



## WorkCover claims and pre-existing injuries

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**Date:** Friday August 15, 2025

If you have a pre-existing injury that has worsened because of your job, you may be eligible to lodge a WorkCover claim. This includes injuries that have been aggravated, accelerated, exacerbated, or have reoccurred due to your work duties. In this article, we explain what counts as a pre-existing injury, how to prove it has been aggravated, and what compensation you may be entitled to under the [Victorian workers' compensation scheme](#).

### What is a pre-existing injury?

For the purposes of a WorkCover claim, a pre-existing injury (or illness, including mental health conditions) is an injury or medical condition that existed before a work-related incident or condition.

The aggravation may be:

- an aggravation of a previous work-related injury, where the aggravation occurred at work;
- an aggravation of a previous work-related injury, where the aggravation occurred away from work;
- an aggravation of a pre-existing injury, not work-related (e.g. an old injury through sport but aggravated at work).

### How do I prove that a pre-existing injury has been aggravated

For a pre-existing injury to be aggravated, leading to an entitlement to workers' compensation, you need to show that your injury has accelerated, exacerbated, aggravated, reoccurred or deteriorated due to work.

- **Accelerated injury** is where an injury worsens more quickly than it normally would, which can be caused by the repetitive nature of a task that has caused the existing injury to worsen quickly.
- **Exacerbated injury** is the worsening of an existing injury that would have ordinarily reverted to its original state prior to the exacerbation.
- **Aggravated injuries** occur when a pre-existing injury has worsened.
- **Recurrence injuries** occur when a pre-existing injury reoccurs at the same location after a period of time.
- **Deteriorated injuries** occur when a pre-existing injury worsens in either complexity or severity.

Ultimately, it is your treating medical practitioner (for example, your GP) who will confirm whether a workplace injury has aggravated a pre-existing condition. Notably, if your injury worsens for a short period after a workplace incident and then returns to its pre-injury condition, it may be difficult to prove that you have sustained an aggravated injury.

Nevertheless, your injuries will be thoroughly assessed by a doctor who will determine the extent of aggravation of a pre-existing injury. Once an aggravation has been determined, an assessment will be made to determine how your current work duties contributed to that aggravation of your pre-existing injury.

## Should I declare pre-existing injuries to new employers?

Prior to commencing your employment, a new employer will usually provide you with information regarding the duties required for you to undertake your new role.

With this, they may ask you to disclose any pre-existing injuries and/or diseases that could impact your ability to perform the tasks of the role.

If this occurs, employers may advise you that should you fail to disclose any pre-existing injuries or if you provide false and/or misleading information about any pre-existing injuries, you will not be entitled to workers' compensation if your pre-existing injuries are aggravated, exacerbated, accelerated or recur due to your employment.

## Can I reopen a prior WorkCover claim after a recurrence injury?

If you have suffered a recurrence of a prior work-related injury, your original WorkCover claim can be reopened.

For this to occur, you will need to provide medical evidence indicating that your injury has resurfaced as a result of your current work. Depending on how your injury resurfaced, you may be required to undertake a medical evaluation from your treating doctor, which states how your injury worsened.

## What if I already have an existing WorkCover claim?

If you have an existing WorkCover claim related to the pre-existing injury, you may not need to lodge a new WorkCover claim for the aggravation, exacerbation, recurrence or deterioration of the injury, as contacting the WorkCover insurer will allow you to claim your medical and like expenses associated with the injury.

However, if you have already passed 130 weeks of your original WorkCover claim being accepted, you may no longer be entitled to your weekly payments. This is why lodging a new WorkCover claim can be beneficial, as it may give you access to all no-fault entitlements, including weekly payments.

## What can I claim from WorkCover if I have an aggravation of a pre-existing injury?

Should your WorkCover claim due to aggravation of a pre-existing injury be accepted, you will be entitled to:

- medical and like expenses;
- [weekly payments for lost wages](#);
- a [lump sum payment for permanent impairment](#);
- home assistance; and
- travel and expenses.

## Can I make a common law claim for an aggravated injury?

In addition to any of the statutory entitlements outlined above, you may also be entitled to common law damages (compensation).

To be successful in a common law claim, you need to show that you have sustained a serious injury that was caused by the negligence of your employer. This includes aggravated injuries. However, you may only be able to claim to the extent that your injury has worsened.

You can read more about this in our earlier blog, ["WorkCover common law claims and serious injury applications"](#).

## Get help from a workers' compensation lawyer

WorkCover claims due to aggravation of a pre-existing injury (or condition) can be quite tricky. Contacting Guardian Injury Law will ensure that your matter is being assessed by a lawyer who has experience in workers' compensation claims and who is able to provide you with advice related to the specifics of your injury.

## Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

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