



Work injuries

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Introduction

This document provides answers to common questions asked about work injuries and the availability of compensation.

Types of Claims

If you are injured at work, there are two types of claims that you can make:

- No-fault “statutory” claim – a workers’ compensation claim, submitted to WorkCover; and/or
- Common law or “damages” claim, submitted to your employer or the person who caused your injury.

Most workers make a statutory claim first, then consider whether to make a common law claim after medical treatment for the injury has finished.

If you have not made a statutory claim, you can still consider whether to make a common law claim.

Time limitations

Submit an incident report to tell your employer about your injury **IMMEDIATELY**.

Even a delay of a few days can create difficulties when seeking compensation.

For statutory claims, make the claim to WorkCover within 20 business days of the date of injury, and within 6 months at the latest. Claims lodged more than 6 months can be rejected as being too late.

For common law claims, there is a 3 year time limitation period. There are several steps that must be completed before the 3 year limitation.

Make a decision about whether to proceed with a common law claim within 2.5 years of the date of injury.

Statutory workers’ compensation claim

Workers’ compensation is a type of insurance that can, if you are eligible under the *Workers’ Compensation and Rehabilitation Act 2003* (Qld) (**the Act**) pay your wage and medical costs for your injury, regardless of who was at fault.

Deciding your claim

The Act recognises both physical and psychological/psychiatric injuries.

To receive compensation you must prove:

- you have sustained an injury;
- work-related factors significantly contributed to your physical injury; and
- for psychological injury, the injury did **not** arise from “reasonable management action” taken in a reasonable way (which includes discipline action, dismissal or demotion). The actions of your employer do not have to be perfect to be considered reasonable.

Based on the above, your claim will either be accepted or rejected.

Compensation

If your claim is accepted, compensation may include:

- weekly payments as income replacement; and/or
- hospital and medical expenses (such as medications, doctor’s appointments and medical equipment).

What you need to do

If you have been injured at work or because of work, you should:

- see your doctor and get a workers' compensation medical certificate;
- tell your employer about your injury and provide them with a copy of the medical certificate;
- lodge a claim with WorkCover Queensland, usually that can be done by your doctor at the medical practice; and
- keep copies of all documents relating to your injury and claim. It is up to you to provide evidence to support your claim.

Who pays for treatment while your claim is being assessed?

WorkCover will not pay for treatment until a decision is made, unless it is essential to determining the claim.

How long will your claim go for?

You will only receive compensation while you are covered by a current workers' compensation medical certificate.

You must have a current workers' compensation medical certificate at all times. Even a one day gap can lead to your claim being closed.

There are statutory limits on the total amount of compensation that you can receive and the length of time that you can receive compensation.

Once your injury is "stable and stationary", as assessed by medical practitioners, the claim will be closed. You may be entitled to a small lump sum of compensation at this stage.

An injury is "stable and stationary" when doctors decide that medical treatment is unlikely to improve the injury substantially in the short term. Sometimes your doctor might decide your injury is stable, even if you are still receiving treatment like physiotherapy.

What can you do if you are unhappy with a decision made by WorkCover?

You can seek a review of the decision through the Workers' Compensation Regulator.

If you are still unhappy with the decision, you can appeal to the Queensland Industrial Relations Commission.

A refusal to pay for surgery or a specific medical expense cannot be reviewed and can only be appealed to the Commission, or in some cases, the Industrial Magistrates Court.

What happens at the end of your claim?

If you return to work and cease medical treatment, your claim will close, often without WorkCover telling you.

If you have ongoing difficulty returning to work or need medical treatment, WorkCover Queensland will eventually gather medical information from your treating doctors and independent doctors, with a view to determining that your injury is stable and stationary. When it is stable, the claim will close.

You are entitled to ask for an assessment of whether you have sustained permanent impairment.

What happens if your injury has caused permanent impairment?

Permanent impairment is a loss of efficient use of a bodily function. The assessment is intended to be objective, such that a PE teacher will receive the same compensation as an English teacher for a hand injury, even though a hand injury might end the career of the PE teacher.

When your injury has reached a stable and stationary state, an independent assessment will be arranged and the doctor will assess the level of permanent impairment. From the doctor's report your degree of permanent impairment (DPI) will be calculated as a percentage. This percentage is converted to a dollar value of compensation and a lump sum offer made.

You have the option to accept or decline this lump sum offer. Importantly, if you accept this offer, then you cannot seek common law damages (see more below). If you wish to obtain advice about the prospects of success of a damages action, you should defer the offer of compensation.

You may be eligible for additional payments including:

- if your DPI is greater than 30% you are entitled to an additional lump sum to assist with your ongoing medical needs once your workers' compensation claim has closed; and/or
- if you require ongoing assistance with activities of daily living, you may be entitled

to an additional lump sum for gratuitous care.

Common law claims

Common law claims involve an injured worker suing their employer for negligence.

Once a common law claim is commenced, the worker is deemed to have rejected the lump sum otherwise payable as a result of the permanent impairment assessment.

Generally, if possible, you should wait for permanent impairment to be assessed before commencing a damages action, so you know the amount of the lump sum you are rejecting.

Time limitation periods still apply and you should not wait longer than 2.5 years after your date of injury.

The courts may award payments (known as common law damages) for:

- economic loss;
- pain and suffering;
- legal costs; and
- medical and hospital costs.

Damages can be recovered if you can establish that there was some fault on the part of the employer which caused your injury.

WorkCover will defend this common law claim on behalf of the employer.

What if you are able to return to work but the injury has an impact on your personal life?

Courts are not particularly generous when assessing compensation for the impact of an injury on a claimant's personal life. They are obliged to use a specific injury scale which does not take into account subjective pain and suffering.

Loss of personal activities, such as no longer being able to participate in sports, is unlikely to attract any specific compensation.

Time Limitations

You must start your action within three years of the date of the injury.

Third parties

A worker is not limited to suing their employer. If there was a third party involved in causing the injury, e.g. on excursion or where a student has caused the injury, the worker can also sue the person who caused the injury.

There are practical difficulties with suing students as they generally do not have money to pay damages.

For any claims against third parties, the claim proceeds under the *Personal Injuries Proceedings Act 2002* (Qld) (**PIPA Act**), which establishes a mandatory regime, different to the Act.

Notice of an intention to claim against a third party must be given under the PIPA Act within 9 months of the date of injury.

For further information or assistance please contact the QTU.