Workers Compensation

This information is for members of the NSW Teachers Federation who are employed in schools, colleges, AMES centres and related workplaces.


It is most important to be aware that this pamphlet is intended as a guide only to the rights and obligations of teachers injured from 1st January, 2002. If you are unsure about your rights or need further details about aspects of the scheme, members should not hesitate to check with the Federation (ph. 1300 654 369) Members injured prior to 1st January, 2002 should seek advice from the Federation regarding their entitlement to workers compensation benefits.

What is Workers Compensation?

The workers compensation scheme provides workers injured in the course of their employment with weekly payments to cover loss of earning capacity, payment of medical expenses and rehabilitation expenses, and assistance with return to work. All employers must have a workers compensation policy to cover the cost of these.

Workers compensation will be paid to a worker whether the injury is the fault of the employee, other employees or the employer.

Who is entitled to workers compensation?

All employees - permanent, temporary and casual - are entitled to workers compensation. As a general rule, you can claim for workers compensation if you:

- Are injured at work
- Are injured on the way to or from work (provided the injury is not attributable to your serious and wilful misconduct). You may even have an entitlement if you have broken your journey.
- Are injured at other place you are required to attend for work-related reasons
- Are injured at any time out of school hours while on duty (e.g. excursions)
- Are exposed to and contract an illness from a student or staff member
- Contract an illness that was substantially caused or aggravated by conditions at work. Examples in this category include, industrial deafness, heart attack and stress-related illnesses such as anxiety,
depression, nervous breakdown and physical manifestations of these, such as ulcers and allergies.

Members who believe they may be entitled to workers compensation should lodge an application. They should not be dissuaded by colleagues who suggest that the claim will be unsuccessful. A workers compensation claim will not harm the claimant's career in any way.

It is worth noting the following:

- As long as deliberate fraud is not involved, there is no penalty of any type for lodging a claim (successful or otherwise) for workers compensation.
- All employers must insure their employees under the Workers Compensation Act.
- It is in the interests of the employer as well as the employee to have compensation provided when appropriate.
- An injury which may appear relatively minor at the time may give rise at a later date to further, more serious complications. If the original claim is successful, illnesses or disabilities arising from it will entitle the claimant to further compensation.
- For the purposes of the workers compensation legislation, the Department of Education and Training in NSW is a self-insurer. However, all claims are managed for the Department by the GIO.

**How long do I have to lodge a claim?**

Members are advised to make a report of an injury as soon as possible after it has occurred and, if the insurer requires it, submit a claim promptly. This will assist in achieving prompt payment of benefits and other support. Nevertheless, the legislation provides that a first claim can be lodged within a period of three years after the injury occurred. However, if the employee was not aware of the injury until some later date, then the three year period for the lodgement of the claim commences from the date of that awareness. If the claim is for compensation death, or serious and permanent impairment, the claim may be made at any time. Additionally, WorkCover has the power to extend the three year period, if it sees fit.
What can you claim for?

Physical injuries

You can claim for any physical injuries that are substantially caused by your work. Generally, this also includes injuries which occur on the way to or from work. You are also covered while you are on excursions and other duties which may take you away from your workplace.

Infectious diseases

If it is probable that you contracted an infectious disease at work, it is likely that you can claim compensation. Such diseases include measles, chicken pox, glandular fever and head lice. Your claim should be supported by a statement which sets out the names of pupil and staff suffering from the disease with whom you have been in contact, dates of their absence from the school or other workplace, the and the nature and extent of your contact. It is not necessary for the infected student or students to be in your class.

Psychological and Psychiatric injuries

Claims for psychological and psychiatric injuries are as valid as those for physical injuries. Any members suffering from a psychological condition which a doctor believes to be work related should lodge a claim for workers compensation. Such conditions may include stress, anxiety, depression and the physiological effects of these. It is important to note that psychological medical conditions need not have been caused by the work situation; they need only have been aggravated by work conditions and be supported by a doctor stating that work conditions are a substantial contributing factor to your incapacity.

It should be noted, however, that legislative changes in recent years have removed the right to workers compensation if the psychological injury, such as anxiety or depression, arises from "reasonable action" taken by the employer, or as a sequel to physical injury. Reasonable action includes those which relate to transfer, promotion, demotion, performance appraisal, discipline, retrenchment, dismissal or provision of employment benefits to workers. Nevertheless, it is possible to successfully pursue claims in relation to these matters if the employer's actions are shown to have been unreasonable.

