

Workers guide to workers compensation

Guide

Disclaimer

This publication contains information regarding workers rehabilitation and compensation. It includes some of your obligations under the *Return to Work Act 1986* (the Act) that NT WorkSafe administers. The information provided is a guide only and must be read in conjunction with the appropriate legislation to ensure you understand and comply with your legal obligations. (Version 1.5 – September 2023)



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Definition of a worker

A worker is a person who is employed on a casual, part-time or fulltime basis. This includes visa workers and labor hire workers.

The pay as you go (PAYG) test applied under the Australian Taxation Office (ATO) laws is used to determine who is required to be covered for workers compensation in the Northern Territory. The ATO website (<https://www.ato.gov.au/>) has guidelines and online tools to assist you to determine an individual's employee/contractor status.

Interpretation of a worker is:

Someone who performs work or a service for another person under a contract and is an employee for PAYG purposes as defined by the Taxation Administration Act, **even if the employer is not withholding tax when they should be.**

When is a worker covered for workers compensation?

In the Northern Territory a worker is entitled to compensation for any personal injury or disease or an aggravation of an injury or disease that occurs:

- during the course of employment, or
- by any incident arising out of employment

Claims for most journeys to and from work involving the use of a motor vehicle are excluded. Journeys that are considered to be in the course of employment are not excluded. Examples are where the journey is to or from a workplace other than the worker's normal workplace at the request of the employer or travelling outside normal work hours as a result of a call out by an employer, whether paid for the call out travel or not.

Injuries from motor vehicle accidents while on a normal journey travelling to or from work are not covered by workers compensation but may be claimed under the Motor Accidents Compensation scheme (MAC), which is administered by the Territory Insurance Office (TIO).

Injuries to and from work that do not involve the use of a motor vehicle are covered. Eg. walking or riding a push bike.

Claim forms

To claim for workers compensation entitlements the worker must submit a Northern Territory workers compensation claim form. Claim forms can be obtained from the employer, the insurer or NT WorkSafe, and are available on the NT WorkSafe website (www.worksafe.nt.gov.au).

The worker must complete Part I of the claim form, pages 3 to 5 and submit the claim form to the employer, along with a medical certificate of capacity from a doctor if the claim is for loss of income.

Where the claim form is for medical expenses only, the worker needs only to provide the account or receipt with the claim form.

Note: The worker cannot claim by submitting a medical certificate of capacity only.

How to make a claim

The employer should be informed of a work related injury or disease, as soon as practicable. This can be done either verbally or in writing.

Videos

NT Worksafe have developed a number of videos providing information on workers compensation in the Northern Territory. Please see below, videos that will assist you when lodging a workers compensation claim.

Making a claim

This short video will explain the return to work process and what help is available to workers who have been injured at work. https://www.youtube.com/watch?v=PQFWIp_V8_4

Aboriginal workers – workers compensation

This short video will explain if you are hurt at work you can make a workers compensation claim. You will see and hear how to get that money if you are injured and cannot work.

Languages available:

English - <https://www.youtube.com/watch?v=qwvaBxobPOo>

EC Arrernte – https://www.youtube.com/watch?v=0_ueDmnTQdo

Kriol – <https://www.youtube.com/watch?v=GVkJgQ14YHc>

Warlpiri – https://www.youtube.com/watch?v=LO4A_nlCfaY

Yolngu Matha - <https://www.youtube.com/watch?v=0ArEP6r9dv8>

Visa workers – a guide to workers compensation

This short video will help you understand your workers compensation rights as a visa worker in the Northern Territory. https://www.youtube.com/watch?v=EN2neG_zb8M

Important note:

A worker has six (6) months to lodge a claim for workers compensation from the date of the injury or becoming incapacitated from a disease. In some circumstances a claim can be made after 6 months.

- before giving the claim form to the employer, a worker should take a copy and keep this information for their records for the duration of the claim. The worker should hand, email or post the claim form to the employer as soon as possible. If posting the claim form to the employer it is advisable to send it by registered mail.
- a worker should be aware that a medical certificate of capacity, from a medical practitioner is essential for your claim but does not on its own, determine a connection to your work or decide liability. Liability is determined having regard to the injury and the relationship to the worker's employment.

