

Do I have to disclose my previous workers compensation claim when applying for a job?

If a prospective employer does **not** ask you if you have previously had any **workers compensation claims** (Return to Work or Comcare) or have previously suffered any injuries, you do not have a strict obligation to disclose this to them.

However, if the prospective employer refers you for a pre-employment medical, the doctor should ask you about any existing or previous injuries and you should disclose those injuries (although not necessarily whether you claimed workers compensation or not).

As a matter of work, health and safety, if you have an injury or condition which might affect your ability to do the job safely (whether or not you lodged a workers compensation claim in relation to it), some may argue that you should disclose that injury or condition to the prospective employer even if they do not specifically ask you about it. This is because in the modern work place, both employers and employees have an obligation to ensure the health and safety of all workers while at work.

For example, if you have previously had a serious back injury and as a result, it is unsafe for you to lift heavy items, you should disclose this if you are applying for a job which will involve heavy lifting.

In our opinion, the overriding issue should be the safety of yourself and other workers at your

workplace. If you have an injury which may affect that, then you should disclose that injury to your prospective employer

A prospective employer should not really be asking whether you have had a previous workers compensation claim or not, because they have no legitimate interest in knowing this. They **do** have a legitimate interest in knowing whether you have an injury or condition which might affect your ability to do the job safely but that is a different question than whether you have had a workers compensation claim.

Unfortunately however, some prospective employers will ask about previous workers compensation claims. Although in our view they can have no legitimate right to ask this, you should not lie in a job application. If you are dishonest on a job application and you are offered the job and later your employer discovers that you have not been honest, you may be subject to disciplinary action up to and including dismissal.

If you are asked about previous workers compensation claims and you previously had claims for minor injuries which do not affect your ability to do the job you are applying for (for example, a cut finger, a foreign object in the eye or a minor muscular strain), you should provide that information and specify that the injury in question has now resolved.

It is unlawful for a prospective employer to refuse to offer a job to a person because that person has exercised the “workplace right” of making a workers compensation claim.

It is also unlawful for an employer or prospective employer to discriminate against employees or prospective employees because of a disability, unless that disability makes the employee or prospective employee unable to undertake the inherent requirements of the position in a safe manner.

If you believe that you have missed out on a job offer because you disclosed that you have previously had a workers compensation claim, or have been discriminated against because of a disability, please feel free to get in touch directly with **Margaret Kaukas** or the **Andersons Employment Law team**.

> If a prospective employer does not ask you if you have previously had any workers compensation claims you do not have a strict obligation to disclose this to them.

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.