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Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020

Notice about common law claims Fact Sheet 3

Amendments to the regulations provide for a notice to be given to workers about common law claims

Effective 16 November 2020

Discontinuation of termination day notice

- The *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020* discontinued the termination day by deleting relevant provisions in the Act.
- One of the provisions deleted included an employer's obligation to notify workers about the termination day under section 93O of the Act.

New notice about common law claims

- Regulations provide for an alternative notification about common law claims to be sent to workers by insurers and self insurers.
- The new notice must be in the form approved by WorkCover WA's CEO. The approved form of the notice is attached.

When to send the notice

- From 16 November 2020 insurers and self insurers are required to notify workers about common law claims in the following circumstances:

Insurers

If liability is accepted in relation to a claim by way of weekly payments, at the same time an insurer notifies the worker under section 57A of the Act that liability is accepted in relation to the claim

Self insurers

If liability is accepted in relation to a claim by way of weekly payments, on or before making the first weekly payment.

Sending notice by email

- The common law claim notice may be given to a worker by emailing the notice to an email address nominated by the worker.
- A worker is taken to have nominated an email address if the email address is included in the worker's claim for compensation.
- Changes to the regulations also permit liability decision notices under section 57A or section 57B to be sent to workers via email.

Common law claim notice approved under regulation 25 of the Workers' Compensation and Injury Management Regulations 1982

In addition to having your workers' compensation claim accepted, you may also have the right to claim for common law damages against your employer in the District Court.

A common law claim is different to the claim you made for compensation and is made outside the workers' compensation system.

There are restrictions on whether workers can pursue a common law claim. You should consider the information below carefully, and if you wish to take matters further – seek advice.

To make a common law claim you must –

- have a degree of permanent whole of person impairment of 15% or more
- lodge what is known as an 'election' to retain the right to seek common law damages with WorkCover WA's Director Conciliation
- make a common law claim in the District Court after the election is registered
- ensure your claim is made within a period of time known as a limitation period (which is generally 3 years)

It is important to understand that if you make a common law claim, your level of weekly compensation may be reduced.

You can get advice by contacting your Union, or to find a lawyer by contacting the Law Society of WA at <https://www.lawsocietywa.asn.au/find-a-lawyer/>

If you are a non-English speaker and require a language service, please visit the WorkCover WA language page at <https://www.workcover.wa.gov.au/languages/>