Cameron Hall
COMPENSATION LAWYERS



Common law claims when injured at work in Queensland

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In Queensland, if you suffer a workplace injury or illness, in addition to your worker's compensation statutory entitlements (like weekly payments and medical expenses), you may be entitled to bring a common law claim for damages (compensation) due to the impact your injury has had on your life, and in particular your ability to earn income.

If an injured worker has not brought a statutory claim with Workcover, then they have two options:

1. Lodge a worker's compensation claim now and have it accepted; or

    Bring what is called a 'common law only' claim with Workcover.

Option one is ordinarily the best way to go. If you are seeking to bypass your initial worker's compensation claim for statutory entitlements and pursue common law damages only, you should seek legal advice first from a lawyer experience in worker's compensation claims in Queensland.

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Who can make a worker's compensation common law claim?

Any worker who has an accepted worker's compensation claim (for statutory benefits) is entitled to consider whether to bring a common law claim for damages. Unlike a statutory worker's compensation claim (which operates under a no-fault scheme), a crucial component of eligibility for common law damages is that an injured worker will need to prove that the employer contributed to the injury/illness through negligence.

Three key requirements when making a worker's compensation common law claim

Your work-related injury or illness has/is impacting your ability to work;

You believe your injury could have been avoided had reasonable care been exercised by your employer (or a co-worker, if it was something they did or didn't do that caused you to suffer injury or illness) – that is, negligence on the part of your employer contributed to your workplace injury or illness; and

You meet the time limit for lodging your common law claim.

How is your injury or illness affecting your ability to work?

Common law actions are largely to compensate workers injured in negligent circumstances for a permanent loss of earning capacity (that is, what they may have been able to earn in the future had it not been for the injury).

Other components of the damages sought in a common law claim include:

compensation for your pain and suffering and loss of amenities/enjoyment of life; and

any injury-related out of pocket expenses you have incurred or are likely to incur into the future. These will mainly consist of medical and rehabilitation type expenses.

Calculating all your entitlements in a common law claim is a complex process. It is strongly recommended that you engage an experienced worker's compensation lawyer if you intend to sue your employer for your work-related injury.

If you go it alone, it can be tempting to accept the first offer made by the insurer (as it can seem like a substantial amount of money) but often claimants are entitled to more than this first offer. An experienced lawyer, on your side, will ensure your compensation is maximised and you get everything you are entitled to.

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Did negligence contribute to your workplace injury?

To be eligible for common law damages, you must prove that your employer (or another worker) was negligent in causing your injury. This is a critical aspect of a common law claim, and careful consideration needs to be given as to whether any injury was the result of an act or acts (or a failure to act) on the part of your employer, or one or more others in the workplace (doesn't matter what their position with the employer is).

If you are unsure if negligence contributed to your workplace injury, it is crucial that you seek legal advice as soon as possible as time limits apply for worker's compensation common law claims.

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Time limits for worker's compensation common law claims in Queensland

In Queensland, strict time limits apply to bringing a worker's compensation common law claim.

The relevant 'limitation period' in Queensland is generally 3 years from the date of injury or, in the case of illness (for example, silicosis, cancer and other diseases), three years from the onset of the illness. What this means is that if you don't take steps to formally commence your common law claim within 3 years of the date you sustained your injury, then you may lose your ability to sue your employer.

Under exceptional circumstances, there is the ability to extend the 3-year limitation period, however this is not easy to do and you most definitely should not rely on that as an option as there is no guarantee an extension of time will be granted.

Three years might seem like a lengthy period in which to take your time to consider your situation, but it can quickly pass by and in most instances, there isn't the ability to extend the limitation period, and your right to seek compensation will be lost.

Get help from a worker's compensation lawyer

We have over 35 years of experience in handling work-related common law damages claims. We are usually able to advise you if you have a worthwhile common law claim following your free no-obligation discussion with him. If you have a viable claim, we will run it on a 'no win, no fee' basis.

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.