

# WORKERS COMPENSATION



## What is a Workplace Injury?

*Understanding workers' compensation can be overwhelming. This guide aims to help walk you through the process and answer commonly asked questions.*

A work-related injury or illness can happen either in the workplace, in work-related situations or when travelling to and from work.

If you're a Queensland worker and are suffering from a work-related injury or illness, you may be entitled to make a claim for workers' compensation with WorkCover Queensland. When people think of injuries, they usually think of physical injuries like broken bones and muscle strains/sprains. However, it can also include psychological injuries.

A psychological injury is a condition that causes abnormal thoughts, feelings and behaviours. They can come in many different forms, for example, depression, post-traumatic stress disorder, anxiety disorders and adjustment disorders. A psychological injury can arise due to a number of different situations including sexual harassment, gender discrimination or bullying or other harassment. If one of these things causes a psychological injury, you might have a valid workers' compensation claim (in addition to any other employment claim you might have for the harassment or discrimination).



## Sexual Harrassment

The Sex Discrimination Act 1984 (Cth) defines sexual harassment as when a person:

- a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed.

where a reasonable person would expect the person harassed would be offended, humiliated or intimidated.

Examples can include:

- Unwelcome touching;
- Suggestive comments or jokes;
- Sexually explicit pictures, posters, emails or text messages;
- Requests for sex;
- Intrusive questions about a person's private life or body;
- Unnecessary familiarity, including deliberately brushing up against someone;
- Staring or leering;

## Gender Discrimination

It is unlawful for your employer to discriminate against a person based on their sex, sexual orientation, gender identity, relationship status or pregnancy. Gender discrimination is treating you less favourably than a person of the opposite sex would be treated in the same or similar circumstances. Examples of gender discrimination against women include: being paid less than men despite having similar responsibilities, being held to a different standard due to gender, being excluded from important meetings, and being fired or demoted due to pregnancy.

## Bullying

Workplace bullying is conduct directed toward an employee which is unreasonable, repeated and of such a nature to create a risk to the health and safety of the employee. Examples include:

- Abusive, insulting, or offensive language or comments;
- Unjustified criticism or complaints;
- Deliberately leaving someone out of work-related activities
- Withholding vital information for being an effective employee;
- Spreading rumours.
- Setting unreasonable timelines or constantly changing deadlines;
- Setting tasks unreasonably below or above your skill level;



One-off incidents aren't considered bullying, although should not be ignored.

Unreasonable behaviour that involves physical violence, or threatened violence, might be bullying, but is also potentially criminal and should be reported to your employer and/or police.

## Exception: reasonable management action

Psychological injuries will not be compensable workplace injuries if they are caused by 'reasonable management action taken in a reasonable way by the employer'.

The law allows an employer to take reasonable action if an employee is not doing their job well. This action might include:

- placing an employee on a performance improvement plan (including meetings to address any underperformance);
- taking disciplinary action for misconduct;
- telling you your work is not satisfactory;
- telling you your behaviour at work is inappropriate; and/or
- modifying your work by transferring you to another team or division.

The employer must always take this action in a reasonable way. If they take this action in a way to that was intended to embarrass or upset you, involved publication to other workers that was not required, or did not give you a proper chance to consider and respond to assertions about your performance, any resulting psychological injury might still be a compensable workplace injury.

To read more about dealing with workplace bullying, see a Guide from Safe Work Australia [here](#).



## Things to Remember

Even if you have a history of suffering from mental health conditions or physical injuries before your workplace injury, you may still be entitled to workers' compensation benefits. WorkCover will consider whether the workplace incident made your injury or condition worse.

Regardless of whether your pre-existing injury was work-related or non-work related, you still need to make a new claim for each separate injury sustained at work.

# How to Lodge a WorkCover Claim

To make a claim to WorkCover, you must submit your claim within 6 months of the injury happening. During that time you should:

## 1. Make an appointment with your GP:

- It is important to be clear with your GP how the injury occurred at work.
- Your doctor will provide you with a Work Capacity Medical Certificate which will outline your injury and whether you are still able to work at all.

