

Western Australia Workers' Compensation Claims

EMPLOYER OBLIGATIONS UNDER THE WORKERS' COMPENSATION AND INJURY MANAGEMENT ACT (1981) ('The Act')

Injury Management Obligations

We need to ensure you are aware of your injury management obligations under the Workers' Compensation and Injury Management Act 1981 as failure to comply may result in penalties, and/or a fine of up to \$2,000 (s155B, s155C(1) & (3), s155D(3)).

To assist you in understanding your injury management obligations, Allianz has developed the attached:

1. Injury Management Policy;
2. Injury Management Procedures; and
3. Return to Work Program.

These documents may be modified to suit your business needs.

Code of Practice

The injury management provisions of the Act are supported by the Workers' Compensation Code of Practice (Injury Management) 2005, which functions to regulate how employers meet their obligations. The Code of Practice provides a basic framework for employers to establish and implement:

1. An injury management system for the workplace (s155B); and
2. Individual return to work programs for workers who have not returned to their full pre-injury position, duties and hours (s155C(1) & (3)).

Under the Code of Practice you are required to provide a copy of your Injury Management Policy and Procedures to any worker who requests it. We suggest providing workers with easy access to that information by, for example:

- Posting a copy of the documents on a notice board;
- Establishing a link on your Intranet to an electronic copy of the documents; or
- Providing copies of the documents in the staff room or reception area.

As an employer, you should also be aware that for a period of 12 months following when a worker becomes entitled to weekly payments for an injury under the Act, you are obliged to provide the worker with their pre-injury job if reasonably practicable, or an alternate job that is comparable in status and pay for which they are qualified and capable of performing (s84AA).

Further information

Further information is available from WorkCover WA on (08) 9388 5555 or <http://www.workcover.wa.gov.au>, where you can access the information booklet "Injury Management: A Guide for Employers".

To assist your organisation meet its obligations, Allianz has example documents:

1. Injury Management Policy;
2. Injury Management Procedures; and
3. A Return to Work Program for injured workers.

If you require copies of these documents, please contact your Intermediary or your Case Manager.

Claims Management Obligations

What happens and when

1. A workplace injury is reported to the employer. In the case that a serious incident occurs involving a fatality or permanent injury/ illness, please phone WorkSafe immediately on 1800 678 198. We would also request you notify your Allianz contact as soon as possible.
2. The employer notifies Allianz as soon as practicable of the injury/incident and is issued an incident number which is to be used in all correspondence. If the injured worker wishes to make a claim, the employer is to provide the worker with a claim form.
3. If the injury is significant, a Case Manager will be assigned and will make contact with the employer, injured worker and, if necessary, the treating doctor to initiate injury management activities as appropriate.
4. The injured worker and employer complete the compensation claim forms and, together with a WorkCover Medical Certificate, forward them to Allianz within 5 working days of the employer receiving the worker's form.

Please note that in accordance with the Workers' Compensation and Injury Management Act 1981, WorkCover may penalise employers \$1000.00 for failing to report claims to their insurer within the required timeframe (s57A(2A)).

5. Upon receipt of the claim forms and medical certificate, Allianz will assess the claim and in most cases, advise all parties of liability determination within 3 working days.

If liability cannot be determined, Allianz has a further 10 days to determine liability, thereafter the claim is considered to be disputed.

6. If liability is accepted,
The Case Manager collaborates with the worker, employer and nominated treating Doctors to return the injured worker to work as soon as possible.

If liability cannot be determined without additional information,

The Case Manager will notify the employer and the worker of the delay in determining liability and the reason(s) why. The required additional information will be sought and a decision promptly made on receipt.

If liability is not accepted

The Case Manager will notify the employer and injured worker of the liability decision verbally and offer the worker the opportunity to partake in the Internal Dispute & Resolution Process to discuss the decision made on their claim. All parties will subsequently be advised in writing of Allianz's decision and the process if the decision is disputed.

7. If liability is accepted, all relevant accounts and requests for wage reimbursements should be sent promptly to Allianz for payment.

Please note, the Workers' Compensation and Injury Management Act 1981 requires an employer to make weekly compensation payments to an injured worker within 14 days of being advised the claim is accepted.

Failure to comply with this requirement may result in a WorkCover penalty of \$2,000.00 for each weekly payment not made when due. Subsequent payments are required to be made on the employer's usual pay day (s57A(7)).

