



CEPU Representatives Guidelines Telstra Workers' Compensation

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Introduction

This Union Representatives Guide provides information on the following rights and entitlements of workers' compensation for Telstra workers

1. When am I covered by workers' compensation?

- 1.1 Circumstances in which I may be entitled
- 1.2 Diseases and medical conditions
- 1.3 Travelling between home and work

2. Steps to making a claim

- 2.1 What do I have to do?
- 2.2 Access to your medical records
- 2.3 Written statements and other information
- 2.4 Telstra decisions
- 2.5 Medical examinations

3. What am I entitled to?

- 3.1 Medical treatment and rehabilitation
- 3.2 Time off work
- 3.3 Lump sum payment for permanent impairment

4. Employment issues

- 4.1 Job offers
- 4.2 Redundancy, resignation and superannuation
- 4.3 Termination of employment

5. Suing Telstra for Negligence

6. Suing a Third Party

7. Death Claims

8. In what other ways can CEPU Legal Services help me?

1. When am I covered?

1.1 When am I covered by workers' compensation?

As a Telstra employee, you are covered by workers' compensation for:

- injuries sustained at work, including during lunch and other breaks
- injuries sustained travelling to or from work
- pre-existing injuries aggravated by work
- diseases or medical conditions made worse by work
- injuries sustained at work functions
- injuries sustained during work training sessions

1.2 Diseases and medical conditions

Diseases and medical conditions which may be covered include:

- heart attack
- stroke
- cancer
- lung conditions
- dermatitis
- psychiatric conditions

Work does not have to be the sole or major contributing factor to your injury or illness

1.3 Travelling between home and work

If you are travelling between home and work you are covered. If you are involved in a motor vehicle accident, you may also be entitled to compensation from the compulsory third party insurer of the other driver.

Compensation received other than from Telstra will affect your workers' compensation entitlements. Therefore, it is important to seek legal advice before agreeing to a settlement. See the section Suing a Third Party further in this booklet.

When am I covered by workers' compensation?

Diseases and medical conditions

Travelling between home and work

1. When am I covered?

2. Steps to making a claim

2.1 What do I have to do?

You must:

- notify Telstra of your injury, accident or illness immediately
- visit a legally qualified medical practitioner for treatment
- If you cannot perform part or all of your duties, obtain a medical certificate from your doctor
- complete a Telstra workers' compensation claim form, available from your manager
- give the original claim form and medical certificate to your manager who should sign the claim form and provide you with a copy then forward it to the compensation department within five days

If you are unable to return to work, you must send Telstra medical certificates for the whole period that you are unable to work. Every medical certificate must contain certain minimum information, such as:

- the date of injury and the date you first sought medical treatment (first certificate only)
- a clear diagnosis of your claimed condition
- how your condition is related to your employment
- details of any pre-existing or contributory factors

- any treatment required for your condition and the likely duration of the treatment
- the period of time off work, if required
- an assessment of your fitness for your pre-injury duties

2.2 Access to your medical records

You are required to sign a section on the claim form that agrees to give Telstra access to your medical records relating to your injury or illness.

No further action is usually taken on your claim until you have signed the workers' compensation claim form.

You are not required to allow any access to your medical records which do not relate to your injury or illness, and we recommend that you do not allow Telstra additional access to your medical records without advice.

2.3 Written statements and other information

In some circumstances, you may be required to provide further information within a specified period. You may be uncertain as to what documents or information you are required to provide. Please talk to your union representative or call the union office for assistance.

2.4 Telstra workers' compensation decisions

Most decisions made by Telstra can be reviewed. A primary decision is called a 'determination'.

If you are dissatisfied with a determination, you may request a reconsideration of the determination by an independent review officer.

You must request a reconsideration within thirty (30) days of receiving a determination in writing from the workers' compensation section. The request must be in writing and provide reasons for the request. Your union representative can assist you by preparing your request for reconsideration. Extensions of time can be granted in some circumstances.

If you request a reconsideration, Telstra will issue a second decision called a 'reviewable decision'. If you are dissatisfied with Telstra's second decision, you may apply to have the decision reviewed by the Administrative Appeals Tribunal.

You must lodge an Application for Review of Decision form within sixty (60) days of receiving a reviewable decision. We recommend that you call your union representative or the union office for assistance at this stage.

Telstra should provide its decisions within a reasonable time, however there is no time limit by which Telstra must decide. If you have not received a decision within 10 working days of lodging a claim or requesting a reconsideration, you should contact your union representative or call the union office for assistance.

2.5 Medical examinations

After making a workers' compensation claim, Telstra may direct you to attend medical examinations. You will be notified of such examinations in writing under section 57 of the *Safety, Rehabilitation and Compensation Act 1988*. Please note you are not compelled to attend individual examinations outside of this requirement made in writing.

Telstra requires their examiners to treat you with courtesy and respect. In the unlikely event that you believe you have been mistreated, you should contact the Health Services Commission in your State or Territory and your union for assistance.

