



Workers Compensation and Injury Management:

A Guide for Workers

A workers compensation and injury management scheme that works for all.

workcover.wa.gov.au

WorkCover WA



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About WorkCover WA

WorkCover WA is the government agency responsible for overseeing the workers compensation and injury management scheme in Western Australia.

This includes monitoring compliance with the *Workers Compensation and Injury Management Act 2023*, informing and educating workers, employers and others about workers compensation and injury management, and providing an independent dispute resolution system.

This publication is current at July 2024.

Disclaimer

This publication contains information regarding workers compensation and injury management. It is intended to provide general information only. You should not act or omit to act on the basis of anything contained herein. This guide should be read in conjunction with the *Workers Compensation and Injury Management Act 2023*. You should seek appropriate legal/professional advice about your particular circumstances.

For more information, visit the WorkCover WA website. Workers compensation legislation is also available from the Parliamentary Counsel's Office website at legislation.wa.gov.au

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An injury at work can have significant consequences for your personal and professional life. Workers compensation laws in WA aim to minimise the impact of a workplace injury by ensuring injured workers are fairly compensated while they are unable to work, and are supported in returning to work following an injury.

This guide outlines information to help injured workers understand how the workers compensation system operates in WA, how to best manage their claim for compensation and how to ensure the best possible outcome following an injury.

Additional information and supplementary resources for workers and employers can be accessed from the WorkCover WA website.

WorkCover WA's Advice and Assistance Service can also provide further information and clarification on topics addressed in this guide.

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Section 1

Understanding Workers Compensation

Workers compensation scheme

What is workers compensation?

Workers compensation is financial compensation provided to workers who become injured as a result of their work.

It may include compensation to cover loss of earnings, permanent impairment, medical expenses, and workplace rehabilitation to assist them to return to work.

Any worker who suffers a work-related injury or disease requiring medical treatment or time off work is entitled to claim workers compensation, regardless of who was at fault.

Workers compensation in WA

The workers compensation scheme in Western Australia is administered by WorkCover WA in accordance with the *Workers Compensation and Injury Management Act 2023* (the Act). The Act has two main purposes:

- ensuring workplace injuries are managed in a manner that enables a worker's prompt and safe return to work
- ensuring injured workers are compensated for lost earnings, medical expenses and associated costs while they are unable to work.

Employers are required to maintain workers compensation insurance coverage with a licensed insurance company or be licenced as a self-insurer.

The scheme covers full-time, part-time, and casual employees, and in some circumstances, contractors and subcontractors.

Rights and obligations under the Act

The rights and obligations of employers, workers and other key parties in the scheme are defined under the Act. By law, employers are required to have a current workers compensation insurance policy covering all of their workers and a documented injury management system for their workplace. Employers, insurers and self-insurers must also ensure that any workers compensation claim is managed in accordance with the Act.

WorkCover WA's *Insurer and Self-insurer Principles and Standards of Practice*, *Workplace Rehabilitation Providers Principles and Standards of Practice* and *Insurance Brokers Principles and Standards of Practice* ensure high standards of service are provided to employers and workers.

Other key parties in the scheme include treating medical practitioners and workplace rehabilitation providers. Each party performs an important role in the workers compensation process, working closely with employers and workers to minimise the impact of workplace injuries on all affected parties.

Workers compensation insurance

Workers compensation insurance protects workers and their employers from the financial impact of work-related injuries by compensating for the costs and expenses arising from a workers compensation claim. In the event of an injury, an employer will liaise with their insurer about the assessment and management of the claim.

There will be occasions, however, where an injured worker may deal directly with the insurer (e.g. in relation to medical reviews or payment of medical expenses).

Workers compensation claims

Am I eligible to claim workers compensation?

You are entitled to claim workers compensation if you suffer an injury during the course of your work, and you are defined by law as a worker.

The definition of a worker under the Act includes:

- full-time workers on a wage or salary
- part-time, casual and seasonal workers
- workers on commission
- piece workers.

In some circumstances it may also include:

- contractors and subcontractors
- working directors.

If in any doubt as to whether the terms of your employment cover you for workers compensation, call WorkCover WA's Advice and Assistance Service.

How do I make a claim?

To make a claim for workers compensation, you will first need a medical practitioner to certify the cause of your injury is work-related. If your treating medical practitioner determines your injury is work-related, they will issue you a First Certificate of Capacity which will outline the type and extent of your injury, your fitness for work, and any restrictions on work duties as a result of the injury.

