

Return to Work

The South Australian State
workers compensation system

Have you suffered a work-related injury and considering pursuing a Return to Work workers compensation claim?

Sep 2015

Key considerations

This guide details the compensation, rights and entitlements for workers injured on or after 1 July 2015. For workers injured prior to 1 July 2015, please get in contact with one of our workers compensation lawyers.

What can you claim?

You can claim weekly benefits for loss of income, medical expenses and other entitlements as a result of either a physical and/or psychological work-related injury.

Time limits

You should notify your employer of any work injury as soon as possible even if there is no need to lodge a claim at that time.

Permanent impairment

If you've suffered a physical injury that results in a permanent impairment you may have an entitlement to a tax free lump sum payment.

Seriously injured workers

If you've been assessed as having a permanent impairment of 30% or more is classified as seriously injured and your entitlements will not cease. You should seek legal advice.

What if my claim is rejected?

If your claim is rejected or you are unhappy with a decision in relation to your claim you can lodge an application for review.



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Injured at work?

If you have an injury or disease arising out of your employment, you may be entitled to compensation. The process for claiming compensation through Return to Work SA can be complicated. At Andersons, we try to make the process easier for you by providing you with the right information and working with you through the claims process.

Who can claim South Australian workers compensation?

Return to Work SA covers injured workers including part-time and full-time workers, casual workers, labour hire workers and in some cases contractors and the self-employed. Return to Work SA is a State based compensation system. It is important to note that some workers will be covered by Comcare, rather than Return to Work SA. If you are unsure which compensation scheme covers you, contact Andersons for advice.

What can I claim?

If you have sustained a workplace injury you may be entitled to the following compensation, irrespective of who was at fault or who was responsible for your injury:

- Workers compensation benefits such as weekly payments for loss of income (maximum entitlement of 104 weeks from the date of incapacity);
- Medical and rehabilitation expenses (maximum of 52 weeks once weekly payments cease);
- Lump sum compensation for non-economic loss;
- Lump sum compensation for economic loss (unless seriously injured cases); and
- Common law damages (in some cases).

Weekly payments for loss of income

Weekly payments are based on an average of your pre-injury earnings over the 12 months immediately before your injury. Your “earnings” include the following:

- Basic wages;
- Allowances; and
- Overtime (if ongoing and regular).

Your weekly payments can be paid by your employer, Return to Work SA or a self-insured employer. For the first 52 weeks from the first date of your incapacity as a result of your work related injury you are paid your average weekly earnings rate.

After 52 weeks there is a reduction in payments to 80% of your average weekly earnings rate. Payment at the 80% rate continues for the next 52 weeks.

If your claim for Return to Work SA weekly payments is rejected or your payments cease or are reduced and you believe that decision is incorrect, you should contact Andersons for a free initial consultation.

Medical & rehabilitation expenses

You are entitled to reasonable medical and rehabilitation expenses for treatment required as a result of your work related injury, and these may include:

- Hospital and nursing services;
- Medical treatment (including doctors, specialists and medication);
- Rehabilitation like physiotherapy, psychology, vocational services, occupational therapists and gym memberships;
- Home help including domestic and gardening services;
- Travel expenses.

From 1 July 2015 injured workers are entitled to receive medical and rehabilitation expenses whilst in receipt of income maintenance payments and for a period of up to 52 weeks after income maintenance ceases.

Lump sum payments

If your injury results in a permanent impairment, you may be entitled to a lump sum payment. You must be assessed by an accredited permanent impairment assessor.

This assessor will determine your Whole Person Impairment (‘WPI’) and using the required assessment criteria, a determination of your WPI resulting in a percentage of impairment will be made.

There are two types of lump sum payments; non-economic loss and economic loss.

Non-economic loss is for the functional loss due to your injury.

Economic loss takes into account the loss of future earnings beyond cessation of income maintenance payments.

Your WPI must be 5% or more to qualify for a non-economic loss lump sum payment. Workers with psychiatric injuries are not eligible to receive non-economic loss lump sum payments from Return to Work SA.

If your WPI is between 5% and 29% you will also qualify for an economic loss lump sum payment. Workers with psychiatric injuries are not eligible to receive economic loss lump sum payments from Return to Work SA.

You must contact Andersons to determine your rights and entitlements in relation to lump sum payment applications.

Seriously injured workers

If you are classed as a “seriously injured worker”, income maintenance payments continue until retirement age.

You will be entitled to reasonable medical and rehabilitation expenses for life.

Seriously injured workers are not entitled to an economic loss lump sum payment as you will receive ongoing weekly income maintenance payments.

Seriously injured workers may also be entitled to common law compensation in certain circumstances.

Common law compensation

Common law damages are a separate action to your Return to Work SA claim. They are a lump sum payment of compensation for your injuries if they were caused by the negligence of a third party. From 1 July 2015 if you are a seriously injured worker you can elect to sue your employer or your fellow employees for common law damages in lieu of receiving ongoing workers compensation payments.

Opportunities to claim common law damages are limited under South Australia law and the claiming process can be complex. You should contact a common law expert at Andersons to review your options and ensure you receive any compensation due to you.

Death claims

In the unfortunate event that a work related injury results in the death of a worker, that worker's dependants may be entitled to claim compensation.

The system that determines what benefits you are entitled to is complex and can be different for each claim. You should contact Andersons to ensure you are getting your full rights and entitlements.

Do time limits apply to lodge a claim for compensation?

Time limits do apply for lodging a claim for workers compensation or common law damages.

A claim for workers compensation needs to be lodged within six months of the disability arising or being diagnosed. In some cases you may be able to lodge a claim after this period. It is important that you contact Andersons as soon as possible to ensure you receive your full rights and entitlements.

A claim for common law damages needs to be lodged within three years of the event that caused your injuries, unless the court orders an extension of time to commence an action. If you are under the age of 18 years at the time of the accident, a parent or guardian may instruct a solicitor to start proceedings on your behalf and in those circumstances, the three year limit does not start until you turn 18 years old.

What if I disagree with a decision/determination by Return to Work SA?

If a decision or determination is made by Return to Work SA or the self-insured employer about any of your rights, and you disagree with that decision or determination, you generally only have one calendar month to dispute it. You must act fast if you disagree with decisions relating to your claim or your entitlements.

What are my general rights with regard to Return to Work SA?

You have the right to:

- Make a claim for compensation for Return to Work SA weekly payments, medical and rehabilitation expenses, non-economic loss lump sums and economic loss lump sums;
- Choose your own doctor or treatment provider and accredited assessor;
- Have all personal information kept confidential;
- Get advice before signing anything;
- Get a copy of all medical reports about your claim;
- Get a copy of any rehabilitation or return to work plan and be consulted on the contents of that plan;
- Have reasonable out-of-pocket expenses paid within 10 business days;
- An interpreter if required;
- An advocate, for example an Andersons solicitor.