

INJURED AT WORK

If you are a worker employed in the Northern Territory ("Territory Worker") and you suffer an injury at work, you may be entitled to compensation under the *Return to Work Act* ("RTW Act"). The compensation you may be entitled to includes:

- Compensation in the first 26 weeks of incapacity for the difference between the amount you actually earned in employment during a week and your normal weekly earnings immediately prior to the injury;
- Compensation after the first 26 weeks equal to 75% of your loss of earning capacity;
- Compensation for medical and like expenses in relation to the injury;
- Compensation if the injury results in a whole person permanent impairment of 5% or greater.

What is an injury?

An injury is defined in the Act as being:

3A Injury

- (1) An ***injury***, in relation to a worker, is a physical or mental injury arising out of or in the course of the worker's employment and includes:
- (a) a disease; and
 - (b) the aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury or disease.

(2) *Despite any other provision of this Act, a mental injury is not considered to be an injury for this Act if it is caused wholly or primarily by one or more of the following:*

- (a) *management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker's employer;*
- (b) *a decision of the worker's employer, on reasonable grounds, to take, or not to take, any management action;*
- (c) *any expectation by the worker that any management action would, or would not, be taken or any decision made to take, or not to take, any management action.*

Making a claim

Pursuant to section 80 of the RTW Act, a prerequisite to any entitlement to compensation is to notify your employer as soon as practicable of the injury.

This can be done either verbally or in writing and must include details such as, the name of the person injured and the date and cause of the injury.

If you are unable to work because of the injury, or if you incur medical expenses or suffer an whole person impairment, because of the injury you will need to lodge a claim form with your employer.

Section 82 and 83 of the RTW Act sets out the form of the claim and how it is to be given or served on your employer. The relevant form is available at <http://www.worksafe.nt.gov.au/WorkersCompensation>. This site also has some useful information about making a claim for compensation under the RTW Act and information about the claim process.

If the injury results in time off work then you will need to provide a Statement of Fitness for work with your claim form. You can obtain the Statement of Fitness for work from your medical practitioner.

You should ensure your medical practitioner is aware you need the Statement of Fitness for work for a work related injury as the form of the Statement is more detailed than what medical practitioners usually provide by way of a medical certificate.

Once you have lodged the claim with your employer, the employer has three working days to forward your claim to its insurer.

The employer (insurer) then has 10 working days to make a decision to accept liability for your claim or to dispute liability for your claim. Another option is that the employer can defer making a decision.

If the employer defers making a decision they have 56 days from the date you are notified of this to make a decision whether to accept or reject liability. If the claim is deferred then the employer has to make weekly payments to you during the deferral period.

If the employer accepts the claim then within three working days of that decision the employer shall commence making weekly payments to you.

If the claim is rejected you have the right to have the rejection conciliated by NT Work Safe and the Notice of Decision provided to you rejecting the claim must set out your rights. You then have 90 days to apply to NT Worksafe for conciliation.

If the matter is not resolved at mediation a certificate stating this will be issued by the mediator and you then have 28 days from the date you receive the certificate to commence a proceeding in the Work Health Court for a determination by the Court as to the liability of your employer for the injury.

Settlement by Agreement

Pursuant to section 78A of the RTW Act, you can enter into an agreement with your employer so that instead of being paid compensation which would be payable under the RTW Act, you receive payment of a lump sum.

However, once a lump sum agreement is signed and provided it is enforceable you will not be entitled to any further payments under the RTW Act.

Therefore, if you are contemplating such a lump sum payment it is important to take account of future time off work, future medical expenses and future rehabilitation costs as these will have to be funded from your lump sum payment.

Summary

If you would like advice as to your rights if you are injured at work contact us at De Silva Hebron on 8924 4944 for a 30 minute interview consultation for \$99 plus GST.

We can also assist you in negotiating a lump sum payment with your employer.

Or if your claim has been rejected and you wish to commence a proceeding in the Work Health Court we can assist you.