

WorkCover guide

If you have been injured at work, or in the course of your employment duties you are entitled to receive Workers' Compensation benefits. In some cases you may even have a civil action in negligence against your employer if they caused the accident.

The Workers' Compensation and Rehabilitation Act 2003 applies to work related claims.

For the injured party it provides access to common law, that is, the injured person has a right to approach a law court to seek monetary compensation from the person/entity 'at fault' for the personal injury and other related losses.

As a fault based scheme it requires proof of liability, i.e. the injured party must be able to establish negligence against the person/entity they believe is at fault.

However, the injured person does not need to prove fault to be able to access Workers' Compensation benefits and statutory lump sum compensation.

At McNamara and Associates we have a REAL approach to workcover claims.

As a firm that has been around more than 80 years we are:-

1. Reliable

As a local law firm with families and connections to the Ipswich region, we place a high value on offering high quality legal help to our clients, our reputation depends upon it!

2. Experienced

When it comes to effectively and efficiently resolving your legal problem, experience matters! With over 80 years of experience working with the people of the Ipswich and Lockyer Valley regions of Queensland, we get you!

3. Approachable

We've been around long enough to know that for many people legal problems are both difficult and stressful. What we bring to the table is not only experienced and dedicated legal help, but an approach that our clients often remark as "refreshing." In our firm, being "**approachable**" is a core value that we always aspire to live up to.

4. Local

We've been helping the people of Ipswich and Lockyer Valley regions for over 80 years. Today we are one of the largest law firms in the local area with a deep-seated commitment to giving back.

If an injury results in the loss of capacity, the injured person may have lost the ability to prepare a will or enduring power of attorney. Compensation payments may also effect the injured persons wishes in a will that had already been prepared.

We recommend that if you, or a family member have been involved in an accident, you should seek advice about how the accident might effect your estate from one of McNamara and Associates estate lawyers.

McNamara and Associates understand that the financial strains that result from personal injures can place pressure on relationships. If your relationship has deteriorated because of an injury, you should seek advice from one of McNamara and Associates family lawyers.

Can you make a claim?

You can make a WorkCover claim if you have sustained an injury at work, or in the course of employment duties, and the injury occurred in Queensland.

An example of in the course of employment might be if you are a truck driver, and are injured unloading at a third parties yard.

If your injury was at a third parties yard, or other place like that, you may also be able to make a public liability claim.

Other types of claims might be what is known as a journey claim. These are claims when you are travelling to or from work, or between locations in the course of your employment.

If your injury was a journey claim, you may also be able to claim for a motor vehicle accident.

Any worker can make a statutory compensation claim if they are injured, and this right may extend to sub-contractors and some volunteers, in particular circumstances.

However, you can only make a common law claim for damages if your employer caused the injury through negligence or a deliberate act.

Claims can also arise from bullying or harassment in the workplace.

McNamara and Associates can assist you in finding out whether you can claim for workers' compensation.

What injuries can you claim for

The types of injuries that could be claimed for are very broad. Generally speaking, as long as the injury is connected to the work related accident, it can be claimed. These injuries could be physical or psychological.

These injuries could be new, or they could be aggravations of pre-existing injuries.

Dependents can claim for victims of fatal accidents.

What injuries can you claim for (cont)

It is also critical that you consider if at the time of the accident you:

- a. are travelling in a vehicle; or
- b. at third parties premises.

In any of these cases you may have other rights which may be lost if you do not take steps within extremely short time limits.

In some cases you may be able to apply for income protection or Total and Permanent Disability (TPD) Insurance, or make a claim for a motor vehicle accident.

Psychological injury caused by bullying and harassment

It is a bit different if you have a psychological injury from bullying or harassment.

To be successful in obtaining damages for a psychological injury from bullying or harassment you will need to be able to prove that your injury occurred as a result of unreasonable management action taken in an unreasonable way.

To be considered unreasonable management action the following criteria must be met:-

- a. Behaviour that is repeated, unwelcome and unsolicited;
- b. You considered the behaviour to be offensive, intimidating, humiliating and threatening;
- c. A reasonable person would consider that behaviour to be offensive, humiliating, intimidating or threatening.

Examples of unreasonable management action could include:-

- a. Abusing a person loudly when others are present;
- b. Repeated threats of dismissal or other severe punishments for no reason;
- c. Constant ridicule and being put down;
- d. Leaving offensive messages on email or telephone;
- e. Sabotaging a persons work by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways;
- f. Humiliating a person through gestures, sarcasm, criticism and insults, often in front of other people;
- g. Spreading gossip or false, malicious rumours about a person with an intent to cause that person harm.

