

## BULLETIN

# Workers Guide to Workers Compensation

This information bulletin has been developed to inform workers of their responsibilities and entitlements relating to workers' compensation under the Northern Territory workers' compensation scheme.

## Can I make a claim for workers' compensation?

You are entitled to make a claim if you suffer a work related injury or disease and if you fall within the definition of a worker.

## Definition of a worker

A worker is a person who provides work or service for another person and does not provide that person with an [Australian Business Number](#) (ABN) in writing.

The legal definition of a worker includes full-time, part-time, casual, seasonal, piece workers and commission workers.

For further information see NT WorkSafe bulletin [13.01.02](#) Compensation - Who is eligible?

## When is a worker covered for workers' compensation?

In the Northern Territory a worker is entitled to compensation for any personal injury or disease or an aggravation of an injury or disease that occurs:

- during the course of employment;
- by any incident arising out of employment;
- on a journey to or from work, except if the accident involved a motor vehicle.

If someone is involved in a motor vehicle accident traveling to or from work they can claim under the Motor Accidents Compensation scheme (MAC), which is administered by the Territory Insurance Office ([TIO](#)).

For further information see NT WorkSafe information bulletin [13.01.18](#) Guidelines for the settling of journey claims.

Please note that injuries from motor vehicle accidents that arise from the use of a vehicle to perform work are covered by workers' compensation.

## How to make a claim

The employer should be informed of a work-related injury or disease, as soon as practicable. This can be done either verbally or in writing.

## Claim forms

To claim for workers' compensation entitlements the worker must submit a Northern Territory workers' compensation claim form. [Claim forms](#) can be obtained from the employer, the insurer or NT WorkSafe, and via NT WorkSafe's website:

[www.worksafe.nt.gov.au/corporate/forms/rehabilitation\\_comp/fm1900.pdf](http://www.worksafe.nt.gov.au/corporate/forms/rehabilitation_comp/fm1900.pdf)

The worker must complete the first 2 pages and submit the claim form to the employer, along with a workers' compensation First Medical Certificate from a doctor if the claim is for loss of income.

Where the claim form is for medical expenses only, the worker needs only to provide the account or receipt with the claim form.

*NOTE: The worker cannot claim by submitting a medical certificate only.*

### **Important note:**

A worker has six (6) months to lodge a claim for workers' compensation from the date of the injury or becoming incapacitated from a disease. In some circumstances a claim can be made after 6 months.

Before giving the claim form to the employer, a worker should take a copy and keep this information for his or her records for the duration of the claim. The worker should then hand or post the claim form to the employer as soon as possible. If posting the claim form to the employer it is advisable to send it by registered mail.

A worker should be aware that a medical certificate is essential for your claim but does not on its own determine a connection to your work or decide liability. Liability is determined having regard to the physical injury and the relationship to the worker's employment.

The employer must complete page 3 of the claim form and submit it to their workers' compensation insurance company within 3 working days of receiving the claim from the worker.

The insurer must make an initial decision on the claim within 10 working days of the employer receiving it. The insurer will manage and make all the decisions regarding the claim on behalf of the employer.

## **Claim Decision**

The insurer's decision must be to either:

### ***Accept liability***

Payment of benefits will commence. These benefits will include lost earnings, reasonable medical and rehabilitation expenses.

### ***Reject liability***

The worker will be formally advised in writing of the reasons for rejection and the worker's rights of appeal.

### ***Defer liability***

The worker will receive up to 8 weeks pay while the insurer further investigates the claim. The insurer must make a final decision to accept or reject the claim before 56 days have expired from the date of the decision to defer.

Once the worker has lodged their claim, they will be dealing with different organisations and people. These may include: employers, insurers, medical practitioners, rehabilitation providers, unions, solicitors and NT WorkSafe.

## Entitlements

### Weekly payments of compensation

- **First 26 weeks of incapacity**

If the insurer accepts liability for the worker's claim, then weekly payments of compensation must be made by the employer commencing within 3 working days of the decision to accept the claim. A worker is entitled to receive their normal weekly earnings (NWE) for the first twenty-six (26) weeks of total or partial incapacity.

However if a worker has a work capacity and returns to work (for example on limited hours) then the compensation entitlement will be the difference between the income received for that work and their NWE.

NWE is a worker's normal number of hours per week, at their normal hourly rate. NWE also includes overtime where the overtime was worked in a regular and established pattern; shift penalties where worked in a regular and established pattern; over award payments; climate allowance; district allowance; leading hand allowance; qualification allowance; service grant; but does not include any other allowance e.g. employer contributions to superannuation.

Benefits received in lieu of cash, for example board, lodging and electricity, may also form part of NWE.

- **After 26 weeks – long-term incapacity**

After the first twenty-six (26) weeks a worker is entitled to 75% of their loss of earning capacity subject to a maximum of 150% of average weekly earnings (AWE). This rate can be payable until the injured worker reaches the age of 65.

Loss of earning capacity is the difference between the amount a worker is reasonably capable of earning in a week and their pre-injury NWE.

