



FACT SHEET

Changes to workers compensation: Work capacity

In June 2012 the government introduced changes to the NSW Workers Compensation Scheme that focus on assisting injured workers to return to work. These changes include the insurer assessing injured workers' work capacity – to guide their return to work planning and the benefits they may get.

If you are an injured worker, your 'work capacity' is basically your fitness to work – whether in your normal job, on reduced hours, on modified or alternative duties, or with another employer.

Evidence shows that staying at work, or returning to work as soon as safely possible, is good for your health and wellbeing.

Work capacity assessments

The insurer assesses your work capacity through a continual process of gathering and reviewing information about your claim. It is not a one-off 'test'.

The assessment takes into account your medical, functional and vocational status, and looks at all available sources of information – eg:

- your activities of daily living
- medical evidence
- injury management and return to work plans
- the *WorkCover NSW certificate of capacity* (catalogue no. WC01300) from your doctor.

The role of your doctor

Prior to the changes, your fitness for work was determined by your doctor in the *WorkCover medical certificate*. The medical certificate is now replaced by the certificate of capacity, which focuses on what you can do rather than what you can't do. The certificate of capacity from your doctor is one important source of information that the insurer now considers when assessing your work capacity.

Work capacity decisions

Based on the continual assessment, the insurer makes decisions on your work capacity throughout the life of your claim. These decisions can be about things like:

- your current work capacity
- your pre-injury average weekly earnings
- what constitutes suitable employment for you.

As well as helping you to plan your return to work, these decisions can affect your entitlement to weekly payments. For example, after two and a half years of receiving weekly payments, if the insurer decides you have some work capacity but you are not working 15 hours or more per week then your weekly payments will cease.



The insurer can make work capacity decisions at any point during the life of your claim – eg on receipt of new information relating to your capacity. If your claim continues, the insurer must review your work capacity at least every two years (unless you are seriously injured).

If the insurer receives new information about your claim it will be shared with you as it becomes available.

Note: if you made your claim prior to 1 October 2012, the insurer will assess and make an initial decision on your work capacity during 2013.

How you find out about a decision

If the insurer's work capacity assessment suggests that the decision may result in your weekly payments reducing or ceasing, your case manager will contact you at least two weeks in advance to give you the opportunity to provide information about your injury or claim.

Once the insurer has made their decision on your work capacity, you will get three months' notice before any change to your weekly payments.

If you disagree with a decision on your work capacity, you can seek a review from your insurer. If you are not satisfied with that decision you may then seek a review by WorkCover. If the issue is then not resolved to your satisfaction you may seek a review by the WorkCover Independent Review Officer, who has been introduced under the reforms to review work capacity decisions.

More information

To discuss your work capacity, contact your case manager.

For information about:

- the health benefits of work, go to racp.edu.au/page/afoem-health-benefits-of-work
- the WorkCover Independent Review Officer, go to wiro.nsw.gov.au or call 13 94 76
- weekly payments and how they are linked to work capacity and work status, see WorkCover's fact sheet *Changes to workers compensation: Benefits* (catalogue no. WC03921).

For general information about work capacity assessments, decisions and reviews, go to workcover.nsw.gov.au or call us on 13 10 50.

Note: the workers compensation changes do not apply to some workers. The excluded groups are police officers, paramedics, firefighters, coal miners and workers who make dust diseases claims.

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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