Fact Sheet

Who can make a claim?

Worker or contractor?

A standard employment relationship consists of workers and employers. A worker, for workers compensation purposes, is defined as:

'a person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing)'.

However, as many employment relationships are not standard, some people are also classified as **deemed workers** for workers compensation purposes. These classes of 'deemed workers' include, but are not limited to:

- Outworkers
- Salespersons, canvassers, and collectors
- Contractors under labour hire service arrangements
- Rural workers
- Boxers, wrestlers, referees and entertainers.

See Schedule 1 of the *Workplace Injury Management and Workers Compensation Act 1998* for a comprehensive list.

There are several factors, which need to be considered to distinguish an employee from a contractor. These factors are subjective and no single factor can be regarded as decisive. All factors must be weighed up to determine a person's employment status.

A **contractor** is more likely to:

- Be engaged to carry out a particular task using his or her own skill and judgement

- Employ others, delegate or sub-let work to another
- Be paid on the basis of a quotation for the job
- Supply his or her own tools and materials
- Carry on an independent business in his or her own name or under a business or firm name
- Be affected by PAYG tax arrangements.

Please note that an ABN by itself is not a definite indicator of a person(s) status.

A **worker** is more likely to:

- Be subject to direction from the employer as to the work to be performed and the time and manner in which it is performed
- Be required to actually carry out the work
- Be paid on a time basis
- Have tools and materials supplied by the employer
- Work exclusively for a single employer.

NOTE: A person may have been hired as a contractor and be a contractor for other purposes such as tax, but still be a worker for the purpose of workers compensation.

It should be noted that the status of a person for tax purposes bears no direct relationship to that person's status as a worker for workers compensation purposes.

WorkCover's Worker Status Service assists employers by providing certainty and clarity on the status of workers.

A worker status self-assessment tool has been developed to guide employers on the status of workers and is the first step in deciding if a private ruling may be needed. A self-assessment or private ruling is not needed if the person is a deemed worker as outlined above.

Making a claim

When a worker is injured at work, the employer, injured worker and Scheme Agent or insurer each have responsibilities to ensure that the injured worker is provided with benefits and assistance to recover and return to work safely and as soon as possible.

This section provides information on the responsibilities and processes for making a claim for workers compensation, including:

1. Notifying the Scheme Agent or insurer of a work related injury
2. What a worker must do if injured at work
3. What an employer must do when there is an injury at work
4. What to do if an employer does not have workers compensation insurance
5. What the Scheme Agent or insurer must do when notified of a work related injury
6. The process for making a workers compensation claim
7. The provisional liability process
8. The process for making a claim for permanent impairment
9. The process for a noise induced hearing impairment claim
10. The process for making a journey or work break claim
11. The process for making a claim for a psychological injury
12. Who can make a workers compensation claim.

Step by step claims process

Before making a workers compensation claim, an injured worker or their representative must advise their employer that an injury has occurred, and provide medical information.

Step 1: notify the employer as soon as possible

Step 2: record the injury/illness in the employer's Register of Injuries

Step 3: obtain a WorkCover medical certificate from the injured worker's nominated treating doctor or hospital

Step 4: notify the Scheme Agent or insurer of the injury (the Scheme Agent or

insurer can be notified by the employer, the worker or a third party)
Step 5: ensure that the medical certificate and any associated bills or expenses are given to the worker's employer.

Generally, once the Scheme Agent or insurer has been notified of an injury, the following will occur:

- The Scheme Agent or insurer will contact the worker, employer, and if necessary, the worker's nominated treating doctor
- Provisional liability payments will start within seven days of the insurer receiving notification of the injury
- If the Scheme Agent or insurer has a reasonable excuse to not commence provisional liability payments, the Scheme Agent or insurer will notify the worker within seven days of receiving notification of the injury.

In most cases, an injured worker does not need to complete a claim form if the Scheme Agent or insurer has sufficient information about the injury.

A claim form is only required if:

- The Scheme Agent or insurer has a reasonable excuse to not commence provisional liability payments and has notified the worker
- Weekly payments exceed the 12 week provisional liability period or medical expenses exceed $7500 and there is insufficient information to determine ongoing liability
- The injury has been notified but there is insufficient information to determine liability.

