitable duties. In this situation, WorkCover will try to place you with another employer referred to as a 'host employer' where you can safely perform suitable duties. A host employment placement will usually last for three to six weeks.

WorkCover will pay your wages while you perform suitable duties with a host employer.

### **What happens when you are not able to return to your pre-injury role?**

If you have suffered a serious injury, or have not fully recovered from your injury, you may not be able to safely return to your pre-injury role.

WorkCover may be able to assist you in searching for a new role throughout the statutory and common law claim. You can discuss this with your claim manager.



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### **Do I have a right to return to my pre-injury position?**

If you are dismissed because of your injury, you may apply for reinstatement to your pre-injury position. You must apply to your employer within 12 months after the injury and provide a doctor's certificate that you are fit for employment in the former position.

If your employer fails to reinstate you, you may apply to the Queensland Industrial Relations Commission for an order that you be reinstated.

Under anti-discrimination law, your employer may have an obligation to provide reasonable adjustment to allow you to continue in your pre-injury role. If you think you may be able to return to your former position if some changes are made to the position or the workplace, you could discuss this with your employer or seek appropriate advice from a lawyer or trade union.

### **When will my claim cease?**

Typically, your claim will end when your treatment is completed and you return to work.

All claims are different and the timeframes will vary according to your injury and the treatment required. If you have returned to work, or if you have recovered from your injury or if your treatment has finished, WorkCover may close your claim.

When making the decision to stop payments for benefits and treatment, WorkCover will consider the opinions of your treating doctors or others doctors that have been engaged by WorkCover to review your case.

Your claim will cease if your injury has resolved, if you have received all necessary and reasonable treatment for your injury, or if further required treatment is for a pre-existing or non-work-related condition.

Your claim may also come to an end if:

- your claim has been on foot for more than a two-year period and no more treatment is required
- your claim is inactive (e.g. if you fail to communicate with WorkCover)
- there are suspicions of fraudulent behaviour
- you or WorkCover request a permanent impairment assessment.

Typically, once you have completed your treatment and/or returned to work, your statutory claim closes. WorkCover may also close your claim if it has been medically determined that your injury is stable and stationary. 'Stable and stationary' means that your injury is not likely to improve with further medical or surgical treatment. To determine this, WorkCover will consider the opinions of your treating doctors and may also arrange for you to be examined by an independent medical specialist.

The independent medical specialist will usually be asked to provide a permanent impairment assessment of your injury if they determine your injury stable and stationary.

### **PART 4: PERMANENT IMPAIRMENT AND LUMP-SUM PAYMENTS**

If you are assessed as having a 'permanent impairment' of greater than 0%, you will be entitled to a lump-sum payment.

A lump-sum payment for permanent impairment is separate from benefits and treatment expenses. Examples of a permanent impairment can include:

- reduced shoulder movement
- a spinal cord injury
- an amputated finger.



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### How is permanent impairment assessed?

If you are having an assessment of permanent impairment, you will be examined by a medical specialist. The specialist will be provided with copies of relevant documents on your claim file such as radiology reports and treating practitioner reports.

The specialist assessing your impairment will provide a report to WorkCover. This report will comprise your diagnosis and an assessment of your permanent impairment. The assessment of permanent impairment will be expressed as a percentage. If you disagree with the permanent impairment assessment of a physical injury you may seek a review. You can either request a referral to the Medical Assessment Tribunal or request WorkCover consider a medical review by a different doctor.

If you have a psychological injury, you will attend the General Medical Assessment Tribunal. This tribunal will be a panel of three psychiatrists. They will ask you questions about your injury and your symptoms. They will also have been provided with copies of reports and records from your treating practitioners and other doctors that have examined you. The tribunal will then provide a report to WorkCover with your diagnosis and assessment of your permanent impairment. The assessment of permanent impairment will be expressed as a percentage. There is no review process for psychological injury assessments.

More information can be found on the [WorkCover website](#) about this process.

### Your Notice of Assessment

After the medical report assessing permanent impairment is received, WorkCover will provide you with a document called a Notice of Assessment.

If your assessed impairment is above 0%, you will be offered a lump-sum compensation payment. The offer will be set out in detail on in your Notice of Assessment.