8. Allianz will keep in regular contact with the employer and injured worker to facilitate a prompt recovery and return to work of the injured worker. Assistance maybe sought from specialist providers, such as occupational rehabilitation experts or medical professionals.
9. Injured worker is certified fit for work with no ongoing treatment. All final accounts / wage reimbursements sent to Allianz for payment.
10. Allianz closes the claim

Accepting Liability for the Claim

Once we receive the claim forms and the First Medical Certificate, we will make a decision (either accepted, denied or pending) within three (3) working days. A letter will be sent to you about our decision on liability and will include the claim number.

1. If the claim is accepted and it involves time lost, it is in order for you to commence payment of compensation for the period of incapacity shown in the First Medical Certificate. Any other documents should be sent to us as you receive them, quoting the claim number.
2. If pending, we have considered it necessary to obtain further information either by investigating the accident or to seek more detailed medical information. If we are unable to reach a decision within ten (10) working days of us receiving the claim form, a copy of Form 3C will be sent (no action is required on your part). This form is an Insurer's Notice to advise the employer, worker and WorkCover WA that more time is required to make a decision on liability.

Important Note: Once our enquiries are complete we will advise you of our decision, but under no circumstances should compensation payments to the worker be commenced without our express authority. You are encouraged to pay any accrued sick or annual leave entitlements in the intervening period. If the claim is subsequently accepted, these entitlements can be credited back to the worker.

3. If denied, a Form 3B will be sent advising our ground for denial. This form is an Insurer's Notice to advise the employer, worker and WorkCover WA that the liability is denied or disputed.

Recurrence or Aggravation of an Injury:

1. The recurrence or aggravation of an injury occurs when:

The worker has sought medical treatment with respect to a previous injury: the subject of a claim; and

- a) the worker has not received treatment for this injury for a period equal to or greater than 3 months (recurrence); or
- b) the worker has returned to work (after a period of being absent from work because of the previous injury) and is certified unfit (aggravation).

In the case of a recurrence or aggravation of an injury, if liability is in dispute then same time limits apply for processing a claim as Accepting Liability for the Claim (above).

2. Forms the employer should forward to the insurer in case of a recurrence are:

- A recurrence of Disability claim form;
- Witness Statement forms; and
- Supporting medical certification.

How to Calculate the Weekly Rate

Weekly compensation rates are based on "weekly earnings" as defined in the Workers' Compensation and Injury Management Act 1981 (As Amended). The following notes should assist with the information you need to provide for calculation of the compensation rate.

There is a difference in the way weekly benefits are calculated for award and non-award workers, as follows:

Category A

If a worker is paid under an industrial award, weekly payments are calculated under schedule 1 clause 11 (3), of the Act. This also includes workers paid under an Enterprise Bargain Agreement (EBA); and

Category B

If a worker is paid under a non-award agreement such as salary, etc, payments are calculated under schedule 1 clause 11(4) of the Act.

Calculating Weekly Payments

The following sets out the different approaches for calculating weekly payments for award and non-award workers for the First to the Thirteenth week and from the Thirteenth week onwards from the date of incapacity.

First to Thirteenth weekly payments from the date of incapacity.

Weekly payments for award workers Clause 11(3)

The rate of weekly earning under the relevant award:

- Plus any over award or service payments paid on a regular basis.
- Plus overtime and any bonus or allowance.
- Up to the prescribed maximum amount (indexed annually) but not less than the prescribed minimum (the minimum weekly earnings payable under the relevant industrial award).

Reference to overtime and any bonus or allowances means the amount of those items averaged over the 13 weeks prior to the incapacity, or if the worker was employed for less than 13 weeks, averaged over the lesser period.

Weekly payments for non-award workers Clause 11(4)

The worker's average weekly earnings in the employment that the worker was in at the time when the disability occurred, including:

- Overtime;
- Bonuses; and
- Allowances.

The average weekly earnings are to be taken and calculated over a period of 52 weeks* preceding the date of disability, or if the worker was employed for less than a period of 52 weeks, the lesser period.

The maximum weekly amount is the prescribed amount, which is indexed annually, and the minimum weekly earning is prescribed under the Minimum Conditions of Employment Act 1993.

For non-award workers, employers must now calculate the weekly payments based on 52 weeks, where possible.

