



WorkCover and mental health claims for psychological injury

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Bullying and harassment in the workplace is never OK. Whether it be physical assault, sexual assault and harassment or emotional harassment, this behaviour can lead to significant mental health injuries that can have long-lasting and devastating effects on workers, their loved ones and families. Alarming, psychological injury claims in the workplace are on the rise. In this article, we look at your options to lodge a WorkCover mental health claim for compensation and other benefits, due to your psychological injury at work.

Psychological injuries at work on the rise

Prior to 2009, 9% of all WorkCover claims were mental injury claims. Between 2009 to 2104, mental injury claims consisted of 11% of all claims. Currently, mental injury claims account for 13% of all claims. Alarming, this percentage is expected to increase to 33% of all WorkCover claims over the next 10 years.

In an effort to combat this, WorkSafe has introduced the [Mental Health Strategy 2021 to 2024](#). This strategy aims to:

- prevent mental injuries;
- ensure Victorian workers with a mental injury are protected and have access to support; and
- improve employers' compatibility to create and provide positive, mentally healthy workplaces.

What are the causes of psychological injuries at work?

Mental health illness and psychological injuries in the workplace can be caused by a number of factors including:

- sexual assault;
- physical assault;
- verbal abuse;
- bullying;
- discrimination;
- exclusion; and
- overwork.

If you have been subject to any form of workplace bullying or harassment, we encourage you to seek assistance from your treating GP as a matter of priority. You can contact [Lifeline](#), [Beyond Blue](#) or the [Sexual Assault Crisis Line](#) should you require more urgent assistance

WorkCover claims for psychological injury

Where workplace harassment or abuse leads to a mental injury such as anxiety, depression or post-traumatic stress disorder, workers have the right to worker's compensation by [lodging a WorkCover claim](#) with their employer.

Entitlements can include:

- medical and like expenses such as medication;
- psychological support and GP appointments;
- weekly income payments;
- lump sum entitlements if your injury becomes permanent; and
- common law entitlements to pain and suffering damages and economic loss damages if your injuries were caused by the negligence of your employer or a third party.

You can [learn more detail about the benefits and compensation available here](#).

Fast track claims for mental health injuries

As part of their mental health strategy, WorkSafe has introduced a fast-track claims process for all workers or volunteers who make a worker's compensation claim that includes a mental injury.

The fast-track claims process is designed to provide workers with early treatment and support while they await the outcome of their claim. These payments are called provisional payments and consist of reasonable medical treatment and services for up to thirteen weeks, even if your claim is rejected.

Lodging your WorkCover claim for psychological injury

To lodge a claim for WorkCover entitlements, you first need to attend your treating GP and obtain a WorkCover certificate of capacity. The first certificate needs to be for 14 days. Every certificate after this should be for 28 days.

You should then complete a [WorkCover claim form](#). If you have any questions concerning the claim form, it is important that you seek legal advice as soon as possible. At Guardian Injury Law we provide you with clear, straightforward advice to give your claim every chance of success.

Free advice to get your claim moving: 1300 700 761

To lodge your claim, you should provide the WorkCover claim form, certificate of capacity and any supporting documents to your employer. Make sure you keep a copy of all documents that you provide.

As part of the new provisional payment requirements, once your employer has received the claim documents, they are required to forward them to their WorkCover insurer within three business days.

Once the WorkCover insurer has received the claim documents, they will determine if provisional payments should be made. If they are to be made, you should forward all reasonable receipts for treatment to your employer and insurer for reimbursement.

The WorkCover insurer will continue to assess your claim and provide a formal decision within 28 days of receiving the claim documents.

If your psychological injury claim is rejected, you will still continue to receive 13 weeks of reasonable medical and like expenses such as medication and treatment but you will not receive benefits like weekly payments or lump sum compensation. There are options to have a [WorkCover decision reviewed](#). It is crucial that you seek legal advice if you wish to have a decision reviewed, to optimise your chances of success.

Psychological injury claims that are not covered by WorkCover

The *Workplace Rehabilitation and Compensation Act* provides that a psychiatric injury claim can be denied where a mental injury is caused wholly or predominantly by:

- management action taken on **reasonable grounds** and in a **reasonable manner** by the worker's employer.
- a decision of the worker's employer, on reasonable grounds, to take or not to take any management action.
- any expectation by the worker that any management action would, or would not, be taken or a decision made to take or not to take, any management action.

Some examples of reasonable management action include appraisal of the worker's performance, counselling of the worker, suspension or stand-down of a worker's employment, disciplinary action taken in respect of the worker's employment, dismissal, or promotion of the worker.

Because workplace mental injuries very rarely happen in isolation, it is crucial that you speak with a lawyer if you are considering lodging a worker's compensation claim or have lodged a claim that has been rejected.

[Free advice to get your claim moving: 1300 700 761](tel:1300700761)

Guardian Injury Law are experts in assisting workers who have sustained a mental injury caused by work. By listening to your story, we can help you get your claim accepted or successfully challenge a rejected claim to ensure you receive maximum compensation.

Other options to worker's compensation for your psychological injury

Super TPD

If you have sustained a mental injury that is preventing you from working and your super policy has insurance benefits such as income protection or total permanent disability (TPD) benefits, you may be able to claim these benefits.

Income protection benefits should only be obtained if you are not accessing WorkCover weekly income entitlements. This is because they are both considered "income" and cannot be received at the same time.

TPD claims can be accessed if you are permanently unable to return to work and meet the fund's requirements. Advice from Guardian Injury Law is crucial as you need to ensure that your claims are maximised and brought correctly and appropriately.

Police

If you have been the subject of a sexual or physical assault, you may want to consider contacting Victoria Police on tel: . Ensure that you have appropriate support around you.

Victims of Crime - VOCAT

If you have reported a sexual or physical assault to Victoria Police and they have laid charges, you can make a claim with the [Victims of Crime Assistance Tribunal](#).

Entitlements can include counselling and medical expenses, safety-related expenses, loss of earnings and lump sum compensation known as special financial assistance.

Australian Human Rights and Equal Opportunity Commission

If you have been the subject of sexual harassment or discrimination on the basis of your sex, religious beliefs or age, you can make a complaint with the [Australian Human Rights and Equal](#)

Why seek legal advice from a WorkCover lawyer?

Obtaining compensation for injuries sustained in the workplace in most cases is not straightforward, particularly when the injury is a mental or psychological injury.

Due to the number of different entitlements available, it is essential that you seek the advice of Guardian Injury Law to obtain clear, plain English advice and maximise your entitlements.

We will take the time to listen to you and achieve the best outcome possible with care, compassion and respect. Your first appointment is free and we will run your case on a no-win, no-fee basis. Therefore, it costs you nothing to find out where you stand.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

enquiries@guardianinjurylaw.com.au

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.