Psychological injury caused by bullying and harassment - (cont)

It is then considered unreasonable management action if that behaviour is used to:-

- a. Primarily offend, intimidate, humiliate, or threaten workers; and
- b. To create an environment where workplace harassment is more likely to occur and that behaviour was a significant and contributing factor to the injury.

It is not unreasonable management action if the behaviour is only a single incident, or is reasonable management action is taken in a reasonable way.

Reasonable management action can be:-:

- a. Action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker; or
- b. A decision not to award or provide promotion, reclassification or transfer or, or leave absence or benefit in connection with the worker's employment.

The Courts have determined that management action does not have to be perfect. It merely has to be reasonable and this encompasses the notion that there may be blemishes in the management action.

McNamara and Associates can assist you in investigating whether your injury was a result of unreasonable management action taken in an unreasonable way.

How do you claim

The first step is to lodge an application for workers' compensation. This claim is for weekly benefits, travelling, pharmaceutical, medical and rehabilitation expenses etc. The application must be supported by a medical certificate from your treating Doctor, on the approved form.

How you fill out the form can significantly affect both the amount of compensation you receive and the way the WorkCover treats you

An application for compensation is valid and enforceable only if the application is lodged by you within 6 months after the entitlement to compensation arises, unless special circumstances arose to the satisfaction of WorkCover that prevented you from making the application within 6 months.

If an application is lodged more than 20 business days after the entitlement to compensation arises, the extent WorkCover's liability to pay compensation is limited to a period starting no earlier than 20 business days before the day on which the valid application is lodged.

If your application is accepted you are entitled to be paid 85% of your wages for the first 26 weeks of your incapacity and from that date 75% of your weekly earnings for the next two years. You can continue to receive weekly benefits after two years, but the rate is reduced to the Centrelink single rate pension, unless your injury is one which could have an impairment of more than 15%.

What if your claim is rejected or ceased

In the circumstances where WorkCover Queensland have made a decision to reject or finalise your claim and you do not accept WorkCover Queensland's decision then you may lodge an Application for Review with the Workers' Compensation Regulator.

Your Application for Review must be lodged within ninety (90) days of you receiving the decision of WorkCover Queensland to reject or finalise your claim.

McNamara and Associates can assist you in preparing an application to the Regulator.

What is lump sum 'statutory' compensation

A claim for a lump sum amount is based upon a permanent impairment percentage as assessed by a doctor and/or Medical Assessment Tribunal.

WorkCover may refer you for this assessment or McNamara and Associates can request that WorkCover refers you. The calculations for the lump sum amount are provided in a document called a Notice of Assessment.

Once WorkCover Queensland has ceased paying you benefits you should request a Notice of Assessment from WorkCover Queensland.

If you disagree with the assessment you may request a review by a second medical practitioner or the Medical Assessment Tribunal (unless the Tribunal made the original decision). You have 28 days only after receiving the notice of assessment of permanent impairment to request a review of the decision by a Medical Assessment Tribunal or you are taken to have agreed with the PERCENTAGE of permanent impairment. In the case of psychological injuries, the assessment is performed in the first instance by the Medical Assessment Tribunal.

You should seek advice before accepting any offers of lump sum compensation from WorkCover as accepting an offer prevents you from making a common law damages claim. You can only accept a lump sum offer OR claim common law damages, not both.

This process usually takes approximately two to three months after your benefits claim has ceased.

You only have three (3) years from the date of incident to request your Notice of Assessment otherwise you will forever lose your right to make a common law claim as described below.

Can you make a common law claim for damages

To succeed in a claim for common law damages for negligence it is necessary for you to prove that your employer was at fault (prove liability) and that you have suffered an injury.

To prove fault it is necessary to show that your employer did not provide you with a safe environment at work or has otherwise done something to cause the incident where you suffered injury.

There are standards with which your employer must comply and it may be necessary to refer to such standards to determine whether your employer is at fault.

You are only permitted to make a common law claim if:-

- a. you have received a Notice of Assessment from WorkCover for your injury; or
- b. you have not received a Notice of Assessment for your injury but have received a Notice of Assessment another injury related to the same event and that other injury is assessed as being a 20% degree of permanent impairment or more; or
- c. you have a terminal condition.

You have three (3) years from the date of incident to file court documents or settle a claim for common law damages or you will forever lose your right to make a common law claim.

If your injury occurred between 15 October 2013 and 31 January 2015 the eligibility to make a common law claim is different. You should seek urgent legal advice if your injury occurred

What compensation will you receive

If you settle your claim or a Court makes an award in your favour the money you receive is referred to as "damages".