- the employer must complete Part 2 (page 6 - 7) of the claim form and submit it to their workers compensation insurance company within 3 working days of receiving the claim from the worker.
- the insurer must make an initial decision on the claim within 10 working days of the employer receiving it. The insurer will manage and make all the decisions regarding the claim on behalf of the employer.

Claim Decisions

The insurer's decision must be one of the following:

Accept liability

Payment of benefits will commence. These benefits will include lost earnings, reasonable medical and rehabilitation expenses.

Reject liability

The worker will be formally advised in writing of the reasons for rejection and the worker's rights of appeal.

Defer liability

The deferral gives the insurer up to 56 days to obtain further information, however, the insurer must make a final decision to accept or dispute the claim before 56 days have expired from the date of the decision to defer.

During the period of the deferral the worker is entitled to weekly payments of compensation as well as reasonable medical and rehabilitation expenses.

This benefit excludes hospital inpatient and associated surgical costs as well as costs of interstate evacuations.

Entitlements

What are my entitlements – guide for workers video

This short video will explain what you may be entitled to receive if you make a workers compensation claim following a workplace injury - https://www.youtube.com/watch?v=05Mf1pc_RMk

Weekly compensation – first 26 weeks of incapacity

If the insurer accepts liability for the worker's claim, then weekly payments of compensation must be made by the employer commencing within 3 working days of the decision to accept the claim. A worker is entitled to receive their **normal weekly earnings** (NWE) for the first twenty-six (26) weeks of total or partial incapacity.

However if a worker has a work capacity and returns to work (for example on limited hours) then the compensation entitlement will be the difference between the income received for that work and their NWE.

NWE is the gross remuneration paid to a worker. NWE also includes overtime where the overtime was worked in a regular and established pattern; shift allowance where worked in a regular and established pattern; over award payments; climate allowance; district allowance; leading hand allowance; qualification allowance; service grant; but does not include any other allowance.

Benefits received in a form other than money or a credit for meals, accommodation or electricity, may also form part of NWE. There is a cap of 35% of average weekly earnings on non-cash benefits.

Non-cash benefits for meals, electricity and accommodation do not apply to fly in fly out or drive in drive out workers.

The average weekly earnings (AWE) is published by the Australian Statistician for the Northern Territory for 'Full-Time Adult Persons, Weekly Ordinary Time Earnings', published by the Australian Statistician before January each year.

For further information see NT WorkSafe information bulletin *Average Weekly Earnings Figures*.

A worker who has two or more jobs is entitled to include the remuneration from the other jobs provided that they were employed in the other job or jobs for at least 6 weeks prior to the injury.

See the NT WorkSafe bulletin *Normal Weekly Earnings* for more detailed information.

Weekly compensation – after 26 weeks – long term incapacity

During the first 26 weeks when a worker is incapacitated for work, their compensation payments are paid at their normal weekly earnings. The first 26 weeks is an aggregate of weeks of paid incapacity compensation.

After 26 weeks, compensation payments are paid at 75% of the worker's loss of earning capacity or 150% of Average Weekly Earnings, whichever is the lesser. Loss of earning capacity is the difference between the amount a worker is reasonably capable of earning in a week and their pre-injury normal weekly earning.

Low to moderate income earners, mainly those with dependants, may be entitled to have a higher percentage than 75%, but not more than 90% applied to their loss of earning capacity.

To determine if an increased benefit applies, you take:

- 50% of the average weekly earnings and if applicable, add
- 12.5% of average weekly earnings for a dependent spouse and 6.25% of the average weekly earnings of each prescribe child.

If the amount applied is more than 75% of a workers normal weekly earnings, then that percentage is applied for the calculation on long term incapacity. Noting this is to a maximum of 90%.

Example: Minimum benefit

Assume that a workers normal weekly earnings are \$1200 and is to be based on the average weekly earnings in 2016 of \$1513.50

Worker	Dependent Spouse	Child
50% of average weekly earnings = \$756.75	12.5% of average weekly earnings = \$189.19	6.25% of average weekly earnings = \$94.59

Spouse and one child

The long term weekly benefit for this worker = \$1040.53

75% of the workers normal weekly earnings (\$1200) = \$900

Because the amount of the average weekly earnings calculation is more than 75% of the workers normal weekly earnings, the average weekly earnings calculation (\$1040.53) is then taken as a percentage of the workers normal weekly earnings (\$1200), i.e \$1040.53 as a percentage of \$1200.00 = \$86.71%

Spouse and two children

If the same worker had a dependent spouse and 2 children the workers average weekly earnings calculation would be \$1135.13. This amount taken of the workers normal weekly earnings of \$1200.00 would be 94.59%.

