



## **Workers Compensation - WA**

All employees and some contractors are entitled to compensation for injuries and medical conditions sustained or aggravated as a result of their work. 'Work' includes breaks, functions, training and business travel. In some states 'work' may also include travel to and from work.

### **How is workers compensation decided?**

Compensation is paid under the various state-based workers compensation schemes, which have been constantly changing.

The precise compensation payable will depend on the state law that applies and the date of injury. This can affect the level of your weekly payments, the type and amount of any lump sum and whether or not you have a right to claim damages ('sue') for negligence.

### **What if I am injured while working interstate?**

Most workers compensation claims concern injuries that occur within the state in which the worker lives and works.

In some cases a worker may live in one state and be injured when temporarily in another state. Where this occurs, dual or alternative coverage may be available.

If you lodge a claim in one state, it may limit your access to another state's scheme. As benefits differ between states, it is important that you have access to sound legal advice as early as possible.

### **How do I go about making a claim?**

If you have been injured at work or have sustained or aggravated a medical condition as a result of your work you are entitled to claim compensation under the Workers Compensation and Injury Management Act (1981).

If you intend to make a claim, Slater & Gordon strongly recommend that you seek immediate legal advice to ensure that your rights and entitlements are fully protected.

Slater & Gordon can help. Our dedicated team of workers compensation lawyers are committed to achieving the best possible compensation outcomes on behalf of injured or bereaved workers and their families and regularly represent them at the Dispute Resolution hearings at the Directorate.

We will work with you to thoroughly assess the circumstances of your claim and advise you frankly of the legal options and avenues available to you - preferably without the need to resort to costly litigation.

We will and do challenge the law, however, and when necessary, will take the calculated risk of court action to ensure that your rights are defended.

Slater & Gordon's [No Win - No Fee™](#) scheme is generally available for workers compensation claims. The scheme is designed to help those whose financial circumstances might otherwise deny them access to legal representation.

### **What sorts of things can I claim?**

Provided you can establish that your current incapacity is work-related you may be entitled to ongoing benefits including:

- weekly compensation payments of up to the prescribed limit for so long as your doctors certify you unfit for work and this is not disputed by the insurer's doctors
- all statutory allowances and medical expenses related to your accident paid up to the prescribed limit, provided the insurer agrees the expenses incurred are reasonable
- approved vocational rehabilitation if you feel you require assistance in returning to suitable employment

### **What if my injuries lead to a permanent loss of function?**

If your injuries have stabilised, your medical treatment is complete and you continue to suffer a permanent injury, the doctors may be able to make a permanent impairment assessment of the injury for your entitlement to a Schedule 2 lump sum payment.

If the parties agree to redeem your claim the effect is to 'bring forward' future entitlements for weekly payments and medical expenses as well as any Schedule 2 payment.

### **If an employer's negligence caused my injuries can I also claim common law damages ('sue')?**

You are not entitled to make a common law claim for negligence against your employer unless it is found you have suffered a permanent injury.

### **Common Law Claims For Injuries Prior to 14 November 2005**

To succeed with a common law claim you must be able to prove that your employer's negligence led to the injury, ie that their duty of care toward you, the worker, was breached. If you are assessed as having a disability of between 16% and 29% the maximum you can recover at common law is \$334,093.00 (present prescribed amount). However, this maximum will be awarded only in the 'most extreme cases'.

If your disability is assessed as being 30% or more you are entitled to receive the full amount of compensation which, under common law principles, should restore you to the position you would have been had it not been for the negligent act. That is, your damages are not capped at \$334,093.00.

Any payments you have already received from the insurer by way of weekly payments, medical or rehabilitation expenses will be deducted from the total amount of damages which you are awarded. This will be the case regardless of your level of disability.

## What are the options and limits on compensation payments?

As an injured worker you must choose whether to continue to receive weekly compensation payments (where your disability is between 16-29%) or to pursue a common law claim. This decision must be made within 6 months less 21 days after commencing weekly compensation payments.

In the event that you are determined as having a permanent disability of not less than 30%, your damages claim must begin within 6 years of the date of the injury or you will be precluded from pursuing a common law claim.

If you believe you have an entitlement to a common law claim, it is vital that you seek immediate legal advice as soon as possible after the incident to ensure that you meet statutory time limits - particularly in the case of permanent disability.

## Common Law Claims For Injuries on or After 14 November 2005

Access to common law is based on an assessment of whole person impairment ('WPI'). In the event that you are assessed to have a WPI of not less than 15% and less than 25% you must elect to pursue a common law claim within 12 months of the date the claim for weekly payments was made. A cap on damages in the sum of \$334,093.00 will apply. Weekly payments will cease over a period of 6 months.

In the event that you obtain a WPI of 25% or more, your claim will be uncapped. An election must be made to proceed with such a claim within 12 months of the date the claim for weekly payments was made.

Your damages claim must begin within 3 years of the date of the injury or you will be precluded from pursuing a common law claim. **For some injuries you will have 6 years to make a claim.**

If you believe you have an entitlement to a common law claim, it is vital that you seek immediate legal advice as soon as possible after the incident to ensure that you meet statutory time limits - particularly in the case of permanent disability.

## Talk to us

If you have been injured at work and would like more information about how we can help you, please contact us either by [email](#) or by calling direct on **1800 555 777**.