You will need to notify WorkCover of your decision to accept, reject or defer the lump-sum offer within 20 business days of the Notice of Assessment. The Notice of Assessment will set out your options in detail and you should read the document carefully.

Your options are:

1. You can accept the lump-sum payment set out in the Notice of Assessment. This will finalise your statutory claim and you will receive payment within seven days. You will be unable to seek damages against your employer (common law process) unless your permanent impairment is above 20 %.
2. You can reject the lump-sum offer set out in the Notice of Assessment and seek damages via the common law process. Once you have started the common law process, you will no longer be able to accept the lump-sum offer. You will be responsible for your own legal fees.
3. You can defer your decision to either accept or reject the lump-sum offer. If you do not accept or reject the lump-sum offer in the 20 business days, your decision will be considered deferred.
4. If your permanent impairment is 20% or more, you are entitled to accept the lump-sum compensation payment and seek damages via the common law process. WorkCover may be required to pay part of your legal fees in these circumstances. Physical and psychological injuries cannot be combined to reach an impairment over 20%.



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### **PART 5: SEEKING FINANCIAL SETTLEMENT AGAINST YOUR EMPLOYER**

Once you have received your notice of assessment or if a limitation period is approaching, you may wish to seek a financial settlement against your employer if your work-related injury occurred because of the negligence (fault) of your employer. You should seek legal advice if you think this may be relevant to you, as the process is of a complex legal nature.

This claim is often referred to as 'common law claim' or 'damages claim'.

Damages may include a component for pain and suffering, past and future loss of income and superannuation, and past and future expenses (e.g. medical, rehabilitation, travel, care, pharmaceutical and aids/equipment).

#### **How to commence a common law claim**

To commence a common law claim, you will have to complete a 'notice of claim' form and lodge it with WorkCover. A copy must also be sent to the employer. Your notice of claim will contain your allegations of negligence against your employer and an assessment of the damages you are seeking.

Once the form has been lodged, there are a series of prescribed steps that need to occur before court proceedings can be commenced. These steps are called pre-court proceedings.

During the common law claim including the pre-court proceedings, WorkCover acts on behalf of the employer and will engage solicitors to manage the claim. WorkCover's lawyers typically have six months to investigate your allegations of negligence against your employer. They will gather financial and medical records, and may require you to undergo additional medical examinations to assess the value of your claim. They will then either admit or deny liability for your injury.

WorkCover and you are required to seek to resolve a claim where possible in the pre-court proceedings. Settlement of the claim can be negotiated informally or at a formal conference.

If a settlement is not agreed during the pre-court proceedings, you can file your common law claim in court and proceed to a trial. If you are able to prove negligence at trial, a payment of damages is awarded.

On average a common law claim will take around 12 months to resolve in the pre-proceedings. If the matter proceeds to court and trial, the process may take longer.

Settlement payments or awards of damages will be paid by WorkCover.

You can find more information about this at this [WorkSafe Queensland website](#).

Some matters that are relevant to a common law claim:

- You will need to produce evidence showing your employer was negligent and that this caused your injury.
- If your own actions contributed to your injury, your damages may be reduced.
- You may have to undergo further medical assessments.
- Evidence will be obtained from you, your colleagues and your place of employment.
- You will need to supply information relating to your employment history, taxation records, and medical history.
- If your claim cannot be resolved by negotiation, you may be required to give evidence in court.
- Most people who proceed with a common law claim choose to instruct a solicitor as the process is of a complex legal nature.
- You will be responsible for your legal fees.



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### **Time limit for bringing a claim**

There are strict time limits that govern when you can bring a common law claim. You will generally have up to three years from the date of your injury to begin your common law claim. If it has been more than three years since the date of your injury, you may be unable to bring a claim. You should seek legal advice if you think this may be relevant to you.

### **Settlement of your claim—negotiation**

Both you and WorkCover are required to make genuine efforts to resolve your claim before you can begin court proceedings.

A settlement of your claim may be negotiated informally over the phone, which can reduce costs, or in a formal conference, which is a face-to-face meeting between you, your lawyers, WorkCover and their lawyers. WorkCover will also invite the employer to attend the conference.

If a settlement is agreed, you will be required to sign a release and discharge. This document sets out the settlement amount, your agreement to release WorkCover and the employer from any further liability and your agreement to keep the settlement confidential.

