



CGU Workers Compensation

Important Information for
WA Employers

Important Information for WA Employers on Workers' Compensation Act Amendments

The Government has passed amendments to the Workers' Compensation and Injury Management Act (1981). Most of these changes came into effect on 1 October 2011 and are not retrospective.

As an employer, there are certain aspects of the new legislation that you need to be aware of in respect to your Employers' Indemnity policy and your obligations in managing a workers' compensation claim following an injury to one of your workers.

The following information is a brief update on these changes and is not intended to be legal advice. We recommend that you consult your broker or legal adviser for specific advice as to how the changes may affect your business and you.

Section 5 (1) Definitions – Worker – Family Members

This amendment came into effect for all claims with a date of accident on or after 1 October 2011.

The definition of a "worker" has been amended. It previously excluded a family member who was residing in the employer's house as being a worker under the Act unless declared under the Policy. The reference to a family member has been removed and therefore any family member residing with the employer will be covered for workers' compensation should they suffer an injury where the family member and employer have entered into or works under a contract of service or apprenticeship with the employer, whether by way of manual labour, clerical work,

or otherwise and whether the contract is expressed or implied, is oral or in writing.

Wages for family members must now be declared and included under the General Employees category.

Section 56 Entitlement to Weekly Payments Ceasing on Account of Age

This amendment came into effect for all claims with a date of accident on or after 1 October 2011.

Currently weekly payments for injured workers cease when they reach the age of 65 or if aged 64 and above at the time of their injury, compensation is restricted to one year's payment of weekly wages. The limitations on weekly payments ceasing on account of age have now been removed.

This now means a worker of any age whose injury occurs on or after 1 October 2011 is entitled to the full prescribed amount for weekly payments, i.e. a worker who suffers an injury at age 68 will be entitled to the same benefits as a worker aged 30.

Section 57A(2) Claims Procedure – Insured Employer

This amendment came into effect for all claims with a date of accident on or after 1 October 2011.

The amendments have increased the number of working days from 3 to 5 for an employer to lodge a claim on their insurer from the date the worker provides the employer with a claim form and medical certificate.

Whilst the additional time allowed is pleasing for employers **please note that a fine of \$1,000 will apply if you do not lodge the claim on your insurer within 5 full working days.** We envisage the fine will be applied direct by WorkCover WA.

Once liability for the claim has been accepted by your insurer or an order for the acceptance of liability by an arbitrator has been made you must make the first weekly payment within 14 days from the date of the insurer's letter or the date of the arbitrator's order.

Please note if as an employer you fail to make the first payment within 14 days or any ongoing weekly payments on your usual pay day, a fine of \$2,000 applies. This fine applies individually for each weekly payment not made, therefore if you failed to make two weekly payments the fine would be \$4,000.

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Schedule 1 Clause 11 Weekly Earnings

The 1 October 2011 amendments were going to include a change whereby injured workers employed under a relevant Industrial Award were to have the calculation of their weekly compensation rate brought in line with Non-Award workers.

WorkCover, in conjunction with the Minister, have agreed not to proclaim the proposed changes and therefore the calculation of weekly wages will remain unchanged. WorkCover are reviewing the legislation and proposed amendments around the calculation of weekly wages to ensure the calculation is clearer and equitable to all workers. We will update you when that review has been completed.

Section 93K Election to Pursue Common Law Damages

This amendment came into effect for all claims with a date of accident on or after 1 October 2011.

Currently a worker has 30 days to commence court proceedings after WorkCover WA gives to the worker notice of the registration of the worker's election to pursue common law damages. The only limit that will apply now to the commencement of common law proceedings is that stipulated by the Limitations Act 2005 being 3 years.

Section 160 Employer to Obtain Insurance

This amendment came into effect for all claims with a date of accident on or after 1 October 2011.

Currently all employers must take out a policy of insurance to cover any worker employed by them for the employer's statutory obligations. The amendments now require the employer to also obtain insurance to cover the employer's liability to pay damages (common law) for any worker employed by them.

Your CGU Employers' Indemnity policy automatically provides Common Law Liability cover to a limit of \$50,000,000 for workers employed by you under a contract of service or apprenticeship (i.e. Employees).

Disputes Lodged with WorkCover WA

These changes come into effect as of 1 December 2011.

The current Dispute Resolution Directorate will be split into the Workers' Compensation Conciliation Service and the Workers' Compensation Arbitration Service.

The key changes to note with the Workers' Compensation Conciliation Service are:

- a) Conciliation will be the first stage of resolving a dispute lodged by any party and will usually be compulsory.
- b) Parties to a dispute are to make reasonable attempts to resolve the dispute before making an application. If that cannot be achieved the Conciliation Officers will make all reasonable efforts to resolve the dispute including having increased powers to require parties to attend meetings and conferences as well as answer questions.
- c) Conciliation Officers have the power to order interim payment and suspension orders.
- d) Time limits will apply to the amount of time a dispute can stay in the conciliation phase.
- e) Conciliation Officers can refer a dispute for determination by a Medical Assessment Panel.
- f) Conciliation Officers have the power to issue orders by the consent of the parties to a dispute.

- g) A Conciliation Officer may refuse to permit an employer or an insurer to be represented by a lawyer or registered agent if a worker is not represented by a lawyer or registered agent.

The key changes to note with the Workers' Compensation Arbitration Service are:

- a) The Arbitration process excludes conciliation and Arbitrators are not to attempt to resolve a dispute by conciliation but are to determine the dispute in accordance with the Act.
- b) An Arbitrator has the authority to confirm, vary or revoke a direction made by a Conciliation Officer.
- c) An Arbitrator may review their decision on the receipt of new information.
- d) Appeals of an Arbitrator's decision will be dealt with by the District Court of WA.

Where a dispute has been filed CGU will consult with you and keep you fully informed whilst representing and managing the process through the Conciliation and Arbitration services on your behalf.

In summary, these legislative amendments mean the following for employers:

- Family members are now included under the definition of a worker, and their wages must be declared under the policy.
- A worker's wages are no longer ceased at age 65 or restricted for 1 year if age 64, if their date of accident is on or after 1 October 2011.
- The employer must lodge the claim with the insurer within 5 working days of receiving it from the worker.
- The employer must make weekly payments within 14 days once a claim is approved by the insurer. Weekly payments are then to occur on the worker's usual pay days. Financial penalties will apply.
- The calculation of weekly wages remains unchanged.
- Time period for a worker to commence court proceedings for common law extended to 3 years.
- Employers must obtain insurance for common law damages to cover workers employed by them.
- Changes to the Dispute Resolution process are effective from 1 December 2011.

If you require any further information or assistance with these changes in legislation, please contact either your Insurance Adviser for policy enquiries or your Claims Case Manager for claim enquiries. Alternatively you can contact WorkCover WA on 1300 794 744 or visit their website at: www.workcover.wa.gov.au



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