Initial injury notification

When a workplace injury occurs, the injury must be reported to the employer as soon as possible.

The details must be entered in the injury register.

Anyone can make initial notification of the injury to the Scheme Agent or insurer.

The employer has a legal requirement to notify the Scheme Agent or insurer within 48 hours of the injury being notified. Employers may avoid paying a claims excess if there is an injury by notifying their Scheme Agent or insurer within the required timeframes.

The initial notification can be made in a number of ways, electronically, in writing or by phone. Once notified, the Scheme Agent or insurer will give the notifier a notification number, this number will be used to track the notification.

When notifying an injury, the following information needs to be provided:

1. Worker's information – their name, residential address, contact details and date of birth
2. Employer's information – the business name, current business address and employer contact
3. Treating Doctor information – the name of the doctor or hospital where the injured worker is being treated
4. Injury or illness details – the date of the injury, description of how it happened and a description of the injury itself
5. Notifier information – the name of person making the notification, relationship to injured worker and contact details
6. Supporting information – anything else the notifier considers necessary.

What a worker must do

If you suffer a work-related injury you will not, in most cases, need to submit a claim form to receive workers compensation. Generally, weekly payments will commence within seven days of your employer's Scheme Agent or insurer being notified of your injury. Notification of an injury can be written or verbal and anyone can make initial notification of the injury. Your employer has a legal requirement to notify the Scheme Agent or insurer within 48 hours of your injury being reported.

If you've been injured at work you must:

- Notify your employer as soon as possible
- Have your name, the date and details of the injury recorded in the employer's register of injuries
- See a doctor and have the doctor complete a WorkCover medical certificate
- Sign the WorkCover medical certificate to:
    - Indicate the doctor has been chosen as your nominated treating doctor, and
    - Permit your nominated treating doctor to release information to the Scheme Agent or insurer and your employer to help with an injury management and return to work plan
- Give the completed medical certificate to your employer and attach any bills or receipts for treatment
- Participate and cooperate with the development and implementation of an injury management plan
- Comply with requests made by the Scheme Agent or insurer within seven days (this may include obtaining a WorkCover medical certificate or completing a claim form).

You should keep copies of all documentation relating to your injury.

Remember to make a note of the notification/claim number from the Scheme Agent or insurer and quote it on all documents you send to your employer and your employer's Scheme Agent or insurer. You should also keep a copy of any documents relating to your injury.

If you are off work and cannot do your normal job ask your doctor and employer about suitable duties. You must make all reasonable efforts to return to work as soon as possible.

Time limits for making a claim

A claim for workers compensation should be made within six months of the date of injury, accident or date of death.

If the failure to make a claim within six months is the result of ignorance,

mistake, or absence from the State a claim for workers compensation can still be made.

If a claim is not made within three years but relates to an injury resulting in death or serious permanent impairment of the worker, the claim may still be made. Contact your employer's Scheme Agent or insurer for further advice.

What an employer must do

When a workplace injury occurs the employer must:

Provide the injured worker with:

- First aid and/or transport to medical treatment
- The name of the employer's Scheme Agent or insurer
- The company name and contact details of the employer
- A workers compensation claim form (if requested by the worker).

Keep a register of injuries

The register of injuries must be readily accessible in the workplace and the employer must ensure all details of the injury are recorded in the register.

Notify WorkCover immediately on 13 10 50 of serious incidents involving injury or illness.

A serious incident requiring notification can include:

- A fatality
- An injury or illness, such as when a person:
    - Has a limb amputated
    - Is placed on a life support system
    - Loses consciousness
    - Is trapped in machinery or a confined space
    - Has serious burns.

Refer to clause 344 of the *Occupational Health and Safety Regulation 2001* for the full list of serious incidents.

Notify the Scheme Agent or insurer within 48 hours of becoming aware of an injury.

Provide the Scheme Agent or insurer with the:

- Date and description of injury, and details of how it happened

- Name, address, contact telephone number and date of birth of the injured worker
- Name and address of the company
- Name of the treating doctor and contact telephone number, or name of the hospital if the worker is hospitalised
- Name and contact details of the person making the initial notification, and their relationship to the worker or employer
- Date of consultation with treating doctor and a diagnosis
- Workers capacity to return to work and expected return to work date
- Details of any time off work
- Worker's wage details.

