



Queensland WorkCover Claims

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Queensland WorkCover Claims

If you have been hurt at work in Queensland you are entitled to workers' compensation under a no fault system. This means you can claim workers' compensation benefits whether or not your employer was at fault. Benefits include loss of wages, medical and hospital expenses, and payment of a lump sum of compensation.

Who is a 'worker'?

A worker is anyone employed under a contract of service, regardless of their tax-paying status. This usually means anyone who earns a salary or wages, has set hours, or who is supervised or can be dismissed by their employer.

Some types of volunteers and work experience students may also be eligible for workers' compensation benefits.

People who are working directors of their own company, partners engaged by their own partnerships, self-employed people, and professional sports people are not entitled to workers' compensation.

If you have been injured and you are unsure about whether you are classified as a worker, you should still lodge a [claim form](#) or contact us on 1300 302 318 for advice about whether you qualify for a claim.

What is an 'injury'?

The law in Queensland defines an injury as, "a personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury". Your lawyer can advise you whether your injury falls within this definition.

An "injury" can occur at work, on the way to or from work, or on a rest break. You may also be injured while traveling as part of your job or while you are visiting other sites or workplaces as part of your employment. You may also be covered if you are working from home at the time of your injury.

Physical injuries, psychological and psychiatric disorders and diseases are all covered by the definition of injury. You can also claim for the aggravation of a pre-existing condition. Death from an injury or disease is also covered.

How do I make a claim?

You can lodge a claim for workers' compensation up to six months after the date of your injury. To lodge a claim you can:

- [lodge a claim online](#)
- complete a [claim form](#) and [upload using our WorkCover's online service](#)
- fax a [claim form](#) to 1300 651 387
- post a [claim form](#) to GPO Box 2459, Brisbane Qld 4001
- call WorkCover on 1300 362 128.

A medical certificate from your doctor must accompany your claim form.

How long will it take?

WorkCover must assess an application for workers' compensation within 20 days of lodgement.

What if the claim is not accepted?

If your claim is not accepted, you may apply to the [Workers' Compensation Regulator](#) for a review.

Weekly compensation

If you are totally or partially incapacitated for work, you may be eligible for payments of weekly compensation. The amount of weekly compensation you receive will depend on the length of time you are unable to work, the date of your injury, the length of your claim and whether you are working under an award or other industrial agreement.

Generally, you are entitled to 85 per cent of your normal weekly earnings for the first 26 weeks of incapacity. After 26 weeks, and up to 52 weeks, the rate of payment decreases to 75 per cent of your normal weekly earnings.

Tax will be deducted from your weekly compensation. WorkCover will not pay superannuation on your behalf.

Weekly payments will stop when the first of the following events occurs:

- you are able to return to work and are no longer injured
- you receive a lump sum offer
- you have been receiving weekly compensation for five years
- your total weekly compensation reaches the maximum amount payable.

Medical and rehabilitation costs

Provided you have a current workers' compensation medical certificate, WorkCover will usually pay for all reasonable medical and rehabilitation costs covered by the dates on the medical certificate.

The types of expenses that will be paid include:

- medical treatment by a doctor, dentist, physiotherapist, etc.
- surgical and hospital expenses (including bandages and prescription medicines)
- rehabilitation treatment and equipment (such as wheelchairs and crutches)
- travelling expenses.

Hospital costs

For non-elective hospitalisation, WorkCover will cover up to four days in hospital, although this period can be extended with the agreement of WorkCover. WorkCover will only pay for elective hospitalisation if it has been agreed to prior to the hospitalisation.

Travel expenses

WorkCover will pay your travel expenses for attending a medical appointment with doctors or for rehabilitation.

Lump sum compensation

If you have suffered a permanent impairment as a result of a work-related injury, you may be entitled to lump sum compensation for the loss of efficient use of a part of your body or for loss of part of the body. Assessments for permanent impairment are usually conducted when your injury becomes stable and stationary, and is unlikely to improve with further treatment.

You can ask WorkCover to be assessed for permanent impairment, or WorkCover can make the arrangements themselves. The percentage of permanent impairment is used as a starting point to calculate the amount of lump sum compensation that WorkCover will offer you.

