

Workers' Compensation and Injury Management

Important Information for Employers



About WorkCover WA

WorkCover WA is the government agency responsible for overseeing the workers' compensation and injury management system in Western Australia.

This includes monitoring compliance with the *Workers' Compensation and Injury Management Act 1981*, informing and educating workers, employers and others about workers' compensation and injury management, and providing an independent dispute resolution system.

Disclaimer

This brochure is intended to provide general information only. You should not act or omit to act on the basis of anything contained herein. You should seek appropriate legal/professional advice about your particular circumstances.

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This brochure provides you with basic information about the workers' compensation system and the injury management process.

More detailed information about the system and process can be found on the WorkCover WA website at www.workcover.wa.gov.au or obtained by calling Advisory Services on 1300 794 744.

The aim of workers' compensation and injury management

The primary goal of the *Workers' Compensation and Injury Management Act 1981* (the Act) is to compensate workers who suffer a workplace injury and support injury management to enable injured workers to return to gainful employment.

Legal obligations

Under the Act, your legal obligations as an employer include:

- having workers' compensation insurance cover for all 'workers' (penalties apply for avoidance)
- providing the completed claim form to your insurer within five working days
- making weekly payments to the injured worker as soon as the claim is accepted
- having an injury management system, and
- developing and implementing a return to work program if a treating medical practitioner indicates it is needed for an injured worker.

Definition of a worker

The legal definition of a 'worker' who must be covered is very broad. Section 5 of the Act states '...any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed, implied, oral or in writing'.

The definition includes full-time and part-time workers, workers employed on casual and seasonal rates, apprentices and, in appropriate circumstances, sub-contractors. All workers should be covered by a policy of insurance regardless of how they are paid, whether it is by wages, salary, commission, piece rates or even payment in kind.

Further information on employers' liabilities for contractors and sub-contractors is available from the WorkCover WA website or Advisory Services.

Workers' compensation insurance

Workers' compensation insurance protects employers from financial costs when a worker sustains a work-related injury or illness. It protects injured workers by providing weekly payments to cover loss of earning capacity, payment of reasonable medical and rehabilitation expenses, and other entitlements.

Workers' compensation insurance is compulsory and you, as an employer, need to take out a policy with an approved insurance company to cover all the workers you employ. A list of approved insurers can be obtained from the WorkCover WA website or Advisory Services.

Any worker who suffers a work-related injury or illness and needs medical treatment and/or cannot work because of the injury is entitled to claim workers' compensation.

When taking out a workers' compensation insurance policy, you will be required to complete a wages declaration, which is used by the insurer to calculate your insurance premium.

Calculation of wages

When completing a wages declaration, it is important that you calculate your wages costs accurately, as this will affect your insurance premium.

For these purposes, the term 'wages' means all wages, salaries, remuneration, commissions, bonuses, overtime, allowances and the like, directors' fees, superannuation contributions (except those made by force of law), fringe benefits and all other benefits paid (whether paid in cash or non cash benefits such as vehicles, equipment, mortgage payments, travel, school fees etc.) to or in relation to a worker (including working directors declared as such to us) or to contractors, before deduction of income tax.

'Wages' does not include termination payments, retirement pay, retrenchment pay in lieu of notice, pensions, golden handshakes, or weekly payments of workers' compensation.

Superannuation contributions made as part of the *Superannuation Guarantee* (currently 9% of earnings) are therefore not to be included in the calculation of 'wages'. Any other superannuation contribution made on behalf of the employee is however, classed as 'wages'.

What to do when an injury occurs

Apply first aid and report the injury in your incident reporting system

Encourage the worker to see a doctor of their choice as soon as possible and obtain a medical certificate known as a Workers' Compensation First Medical Certificate. Provide a workers' compensation claim form to the worker.

When the worker gives you their First Medical Certificate and claim form, complete the employer's section and send the claim form together with the medical certificate to your insurer within **5 working days**.

The insurer has 14 days to assess the claim and can:

Accept the claim

Workers' compensation entitlements commence

Dispute the claim

No entitlements are made – you can dispute this decision

Pend the claim

No entitlements are made – the insurer needs more time to make a decision

Insurer responsibilities

It is not your decision to accept liability for the claim. Your insurance company must assess the claim and advise you and the injured worker, in writing within 14 days of receiving the claim, whether it is accepted or disputed, or if they need more time to make a decision.

If the insurer fails to reply within 14 days of you lodging the claim, then the worker becomes entitled to weekly payments of compensation. This is determined by WorkCover WA. The insurer must indemnify you for these payments and they are also liable to a \$1,000 penalty.

If, after 19 days of the worker lodging their claim, the worker has not received notification or the first of their weekly payments, then the matter is deemed to be in dispute and the worker may bring the matter to WorkCover WA for a decision. Also, in these circumstances, WorkCover WA may order an employer to make an application for an arbitrator to determine liability.

What to pay and when

While the claim is being assessed, you may consider paying accrued leave to your injured worker (such as, annual or sick leave).

You should ask the injured worker first, make it clear this is not workers' compensation, and that payment of accrued leave or sick leave is a voluntary option until a decision regarding liability is made. If the claim is approved, and payment from accrued sick leave entitlements has been made, these entitlements must be refunded to the employer by the insurer and re-credited to the worker.

When your insurer gives approval, you should begin workers' compensation payments without delay, consulting with your insurer regarding the amount. Once payments begin, you are required to pay the worker in the usual manner and on their usual payday, unless notified by the insurer to cease payments.

