



Work injury common law damages claims NSW

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In NSW, if you are injured at work, you may be entitled to [workers compensation benefits under the statutory scheme](#), like payment for loss of wages, medical expenses and a permanent impairment lump sum payment. Further, if your injury was due to the negligence of your employer, you may also be eligible for compensation through a work injury damages claim; a common law claim.

Who is entitled to work injury damages?

There are a number of criteria you need to satisfy to be eligible for work injury damages:

1. Your injury(s) must be as a result of negligence
2. You must be assessed with at least 15% whole person impairment under the WorkCover Evaluation of Permanent Impairment guidelines. These are the same guidelines that will have been used to determine your percentage impairment for your [workers compensation permanent impairment claim](#).
3. The work injury damages claim must be made within three (3) years of injury. If you are assessed at 15% outside the three years, a claim can still be made after leave (permission) of the Court is obtained.

A lawyer can advise you more fully in respect of your circumstances and whether you are likely to meet the criteria for a claim.

Claims against another party (not your employer) for their negligence

Further, there may be another party that may be liable in negligence; for example, a worksite manager, other contractors etc. Claims against such individuals or other parties are referred to as occupiers/public liability claims.

A claim against another party can be made regardless of the level of whole person impairment but must be made within three (3) years of the injury. If proceedings are commenced outside 3 years, leave of the Court needs to be obtained.

What compensation is payable with a work injury damages claim?

Work injury damages claims are limited to a claim for loss of past and future economic losses calculated through to retirement age. The claim also includes payments for past and future loss of superannuation as well as the tax that has been deducted from our [workers compensation weekly payments](#) (under the statutory scheme).

An adjustment is made to the claim for past economic loss to take into account the amount of weekly compensation the insurer has already paid you under the workers compensation statutory scheme.

If you have received Centrelink payments or income protection these will be repayable from the settlement of the claim.

In respect of the claim for future economic loss, adjustment is made to the value of the loss by reference to actuarial tables. It is not a straight mathematical calculation of the loss because when you resolve your work injury damages claim, you receive the damages (compensation) as a tax-free lump sum free rather than weekly payments you were receiving previously.

There is also a reduction of the future economic loss, generally of 15%, to adjust for the “vicissitudes of life” or the prospect that some other unknown future factor may affect your capacity to earn.

What’s the process for making a work injury damages (common law) claim?

Once we have determined that your employer’s negligence contributed to or caused your injury and you have resolved your [lump sum permanent impairment claim](#), we will serve a s281/282 notice which sets out the allegations of negligence and the amount we are claiming on your behalf.

The insurer will issue its decision in reply.

The insurer has two months to reply, however, if the insurer requests further particulars of the claim, the timeframe to issue the decision is extended to two months from provision of the further information. Likewise, if the insurer arranges an Independent Medical Examination (IME), they have two months from the date of the IME.

A Statement of Claim will be drafted. This is a document which sets out all the details of your claim and the basis of our Prefiling Statement which will be served on the other side (the insurer) together with other supporting documents.

The insurer will then serve its Prefiling Defence and its documents.

We will then seek a mediation in the Personal Injury Commission to try to settle the matter without the need to go to trial. A mediator will be appointed to assist with settlement negotiations. The mediation should normally be scheduled approximately 9 to 12 months from the date we serve the s282 notice.

Sometimes a mediation is unable to be held; for example, the insurer refuses to take part in a mediation. In that event, the Plaintiff (you) is required to commence court proceedings to continue with the work injury damages claim.

What is the cost to pursue a claim?

Legal costs will be payable if you proceed with a work injury damages (or an occupier's liability claim) as IRO (the Independent Review Office) does not fund these claims.

If you choose to engage a Hall Payne personal injury lawyer to assist you with your claim, we will issue you with a costs agreement (outlining the estimated costs to pursue your claim), prior to doing any work for you.

What happens when my matter resolves?

When your matter resolves (either at mediation or trial), any entitlement to weekly compensation and treatment expenses (under the workers compensation statutory scheme) will end and your workers compensation file will be closed and finalised.

You will be paid a lump sum to cover the settled amount for past and future economic loss.

At times, the employer may seek that you resign from your employment if you are still technically employed.

Get help from a worker's compensation lawyer

Most matters resolve at mediation and this is usually the preferred option as it takes less time, is less stressful and less costly.

If, however, your matter does not resolve at mediation (or the insurer chooses not to mediate) and the case proceeds to court, Hall Payne has significant expertise and experience in obtaining compensation for injured workers via court processes.

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

Email: general@hallpayne.com.au

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