

WA Workers' Compensation

Important notice to Workers' Compensation
policy holders



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Introduction

From 1 July 2024 the Workers Compensation and Injury Management Act 1981 will transition to the new Workers Compensation and Injury Management Act 2023 (the Act). The Act modernises Western Australia's Workers Compensation laws.

This notice provides general information relating to the Act only and does not take your personal circumstances into consideration. This notice is not intended to provide legal, technical, or detailed advice with respect to the workers compensation scheme. You should not act based on information in this notice without first obtaining professional advice.

Governing Body

WorkCover WA is the government agency responsible for regulating and administering the workers compensation scheme in Western Australia. The Workers Compensation scheme ensures workers who suffer a work-related injury or illness are compensated for lost earnings, medical expenses, and other associated costs, and assists injured workers to achieve a safe and sustained return to work. As the governing body, WorkCover WA recommends workers compensation insurance premium rates for the industry.

An employer or worker can contact WorkCover WA for advice and assistance on 1300 794 744 or contact them via an electronic query at www.workcover.wa.gov.au/contact-us/.

General Information

The Workers Compensation and Injury Management Act 2023 requires all employers in Western Australia to have workers compensation insurance for their workers. This insurance provides protection for workers who suffer work-related injuries or illnesses and helps cover medical expenses, rehabilitation costs, and lost wages. It is an offence under the Act for an employer not to have workers compensation insurance in place. This may result in significant penalties.

Transition from 1981 Act to 2023 Act

All policies will transition to the new policy wording from 1 July 2024. This means all documents and claims will be administered under the provisions of the Act and new policy wording. The information in the policy documentation will also be updated to reflect the new policy wording and the Act. It is important for the employer to ask for professional assistance if they require help with the transition.

Definition of worker

Under the Act any person working under a contract of service and apprentices will still be deemed to be a worker. Declared working directors continue to be considered a worker under the Act, however the Act has expanded working directors to include directors of public companies (i.e. Ltd companies) and private companies (i.e. Pty Ltd).

In the Act the coverage for contractors has been clarified. Any individual who has contracted to another person for the performance of work will be covered. There are some exceptions to this, such as if a contractor is doing work that is in the course of a trade or business regularly carried out by the individual in the individual's own name or business or the name of their firm, then the contractor will be required to carry their own Workers Compensation Insurance Policy.

Avoidance arrangements should be considered where an employer can benefit from a worker's services without taking on liability and duties as the worker's employer. If a worker is injured under such an arrangement, the employer is liable to pay any compensation covered by the insurance policy. The insurer can then recover these compensation costs from the employer.

Workers outside of Western Australia

The Act provides coverage for workers who travel to or work temporarily in different jurisdictions, provided it meets the 'state of connection' test. The state of connection test is the same as set out in the 1981 Act, however the Act provides for an exclusion of liability for compensation in respect of injury suffered by a worker outside of Australia, if the worker has never resided in Australia or has been continuously resident outside Australia for more than 24 months when an injury occurs.

Cover is excluded for common law liability arising in respect of injuries or claims brought outside of Australia.

Obligation of an employer to have insurance.

Under the Act, an employer is a person or entity who has contracted a worker to work. An employer must at all times have a current workers compensation policy issued by a licensed insurer. It is an offence under the act for an employer with workers to not hold a workers compensation policy.

Application for a Zurich workers compensation policy

An employer is required to provide underwriting information about their business to Zurich. This assists us to issue or renew a workers compensation policy. Along with this underwriting information and as part of the quoting process, the employer will need to complete the approved estimated and actual remuneration forms. The remuneration forms have been developed by WorkCover WA along with a Remuneration Guideline. The Estimated Remuneration Declaration is required to provide Zurich the potential remuneration to the employer's workers for the forthcoming period. The Actual Remuneration Declaration provides information relating to the actual remuneration paid to employers workers for the prior policy period.

It is a requirement under the Act that Zurich receives both remuneration declarations. It is also part of the employer's record keeping requirements under the Act for the employer to keep these documents.

Keeping records

An employer must keep current and accurate remuneration records for 7 years which includes the following information:

1. number of workers insured under the policy;
2. the industry classification based on which the premium was determined; and
3. the total remuneration paid during the period of insurance.

WorkCover WA may require the employer provide the records in the event the records need to be inspected by a person authorised by WorkCover WA.

The insurer may reasonably request to inspect or audit your records if this audit and inspection is relevant to a claim or the policy.