If you feel that you may be unable to pay an injured worker's weekly payments in this manner, you should contact your insurer as soon as possible to discuss what options are available. If you cannot resolve the issue with your insurer, contact WorkCover WA's Advisory Services on 1300 794 744.

Accounts and invoices

Forward all accounts and invoices relating to medical treatment and other approved entitlements to your insurer as soon as reasonably possible.

Choice of treating medical practitioner

A worker has a right to attend a medical practitioner of their own choice for treatment and management of their work-related injury.

Medical review

As an employer, you have the right to arrange a medical review via your insurer before or after a claim has been accepted. An injured worker is required to attend this appointment for a medical examination. If they do not attend, payments of compensation may be suspended, and in certain circumstances their right to pursue workers' compensation may cease.

A worker cannot be required to attend medical reviews:

- more frequently than once every two weeks
- at any time other than during reasonable hours
- with more than three medical practitioners who are specialists in the same field of medicine.

Injured worker's entitlements

A worker who has a claim accepted by the insurer may be eligible to receive the following entitlements:

- Compensation for loss of earning capacity, limited to a maximum amount (currently twice the Australian Bureau of Statistics average weekly earnings for an adult in WA) per week, and a total maximum entitlement for the life of the claim, known as the Prescribed Amount.
- Reasonable medical and other expenses (calculated at 30 percent of the Prescribed Amount).
- Reasonable vocational rehabilitation expenses (calculated at seven percent of the Prescribed Amount).
- Reasonable travelling and accommodation expenses.
- Lump sum settlements in certain circumstances.

If the worker uses up all of their Prescribed Amount or their medical expenses entitlement, extra amounts can be granted within certain guidelines.

Note: the Prescribed Amount and maximum weekly payment are indexed on 1 July each year and the current amounts can be obtained from the WorkCover WA website or Advisory Services.

Employer's obligations to maintain an injured worker's employment

If a worker attains partial or total capacity for work within 12 months from the day he or she became entitled to weekly payments of compensation, you

must make available the position held by the worker immediately before that day, if it is reasonably practicable to do so.

If that job is not available, or the worker can no longer perform that job, you must provide a similar position, for which the worker is qualified and capable of performing, that is comparable in status and pay.

If you wish to terminate the employment of a worker within the 12 months mentioned above, you must give both the worker and WorkCover WA 28 days written notice of your intention.

Injury management

Injury management is defined in the Act as ‘the management of workers’ injuries in a manner that is directed at enabling injured workers to return to work’. It is the responsibility of employers and injured workers to cooperate in this process, where it is medically supported.

It is a legal requirement to have an injury management system in place.

WorkCover WA has issued a *Code of Practice (Injury Management) 2005* (the Code), which explains your legal responsibilities regarding injury management.

Injury Management: A Guide for Employers has also been produced to provide practical help. This publication includes information on how to establish injury management systems and return to work programs, with ready-to-use templates, and can be obtained from the WorkCover WA website or Advisory Services.

Injury management systems

The Code requires you to have a written description of your injury management system. This should include the steps to be taken when an injury occurs and the contact details for the person responsible for the injury management system.

You must provide your workers with a copy of the document describing your injury management system if they ask for it.

Return to work programs

You are required to establish a return to work program for an injured worker if their treating medical practitioner informs you in writing that a return to work program should be established or that the injured worker is:

- partially fit to return to work in their usual job
- or, totally or partially fit to return to an alternative job.

This needs to be done with the worker's agreement, in writing and in accordance with the Code.

You should speak to the treating medical practitioner as soon as possible after receiving a claim form to discuss possible return to work arrangements. It is important that you establish communication with the treating medical practitioner early in the claim process, however this should be kept separate from the workers' personal medical appointments.

The return to work program should include the following:

- your name and the name of the injured worker
- a description of the goal of the return to work program
- the actions to be taken and who is to take them
- a statement as to whether or not the worker agrees to the program.

Any changes that need to be made to the return to work program as a result of advice from the worker's treating doctor must be made with the worker's agreement and in writing.

You have to give both the worker and their treating doctor a copy of the return to work program and any changes made to the program.

Penalties apply for non-compliance

Insurers are required to assist employers to comply with their injury management obligations or, upon request, discharge an employer's obligation to establish a return to work program for an individual worker.

What is vocational rehabilitation?

Vocational rehabilitation is a specific service that is available to assist in helping injured workers' stay in, or return to, suitable work. WorkCover WA approves vocational rehabilitation providers. To obtain a list of approved providers please contact the WorkCover WA Advisory Services or visit our website.

Please Note: Injured workers have the right to choose a vocational rehabilitation provider and payment for their services forms part of an injured worker's entitlements.

Further information

The information in this brochure is intended as a brief introduction to the *Workers' Compensation and Injury Management Act 1981*.

Additional information services and publications can be obtained by telephone or in person from:

WorkCover WA
2 Bedbrook Place
Shenton Park 6008

Advisory Services: 1300 794 744
TTY (hearing impaired): (08) 9388 5537
Facsimile: (08) 9388 5550
Website: www.workcover.wa.gov.au
Email: postmaster@workcover.wa.gov.au

Advisory Services is a telephone information service which provides general information on workers' compensation and injury management.

Information is also available in alternative formats for people with disabilities, including an audio loop available on 48 hours notice for the hearing impaired.

Interpreter services paid for by WorkCover WA can be made available with prior notice.

Information seminars for employers are held on a regular basis free of charge. More information is available from the Calendar of Events at www.workcover.wa.gov.au or through Advisory Services on 1300 794 744.



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