

## WORKCOVER – AN OVERVIEW (VIC)

Workers' compensation in Victoria is governed by the Workplace Injury, Rehabilitation and Compensation (WIRC) Act 2013. This Act was created to consolidate workers' compensation laws by compiling them into a single, simplified piece of legislation.

The WIRC Act replaced the Accident Compensation Act 1985, the Accident Compensation (Occupational Health and Safety) Act 1996 and the Accident Compensation (WorkCover Insurance) Act 1993. However, these Acts will continue to apply to claims made prior to 1 July 2014.

### What are the objectives of the WorkCover scheme?

The objectives of the WorkCover scheme are to:

- > reduce the incidence of accidents and diseases in the workplace
- > make provision for the effective occupational rehabilitation of injured workers and their early return to work
- > increase the provision of suitable employment to workers who are injured to enable their early return to work
- > ensure appropriate compensation under the legislation is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible
- > ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses
- > establish incentives that are conducive to efficiency and discourage abuse
- > enhance flexibility in the system and allow adaptation to the particular needs of disparate work situations
- > maintain a fully-funded scheme
- > in this context, to improve the health and safety of persons at work and reduce the social and economic costs to the Victorian community of accident compensation.

### Who can make a worker's compensation claim?



See WIRC Act 2013 (Vic) s. 3

A "worker" is defined as anyone who "performs work for an employer" or "agrees with an employer to perform work". This broad definition includes more than just the employees of a business – certain independent contractors, labour hire employees working for a host employer and even volunteers can make a workers' compensation claim in certain circumstances. For further clarification, please call the Workplace Relations Advice Line on (03) 8662 5222.

### Do I need WorkCover Insurance?

In Victoria, employers must register for WorkCover insurance if:

- > Their annual ratable remuneration (wages and benefits paid to workers) is greater than \$7500; **or**
- > They employ apprentices or trainees

### What can a worker claim?

If a work-related illness or injury has occurred, a worker can claim two things:

1. **Reasonable expenses** associated with treatment of the illness or injury
2. **Weekly payments** compensating the employee for loss of income due to the illness or injury. How much is paid is calculated on the worker's average weekly earnings prior to the injury.

## Employer's excess

If a claim is accepted, the employer is liable to pay the first 10 days of absence from work, and the first \$735 of medical and like expenses as an excess (subject to change annually). These costs are not reimbursed by the insurer, unless the employer has chosen the excess buyout option.

## Common law remedies

If a worker has suffered a "serious injury" as defined in the Act, he or she may also sue the employer for common law damages.

One of the intentions of workers' compensation law is to ease the burden on the judicial system by providing an alternative to litigation. Before court proceedings commence, an employee must seek a determination from WorkSafe that a "serious injury" has occurred.

## What kinds of illnesses/injuries are covered?

### Work-related injury/illness

 See WIRC Act 2013 (Vic) ss. 39, 46

The legislation provides that an injury can provide an entitlement to compensation if it arises "out of or in the course of any employment".

This definition is broadly worded - there is no single definition of what will and will not be deemed to be a work-related injury. The legislation does provide some clarity by listing several examples deemed to be "in the course of employment", such as where the worker is travelling for the purpose of their employment, or where they are injured whilst attending a compulsory training course.

## No-fault scheme

It is important to remember that Victorian worker's compensation is a "no-fault" scheme, meaning that if an injury is work-related, a worker will have an entitlement to compensation - it is irrelevant that the injury may have been caused wholly or partly by the actions of the worker.

Nevertheless, if a worker's injury was caused by a breach of safe work practices or company policies, disciplinary action may be appropriate.

## Who is covered by the WIRC Act 2013?

 See WIRC Act 2013 (Vic) s. 37


Workers' compensation varies from state to state. The WIRC Act prescribes that a worker's employment is connected with the State in which the worker usually works in that employment.

