

Workplace Risk Update

Western Australia | October 2020



The Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020 came into effect on 12 October, the third change will come into effect on 16 November.

The five amendments, identified as “priority changes” by WorkCover WA, are summarised below. We recommend that organisations now urgently review their injury management and rehabilitation frameworks to ensure they remain current.

1. Presumption of work injury for health care workers who contract COVID-19

As health care workers are at a heightened risk of contracting COVID-19, this amendment ensures they are supported in the workers' compensation scheme should they contract the disease. To minimise the risk of health care workers contracting COVID-19, strong risk management practices must be exercised in line with the hierarchy of control.

2. Discontinuation of the common law termination day

Previously a time limit was placed on a worker to elect if they intended to pursue common law

damages (generally 12 months from the date of injury). This has now been eliminated with no time constraint on workers.

This change will undoubtedly have an impact on pricing at renewal as insurers will be concerned that the elimination of the defined timeframe may lead to increased claims costs. The amendment highlights that early intervention, and prompt resolution of claims is now more important than ever, to put your organisation in the best possible position when negotiating your premium.

3. Notice about common law claims

Insurers, not employers, are now obligated to notify a worker about their ability to pursue common law damages. A notice will be sent by your insurer to a worker at the same time that a claim is accepted for weekly payments.

Given there is no longer a requirement for employers to advise workers of their entitlement to common law damages, both injury management and rehabilitation frameworks will require adjusting to reflect this change.

4. Email service of liability decision notices

A notice under sections 57A or 57B of the Act may now be given to a worker or employer by email. To ensure you do not miss any important correspondence in relation to your workforce, we suggest that you verify the details your insurer has noted in its claims system. Should a liability letter get missed, it could lead to a payment of weekly compensation getting missed or paid late, which will negatively impact the relationship between an employer and worker.

5. Indexation of capped worker entitlements

The amendment protects against any reduction in the prescribed amount (which has happened twice since 2015/16 when the ABS Average Weekly Earnings index reduced).

As an employer, it is imperative that you stay across these indexations to ensure you don't under-pay any of your workers. Setting calendar invitations well in advance of indexation dates is a good way to ensure you don't miss the change.

Source:
<https://www.workcover.wa.gov.au/resources/legislation-rules-amendments/recent-legislative-amendments/>

Next steps

To find out more about how we can help please reach out to your Willis Towers Watson contact or contact our Workplace Risk team on:

Workplace.Risk@willistowerswatson.com

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