



I was injured on a journey to/from work – can I make a WorkCover Queensland claim?

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Many people injured at work in Queensland are unclear whether they would be able to make a workers' compensation claim if they are travelling to or from work – this is often called a “journey claim”. A common question asked in relation to workers' compensation journey claims is what “in the course of employment” means, and where this starts and finishes in terms of a working day.

If you are covered by Queensland workers' compensation insurance, the short answer is yes. Generally, you can make a [workers' compensation claim](#) if you are injured on the way to or from work. But, like everything legal in nature, it depends on the circumstances.

Is the journey “in the course” of the worker’s employment?

With all WorkCover Queensland claims, in order for the claim to be accepted, the worker will need to show that the injury occurred in the course of their employment. This is still the case even when an injury occurred in the journey to or from work.

Generally, for injuries that come within the WorkCover Queensland legislation and which occurred during the journey between a worker's home and their place of work, are considered injuries “in the course” of employment.

However, some injuries in the journey to or from work might not be considered to be ‘in the course of employment’:

Where you have taken a significant deviation in the journey, or the journey has been interrupted (i.e you haven't travelled directly from your home to work, or from work to home). This may include where you stop at the shop or a restaurant on the way home.

Where you have committed an offence during the journey. For example, you were under the influence of alcohol, and this was a material contributing factor in the accident, which resulted in your injury.

Where there has been a significant delay before you started the journey. An example of this could be where you attend a personal event near work and then begin your journey following that event (for example, you attend a restaurant with a friend after work).

What time limits apply to making the workers' compensation claim?

The usual time limits for making a workers' compensation claim, which is covered by Queensland legislation, apply. This is generally 6 months from the date of the accident.

Workers' compensation benefits for a journey claim

The same benefits are available to workers injured during a journey as those injured at work, and include:

1. [Weekly income compensation payments](#);

Medical and rehabilitation expenses;

Costs associated with travelling to medical attendances;

Lump sum compensation for permanent impairments.

How do I lodge a claim for the injuries sustained on a journey to or from work?

If you are injured on your journey to or from work, you should notify your employer of the injury and the circumstances of how the injury happened. You should speak to your employer about how to lodge a workers' compensation claim.

You can make a claim through the following methods:

calling WorkCover Queensland ([1300 651 387](tel:1300651387));

lodging a claim [online with WorkCover Queensland here](#);

downloading and filling in a claim form and sending this to WorkCover Queensland as indicated in that form.

You can read more about lodging a workers' compensation claim with [WorkCover Queensland on their website here](#).

If your employer is a self-insurer for workers' compensation claims, then you will need to discuss how to make a claim with your supervisor. Some employers also have information about how to make a claim on their webpage or on an internal intranet.

In order to provide medical information about your injury, you will need to provide a "[Work Capacity Certificate](#)" from your doctor when you lodge your claim. This form is to be completed by your doctor regardless of whether your claim is to be lodged with WorkCover Queensland or a self-insurer.

What if my workers' compensation claim is rejected?

If your workers' compensation 'journey claim' is rejected (either by Workcover Qld or the self-insurer employer), then you have 3 months to lodge an Application for Review with the Workers' Compensation Regulator. This 3-month time limit is very strictly observed by the Regulator, so it is very important to record the due date somewhere you can be reminded, for example, on your phone reminders or an old-school calendar.

There is provision in the legislation to lodge a Review Application outside this 3-month time period, but the Regulator rarely accepts any excuse by an injured worker for why they didn't lodge it within the 3-month period.

Once they receive your Application for Review, the Regulator will review it (and any accompanying documents or submissions you want to make in support of it), and decide whether it will set aside the decision to reject your application for compensation, or confirm that decision still stands.

Some of the decisions the Regulator could make include:

overturning the insurer's decision to reject your workers' compensation claim (ultimately accepting your claim);

affirming the insurer's decision to reject your workers' compensation claim (ultimately agreeing your claim should be rejected);

or

directing the insurer (either WorkCover Queensland or a self-insurer) to do certain things, like gather more medical evidence or investigate the facts further and then make a new decision on your claim. If the insurer rejects your claim again after this, you can apply to the Regulator for another review. You will have a fresh three-month window to submit this second review application.

The Regulator can take about 6 months from the date of lodgement of the review application to make a decision, so you will need to consider alternatives in terms of income if you are no longer employed or have run out of sick days.

Options in this regard include:

income protection through your superannuation (note, however, that IP policies will usually have a waiting period before payments can commence); or

Centrelink benefits, such as disability support payments.

Importantly, if the Regulator subsequently overturns the decision to reject your claim, and you are back-paid weekly benefits, [Centrelink will need to be refunded](#) the benefits it paid you whilst you waited for the Regulator to make its decision. Likewise, most [income protection insurers will also want to be refunded](#) what they paid you in the interim.

If the Regulator confirms the insurer's decision to reject your claim, then you have the option to appeal the Regulator's decision to the Queensland Industrial Relations Commission. There is a very tight time period of 20 business days from the date you received the Regulator's decision in which to lodge the necessary appeal form with the QIRC. Appeals to the QIRC are complicated, and you should always seek advice from an experienced workers' compensation lawyer about what's involved.

[FREE ADVICE FROM A WORKERS' COMPENSATION LAWYER: 1800 001 339](#)

Can I make a common law claim for damages for a journey claim?

If your journey injury was as a result of a road accident, you should consider whether the accident was due to another driver's negligence. In those circumstances, you might have a common law damages claim you can bring against the other driver's 'CTP insurer'.

This is a completely separate claim from a workers' compensation claim. With a motor vehicle accident claim, you are entitled to seek damages for pain and suffering, loss of earning capacity, and medical/rehabilitation expenses (past and future) and, in some cases, for the care you've been given by family/friends (gratuitous care) and/or paid care.

Notably, you cannot "double-dip" and claim on both the CTP scheme and the workers' compensation scheme for the same benefits. Therefore, the compensation you receive through each of the compensation avenues may need to be adjusted to reflect the other, so that you only receive each benefit once. We highly recommend you seek legal help if you want to sue another driver or vehicle operator for damages.

In some very limited circumstances, you might have a common law claim against your employer after an injury while travelling to or from work. An example of a possible common law claim for a journey accident is where you fell asleep at the wheel due to unreasonable and excessive working hours you were required to do before the accident happened. This is a very complex area of workers' compensation law, so you most definitely need to speak to an expert workers' compensation lawyer if this might be a possibility.

Get help from a workers' compensation lawyer

Workers' compensation journey claims have an added complication to the claims process, primarily related to proving the accident occurred "in the course of employment". They are not impossible but do require careful consideration, particularly if they are rejected and you need to participate in the review options. Engaging an experienced workers' compensation lawyer will maximise any entitlement to compensation.

If you have been injured while travelling to or from work, be sure to contact IM Lawyers for an obligation-free initial consultation.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.