



# Workers' Compensation and How to Claim It

If you've suffered an injury at work, you're going to need to know how to claim workers' compensation. At Bourke Legal we've created this Guide to help you understand the basics of making a claim for compensation and what benefits you might be eligible for.

## **WHAT IS A WORK INJURY?**

A work injury is an injury which arises out of, or in the course of, employment. It can be physical or psychological in nature.

There are many different types of work injuries, for example:

- A sudden injury arising from a specific incident, such as hurting your lower back while lifting a 50kg box. These are called 'frank injuries'.
- A disease injury which gradually creeps up on you over a period of time, such as a degenerative spinal condition, or a psychological condition such as PTSD caused by constant and repetitive exposure to traumatic events.
- An aggravation, acceleration, exacerbation or deterioration of a pre-existing condition. Your injury can still be a work injury if your pre-existing condition (or underlying disease) was made worse by your employment. For example, you may have a psychological condition such as depression made worse because you are bullied at work.

## **WHAT DO I DO IF I HAVE SUFFERED A WORK INJURY?**

Whatever type of injury you have, you need to notify your employer immediately. If that's not possible, you should notify your employer at the earliest opportunity. It is your employer's responsibility to record the injury and notify its workers' compensation insurer.

You will need to provide a SIRA Certificate of Capacity from your doctor at the time you notify your work injury or, if that is not possible, as soon as practicable. This is a special type of medical certificate for NSW workers' compensation claims. Your doctor will be familiar with the form. The certificate includes information such as your diagnosis, how your illness or injury is related to work, and whether you can work after your injury. Your doctor will need to certify your work capacity, for example, whether you are unable work until you recover, or whether you can go back to work for a few hours a week doing light duties. You should discuss your work capacity with your doctor before they complete your certificate.

The insurer will likely request that you complete a claim form which notes your personal and contact details, your employer's details, the details of how your injury occurred, and other relevant information.

In rare circumstances, your employer may not have notified your injury to its workers' compensation insurer and it may be necessary to notify iCare yourself. iCare is the body responsible for insurance and care schemes in New South Wales, like the workers' compensation scheme.

You can self-report an injury to iCare by contacting:

Phone: 13 77 22

Email: [newpiclams@icare.nsw.gov.au](mailto:newpiclams@icare.nsw.gov.au)

If your employer is uninsured, you may still be eligible for workers' compensation benefits. You should notify your injury direct to iCare using the below contact details:

Phone: 1800 221 960

Email: [wiclaims@icare.nsw.gov.au](mailto:wiclaims@icare.nsw.gov.au)

Uninsured employers may be penalized for not taking out a workers' compensation policy.

## **ARE THERE ANY TIME LIMITS FOR MAKING A CLAIM?**

You should notify your work injury within six months from the date it happened.

If you don't notify your injury within six months, you can still make a claim for workers' compensation up to three years from the date of injury if have a good reason for not doing so.

If you are notifying an injury which has resulted in death or serious and permanent disablement, you can still make a claim beyond the three-year limitation if there is a reasonable explanation for the delay.

## **WHAT BENEFITS AM I ELIGIBLE FOR?**

There are three main types of benefits under the NSW workers' compensation scheme. These are:

1. Weekly benefits payments for loss of wages;
2. Medical, hospital and rehabilitation expenses;
3. Lump sum compensation.

Your eligibility for these benefits may be affected can be affected by various factors. See Bourke Legal's [NSW Workers' Compensation Payout Guide](#) for more details about the types of payments you can expect and how they are calculated.

## **WHAT HAPPENS AFTER THE INSURER HAS BEEN NOTIFIED OF MY CLAIM?**

If you have lost wages because of your injury, you should start to receive weekly payments under provisional liability within 7 days unless the insurer has a reasonable excuse not to pay them.

The insurer may say that it has a reasonable excuse not to start your weekly payments because have not provided sufficient medical information about your injury, or it may claim, for example, that your injury is not work-related.

If you are claiming medical expenses, the insurer may accept provisionally liability for medical expenses up to a fixed amount of around \$10,000. The amount is increased from time to time.

An insurer may make payments to you under provisional liability for a period of up to 12 weeks while it investigates your claim. Please note that payments made under provisional liability do not amount to an acceptance of your claim.

At some stage during the 12-week period, the insurer will make a formal decision about its liability for your injury by either accepting your claim or declining it.

### **WHAT HAPPENS IF THE INSURER REJECTS MY CLAIM?**

There are many reasons why an insurer may decline liability for your claim. For example, they may decide that you did not suffer a work injury or that you are a type of worker who is covered by workers' compensation (e.g. a sole trader).

Even if the insurer accepts liability for your claim, they may dispute the amount of weekly benefits payable, your eligibility for medical and treatment expenses, or your eligibility for lump sum compensation for permanent impairment.

Insurers are required to put their decisions in writing, often in the form of a Section 78 Notice (a notice which declines liability for your claim) or a Work Capacity Decision (a notice which changes the amount of weekly benefits payable to you).

If you do not agree with the insurer's decision in respect of your claim, you can challenge the decision by requesting a review, and/or proceeding to the Personal Injury Commission for a determination of the dispute.

If liability for your claim is challenged in by the insurer, we recommend that you seek legal advice as soon as possible.

### **WHO PAYS MY LEGAL COSTS FOR CHALLENGING AN INSURER'S DECISION?**

Workers are not generally required to pay legal costs for challenging an insurer's decision.

However, who you recover your legal costs from depends on the type of worker that you are.

#### **Exempt Workers (Firefighters, Police Officer and Paramedics)**

If you are an [exempt worker](#) such as a firefighter, police officer or paramedic, and the insurer makes an adverse decision about your workers' compensation claim or entitlements, you should contact a lawyer in private practice to help you, such as a lawyer at Bourke Legal.

At **Bourke Legal**, we act for exempt workers on a regular basis and pride ourselves on our outcomes.



Your legal costs are payable by the insurer upon successful completion of your claim. If your claim is unsuccessful, we will not charge you.

### **Independent Review Office (IRO)**

If the insurer denies liability for your claim and you are not an exempt worker, you should contact the **Independent Review Office (IRO)** or head to their website.

IRO is an organisation which assists injured workers with workers' compensation disputes.

IRO will pay your legal costs and disbursements to challenge an insurer's decision about your workers' compensation claim, provided your claim has reasonable prospects of success.

To be eligible for IRO funding, you need to find an **IRO Approved Lawyer** who can apply for a grant of funding and represent you. IRO Approved Lawyers are lawyers employed in private practice who are accredited by IRO to act in workers' compensation matters.

The easiest and quickest way to find an IRO Approved Lawyer is to go to IRO's website at:

[www.iro.nsw.gov.au](http://www.iro.nsw.gov.au)

Click on the hyperlink that says FIND A LAWYER.

On the Find a Lawyer page, you can search for a lawyer by name, by firm or by region.

For example, if you live on the North Coast of NSW, you select that option in the dropdown box under Region and hit search. This will show you a list of all IRO approved lawyers on the North Coast. It is up to you to telephone an IRO approved lawyer on the list and consult them about your claim. The legal fees and disbursements charged by IRO approved lawyers are reimbursed by IRO and the worker does not pay a cent for legal representation.

At **Bourke Legal**, all of our lawyers are **IRO Approved Lawyers**, with significant experience in workers' compensation, and we are happy to help you with your claim.

**To find out more, visit our website at [www.bourkelegal.com](http://www.bourkelegal.com) or call us on 1300 230 937**