

In Western Australia workers compensation insurance is mandatory for employers who engage 'workers' covered under the [Workers Compensation and Injury Management Act 2023](#) (the Act).

It can sometimes be difficult to work out if support workers engaged by NDIS participants are covered as workers under the Western Australian workers compensation scheme, and if so, who is responsible for insurance arrangements.

This fact sheet provides information for NDIS participants and others to clarify when coverage is required.

This factsheet:

- Provides guidance on when support workers are classified as "workers" and sets out who is considered the support worker's employer in different employment arrangements
- dispels common myths about coverage
- gives some examples of common engagement arrangements and sets out who is responsible for insurance
- provides WorkCover WA contact details for further information.

Note: Terms used in this fact sheet have the same meaning as found in the [National Disability Insurance Scheme Act 2013 \(Cth\)](#).

When is a NDIS participant the employer of a support worker?

There are three circumstances in which a support worker may be covered by the Act. They are:

- a worker under a contract of service (standard arrangements)
- a worker under a contract for service (standard arrangements)
- NDIS support workers in certain regulated circumstances (extended arrangements).

Further information on standard arrangements and extended arrangements can be found in the WorkCover WA publication, [Definition of Worker and Employer – Explanatory Guide](#).

Standard arrangements

Under standard workers compensation arrangements, a NDIS participant will be the employer of a support worker where the NDIS participant has a direct contract of service (standard employer/employee relationship), and in some circumstances, a contract for service (contractor arrangement and not operating a business in their own name or business name) with the support worker.

It is mandatory for an employer of a worker to obtain a policy of workers compensation insurance from a licensed insurer for any worker/s they engage under standard arrangements.

Extended arrangements

Workers compensation legislation provides workers compensation coverage to NDIS support workers beyond the standard arrangements. Even where a NDIS participant does not have a contract of service or contract for service with a support worker, the support worker may still be a worker for workers compensation purposes.

If a NDIS participant self-manages their funding or uses a registered plan manager to receive NDIS supports, the NDIS participant is required to provide workers compensation insurance for their support worker/s. This is because both these arrangements create legal obligations as the NDIS participant has personally chosen how to use their funds.

If a NDIS participant receives funding for NDIS supports under their plan, and:

- self-manages their funding; or
- uses a registered plan management provider to manage the funding; or
- uses a mix of self-managed and registered plan managed funding,

and they engage a support person to deliver funded support:

- the support worker is deemed a worker; and
- the NDIS participant is deemed the employer of the support worker.

This means the NDIS participant must:

- obtain a workers compensation insurance policy from a licensed insurer in the WA workers compensation scheme; and
- comply with employer obligations under WA workers compensation law (see below).

However, the further coverage provisions do not apply if the support worker is:

- employed by a person in the business of supplying support workers to NDIS participants; and
- that person has a contract with the support worker to provide the service.

In those circumstances:

- the person in the business of supplying support workers is the employer, not the NDIS participant; and
- the person in the business of supplying support workers may be responsible for workers compensation coverage for the support worker.

A NDIS participant would never be the employer of a support worker where funding for supports under their plan is managed by the National Disability Insurance Agency.

Persons acting on behalf of a NDIS participant

Where a NDIS participant is the employer of a support worker, the NDIS participant will be the person named as the employer on the workers compensation policy. This is the case regardless of any existing care or guardianship arrangements, including arrangements under the NDIS.

There may be circumstances in which a NDIS participant is unable to make their own decisions, and a nominee or guardianship arrangement exists. If a person is authorised to act on behalf of a NDIS participant, depending on the circumstances of the arrangement entered into, that person may assume certain responsibilities on behalf of the NDIS participant.

These responsibilities vary according to the individual arrangement but generally relate to a broad number of matters, which may include ensuring a workers compensation policy is in place for workers under standard arrangements and extended arrangements. As noted, such arrangements do not change the NDIS participant being named as the employer of the support worker for workers compensation purposes.

Employer obligations

An employer taking out a policy of workers compensation insurance for their worker/s is the first step in ensuring compliance with the Act. A policy must be taken out where there is a contract of service, a contract for service, or where the NDIS support worker extended arrangements apply.

Where a NDIS participant is the employer of their support worker, the NDIS participant has the same claim and injury management responsibilities as any other employer. Obligations include dealing with a workers compensation claim if one is made and establishing and implementing injury management systems and return to work programs for injured support workers. Your workers compensation insurer can assist you with understanding and meeting these obligations.

