



GALBALLY|&|O'BRYAN

Lawyers

WorkCover Claims

A general guide to entitlements

Work Injury

Being injured at work can cause financial problems and stress particularly if you must deal with the complexity of a workcover claim.

In Victoria most injured workers are entitled to some type of compensation. This may include weekly payments for time off work, medical expenses and lump sum compensation for permanent injuries.

Although compensation can never make you better it can help pay for your medical treatment and provide some financial security especially if you cannot work.

Galbally & O'Bryan can help you obtain your proper compensation entitlement.

To obtain expert advice from one of our lawyers telephone 9200 2533 or arrange a free first appointment.



How to Make a Claim

1. The injury must be reported to your employer generally within 30 days.
2. If appropriate seek medical treatment as soon as possible and provide the doctor with accurate details.
3. Lodge a WorkCover Claim form with your employer as soon as possible after injury. Claim forms can be obtained from your employer, a post office or Galbally & O'Bryan. A WorkCover medical certificate from your doctor must be lodged if you are claiming weekly payments for time off work.
4. Your employer has up to 10 days to forward the Claim to their Insurer, who then has a further 28 days to accept or reject the Claim. If no decision is made within 38 days, or the Claim is rejected, you should seek legal advice.

What can I Claim?

Medical Expenses

You can claim all of your reasonable medical expenses including bills for doctors, medication, hospital, physiotherapy, chiropractic and many other types of treatment.

In some cases the Insurer can pay for home help or modifications to your home or car.

You can claim travelling expenses for visiting treating or workcover doctors.

Weekly Payments

Different methods of calculating weekly payments for time off work apply depending on your date of injury and are subject to a statutory maximum amount. The calculation takes account of your pre injury earnings which for a limited period can include shift and overtime allowances. For most current claims the following applies:-

If you cannot work you are entitled (subject to a maximum amount) to:

1. For the first 13 weeks - 95% of your pre-injury average weekly earnings.
2. For 14 weeks to 130 weeks - 80% of your pre-injury average weekly earnings.
3. After 130 weeks - 80% of your pre-injury average weekly earnings if you have no current work capacity which is likely to continue indefinitely.

If you can do some work you are entitled (subject to a maximum amount) to:

1. For the first 13 weeks - 95% of your pre-injury average weekly earnings less current weekly earnings; or
if you have not returned to work because there are no suitable duties - 95% of your pre-injury earnings.
2. For 14 weeks to 130 weeks if you have returned to work - 80% of your pre-injury average weekly earnings less 80% of your current weekly earnings; or
if you have not returned to work because there are no suitable duties - 80% of your pre-injury average weekly earnings.
3. After 130 weeks you can apply to the WorkSafe Victoria for weekly payments to continue if:
 - * you have returned to work.
 - * you are working at least 15 hours a week.
 - * you are earning \$151 or more a week.
 - * you are incapable indefinitely of doing more work to increase your earnings.

In some circumstances you maybe entitled to weekly payments for a period of 13 weeks following surgery.

All weekly payments are dependent upon you:

- (a) making reasonable efforts to participate in rehabilitation and accepting reasonable offers from the employer to return to work in suitable employment;
- (b) attending the insurer's doctors and/or rehabilitation providers for assessment.

Superannuation Contributions

Superannuation contributions are payable after 52 weeks and continuing while you are in receipt of weekly payments until age 65.

Lump Sum Compensation

Impairment Claims for injuries on or after 12 November, 1997

1. If your injury causes a permanent physical whole person impairment of at least 10% (or 5% for certain injuries sustained from 3 December, 2003) you are entitled to a lump sum impairment payment. For a psychiatric injury impairment must rate at least 30%. The maximum impairment entitlement is approximately \$503,000.
2. Impairment is measured using an American medical publication known as the AMA Guides Fourth Edition. It generally cannot be assessed until at least 12 months from the date of injury and only if your injury has stabilised.
3. If the injury caused a total loss of a body part (eg, amputation of the first joint of a finger) lump sum compensation may be available even if the whole body impairment is less than the 10% or 5% threshold.
4. To make a claim you need to complete and lodge an impairment claim form. Galbally & O'Bryan can advise and assist you with this.
5. Payment of lump sum compensation for permanent impairment does not affect your entitlement to weekly payments or payment of medical and like expenses, or prevent lodgement (if appropriate) of a further claim for common law damages for a serious injury.

Suing for Negligence – Common Law

If you have sustained a 'serious injury' as a result of the negligence of your employer or another party you may be able to sue for substantial compensation called 'damages'. This can be for pain and suffering only (general damages) and also in some cases for loss of earnings.