Note: Employers may avoid paying a claims excess if there is an injury by notifying their Scheme Agent or insurer within the required timeframes.

If provided by the worker, forward to the Scheme Agent or insurer:

- A WorkCover medical certificate within seven days
- Ongoing medical certificates, receipts and accounts for medical or other treatment, within seven days.

Provide suitable duties

- Provide suitable duties for the injured worker wherever possible and any assistance that will help the worker to recover and return to work quickly
- Notify your Scheme Agent or insurer if unable to provide suitable duties for the injured worker
- Cooperate and participate in the establishment of injury management and return to work plans for the injured worker.

Provisional liability

Provisional liability enables a Scheme Agent or insurer to start paying weekly benefits and medical expenses to an injured worker. Provisional liability allows weekly payments to continue for a maximum of 12 weeks and payment of medical expenses up to $7500.

Weekly compensation payments must begin within seven days of the Scheme

Agent or insurer being notified of your injury unless the Scheme Agent or insurer has a reasonable excuse.

If provisional liability payments do not commence, the Scheme Agent or insurer must notify you in writing of the reason/s. They must also provide you with advice on how to resolve the issue.

Part one of the *WorkCover guidelines for claiming compensation benefits* sets out the procedures for initial notifications and provisional liability.

Reasonable excuses to not commence provisional liability payments

An employer's Scheme Agent or insurer is obliged, in most cases, to begin provisional liability payments within seven days of being notified of a worker's injury.

In some cases, however, the Scheme Agent or insurer will have a 'reasonable excuse' not to start provisional liability payments. The reasonable excuses that a Scheme Agent or insurer can use to not commence payments within the usual seven days are listed below.

There is insufficient medical information

The Scheme Agent or insurer has a reasonable excuse if after attempting to obtain medical information it does not have sufficient information to establish that there is an injury or that the injury is related to the worker's employment.

However, the Scheme Agent or insurer may have to allow special consideration for workers in remote rural areas, where access to medical treatment is not readily available.

The injured person is unlikely to be a 'worker'

The Scheme Agent or insurer has a reasonable excuse if:

- the worker has been unable to verify their status as a worker (under NSW workers compensation legislation)
- the employer is able to verify that the injured person is not a worker.

View more information on workers and contractors.

The Scheme Agent or insurer is unable to contact the worker

The Scheme Agent or insurer has a reasonable excuse if it is unable to contact the worker after trying repeatedly, by phone, electronic means or at least once in writing.

The worker refuses to release information

The Scheme Agent or insurer has a reasonable excuse if the worker will not consent to the release or collection of personal and health information in relation to the workplace injury to determine the worker's entitlement to provisional payments.

The injury is not work related

The Scheme Agent or insurer has a reasonable excuse if the employer has provided evidence that the worker's employment is not a substantial contributing factor to the injury.

The injury is notified after two months

The Scheme Agent or insurer has a reasonable excuse if the notice of injury is not given to the employer within two months after the date of the injury.

However, the Scheme Agent or insurer may ignore this excuse if a liability is likely to exist and if it believes paying provisional payments to the worker will be an effective injury management intervention.

The injury is not a significant injury

If the injury is not significant – ie the worker is likely to be unfit to do their normal work for less than seven continuous days – then the Scheme Agent or insurer may extend the time to assess entitlements to 21 days after the initial notification is made.

Permanent impairment claims

If an injured worker has a permanent impairment as a result of a work related injury or illness, the worker may be entitled to receive statutory permanent impairment compensation. This compensation can be made in the form of one or two lump sum payments, depending on the level of permanent impairment. These payments are for:

- Permanent impairment sustained as a result of a work related injury or illness (section 66 of the *Workers Compensation Act 1987*)

- Pain and suffering arising from the impairment (section 67 of the *Workers Compensation Act 1987*).

View detailed information on benefits payable for permanent impairment and pain and suffering compensation and download the claim form.

