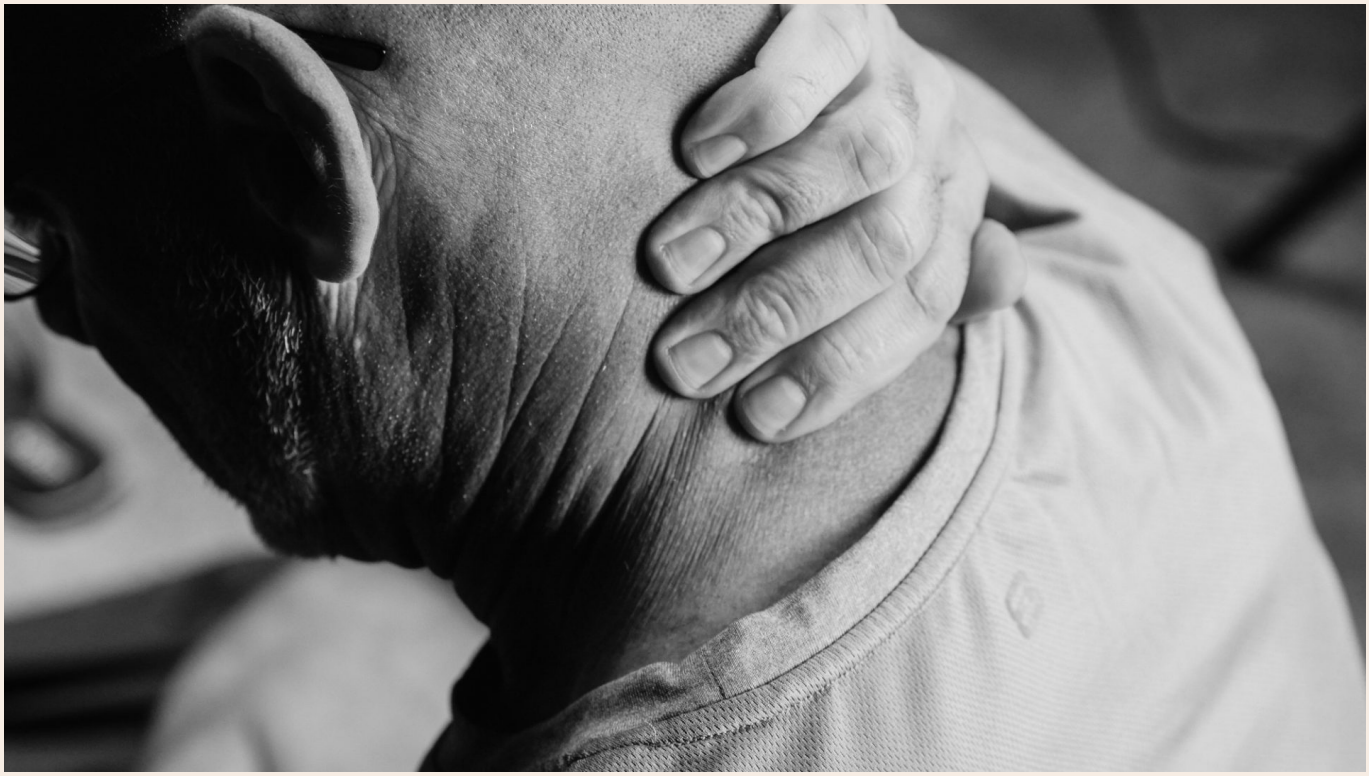


Can I quit my job when I'm on Workers Compensation?

Many clients who have been injured at work and are on **Return to Work workers compensation**, feel that they are not receiving appropriate support from their employer to assist with their rehabilitation. In fact, workers often feel that the attitude of their bosses and even colleagues is hindering their rehabilitation efforts following a work related injury.

It often seems 'easier' for an injured worker to quit employment if there has been a breakdown in the employee-employer relationship. However, resignation from employment can be considered a "breach of mutuality" under the workers compensation legislation. A breach of mutuality involves conduct on the part of the worker that renders them ineligible to receive workers compensation weekly payments (known as income maintenance).

Resignation may also impact a worker's entitlements even if a worker thinks they have no choice but to resign because of their incapacities, or they feel they are a burden on their employer as a result of their injuries.

In general terms, both workers and employers under the Return to Work legislation have an obligation to maintain the employment relationship. Therefore, making a decision to resign can be viewed as a clear breach of a worker's legal obligations. As a result, entitlements to income maintenance will likely cease if a worker decides to resign.

What about other entitlements under workers comp; like medical expenses?

Importantly, even though a worker's income maintenance may be discontinued, a resignation from employment does not impact on other rights under the workers compensation legislation, including the right to have reasonable medical expenses reimbursed, or an entitlement to receive lump-sum compensation in certain circumstances.

What if the worker has another job to go to?

A worker may quit their job with the pre-injury employer because they have been offered a new job elsewhere. This technically breaches the worker's obligation to perform suitable duties with the pre-injury employer. However, this will not be an issue if the new job pays more than the calculated Average Weekly Earnings. But if the new job pays less than the Average Weekly Earnings the worker may not be entitled to receive any "top up" payments of income maintenance.

This is a complex area of workers compensation law, and if you encounter this type of problem, you should seek experienced legal advice immediately.

To further complicate matters, if a worker has ongoing restrictions and resigns from the pre-injury employment **as a result of those injuries or disabilities**, and then starts a new job with a different employer that is suitable but pays less than the Average Weekly Earnings, the worker **may** be entitled to be paid "top up" payments.

In addition, if a worker cannot maintain the new job as a result of the injury, the worker could bring a further claim for income maintenance if the worker "restores mutuality" with the pre-injury employer. To restore mutuality, a worker needs to demonstrate that they are "ready, willing and able" to return to work and carry out suitable duties with the pre-injury employer.

But remember, the previous employer may not be prepared take the injured worker back. If this occurs, there is a chance the claim for income maintenance will be rejected. Again, if this happens, seek immediate legal advice.

It is important to note that a "resignation" from employment is treated very differently in workers compensation law compared to a "termination" instigated by the employer under workers compensation law; for example, if an employer terminates a worker because the employer is unable to find suitable alternative duties for the worker.

This separate complex issue is not dealt with in this blog but if an employer does terminate a worker without following certain procedural steps, the worker may be entitled to pursue a claim against that employer. Workers should seek urgent legal advice following a termination, because a pursuit of a claim, particularly a claim for unfair dismissal, needs to occur very quickly after the termination takes effect.

Generally, both workers and employers under Return to Work legislation have an obligation to maintain the employment relationship.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.