Cameron Hall
COMPENSATION LAWYERS



What's the difference between a Queensland workcover statutory claim and a common law claim?

Date: Sunday December 28, 2025

When you are injured at work in Queensland, you may be able to access compensation through the state's workers' compensation scheme. This system covers physical injuries, psychological injuries and work-related illnesses and is often referred to as a 'statutory claim'. In addition to a statutory claim, a common law claim is a right to seek damages (compensation) due to the employer's negligence.

This article explains some of the more important differences between the two types of claims, but also focuses on some critical things that apply to both, and how they interact in Queensland.

What is a statutory WorkCover claim?

A statutory claim is a no-fault claim, which means you do not need to prove that your employer, or anyone else, caused your injury. You only need to show that your injury arose out of, or in the course of, your employment, and that employment was a 'significant contributing factor' to the cause of your injury.

Statutory claims are managed by WorkCover Queensland or by a self-insurer. The purpose of a statutory claim is to provide immediate financial support if you are incapacitated for work due to your injury, and/or you require medical care (other types of benefits are available if your injury results in high care medical and care requirements).

Entitlements available under a statutory claim in Queensland

If your statutory claim is accepted, you are entitled to claim:

- weekly compensation payments if you are unable to work or can only work reduced hours;

payment of medical and rehabilitation costs that are considered reasonable and necessary;

travel expenses to attend medical appointments;

a lump sum impairment payment if you are left with a permanent impairment once your injury stabilises.

Entitlement to statutory claim benefits continues until one of the following occurs:

You are paid the statutory maximum amount available for any one claim;

Workcover/self-insurer determines that you no longer suffer from the relevant injury and/or you are no longer incapacitated for work at all;

Workcover/self-insurer assesses you for permanent impairment and issues you a Notice of Assessment (and you don't dispute that to the Medical Assessment Tribunal).

Note, if none of the above occurs, then you are entitled to seek to re-open your statutory claim at some point down the track (if your injury flares up, for example). But the law regarding re-openings is somewhat complex, so if you are considering this, it's best to get some legal advice from a workers' compensation lawyer.

CALL US FOR FREE ADVICE: 07 3310 8729

Eligibility for a lump sum payment and how it's assessed and calculated

When your injury is stable, WorkCover may arrange a permanent impairment assessment. If your degree of permanent impairment is greater than 0 percent, WorkCover will make a lump sum offer, based on the degree of whole-person impairment.

This decision is critical. If your degree of permanent impairment is 20 percent or less and you accept the offer, you will lose your right to pursue a common law claim. If your impairment is greater than 20 percent, you may accept the lump sum and still pursue a common law claim.

Because the decision you make when you receive an offer of a lump sum (the Notice of

Assessment) is so important, and you think you might want to sue your employer for damages, you should always seek legal advice about the Notice of Assessment as soon as you receive it.

CALL US FOR FREE ADVICE: 07 3310 8729

You can read more about lump sum compensation in our earlier blog, "WorkCover lump sum compensation claims Queensland".

What is a workers' compensation common law claim?

A common law claim is separate from the statutory claim. It is a fault-based claim, meaning you must prove that your employer or another party connected with your work failed to take reasonable care. You must also show that this failure either caused or contributed to your injury.

Unlike statutory claims, which provide capped and controlled benefits, common law claims compensate you for the full financial impact of your injury. This includes both past and future losses.

You can read more about common law claims in our earlier blog, "Common law claims when injured at work in Queensland".

When you can bring a common law claim

You can only pursue a common law claim once WorkCover/self-insurer issues a Notice of Assessment. Even if you have not made a statutory claim, you still need a Notice of Assessment from WorkCover/self-insurer to be legally able to bring a common law claim.

When you are contemplating a common law claim, to succeed, you need to (generally) show:

your employer owed you a duty of care;

your employer breached that duty by failing to provide a safe work environment;

the breach caused or materially contributed to your injury;

you suffered loss and damage as a result.

Examples of employer negligence include failing to provide proper training, not supplying

safe equipment, ignoring known hazards in the workplace or allowing unsafe systems of work.

Compensation available under a common law claim

A common law claim may allow you to recover compensation for:

past lost wages;

future loss of earnings due to reduced earning capacity;

medical, treatment and rehabilitation costs;

travel costs related to treatment;

care and assistance provided by family members or paid carers (this is a particularly complicated component of possible damages, and not every claimant is entitled to them - thresholds apply);

pain and suffering.

How statutory WorkCover claims and common law claims interact

Although statutory claims and common law claims are different, they are connected in some respects. Most injured workers begin with a statutory claim because it offers immediate income and treatment support without needing to prove fault. A common law claim is usually considered after the statutory process ends or once a permanent impairment assessment (Notice of Assessment) is issued.