AWE is the average weekly earnings as published by the Australian Statistician for the Northern Territory Full-Time Adult Persons, Ordinary Time Earnings, last published before January each year.

For further information see NT WorkSafe bulletin [13.01.11](#) The average weekly earnings figures.

### Medical treatment and expenses

Reasonable hospital, medical and ancillary expenses resulting from a work related injury.

If liability for a claim has been accepted, all reasonable medical and rehabilitation services are paid for by the insurer through the workers' compensation scheme. The insurer in conjunction with the employer is responsible for organising this. There is no cost to injured workers.

Reasonable expenses incurred include:

- medical, surgical and rehabilitation treatment;
- hospitalisation in a public or private hospital;
- pharmaceutical expenses;
- travelling or being transported to and from any place in order to attend for treatment or hospitalisation, including a kilometre allowance for use of a private vehicle, see NT WorkSafe information bulletin [13.01.11](#) for current kilometre allowance rate;

- accommodation costs incurred while away from the normal place of residence to attend for treatment;
- upgrading of job skills or retraining in order to undertake suitable employment;
- workplace, vehicle and home modifications;
- household services, e.g. domestic help;
- attendant care services.

### **Vocational rehabilitation expenses**

If specialist services are required to help the worker return to work, an approved vocational rehabilitation provider will assess their situation and provide assistance if appropriate.

**Note:** To keep receiving weekly payments, a worker has an obligation to participate in a rehabilitation program or undertake suitable alternative duties provided by the employer.

Workers must make themselves available for a medical examination by a doctor provided and paid for by the employer, at any reasonable time and place. Failure or refusal to attend the examination, or refusal to undertake treatment recommended as a result of the examination, might result in the entitlement to weekly payments being cancelled.

The worker has the right to select, or change, their own treating doctor.

However, where a worker has maintained a regular relationship with a treating doctor/practice for more than 30 days but wishes to transfer to a new treating doctor/practice, it is advisable for the worker to notify the insurer within 14 days of that change, including the name of the new treating doctor and reason for the change.

### **Permanent Impairment**

If the worker is left with a permanent impairment as a result of a work related injury or illness there is provision under the *Workers Rehabilitation and Compensation Act* (the Act) for a payment in respect of that permanent impairment.

Payment to the worker may be made to compensate for the permanent impairment when the injury or illness has stabilised.

This payment does not affect the worker's rights to weekly compensation benefits, medical or rehabilitation expenses.

See bulletin 13.01.11 for current permanent impairment payment details.

### **Employer contributions to superannuation**

Employer contributions to superannuation are NOT included in the calculations of normal weekly earnings with regards to workers' compensation benefits under section 49 of the Act

#### ***104 weeks provision***

At any stage of long term incapacity (after 26 weeks) a worker can be deemed to have an earning capacity.

Up until 104 weeks of incapacity has elapsed, suitable employment must be reasonably available.

After 104 weeks (2 years) of total or partial incapacity, the worker, once assessed, may be deemed to have an earning capacity on the most profitable employment that could be undertaken by that worker, whether or not

such employment is available to the worker and the worker's entitlements may be reduced or ceased accordingly.

This provision will only apply after 104 weeks of total or partial incapacity. It will not affect those who, because of the seriousness of their injury, will have little or no real ability to return to the workforce.

**Note:**

- The 104 weeks (2 years) is calculated from the first day of total or partial incapacity.
- The assessment is carried out by appropriately qualified medical practitioners and allied professionals.

For further information see NT WorkSafe bulletin 13.01.17 Compensation – 104 weeks provision.

## How long can benefits continue?

### Weekly payments

If a worker continues to supply a workers' compensation medical certificate signed by a medical practitioner confirming continued incapacity, weekly payments may continue until the worker reaches 65 years of age. All other entitlements such as permanent impairment, medical and rehabilitation entitlements continue regardless of age.

Where an injury occurs after the worker turns 65, weekly payments are made for the first 26 weeks and will then cease; however, all other entitlements continue regardless of age.

### Commutation

Commutation is converting (or exchanging) a worker's compensation entitlement to weekly benefits, to a lump sum payment. A worker will need to have an ability to work to enable this to occur.

Where a partially incapacitated worker is receiving weekly benefits as a top up of his or her loss of earning capacity, this benefit can, in certain circumstances, be commuted to a once only lump sum payment.

Entitlements to weekly benefits may be commuted to a lump sum upon application to the Work Health Court by:

- the employer/insurer, where because of the small amount of the regular payment, the administration cost in making the payment is disproportionate to the benefit received; or
- by a worker. In this case the Work Health Court must be satisfied that the worker's:
  - condition has stabilised;
  - rehabilitation is complete;
  - the worker is not totally incapacitated for work; and
  - has received financial counselling.

The maximum commutation is 208 times the worker's normal weekly earnings (NWE) or average weekly earnings (AWE), whichever, in the case of a particular worker, is the greater.

