



Information for injured workers

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice.

You should seek independent legal advice if you need assistance on the application of the law to your situation.

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If you are injured at work

If you have a work injury and need medical treatment and/or have reduced work capacity then you may claim workers compensation. The workers compensation system provides you with benefits and assistance to stay at work as part of your recovery, or support a safe return to employment to reduce the impact of your injury for you and your family.

What workers compensation covers you for

The workers compensation system provides a range of benefits. These include:

Weekly payments – this is paid to cover your loss of earnings and support you in your recovery and return to work. Initially, the weekly payment is based on a percentage of your average weekly earnings before the injury, capped at a maximum weekly rate. The calculation of the average weekly earnings includes payments for overtime and shift allowances but only for the first 12 months of weekly payments.

Following 13 weeks of payment the calculation of the weekly payment is modified and is based on how many hours you are working per week, and your capacity for work. Entitlement to a weekly payment after 130 weeks is not available unless certain requirements are met.

Weekly payments (exempt workers) – For injured workers exempt from the 2012 legislative changes, initially the weekly benefit is paid at award rate, registered agreement rate or enterprise agreement rate of pay, capped at a maximum weekly rate. The payments do not include payments like overtime, shift-work and penalty rates. After six months your payments could drop to a fixed rate prescribed by regulations (regardless of your pre-injury rate of pay).

Exempt workers include police officers, paramedics, firefighters, coal miners, emergency service workers, rescue association workers and workers who make dust diseases claims.

Reasonable medical and other expenses – including medical and hospital treatments, therapies, counselling, medical tests and medication. Entitlement to these benefits is subject to prior approval by the insurer unless the treatment is exempt from prior approval.

Reasonable rehabilitation expenses – covers costs associated with your safe return to work including the cost of an approved workplace rehabilitation provider and job seeking support where required.

Reasonable other expenses – including items such as travel, aids and equipment. Entitlement to these benefits is subject to prior approval by the insurer unless the expenditure is exempt from prior approval.

Payment for permanent impairment – you may be entitled to a lump sum payment for serious and permanent injuries. There is a threshold for payment of permanent impairment benefits which must be exceeded for any payment to be made.

For further information about these benefits refer to WorkCover NSW's website and other WorkCover publications.

When your weekly payments should commence

If you are entitled to weekly payments, they should commence within seven days of the insurer being notified of your injury. The insurer should also pay reasonable medical expenses that are exempt from prior approval or have been approved.

If you do not receive payment you can contact the WorkCover Claims Assistance Service on **13 10 50** or your union.

Your entitlements and responsibilities

You, the injured worker, can:

- choose your nominated treating doctor
- choose your approved workplace rehabilitation provider and/or retraining provider where required
- be involved in the development of your return to work plan
- choose your treatment providers.

Protection of your job – your employer cannot dismiss you (because of your injury/illness) during the first six months after you have become unfit for employment as a result of the injury/illness. If you are terminated after six months but become fit for your old job within two years, you can apply to be reinstated with your employer.

What you need to do if you have a work related injury or disease

- notify your employer (usually your direct supervisor) as soon as possible
- record your name, the date and cause of the injury in the employer's register of injuries or have someone do it on your behalf
- see your doctor to arrange treatment and get a *WorkCover NSW – certificate of capacity* (catalogue no. WC01300) to give to your employer
- participate in the development of and comply with an injury management plan and return to work plan
- keep in touch with your employer regularly
- keep copies of all documentation relating to your injury

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- make reasonable efforts to return to work in pre-injury or suitable employment
 - actively participate and cooperate in workplace/vocational rehabilitation
 - actively seek future employment prospects
 - actively participate and cooperate in assessment for the determination of your capacity for work.

WorkCover certificate of capacity

You are required to obtain a certificate of capacity at least every 28 days from your nominated treating doctor or specialist. This certificate focuses on what you can do during your recovery and helps inform a tailored approach to your injury management and return to work planning.