Damages are broken down into different categories:-

1. General Damages (pain and suffering)
2. Special Damages (expenses)
3. Past Economic Loss (lost wages)
4. Future Economic Loss (loss of future earning capacity)
5. Future Special Damages

You should keep a record of all the expense you have incurred because of the injury; ie medication, Doctor bills, kilometers travelled to Doctor appointments, expenses of any modifications to the home and time off work are just some of the examples of the type of expense you should record.

You may receive your damages as a single payment (after deduction of the refunds outlined above and your legal fees and outlays). This is usually referred to as a lump sum settlement. It is by far the most common way to receive your damages.

What compensation will you receive (cont)

Alternatively, you may choose to negotiate a structured settlement. A structured settlement occurs where there is an agreement providing for the payment of all or part of your damages in the form of periodic payments funded by an annuity or other agreed means. A structured settlement may be possible but you are strongly advised to obtain independent financial advice about the effect of a structured settlement as compared to the receipt of lump sum damages.

McNamara and Associates can assist you in investigating whether you would be successful in receiving damages in a common law claim for damages.

How long will it take

The following is a basic timeline of the likely progress of your claim. This is a guide only.

STEP	TIME
Lodge application for workers' compensation	1 to 6 months after the injury
Assessment of degree of permanent impairment	After the injuries become stable and stationary, usually 6 to 12 months after the injury
WorkCover issues Notice of Assessment	10 business days after WorkCover receives the assessment of degree of permanent impairment
Serve Notice of Claim for Damages	After a Notice of Assessment has been issued, or within 1 to 3 months before the end of the three years after the injury
WorkCover's response to Notice Claim Form regarding compliance	3 to 10 business days after Step 1
WorkCover's liability response	6 months after Step 1
Prepare Statement of Loss and Damage	6 - 9 months after Step 1
Medical examinations	6 months after Step 1
WorkCover's medical examinations	6 - 9 months after Step 1
Compulsory conference	9 months after Step 1
Begin court proceedings if necessary	Within 60 days after Step 7
Judgment or Settlement	18-24 months after Step 1
If receiving lifetime treatment, care and support, acceptance or rejection of damages for treatment, care and support.	10 business days after sanction, settlement or appeal period expires.

What are the time limits

It is essential that a complying Notice of Claim for Damages be provided to WorkCover Queensland (or an agreement to waive compliance by WorkCover Queensland is obtained) within three years of the injury occurring.

Generally speaking, after this date you will not be able to bring an action for damages in relation to this accident, however, there are some limited circumstances in which the limitation period may be extended and you should take legal advice in this regard.

What else should you know

Employment - If your injuries have any impact on or are affected by your employment (such as bullying, demotion or dismissal), you may also wish to seek advice on whether these circumstances give rise to other rights.

Strict time limits may apply and you should therefore raise any concerns and seek advice as soon as possible.

Engaging in a call - While you are receiving statutory compensation you are required to notify WorkCover Queensland within 10 business days if you return to work or engage in a calling. 'Engaging in a calling' occurs if you engage in any activity which ordinarily gives rise to the receipt of remuneration or reward including:

- » self-employment; or
- » the performance of an occupation, trade, profession; or
- » carrying on of a business (which may include making arrangements to start a business),

whether or not you receive remuneration.

A failure to notify WorkCover of this may mean you lose your rights to proceed with a common law claim for damages and may even result in criminal prosecution. If you

Serious injuries - From 1 July 2016, where workers have suffered serious injuries and their employment is a significant contributing factor, they may be entitled to receive necessary and reasonable treatment, care and support regardless of fault. These injuries are certain types of spinal cord injury, certain types of traumatic brain injury, certain amputations, certain burns, certain shoulder injuries and permanent blindness caused by trauma.s, certain shoulder injuries and permanent blindness caused by trauma.

Necessary and reasonable treatment, care and support may be provided for life or for a determined period depending upon need.

What else should I know - (cont)

You may have been assessed to receive treatment, care and support for life or for an interim period. If you receive any documentation about your assessment, including telling you your assessment has changed, it is important that you let us know immediately as this impacts on your rights and obligations. If you are at all unsure, please contact us to discuss.

If you are not already receiving treatment, care and support, we will discuss with you if you are eligible to ask the insurer to assess you for treatment, care and support and can assist you to make the request.

Investigations - After you serve your claim WorkCover has the right to appoint investigators to investigate the factual basis of your claim. These investigators might take statements from witnesses or conduct video surveillance of you. Surveillance can extend to internet and social media checks.

It has become common for WorkCover to perform full reviews of a claimant's social media profile, whether it be Facebook, Twitter, Instagram, LinkedIn, Snapchat, YouTube or any other websites. We strongly advise that you bear in mind that WorkCover may investigate your social media profiles before posting comments, pictures or videos. Even if your profile is closed to the public, WorkCover may obtain an Order from the Court for you to disclose the entire content of your social media profile.

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