But it is certainly possible to initiate a common law claim without having first made a statutory claim. These are called ‘common-law-only’ claims, but complicated procedural steps still apply, including the issuing of a Notice of Assessment by Workcover/self-insurer. Legal assistance will always be recommended if you want to run a common-law-only claim.

CALL US FOR FREE ADVICE: 07 3310 8729

If you decide to pursue a common law claim, any statutory payments you received are taken into account through a statutory refund. This refund is deducted from your common law settlement to prevent you from receiving double compensation for the same loss.

The choice to accept or reject a statutory lump sum is also important because of the 20 percent impairment rule. Accepting a lump sum when your impairment is 20 percent or less generally means you cannot later pursue a common law claim. The golden rule is to get some legal advice as soon as you receive a Notice of Assessment (if you have had a statutory claim) to make sure you make the right decision.

Time limits for statutory and common law claims

Strict time limits apply to Queensland WorkCover matters.

Statutory claim time limits

For statutory claims, you must lodge your application within six months from the date your entitlement to compensation arises. This is usually the date that an injured worker first attends a doctor about their work injury (but can be the date that they become incapacitated).

Another golden rule is to lodge your application for statutory benefits as soon as you can following your injury (assuming you've suffered incapacity and/or the need for medical treatment). Extensions are sometimes granted, but only in very limited circumstances.

Common law claim time limits

For common law claims, you have three years from the date of injury in which to take steps to protect your right to bring an action for damages. In addition, you must comply with certain procedural steps which are part of a pre-court process under the Workers' Compensation and Rehabilitation Act. These processes have specific steps and timeframes, so it is important to seek advice early.

Missing a time limit will result in a loss of your right to claim compensation.

Pursuing a statutory claim and/or a common law claim

For most injured workers, there is no need to choose between pursuing a statutory claim or a common law claim. The usual path is to lodge a statutory claim and then decide about a common law claim once the injury stabilises and the permanent impairment assessment is issued.

A common law claim should always be considered if:

- your employer could have prevented the injury (through better/more appropriate work systems and/or environment in which to do your job);

your injury has long term or permanent consequences;

you are likely to continue to suffer loss of earnings into the future;

the statutory lump sum offer does not adequately cover your losses (if you are likely to suffer significant loss of earnings into the future, the lump sum offer you receive from Workcover/self-insurer will usually not be enough to properly compensate you for your future losses).

Legal advice can help you understand the strengths of your potential common law claim and whether it is likely to be a more appropriate option than accepting the statutory lump sum offer noted in the Notice of Assessment.

Frequently asked questions

Can I pursue **both** a statutory claim and a common law claim?

Yes. Injured workers will lodge a statutory claim to meet their early support needs, and then consider their option of pursuing a common law claim after the end of the statutory claim, which can focus on their longer-term losses. You need to get legal advice as soon as you receive your Notice of Assessment, or the 3-year limitation period is close to expiring.

Do I need to prove fault or negligence to receive statutory benefits?

No. Statutory claims are what are known in the law as ‘no fault’. You only need to show that your injury is work-related (i.e., meets the definition of ‘injury’ as noted in the Workers’ Compensation and Rehabilitation Act 2003).

How long do common law claims take?

Many common law claims resolve in about 12 months, depending on the complexity of the injury, medical evidence and the insurer’s approach to negotiations, which will usually depend on the strength of your case.

What if my employer disputes my claim?

Your employer does not decide statutory claims. WorkCover assesses them independently (but will, of course, consult with your employer about the circumstances of your work injury).

You can read more about appealing an adverse decision about your claim in our earlier blog, “Appealing a workers’ compensation decision by WorkCover Queensland”

For common law claims, your employer will be involved in giving WorkCover Queensland the information it needs to defend/respond to your claim, but the employer has no legal say in how WorkCover legally responds to your common law claim. Even if your employer is a self-insurer for workers’ compensation purposes, the insurance division of the company has to deal with compensation claims independently of the operational division.

Get help from a workers’ compensation lawyer

Understanding the difference between statutory claims and common law claims is an important part of protecting your rights after a work-related injury in Queensland. A statutory claim provides immediate support, while a common law claim may offer a greater level of compensation if negligence can be proven.

Clear advice at the right time will help you manage these processes and achieve the best possible outcome under Queensland’s workers’ compensation scheme. But get legal advice as early as possible, as there are lots of different time limits which apply to both statutory and common law claims, and missing them will usually be fatal to your ability to recover the compensation you need and deserve.

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.