

# Exposure to COVID-19 in the course of your employment

## What if a worker contracts COVID-19 at work or because of their work, will they be covered by workers' compensation?

While the laws in each State and Territory differ slightly, the answer to this is probably yes.

- In Queensland, Western Australia, the Northern Territory and Victoria diseases are considered to be injuries in workers' compensation legislation and thus workers will be covered. In addition:
  - In Victoria diseases will be covered if you are working in a job that gives rise to a significantly greater risk of contracting that disease;
  - In Western Australia in certain circumstances there is a rebuttable presumption that a health worker who has contracted COVID-19 has sustained it at work.
- In NSW a worker will be covered if they contracted the virus (a "disease") in the course of their employment and their work activities were the "main contributing factor" to contracting the virus. Legislation has been introduced to make it easier to establish a link between certain types of work and contracting COVID-19, including those in retail and healthcare sectors, educational institutions, the cleaning and construction industry, hospitality and passenger transport.
- In South Australia, workers will be covered if they developed the virus "in the course of their employment" and if employment was "a significant contributing cause" of the injury.

A worker should not hesitate to lodge a workers' compensation claim in any jurisdiction if they believe they have contracted COVID-19 as a result of their job, even if they are not sure the exposure happened at work.

## What if a worker contracts COVID-19 because they have been on public transport, will they be covered by TAC or a CTP scheme?

The answer to this in most states is no.

- In Victoria and Western Australia a worker will need to show their injury was caused by the driving of a motor vehicle.
- In Queensland the injury must have been caused by, through or in connection with a motor vehicle.
- In the Northern Territory a worker will need to show their injury was the result of a motor accident.
- In NSW:
  - Workers' compensation - if a worker is travelling to and from work on public transport they would not be able to bring a claim. If a worker is on public transport in the course of their employment (for example to attend a different site/conference) then they would be covered by workers' compensation provisions.
  - CTP - the injury must arise from the use or operation of a motor vehicle.
- In South Australia claims for compensation under the CTP scheme must be the result of someone else's negligent use of a motor vehicle.

It is possible there may be other remedies available to workers who have been exposed to COVID-19 while on public transport. To find out whether a worker might be eligible for compensation it is best to seek expert legal advice.

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## Does this change if the worker contracts COVID-19 on public transport on their way to work, will they be covered by workers' compensation?

While the laws in each State and Territory differ slightly, the answer to this in most states is no.

- In Victoria workers will not be covered, even if they were on their way to work when exposed.
- In Western Australia an injury sustained on the way to or from work is also not compensable. The situation may be different if the journey is between two work sites.
- In Queensland it is possible for a worker to be eligible for WorkCover if they can prove they contracted COVID-19 on public transport on their way to or from work.
- In the Northern Territory, as a general rule, workers' compensation does not cover workers if they contract a disease as part of their usual, everyday commute between home and work. However, these rules are complex so any worker concerned should speak to a lawyer.
- In NSW there are no journey claims under workers' compensation legislation.
- In South Australia it's possible for a worker to be eligible for workers' compensation if they can prove they contracted COVID-19 on public transport on their way to or from work (subject to certain exceptions).

It is possible there may be other remedies available to workers who have been exposed to COVID-19 while on public transport. To find out whether a worker might be eligible for compensation it is best to seek expert legal advice.

## What if an employer makes it compulsory to have a COVID-19 vaccination to return to work, and a worker has an adverse reaction to that vaccine? Will they be covered by workers' compensation?

While the laws in each State and Territory differ slightly, the answer to this is probably yes.

- In Victoria, Queensland and the Northern Territory workers will be covered and will be able to receive benefits for any adverse reactions to the vaccine.
  - Case law makes it clear that activities that are "reasonably incidental" to employment will entitle a worker to compensation if they suffer injury.
  - In this scenario, the employer has induced or encouraged the employee to engage in the activity of undergoing the vaccination which has resulted in adverse reaction.
- In Western Australia this would depend on the circumstances in which the vaccination has been administered, but the adverse reaction would likely be covered if a worker can show that the employer mandated the worker to have the vaccine.
- In NSW it would be expected that such a claim would be successful if the injury was sustained "in the course of employment" and work was a "substantial contributing factor".
  - In these scenarios, the injury would be covered by workers' compensation.
  - This is a different test to that which applies to a worker who contracts COVID-19 at work, where a person's work activities would need to be deemed the "main contributing factor" to contracting the virus.
- In South Australia it would be expected that such a claim would be successful if the injury was sustained "in the course of employment" and if employment was "a significant contributing cause" of the injury.

This is general advice only. Any worker seeking specific advice should speak to their union or seek legal advice. | Information correct as at September 2021

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