Members should not be dissuaded from making a claim for workers compensation for psychological injury by colleagues and/or supervisors. Because of the special requirements relating to these claims, members who believe they may have a claim are strongly advised to seek advice from the Federation. This includes those who feel they may be affected by the "reasonable action" provision.
What medical and other expenses can I claim?

You can claim such expenses as:

- Medical, hospital, dental, chemist and ambulance expenses
- Treatment by a physiotherapist, chiropractor, osteopath, masseur or speech therapist. This treatment should be endorsed by a doctor as "medically necessary" treatment for your injury.
- Clothing, glasses, crutches, dentures, artificial limbs etc., provided they were damaged in the accident which gave rise to the claim
- Modification of your home or vehicle if requested by a doctor
- Travel expenses for attending appointments for medical and other treatment
- Domestic assistance, in some circumstances

All expenses claimed must relate directly to the injury.

Remember to keep copies of all receipts and certificates submitted in support of your claim. If you use your own vehicle to see a doctor or obtain treatment, keep a record of the mileage travelled and submit this.

How do I lodge a claim?

- **Report the injury as soon as possible to your principal/college manager/senior supervisor.**
- **If you have an illness which you believe is work-related, you should report it as soon as you become aware of this.** Your report can be written or verbal. Ensure that the injury is recorded in the Register of Injuries. This can be done by the injured worker or the employer or supervisor can be requested to make the entry.
- Obtain, or arrange to have obtained, statements from eye-witnesses to any event which gave rise to the injury.
- See a doctor promptly and obtain a WorkCover medical certificate (all doctors have these). Your certificate should state the nature of the illness, period of absence from work and, if possible, a statement to the effect that the injury/medical condition is work related. When completing the WorkCover certificate, the doctor must state that the condition is substantially or mainly caused by work. It also provides essential information on whether a person can return to their normal job or require special duties until they have recovered. In the case of
psychological injury, terms such as "stress" or "stress condition" are unacceptable. The certificate must give the medical diagnosis, stating the emotional, psychological and physical manifestations of your psychological injury, (e.g. "anxiety, depression"). For all types of claims, retrospective certificates will usually not be accepted.

- Complete a claim form, if requested by the insurer. This must be provided by your principal, etc.
- Attach your WorkCover Medical Certificate to your claim. A copy of this is to be found at the end of this pamphlet.
- As soon as possible after the injury, submit your completed claim form. If you are likely to be away for a lengthy period, you should submit your claim within a reasonable period and not wait until you return to work. If you are unable to return to your work for more than seven days, you have the right to nominate a treating doctor who will actively manage your injury in consultation with DET and the insurance company.
- Make a note of when you have submitted your claim and, if possible, obtain a receipt for your claim when you submit it.

Photocopy and keep all documents relating to your claim. You should also request copies of any statements which arise from investigations into your injury.

After you have lodged your claim, your employer is obliged to notify their insurance company within two days and forward any associated documents within seven days.

**Should I fill out a normal sick leave form?**

Yes! Although you have submitted a workers compensation claim, you still need to complete sick leave forms in the usual way. There is a place on the leave form to indicate that you have lodged an application for workers compensation. If your claim is accepted, even provisionally, sick leave taken as a result of the injury will be re-credited to you.

**When can I expect to be paid benefits?**

Under the workers compensation legislation, the insurer must commence payments within 7 days of receiving notification of the injury unless the insurer claims that it has a "Reasonable Excuse" not to do so. This includes payments for all reasonable medical expenses. It should be noted, however, that even though payments must commence within seven days, this can be a provisional acceptance and the insurer has 21 days to decide whether it will accept liability for the claim or to dispute the claim.
If there are any delays in the payment of benefits and/or medical expenses, the Federation should be contacted immediately.

What is a "Reasonable Excuse"?

From January 1, 2002, can only refuse to commence payment within seven days if it has a Reasonable Excuse. The only excuses which are regarded as this are the following:

- insufficient medical information
- worker unlikely to be a worker (i.e. was not employed at the time of the injury)
- insurer unable to contact worker
- worker refuses access to personal and health information related to the injury
- injury is not work-related
- injury notified after two months.

No other excuses can used by the insurer to delay or decline payment of benefits. If the insurers decide that they will offer a "reasonable excuse" it must be based on evidence available to them.

