



2 Bedbrook Place  
Shenton Park  
Western Australia 6008  
[www.workcover.wa.gov.au](http://www.workcover.wa.gov.au)

telephone 08 9388 5555  
facsimile 08 9388 5550  
advisory services 1300 794 744  
TTY 08 9388 5537  
 @WorkCoverWA

# Mandatory COVID-19 Vaccinations & Workers' Compensation

WorkCover WA Bulletin – 21 October 2021

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**This bulletin provides general information on the issue of COVID-19 vaccine injuries in the Western Australian workers' compensation and injury management scheme.**

## Background

- In light of the State Government, and some employers, mandating that workers in certain industries obtain a COVID-19 vaccination, employers and workers sought clarification on whether workers can lodge a compensation claim if they have an adverse reaction to a vaccine.
- While COVID-19 vaccines are safe and effective, a small percentage of people may experience more significant side effects. In certain circumstances an adverse reaction to a COVID-19 vaccine resulting in injury/ disease may be covered by workers' compensation.
- Workers' compensation claims are considered and assessed by an approved insurer on the merits of the individual claim.
- Whilst WorkCover WA is unable to provide advice as to the likely outcome of any specific claim, the following sets out key requirements that must be satisfied to support a successful claim.

## Key requirements to be proven

- Under the *Workers' Compensation and Injury Management Act 1981*, for a worker to make a successful workers' compensation claim for a COVID-19 vaccine related injury or disease, the approved insurer needs to be satisfied that:
  - the vaccine injury arose in, or out of, the course of the worker's employment;
  - for a disease, the worker's employment must also be shown to be a significant contributing factor to the disease.

- It is possible that the requirement to connect the COVID-19 vaccine injury or disease to the worker's employment would be satisfied where the vaccine is a mandatory requirement or condition of the worker's employment.
- However, this is an unsettled area of law and it is not possible to provide definitive advice about the effect of mandatory vaccinations on an employer's liability to pay compensation for a COVID-19 vaccine related injury or disease.
- The legislated rebuttable presumption of work injury that applies when a health care worker contracts COVID-19 does not apply to a COVID-19 vaccine related injury or disease.

### **Claiming compensation**

- Any COVID-19 related claim, including one associated with a COVID-19 vaccination, can be lodged via the standard workers' compensation claim process by filling out a workers' compensation claim form and obtaining a First Certificate of Capacity from the worker's treating medical practitioner. The approved insurer will then consider the claim and determine whether to accept or dispute liability.

### **Disputes**

- Where a worker disagrees with the decision of an approved workers' compensation insurer, that dispute may be dealt with via the insurer's internal dispute resolution process, or brought before the WorkCover WA Conciliation and Arbitration Services (CAS) for resolution.

### **Commonwealth COVID-19 indemnity scheme**

- The federal government has developed a COVID-19 vaccine claims indemnity scheme to reimburse people who suffer a moderate to significant injury following an adverse reaction to an approved COVID-19 vaccine.
- The information provided in this bulletin relates to the Western Australian workers' compensation scheme only. Details on the Commonwealth scheme can be found via the following link:

<https://www.health.gov.au/initiatives-and-programs/covid-19-vaccine-claims-scheme>.

### **Further information**

- Further information with respect to making a workers' compensation claim can be found at the WorkCover WA website: <https://www.workcover.wa.gov.au/> or from WorkCover WA's Advice and Assistance Service on 1300 794 744.