



Western Australia Workers Compensation

A guide for businesses

Effective 1 July 2024



EBM
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About WA Workers Compensation

In Western Australia (WA)¹, employers are legally required to hold a current Workers Compensation insurance policy² from an approved insurer to cover their workers and business against a workplace injury/illness as per the *Workers Compensation and Injury Management Act 2023* (the Act).

EBM Insurance & Risk (EBM) has prepared the following summary to assist and support our clients³ and includes the following key information:

- Definition of who is considered a worker
- Legal requirements
- Location of employment and considerations
- Additional insurance cover requirements
- Submitting a workers compensation claim
- Injury management system.

Your EBM Account Manager is also available to help with any queries you may have.

Further information is available from [WorkCover WA](#) or alternatively, you may wish to contact a legal advisor.

¹ Workers Compensation is compulsory for all employers in Australia. Please refer to each state or territory regulator for more information or contact your EBM Account Manager for assistance.

² WA Workers Compensation policy is standard wording set by WorkCover WA.

³ This document is not intended to be comprehensive and does not constitute legal advice.

We draw your attention to the following key information about the WA Workers Compensation Policy to assist your business in understanding your insurance and risk requirements.

Covering Your Workers

The Act provides a broad definition of what is considered a Worker. It is important to discuss your workforce structure (including your working arrangement with contractors and subcontractors) with your EBM Account Manager to understand your workers compensation policy obligations.

Please refer to [WorkCover WA](#) for more information on the definition of:

- A worker
- Contractors/subcontractors
- Interstate workers
- Overseas workers
- Working directors.

A working director means a director of a company:

- who does work for or on behalf of the company; and
- whose remuneration, by whatever means, as a company director of the company, is in substance for personal manual labour or services.

Failure to nominate a working director on the Remuneration Declaration form will result in such person(s) not being insured for workers compensation.

In some cases, it may be preferable to effect alternative income protection options for working directors. Please ask your EBM Account Manager for details.

Workers Compensation Substitutes are Illegal

An employer cannot contract out of their liability under the Act.

- A personal sickness and accident policy cannot be substituted for a workers compensation policy. An employer must have a workers compensation policy regardless of the fact that the worker may also choose to take out a personal accident policy.
- Sometimes a contractor/subcontractor is asked to sign an agreement with the employer to the effect that the contractor/subcontractor is not entitled to claim workers compensation. If the contractor/subcontractor is defined as a 'worker' under the Act, then this agreement is prohibited and invalid.
- An employer must not deduct monies for payment of a workers compensation policy from any workers wages.

Avoidance Arrangements

Some employers may attempt to engage in 'avoidance arrangements' to try to avoid their liabilities under the Act. That is, they may ask individuals to incorporate (set up their own company) as a condition of getting a contract for work. Employers commit an offence by engaging in these arrangements⁴.

For details about fines and penalties that may be imposed, refer to [WorkCover WA](#).

State with which employment connected

The Act provides that the workers compensation premium payable and entitlement for injured workers are determined by each worker's "State of Connection".

A worker's employment is connected with:

- a. The State in which the worker usually works in that employment; or
- b. If no State is identified or no one State is identified by (a) - the State in which the worker is usually based for the purposes of that employment; or
- c. If no State or no one State is identified by (a) or (b) - the State in which the employer's principal place of business in Australia is located.

Employment must be connected with this State

As noted above, liability for compensation arises only if the worker's employment is connected with this State.

Under the Act, there is no liability for compensation in respect of an injury suffered by a worker outside Australia if the worker:

- (a) has never resided in Australia; or
- (b) has been continuously residing outside Australia for more than 24 months when the injury occurs. (This does not apply if the injury suffered by the worker is an injury by dust disease or an injury by firefighter disease.)

If you are unsure about cover requirements, please contact your EBM Account Manager for more information.

Extra Territorial Workers Compensation

If your workers go overseas on business, you should consider effecting Extra Territorial Workers Compensation Insurance cover. This cover is usually incorporated as an extension of a Corporate Travel Policy.

You should be aware that workers compensation is dealt with differently in all overseas countries.

⁴ Source: WorkCover WA

Below is a guide to the optional extensions⁵ available under WA workers compensation insurances.

Workers Compensation in WA can be extended to provide additional cover where required by the business. Where it has been identified that your business requires an optional extension (and you request EBM to arrange this option on your behalf), EBM will negotiate with your insurer, and where able, arrange any required extensions.

A summary of the optional extensions available are outlined below:

1. Principal Indemnity Extension – Statutory Benefits and/or at Common Law

A Principal Indemnity Extension, covering a named Principal for claims under the Act and/or at Common Law, will enable the insurer to respond in the event your worker pursues a claim against the Principal.

The indemnity provided by the Principal Indemnity Extension only applies where a **contractual obligation** exists to the Principal to obtain employers indemnity insurance in respect to one of your workers.

This extension must be specifically requested and agreed to by insurers and is considered in conjunction with the Waiver of Subrogation extensions.

2. Waiver of Subrogation – Statutory Benefits and/or at Common Law

Waiver of Subrogation waives the right of the insurer under the Employer Indemnity Policy to pursue recovery from the Principal.

The indemnity provided by the Waiver of Subrogation only applies where a **contractual obligation** exists to the Principal to obtain employers indemnity insurance.

This extension is considered in conjunction with the Principals Indemnity extension.

3. Increased Common Law Limit

Additional Common Law cover can be negotiated up to a maximum of \$200 million.

The standard Employers Indemnity Policy and cost in respect to any one event, regardless of how many workers are injured by that one event, is limited to \$50 million.

4. Overseas Common Law

This important extension extends common law to workers for work related injuries that occur while working **temporarily overseas** (subject to individual insurer's terms and conditions).

This extension may **not**:

- be available for all locations
- apply at any time during the period of travel where the Australian Government has issued travel advisory warnings.

In these situations, it is important to contact your EBM Account Manager to discuss alternative options.

⁵ All extensions are subject to the Terms, Conditions, Limitations and Exclusions of each of the Policies as issued by the insurer.

Submitting a Workers Compensation Claim

Employers have seven calendar days to lodge a workers compensation claim with their insurer once they have received the following from the injured worker:

- the completed Workers Compensation Claim Form and
- the WorkCover WA prescribed First Certificate of Capacity.

Failure to meet this statutory requirement may result in WorkCover WA imposing a financial penalty.

An employer's report of injury form should also be completed.

The insurer is responsible for assessing the workers compensation claim. Liability is determined by the insurer within 14 calendar days, and they must advise in writing whether the claim has been accepted, disputed or if additional time is required to make a decision.

Provisional Payments

If an insurer is unable to make a determination on liability within 28 calendar days, provisional payments of income compensation and medical expenses must commence from the date of first incapacity.

If an insurer is unable to dispute a claim within 120 days of receiving it, liability will be deemed accepted.

Injury management system requirements

Employers must ensure that an injury management system is established, documented and implemented, and is available to workers.

A penalty applies if an injury management system is not in place, in accordance with the Act.

WorkCover WA has a template available for download and can be modified as required.

Here to assist

If you have any questions or would like to discuss the workers compensation and/or alternative insurance options in more detail, please contact your EBM Account Manager on 1300 755 112.



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