Although you don't need to provide a WorkCover medical certificate under the provisional liability arrangements unless the insurer requests it, it is still advisable to provide one. However, a completed WorkCover medical certificate is necessary if you wish to proceed further with your claim. A copy of the WorkCover Medical Certificate is to be found at the end of this leaflet.

If my claim is unsuccessful, what should I do?

If the insurer denies liability or further liability for your claim, they must write to you and advise you of the reasons for this. You can seek clarification from the insurer if you don't understand or agree with the decision. The written notification should include a phone number for this. If you believe that the denial of liability is unreasonable, contact the Federation as soon as possible. You may need assistance to pursue your claim.

The Claims Assistance Service of WorkCover can also help to resolve differences before they become formal disputes.

Where a dispute occurs between the insurer and a claimant, the Workers Compensation Commission will hold a conciliation hearing in an attempt to resolve the matter. Federation advice should be sought in relation to this.
If my claim is rejected, can I claim medical expenses from Medicare and/or another health fund?

Yes, but you must indicate when bills relate to a disputed or unresolved workers compensation claim. Normally, you will be required to provide an undertaking to repay Medicare and/or the health fund if your claim is successful.

If I am unable to work, what payments am I entitled to?

It is not possible to cover all of the details of payments in this leaflet. Members should check their entitlement with the Federation. As a general guide, the following applies:

**Total incapacity**

**For the first 26 weeks**, you will receive either your salary or the maximum weekly payment, whichever is the lesser. The current maximum weekly payment is set at $1,281.30 (as at May, 2002). If you are a temporary or casual teacher you will be paid compensation based on the average weekly hours worked to the date of the claim.

However, if your normal weekly salary exceeds this, your employer will use any available sick leave to supplement the insurer's payment so that you are paid the equivalent of full salary as long as possible.

**After the first 26 weeks**, you will receive $296.20 per week (as at May, 2002) plus $78.10 for a dependent spouse plus an additional amount for each dependent child ($55.80 for the first dependent child as at May, 2002).

All payments are adjusted each six months in line with C.P.I. movements.

**Partial incapacity**

Once your injury has been reported and your doctor says you are fit for suitable duties, the insurer must provide you with an Injury Management Plan. Such a program, containing a staged return to work, should be developed in consultation with you and must commence even though you may not yet have heard if your claim has been accepted. These rehabilitation programs, in the Federation's view, should involve a recognised rehabilitation provider, such as the Commonwealth Rehabilitation Service. If your doctor certifies you as partially or temporarily incapacitated, you should contact the Federation to check what your entitlements are under workers compensation.
Lump Sums

Under the new legislation provisions relating to loss of function and pain and suffering have changed. Federation advises that members who believe they may have a claim in this area to seek advice from the Welfare Section about lodging such claims.

You are entitled to lump sum if you have suffered permanent impairment of function or loss of use of part of the body. For injuries after 1st January, 2002 the level of impairment is assessed by a medical specialist trained in using the WorkCover Guides, as a percentage of Whole Person Impairment (WPI).

A lump sum may also be available for permanent psychological injury. This, however, must be a loss assessed as 15 per cent or more permanent impairment of the whole body. Members who feel they may be able to claim a lump sum for this type of injury should consult the Federation.

Teachers should make a claim for a lump sum as soon as their condition becomes stable and they have achieved maximum medical improvement. For example, at some point following surgery or other treatment for an injury, it should become sufficiently stable for your doctor to assess what level of function you will be left with on a permanent basis. There is no advantage in delaying a claim since the amount claimable is set at the date of injury and not at the date the claim is lodged. Any delay may simply result in the value of the lump sum being reduced by inflation.

Settlement of a lump sum claim does not preclude a further claim if the condition deteriorates further over time. For example, an employee has accepted a lump sum settlement based on 20% loss of function in their arm, but finds there has been a further deterioration to 50% loss of function over the following five years. Under the Act, the employee can lodge another claim for the additional 30%. Because of this, an employee should always advise a doctor of a previous injury, even if it occurred many years before and even if it appeared that full recovery had occurred at the time.

Settlement of a claim for a lump sum for permanent impairment of function or loss of use does not mean that you have settled your entire claim. You will still have rights to weekly payments of compensation, payment of medical expenses and rehabilitation, as needed.

