

Chapter
19

**Workers' Compensation
& Rehabilitation**

This section answers common questions about workers compensation and rehabilitation. If you require more information please contact WorkCover New South Wales on telephone: 13 10 50.

What is the WorkCover scheme?

The WorkCover scheme provides workers' compensation and rehabilitation benefits to injured workers in NSW. It also helps employers to improve health and safety standards at the workplace.

What is WorkCover NSW?

WorkCover NSW is the government body that monitors the overall operation of the WorkCover scheme. It provides advice and information about compensation, rehabilitation and occupational health and safety.

WorkCover inspectors also visit workplaces to ensure that Employers have appropriate health and safety standards in place.

Who can claim compensation?

Workers can claim compensation if they have had a work related injury or illness such as:

- An injury or illness while at work
- An injury while travelling as part of their work
- An injury while travelling from their home boundary to work, usually where they were not at fault
- An injury while on an authorised absence from work
- Workers can claim compensation if their injury or illness results in time off work
- Expenses for medical, hospital and rehabilitation services.

How are claims for compensation made?

1. The employer should be notified about an injury as soon as possible after it happens.
2. A Workers' Compensation claim form must be completed. These forms are available from the employer's Workers' Compensation insurer.
3. A WorkCover medical certificate must be attached to the claim form. This certificate is provided by the employee's doctor.
4. Receipts for treatment or chemist expenses must also be attached to the claim form. The employer must forward the claim to their insurance company.
5. Employees should be encouraged to keep copies of all receipts and documents that form part of their claim.
6. If the employee's doctor determines that they are fit for some work but not their normal duties, the employer should discuss appropriate work with the doctor.

What benefits can an employee claim?

If the employee's claim is accepted by the insurance company, he or she may be able to claim the following benefits:

1. Weekly benefits

Weekly benefits are paid while the employee is unable to work because of the injury or illness.

- a. If the employee is unable to do any work, the Insurer will pay them their award rate for the first 26 weeks of incapacity. This rate does not include any overtime or allowances that may have been a regular part of the employee's pay.

After 26 weeks, employees receive a lower rate which is called the statutory rate, with additional benefits for a dependant spouse and children. This amount is paid until the employee becomes fit for normal work or for some work.

Employees should advise their employer and the insurance company if they have any dependants. This will help the insurance company to pay the correct statutory rate.

- b. Once the employee's doctor thinks he or she is able to do some work, their rate of weekly benefit will depend on whether the employer can provide them with suitable work.

This might involve working less hours or doing a completely different job for a short period. In some cases, employees will earn less than were before their injury. In these circumstances the insurer will pay makeup pay

If the employer does not provide suitable work, the insurer may pay the employee a special weekly benefit. In order to get this benefit, employees usually need to be either actively looking for work or undertaking rehabilitation. This benefit is available for a maximum of 104 weeks.

If the employee refuses to accept suitable work, the insurance company may reduce or stop the employee's weekly benefit.

2. Medical expenses

Employees can claim reasonable expenses for medical treatment of their injury. This includes expenses such as doctors' fees, physiotherapy treatment, chiropractic services and chemist expenses.

3. Travel expenses

Employees can also claim for reasonable travel costs in attending appointments for medical treatment.

4. Rehabilitation services

The insurance company will pay for the costs of reasonable rehabilitation services to help employees return to work.

5. Damage to personal items

Employees can claim if certain personal items, such as clothing or spectacles, were damaged in a work-related accident.

6. Payment for permanent injuries

Employees can receive a lump sum payment for the loss of a limb or loss of the use of part of the body. In some circumstances they can also receive a lump sum payment for the pain, distress and anxiety suffered.

7. Payment where the worker dies

Where a worker dies as a result of injury, their dependants can claim a lump sum payment and weekly payments for dependant children. Where there are no dependants, reasonable funeral expenses can be claimed.

8. Damages for negligence

If a worker is seriously injured and the injury was caused by the fault of the employer or another worker, he or she may be able to sue the employer for damages.

9. Commutations

In limited circumstances, workers can have their weekly benefits converted into a lump sum payment. This is called a commutation.

What is the role of the Insurance company?

Most employers take out a workers' compensation policy with an insurance company but some large employers are self-insurers who manage their own workers' compensation claims.

When a claim is made, the insurance company will decide whether to accept the claim. If it does accept the claim, the insurer will:

- Pay for medical and rehabilitation costs
- Determine the amount of weekly benefit to be paid
- Assess what other benefits the employee is entitled to receive.

As part of deciding payments on a claim, the insurance company may require an employee to attend medical examinations.

What if the weekly benefits are delayed?

While waiting for the insurance company to accept a claim and start paying weekly benefits, an employee may request sick leave or holiday leave. If the Insurer accepts the claim, leave is restored.

What happens if the employee's claim is not accepted?

The insurance company will usually make a decision about a claim within 21 days. If they need to carry out investigations they can take an additional 21 days to make a decision.

If the insurance company has not started to pay an employee's claim within this 42 day period they will refer the disputed claim to WorkCover NSW for conciliation. The employee will be advised by the insurance company of the reasons for their decision to dispute the claim.

Once the WorkCover Conciliation Service has all the Information it needs to try to resolve the dispute they will contact the employee. While waiting for the dispute to be resolved, the employee should contact CentreLink about any entitlement to social security benefits that may be available.

What are an employer's responsibilities?

An employer must:

- Provide a safe and healthy workplace
- Send any claim submitted by an employee to their workers' compensation insurance company within 7 days
- Give an employee any compensation benefits received from the insurer as soon as possible
- Notify WorkCover NSW if an employee is either off work or on suitable duties for more than 7 days
- Not dismiss an employee because of their injury within 6 months of becoming unfit for work.

What are the responsibilities of an employee?

Employees must take care to prevent work injuries to:

- Themselves and others
- Tell their employer of any injury as soon as possible
- Attend medical examinations as directed by their insurer or employer
- Provide accurate information about any aspect of their claim.

What if the employer is uninsured?

If the employer does not have any workers' compensation insurance, the employee can claim from WorkCover NSW.

What is Rehabilitation?

Sometimes workers need help to return to work after injury or illness. This is called rehabilitation. Once employees start to recover, WorkCover encourages on-the-job rehabilitation rather than staying off work until they are fully fit. A rehabilitation plan may include things like an assessment of the employee's job, a gradual increase in their hours or duties and advice about their injury so that they don't re-injure themselves.

Rehabilitation can be provided by the employer or by a rehabilitation provider.

1. Rehabilitation from the employer

Most large employers nominate a staff member to help injured workers return to work. This person is called a rehabilitation coordinator.

The coordinator's role is to act as the link between all the people involved in the employee's rehabilitation - the employee, their doctor, their supervisor, their workmates and their union.

The rehabilitation coordinator can develop a return-to-work plan for the employee after discussion with their doctor. They can also provide information about weekly benefits, the claims process and what to do in case of dispute.

2. Rehabilitation from a rehabilitation provider

A rehabilitation provider is a team of health professionals who can help employees return to work. Rehabilitation providers offer services such as:

- Assessment of the employee's needs
- Education about the injury
- Liaison with the employer
- Advice about changing parts of an employee's job
- Programs to gradually increase the employee's hours or duties; information about aids and equipment
- Advice about retraining
- Help with finding a new job.

Who can refer an employee to rehabilitation?

The following people can refer an employee for rehabilitation:

- The employer
- The insurance company managing the claim
- The employee's doctor
- The employee's union
- The employee's solicitor.

**Employees may refer themselves by choosing a provider from
WorkCover's List of Accredited Rehabilitation Providers.**