If this is unable to be determined, the worker's employment will be connected with either:

- > The State in which the worker is usually based for the purposes of that employment, or if this is unable to be determined;
- > The State in which the employer's principal place of business is located

If, after consideration of the above, the employment still cannot be connected with a particular state, a worker's employment is connected with the state where the injury occurred, as long as there is no place outside Australia which provides for compensation for the injury.

## What should I do if an employee lodges a WorkCover claim?

 See WIRC Act 2013 (Vic) s. 19

If an employee claims they have been injured at work, they are entitled to make a WorkCover claim. A business cannot lawfully refuse to accept a claim form.

1. Confirm with the employee in writing that you have received the claim. This can be done by completing the “Employer lodgement details” section on the “Worker’s Injury Claim Form” and giving the employee a copy.
2. An employer should ensure that the worker has completed all fields on the claim form.
3. Complete the Employer Injury Claim Report form. If you dispute liability, you should attach a letter outlining your reasons, with as much evidence as possible. It is difficult to dispute liability after the claim has been lodged.
4. Lodge the claim with your agent within 10 calendar days of receipt. A certificate of capacity must be included if the worker is claiming weekly payments. You should also include any relevant medical bills already incurred. Penalties apply if this time limit is not adhered to.
5. Following lodgement, an employer should commence planning the return to work process, even if liability is disputed.
6. The insurer must accept or reject the claim within 28 calendar days. During this time, if the employee is unfit for work, they will be entitled to take personal leave. If the claim is approved, this should be credited back to the employee. If the agent does not give written notice within the time limit, the claim will be deemed to have been accepted.
7. The employer will ordinarily have an excess payable if the claim is successful. If this is the case, the employer is obliged to pay for the first ten days of the employee’s weekly payments, and the first \$735 of the reasonable costs of medical and like expenses (indexed annually: current figure as of 2020/2021 financial year).

## The return to work obligation

 See WIRC Act 2013 (Vic) ss. 103-108

If a worker suffers a work-related injury or illness, an employer must immediately begin planning for their return to work and arrange **suitable employment** if they have a capacity to work.

An injured employee’s position must remain available for them to return to for a period of 52 weeks, called the **employment obligation period**. After this period has expired, an employer may withdraw suitable duties. Employment may be terminated if medical reports show that the employee has little or no prospect of returning to their role in an acceptable timeframe.



Even after the expiration of the employment obligation period, an employee will still have access to unfair dismissal and general protections claims. Additionally, if an employee who had made a claim is dismissed, the employer’s premium will substantially increase. The Victorian Chamber strongly recommends employers seek specialised advice prior to dismissing an employee who has been receiving workers’ compensation.

### Weekly Payments

If an employee is unfit to perform their pre-injury role, they will be entitled to compensation in the form of weekly payments until they are fit to return to full capacity. These earnings are based on the employee's **Pre-Injury Average Weekly Earnings (PIAWE)**, which includes:

- > The base rate of pay
- > Overtime and shift allowances
- > Commissions or piece rates
- > The monetary value of any fringe benefits, such as use of a motor vehicle, provision of residential accommodation, health insurance or education fees.
- > Salary sacrificing arrangements

### Schedule: Weekly Payments

	Entitlement – no return to work	Entitlement – return to work
First 10 days' time lost	Employer liable to pay at normal rate of pay, including any applicable penalty rates	Normal rate of pay
Day 11 – up to 13 weeks	95% of PIAWE, or the statutory maximum*	95% of PIAWE (or statutory maximum*), less current weekly earnings
13 weeks – 52 weeks	80% of PIAWE, or the statutory maximum*	80% of PIAWE (or statutory maximum*), less 80% of current weekly earnings
52 weeks – 130 weeks	80% of <b>PIAWE</b> , less overtime and shift allowances	80% of <b>PIAWE</b> less overtime and shift allowances (or statutory maximum*), less 80% of current weekly earnings

\* Indexed annually. As at 1 July 2020, the statutory maximum was \$2,460 per week.