You and your employer will also need to complete a Workers Compensation Claim Form, which will provide details on where and when the injury occurred, the circumstances surrounding the injury and any contributing factors. The Claim Form and First Certificate of Capacity are submitted to the employer's insurer, who will use the information provided to assess your eligibility to access workers compensation entitlements. Detailed information on how to make a claim and how it is managed is outlined in Section 2: The Claims Process.



Section 1

Workers compensation entitlements

If your claim is accepted, you may be eligible to receive payments to compensate for loss of earnings, medical, health and miscellaneous expenses, workplace rehabilitation, travel expenses and permanent impairment (if applicable).

General Maximum Amount

Limits apply to the total amounts or value of compensation you can receive for different entitlements over the life of your claim. Maximum amounts are adjusted annually.

For current amounts, speak to your employer's insurer or go to the WorkCover WA website.

General entitlements

Income compensation

Payments to compensate for loss of earnings are known as income compensation payments. The frequency of payments may be weekly, fortnightly or monthly, depending on how you are usually paid. Income compensation payments are calculated based on pre-injury average earnings over a 12-month period for award and non-award workers (or period employed if less than one year).

A step down to 85% of the worker's pre-injury rate of pay applies after 26 weeks of payments, subject to minimum and maximum amounts. Regardless of your employment and award conditions, income compensation payment amounts are capped at twice the average weekly earnings for an adult in WA.

Medical and health expenses

Medical and health expenses you can claim include:

- medication
- medical or surgical attendance
- treatment by specialists
- hospitalisation costs
- dental
- allied health treatment (including physiotherapy, chiropractic acupuncture, osteopathy, mental health social work, occupational therapy, psychology, speech pathology and exercise-based programs).

Your employer's insurer is only required to pay 'reasonable' expenses up to fixed medical and health provider rates.

Current rates are published on the WorkCover WA website.

Workplace rehabilitation expenses

You are entitled to claim payments to cover the cost of workplace rehabilitation services by an approved provider if you need assistance with staying in, or returning to, work following an injury.

More information on workplace rehabilitation services is outlined in Section 3: Injury Management.

Miscellaneous expenses

Miscellaneous expenses compensation is paid in addition to medical and health expenses compensation.

There is no limit on these expenses, and they include:

- first aid and emergency transport
- a wheelchair or similar appliance
- a surgical appliance or artificial limb
- travel
- assessment of degree of permanent impairment.

Compensation for permanent impairment

Permanent impairment compensation may also be available to workers who sustain permanent impairment as a result of a work-related injury. Eligibility for compensation, including the total amounts payable, is based on an assessment of a worker's degree of permanent impairment (expressed as a percentage) by an Approved Permanent Impairment Assessor (APIA). Permanent impairment compensation is only payable as part of the settlement of a worker's claim.

Impairment assessment

An APIA is a medical practitioner approved by WorkCover WA to assess the degree of permanent impairment caused by a work-related injury. Impairment assessments are conducted only when a worker's condition has stabilised and is unlikely to change.

You are entitled to choose your own APIA for an assessment. An APIA register, including contact details, is available on the WorkCover WA website.

Settlements

A settlement agreement finalises a claim with a lump sum. Settlement agreements providing for lump sum compensation must be registered with WorkCover WA. Certain criteria must be satisfied before a settlement agreement can be registered.

Common law

You may be eligible to pursue a claim for damages against your employer through the courts if your injury was caused by your employer's negligence. Restrictions apply including a requirement to register an election with an assessed whole of person impairment of 15% or more.

Other types of compensation

Noise Induced Hearing Loss (NIHL)

If a worker believes their hearing loss is due to workplace noise exposure, they may be eligible to pursue a workers compensation claim for NIHL. The threshold for an initial claim is at least 10% NIHL.

There is a two-step process to claiming compensation for NIHL, which begins with an audiological test before moving on to a NIHL assessment. Compensation is paid as a lump sum up to 75% of the General Maximum Amount, and is paid as a proportion of assessed NIHL.

For more information visit the WorkCover WA website.

Dust disease

Pneumoconiosis, silicosis, mesothelioma, lung cancer and diffuse pleural fibrosis – each referred to as a dust disease – are covered under a presumption of work injury.

Dust disease claims are referred to the Dust Disease Medical Panel (DDMP) for determination.

The DDMP makes binding determinations on questions relating to the diagnosis of the disease, the extent of any incapacity (relevant if the claim relates to income compensation), and the degree of permanent impairment (relevant if the claim relates to permanent impairment compensation and/or access to common law).

