



## Factsheet Ten

### WORKERS' COMPENSATION

If you are injured at work or become ill as a result of work, you may be entitled to workers' compensation for lost wages, medical and other expenses.

You should report any injury or accident to your employer as soon as possible and preferably in writing. Do this even if the injury is minor and you don't need time off, as the injury may cause problems later on. Any employee can claim, including casuals and apprentices and trainees. Generally, independent contractors are not able to make a claim. Volunteers, except for those that are specifically included in the *Return to Work Act*, are not eligible.

#### Am I covered for workers' compensation?

You will be covered for workers' compensation if you are considered to be a 'worker' according to the definition in the *Return to Work Act*. The Pay-As-You-Go (PAYG) test applied under the Australian Taxation Office (ATO) laws will now be used to determine who is required to be covered for workers' compensation in the NT.

Generally speaking, people who are 'contractors' under the PAYG test are not covered for workers compensation. If you believe you are a contractor you should take out your own insurance to cover you for injury.

If the business is owned by an individual or partnership (not a company), family members of those individuals are only covered if their personal details and their remuneration are disclosed to the insurer. They will also be required to have PAYG deductions made from their remuneration.

Workers' compensation for company directors is optional.

Working out if you are a 'worker' or 'contractor' for the purposes of workers' compensation can be difficult. If you are unsure, you should seek advice. The ATO website has guidelines and online tools to assist you to determine your status.

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

A worker is entitled to compensation for any personal injury or an aggravation of an injury that occurs:

- during the course of employment; or
- by an incident arising out of employment.

Injuries that are incurred on a journey to and from work are no longer covered by workers compensation, except for the following scenarios which would most probably be covered:

- injuries that occur between the residence and a business appointment (not the office/workplace to which the worker reports and/or attends);
- journeys to and from the residence for workers on call that are required to attend and are paid some amount for the time travelled;
- journeys between the residence and a destination other than the regular workplace where attendance is required by the employer;
- journeys between the residence and the regular workplace in company arranged/paid transport, e.g. company bus, taxi, but not including company cars which are part of a salary package;
- travel associated with a trip away.

If you are injured as a result of an accident involving a motor vehicle in your usual commute between home and work, this should be covered through the *Motor Accidents (Compensation) Act*.

## How do I make a workers' compensation claim?

You usually have up to 6 months to lodge a claim for workers' compensation from the date of the injury or when first becoming aware of the injury or disease. However some claims have been accepted even when they have been lodged after 6 months. You must complete the first two pages of the NT WorkSafe approved claim form which you can get from your employer or from NT WorkSafe directly. It is also available online on the NT WorkSafe website under Forms ([www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)).

You will need to submit the form to your employer along with the approved workers' compensation medical certificate (called a "Statement of fitness for work -First certificate"). This first certificate can cover up to the first 14 days of work incapacity and should be provided to your employer with your completed and signed Workers' Compensation claim form. Remember to keep a copy of your Claim Form, medical certificate and any documents you have attached, for future reference.

If your claim is for medical expenses only, you need to provide the account or receipt with the claim form.

Everyone has the right to see his or her own doctor. However, you may be required by an insurer or your employer to undergo an examination by another medical practitioner for the

purpose of obtaining a second opinion.

Once you have lodged your Workers' Compensation form with your employer, your employer has 3 days to complete and sign part 2 of the form and send it to their insurer. You should be told whether your workers' compensation claim is accepted, deferred or rejected within 10 days of giving the claim form to your employer.

### What happens if my claim is accepted?

If your claim is accepted by your employer's insurer, you may receive compensation for lost wages for a maximum of five years, or 260 weeks of paid compensation. You are entitled to receive your normal weekly earnings for this time, less any amount you actually earn. However, after receiving a total of 26 weeks compensation payments (not 26 weeks from the date you were injured), compensation payments are then paid at 75% of your normal weekly earnings.

You may also receive compensation for medical and treatment costs for an additional 12 months after that date.

Note that the five year time limit does not apply to workers who are permanently impaired, if the degree of their impairment is 15% or greater. The assessment of impairment is limited to the primary injury and excludes secondary psychological injury.

Your employer does not have to pay superannuation while you are on workers' compensation and not working, unless there is an alternative provision in the modern award that covers you.