To make a claim for permanent impairment compensation, the injured worker must have sustained a work related injury that resulted in permanent impairment with a whole person impairment of one per cent or more (for primary psychiatric and psychological impairments a minimum level of 15 per cent whole person impairment and for hearing impairment claims, a minimum level of six per cent binaural hearing loss) for injuries received on or after 1 January 2002.

A claim for compensation for permanent impairment and pain and suffering can only be made for injuries sustained on or after 1 January 2002 when the 'maximum medical improvement' has been reached ie the condition has been medically stable for the past three months and further recovery or deterioration is not expected in the next 12 months.

Once the Scheme Agent or insurer is satisfied that the injury has resulted in permanent impairment and has reached maximum medical improvement, the Scheme Agent or insurer must organise an assessment of permanent impairment, which will then determine the amount of lump sum compensation. The Scheme Agent or insurer will agree on selection of an assessor with the worker if the workers treating specialist is not a trained assessor of permanent impairment.

A permanent impairment claim form is not required if:

- A workers compensation claim for the injury is in progress
- The Scheme Agent or insurer has sufficient information regarding the injury
- The Scheme Agent or insurer is satisfied that the injury has resulted in permanent impairment and reached maximum medical improvement.

A permanent impairment claim form is only required when:

- A worker is making a claim for permanent impairment and pain and suffering (if applicable) and has not previously made a workers compensation claim related to the injury
- The Scheme Agent or insurer does not have sufficient information about the injury.

If a worker is also making a claim for a pain and suffering payment, the worker must also have a 10 per cent or more whole person impairment (or 15 per cent whole person impairment for a primary psychological injury) for injuries sustained on and after 1 January 2002 and complete a permanent impairment claim form.

The employer must:

- Send the claim to the Scheme Agent or insurer within seven days after receiving a claim
- Respond to requests from the Scheme Agent or insurer for more information within seven days
- Forward any documentation the employer receives concerning the claim within seven days.

If the Scheme Agent or insurer is satisfied with the supporting documentation, it may accept the worker's specialist's assessment and settle the claim for permanent impairment, or pain and suffering, without needing to obtain additional assessments.

Complying agreement

A complying agreement is a written agreement between the injured worker, the Scheme Agent or insurer regarding the lump sum payment for permanent impairment and, if eligible, for pain and suffering. Prior to making the payment to the injured worker, the Scheme Agent or insurer must be satisfied that the injured worker has obtained independent legal advice.

The Scheme Agent or insurer is required to record evidence that this advice has been obtained and the details of the agreement. The legal advisor claims the cost of providing their advice from the insurer in accordance with schedule 6 of the *Workers Compensation Act 1987*

Hearing impairment claims

Noise-induced hearing impairment can occur over a number of years and involve more than one employer. If you are a worker who is concerned about your hearing, you should consult your general practitioner.

If you have noise-induced hearing impairment as a result of exposure to noise in the workplace, you can make a workers compensation claim for the cost of reasonably necessary hearing aids and certain hearing tests.

You may also be entitled to make a claim for permanent impairment if you have a minimum of six per cent binaural hearing loss (both ears combined).

A workers compensation claim should be made as soon as possible after you become aware of your noise-induced hearing impairment. If you are no longer working in a noisy industry you make your claim on your last known noisy employer.

To make a claim for noise-induced hearing impairment, your must provide the following documents to your employer, Scheme Agent or insurer:

- Hearing assessment/audiogram
- Completed *Worker's injury claim form*
- Completed *Permanent impairment claim form* if you have six per cent or more binaural hearing loss (both ears combined).

Journey and work break claims

Journey claims

A worker may be able to make a claim for injuries suffered in the course of most journeys (without significant interruption or diversion) to and from the worker's:

- Home (place of abode) and place of employment
- Home, place of employment and educational institution if it is required for the worker's employment
- Home, place of employment and any other place the worker is required to attend for work-related reasons.

A worker will not be able to receive compensation for a journey claim if there is ‘serious and wilful misconduct’ by the worker. For example, if a worker is involved in a car accident on the way home from work and is found to be under the influence of alcohol or other drugs which contributed to an injury sustained in the car accident.

With car accidents the worker may have the option of claiming either workers compensation for personal injury or through compulsory third party (CTP) if another driver is found to be at fault.