### Accident Make-up Pay

Certain awards or industrial instruments have historically required an employer to “top up” the employee’s weekly payments to the level of their pre-injury earnings. This is known as “accident pay” or “accident make-up pay”.

In December 2014, accident pay provisions were phased out of the vast majority of awards. In October 2015, as part of the four-yearly review of modern awards, the Fair Work Commission handed down a decision reinstating accident pay provisions into many of the awards covering industries which had a prior history of accident pay entitlements. [See our fact sheet on accident pay for further information.](#)

## Can an employee receiving Workers compensation payments accrue and take annual leave and accrue and take personal leave?

The laws regarding Workers compensation are different state to state.

State	Accrue annual leave	Take annual leave	Accrue personal leave	Take personal leave
Victoria	Yes	Yes	No	No
New South Wales	Yes	Yes	No	Yes**
Queensland	Yes	Yes	Yes	Yes
Western Australia	Yes	Yes	No	No
South Australia	Yes*	Yes	Yes	No
Northern Territory	No	No	No	No
Tasmania	Yes	Yes	No	No
Australian Capital Territory	No	No	No	No

\*Different rules apply if the worker is on worker's compensation for over 52 weeks and is totally incapacitated

\*\*If the payment for personal leave is higher (worker would be afforded the difference between the personal leave and workers compensation)

Long service leave will be governed by the relevant state act or industrial instrument, whichever provides the employee's long service leave provisions. In Victoria under the Victorian Long Service Leave Act 2018 for example, all leave taken on account of illness and injury will contribute to continuous service for long service leave.

## Disputing a WorkCover claim

As a no-fault system, Australian worker's compensation laws can be difficult to challenge. An employer may dispute liability in two situations:

### 1. After receiving a WorkCover claim from an employee

If a worker gives an employer an injury claim form, and there are doubts as to:

- > Whether the illness or injury is one that provides an entitlement to compensation; **or**
- > Whether the illness or injury is work-related,

Then the employer *must* dispute liability at this point.

An employer should attach a letter to the claim form, providing as much evidence as possible. The insurer or relevant authority has 28 days to assess the claim, and may appoint an investigator to the matter. The agent may also refer the worker to attend an independent medical examination with an appropriate specialist.

### 2. After the worker's claim has been accepted

Once a claim has been accepted by the insurer or authority, it is far more difficult to have the decision overturned.

At this point, the employer cannot dispute whether the injury was work-related. An objection can only be based on either of the following grounds:

1. The claimant is not a "worker" within the meaning of the Act
2. The employer was not the correct employer of the worker at the time of the injury.

## Contacting the Victorian Chamber of Commerce and Industry

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The Victorian Chamber's specialist Workplace Relations Consultants can assist your business with all matters relating to WorkCover, including:

### **Disputing claims**

Whilst WorkCover is a no-fault system, employees must still have incurred a work-related injury to be entitled to compensation. If you believe a claim may be one that is fraudulent, frivolous or relates to an injury which occurred outside of the workplace, our consultants can assist in challenging the claim.

### **The return to work process**

Employers have an obligation to provide suitable employment as part of the rehabilitation process, however ensuring employees return to work following an injury and identifying suitable duties can present challenges. Our consultants can advise on a best-practice approach to ensure employees return to work as soon as possible. Remember – early return to work equals lower cost.

### **Claims management and premium reduction**

Claims remain Premium sensitive for a period of three years from the date of injury, meaning that historical claims may still be costing your business. The Victorian Chamber can identify what is premium sensitive and reduce ongoing costs through effective claims management.

### **Training and policy review**

Prevention is better than cure. Ensure that your OHS policies are up to date and employees are trained in safe work practices to prevent injuries from occurring in the first place, and to ensure you're complying with your OHS duty of care. For further assistance in customising and implementing employment practices in your workplace, please contact the Victorian Chamber's Workplace Relations Advice Line on **03 8662 5222**.

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