



Workers' Compensation: A Beginner's Guide for West Australian Employees



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[WorkCover WA](#) has an excellent website with very detailed resources for managing a workers' compensation claim. Workers' compensation in Western Australia operates under a legal framework: The Workers' Compensation and Injury Management Act 1981.



Making A Claim

If you have sustained an injury at work, the first step in making a claim is to notify your employer of the injury. You then need to see your general practitioner and ask for a **first certificate of capacity**. The first certificate is a very important document and it is vital that it clearly indicates all injuries sustained. It can be very difficult to have injuries not identified on the original documentation accepted at a later date.

One of the basic principles of the workers' compensation scheme is that the injured employee has complete choice in who their treating doctors, physiotherapists, and specialists are. You do not have to see your "employer's doctor" but their understanding of the workers compensation scheme may be very helpful in managing your claim. The employer or insurer can send you for independent medical examinations and you are obliged to attend these examinations. However your treating practitioners are entirely at your choice.

The second document you need is a **Workers' Compensation Claim Form**, which is available for download from the WorkCover WA website. Once you have completed the claim form, it needs to be submitted to your employer with the first certificate of capacity.

The employer then has five days to lodge the form with the insurer, and the insurer has a further fourteen days to respond to the application.

The claim is either accepted, declined, or put on hold pending further investigation or medical reports.

If the claim is declined, there is an internal dispute resolution process through the insurer and a conciliation service available through WorkCover WA.

If the first certificate (or any subsequent progress medical certificates) indicate that you have a capacity for work, then you may be required by your employer to return to work either on your normal duties or on restricted duties.



What Compensation Do I Receive?

a) Loss of wages

Worker's compensation payments will cover loss of wages and expenses associated with the medical treatment of your injury.

Most people will receive a salary similar to their usual salary (including overtime payments) for the first thirteen weeks, and thereafter it will step down to a slightly lower amount which excludes any overtime and bonuses.

No salary will be paid if you elect to pursue a **common law claim**. Common law claims apply only to severe injuries or multiple injuries sustained in the workplace where you are deemed to have more than 15% whole person impairment, and the injury is proven to be caused by negligence on the part of your employer. Very few claims meet this threshold. Common law claims are generally settled for much higher amounts, on the grounds that you are permanently incapacitated and unable to return to meaningful employment. To pursue a common law claim, you require legal representation.

b) Expenses

The workers' compensation scheme will cover reasonable medical expenses associated with general practitioners, specialists, and various rehabilitation services.

There are also allowances for travel and accommodation expenses incurred as a result of medical treatment.

Workers' compensation also covers costs associated with workplace rehabilitation expenses. A **workplace rehabilitation provider** may be recommended by the doctor, employer or insurer to assist with the return to work process and identifying suitable duties or alternative placements in a different work environment. You can choose the provider. Occasionally retraining for a new occupation may be required.

Return To Work

At all subsequent visits to your general practitioner or specialists, you should be provided with a **progress certificate**. This certificate will indicate whether you are totally unfit for work, or fit to return to your pre-injury occupation, or fit to return to work with modified duties. It is important that you have a valid certificate to cover the entire period of time you are on workers' compensation for your salary payments to be made. If you are partially fit to undertake alternative duties (such as desk duties), your doctor is legally obliged to indicate this on the certificate.

The certificate then goes to your employer, and if the employer has suitable duties, then you are obliged to attend work and undertake those duties. The employer may engage a workplace rehabilitation provider to assist in designing a return to work program and ensuring that the duties you are asked to do are appropriate and in line with the restrictions identified on the certificate.



It is fair to say that these certificates do cause a reasonable amount of anxiety and confusion. Firstly, just to clarify what I have said above, the doctor is obliged to indicate that you are fit for alternative duties regardless of whether the employer has alternative

duties available. Once the certificate is completed, it is then up to the employer to decide whether they wish for you to come to work and undertake alternative duties or not. The employer can decide there are no alternative duties and tell you to stay at home, but that is the employer's decision, not the doctor's decision.

The workers' compensation scheme places a heavy emphasis on returning people back to the workplace as quickly as possible, even in a restricted capacity. There are several reasons for this. Firstly, it is well recognised that the longer someone is entirely out of work, the greater the likelihood that they will never return to meaningful employment. Secondly, long periods off work (often referred to as "lost injury days") can impact upon the cost of the workers' compensation insurance premium for the employer.

The workers' compensation scheme operates on **mutual obligations**. The employer and insurer have obligations to pay you a salary and cover the cost of your treatment. In return for accepting that salary, you must attend work and undertake duties that are medically appropriate, as indicated on your certificates. You must also be compliant with your treatment and attend appointments as arranged.

