



# I've suffered a psychological injury at work. What do I do?

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Many people believe that workers can only make [compensation claims for work-related physical injuries](#). However, there are growing numbers of claims submitted for work-related psychological injuries. These cases are more onerous and have different requirements to claims for physical injuries. There is also an exclusion, referred to as "*reasonable management action taken in a reasonable way*", which can be used to reject psychological injury claims.

## What's the test?

Employers must ensure, so far as is reasonably practicable, the health and safety of workers. Queensland workers' compensation law can be complicated, especially when it comes to psychological injuries. Unfortunately, a high number of compensation claims for psychological injuries are rejected in the first instance.

It is not enough to prove that a psychological injury occurred at work; presently, an injured worker must also establish that the work-related incident (or incidents) was "*a significant contributing factor*" to the psychological injury.

Often, determination of whether a work incident is "*a significant contributing factor*" is based on the opinion of a treating practitioner (e.g. treating psychiatrist).

**A significant change to the definition of psychological injury came into effect 30 October 2019 in Queensland**

Prior to October 2019, the definition of psychological injury required employment to be “**the major significant contributing factor**”.

On 22 October 2019, the Queensland Parliament passed the Workers’ Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 (“the Bill”).

The Bill amends the definition of psychological injuries by removing “major”. Therefore, the definition has been amended to require employment to be “a significant contributing factor” to the development of the psychological injury. This significantly decreases the standard a worker must meet to claim compensation.

This amendment took effect on 30 October 2019 and, therefore, only applies to psychological injuries sustained after this date. Psychological injuries sustained before 30 October 2019 must meet “the major significant contributing factor” definition.

However, even if a treating practitioner states that the work incident was “the major significant contributing factor” or “a significant contributing factor” to the injury, the claim may be rejected because the incident constitutes “reasonable management action taken in a reasonable way”.

## **What is “reasonable management action taken in a reasonable way”?**

“Reasonable management action taken in a reasonable way” is an exclusion often relied on by insurers to reject claims for psychological injury. This exclusion only applies to work-related psychological injuries and can be applied when:

- the incident/s constituted “management action”;
- this “management action” was reasonable; and
- this “reasonable management action” was carried out in a “reasonable way”.

The test for whether an incident involves “reasonable management action taken in a reasonable way” is an objective one. That is, would a reasonable person (i.e. not the employer or injured worker), after considering all the relevant facts, consider the management action reasonable?

The legislation provides specific examples of actions that may constitute reasonable management actions taken in a reasonable way, for example:

- action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker; or
- a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker’s employment.

Cases have clearly determined that the “management action” does not have to be perfect, only reasonable. Unfortunately, this means that the exclusion is broad and can be applied unfavourably for many injured workers.

# What do I do if my workers' compensation claim is rejected?

If your claim is rejected, you can lodge a review with the Queensland Workers' Compensation Regulator. This review must be lodged within 3 months of the date you receive the decision to reject your claim.

If your claim is rejected, legal arguments can be submitted, arguing that your injury was not caused by "*reasonable management action taken in a reasonable way*". These arguments will depend on the facts of each case, but can include:

- the incident/s did not arise as a result of management action;
- the "*management action*" was unreasonable; or
- the "*reasonable management action*" was not carried out in a "*reasonable way*".

In cases where the injury was caused by multiple factors, the matter can be complicated. Courts take a "*global approach*" by weighing up all events linked to the cause of injury before determining whether, on balance, those factors constitute "*reasonable management action taken in a reasonable way*".

## Conclusion

Psychological injury claims can often be long, complicated, confusing and emotional. If you have sustained a work-related psychological injury, we strongly encourage you to seek legal advice.

Hall Payne Lawyers can assist you by:

- assessing your situation to determine the best course of action;
- providing advice if your claim is rejected, and the possible arguments available on Review; and
- facilitating conciliation and appeal proceedings through the Queensland Industrial Relations Commission and Industrial Court.

## Handy tips

- Always see your treating general practitioner in the first instance; they know you best.
- If you are the victim of bullying or harassment, always document incidents in a diary with the date, time, specific details of the incident and name witnesses (if possible).
- Always complete a workplace injury incident form as soon as possible after an incident. Inform your manager or workplace health and safety advisor and consult your Union or lawyer.

***This article relates to workers compensation claims in Queensland.***

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