Pain and suffering

You are entitled to an additional lump sum for pain and suffering if you have 10% or more whole person impairment. The determination of the amount to be paid is independent of the percentage of WPI.

Members should consult the Federation if they believe they may be entitled to a settlement for pain and suffering.
A settlement for pain and suffering for a particular injury is final and cannot give rise to a further claim at a later date.

**Damages**

It is possible, under some circumstances (usually involving negligence) to pursue common law damages for a work-related injury. To do so, however, precludes a claim being made for lump sum under the Workers Compensation Act. It should also be noted that damages will be awarded for economic loss only, not pain and suffering. This means that any award will be based solely upon an assessment of the employee's lost earning capacity. To make a claim under common law, a worker must have achieved 15% or more WPI.

Members who believe they may have a common law claim for damages should seek advice from the Federation.

**Superannuation**

Employees entitlements under the Workers Compensation Act are in no way affected by their entitlements under various superannuation schemes. For example, a teacher who is medically retired as a result of a work-related injury can receive both a weekly compensation payment and a fortnightly superannuation pension (or superannuation lump sum where a pension is not payable). If you are medically retired, you should continue to send medical certificates to the insurer. If payment cease, you should contact the Federation.

**Journey claims**

Workers compensation benefits are available for injuries suffered in most journeys between your home and your place of employment, or any other place you are required to attend for work-related reasons. This means that you are covered for most journeys once you leave the boundary of your property.

Since it may be possible to lodge a motor accident claim as well as a workers compensation claim if the injury arises from a motor vehicle accident, advice should be sought from the Federation on the most appropriate course of action.

Special conditions apply if you have broken your journey between home and work. They also apply if the accident occurred before December 13, 1997. In either case, or if you are just uncertain as to your rights, contact the Federation.

**Holiday pay**

In most cases, permanent and temporary employees in receipt of workers compensation payments will also be entitled to holiday pay. If, for example, you are in receipt of full pay (which could be a combination of workers
compensation payments topped up from your sick leave entitlement) immediately prior to the vacation you will receive your normal pay for the vacation. Under some circumstances teachers may receive a workers compensation benefit in addition to their normal holiday pay. Casual and other employees unsure as to their entitlement should contact the Federation.

**Return to work plan**

A return to work plan is a written statement of the steps which will be taken to assist the injured employee to return to work. Such a plan may include a phased return to work, changed duties and/or a reduced workload.

If you will be off work for more than seven days, you must advise the insurance company of the doctor who will be responsible for overseeing your return to work plan. Normally this would be your G.P. or other treating doctor. An injured employee has the right to nominate his or her own doctor and this cannot be overridden by the employer or insurance company.

The nominated treating doctor is responsible for developing, managing and signing off on the return to work plan, as well as ensuring that the return to work of the injured employee is done safely and without risk of further injury. In the first instance, the return to work plan should be developed between you and your doctor, and may involve other health experts. Your doctor will liaise with the insurance company and the employer and make sure that the return to work plan is acceptable.

In some cases, the employer may also send a return to work program to your doctor. It is important, however, that any return to work program is negotiated, not imposed. If a dispute arises concerning an appropriate return to work program, you should contact the Federation since it may be necessary to take matters in dispute to the Workers Compensation Commission.

**What if my claim, or some aspect of it, is disputed?**

The Workers Compensation Commission has been established to deal with disputed workers compensation claims and some related matters. Disputes involving weekly benefits, provision of suitable duties, medical and related expenses, payment for damages to person property, compensation for death and management of a worker's injury can all be dealt with by the Commission, as can delays in paying any of the benefits listed.

Members who believe that it may be appropriate to refer a matter to the Commission should consult the Federation.
Further help and advice

NSW Teachers Federation

Your union, the NSW Teachers Federation, regularly provides assistance to members who need advice about workers compensation matters. When appropriate, it also provides legal assistance. If you have any questions about workers compensation, including your entitlement to it, phone the Federation.

Claims Assistance Service

WorkCover's Assistance Service provides advice and assistance to injured workers and employers about claims for workers compensation. Support is provided in relation to reporting of injuries, prompt payment of benefits and return-to-work matters.

Useful contacts

NSW Teachers Federation 9217 2100 1300 654 369 (toll free)
WorkCover Claims Assistance Service 131050

These two Acts cover different parts of the workers compensation system and therefore need to be read together to obtain the full picture.