

Injuries at work

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

A workers compensation claim is to cover the costs associated with an injury that occurred at work.

What does “injured at work” mean?

You are entitled to compensation if you suffer an injury as a result of doing your usual work or you suffer a disease to which your employment substantially contributed. To claim workers compensation, the injury must have happened while you were doing your usual work (i.e. not on a break or while you were doing something that was not work-related).

If you were injured while travelling between home and work, you will only be covered by workers compensation if your employer requested you to travel or if the travel is work related. An injury from a motor vehicle accident may be covered by MAIB (the Motor Accident Insurance Board).

Injuries related to stress may not be classified as a 'work injury' if the stress was because:

- you were transferred, demoted, disciplined, counselled or your employment was ended on reasonable grounds, or
- you were not promoted or provided with certain employment benefits on reasonable grounds, or
- a reasonable administrative action was taken against you.

Is my type of work covered by workers compensation?

Workers compensation applies to workers defined as a person who works under a contract of service or training agreement. This covers most workplaces.

The following type of work is also covered by workers compensation.

- Volunteer firefighters, police, ambulance workers.
- Prescribed volunteers while engaged in their volunteer duties.
- Salespeople, canvassers and collectors paid by commission.
- Jockeys and apprentices employed by the Tasmanian Thoroughbred Racing Council.
- Taxi drivers and luxury hire car drivers while driving or performing any associated activity such as loading, unloading or cleaning of the vehicle.

The following people are **not** considered covered by workers compensation.

- Members or crews of fishing boats who are paid wholly or mainly on the basis of a share of profits or gross earnings of the boat.
- People taking part in approved programs of work for unemployment payment (workforthe-dole schemes).
- Independent contractors engaged in a contract for services.
- People employed as domestic servants for a private family who have worked less than 48 hours at the time of the injury (domestic cleaners are usually covered under the household's insurance policy).

What kind of compensation payments are available?

There are 3 types of payments that can be made.

1. Weekly payments

If you are incapacitated for work (that is, you can't do your normal job), and you have a worker's compensation medical certificate from your doctor, you are entitled to receive a payment to compensate you for loss of your usual income. If you are incapacitated for a short time, you will receive a sum close to your average weekly income. However, if your incapacity lasts for a significant period the weekly amount you receive will slowly decrease as follows.

- 100% for the first 26 weeks
- 90% between 27 weeks and 78 weeks
- 80% from 78 weeks onwards

You cannot receive less than 70% of the basic wage. After 9 years, weekly payments will decrease on a sliding scale, depending on the level of impairment, until you reach a maximum entitlement period of 20 years.

Generally, weekly payments end once you are 65 years of age. This overrides the maximum period of entitlement. The exception to this is if you are injured at the age of 64 years. In this case, payments will stop one year from the date of the injury.

2. Medical and associated costs

You are entitled to claim reasonable and necessary medical, hospital and pharmaceutical costs from your employer. Physiotherapy, other rehabilitation costs and some household services are included. You can also claim reasonable and necessary travelling costs to and from medical and other related appointments.

There is no limit on the amount payable by your employer for medical and associated costs, although your employer's liability to pay for medical services ends 10 years from the time they first received your workers compensation claim.

3. Lump sum payments for permanent impairments or injuries

If you have suffered a permanent or partial impairment to a specified part of your body you may be entitled to a lump sum payment. The amount you are entitled to receive depends on the degree of impairment, which would be assessed by a medical specialist. This is in addition to any other compensation paid under the [Workers Rehabilitation and Compensation Act 1988](#).

How do I make a claim for workers compensation?

You must tell your employer as soon as possible after suffering a workplace injury or disease. You can do this in person, in writing or by email.

You have 6 months from the date of the injury to claim compensation, but it is recommended that you claim as soon as possible. If you decide to leave your employment, you must do this before you leave, even if you leave within 6 months from the date of injury.

To claim, you must complete and forward to your employer:

- a workers compensation claim form
- a workers compensation medical certificate completed by your doctor.

Your employer must start making weekly payments and start paying for medical expenses once they receive the claim for compensation. Payments will only be made if you have been certified as totally or partially incapacitated for work by your doctor.

The employer must give you written notice of the status of your claim within 28 days of receiving your claim. The employer has 84 days from the date of your claim in which to dispute liability to pay compensation. If they do not dispute liability within this time, then they will be assumed to have accepted liability for the claim.

Can I make a claim for pain and suffering and future expenses?

If you are injured at work due to the fault or negligence of your employer or another person, you may have a claim for common law damages. A common law damages award will compensate you for pain and suffering, loss of past and future earning capacity and future

medical expenses. It may also cover some past loss of wages. This is in addition to your right to workers compensation weekly payments. Any payments you have already received will be considered in assessing a final award.

To start a common law claim, you must be able to provide medical evidence that you have suffered a whole-of-person impairment of at least 20% of your functioning. If you would like to pursue a common law claim for personal injury, get legal advice first as this area of law is complex.

What else do I need to know?

There are strict time limits which apply to making a claim for common law damages. Generally, you have 3 years starting from the date your injury was discovered, or 12 years starting from the date of the act or omission which you say caused your injury, whichever is the earlier date.

There are circumstances where you will not be entitled to make a claim for common law damages. This may happen if you sign an agreement with your employer or the insurer to settle all outstanding entitlements under the *Workers Rehabilitation and Compensation Act 1988*. This will have the effect of finalising all claims by you against the employer or the insurer and you will not be entitled to make a claim for common law damages.

TASCAT must approve a settlement agreement if it is made within 2 years from the date of the claim for compensation.

As a worker, you have a responsibility to attend any reasonable medical appointments made for you by your employer and to take part in any rehabilitation program or alternative work duties arranged by your employer.

Your employer must hold your job open for you for a period of 12 months to allow you to be rehabilitated after your injury. This does not apply in cases where:

- there is medical evidence that says it is highly improbable that you will be able to perform the role you were engaged in before the injury
OR
- that role no longer has to be performed.

If either of these exceptions apply, your employer must let you know in writing.

Your injury management coordinator must prepare a return-to-work plan or injury management plan for you. Where you cannot return to your pre-injury job, your employer must provide suitable alternative duties.

Any dispute about injury management must first be tried to be resolved by mediation. If that is unsuccessful, it can be referred to the Tasmanian Civil and Administrative Tribunal (TASCAT).

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.