Workplace fatality

When a worker has died as a result of a work-related injury, a claim for compensation can be made by the worker's dependant(s). For more information contact WorkCover WA's Advice and Assistance Service or visit the WorkCover WA website.

Section 2

The Claims Process

Making a claim

The following steps should be taken following an injury at work:

- Seek first aid immediately, and report your accident or injury in accordance with your employer's incident reporting policy and procedures.
- Make an appointment to see a medical practitioner of your choice as soon as possible for treatment and assessment of your injury.
- Ask your medical practitioner to provide you with a First Certificate of Capacity.
- Ask your employer for a Workers Compensation Claim Form or download a copy from the WorkCover WA website.
- Complete the worker section of the Claim Form and return this, along with your Certificate of Capacity, to your employer. Keep a copy of both documents for your records.
- Your employer will need to complete their section of the Claim Form and submit it with your Certificate of Capacity to their insurer within seven days of receiving these documents from you.

You must make your claim as soon as practicable within 12 months after an injury occurs.

Keep copies of your Certificates of Capacity and Claim Form for your records and reference if required.

The first point of contact for any claim specific queries should be your manager or supervisor at work, until the claim is forwarded to the employer's insurer.

Your first medical appointment

You should make an appointment to see a medical practitioner of your choice as soon as possible after an injury. During this appointment, your treating medical practitioner will assess your injury and issue you with a First Certificate of Capacity.

You should provide your medical practitioner with all information relevant to your injury to ensure they can complete the Certificate of Capacity fully and accurately. The information provided by your medical practitioner on this certificate can have a significant bearing on decisions about your claim. The Certificate of Capacity will:

- provide a diagnosis of your injury
- certify your capacity for work and the extent (total or partial)
- identify the nature of any duties you can perform and the nature of any restrictions
- identify how long it is estimated any incapacity for work will continue
- outline a plan for future appointments and any other proposed medical treatment.

Claim assessment

Following receipt of documentation, a case manager allocated by your employer's insurer may contact you, your employer and your treating medical practitioner for further information to assess liability for the claim. The insurer has 14 days to notify you and your employer of their decision.

While your claim is being assessed

Medical expenses

You are responsible for covering the costs of medical treatment for your injury until a decision regarding liability is made by your employer's insurer. It is important you keep all payment receipts during this time. These costs will be reimbursed if your claim is accepted.

Optional leave payments

While waiting for a decision on your claim, you may wish to discuss with your employer the option to have any accrued leave, such as annual or sick leave, paid to you if you are unable to work during this time. When considering this option, you should note that:

- leave payments are not an alternative to workers compensation
- accepting leave payments is voluntary and will not affect your workers compensation entitlements in any way
- leave entitlements will be credited back to you if your claim is accepted.

Provisional payments

Provisional payments will be payable if an insurer requires more than 28 days from receiving your claim to notify you of a liability decision. Provisional payments are made up of income compensation payments and a limited amount of medical and health expenses, and cease once a decision on the claim is made.

Claim decisions

Your employer's insurer is required to notify you and your employer in writing within 14 days after receiving your claim if it has been accepted, not accepted or is still undecided. If undecided, a deferred decision notice will be issued. The insurer will provide a claim number which should be quoted in all related correspondence. If no response is received from the insurer within 14 days, the claim is deemed to be accepted and compensation becomes payable.

