

# **Employers 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* (RTW 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 – March 2021)



## Creative Commons

All material presented in this publication is provided under a Creative Commons Attribution 3.0 Australia licence.

For the avoidance of doubt, this means this licence only applies to material as set out in this document.

The details of the relevant licence conditions are available on the Creative Commons website as is the full legal code for the CC BY 3.0 AU licence.

Reviewed March 2021

# Contents

<b>Workers compensation insurance</b> .....	<b>1</b>
Workers compensation insurance – guide for employers.....	1
<b>If you don't have workers' compensation insurance</b> .....	<b>1</b>
<b>How do I arrange insurance?</b> .....	<b>2</b>
<b>When is a worker covered for workers compensation?</b> .....	<b>2</b>
<b>Claim forms</b> .....	<b>2</b>
<b>Receiving a claim</b> .....	<b>3</b>
<b>The insurer's decision must be to either:</b> .....	<b>3</b>
Accept liability .....	3
Dispute liability .....	3
Defer liability.....	3
<b>Payment of compensation</b> .....	<b>3</b>
Accept Liability .....	3
Defer liability.....	4
Dispute liability .....	4
Deeming of liability .....	4
<b>Interest for late compensation payments</b> .....	<b>4</b>
<b>Employer contributions to superannuation</b> .....	<b>5</b>
<b>Return to Work</b> .....	<b>5</b>
Returning to work – guide for employers video .....	5
<b>What can be expected from the employer's insurer</b> .....	<b>5</b>
For Accepted Claims .....	6
For Deferred Claims .....	6
For Disputed Claims .....	6
<b>Internal Dispute Resolution</b> .....	<b>6</b>
Dispute Resolution Video .....	7
<b>What is expected of the employer</b> .....	<b>7</b>
Role of rehabilitation provider video.....	7
<b>What is expected of the injured worker</b> .....	<b>8</b>
<b>Contact us</b> .....	<b>8</b>



## Workers compensation insurance

Employers must arrange a workers' compensation policy if they employ a worker.

In the Northern Territory the test used under Australian Taxation Law to determine tax and superannuation obligations is also used to determine if an individual is required to be covered for workers compensation.

Under the *Return to Work Act*, employers **must** hold a workers compensation insurance policy with an approved insurer if they employ an individual who performs work or a service under contract and is in relation to the contract, an employee for the purpose of assessment for PAYG withholding under the *Tax Administration Act 1953 (Cth), Schedule 1, Parts 2-5, even if they are not withholding tax but should be.*

An on line tool is available on the **ATO website** to assist employers to find out whether a worker is an employee or contractor for tax and super purposes. If your business engages and pays workers, you should use this decision tool.

If it is determined a person is an employee using ATO guidance (even if the employer thinks they are a contractor) then the individual should be covered for workers' compensation.

If you, as an employer, are unsure if you require a workers' compensation policy, then you should seek independent professional advice on tax and other employer obligations.

If you are a director of a company, you are only covered if your company has taken out a workers' compensation policy with an approved insurer and your personal details and your remuneration have been disclosed to the insurer.

If the business is owned by an individual or partnership (not a company) immediate family members who live with those individuals or partners, are only covered if their personal details and their remuneration are disclosed to the insurer.

If you are a labour hire business, all individuals engaged by you, must be covered regardless of whether they are an employee or contractor.

### Workers compensation insurance – guide for employers

This short video will explain your workers compensation insurance obligations as an employer, including why you need workers compensation insurance, when you need to obtain a policy, and who you need to cover - <https://www.youtube.com/watch?v=Cp2dfC29buo>

## If you don't have workers' compensation insurance

Under the *Return to Work Act* if an employer does not hold the necessary workers compensation insurance policy there is power for NT WorkSafe to order the employer to stop all aspects of their business until such time as the situation is rectified.

- You will be up for the cost of any claim which could amount to millions of dollars
- You risk the financial viability of your business and if you are a sole trader, your personal assets
- Penalties of up to \$179,000 (for a company) for a breach of the legislation.