Workers' compensation can also cover medical costs which may include fees charged by doctors, specialists, chiropractors, physiotherapists, psychologists and various other practitioners, hospitalisation, chemist items, family counselling, financial counselling and employment counselling, the cost of travelling to and from treatment and replacement of the following items if damaged or destroyed at the time of the injury: spectacles, prosthesis, crutches and other walking aids.

If you are aged 66.5 years or older at the time of the injury, you are entitled to 104 weeks compensation.

### What happens when a decision on a claim gets deferred?

A claim can be deferred for up to 56 days to allow the insurer time to gather further information on the claim. The worker will receive up to 56 days of compensation while the insurer further considers the claim.

When the claim is deferred, the employer must commence payments of weekly benefits within three working days of the decision to defer.

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.

During the period of deferral the employer must pay for treatment and rehabilitation.

The employer is not required to pay for treatment that relates to hospital inpatient and associated surgical costs or the costs of interstate evacuations.

## What happens if my claim is rejected?

If your claim is rejected by your employer's insurer, you have the right to appeal the decision by applying to NT WorkSafe for mediation, but you must do this within 90 days of receiving the Notice of Decision and Rights of Appeal form. (This form is the document that your employer's insurer must provide to you if they reject your claim).

Mediation is a free service. The mediator will hold discussion with the parties and assist the parties to reach agreement.

If, in the opinion of the mediator, a conference would help resolve the matter then they will convene a mediation conference and require the worker, the insurer, and sometimes the employer, to attend. You are entitled to have a support person, such as a union representative, family member or friend, attend the conference with you. The support person may represent you if the mediator is satisfied that to do so would facilitate the conduct of the mediation.

In certain circumstances (if the mediation is in relation to liability for compensation, or a decision to cancel or reduce compensation) the mediator may allow a lawyer to represent you if they are satisfied that it is physically impractical for you to participate in the mediation in person, or if they believe it will facilitate the conduct of the mediation. The mediator may recommend to the Authority that the employer be directed to pay the reasonable costs of legal representation and legal advice.

Once you have applied for mediation you can seek interim benefits from the Work Health Court. This means that you ask the Court to pay you weekly benefits (wages) while you are awaiting a decision as a result of the mediation or a substantive decision from the Court about whether you are entitled to ongoing benefits. You should be aware that if your claim is subsequently denied, action may be taken to recover these benefits from you.

If you are not satisfied with the insurer's decision after mediation you have the right to appeal to the Work Health Court but you must do this within 28 days from the date you receive the Certificate of Mediation. You should seek advice from a lawyer if you wish to do this.

## What is rehabilitation?

Rehabilitation is extra help to get you back to work or to help you cope at home. It might include counselling, medical treatment, physiotherapy, occupational therapy or a fitness program. It may also involve training for a new job and help in finding you a new job.

Your employer must produce a return to work plan that you agree with, for any injury that involves incapacity for more than 28 days.

You cannot be dismissed for a period of 6 months following the date of injury, unless during that period you engage in serious misconduct.

Serious misconduct includes: engaging in wilful or deliberate behaviour which is inconsistent with your contract of employment; conduct that causes serious and imminent risk to the health and safety of a person, or to the reputation, viability or profitability of your employers' business; theft, fraud or assault in the course of your employment; being intoxicated in the workplace; or refusal to carry out a lawful and reasonable direction from your employer, which is consistent with your contract of employment.

## Where can I get more help?

### **NT Working Women's Centre**

Freecall: 1800 817 055

Web: [www.ntwwc.com.au](http://www.ntwwc.com.au)

### **Your Union**

Unions NT

Ph: 8941 0001

Web: [www.unionsnt.com.au](http://www.unionsnt.com.au)

### **NT WorkSafe**

Ph: 1800 019 115

Web: [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)

### **Australian Taxation Office**

Ph: 13 28 65

Web: <http://www.ato.gov.au>

## **Comcare (workers' compensation for Commonwealth employees)**

Local call: 1300 366 979

Web: [www.comcare.gov.au](http://www.comcare.gov.au)

### **To access an interpreter**

Interpreting and Translating Service NT

Ph: 1800 676 254

Web: [www.itsnt.nt.gov.au/](http://www.itsnt.nt.gov.au/)

Aboriginal Interpreter Service

Ph: 8999 8353

Web: [www.ais.nt.gov.au/](http://www.ais.nt.gov.au/)

### **For people with a hearing and/or speech impairment**

National Relay Service

Ph: 133 677

Freecall: 1800 555 677

The NT Working Women's Centre provides free and confidential information, advice and assistance to women about work related matters.

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