Because this is greater than 90% of the workers normal weekly earnings, 90% is applied to the workers loss of earning capacity.

Formal notice is required to be provided to the worker of the pending step down and the step down does not take effect until 14 days after the worker has been notified in writing.

This step down is known as a statutory event in relation to compensation payments and does not affect a workers entitlements to compensation for medical, surgical and rehabilitation treatment, family counselling and other costs.

Entitlement may change after 104 weeks

At any stage of long term incapacity (after 26 weeks) a worker can be deemed to have an earning capacity.

Up until 104 weeks of incapacity has elapsed, suitable employment must be reasonably available.

After 104 weeks (2 years) of total or partial incapacity, the worker, once assessed, may be deemed to have an earning capacity in the most profitable employment that could be undertaken by that worker, whether or not such employment is available to the worker. The worker's entitlements may be reduced or ceased accordingly.

Note:

- the 104 weeks (2 years) is calculated from the first day of total or partial incapacity
- the assessment is carried out by appropriately qualified medical practitioners and allied professionals

Employer contributions to superannuation not included

Employer contributions to superannuation are **not** included in the calculations of normal weekly earnings with regards to workers compensation benefits under Section 49 of the Act.

Capping of weekly benefits to 260 weeks (5 years)

Workers who suffer an injury after 1 July 2015 are limited in duration to 260 weeks of paid compensation payments (not calendar weeks). Payments for medical and other treatment costs will continue for an additional 12 months before ending.

This does not apply to workers who have suffered a more serious injury and are assessed as having a permanent impairment of 15% or more. These workers are not time limited and depending on work capacity may be entitled to compensation payments until pension age.

Interest for late compensation payments

If the employer pays the worker more than 7 days after the end of the week in which compensation was due, interest is payable. The legislation sets out how the interest amount is calculated.

If the workers claim is disputed and a decision is made at a later date to wholly or partially accept the claim, interest will be payable from the date payment would have been required if the claim had not been disputed.

Medical treatment and expenses

Reasonable hospital, medical and other expenses resulting from a work injury may be claimed.

If liability for a claim has been accepted, all reasonable medical and rehabilitation services are paid for by the insurer through the workers compensation scheme.

Reasonable expenses incurred include:

- medical, surgical and rehabilitation treatment
- hospitalization in a public or private hospital
- pharmaceutical expenses
- travelling or being transported to attend for treatment or hospitalisation, including a kilometre allowance for use of a private vehicle, see NT WorkSafe information bulletin Average Weekly Earnings Figures for current kilometre allowance rate
- accommodation costs incurred while away from the normal place of residence to attend for treatment
- upgrading of job skills or retraining in order to undertake suitable employment
- workplace, vehicle and home modifications
- household services, e.g. domestic help
- in some circumstances – child care services

Where a worker's medical, surgical and rehabilitation treatment is given by, or under the direction of the worker's treating medical practitioner, the treatment won't be able to be suspended or refused by the employer/insurer unless:

- there is a dispute that the treatment relates to the work related injury
- there is a dispute based on a supporting medical opinion held by the employer

Payment of reasonable expenses for family counselling

Being on workers compensation can create additional psychological stress on families and financial stress when compensation is reduced. A benefit is provided for counselling for the worker and the worker's family members with the intention that better outcomes will assist the process of rehabilitation.

The amount payable is a maximum of 1.5 times the Average Weekly Earnings (AWE). For further information about this benefit talk to your insurer's case manager.

Vocational rehabilitation expenses

If specialist services are required to help the worker return to work, an approved vocational rehabilitation provider will assess their situation and provide assistance if appropriate.

Note: To keep receiving weekly payments, a worker has an obligation to participate in a rehabilitation program or undertake suitable alternative duties provided by the employer.

Medical consultation

The worker has the right to select, or change, their own treating doctor.

However, the worker should advise the insurer as soon as practicable if they change their treating doctor, as the insurer may have to inform the doctor of any impending Independent Medical Examination.

