

WERP

WOMEN'S EMPLOYMENT RIGHTS PROJECT

Funded by the Office for Women, NSW Department of Premier and Cabinet



IMPORTANT NOTE: THIS FACT SHEET ONLY APPLIES TO WOMEN WHO WORK IN NEW SOUTH WALES

WORKERS COMPENSATION

WHAT IS 'WORKERS COMPENSATION'?

A person who is a worker or deemed to be a worker can claim workers compensation in the event of a work-related injury.

Injured workers are entitled to receive weekly payments to cover loss of earning capacity, payment of medical expenses and vocational rehabilitation expenses to assist them to get back to work. Lump sum compensation for any permanent impairment is also available.

All NSW employers must have a workers compensation policy to insure themselves against compensation claims for workplace injuries.

A claim for worker's compensation should be made **within six months** of the date of the injury but this time limit is frequently extended to 3 years and can be extended beyond that in some circumstances.

HOW CAN I MAKE A CLAIM FOR WORKERS COMPENSATION?

- ❖ Advise your employer that an injury has occurred and provide medical information. The employer must then notify their insurer within **48 hours**
- ❖ Provisional liability payments should start within **seven days** (for most injured workers); and
- ❖ The insurer will investigate the facts and decide to continue or stop further payments.

WHAT IS AN INJURY?

According to Section 4, Part 1, of the *Workers Compensation Act 1987*, 'injury' -

- ❖ means personal injury arising out of or in the course of employment
- ❖ includes -
 - a disease which is contracted by a worker in the course of employment and to which the employment was a contributing factor; and
 - the aggravation, acceleration, exacerbation or deterioration of any disease where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration.

It should be noted that injuries could be physical or psychological.

HOW LONG DO I HAVE TO WAIT TO FIND OUT IF THE INSURANCE COMPANY ACCEPTS OR REJECTS MY CLAIM?

- ❖ After the initial notification of the injury and commencement of provisional liability payments a claim form is submitted, the insurer has either **21 days or until the period of provisional liability expires** to make a decision. Provisional liability is decided by the insurer prior to the commencement of payments. Although the maximum is usually 12 weeks, the insurer may also decide to extend provisional liability for a further period.



DO I HAVE TO FILL OUT A CLAIM FORM?

- ❖ Not in most cases but you may be asked to complete one if –
 - ❖ the insurer requests one
 - ❖ you need weekly payments for 12 weeks
 - ❖ medical expenses are more than \$7,500
 - ❖ the provisional liability payments don't start or are stopped and you disagree.

WHAT BENEFITS ARE AVAILABLE?

Depending on the individual claim, you may be eligible for all or some of the following payments –

- ❖ weekly benefits
- ❖ medical or related treatment
- ❖ occupational rehabilitation services
- ❖ ambulance service
- ❖ hospital treatment
- ❖ travel expenses to attend appointments for medical and other treatment
- ❖ lump sums for permanent impairment
- ❖ lump sums for pain and suffering
- ❖ vocational re-education and retraining, work aids and equipment, work trials
- ❖ when the injury results in the death of the worker, the dependent family members may be eligible for death benefits and/or funeral expenses.

KEY POINT!

It's easy to make a claim for workers compensation.

Notify your employer of the injury, they then notify the insurer, who considers the facts and starts provisional liability payments. This means you will have a regular income while the insurer gets more information to support or dispute the claim.

If the claim is accepted, further benefits are paid to you in accordance with medical certificates.

WHAT IF MY EMPLOYER THINKS THE INJURY IS NOT RELATED TO WORK?

- ❖ Then the employer or the employer's insurer must provide evidence to support that assertion eg medical evidence that the medical condition already existed and has not been aggravated by work, or factual evidence that the injury occurred in circumstances not arising out of or in the course of employment.

WHAT WILL I BE PAID IF I'M TOTALLY UNFIT FOR WORK?

- ❖ For the **first 26 weeks** payments are at the award rate or agreement rate of pay, capped at a maximum weekly amount. Overtime, shiftwork, payments for special expenses and penalty rates are excluded
- ❖ Casual workers are entitled to their average weekly income based on what was earned over the previous 12 months (unless they are employed under an award rate)
- ❖ **After 26 weeks** your payments will be at the statutory rate. This is adjusted twice a year and depends on whether you have a dependent spouse and/or children.

WHAT IF I CAN ONLY RETURN TO WORK ON PARTIAL DUTIES?

- ❖ If you return to work on partial (suitable) duties and earn less than before the injury, then 'make-up' pay (additional) will be paid. 'Make-up' pay is the difference between the normal gross weekly wage before the injury (including overtime, shift work, payments for special expenses and penalty rates) and the actual weekly earnings after the injury.

WHAT DO I GET IF I'M FIT TO GO BACK TO WORK ON SUITABLE DUTIES BUT MY EMPLOYER CLAIMS THEY DON'T HAVE ANYTHING SUITABLE?

- ❖ You can receive what are called 'section 38 payments' which include –
 - ❖ Not more than the award/agreement rate of pay within the first 26 weeks of incapacity, and
 - ❖ Not more than 80 percent of the award rate between 27 and 52 weeks of incapacity.
- ❖ Section 38 payments **stop after a maximum 52 weekly payments** after which you may continue to receive make-up pay or statutory rate payments

WHEN SHOULD I GET LEGAL ADVICE?

- ❖ If you think you may have a permanent impairment as a result of the injury
- ❖ If the injury was serious and you believe it resulted from your employer's or some third party's negligence



- ❖ If you are not sure you are receiving the correct make-up pay or pay while incapacitated
- ❖ If there is any dispute about your medical treatment. eg the insurer won't pay for some recommended treatment or your rehabilitation program
- ❖ If you wish to dispute any decision of your employer and/or insurer, for example, if the insurer denies liability or your employer does not provide you with suitable duties upon your return to work.

NEED MORE INFORMATION?

For more information on workers compensation entitlements and any 'minor' disputes about weekly payments, medical expenses and rehabilitation, contact **WorkCover NSW** (ph13 10 50).

For legal advice, contact your **local community legal centre**.

TOP TIPS!

1. **Notify the employer immediately after a workplace injury**
2. **Remember what happened, when, how – write it down and any witnesses' names (if any)**
3. **Keep a copy of all documentation that you send to the employer or the insurance company and all documentation that is sent to you**
4. **Keep a diary of events. Some workers compensation claims can go on for weeks, months, even years so it's important to keep a detailed record of what happens.**
5. **Get *early* legal advice. Solicitors cannot charge injured workers for acting in workers compensation claims – the insurer has to pay your solicitor's bill when the claim is finalised.**

Disclaimer The information contained in this fact sheet is only intended as a guide to the law and should not be used as a substitute for legal advice. If you have any further questions we strongly suggest you seek legal advice.

The views expressed herein do not necessarily reflect the views of the Office for Women, NSW Department of Premier and Cabinet.

Note: This information applies to people who live in, or are affected by, the law as it applies in the State of New South Wales, Australia.

The information contained in this fact sheet is current as at 1 July 2007.