Being offered a lump sum

Most people who receive an offer of lump sum compensation will be required to decide between accepting the amount of the offer and pursuing a common law claim. A common law claim will arise if your injury was caused by the negligence of your employer. If you have received, or are about to receive, an offer of lump sum compensation, you should seek legal advice immediately. Most people will reject a lump sum offer of compensation and make a common law claim because they will get more money.

Roles in the rehabilitation process

Role of the injured worker

An injured worker must genuinely participate in rehabilitation. If you don't, WorkCover may suspend payment of compensation benefits.

You are required to:

- keep WorkCover informed of any material change in your circumstances
- advise WorkCover of any return to work, while receiving weekly compensation payments.

If you do not inform WorkCover of any new circumstances, penalties may apply.

Role of the employer

Employers must take every reasonable step to help you with rehabilitation while you are receiving compensation benefits. If they don't, penalties apply.

An employer with 30 or more employees in a high-risk industry must have a Rehabilitation and Return to Work Coordinator. The coordinator is responsible for planning and monitoring the worker's reintegration into the workplace. They are required to liaise with you, your doctors, rehabilitation providers and WorkCover, until the claim is finalised.

An employer with less than 30 employees is required to keep in regular contact with you and WorkCover, in addition to supporting the rehabilitation process.

Role of WorkCover

A WorkCover customer advisor is the person who will manage your claim until your condition stabilises, or you recover. A customer advisor is responsible for approving your treatment and working with your rehabilitation providers to set recovery goals and develop a return-to-work plan. The customer advisor is the central point of contact during the rehabilitation process.

Role of the treating doctor

The treating doctor's role in the rehabilitation process is to determine what rehabilitation you need as a result of your work-related injury. Rehabilitation might include physiotherapy, occupational therapy, psychological counselling or training for new job skills.

The customer advisor will consult your treating doctor and other rehabilitation providers to develop a return-to-work plan. Your treating doctor must give approval before any plan is started, or as changes to the plan occur.

Sometimes, WorkCover will engage an external occupational therapist to conduct a work site assessment, to gather information about your rehabilitation, or to develop a suitable duties program.

Role of the health providers

Health providers, other than treating doctors, play an important role in the rehabilitation process. Health providers are required to:

- provide focused rehabilitation aimed at you returning to work
- provide assessments, written reports and give feedback to customer advisors
- keep WorkCover advised of your progress
- participate in case conferencing when asked to do so.

Case conferencing

What is case conferencing?

A case conference is a discussion about your treatment, rehabilitation or return to work, and is usually held between you, your treating doctor or rehabilitation provider and the WorkCover customer advisor. A case conference can be held face-to-face or by telephone.

The role of a doctor and health provider at a case conference

At a case conference, information is shared about your injury, future treatment, rehabilitation and return to work needs. In most instances, a case conference replaces the need for a written report. After a case conference has concluded, the WorkCover customer advisor will provide a written summary of the discussion to everyone who attended the case conference.

How do doctors and health providers get paid for a case conference?

WorkCover will pay for your doctor's and health provider's time, based on item numbers in the Regulator's Table of Costs. WorkCover includes the relevant item number and fee on the case conference form. The invoice can be faxed to WorkCover and it will be processed.

Common law claims

Common law claims exist to provide compensation for the losses you have suffered as a result of the injury that you sustained at work. You are only eligible to make a common law claim if you can show your employer breached its duty of care to provide you with a safe workplace.

In addition, if you were injured on or after 15 October 2013, you need to have sustained a degree of permanent impairment of more than 5 per cent.

You should obtain advice from your lawyer in relation to any potential common law entitlement. Most people will recover more money if they start a common law claim, than if they accept the lump sum offer from WorkCover.

What is the common law process?