What If I Need Surgery?

If Dr Colvin recommends surgery and you agree to this, then the surgeon must apply to the insurer for approval to proceed with surgery. Having an approved workers' compensation claim does not automatically mean that the insurer will approve costs for surgery, although generally speaking it is very uncommon for them to decline approval for surgery. A request for approval for surgery will either be accepted, declined, or put on hold pending further medical reports. The insurer may request a report from the treating surgeon or an independent medical report from a specialist with similar qualifications.

Following surgery, you will receive certificates for a period of total incapacity, and then progress certificates indicating partial incapacity until such time as you are ready to return to normal duties.

Rehabilitation Goal

During the recovery period, the patient, doctor, employer, insurer and rehabilitation provider need to agree on a rehabilitation goal. That is, to determine whether the patient is likely to return to their previous occupation or whether, as a result of the injury, there may be some permanent restrictions, which would prevent them from returning to that occupation. In the setting of permanent restrictions, a decision may be made that retraining for an alternative occupation is required. There are avenues to access funding for retraining through the workers' compensation scheme.



Making a realistic decision about the rehabilitation goal fairly early in the recovery process is critically important for you as the injured worker. If you spend twelve months attempting to get back to a high demand manual job and ultimately you are unsuccessful in achieving that level of function, then it is possible to find that you have wasted twelve months, your claim is closed, and you have no job to go back to. Throughout the entire claim management period, the single most important thing to have at the top of your priorities is a meaningful job to go back to at the end of your recovery.

What Is A Common Law Claim?

Patients with severe injuries or multiple injuries, may be able to pursue a common law claim against your employer in the courts. To pursue a common law claim, you will need to have a minimum 15% whole person impairment. In order to determine that, you will require an impairment assessment from an approved medical specialist. To go down this path, you will require legal representation and it is likely that your lawyer will arrange for an appropriate impairment assessment to determine if you are eligible for a common law claim. Common law claims only apply where the injury arises from negligence on the part of the employer.

Common law claims are generally settled for much higher amounts because you have lost permanent earning capacity.

You must elect to pursue a common law claim within twelve months of lodging a workers' compensation claim. Once you lodge a common law claim, the wages payments will reduce. Refer to information on the [WorkCover WA website](#) for details.

Dispute Resolution

WorkCover WA offers a conciliation process. Advice on dispute resolution can be accessed through their website.

If this fails, it proceeds to arbitration. You can be represented by a lawyer or registered agent during these processes.

Finalising A Workers' Compensation Claim

All workers' compensation claims are ultimately finalised. Many patients are apprehensive about this process and some patients express a desire to keep their claim open indefinitely. Unfortunately, that is not practical or feasible. If the insurer was obliged to keep all claims open indefinitely, they would not have a viable business and

we would therefore not have a workers' compensation scheme. Insurers are entitled to close claims and it is legislated that they have that right.

A claim can be finalised once you have reached **maximum medical improvement**, [unless you choose to finalise it earlier]. That does not mean that you are fully recovered. Rather it means that you have made as good a recovery as you are going to make and there is no prospect of further improvements over time or improvement with further treatment.

Generally, you are likely to be deemed to have reached maximum medical improvement approximately twelve months post injury or twelve months post surgery. It is possible for claims to be extended beyond this time if your medical practitioner supports an extension of the finalisation date. It is not uncommon to extend the finalisation date for up to eighteen months post surgery for complex shoulder and knee reconstructive surgery.

In order to settle your claim, you will need to undertake a medical examination to determine your **percentage of permanent impairment**. This assessment is undertaken by specialists, such as myself, who have undertaken further qualifications to become an approved medical specialist for the purposes of impairment assessment. The assessment is undertaken using a rigid set of guidelines so that any two medical practitioners should come up with an identical assessment. That assessment is expressed as a percentage of **whole person impairment**. This figure is used to determine a financial settlement for your claim. For most patients, the settlement is in the order of thousands of dollars, very rarely tens of thousands of dollars. The settlement is an acknowledgement by the insurer that you may not have made a full recovery and that you are permanently impaired to some degree. It comes as a surprise to all patients that the assessment makes no allowance for pain. Pain perception is a very individual thing. It is impossible to quantify the impairment from pain, and therefore it is excluded from the assessment. The assessments are based on such things as what operation has been performed, what is the joint range of movement, is the joint stable, is there arthritis as a result of the injury, etc. The assessment also allows for exclusion of conditions that are pre-existing, such as arthritis predating the injury.

Conclusion

The workers' compensation scheme can seem very complicated and daunting. I have over twenty years experience in dealing with workers' compensation claims to assist you in navigating the system and making it as stress free as possible.

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