



Motor vehicle accidents while working – is it WorkCover or TAC?

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If you have been injured as a result of a work-related motor vehicle accident in Victoria, it is important that you seek legal advice. This is because these types of claims can be complex as you are potentially entitled to both WorkCover no-fault benefits and TAC common law entitlements. A lawyer who is experienced in both WorkCover and TAC claims is crucial to maximise your entitlements.

Your [WorkCover no-fault entitlements](#) would include:

- medical and like expenses;
- [weekly payments for loss of income](#); and
- no-fault [lump sum benefits due to permanent impairment](#).

[TAC common law compensation](#) for pain and suffering and economic loss may also be available (in addition to the WorkCover no-fault benefits) where negligence of a third party, for example, your employer or the other driver, caused your injuries.

Types of claims when injured in a car accident while at work

You may be entitled to both WorkCover no-fault compensation and TAC common law damages if you're injured in a motor vehicle accident while at work. Your accident may have been "during the course of employment" or during an "authorised recess".

During the course of employment

Accidents that occur during the course of employment are accidents that are directly caused by the driving of a vehicle or arise out of the use of a motor vehicle, train or tram while at work.

There are two categories of these types of accidents.

1. The first is where the injury has been directly caused by the driving of a motor vehicle. This applies to workers who are in a driving occupation, such as a truck driver, taxi driver, courier driver or bus driver, and they are involved in a motor vehicle accident during working hours.
2. The second category is when an accident occurs out of the use of a motor vehicle. For instance, if a worker injures themselves whilst loading or unloading a vehicle or is crushed by a forklift.

Authorised recess

Accidents during an authorised recess are when the worker has a motor vehicle accident when travelling for work and include when you are:

- on an authorised recess for work, such as a lunch break;
- travelling for work, such as from your main place of employment to an alternate work site;
- going to a conference that your employer has arranged;
- going to trade school or a training program that is part of your employment;
- going to a medical appointment arranged by your employer.

It is important to note that if there has been a significant interruption or change in your journey that is not connected with your employment, and you are involved in a motor vehicle accident, then your claim will likely be solely with the TAC.

WorkCover no-fault entitlements if injured in a road accident while working

If you have sustained an injury as a result of a motor vehicle accident either during the course of employment or whilst on an authorised recess, you should obtain a WorkCover certificate of capacity from your treating doctor and lodge a WorkCover claim with your employer.

WorkCover claims are governed by the *Workplace Injury Rehabilitation and Compensation Act 2013*. For more information about how to do this, see our blog [“WorkCover claims and how to complete a Worker’s Injury Claim Form”](#).

Once your claim is accepted, you will be entitled to “no fault” compensation including:

- reasonable medical and like expenses;

- weekly payments for lost wages; and
- no-fault lump sum compensation.

Common law entitlements – the TAC

If your injuries become permanent and stable, you may have an entitlement to TAC common law damages for pain and suffering and economic loss.

To be eligible, you need to prove that you have a significant injury and that your injury was caused in negligent circumstances. That is, your employer, another driver or a third party is at fault.

To be eligible for TAC common law compensation, you need to:

1. Prove that you have a “serious injury” through the TAC common law gateway.

A serious injury is defined in the *Transport Accident Act 1986* as:

- A serious long-term impairment or loss of a body function; or
- Permanent serious disfigurement; or
- Severe long-term mental or severe long-term behavioural disturbance or disorder; or
- Loss of a Foetus.

A serious injury can also be a permanent impairment of 30% or more. It can also be from a single injury or a combination of injuries as a result of a motor vehicle accident.

A serious injury takes into account both your injuries, your treatment to date, your prognosis and the long-term impact of the motor vehicle accident injuries on your life.

1. Prove that your injuries were caused by the fault of another person. Fault or negligence means that the other person failed to take reasonable care to avoid causing the injury.

For motor vehicle accidents that occur during the course of your employment or injuries that arise from the use of a motor vehicle, sometimes proving fault can be straightforward, other times it can be more complicated. Getting legal advice early on is essential.

[Free advice to find out where you stand: 1300 700 761](#)

TPD claims, in addition to WorkCover and/or TAC compensation

If your injuries are permanent and prevent you from working, then you may also be eligible to claim total permanent disability (TPD) insurance from your superannuation fund. You can learn more detail about TPD claims in our earlier blog, [“TPD claims – your complete guide”](#).

To be eligible to claim, you need to ensure that you held TPD cover at the time of your injuries and also prove that you meet the superannuation fund's definition of total permanent disability. For most funds, this definition is that you are unable to return to employment in any job for which you have the necessary skills, training and experience.

As each fund has a different policy or set of rules, obtaining legal advice is essential to understand your entitlements and ensure you get ALL the compensation you deserve.

For more information, see our blog ["Can I claim TPD if I've received a WorkCover or TAC payout?"](#)

Why is a personal injury lawyer necessary?

If you have been involved in a motor vehicle accident during the course of your employment or whilst on an authorised recess, obtaining legal advice early on is crucial to ensuring that you understand your entitlements and maximise your compensation.

At Guardian Injury Law, we have significant expertise and experience in both WorkCover and TAC compensation. We offer initial free advice and run claims "no win, no fee".

Contacting Guardian Injury Law

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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.