You must complete the declaration attached to each certificate for your certificate to be valid and to notify the insurer of any change in your circumstances.

By law you must notify the insurer if:

- you undertake any paid or unpaid work
- you start your own business
- there are any changes in your employment that may affect your earnings.

Your return to work team

You, your employer, your doctor and the insurer all have a role to play in your safe return to pre-injury or suitable employment. Effective communication means each party must work together and communicate effectively to ensure your return to work is as smooth and safe as possible. If you're a member of a union, they also can assist.

Your injury management and return to work plan

Your employer's role

Employers recognise the benefit of getting injured workers back to work and will assist during this process. The employer will:

- notify the insurer within 48 hours of being made aware of your injury
- consult with you, your treating doctor and the insurer about your return to work plan
- organise suitable (alternative) duties in line with your capacity for work while recovering from your injury
- keep in touch with you throughout your recovery from injury and return to work.

Your nominated treating doctor's role

The nominated treating doctor will:

- recommend and organise treatment for your injury or illness
- complete the certificate of capacity
- communicate with your employer, insurer and workplace rehabilitation provider (if involved) about your medical condition, progress and needs as appropriate
- communicate with your insurer/employer in the development of your injury management plan
- review your condition and capacity for work.

The insurer's role

The insurer must:

- if you're entitled to weekly payments, start paying you weekly payments within seven days of being told of your injury, or advise you of the reason they are not making payments
- continue to pay your weekly payments on a regular and timely basis
- pay reasonably necessary medical expenses (some of which may require pre-approval)
- prepare an injury management plan in the case of an injury lasting more than seven days
- decide whether to accept or deny your claim for workers compensation and advise you in writing
- communicate transparently with you, your nominated treating doctor, your employer, workplace rehabilitation provider and other treatment providers throughout your recovery and return to work planning
- continually assess and make decisions about your capacity for work to develop an injury management plan tailored to you.

Your return to work plan and returning to work on suitable duties

Your return to work team will work with you to develop a return to work plan based on your capacity for work. Your return to work plan includes detail of suitable duties.

Suitable duties are any duties identified that may be provided by the employer for the purposes of facilitating recovery from the workplace injury.

Suitable duties must be:

- in line with your capacity for work
- meaningful
- provided for the purpose of increasing your capacity for work.

Suitable duties may include:

- parts of your job you were doing before your injury
- the same job, but on reduced hours
- different duties altogether
- duties at a different site
- a combination of some or all of the above.

Note: Suitable duties are not a return to work outcome, but rather, a rehabilitation strategy used to achieve a return to work outcome.

If you are unable to return to your pre-injury role

Your return to work team will work with you to identify your options for return to employment that is suitable for you.

If your circumstances change

If you are receiving workers compensation benefits, by law you must notify your insurer if:

- you undertake any paid or unpaid work
- you start your own business
- there are any changes in your employment that may affect your earnings.

Failure to provide this information may result in you receiving benefits you are not entitled to. This could result in you having to repay the benefits and/or lead to potential prosecution for fraud. People who commit fraud against the workers compensation system face maximum penalties of \$55,000 and/or up to two years imprisonment.

Employers and insurers who do not comply with their obligation may also face fines of up to \$55,000.

Where to go if you need assistance or further information

You may have questions about your return to work, your payments or your workers compensation claim.

Contact the following:

- your employer's return to work coordinator
- the insurer managing your claim
- WorkCover Assistance Service
Phone: **131 050**
workcover.nsw.gov.au
- your union, Unions NSW
Freecall: **1800 688 919**
unionsafe.labor.net.au

People from culturally and linguistically diverse backgrounds who need interpreting services should contact:

- Department of Immigration and Citizenship
Translating and Interpreting Service
Phone: **131 450**
- Community Relations Commission
Interpreting and Translation
Phone: **1300 651 500**

*For the purposes of this publication 'insurer' means claims agent, self and specialised insurer.

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