3. What am I entitled to?

3.1 Medical treatment and rehabilitation

At all times you have the right to choose your doctor. Telstra cannot compel you to see their doctor, commonly referred to as a Facility Nominated Doctor (FND) under Telstra Injury Management Policy. If Telstra wants you to see their doctor, contact your union representative.

3.1.1 Medical treatment

Telstra must pay all *reasonable* medical, hospital, pharmaceutical and other treatment costs related to your accepted injury or illness, for example:

- doctors, specialists, physiotherapists, chiropractors, osteopaths, etc.
- investigative procedures, such as X-rays
- remedial gymnasium work and swimming
- supply, repair or replacement of any aid or appliance you may require
- home help, such as domestic cleaning assistance and lawn mowing (depending on the duration of incapacity)
- attendant care, such as bathing, dressing, feeding or assistance with administering medications (depending on the duration of incapacity)
- essential home, workplace and car modifications
- reasonable travel expenses relating to medical treatment

Most items of treatment or medication require written approval from your treating doctor or specialist, and approval in advance from Telstra prior to incurring the medical or like treatment expense.

3.1.2 Rehabilitation

After an injury or illness it is not always possible to return to your pre-injury duties. You may need to think about a new job and/or retraining. Rehabilitation assistance can be valuable in this situation. You should contact your manager and obtain a referral to an approved rehabilitation service to explore your rehabilitation needs.

It is important that you do not reject an offer of rehabilitation or retraining without first seeking legal advice. If you unreasonably reject an offer your compensation can be stopped.

3.2 Time off Work

Payments for time off work are calculated as a percentage of your pre-injury Normal Weekly Earnings. The calculation of your Normal Weekly Earnings is a complex matter. Usually it is your average weekly earnings for the 6 pay periods (12 weeks) before your injury and may include some additional payments, for example some allowances or overtime required to be worked in a regular pattern.

These additional payments are not automatic and may stop or change after a period of time if they do not accurately reflect the earnings of your workplace.

If you are partially unfit for work, Telstra can deem you able to earn a notional amount and reduce your payments by this amount. Your deemed ability to earn is based on what Telstra believes you could earn, even if your medical practitioners say you are not able to work those hours or duties.

If you think that the calculation of your Normal Weekly Earnings is incorrect, you have the right to have them reviewed.

3.2.1 Incapacity payment rates

If you are certified unfit to work by your doctor, you may be entitled to payments at the rate specified for 'total incapacity'. If you are certified fit to perform modified or restricted duties, or assessed as being capable of undertaking a rehabilitation program, you may be entitled to payments at the rate specified for 'partial incapacity'.

First 45 weeks

In the case of total incapacity for work, you are entitled to 100% of your pre-injury Normal Weekly Earnings for a total of 45 weeks, whether consecutive or not, or until you reach the age of 65 years.

In the case of partial incapacity for work, you are entitled to 100% of your pre-injury Normal Weekly Earnings less the total of any actual earnings and any earnings you are deemed able to earn in suitable employment.

3.3 Lump sum payment for permanent impairment

Telstra provides lump sum compensation for permanent impairment. Minimum impairment thresholds apply to these claims. The amount of compensation payable is determined by a complex scheme and depends on the percentage level of whole person impairment and non-economic loss (such as pain and suffering).

An assessment as to the percentage level of whole person impairment must be made by a legally qualified medical practitioner and must be made in accordance with the approved guidelines. A different assessment system applies for injuries sustained prior to 1 December 1988 and the level of compensation is significantly less.

Claiming lump sum compensation does *not* affect your rights to medical treatment and rehabilitation, or to time off work. However, acceptance of an impairment payment will prevent you from making a claim against Telstra for negligence – always obtain advice before acceptance.

3. What am I entitled to?

After 45 weeks

In the case of total incapacity for work, you are entitled to 75% of your pre-injury Normal Weekly Earnings until you reach the age of 65 years.

In the case of partial incapacity for work, you are entitled to salary top-up payments equivalent to between 80% and 100% of your pre-injury Normal Weekly Earnings depending on the level of your incapacity, your actual earnings and any earnings you are deemed able to earn in suitable employment.

4. Employment issues

4.1 Job offers

If you are offered other duties by Telstra, it is very important to obtain advice from your doctor before responding to the offer. You should follow your doctor's advice as an unreasonable refusal to return to work can affect your compensation entitlements.

4.2 Redundancy, resignation and superannuation

Resigning from your employment may affect your workers' compensation claim. Accepting a redundancy payment may disqualify you from receiving future incapacity payments. *It is important that you seek independent legal advice before resigning or accepting a redundancy.*

4.3 Termination of employment

It is an offence for Telstra to terminate your employment because you have provided notice of an injury or lodged a workers' compensation claim. In these circumstances, you may be entitled to lodge a claim for unfair dismissal. Failing to employ or re-employ a worker because of an injury may infringe Equal Opportunity and Disability Discrimination laws. If you believe that you have been discriminated against because of your injury or illness, please contact

your union representative or union office.