## 2. Tell your employer about your injury as soon as you can and give them a copy of your Work Capacity Medical Certificate

- This can include talking to Human Resources, or in smaller businesses, your immediate supervisor.
- If possible, try doing this in writing (for example a letter or email), so you have a record of it. Otherwise, if this conversation occurs in person, ask to have a support person or colleague with you to witness the discussion.
- Your employer must report this to WorkCover within 8 days of becoming aware of it.

## 3. The next step is actually making the claim. This can be done a number of ways:

- The easiest is to submit an online claim form on WorkCover's website. To do this, visit: [worksafe.qld.gov.au](https://worksafe.qld.gov.au) and search for "make a claim" and follow the prompts - [here](#).
- You can also call 1300 362 128 to complete the form over the phone with a WorkCover claims person.
- The type of information WorkCover will need from you includes:
  - Your full name, date of birth and personal contact information;
  - Your employer's full name and location;
  - The Work Capacity Medical Certificate from step 1;
  - Your bank details;
  - A Tax File Number declaration;
  - Information about your injury, including details about how and when it happened

## 4. Do not be afraid of contacting WorkCover to make a claim. WorkCover exists to support workers and help them make claims where the claim is valid. If you do not have complete information, WorkCover can guide you or obtain the information from your employer.

# I've Lodged a WorkCover Claim – Now What?

## How is my claim decided?

WorkCover Queensland will look at a number of different things when deciding whether to accept your claim. This includes:

- The claim being made within 6 months of the injury happening;
- That you have a diagnosed injury, usually meaning a Work Capacity Medical Certificate from your GP or another doctor;
- Checking you were at work when the injury happened, and that work contributed to the injury (this includes if you were travelling to or from work).

## If your claim is accepted

If your claim is accepted, you may be entitled to:

- Medical expenses, including with your GP, psychologist/psychiatrist appointments, specialists, medications and counselling. These expenses will be reimbursed to you or, once your claim is open and running, paid directly by WorkCover to the medical and rehabilitation providers;
- Income replacement benefits – if you are unable to work because of your injury, you can be provided weekly compensation up to 85% of Normal Weekly Earnings (as calculated by WorkCover with input from your employer);
- Travel – related to getting to/from medical appointments;
- Rehabilitation to support getting you back into the workplace, including physiotherapy and meeting with an occupational therapist.



Any income replacement payments will depend on medical certificates indicating how long you should be off work because of your injury.

## Other decisions WorkCover can make

### Rejection of Application

If your claim is not accepted, you will receive a Rejection of Application. That decision can be appealed. To find out what you can do if that happens, see our other **factsheet: My Claim was rejected/closed – now what?**

### Cessation of Claim

Your claim may have been initially accepted and run for some time, but has then been closed. There are various reasons why this may happen, but it is usually because WorkCover has determined – with input from your doctors – that you have received the necessary treatment and you are able to return to work.

This decision can also be appealed. To find out what you can do if this happens, see our other **factsheet: My Claim was rejected/closed – now what?**

### Degree of Permanent Impairment

If your injury causes a permanent impairment (a condition that restricts your functioning and is not likely to improve with further treatment), you may be entitled to 'lump sum compensation'. This is a single payment made at once, rather than a number of small payments over time. To find out if you are eligible, you can ask WorkCover at the end of your claim to assess you for a *Degree of Permanent Impairment* and issue you with a *Notice of Assessment*.

*WorkCover will send you to an independent doctor who will assess you and provide a Degree of Permanent Impairment. WorkCover will then issue you with a Notice of Assessment, a document that indicates your impairment percentage and the lump sum offer in dollars. You should seek independent legal advice from a personal injury lawyer before accepting any lump sum offer from WorkCover.*

*If you do not agree with your assessment, you can ask to be assessed by another doctor or by a Medical Assessment Tribunal. If this is the case, you must notify WorkCover that you disagree with your assessment within 20 business days of receiving your Notice of Assessment.*

## Remember

The most important step is lodging your claim. Once this has been done your focus should be on recovery and rehabilitation. WorkCover will then be working you're your employer to support getting you back to work and getting your life back to normal.