**Note:** This payment does not affect the worker's rights to medical or rehabilitation expenses.

## **The insurer, employer and injured worker all have obligations in the workers' compensation process**

### **What a worker can expect from their employer's insurer**

Injured workers are to be treated with care and understanding and insurers should supply all workers who claim with general information about their claim.

The insurer must make an initial decision on the claim within 10 working days of the employer receiving it. The insurer will manage and make all the decisions regarding the claim on behalf of the employer.

### **What a worker can expect from their employer's insurer**

#### **For Accepted Claims**

Including but not limited to:

- an explanation of the entitlement based on normal weekly earnings, including an invitation to receive further detail on how compensation was calculated. Workers should be informed that they may have an entitlement to be paid for the value of benefits received in lieu of cash (non cash benefits);
- an outline of entitlements (e.g. reasonable medical expenses);
- travelling costs for treatment;
- obligations in relation to the rehabilitation process;
- information that if workers are unable to pay in advance for the cost of medications that they should discuss their circumstances with the insurer;
- reduction in weekly benefits at 26 weeks;
- for long term incapacity the implications of re-assessing loss of earning capacity after 104 weeks having regard to most profitable employment, whether or not such employment is available. Information should be included that any action to reduce payments will be subject to the right of appeal.

It is acceptable for relevant information to be provided at appropriate trigger points rather than providing unnecessary information up front.

#### **For Deferred Claims**

- The letter from the insurer must provide full information about the deferral and the entitlements to compensation during the deferral period.

#### **For Disputed Claims**

- Formal notice must be provided, including information on mediation.

Injured workers will be given the name of their case manager and a direct telephone number for personal contact.

If a Deferred Claim or Disputed Claim is subsequently accepted, then the information outlined for Accepted Claims must then be supplied.

## What to expect from the employer

It is the employer's responsibility to forward the completed claim form along with all other documentation to their insurance company within 3 working days of receiving the claim from the injured worker.

If the claim is accepted or deferred the employer is responsible for making weekly payment of incapacity compensation to injured workers.

The employer must take all reasonable steps to provide the injured worker with suitable employment.

The employer must as far as practicable, participate in efforts to retrain the injured worker.

The employer must assist the injured worker with their rehabilitation program.

If the worker is unable to return to their normal job, their employer should determine if there is another job or a combination of jobs that the worker might be able to do. This might involve getting an accredited vocational rehabilitation provider to assess the suitability of the duties, and make recommendations regarding ergonomics and workstations etc.

The employer might also involve /consult with the treating doctor, fellow workers or union representatives.

If the employer is unable to provide the worker with suitable employment, the employer in consultation with the insurer must refer the worker to the alternative employer incentive scheme.

For further information see NT WorkSafe bulletin [13.01.02 Compensation - Who is eligible](#).

## What is expected of the injured worker

The worker should inform the employer of a work-related injury or disease as soon as practicable. This can be done either verbally or in writing.

Immediately notify the insurer if they return to work with an employer (other than the employer in whose employment the injury occurred).

Participate in any examination by a medical practitioner provided and paid for by the insurer at reasonable intervals.

If the worker is receiving weekly payments of compensation because they are incapacitated for work, ensure that the employer is provided with a medical certificate for the period that they are incapacitated for work.

Injured workers are expected to participate in injury management in accordance with the legislation, cooperating in establishing a return to work program and participating in a cooperative manner in a return to work program, including attending appointments as required.

An injured worker should discuss with their treating medical practitioner and employer what duties they feel they can realistically do, given their injury. It is reasonable to expect an injured worker to allow their employer to discuss return to work options directly with their treating medical practitioner.

**Further information:** Any enquiries regarding the management of claims should firstly be directed to the employer's workers' compensation insurer.

## The role of NT WorkSafe

The role of NT WorkSafe is to administer and enforce the *Workers Rehabilitation and Compensation Act* and to further the objects of the legislation in other ways.

However NT WorkSafe does not have the role or the legislative power to review claims decisions made by insurers.

Where a worker is aggrieved by a decision made by an insurer they may apply to NT WorkSafe for mediation. An independent mediator will be appointed.

The mediator facilitates the resolution of workers' compensation disputes by involving all parties in an informal process to achieve a mutually acceptable agreement.

The role of the mediator is to:

- assist the parties to achieve resolution;
- be even handed and fair;
- maximize flexibility and informality; and
- be prompt and timely in the conduct of mediation processes and in dealings with the parties.

The mediation process is designed to ensure that matters do not unnecessarily proceed to the Courts.

Mediation is a pre-condition to taking a matter to the [Work Health Court](#).

The Work Health Court is established by the *Workers Rehabilitation and Compensation Act* with the power to hear and determine all claims for compensation and questions incidental to or arising out of such claims.

NT WorkSafe can give information on rights, obligations and processes that are provided for in the legislation but it does not have the power to change decisions made by insurers. This is solely a matter for negotiation between the parties or for the Courts to decide.

For additional information relevant to this bulletin refer to NT WorkSafe information bulletin series [13.01](#) Compensation.

**For further information please contact NT Worksafe on 1800 250 713 or visit [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)**