



COVID-19 & WORKERS' COMPENSATION

Your rights*

**Know
YOUR
Rights!**



NOTE: The information in this document does not apply to employers or workplaces under the Comcare system, which for example applies to our members working in Ramsay. Please seek advice from your employer or contact the Association if you have any questions regarding your rights.

**Version 1.2
Issued
15/8/2022**

Transmission in the workplace

There is a legal presumption that certain workers, including those in aged and disability care facilities, and those in the health care sector (public and private), contracted the virus at work or while working.

This change to the NSW legislation in 2020 was to make it easier for frontline workers to establish the link between work and contracting COVID-19. The onus is on the employer's insurer to establish that COVID-19 **was not** contracted at work.

Of course, this presumption will not apply if there is evidence that proves a worker contracted it outside of work.

Accordingly, any transmission that is likely to have occurred in the workplace should be approached as workers compensation.

To be clear, **no employer should place any barrier** to a worker making a workers compensation claim.

Proof of positive status

You will need to have a positive PCR or rapid antigen test result.

Under current public health advice, a rapid antigen test will no longer need to be verified by a PCR.

PCR result

A PCR result should be available to you via a SMS from the pathology provider processing your test. This will clearly indicate the date and time that the test result has been provided to you. The SMS and a screenshot of it showing the date and time should be retained in preparation for any workers compensation claim.

Rapid antigen test result

You should record the date and time of a positive rapid antigen test result.

At the workplace: If the test occurs in the workplace, then the employer will have a record of the positive test. Ask to take a photo on your mobile of the test, and note the date and time it was taken. This should be retained in preparation for any workers compensation claim.

Personal: If the positive result arises from your personal testing, you should note the date and time, and take a photo of the test result on your mobile, which should also time stamp when the photo was taken. This should be retained in preparation for any workers compensation claim.

Remember, with a positive rapid antigen test, you are required to notify Service NSW.



Making a claim

Despite the legal presumption that transmission occurred at work, to start the workers compensation claim process you will still need to get a Certificate of Capacity from your doctor. This is the same documentation that a doctor would fill in for any workplace injury which indicates that the injury is likely to have resulted due to your work.

You should provide the completed form, with any evidence you have of the positive test, to your employer, who is obliged to forward this on to their insurer.

If you are COVID-19 positive at the time you will

need to make a telehealth appointment with your doctor to obtain a Certificate of Capacity.

We recommend you might also send a copy of your claim directly to your employer's insurer if you work in the public system, or to icare via their website if working in the private sector.

Remember, whilst better to get the claim going as soon as possible after the positive test, a workers compensation claim can be made retrospectively if you run into difficulties at the time, if you're too unwell for example.

NOTE: Public Health System

You may be requested to complete an incident form. This is not unusual as it is part of the public health system approach to injuries or incidents in the workplace. Take it as an opportunity to set out your belief that transmission is likely to have occurred in the workplace as there is no other known cause of transmission that you are aware of in a non-work setting. If you have more specific details of when you believe transmission or exposure may have occurred in the workplace, put it down.

Claim process

A claim received from a worker should be provided immediately by the employer to their insurer.

The insurer will just need to be reasonably satisfied that the worker contracted COVID-19 at work and that there is no evidence that it was contracted outside of work. The insurer has 21 days to decide liability. The

insurer must start provisional weekly payments of compensation within 7 days of notification unless they have a reasonable excuse.

If the insurer does not subsequently accept your claim, you will not be required to pay back the provisional payments.

Leave used

Whilst you may be placed on sick / personal leave initially, this should be recredited to you when the claim is accepted (Please note: restrictions apply in the public health system).

Workers compensation benefits

Normal workers compensation entitlements would apply, including medical expenses and weekly payments for time lost (for the first 13 weeks, 95% of average weekly earnings).

Declined claim

If your claim is declined by the insurer, contact the Association and we can discuss and assist, and refer you to NEW Law for specialist workers compensation advice and representation as needed.

**NOT A MEMBER
OF THE NSWNMA?**

www.nswnma.asn.au

Being part of the Association means we have more collective power to deliver positive change on pay and conditions at your work.

Join us today and together, we can make our future stronger.

Authorised by S. Candish, General Secretary, NSWNMA | August 2022 | 1.2