1. WorkCover and your employer are served with a document called a Notice of Claim for Damages. This document is usually prepared by your lawyer. It contains information about you, your injuries, why they think the employer was responsible for your injuries, and an offer of settlement.
2. Once the notice of claim has been served, WorkCover will contact your employer to obtain any information that may assist WorkCover to assess the claim, and the likely compensation payable.
3. WorkCover may engage an investigator to determine how your injury occurred. WorkCover may also obtain information from your treating doctors, previous employers or any documents relating to previous claims.
4. Copies of all relevant documents collected by WorkCover during its investigation will be provided to your lawyer.
5. Once WorkCover's investigations are complete, WorkCover will advise your lawyer whether it accepts liability, and then start informal settlement negotiations, usually by telephone or correspondence.
6. If the informal settlement negotiations do not result in a settlement of the claim, a formal settlement conference will be held. This is a face-to-face meeting between you and your lawyer, and WorkCover and their lawyers. A representative of your employer will be invited to attend.
7. If the claim does not resolve at the settlement conference, you will be required to issue court proceedings and proceed towards a trial.
8. Most claims resolve before or at the settlement conference.

What can be claimed?

All claims for compensation are assessed individually. Compensation paid depends on the type and severity of your injury and your particular circumstances. The compensation you are entitled to may be reduced if you were partially at fault for the accident.

You **may** be entitled to claim:

- pain and suffering and loss of amenities of life
- past economic loss (including loss of superannuation entitlements) from the date of your injuries to the date of settlement or trial
- future economic loss (including anticipated loss of superannuation entitlements) from the date of settlement or trial to your anticipated retiring age
- out-of-pocket expenses such as medical, hospital and similar expenses, travelling expenses, costs of special needs and an allowance for the future costs of these items
- interest (on past expenses and economic loss).

You may also be able to claim other expenses depending on your individual circumstances. Discuss any questions about what you can claim with your lawyer.

You will need to show that your claim for compensation is directly related to the injuries sustained in the accident. WorkCover may obtain records and information to assess how much compensation you should receive. This could include information from your doctor, hospital or your employer or medical examination by a doctor for WorkCover.

What happens at a WorkCover common law settlement conference?

All parties and their legal representatives attend the settlement conference. Sometimes third parties are required to attend as well, such as insurers of contractors who may have contributed to your injury.

Each party attempts to negotiate a settlement of the claim. Often this will involve a discussion about the way in which the workplace injury occurred, who should be held responsible (particularly in circumstances where there are multiple parties) and how much the claim is worth.

Anything that is said at the settlement conference is without prejudice. This means things discussed at the conference remain confidential and cannot later be used by any party if the claim is heard by the court. This enables the parties to discuss the claim openly and frankly.

If the claim is resolved at the settlement conference, you will be required to sign an agreement that prevents you from making further claims for that injury. The agreement includes a provision that the terms of the settlement must remain confidential.

If no agreement is reached at the settlement conference, the parties must exchange final written offers of settlement. The offers are open for acceptance for 14 days. If none of the offers are accepted, you must commence court proceedings within 60 days from the date of the settlement conference.

Refunds to government agencies

If you are successful in a common law claim for damages and receive a payment of compensation, any payments or benefits received from Centrelink, Medicare, WorkCover, the Department of Employment or a private health insurer must be repaid to those agencies from the damages award.

Video surveillance, social media and your work and medical history

It may not be clear to WorkCover how your accident happened, or what injuries you suffered. Remember, WorkCover may have received a different account of what happened from other parties. It is up to WorkCover to find out all they can to discover the truth of what happened in your case.

WorkCover may arrange for a private investigator to check on some details. Sometimes, this may include video surveillance and an examination of your social media sites.

Making a claim requires you to give the WorkCover permission to look at records and information about you from, for example, your doctors, treatment providers, current or past employers and/or co-workers. It is important for you to know that WorkCover's lawyers may talk to all or some of these people.

If you have been honest with the doctors, and your conduct (at home, at work and in public) has been consistent with what you have claimed, then you have nothing to worry about. If you do know of any factors that may affect your case you should tell us straight away.

Superannuation/total and permanent disability claim/income protection insurance

If you have personal or compulsory work superannuation, you may be entitled to a lump sum payout or income protection payments (in addition to any amount you might recover from this claim). Please provide us with the name and address of your superannuation fund so we can investigate this for you. If you do not have this information, your employer will be able to provide it to you.