## How do I arrange insurance?

You can obtain workers compensation insurance by contacting an insurance broker.

Refer to the following list of Northern Territory approved insurers.

Contact details for approved insurance companies	
Allianz Australia Insurance	Phone: (08) 8982 8333
CGU Workers Compensation	Phone: (08) 8924 0300
GIO General Ltd	Phone: (08) 6188 0990
QBE Insurance (Australia) Ltd	Phone: (08) 8982 3877
Allianz Australia Insurance Limited <i>trading as</i> Territory Insurance Office	Phone: (08) 8982 8315

## When is a worker covered for workers compensation?

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
- 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.

The worker must complete Part I of the claim form, pages 3 - 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. A claim form is required.

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 if the failure to claim was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause.

## Receiving a claim

Once a claim has been received from a worker, the employer must complete Part 2, page 6 and 7 of the claim form and **must submit it to their workers compensation insurance company within 3 working days of receiving the claim from the worker**. The employer should retain a copy for their records.

It is not the employer's role to determine liability for the claim; this is the role of the employer's 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 regarding the claim on behalf of the employer.

## The insurer's decision must be to either:

### Accept liability

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

### Dispute liability

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

### Defer liability

The insurer must make a final decision to accept or reject the claim before 56 days have expired from the date of the decision to defer.

## Payment of compensation

### Accept Liability

If the insurer accepts liability for the worker's claim, then weekly (periodical) payments of compensation must be made by the employer commencing within 3 working days of the decision to accept the claim. Payments should continue to be made on usual paydays, in accordance with medical certificates.

Weekly or periodic compensation payments for incapacity for work are based on the injured worker's normal weekly earnings (NWE) immediately before the date of entitlement to compensation.

A worker is entitled to receive their **normal weekly earnings** (NWE) for an aggregate of twenty-six (26) weeks of total or partial incapacity. The 26 weeks is calculated for those weeks the worker suffered actual economic loss, not from the date of injury.

## Defer liability

If the insurer defers liability, any compensation payments must be made by the employer for up to 56 days commencing within 3 working days of the decision to defer.

During this time the insurer can obtain further information to assist in making a final decision, however the final decision to accept or dispute the claim must be made before the 56 days have expired from the date the claim was deferred.

During the period of the deferral the worker is entitled to weekly payments of compensation as well as reasonable medical and rehabilitation expenses. There is no obligation to cover the cost of hospitalisation (including surgery) and interstate travel.

## Dispute liability

If the claim is disputed after having been originally deferred, all weekly payments and expenses made on the claim will cease from the date the formal notice is posted to the worker. Payments made on a deferred claim are not recoverable from the injured worker.

## Deeming of liability

If a decision on the claim is not made within 10 working days from when the claim was made, liability is deemed accepted.

Similarly if a claim was deferred, liability is deemed accepted if a final decision is not made within the 56 day from the decision to defer.

Once payments for a deemed claim commence, the insurer still has the opportunity to decide to make a decision on the claim. However this decision must be made within 14 days of payments commencing otherwise the claim will be considered accepted.

## Interest for late compensation payments

It is important workers compensation payments are made to workers by the due date (normal pay days). Workers compensation payments made more than 7 days after the end of the week in which the pay was due will result in payment of interest to the worker. In addition the legislation provides for a substantial penalty for an employer who does not pay on time.

**The following is a brief explanation of what is included in the calculation of Normal Weekly Earnings (NWE). However the insurer will assist in calculating the worker's entitlement.**

NWE are based on a worker's normal number of hours per week, at their normal hourly rate. 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 allowed in a form other than an amount of money paid or credited for meals, accommodation or electricity, may also form part of NWE and should be advised to the insurer.

## Employer contributions to superannuation

Employer contributions to superannuation are **not** included in the calculation of normal weekly earnings for compensation purposes (Section 49A of the Northern Territory *Return to Work Act*).