### **Going to court—trial**

Court proceedings are commenced by filing a Claim and Statement of Claim in court, and serving that document on WorkCover and your employer.

The Statement of Claim must be completed in accordance with the requirements of the court and governing legislation. Most people will instruct solicitors at this stage.

WorkCover's lawyers serve a Notice of Intention to Defend and Defence in response to the Statement of Claim.

The Statement of Claim is the document that commences the court proceedings, and the way in which the claim proceeds beyond these initiating documents should be discussed in detail with your solicitor.

Your case may go to trial if WorkCover has denied liability, or if there is a disagreement about how much your claim is worth.

At a trial a judge will hear your case, decide whether your employer is liable and how much your claim is worth. If you are successful, the judge may also make an order for the payment of your legal costs.

If you are unsuccessful, you may be liable for your own costs and the costs of WorkCover.





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## USEFUL LINKS

### Beyond Blue

**P** 1300 224 636

**W** [beyondblue.org.au](http://beyondblue.org.au)

### Claim Form for Work Injury or Illness

### WorkCover Queensland

**W** [ols.workcoverqld.com.au/ols/public/claim/lodgement.wc](http://ols.workcoverqld.com.au/ols/public/claim/lodgement.wc)

### Common Law Claim Process

### WorkSafe Queensland

**W** [worksafe.qld.gov.au/claims-and-insurance/compensation-claims/common-law-claims/making-a-common-law-claim](http://worksafe.qld.gov.au/claims-and-insurance/compensation-claims/common-law-claims/making-a-common-law-claim)

### Employee or Contractor

### The Australian Taxation Office

**W** [ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/](http://ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/)

### Find a Self-Insurer

### WorkSafe Queensland

**W** [worksafe.qld.gov.au/claims-and-insurance/self-insurance/list-of-self-insured-employers](http://worksafe.qld.gov.au/claims-and-insurance/self-insurance/list-of-self-insured-employers)

### Legislation

*Workers' Compensation and Rehabilitation Act 2003 (Qld)*

**W** [legislation.qld.gov.au/view/html/inforce/current/act-2003-027](http://legislation.qld.gov.au/view/html/inforce/current/act-2003-027)

### Lifeline

**P** 13 11 14

**W** [lifeline.org.au/](http://lifeline.org.au/)

### Permanent impairment assessment

### WorkSafe Queensland

**W** [worksafe.qld.gov.au/service-providers/legal-professionals/plaintiff-lawyer-resources/assessment-for-the-degree-of-permanent-impairment](http://worksafe.qld.gov.au/service-providers/legal-professionals/plaintiff-lawyer-resources/assessment-for-the-degree-of-permanent-impairment)

### Privacy

### WorkSafe Queensland

**W** [worksafe.qld.gov.au/about/privacy/workcover-queensland-privacy/privacy-statement](http://worksafe.qld.gov.au/about/privacy/workcover-queensland-privacy/privacy-statement)

### Review a claim decision

### WorkSafe Queensland

**W** [worksafe.qld.gov.au/claims-and-return-to-work/independent-review-of-a-claim-decision](http://worksafe.qld.gov.au/claims-and-return-to-work/independent-review-of-a-claim-decision)

### Taxation of benefit payments

### WorkSafe Queensland

**W** [worksafe.qld.gov.au/claims-and-insurance/compensation-claims/payments-and-support/weekly-compensation/taxation-of-benefit-payments](http://worksafe.qld.gov.au/claims-and-insurance/compensation-claims/payments-and-support/weekly-compensation/taxation-of-benefit-payments)

### Workers' Psychological Support Service

**P** 1800 370 732

**E** [info@wpss.org.au](mailto:info@wpss.org.au)



# Have You Been Injured at Work | employment law

## ACKNOWLEDGEMENT

This factsheet was produced in collaboration with Hall & Wilcox smarter law.

### CAXTON COMMUNITY LEGAL CENTRE

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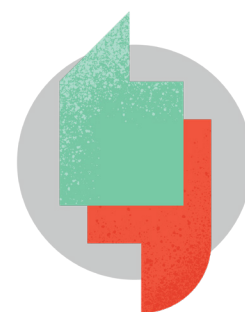
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This information is current at June 2021.



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