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INJURED AT WORK



COMPENSATION LAW
INJURIES AT WORK

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INJURED AT WORK?

If so you may be interested in a lawyer's response to the following questions:-

1. What do I have to do if I am injured at work?

If your employer has an incident or injury reporting procedure you should fill in an incident report and keep a copy.

If you have incurred medical expenses and/or if you need time off work you should fill in a worker's injury claim form. If your employer does not have these they are available from the Worksafe Victoria website. Just put "claim form" in the search engine and you can then download, print and fill in the form.

2. How long do I have to lodge a claim?

A claim for weekly payments must be completed as soon as possible after an injury and must be accompanied by a Worksafe Certificate of Capacity completed by your doctor.

A claim for medical and reasonable out of pocket expenses must be made within six months of the service being provided.

3. What do I do if my claim is accepted?

- » Continue to send Certificates of Capacity to your employer.
- » Request prior approval before accessing certain treatment (contact the Worksafe agent if you are uncertain if prior approval is required).
- » Send treatment invoices or receipts to your employer unless or until advised to send them to their Worksafe agent.
- » Then ask your treatment providers to bill the Worksafe agent directly.
- » Participate in any return to work planning.
- » Be aware that you may be required to attend an independent medical examination.

4. How often do I need to get a medical certificate?

The first medical certificate submitted cannot exceed 14 days. Thereafter certificates can cover up to 28 days each. These certificates should be provided by your treating medical practitioner.

5. What do I do if my claim is rejected?

If you are unhappy with a decision made by your employer's Worksafe agent you can lodge a Request for Conciliation with the Accident Compensation Conciliation Service ("ACCS"). This is a free independent service offered by the Victorian Government to help resolve disputes.

Request forms can be downloaded from the ACCS website www.conciliation.vic.gov.au.

Enter "request for conciliation form" in the search engine, download, print and complete.

A request for conciliation is required to be lodged within 60 days of receiving a decision about your claim that you wish to dispute.

You should attach to the Request for Conciliation a copy of the decision of the Worksafe agent that you wish to dispute.

6. What do I do if the Worksafe agent simply fails to respond to a treatment request?

If a dispute concerns a failure by the Worksafe agent to respond to a request within a reasonable period, then you can lodge a Request for Conciliation with the ACCS. It should be accompanied by the request that was made to the Worksafe agent to which they have failed to respond.

7. How does my employer or their Worksafe agent calculate my weekly payments and work out what to pay me?

Weekly payments are based on a worker's average ordinary earnings during the period prior to their injury. For most workers their "pre-injury average weekly earnings" ("PIAWE") is calculated by averaging their earnings over the 52 weeks prior to their injury. If a worker has been with their employer for less than 52 weeks the relevant period is their period of employment. Periods of unpaid leave and weeks not worked are excluded from the calculation of PIAWE.

For the first 52 weeks of weekly payments the PIAWE rate will include any overtime and shift allowances.

If a worker receives a non-pecuniary benefit or has a salary packaging or salary sacrifice arrangement, the value of his may be included in their PIAWE.

For the first 13 weeks a worker is entitled to 95% of their PIAWE. After 13 weeks a worker is entitled to 80% of their PIAWE. In addition a worker may have an entitlement to make up pay under their contract, EBA or award.

Weekly payments are subject to a maximum amount which is twice Victoria's state average weekly earnings.

Worksafe Advisory Service have a free call number 1800 136 089 and you can contact them if you have any concerns or questions about your PIAWE rate.

8. What happens if I have suffered a permanent injury?

If you have a work related injury or illness that has resulted in a permanent impairment you may be entitled to a lump sum payment called an impairment benefit.

An impairment benefit payment is separate from any compensation for lost income and medical expenses.

An impairment benefit is a once off payment and in order to make a claim you must wait until your injury has stabilised. An impairment claim can usually only be made 12 months after the date of your injury (unless your injury stabilises before then).

You can download a claim form from the Worksafe website.

An injury is considered stable if its effects are not expected to change significantly over time or after further treatment.

Whilst legal representation is not necessary to make an impairment benefit claim you do have the right to legal representation if you choose.

Some legal costs can be claimed, provided you are successful in obtaining an impairment lump sum.

Impairment levels are measured using the American Medical Association Guides to the Evaluation of Permanent Impairment Fourth Edition (unless the impairment is psychological in which case the impairment is measured using the Guide to the Evaluation of Psychiatric Impairment for Clinicians).

After you lodge your claim the agent will arrange an impairment assessment. This is done by a doctor specially trained to evaluate permanent impairment under the above guidelines.

The doctor will then prepare a report, providing a percentage score describing the level of your impairment for your assessed injury. A copy of the report will be sent to the Worksafe agent.

The agent will then write to you indicating whether they accept liability for each of the injuries you have claimed and determining the level of permanent impairment for each accepted injury and the amount of your entitlement (if any).

The legislation sets out the formula that the agents must use to calculate your impairment benefit.

The agent has up to 120 days to determine your claim.

If the impairment assessor says your injury is not stable you will need to wait until your injury has stabilised before you can be assessed again.

You have 60 days from receiving the decision of the Worksafe agent to accept or reject the decision with respect to liability for each injury claimed, the assessment of your level of impairment and/or the calculation of your impairment benefit.

If you accept the decision in its totality your impairment benefit will be paid by the Worksafe agent within 14 days.

If you dispute the liability decision with respect to a claimed injury by the Worksafe agent you must also lodge a Request for Conciliation in relation to the decision.

The matter will then be referred by the ACCS for a conciliation conference.

If you reject the assessment of your level of impairment by the Worksafe agent this dispute will be referred to a Medical Panel for determination. The finding of the Medical Panel is binding on both the Worksafe agent and you.

If you are dissatisfied with the impairment benefit calculation then you can request conciliation in relation to the decision although the calculation of your benefit entitlement is fixed by the legislation and entirely dependent upon the assessment of your level of impairment.

9. Can I sue for damages for my injuries?

If you have a work related injury or illness you may have the right to sue your employer or a third party for damages.

To be entitled to bring proceedings for damages in Court your injury must be “serious”.

If you are assessed as having an impairment of 30% or more your injury will be deemed to be “serious”. Alternatively, you must prove to the satisfaction of the Worksafe agent or the Victorian County Court that you have suffered a “serious” injury as defined by the legislation.

If you wish to bring a claim for damages you should seek legal advice, as a serious injury application must be accompanied by numerous documents and it is important that these documents show that you have suffered from a serious injury.

Even if you have a deemed serious injury (if your impairment has been calculated at 30% or more) you should obtain legal advice before seeking to bring a claim for damages.



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