Only personal injury to the worker can be claimed on a workers compensation journey claim, no vehicle or property damage can be claimed.

Work break claims

A worker may be able to make a claim for injuries received during an ordinary work break (eg morning tea or lunch break) or authorised temporary absence. However, the worker must not subject him or herself to ‘any abnormal risk of injury’ during a work break or authorised absence.

Disputed claims

Once an injured worker receives a notice from the insurer to decline liability or reduce the amount of weekly benefit, they can:

1. Accept the decision

2. Contact WorkCover’s Claims Assistance Service, union or legal representative for advice

If an injured worker requires any assistance in relation to the notice they can contact WorkCover’s Claims Assistance Service on 13 10 50, their union or a legal representative.

3. Disagree with the decision and request that the insurer conduct a further review of the decision

Attached to the dispute notice will be an application form for the injured worker or their representative to complete. On the application form the injured worker should explain why they are requesting the review attaching any additional information that they think is relevant to the decision.

The insurer is required to respond back to the worker in writing within 14 days

of receiving the request for a review. The insurer will either decide to accept the claim or maintain their decision and issue a revised notice, with any additional information relevant to the decision.

If a dispute is lodged in the Workers Compensation Commission the parties can only rely on information included with the dispute notice or application for review. Therefore it is important for an injured worker to attach all relevant information at the review stage as they will be precluded from introducing new material after an application has been lodged at the Workers Compensation Commission.

There may be instances when an insurer inadvertently fails to attach all relevant documents or communicate everything they are required to in the notice. The insurer has an obligation to remedy any defective dispute notices as soon as they become aware of the defect. In the first instance, the injured worker should contact the insurer and ask them to remedy the defect. If they do not, then the injured worker can contact WorkCover's Claims Assistance Service on 13 10 50 or ask their union or legal representative to assist them.

4. Lodge an application with the Workers Compensation Commission

If the worker is satisfied that the insurer has considered all of the relevant issues in making their decision to decline the claim and they disagree with the merits of the decision they can choose to lodge an application to dispute the decision with the Workers Compensation Commission.

The Workers Compensation Commission provides detailed information on resolving disputes or you can call WorkCover's Claims Assistance Service on 13 10 50 for more information.

Injury management disputes

WorkCover has established the Claims Assistance Service (CAS) to help resolve any problems that may arise during the workers compensation claims process.

CAS provides injured workers, employers and insurers with assistance about:

- Payment of benefits
- Delays concerning decisions about treatment and medical expenses
- Reporting of injuries
- Disputes about suitable duties.

Disagreements about suitable duties

Disagreements about suitable duties may arise when, for example:

- The injured worker refuses an offer of suitable duties
- The employer does not offer duties
- The treating doctor is reluctant to agree to suitable duties
- The injured worker doesn't progress through the duties provided to return to pre-injury duties.

In these cases, an injury management consultant or an approved workplace rehabilitation provider can help. Disputes about suitable duties may be lodged with the Workers Compensation Commission.

Disagreements about medical treatment

A second opinion can be requested from another independent doctor.

The insurer can also refer the injured worker to one of WorkCover's approved independent consultants for a review about, for example, physiotherapy, osteopathic, chiropractic, remedial massage therapy and psychological / counselling treatment.

If the dispute cannot be resolved the matter may be referred to the Workers Compensation Commission.

Workers Compensation Commission

The Workers Compensation Commission is an independent statutory tribunal within the justice system in New South Wales and handles disputes about:

- Weekly compensation
- Suitable duties
- Medical and related expenses
- Permanent impairment

- Pain and suffering
- Death of a worker
- Payments for damages to personal property, such as clothing and spectacles.

You can contact the Workers Compensation Commission at registry@wcc.nsw.gov.au or call 1300 368 040 or call WorkCover's Claims Assistance Service on 13 10 50 for more information.

For more information please contact your union. This Literature is recommended as a guide only and is not a substitute for professional or legal advice. If you need clarification or further advice please consult your Union for further information or Contact the Workers Health Centre. The ***Workers Health Centre*** *is a non-profit organisation that has provided workers with quality health and safety services since 1976.*