Payments after the thirteenth week from the date of incapacity.

Weekly payments for award workers schedule 1 clause 11(3) of the Act:

- The rate of weekly earnings under the relevant award
- Plus any over award or service payments paid on a regular basis and any allowances paid on a regular basis related to the number or pattern of hours up to the prescribed maximum amount.

For the purposes of this calculation, no overtime or bonuses are to be included.

Weekly payments for non-award workers schedule 1 clause 11(4) of the Act

Weekly payments are to be paid at the rate of 85% of the amount calculated for the first 13 weeks up to the proscribed maximum amount.

Again with the minimum being the amount prescribed under the Minimum Conditions of Employment Act 1993.

Payment of Compensation

You are obliged to pay compensation to workers at the usual place of payment on their normal pay day. Do not pay compensation in advance of normal pay days. If you do not receive a further certificate of incapacity, contact your Case Manager for further advice.

Failure to comply with this requirement may result in a WorkCover penalty of \$2,000.00 for each weekly payment not made when due. Subsequent payments are required to be made on the employer's usual pay day (s57A(7)).

Deduction of Taxation Instalments

You are required to deduct taxation as you would for normal wages.

Reimbursement of Compensation

Complete the Wage Reimbursement Form for all compensation paid and submit these to Allianz at regular intervals.

Centrelink Payments Repayable by the Worker

If liability is disputed or declined, the worker may receive a benefit from Centrelink. Should the claim later be accepted, you are legally obliged to deduct any amount owing to Centrelink from payments that are going to be made to the worker, until Centrelink debt is satisfied.

Medical and Incidental Expenses

Please forward any medical accounts to us when you receive them. Please do not pay any accounts without our approval, as this is deemed to be an admission of liability. Payments will be made by our office to the creditor concerned.

Travelling Expenses

A worker is entitled to be reimbursed for reasonable cost of travelling to attend medical appointments and treatment in accordance with Schedule 1 Clause 17 of the *Workers' Compensation and Injury Management Act 1981*.

Reimbursement of such travel expenses will be deducted from the prescribed statutory amount for medical and other expenses. The prescribed amount set by WorkCover WA is indexed annually.

Please have the worker complete the Travelling Expenses Claim form and forward this to us when practicable.

Important Notice

WORKING DIRECTORS AND ANTI-AVOIDANCE PROVISIONS

Working Directors may “opt in” or “opt out”

With effect from 14 November 2005, the Workers’ Compensation Reform Act 2004 introduced a number of amendments that relate directly to Working Directors.

From this date, a company can decide to bring its working directors within the scope of the Act by recording on the proposal and wages declaration the estimated remuneration for each director.

A Working Director is a director of a company:

1. who executes work for or on behalf of the company; and
2. whose earnings as a director, by whatever means, are in substance for personal manual labour or services.

A working director will be regarded a worker under the Act if workers’ compensation insurance cover was obtained for the material period on that basis. Non-working directors and Public company directors are excluded.

Remuneration that should be declared in respect of a working director includes all cash and non-cash benefits received by working director that would be regarded as earnings except the super guarantee levy payments. This encompasses items forming part of any salary sacrificing but excludes drawings.

Weekly payments payable to working directors are calculated by reference to the director’s last declared average weekly earnings, i.e. their actual earnings (with supporting particulars) as declared by the employer at the end of the previous policy period.

In line with these changes, if a working director is not nominated on the declaration they will not be indemnified under the policy. Coverage is optional.

Making Employment Conditional on Avoidance Arrangements

Effective from 14 November 2005, anti-avoidance provisions apply. These amendments are directed to companies who attempt to contract out of their workers compensation obligations. An avoidance arrangement is one where:

1. an employer enters into a new arrangement with an existing or former worker where the worker provides substantially similar services and establishes a company which the worker is a director of; and
2. the entity intimated an unwillingness to enter an arrangement or contract unless it was via a scenario as outlined above.

If an avoidance arrangement is found to exist, the newly formed Company is not liable to make any payments of compensation. The principal’s workers compensation insurer is initially liable to meet the claim, however may seek recovery against the principal. In addition, the principal would be found to have committed an offence, and may be liable for a penalty of \$5,000 (s303A(1)).

Further information is available via the WorkCover WA website (www.workcover.wa.gov.au) and by referring to the Fact Sheet, “Working Directors and Avoidance Arrangements”.