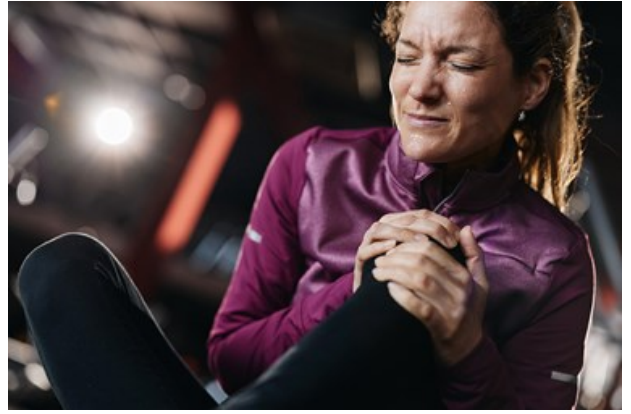




Compensation entitlements if injured at the gym

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If you have been injured at the gym, you may be entitled to compensation for the injuries you have suffered. Your injury may have been due to loose weights, faulty equipment, unsafe premises or even your trainer's advice. To be eligible to claim compensation, your injuries will need to be permanent and stable. You will also need to prove that your injuries occurred in negligent circumstances. This type of compensation is called a [public liability claim](#).

Crucial initial steps to take if injured at the gym

If injured at the gym, there are several steps that are essential for you to take as soon as possible.

1. Seek medical attention from a doctor as soon as possible. Getting appropriate medical care is crucial for your well-being. This will assist with your recovery. Further, your injuries will be clearly and thoroughly documented should you pursue a compensation claim in the future.
2. Document details (including taking any photos) of any faulty equipment.
3. Where possible, get contact details of any witnesses;
4. Report the injury to a staff member. Ideally, this would be in writing and provide a clear outline of how the injury occurred and a description of the injuries you have sustained.
5. If you were at a non-staffed gym (for example, a 24-hour gym), report your injury as soon as practicable after the venue is staffed. You can also provide this report by email.
6. Seek legal advice. Getting legal advice as soon as possible will ensure you have the correct information, that you understand your rights and entitlements and allow you to make an informed decision.

Duty of care owed to gym members

When attending the gym, the owner or occupier of the gym has a responsibility to ensure that they provide a fit and safe environment for those who enter their premises.

According to the *Wrongs Act 1958 s14B(3)*:

“An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that any person on the premises will not be injured or damages by reason of the state of the premises or of things done or omitted to be done in relation to the state of the premises.”

This means that the gym has a duty of care to ensure that those who enter the premises will not be injured or damaged due to its state. It must make sure that the property is kept and operated in a way to ensure that injury is avoided.

For example, the owner or occupier of the gym must ensure that:

- all available equipment is kept and maintained to an appropriate standard and not broken or damaged; and
- staff, including trainers, hold the required qualifications and instruct members on areas only within the scope of their training and experience

If the owner or occupier of the gym has failed to keep the equipment to an appropriate standard or the trainer failed to provide appropriate direction, this is called a breach of duty of care. If this breach or negligence can be established, you may be entitled to compensation due to this negligence.

Do I have a compensation claim if I have signed a liability waiver?

When you attend a gym, most will require you to sign a contract that will include a liability waiver. This waiver is usually within the fine print.

Liability waivers are included so that members who sign up are (supposedly) unable to sue the business for compensation if future injuries occur.

However, if it can be proven that the gym has breached its duty of care to you as a member, the liability waiver is likely to have no standing, and you may have a public liability claim.

What compensation am I entitled to claim with a public liability claim?

If you have been injured at the gym and pursue a public liability claim, you are potentially able to claim your medical and like expenses and a lump sum payment for pain and suffering.

The medical and like expenses related to your injury could include:

- GP and other medical professional attendances;
- medication;
- hospital expenses;
- physiotherapy and rehabilitation;
- surgery;
- psychological therapy;
- lost wages;
- care provided by family or friends.

Further, if your injuries are considered “significant” then you are able to claim pain and suffering damages. A significant injury is one that is assessed in accordance with the 4th edition of the American Medical Association Guides and is:

- 5% or more whole person impairment (“WPI”) for a spinal injury;
- more than 5% WPI for any other physical injury;
- 10% WPI or more for a psychiatric injury.

A suitably qualified medico-legal practitioner will be engaged by your lawyer to conduct the assessment and provide a certificate of assessment.

If your injuries are assessed as meeting the significant injury threshold, then this certificate of assessment will need to be provided to the owner or occupier of the gym. If the owner or occupier disagrees with the significant injury assessment, they can refer it to an independent body known as the medical panel for further assessment. The medical panel's decision is final and binding.

Do I have a claim if the injury occurred after hours?

Many gyms offer their facilities outside ordinary hours, giving those who work from 9.00 am to 5.00 pm the opportunity to keep up with their fitness.

If you are injured in a 24-hour gym where there are no staff present, you may still have a claim against the gym depending on how the injury occurred. This is especially so if the equipment was not maintained or there were no appropriate instructions or supervision available.

Injuries caused by instructors or personal trainers affiliated with the gym

Most gyms encourage their members to join fitness classes and utilise the gym's trainers. While instructors and trainers can be a source of motivation for members, they can also be the cause of serious injury.

If you sustain an injury by being pushed too hard, or if a pre-existing injury (which the instructor or trainer was aware of) has been aggravated, you may be entitled to compensation due to their negligence.

Injuries caused by independent personal trainers

If you are injured by an independent trainer who is not affiliated with the gym, you are unlikely to have a claim against the gym as the injury resulted from the negligence of the independent trainer.

If your trainer has not taken reasonable steps to ensure that they have conducted your training safely and appropriately, you may have a claim against the trainer directly as they have breached their duty of care to you as their client.

What if I was injured by another gym member?

If you were injured because of another member's negligent actions, such as a member dropping weights on you, you may still be entitled to compensation. It will depend on the circumstances of your injury and if negligence can be established.

Get help from a personal injury lawyer

If you believe that your gym injury was a direct result of negligence, Guardian Injury Law can advise you on your rights. Your first appointment is free. We undertake work on a "no win, no fee" or expenses basis.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

enquiries@guardianinjurylaw.com.au

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