Workers have a right to privacy during medical consultations. If an employer, insurer or rehabilitation provider need to discuss the workers progress or return to work options they should not impose on the rights of the worker to privacy during their medical consultation.

When an employer, insurer or rehabilitation provider need to consult with a workers treating doctor they should either organise back to back appointments or arrange to dovetail the discussions as part of a long consultation.

Independent medical examination

An employer may require a worker who has made a claim for compensation to submit at reasonable intervals to an examination by a medical practitioner provided and paid for by the employer. When this occurs the medical practitioner is chosen by the insurer.

An independent medical examination provides the insurer with an independent opinion regarding the worker's injury and treatment to assist with decisions about rehabilitation, recovery at/return to work and entitlements to compensation.

An independent medical examiner (IME) is a specialist with qualifications relevant to the injury sustained. They do not replace a worker's nominated treating doctor. They review the injury and provide independent commentary however cannot treat or offer to treat the worker as a patient.

When requested to attend an independent medical examination, workers must make themselves available for the examination. Failure or refusal to attend the examination may result in the entitlement to weekly payments being cancelled.

Permanent Impairment

If the worker is left with a permanent impairment as a result of a work related injury or illness there is provision under the RTW Act for a payment in respect of that permanent impairment.

Payment to the worker may be made to compensate for the permanent impairment when the injury or illness has reached maximum medical improvement.

A payment for a permanent impairment does not finalise the claim. The worker's rights to weekly compensation benefits, medical or rehabilitation expenses continue.

See the NT WorkSafe bulletin *Average Weekly Earnings Figures* for current permanent impairment payment details.

No age limited to claiming workers compensation

A worker of any age can make a claim.

Limits only apply to how long an older person is entitled to be paid compensation. As a guide:

- a worker who is injured more than 2 years before their pension age - the entitlement to weekly payments ceases on the pension age
- if a worker is injured within 2 years of their pension age, the worker is entitled to a maximum of 104 weeks of compensation.
- a worker already older than their pension age will get a maximum 104 weeks compensation.

What to expect from the employers insurer

The insurer must make an initial decision on the claim within 10 working days of the employer receiving it.

The insurer will manage and make all the decisions about the claim on behalf of the employer and should supply all workers who claim with general information about their claim. Injured workers will be given the name of their case manager and a direct telephone number for personal contact.

For accepted claims

Including but not limited to:

- an explanation of the entitlement based on normal weekly earnings, including an invitation to receive further detail on how compensation was calculated. Workers should be informed that they may have an entitlement to be paid for the value of benefits received in a form other than an amount of money paid or credited for meals, accommodation or electricity (referred to as non-cash benefits)
- an outline of entitlements (e.g. reasonable medical expenses)
- travelling costs for treatment
- obligations in relation to the rehabilitation process
- information that if workers are unable to pay in advance for the cost of medications that they should discuss their circumstances with the insurer

- reduction in weekly benefits after receiving an aggregate of 26 weeks compensation payments
- for long term incapacity the implications of re-assessing loss of earning capacity after 104 weeks having regard to most profitable employment.
- information should be included that any action to reduce payments will be subject to the right of appeal.

It is acceptable for information to be provided at appropriate trigger points rather than providing a lot of information that may not be relevant when a claim is first made.

For deferred claims

The letter from the insurer must provide full information about the deferral and the entitlements to compensation during the deferral period.

For disputed claims

Formal notice must be provided, including information on Mediation.

If a Deferred Claim or Disputed Claim is subsequently accepted, then the information outlined for Accepted Claims must then be supplied.

Internal dispute resolution

All insurers offer an Internal Dispute Resolution Process (IDRP) that provides a 5 working day response time to a worker for a review of the decision made on the claim. An IDRP is an effective mechanism to quickly remedy administrative oversights.

Dispute resolution video

Please watch our short video that will explain your options if there is a complaint or dispute with your workers compensation claim - <https://www.youtube.com/watch?v=bPaU7Qhd3Z0>

Further information is available on dispute resolution on the NT WorkSafe website.

What to expect from the employer

It is the employer's responsibility to forward the completed claim form along with all other documentation to their insurance company within 3 working days of receiving the claim from the injured worker.

If the claim is accepted or deferred the employer is responsible for making weekly payment of incapacity compensation to injured workers.