Time limits

Time limits are very important. If you do act within the appropriate time limit, your claim may be disallowed.

For statutory benefits

If you have not already applied for workers' compensation benefits, an Application for Workers' Compensation must be lodged with WorkCover Queensland (with a current medical certificate confirming you are unfit for work) within six months of the date of your accident or the onset of symptoms.

For common law damages

A compliant Notice of Claim for Damages must be served on WorkCover Queensland within three years of the date of your accident. If this does not occur, your common law damages claim becomes statute barred. This means you will lose all of your rights to recover common law damages for your injury.

Termination of benefits from WorkCover, Medicare or Centrelink

If your damages include future medical expenses, you may not be able to claim any benefits from Medicare for those expenses until you have paid for them yourself first.

If you have already received benefits from Centrelink, any damages you receive could affect your future entitlement to benefits, as well as benefits already paid, which you might have to pay back. There could also be a period after you receive your compensation during which you cannot receive benefits from Centrelink.

As well as having to inform Centrelink of your compensation payments, you are also required to inform them of any change in your assets. This means you must tell Centrelink the net amount of damages you receive after payment of all refunds and legal bills.

Tax

Any damages you receive are free of taxes, but if you invest your money you may have to pay tax on the income your investment generates.

Keeping a record

Your case may take some time to complete, so it is important to keep all records relating to it. You should record your visits to hospitals and doctors, as well as other relevant information, such as the pain you are experiencing, loss of sleep, frequency and severity of symptoms, medication taken and the limitations generally on your and your family's life – especially any work restrictions that you have or might have in the future as a result of your injuries.

You should also keep any accounts, invoices and receipts relating to expenses from your injuries in relation to the accident – this includes medical treatment, pharmaceutical costs, and travelling expenses. If you do not keep records, you may not be eligible to claim these expenses later as part of your case.

Please bring all your records with you when we meet to assess your claim.

Need for legal advice

If you want to ensure you receive all of the compensation you are entitled to, you should have a lawyer acting for you. Common law claims are highly complex, and an expert personal injury lawyer is best positioned to represent you in your claim.

Legal fees

GC Law is a no win–no fee law firm, and we are always up-front about the costs associated with commencing a claim for compensation.

No win–no fee means we will pay for all outlays involved with pursuing your claim (such as medical reports, barrister fees, court filing fees, mediators fees, etc.) but we will not render an account for professional fees or outlays unless you win and receive compensation for your injuries.

No personal injury lawyer can say exactly what the costs of a compensation claim will be before it has taken place. This is because no lawyer can predict how the other parties may respond and how much work will be involved.

But be assured that we keep our fees to a minimum so you get the compensation you are entitled to.

The best way to start your claim is to use [GC Law's Free Case Review process](#). This allows us to assess your case and respond to you accordingly. We can then advise on all matters that may affect your claim and commence the process of claiming compensation on your behalf for any injury sustained in the case of your employment.

Before engaging a lawyer you should discuss legal fees and how much you may be charged. For further information on legal advice contact the [Queensland Law Society](#).

How long will it take for my claim to settle?

It is important to understand that you only have one shot at making a claim. When we finalise your claim, your case is closed permanently. It is virtually impossible for GC Law – or any other legal representative to re-open a completed claim for compensation. This is the case even if the injury you sustained has worsened or has not recovered the way your doctors thought it would.

When trying to accurately assess a claim, we prefer your treatment to be concluded. The financial cost of treatment is high and there is always some guesswork in anticipating the cost of your future medical treatment after the accident. We also need to understand whether you have recovered from the effects of the injuries, or whether you will be left with a permanent residual disability.

We will work to find a balance between not dragging out your claim any longer than is necessary, and putting ourselves in a position where we can accurately assess your full compensation entitlements.

This is why the Free Case Review is an important first step. This allows us to assess all the facts surrounding your accident.

For the best outcome, contact GC Law on 1300 302 318 as soon as possible after your accident. This will allow us to assist you in preparing your claim to achieve the best outcome.

GC Law are compensation lawyers who can help you. Simply visit our [Free Claim Review](#) page or call us today on **1300 302 318**. We'll be happy to talk to you about your individual circumstances.