Understanding your insurance premium

WorkCover WA determines the recommended premium rates for each industry which is updated annually. Insurers can discount the recommended premium rates or load the premiums based on their underwriting criteria. If the premium has been loaded over 75% of the recommended premium rate for your industry, employers are able to have their premium reviewed by WorkCover WA. Additional information regarding this review process can be found at www.workcover.wa.gov.au.

Cancelling an insurance policy

If it is agreed to by WorkCover WA, an Insurer may cancel an employer's policy, including for non-payment of premium. In this event:

1. The employer must provide Zurich an account of the remuneration they have paid in the past year of the policy period up to the date of cancellation; and
2. Zurich will adjust the premium as described above and refund any unearned premium.

It is important to make premium payments on time to avoid a potential cancellation due to non-payment of premium. If you encounter difficulties paying your premium, you must contact us soon as reasonably possible to explore alternative payment options.

Lapse of an insurance policy

If the employer fails to renew their policy, it will lapse at the end of the period of insurance. Zurich will cease to be liable for any claims under the policy no later than 7 days after they notify WorkCover WA of the policy lapsing. The insurer also will require information about the reason for the policy lapse.

How a worker claims compensation

A worker makes a claim by giving the employer a completed claim form (in the approved form) and a certificate of capacity.

Once Zurich receives a worker's claim, the employer is required to give the claim to Zurich within 7 days. Failure to do so can result in fines under the Act.

A worker may give their claim directly to Zurich if the employer fails to give it to Zurich within 7 days.

Responding to a claim for compensation

Within 14 days of receiving the claim, Zurich is required to give the worker a liability decision notice or a deferred decision notice. A liability notice will be issued if there is sufficient information available to decide liability for the claim. A deferred decision notice will be issued if further information is required before a decision can be made.

A liability decision notice must state if Zurich:

1. accepts the claim for compensation;
2. accepts that the employer is, or may be liable to compensate the worker but that there are one or more "liability questions" in relation to the acceptance. Liability questions can include whether there is potential contribution from another employer, apportionment of liability, and which Insurers may be liable to indemnify the employer; or
3. does not accept the claim for compensation.

If the certificate of capacity specifies the worker is incapacitated, the liability notice must also state where Zurich accepts that the employer is liable to pay income compensation.

Deferred Decisions - Provisional Payments and Deemed Liability Acceptance Days

If Zurich gives a worker a deferred decision notice then a liability decision notice must be given as soon as practicable and in any event before the deemed liability acceptance day. The deemed liability acceptance day is 120 days after Zurich receives the worker's claim. If a liability decision notice is not given by this date then the worker's claim for compensation is deemed to be accepted.

An employer is required to make provisional payments of medical and health expenses compensation and income compensation when a deferred decision notice is given. If the employer fails to provide provisional payments to the worker, there are fines applicable under the Act. Provisional payments to the worker are payable 28 days after Zurich has received the worker's claim.

Provisional payments of income compensation will be calculated from the day that the worker first has an incapacity for work resulting from the injury and ends on the earliest of the following dates:

1. the day the worker is certified fit;
2. the day the insurer gives a liability decision notice; or
3. the deemed liability acceptance day.

Provisional payments of medical and health expenses will be calculated from the day the worker was injured and end on the day that Zurich gives a liability decision notice or on the date of the deemed liability acceptance day. The total of the provisional payments are limited to 5% of the medical and health general expenses limit.

Injury management systems

All employers are required to establish an injury management system. An injury management system is a written description of the steps to be followed when there is an injury in the workplace.

Penalties can apply to employers who do not establish an injury management system.

WorkCover WA has developed an Injury Management System template. The detail included in the injury management system may vary depending on the size and nature of the employer's business. Employers can change or add to the template to suit the needs of their workplace.

The WorkCover WA publication Injury Management: A Guide for Employers provides information to assist employers to understand their legal obligations and contains a three-step approach to effective injury management.

Return to work programs

Employers have an obligation to establish a return to work program to assist partially incapacitated workers to return to work. This obligation also arises when you are required by the worker's treating medical practitioner to establish such a program. A return to work program means a program for assisting an injured worker to return to work in a timely, safe and sustainable way. The return to work program must, as far as is reasonably practicable, be established in consultation with the worker.

You may request Zurich to assist you to comply with your duties.

Injured workers have obligations to participate and co-operate in return to work programs.

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