The employer must:

- take reasonable steps to provide the injured worker with suitable employment
- produce a return to work plan, developed and agreed between the employer and worker for any injury that involves incapacity of more than 28 days.
- as far as practicable, participate in efforts to retrain the injured worker
- assist the injured worker with their rehabilitation program.

If the worker is unable to return to their normal job, their employer should determine if there is another job or a combination of jobs that the worker might be able to do. This might involve getting an accredited vocational rehabilitation provider to assess the suitability of the duties, and make recommendations regarding ergonomics and workstations etc.

The employer might also involve or consult with the treating doctor, fellow workers or union representatives.

If the employer is unable to provide the worker with suitable employment, the employer in consultation with the insurer must explore other work options including the alternative employer incentive scheme developed by NT WorkSafe.

For further information see NT WorkSafe information bulletin *Alternative Employer Incentive Scheme*.

The worker may, through their own employment search, acquire a job with an alternate employer if their pre injury employer is unable to provide the worker with suitable employment. If this occurs, the worker must discuss with their insurer and if applicable, their vocational rehabilitation provider.

An employer is not able to dismiss a worker for a period of 6 months following the date of injury unless during that period the worker ceases to be totally or partially incapacitated because of the injury. This does not apply if the employer proves the worker was dismissed on the grounds of serious misconduct.

What is expected from the injured worker

The worker should inform the employer of a work-related injury or disease as soon as practicable. This can be done either verbally or in writing.

Immediately notify the insurer if they return to work with an employer (other than the employer in whose employment the injury occurred).

Participate in any examination by a medical practitioner provided and paid for by the insurer at reasonable intervals.

If the worker is receiving weekly payments of compensation because they are incapacitated for work, ensure that the employer is provided with a medical certificate of capacity for the period that they are incapacitated for work.

Injured workers are expected to participate in injury management in accordance with the legislation, cooperating in establishing a return to work program and participating in a cooperative manner in a return to work program, including attending appointments as required. A worker will put their compensation payments at risk if they fail to comply with a return to work plan provided by the employer.

The worker should discuss with their treating medical practitioner and employer what duties they feel they can realistically do, given their injury. It is reasonable to expect a worker to allow their employer to discuss return to work options directly with their treating medical practitioner.

Further information:

Any enquiries regarding the management of claims should firstly be directed to the employer's workers compensation insurer.

Dishonesty by an injured worker

The employer has a right of recovery where an injured employee has acted dishonestly, the claim is fraudulent, or an injured employee has obstructed or delayed the determination of the claim and liability is subsequently determined not to exist.

The role of NT WorkSafe

The role of NT WorkSafe is to administer and enforce the *Return to Work Act* and to further the objects of the legislation in other ways.

NT WorkSafe can give information on rights, obligations and processes that are provided for in the legislation but it does not have the role or the legislative power to review claims decisions made by insurers. This is solely a matter for negotiation between the parties or for the Courts to decide.

Where a worker is aggrieved by a decision made by an insurer they may apply to NT WorkSafe for Mediation.

An application for mediation must be in writing and may be emailed, posted, hand-delivered, or faxed to NT WorkSafe. You can either use the Notice of Decision and Rights of Appeal form provided by the insurer or the Application for mediation form available on the NT WorkSafe website. An independent Mediator will be appointed.

The role of the mediator for mediation conferences

The Mediator facilitates the resolution of workers compensation disputes by involving all parties in an informal process to achieve a mutually acceptable agreement.

The role of the Mediator is to:

- assist the parties to achieve resolution
- be even handed and fair
- maximize flexibility and informality, and
- be prompt and timely in the conduct of Mediation processes and in dealings with the parties.

The Mediation process is designed to ensure that matters do not unnecessarily proceed to the Courts. Mediation is a pre-condition to taking a matter to the Work Health Court.

Work Health Court

The Work Health Court is established by the *Return to Work Act* with the power to hear and determine all claims for compensation and questions incidental to or arising out of such claims.

An application to the Work Health Court should be made within 28 days of the party receiving a Certificate of Mediation, although the Court has the power to extend the 28 day time limit.

Contact us

For further information please contact us on 1800 250 713, facsimile (08) 8999 5141, via email at datantworksafe@nt.gov.au or go to the NT WorkSafe website at www.worksafe.nt.gov.au