## Return to Work

The employer must:

- take all reasonable steps to provide the injured worker with suitable employment
- give a proposal in writing for 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, the 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 NT WorkSafe approved vocational rehabilitation provider to assess the suitability of the duties, and make recommendations regarding ergonomics and workstations etc.

An employer cannot 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 and willful misconduct.

## Returning to work – guide for employers video

This short video will assist you getting your injured worker back to work, and explain what to do and what help is available - <https://www.youtube.com/watch?v=o1A3hM0K9eA>

**The insurer, employer and injured worker all have obligations in the return to work process**

## What can be expected from the employer's insurer

Injured workers are to be treated with care and understanding and insurers should supply all workers who make a claim with general information about their claim.

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.

## 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 lieu of cash (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 an aggregate of 26 weeks of total or partial incapacity to 75% of their normal weekly earnings
- for long term incapacity, the implications of re-assessing loss of earning capacity after 104 weeks having regard to most profitable employment, whether or not such employment is available. Information should be included that any action to reduce payments will be subject to the right of appeal
- capping of weekly benefits to 260 weeks (5 years) with medical and other treatment costs to continue for an additional 12 months before ending – this does not apply for workers with a permanent impairment of 15% or more

It is acceptable for relevant information to be provided at appropriate trigger points rather than providing unnecessary information up front.

## 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.

Injured workers will be given the name of their case manager and a direct telephone number for personal contact.

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 have an Internal Dispute Resolution Process (IDRP) that provides a 5 working day response time if a request is made by a worker for review of their claim. An IDRP is an effective mechanism to quickly remedy administrative oversights.

## Dispute Resolution Video

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

## What is expected of 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.

The employer is responsible for making weekly payments of compensation to injured workers if the claim is accepted or deferred. The money employers pay to injured workers is recoverable from their insurer, except for any payment made for time lost on the day of the injury.

Employers must not refuse to receive a claim for compensation from an injured worker or dismiss a worker from employment for the reason that the worker has given or attempted to give the employer a claim form.

Employers must propose a return to work plan, developed and agreed between the employer and worker for any injury that involves incapacity of more than 28 days. An effective return to work plan relies on the cooperative efforts of all participants – employers, workers, insurers, medical professionals, allied health professionals and vocational rehabilitation providers. It is reasonable to expect an injured worker to allow their employer to discuss return to work options directly with their treating medical practitioner, however, an employer should not impose on the workers private consultation without consent from the worker.

It is important that employers respect the right of the worker to privacy at their medical consultations.

The employer must take all reasonable steps to provide the injured worker with suitable employment.

The employer must as far as practicable, participate in efforts to retrain the injured worker.

The employer must 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 taking into consideration a workers capacity to work and any restrictions on the workers medical certificate of capacity.

If the employer is unable to provide the worker with suitable employment, the employer in consultation with the insurer may refer the worker to the alternative employer incentive scheme. For further information see NT WorkSafe information bulletin *Alternative Employer Incentive Scheme (AEIS)*.

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

## Role of rehabilitation provider video

This short video will assist you in understanding the role of a vocational rehabilitation provider in the return to work process - <https://www.youtube.com/watch?v=CubEeF0ZEPI>

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 must not be suspended or refused by the employer/insurer unless:

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

If a decision to dispute treatment is made it will be necessary for the reasons to be given in writing to the treating medical practitioner and to the worker, setting out the grounds in which the treatment is disputed.

## What is expected of 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; including:

- cooperate in establishing a return to work program
- participate in a cooperative manner in a return to work program
- attend medical or treatment appointments as required

An injured worker will put their compensation payments at risk if they fail to comply with a return to work plan provided by the employer.

An effective return to work plan relies on the cooperative efforts of all participants – employers, workers, insurers, medical professionals, allied health professionals and vocational rehabilitation providers.

An injured 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 an injured worker to allow their employer to discuss return to work options directly with their treating medical practitioner, however, an employer should not impose on the workers private consultation without consent from the worker.

It is important that employers respect the right of the worker to privacy at their medical consultations.

Any enquiries regarding the management of claims should firstly be directed to the workers compensation Insurer.

## Contact us

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