

WA Workers' Compensation

Important notice to Workers' Compensation policy holders



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Introduction

Western Australia has a scheme in place to govern the compensation for employment-related injuries and their management. This notice provides a snapshot of information relating to the scheme.

The intention of this notice is for general information only and it is not intended to provide technical or detailed advice with respect to the legislative scheme. You should not act or omit to act on the basis of this notice without first obtaining appropriate professional advice.

Governing body

WorkCover WA is the statutory authority responsible for administering the Workers' Compensation and Injury Management Act 1981. WorkCover WA is an agent of the state of Western Australia with the status, immunities and privileges of the state. As the governing body, it recommends premium rates for the industry.

WorkCover WA offers a telephone information service, infoline 1300 794 744 which provides general information on the workers' compensation and injury management system.

Injury management

Injury management involves the injured worker, employer, insurer and treating medical practitioner all working together to assist the worker to stay at work or return to work following a workplace injury.

The Workers' Compensation & Injury Management Act 1981 provides a legislative basis for injury management in WA. It enables WorkCover WA to publish subsidiary legislation in the form of a code of practice, describing injury management in greater detail. The Act also promotes new programs for early intervention and for specialised retraining of injured workers who meet the eligibility criteria.

The Code of Practice (the Code) includes guidance on developing injury management systems and return to work programs. Employers must ensure an injury management system and a return to work program is established in accordance with the Code.

A specialised retraining program is available to injured workers who are unable to return to work and who have a whole person impairment of greater than 10% but less than 15% and who meet all the retraining criteria. An extension of up to 75% of the prescribed amount is available to enable eligible workers to undertake formal vocational training or study where necessary.

Statutory benefits

For injuries which occur after 1 October 2011 the age related restriction (ie. payments cease at the age of 65 or 1 year after the date of injury for workers, who were more than 64 years old at the date of injury) is removed.

The step down in weekly payments for all workers receiving compensation payments applies after 13 weeks. Workers who are covered by an industrial award have allowances, based on the number / pattern of hours worked and paid on a regular basis, included in the calculations of average weekly payments after the step down applies. Non-award workers' weekly payments are averaged over the 12 months prior to their injury and calculated at 85% for the step down rate.

Workers' compensation entitlements are based on the prescribed amount, which is indexed annually. The prescribed amount is the maximum compensation payable for weekly benefits and lump sum payments.

An additional payment of up to 75% of the prescribed amount may be allowed where a worker suffers permanent total incapacity and his / her social and financial circumstances justify it.

Weekly payments for loss of wages, limited to a maximum of the prescribed amount, will continue to be capped. Medical and related expenses for reasonable hospital, medical and ancillary expenses are also capped at up to a maximum of 30% of the prescribed amount. Payment of medical and other expenses can be allowed if they are 'likely to be incurred'.

An application for further reasonable medical expenses may be made after 60% of medical and related expenses / entitlements have been exhausted.

A worker may apply for an extension of up to \$50,000 for medical and related expenses where the social and financial circumstances justify it.

If a worker meets the 'exceptional medical circumstances test' and has a whole person impairment of not less than 15%, they may apply for additional medical and related expenses, capped at \$250,000.

Workers obtaining exceptional medical expenses are excluded from seeking common law damages.

Other benefits

- Workplace rehabilitation expenses for approved workplace rehabilitation to help workers back to work, to a maximum of 7% of the prescribed amount
- Travel expenses for reasonable travel expenses at a prescribed rate per kilometre
- Death benefits for the dependents of a worker who dies in a work related incident
- Funeral expenses for funeral arrangements for deceased workers
- AIDS will be included in Schedule 2, if HIV infection progresses to AIDS, compensation will be paid at 100% of the prescribed amount.

Common law

For workers with injuries on or after 14 November 2005 access to a claim for damages at common law is based on the worker's degree of whole person impairment (WPI). Workers require a WPI of not less than 15% to access common law, however secondary psychological, psychiatric and sexual conditions are excluded.

Agreement may be reached between the insurer and worker on the level of impairment. If agreement cannot be reached an approved medical specialist will conduct the assessment, using a standard assessment method. The degree of impairment can be disputed in the District Court.

Workers will be able to choose an approved medical specialist from a list provided by WorkCover WA. Approved medical specialists are medical practitioners qualified to assess WPI.

After obtaining their WPI workers have to elect between pursuing a common law claim or remaining on compensation. Strict timeframes apply to when an election must be made.

Extensions of the time within which to elect may be granted if the insurer fails to notify the worker of the deadline, if the worker's medical condition has not stabilised, if an assessment certificate has not been given in the prescribed time or if the approved medical specialist requires more time to complete their assessment.

Workers with a WPI over 15% but less than 25% who elect to pursue a common law claim are subject to a step down in weekly payments and their other statutory entitlements cease at the time of election.

Assuming these workers have sufficient funds remaining in the Prescribed Amount for their claim, their weekly payments will reduce as follows:

- For the first three months, the worker will receive 70% of the amount of weekly payments to which the worker would otherwise have been entitled
- For the second three months, the worker will receive 50% of the amount of weekly payments to which the worker would otherwise have been entitled
- Weekly payments cease after six months.

Workers with a WPI of 25% or greater must elect to pursue a common law claim within one year after the day on which the claim for workers' compensation is lodged. No cap on damages applies to these workers and there is no reduction of weekly payments or statutory entitlements.

For common law purposes the deeming effect of Section 175 is removed. This enables a contractor's worker to pursue (without crossing any thresholds) an unrestricted claim at common law against the principal for damages as a result of the principal's negligence or other tort.

The Conciliation and Arbitration Service

Changes to the Dispute Resolution System

The intention of the new system is to improve accessibility and provide a quicker means of resolving disputes.

Key points

- Conciliation and Arbitration will be separate processes
- Removal of the requirement to provide all documentation at the commencement of the process.

Conciliation

- Parties must attempt to resolve the dispute themselves before filing an application
- Conciliation Officers will have the power to order commencement of weekly payments for a maximum of 12 weeks or statutory expenses up to a maximum of 5%
- Conciliation Officers can order a reduction or suspension of weekly payments for a period of up to 12 weeks.

Arbitration

- If a dispute has not been resolved by conciliation, a party to the dispute may apply for determination of the dispute by arbitration
- Arbitrators must be legal practitioners
- Arbitrators can vary or revoke a decision previously made
- Arbitrators can allow matters not included in an application to be raised and considered during arbitration
- Appeals from decisions of Arbitrators will be heard in the District Court of Western Australia.

Lump sum settlements

Lump sum settlements are available in certain circumstances and maximums are calculated on the balance of the prescribed amount.

Lump sum payments will be available in accordance with the WorkCover WA guides for the evaluation of the permanent impairment assessment Schedule 2 tables. The maximum percentages of the prescribed amount under the Schedule 2 tables for the following injuries will be:

- Back 75%
- Neck 55%
- Pelvis 30%

For more information on the workers' compensation legislation we recommend you visit WorkCover WA: <http://workcover.wa.gov.au>

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