Time limits as short as days can apply to an unfair dismissal claim.

4.4 Superannuation

4.4.1 Superannuation payments

Accepting a superannuation payment can affect your entitlement to payments for time off work. Therefore it is important that you seek advice before accessing or dealing with your superannuation.

If you do receive a superannuation payment, or handle it in any way, you are obliged to provide the details of the payment or transaction to Telstra as soon as possible.

4.4.2 Superannuation and insurance disability payments

In addition to Telstra entitlements you may have an entitlement to extra benefits under your superannuation, insurance or consumer credit policy. These benefits depend on the terms of your policy and may include either a pension or a lump sum payment. Generally, you will need to show that you are totally disabled for work either permanently or in some cases temporarily. However, precise requirements and time limits to

make a claim from a superannuation fund or insurer vary.

As payments made under your superannuation policy may affect

your Telstra claim, it is important to seek legal advice before agreeing to a settlement. Please contact your union representative or union office.

4. Employment issues

5. Suing Telstra for negligence

The alternative to pursuing lump sum compensation through the 'no fault' workers' compensation scheme, is to sue for common law damages.

Carelessness that causes injury or illness is often referred to as 'negligence'. Whether you are able to sue for damages will depend on the date and extent of your injury, the existence and degree of negligence by any other person, the place where your injury occurred, and whether the claim is against Telstra or some other person.

You may be entitled to receive lump sum damages from Telstra if your injury or illness has been caused, or made worse, by the carelessness of:

- your managers or supervisors
- your co-workers
- any other person
- or by:
- faulty machinery
- an unsafe workplace
- an unsafe work system
- poor medical treatment

Common law actions may only be taken where you have been assessed by Telstra as having a permanent impairment at least equal to the minimum impairment threshold and you have elected to sue Telstra for negligence as an alternative to the permanent impairment award that Telstra assesses is payable.

The damages recoverable from Telstra are limited to non-economic loss (such as pain and suffering). The maximum that can be awarded is \$110,000. Once you have made the decision to sue for negligence, you cannot change your mind and try to accept what Telstra has previously offered. This is what is called an "irrevocable election".

Suing for negligence does *not* affect your rights to medical treatment and rehabilitation or to time off work payments from Telstra.

5. Suing Telstra for negligence

6. Suing a third party

6. Suing a third party

Suing for common law damages is not restricted solely to work injuries. It can apply to motor vehicle accidents, accidents resulting from dangerous products or poor medical treatment, etc. If you have been hurt and someone else is either partly or wholly to blame, inquire about the possibility of bringing a common law action for damages.

If legal action is instituted against a third party in relation to a work-related injury or illness, Telstra must be notified, in writing, within seven days. If damages are to be paid, Telstra must be notified, in writing, within 28 days after the matter has been settled.

If you recover damages from a third party, other than for non-economic loss, in respect of an injury or illness that Telstra would otherwise be liable for, you must repay to Telstra any compensation that it has paid to you, and you are prevented from claiming any further compensation from Telstra.

Time limits for negligence claims

Strict time limits apply. Each State and Territory has varying limitations on common law claims. Determining the relevant time limit can be difficult. We recommend that you seek early legal advice if you believe you have sustained an injury or suffered an illness during the course of your employment as a result of negligence.

7. Death claims

If you were the partner, spouse or dependant of someone who has died and you think that their work with Telstra contributed to the death, you may be entitled to the following compensation:

- \$201,025.04* lump sum payment
- \$4,630.43* for funeral expenses
- \$66.00* per week for each dependent child

The above amounts relate to an employee who died on or after 1 July 2004. The maximum amounts of compensation are adjusted in line with the Consumer Price Index annually.

7. Death claims

* These amounts are current at the time of printing and are subject to adjustment.

8. In what other ways can CEPU Legal Services help me?

CEPU Legal Services have access to lawyers who specialise in other areas of the law to ensure that you have direct access to expert knowledge and resources.

- ▶ Asbestos Diseases Claims
- ▶ Commercial Litigation:
 - company and business disputes
 - will disputes and breaches of trust
 - professional negligence claims
 - property and commercial tenancy disputes
 - contract disputes
 - Trade Practices and unfair business practice claims
 - building disputes
 - appeals against administrative decisions
 - breach of copyright and intellectual property claims
- ▶ Class Actions
- ▶ Employment Law:
 - employment contracts
 - unfair dismissal
 - discrimination
 - unfair work-related contracts
- ▶ Family Law
- ▶ Income Protection Policy Claims
- ▶ Industrial Law
- ▶ Medical Negligence
- ▶ Military and Defence Compensation Claims
- ▶ Veterans Affairs Claims
- ▶ Public Interest Group
- ▶ Superannuation Claims
- ▶ Public Liability
- ▶ Product Liability
- ▶ Transport Accident Injury Claims
- ▶ Wills
- ▶ WorkCover Claims
- ▶ Probate and Estate Matters

8. In what other ways can CEPU Legal Services help me?

direct access to expert knowledge and resources