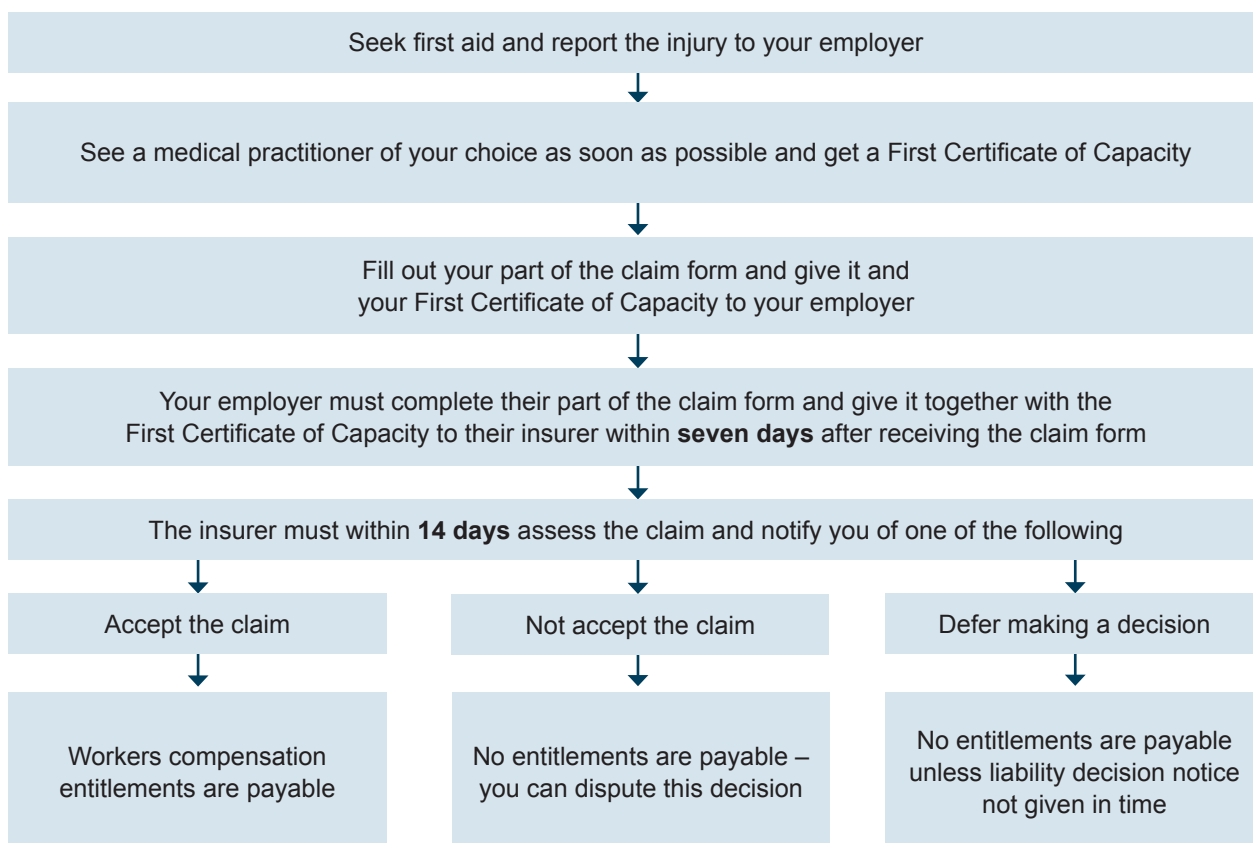
Insurer decision options

- **Accepted** - workers compensation entitlements are payable.
- **Not accepted** - no compensation is payable. The insurer will notify you and your employer of the reason. If you disagree with the decision, you should approach the insurer to have the matter reviewed. You may also apply to WorkCover WA's Conciliation and Arbitration Services (CAS) for assistance with resolving a dispute.
- **Deferred decision** – if a claim decision cannot be made within 14 days, the insurer will notify you that a decision has been deferred and the reason(s).
If a liability decision notice cannot be given within 28 days of receipt of the claim, provisional payments become payable.
The insurer has a maximum of 120 days to give a liability decision notice if a deferred decision notice was previously given. Failure to do so in this timeframe means the claim is deemed to be accepted.



Section 2

How to claim



Receiving compensation

Income compensation payments

If your claim is accepted and your medical practitioner certifies that your injury requires you to take time off work, you are entitled to receive income compensation payments from your employer to compensate for lost earnings.

Your employer's insurer will calculate the income compensation entitlements due to you and advise your employer of the correct payment amounts to make.

Your employer must commence making payments within 14 days of being notified of claim acceptance by the insurer and pay you on your usual paydays. The first payment will include payments that have accrued

from the day on which you first had an incapacity for work. Penalties apply for employers who do not make payments on time.

When does income compensation cease?

Your employer is required to continue making income compensation payments to you unless:

- you have reached the limit on your income compensation entitlements
- you give your consent for payments to stop
- you return to work and have been notified of this by your employer or their insurer
- your workers compensation claim is finalised through a settlement
- you elect to pursue a common law claim.

Your employer may apply to WorkCover WA to suspend or stop your income compensation payments if:

- there is medical evidence your incapacity is no longer a result of the injury
- you do not make reasonable efforts to return work or do not comply with your return to work obligations
- you fail to attend a medical review arranged by your employer or their insurer.

Medical and health treatment expenses

Reasonable medical and health expenses are covered as a workers compensation entitlement.

When your claim has been accepted, forward all accounts and invoices relating to medical and health treatment to your employer or their insurer as soon as possible. Alternatively, the insurer may have a billing arrangement in place with your treating medical practitioner or other health provider.