Common myths

Myth	Fact
NDIS participants don't need workers compensation insurance for sole trader support workers.	A sole trader engaged by a NDIS participant will be deemed the participant's worker where there is a contract of service, contract for service, or NDIS support worker extended arrangements apply. Insurance is required.
Sole trader support workers are their own employees and responsible for their own insurance.	Sole traders are not responsible for their own workers compensation insurance when engaged by a NDIS participant and the extended arrangements apply. In those circumstances the responsibility falls on the NDIS participant .
Where such an arrangement is in place, a NDIS participant's guardian or nominee becomes the support worker's employer.	Depending on the requirements of the arrangement, where a participant is unable to make their own decisions the responsibility of obtaining insurance may fall on a person under a nominee or guardianship arrangement. However, the NDIS participant still remains the employer of the support worker.
My support worker has an ABN. This means the support worker is responsible for their own insurance.	Whether the contractor does or does not have an ABN is not, on its own, indicative of either coverage or exclusion under workers compensation arrangements.
NDIS participants and support workers can enter into an agreement to avoid workers compensation obligations.	Obligations under workers compensation law cannot be avoided by contract . Where an obligation exists, a workers compensation policy is mandatory .
Workers compensation is included under other insurance arrangements (e.g. public liability insurance).	Workers compensation is a separate insurance product and must be obtained from a WorkCover WA licensed insurer .
Workers compensation premiums are not funded by the NDIA.	Where required, workers compensation insurance is considered an employment-related cost and is funded under the participant's plan.
Only self-managed plans require workers compensation insurance.	Both self-managed and plan-managed arrangements will result in workers compensation obligations for a NDIS participant under standard or extended arrangements. Both arrangements create legal obligations, in part because the NDIS participant has personally chosen how to use their funds.
Being a "worker" for workers compensation purposes means the support worker is my employee.	The legislation deems the support worker a "worker" for workers compensation insurance purposes only. It does not create an employment relationship under other laws.

Examples

Example 1

Sarah is a participant in the NDIS and receives funding for supports under her plan, which she self-manages. Sarah engages a support worker for assistance with daily living for personal care. Sarah uses her funds to engage a support worker directly as an employee, has PAYG obligations, and takes on the obligations of an employer.

Sarah has a contract of service with her support worker. As a consequence, the relationship between Sarah and her support worker is a standard workers compensation arrangement and Sarah is obliged to provide workers compensation coverage for her support worker.

Example 2

James is a participant in the NDIS and receives funding for supports under his plan, which is managed by a registered plan management provider. With assistance from his plan manager, James engages a support worker to provide assistance with meal planning and preparation. The support worker James engages is a sole-trader who operates under their own ABN. James engaged the support worker through a digital platform that provides support workers and so James does not have a contract directly with the support worker.

James discussed matters with his support worker who informed James he does not have a contract to provide services with the digital platform.

The extended arrangements apply in these circumstances and James is obliged to provide workers compensation coverage for his support worker.

Example 3

David is a participant in the NDIS and receives funding for supports under his plan, which is managed by a registered plan management provider. David engages a support worker to provide supports for assistance with meal planning and preparation. David engaged the support worker through a platform which provides support workers to NDIS participants. The support worker has a contract with the platform to provide the service to David.

In these circumstances David is not responsible for workers compensation for the support worker. The platform which contracted the support worker may have workers compensation obligations instead.

Note: if the platform did not have a contract with the support worker to provide services to NDIS participants, David would be responsible for workers compensation for the support worker.

Example 4

Emily is a participant in the NDIS and is unable to make decisions for herself. Emily's mother has been appointed as a nominee under the NDIS to act on behalf of, and make decisions on behalf of, Emily.

Emily's mother engages a support worker for assistance with daily living for Emily's personal care using Emily's NDIS funding. Emily's mother engaged the support worker, who operates their own business as a sole trader and advertises their services online and through various support groups.

The extended arrangements apply in these circumstances. As Emily's mother acts and makes decisions on Emily's behalf, she is obliged to ensure workers compensation coverage is arranged for Emily's support worker. However, Emily remains the employer of her support worker for workers compensation purposes.

Contact

WorkCover WA acknowledges that understanding your workers compensation obligations in Western Australia may be complex or difficult to understand.

For further information and to learn more about rights, responsibilities, and obligations in the Western Australian workers compensation scheme, contact WorkCover WA Advice and Assistance on 1300 794 744, or visit the WorkCover WA website at www.workcover.wa.gov.au.