An application for a serious injury certificate needs to be made to WorkSafe Victoria or Court.

You are deemed to have sustained a serious injury if you have a whole person impairment of 30% or greater. If your impairment is less than 30% the Insurer or Court will grant a serious injury certificate if it is satisfied that you have sustained either:

- Serious long term impairment or loss of body function; or
- Permanent serious disfigurement; or
- Severe long term mental or severe long term behavioural disturbance; or
- Loss of a foetus.

The injury's impact upon your enjoyment of life is looked at to determine if you have a serious injury so to be able to sue for pain and suffering compensation. In order to claim compensation for loss of earnings you must show you have sustained at least a 40% permanent reduction in your earning capacity.

The process of making an application for a serious injury certificate is complicated. We are happy to meet with you to explain the process and if appropriate Galbally & O'Bryan can prepare your application.

In rare instances you can sue a party, other than your employer, for damages even without a serious injury.

A common law claim must generally be lodged within 6 years of the date of injury otherwise your right to sue may be lost.

Fatal Injury Claims

If employment was a contributing factor to a worker's death a claim can be made by a financially dependent partner and/or children.

The dependents are entitled to lump sum compensation plus a weekly pension. They may also sue any negligent party.

Other Claims

Income Protection /Total and Permanent Disability Claims

If you have superannuation and as a result of injury or illness have been rendered totally and permanently disabled you may be entitled to a lump sum benefit from your superannuation fund. Payment of any superannuation benefit can affect your workcover entitlements. In certain circumstances you may also have other personal insurance which entitles you to compensation if injured.

Galbally & O'Bryan can provide advice on these types of claims.

How do I dispute a decision?

Conciliation Applications

If you wish to dispute any decision made by the WorkCover insurer you should lodge a Request for Conciliation form with the Accident Compensation Conciliation Service. A form can be obtained by contacting the service on telephone 9940 1111 or downloaded from www.conciliation.vic.gov.au.

The request for conciliation should be lodged within 60 days of the date of decision, although time can be extended at the discretion of the Conciliation Service.

Once your application is lodged, a conciliation officer will be appointed to help sort out your dispute and will provide you with information in relation to the conciliation process. Conciliation is free.

In most cases the conciliation officer will arrange a meeting between yourself and the Insurer. You are not automatically allowed legal representation at the meeting but can bring a friend. If you are a member of a union you may be entitled to receive help from Union Assist.

Galbally & O'Bryan can help you with the conciliation process by:

- Completing and lodging the conciliation request form.
- Obtaining reports where appropriate from your doctors.
- Advising on the process.

Appeals to Court

If the Conciliation Service cannot resolve your dispute you can issue Court proceedings.

Galbally & O'Bryan can advise you on this option.

Medical Panels

In some circumstances you can be referred to a Medical Panel to determine medical questions, such as your level of impairment or capacity to work.

The decision of the Medical Panel is generally binding.

How can Galbally & O'Bryan help?

We aim to help you obtain proper and just compensation by:

- Advising on your rights and entitlements.
- Obtaining medical reports from doctors as needed so you can get paid appropriate WorkCover benefits.
- Reviewing decisions of the WorkCover Insurer on your claim and helping you dispute any incorrect decisions.
- Applying to the WorkCover Insurer for an impairment lump sum benefit.
- Advising and if appropriate applying for a serious injury certificate and common law damages.

We offer

- “No win-no charge” arrangements in most injury compensation cases, the details of we would explain and set out in writing.
- Free telephone advice and free first consultation at either:

Melbourne office:
259 William Street Melbourne VIC 3000
Phone: 9200 2533

Dandenong office:
Shop 9/147-151 Foster Street Dandenong VIC 3175
Phone: 9769 2510



Legal services – our areas of expertise

Galbally & O'Bryan is a legal firm which was founded in 1935. Located in Melbourne and Dandenong we provide comprehensive legal services in the following areas:

Injury compensation claims including:

- Workcover
- TAC
- Medical negligence
- Defective products
- Accidents in a public place or on private property
- ComCare claims
- Superannuation and disability insurance claims

Wills and probate including:

- Challenging a Will
- Making a Will
- Probate and estate administration
- Estate planning

Criminal law - defence of police charges

Family law - marriage and de facto relationships, divorce, property and financial settlements, children and parenting issues

Employment matters - employment contracts, termination of employment, redundancy, discrimination

Property law - leasing, buying and selling a property or business

Commercial litigation/dispute resolution -

commercial and contractual disputes, debt recovery, property disputes, general and professional negligence claims.

For more information

visit www.galballyobryan.com.au

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