

DO YOU SUFFER FROM WORKPLACE STRESS?

IS THE CONDITION AFFECTING YOUR WORK PERFORMANCE?

Have you sought medical treatment?

If you answered yes to any of these questions then you need to be aware of your legal options.

1. You may be eligible for Worker's Compensation. If the claim is accepted by WorkCover Queensland then WorkCover may pay your medical costs and/or your wages while you are unable to work because of your condition.
2. You may be eligible for a benefit under your superannuation policy if you are absent from work for prolonged periods due to a medical condition.

Question - Will WorkCover accept my stress claim if my stress is caused by my job?

Answer - Worker's Compensation claims for stress are only accepted if the condition falls with the definition of "injury" within the *Compensation Rehabilitation Act 2003*, **and** is caused by work activities. This means it has to be:-

- a) A condition diagnosed by a medical practitioner.
- b) The condition must arise as a consequence of **unreasonable** management action taken in an **unreasonable** way.

This means, if a psychological condition has been caused by stress but the employer is considered to have taken reasonable management action the claim will not be accepted.

Reasonable management action includes steps taken to redeploy, demote or discipline a worker. Thus, if the disappointment caused by demotion is so severe it leads to depression, the depression is not an "injury" within the meaning of the legislation. The claim will be rejected as the condition arose out of reasonable management action. However if the decision to demote was a totally unreasonable decision to make, taking into account all

WORK INJURY ASSIST ALERT

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the circumstances of the worker's performance, then the claim may be accepted as the management action to redeploy/demote/discipline has been taken in an unreasonable way.

TIPS FOR GETTING YOUR WORKER'S COMPENSATION CLAIM ACCEPTED

1. Workplace stress can arise from one isolated incident or from lots of incidents over many days or years. It is important to include as many examples of the incidents having caused your work related stress as possible. There is a fine line between what constitutes reasonable management action taken in a reasonable way and what is unreasonable. Each incident and the management action taken for that incident needs to be looked at to determine its reasonableness or unreasonableness. One seemingly insignificant incident could be the only unreasonable action taken by your employer and could therefore mean the difference between your claim being accepted or rejected. So add pages of information as an attachment to the application form and provide a complete response. You are not limited to the few lines available on the form.
2. The injury must be work related. If non-work related personal issues cause or contribute to your condition your claim may be rejected. WorkCover Queensland will be interested in other aspects of your life beyond what is going on in your workplace to ascertain whether other factors are causing or contributing to your condition. WorkCover Queensland will investigate and if there are no external factors effecting your condition ensure that you have told WorkCover this. If there are other personal factors be sure to explain their significance fully. For example, if work related stress is then causing problems at home be sure to spell out the problems at home arose AFTER and as a consequence of the work related stress. If there has been a death of a member of the family as well as work related stress, explain how you were affected by each of these events as separate events so that WorkCover can judge whether the present condition is 100% work related or not.
3. Consult your medical practitioner as soon as you realise you have a medical problem. Delay in obtaining a medical certificate results in delay in acceptance of the claim. This can stall needed medical treatment until the claim is accepted. Delay also affects your legal rights in respect of your **entitlements to sue** your employer in negligence. Psychological injuries often arise over a period of time as a consequence of a series of incidents at work. You only have three years to sue and it is three years from when you start the activity which is responsible

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for a build up of stress or three from being exposed to a particular incident which causes your stress. The time in which you have to sue may almost have expired by the time you lodge your application for Worker's Compensation as it often takes a long time to realise there is a medical problem. So act quickly once you recognise you have a medical problem. Consult your doctor and consult solicitors as soon as possible.

4. If performance issues or job restructure is part of the reason for your condition then in these circumstances you should consult your union or your union's solicitors before lodging your application for Worker's Compensation. Appropriate wording of your application will in these circumstances ensure no misunderstandings and will specifically address the unreasonableness of a decision to demote, redeploy or discipline as opposed to focussing on the demotion itself. These fine distinctions mean the difference between a claim being accepted or rejected.
5. When completing your application for Worker's Compensation focus on the cause of your condition not the condition itself. Your accompanying medical certificate and further medical examinations arranged by WorkCover Queensland will focus on the nature of your medical problem. You need to give WorkCover as much evidence as possible as to the work related factors that have caused the medical problem. If there are factors unrelated to work that have contributed explain what they are and why they are irrelevant or to what extent you believe they are relevant to your current condition.