

Question as to liability or apportionment between employers

The *WCIMA23* provides for circumstances in which a worker makes a claim for compensation and there are questions as to liability or apportionment between more than one employer or insurer.

Key Points

Act ref: ss. 28, 34

- Sometimes a claim is made by a worker and it is not entirely clear when an insurer is required to make a decision on liability as to whether the employer on whom the claim is made is wholly liable, or whether another employer may be wholly or partly liable for the injury from employment.
- Sections 28 and 34 ensure workers are not disadvantaged and are able to receive compensation in a timely manner in situations where liability may be shared or apportioned between more than one employer or insurer.
- Sections 28 and 34 of the *WCIMA23* provide for:
 - a claim to be made on the last employer (in which it is claimed the injury occurred)
 - a liability decision notice to be given where the insurer or self-insurer accepts the employer is *or may be* liable to compensate the worker but there are one or more liability questions in relation to that acceptance
 - compensation to be paid to the worker by the last employer whilst any questions about liability or apportionment between employers or insurers are investigated
 - other potentially liable employers to make a contribution to the last employer or, in default of agreement, to be brought into proceedings in order for an arbitrator to determine liability
 - arbitrator orders for the payment of compensation, reimbursement of compensation, apportionment of liability and indemnity between employers and insurers.

Questions & Answers

Q. Does section 34 apply to all claims with a question about liability or apportionment?

A. No. Section 34 does not apply to claims with respect to a prescribed disease, a dust disease or noise induced hearing loss, as different provisions of the *WCIMA23* apply to those types of injury.

Q. Can relevant employers come to an agreement themselves with respect to liability?

A. Employers are empowered to come to an agreement themselves with respect to liability, reimbursement and/or apportionment. In default of agreement, the matter may be determined by an arbitrator.

Q. How would the last employer or its insurer know whether some other employer may be liable for the injury?

A. A worker must provide the last employer with any information the last employer may reasonably request for the purpose of identifying any other employment in which the worker may have suffered the injury.