# My Claim was Rejected/Closed – Now What?

## Rejected Claim

If your claim is rejected at the beginning, someone from WorkCover will speak to you to explain why. You will also be provided with a letter explaining the decision. You can apply to the Workers' Compensation Regulator to review WorkCover's decision. You will need to lodge a review form with the Regulator and explain why you think WorkCover's decision was wrong. This must be done within 20 business days from WorkCover's decision being given to you.

It is the Regulator's role to maintain a fair and efficient workers' compensation scheme, which includes making sure injured workers are supported and can safely return to work.

## Claim Closed

There are various reasons why your claim may have been initially accepted, then later closed. Often this is related to whether WorkCover considers you have received the necessary treatment and whether you are able to return to work.

Again, WorkCover will provide you with the reasons why your claim has been closed and you can apply to the Regulator to review the decision within 20 business days.

## Time frames

If you disagree with the rejection or closing of your claim, you can appeal the decision to the Workers' Compensation Regulator. You have **20 business days** of being advised of the decision to do this.

If the Regulator confirms WorkCover's decision to reject or close, you can apply to the Queensland Industrial Relations Commission for further review. We recommend you seek independent legal advice from a personal injuries lawyer to assist with an appeal. You have 3 months to lodge an application for review to the Commission and you should seek legal advice as soon as possible after receiving the Regulator's decision. More information about this can be found here:

<https://www.qirc.qld.gov.au/complaints>

You can also provide feedback to WorkCover if you have concerns about how your claim was managed.

## Other avenues of compensation

If your claim has been rejected/closed and you still need treatment you can:

- Talk to your health insurance provider about covering costs
- Talk to your superannuation fund
- Talk to your GP about any options in the public health system, including going on a mental health plan
- Seek independent legal advice

If you do not believe any lump sum offer made to you by WorkCover is reasonable or that your employer or other companies or people caused your injury, you may be entitled to make a claim for common law damages under the *Workers' Compensation and Rehabilitation Act 2003* (Qld) or the *Personal Injuries Proceedings Act 2002* (Qld). You have 3 years from the date of the injury to bring a damages claim. You should seek independent legal advice from a personal injuries lawyer as early as possible if you want to claim damages from an at-fault party.

To do this you are welcome to reach out to the Queensland Legal Services ([www.qls.com.au](http://www.qls.com.au)) or Queensland Council of Unions ([www.qldunions.com](http://www.qldunions.com)) who may be able to provide recommendations.

The Queensland Council of Unions provide a Workers' Compensation Information and Advisory Service (WCAIS) and can be contacted on 1800 102 166.





## Tips and Tricks – Mental Health Based Factsheet

Applying for Workers Compensation can at times be a lengthy and difficult process, especially if you have a psychiatric injury, so it's important you take the time to look after yourself.

Please contact the **free services** below if needed:

- Call Triple Zero (000) or go to the hospital if you are in immediate danger
- Lifeline 13 11 14 <https://www.lifeline.org.au/>
- Kids Helpline (aged 5-25) 1800 551 800 <https://kidshelpline.com.au/>
- Adis 24/7 Alcohol and Drug Support (1800 177 833) <https://adis.health.qld.gov.au/>
- BeyondBlue 1300 224 636 <https://www.beyondblue.org.au/>
- Multicultural Connect Line 1300 079 020 <https://worldwellnessgroup.org.au/>
- 13YARN 13 92 76 <https://www.13yarn.org.au/>
- 1800RESPECT (1800 370 732)
- Worker's Psychological Support Service [www.wpss.org.au](http://www.wpss.org.au)

Even though this can be a stressful process, don't let that deter you from making a claim. These services are here to support you. Be polite and persistent in seeking the help you need.

Other tips and tricks to keep in mind:

- Where you can, try keep records and notes of any discussions and meetings you have regarding your WorkCover claim. This will help you to understand what is happening and ensure your claim is being taken seriously
- Keep copies of all of your medical certificates, reports and receipts or invoices
- Consult with your GP if you are unsure about advice being provided to you by WorkCover or its doctors regarding your injury