Medical reviews

You have the right to see a doctor of your choice for treatment and management of your injury. Your employer or their insurer may, however, refer you to a medical practitioner for a review or second opinion. An appointment will be made for you by the insurer, and you will be advised of the time and date. If you fail to attend this appointment without a reasonable excuse, your ongoing entitlements may be affected.

You will not be required to attend a medical review more than once over a two-week period or at any time other than during reasonable hours.

APIA assessments

An assessment from an APIA will be required to evaluate the percentage whole of person impairment caused by your injury, if you wish to:

- apply for permanent impairment lump sum compensation
- make a claim for damages at common law
- apply for exceptional circumstances medical payments.

Settling your claim

The majority of workers compensation claims conclude with an injured worker's full recovery and return to work. Sometimes, however, claims may also be concluded with a settlement agreement.

A settlement finalises your workers compensation claim. If you enter into a settlement, you will not be entitled to any further compensation for your claim, including medical expenses and income compensation payments. Before deciding on a settlement option, you should seek independent legal advice or contact WorkCover WA's Advice and Assistance Service for more information.

Accepting a settlement may affect other benefits such as Centrelink, tax or private health insurance, so it is important you speak to your benefit providers before making a final decision.

Common law claims

In some circumstances you may be eligible to pursue a claim for damages against your employer through the courts. Unlike the 'no fault' workers compensation system, you must be able to prove that your injury was caused by negligence or other fault of your employer. To be eligible to make a common law claim for damages you must have at least 15% whole of person impairment as assessed by an APIA.

Common law claims are complex and may affect your statutory workers compensation entitlements.

It is strongly recommended that you seek independent legal advice before electing to pursue a common law claim.

Resolving disputes

If a dispute occurs that cannot be resolved with your employer's insurer, you or your employer may apply to WorkCover WA's Conciliation and Arbitration Services (CAS) for assistance with resolving the dispute.

CAS provides a fair and cost-effective system for resolving disputes over workers compensation or injury management issues. For more information, visit the WorkCover WA website.

Section 3

Injury Management

Roles and responsibilities

Your employer

All employers are required by law to have a documented Injury Management System in place to facilitate an injured worker's early recovery and safe return to work.

A person nominated by the employer will have day-to-day responsibility for the Injury Management System and will usually act as a worker's point of contact during their recovery. In addition to their legal responsibilities, your employer should maintain ongoing communication with you, your treating medical practitioner and the insurer, and provide you with ongoing support with your claim and injury management.

Your treating medical practitioner

Your treating medical practitioner will diagnose your injury, provide primary medical care, advise on treatment options, and certify your capacity for work. Periodically, your treating medical practitioner will issue you with a Progress Certificate of Capacity to keep your employer and their insurer updated on your progress, ongoing treatment requirements and capacity to return to work.

Your return to work

Your cooperation with your treating medical practitioner and employer, and active involvement in the management of your injury will be a key factor in your recovery and safe return to work.

You are required to make reasonable efforts to return to work. While you are recovering from an injury, it is essential you see your treating medical practitioner regularly and follow the program of treatment recommended for your injury. You may also be required to attend other medical appointments as required or arranged by your employer or their insurer. If you are unable to attend an appointment for any reason, ensure you provide sufficient notice and make alternative arrangements.

Stay active and positive

A positive frame of mind can have a big impact on your healing and recovery. It helps to:

- stay in touch with your colleagues
- talk to your manager about alternative suitable duties if your treating medical practitioner assesses you as partially fit to return to work
- stay active by continuing with your usual activities as much as you can
- accept help from family and friends
- focus on what you can do rather than what you can't do.

Returning to work

Research shows that an early return to work (even on restricted duties), is an important step in your recovery and the best possible outcome for injured workers.

It is important for you to work together with your employer, their insurer and your treating medical practitioner to facilitate this outcome. Your treating medical practitioner will advise you and your employer when you are able to return to work and any conditions you should observe on your return.

Maintaining your employment

In some cases, the severity or type of injury may keep you away from work for weeks or even months. During this period, your employer is obliged to keep your original position available for you for 12 months from the date of your first incapacity for work.

If your position is no longer available on your return to work or you can no longer perform the role, your employer must provide you with a position that is comparable in status and pay, that you are qualified for and capable of performing. Your employer will consult with you and your treating medical practitioner to decide on appropriate alternative duties.

If your employer wishes to lawfully terminate your employment during the 12-month period, they must give you 28 days' written notice of their intention to do so. You cannot be dismissed solely or mainly due to the fact you suffered an injury causing time off work.

Returning to modified duties

Your employer will be required to develop a return to work program if you have some capacity for work and the nature of your injury is likely to require modifications or restrictions to your duties or working hours. Your employer is required to work with you and your treating medical practitioner to develop a return to work program.

Your return to work obligations

You have certain duties relating to returning to work, including to:

- cooperate with your employer and make reasonable efforts to return to work
- participate and cooperate in the establishment of a return to work program or return to work case conference
- comply with any reasonable obligations placed on you under the return to work program, including any obligation to undertake workplace rehabilitation.

The return to work program must be in the approved form and include:

- details about participants in the program
- a description of the return to work program goal and identification of working hours, and any duties and restrictions
- the actions to be taken to enable you to return to work and who is responsible for those actions.

Approved workplace rehabilitation providers

An approved workplace rehabilitation provider (WRP) may assist you and your employer if you have difficulty identifying suitable duties, or if there are other barriers affecting your return to work.

A WRP can assist you and your employer if there are problems with the return to work process. WRPs are approved by WorkCover WA and have the qualifications, experience and expertise to provide relevant services based on the assessed needs of the worker and the workplace. Services provided include:

- vocational counselling
- assessment of functional and vocational capacity
- ergonomic assessment
- placement activities focused on obtaining a new job for the worker.

A list of approved WRPs is available on the WorkCover WA website.

If you do not participate in an agreed return to work program, your employer may lodge an application with CAS for an order to suspend, reduce or even stop your income compensation payments.



Section 4

Roles and Responsibilities

Workers

Making a claim:

- report your injury to your employer immediately
- see a medical practitioner of your choice as soon as possible to obtain a First Certificate of Capacity
- complete the Workers Compensation Claim Form
- lodge the Claim Form and Certificate of Capacity with your employer
- attend a medical examination, if requested by your employer.

Injury management and return to work:

- participate in your agreed return to work program
- carry out the agreed actions as outlined in the program to the best of your ability
- immediately inform your employer if you experience any difficulties carrying out any of the activities in your program
- continue to attend medical and other treatment appointments as required
- choose an approved WRP if required
- participate in a return to work case conference if required.

Employers

Following a claim:

- submit the completed Claim Form and Certificate of Capacity to their insurer within seven days of receiving these documents from you
- provide you with contact details of their insurer if you wish to contact them directly
- talk to you about paying any sick, holiday, or long service leave in lieu of your wages while your claim is being assessed and you are unfit for work
- commence making income compensation payments to you as notified by the insurer.

Injury management and return to work:

- have an Injury Management System in place
- work with you and your treating medical practitioner to develop a suitable return to work program if required
- refer you to a WRP if there is a problem with the return to work process
- keep your position available for 12 months from your first date of incapacity, where reasonably practicable
- provide you with a position that is comparable in status and pay if you are unable to perform your pre-injury duties
- give you 28 days' notice in writing if they intend to terminate your employment.



Insurers

Following a claim:

- make an informed assessment and decision on whether to accept or decline your claim
- notify you and your employer of the decision within 14 days of your employer submitting the claim documentation
- keep you and your employer informed of important matters relating to the progression of your claim
- provide you with prompt reimbursement of your claim expenses
- operate in accordance with the *Insurer and Self-insurer Principles and Standards of Practice*.

Injury management and return to work:

- work collaboratively with you and your employer to achieve positive return to work outcomes
- consider any referral to a WRP in consultation with you and your employer.

Treating medical practitioners

Following an injury:

- assess your injury and provide an initial diagnosis
- provide you with a completed First Certificate of Capacity
- provide advice on work restrictions that may apply to you
- provide ongoing Certificates of Capacity advising your employer of your capacity for work and ongoing treatment requirements.

Injury management and return to work:

- review your progress on a regular basis and provide a Progress Certificate of Capacity at each review if you are not fully recovered from the injury
- provide written advice indicating the need for a return to work program if required
- work with you and your employer to develop suitable alternative duties that are safe and of equal status and pay
- provide a Final Certificate of Capacity once you are fully recovered.

Approved workplace rehabilitation providers

Injury management and return to work:

- undertake an initial assessment
- discuss findings of the initial assessment with you and your employer and develop a service delivery plan if required
- operate in accordance with the *Workplace Rehabilitation Providers Principles and Standards of Practice*.



Need further assistance?



Call WorkCover WA's Advice and Assistance Service on
1300 794 744 (8:30am to 4:30pm, Monday to Friday)



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