

Agency Bulletin

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[Mandatory COVID-19 vaccines: workers' compensation, general liability and employment practices](#)

In October 2021, the Government released an overarching policy that mandates COVID-19 vaccinations for a number of occupations and workforces across WA.

Workers' Compensation

This mandate may affect aspects of new and existing workers' compensation claims as outlined in the following examples:

- **Impact on Return to Work Programs**

If a worker refuses vaccination, they will be unable to participate in a return to work program with a goal of returning to their pre-injury role.

Under the *Workers Compensation and Injury Management Act 1981* (the Act) it can be argued that a worker refusing vaccination is not complying with their obligations.

Depending on claim circumstances, dispute Applications may be lodged with WorkCover WA.

To lodge an Application, a return to work program must be aligned to medical restrictions and outline vaccination requirements within the program.

Where there is medical evidence that a worker is fully fit for their pre injury role, an Application to WorkCover is applicable.

If agreement cannot be reached to resolve these matters at Conciliation, it may take more than six months for the matter to proceed to Arbitration.

- **Claims for psychological injury due to fear of termination or being forced to take leave for being unvaccinated**

Such claims are likely to be denied on the basis that they relate to an excluded matter under s.5(4) of the Act. Where a worker has been placed on leave, evidence of their understanding or anticipation of ultimate termination/dismissal would strengthen the decision to deny the claim.

Key Points

- **COVID-19 vaccines mandatory for most workers.**
- **Avenues to dispute impacted claims.**
- **Claims for fear of termination likely to be denied.**
- **Claims for health consequences may be compensable.**



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- **Psychological injury claims for concerns about health consequences due to either having or refusing the vaccine**

For these claims the s.5(4) exclusions are unlikely to apply. If the worker can establish they have a fear of vaccine side effects and that the fear has caused a psychological condition, then they will have suffered an injury in the course of their employment which will likely be compensable.

Medical evidence would be required to determine whether the worker has suffered an injury before determining liability .

- **Psychological claims from vaccinated workers afraid to attend work with exempt or unvaccinated workers**

The exclusions would not apply so these claims and further medical evidence is likely to be required before determining liability.

Vaccinated Status and Consent

We ask that you only share the vaccination status of an injured worker if they have provided their consent to do so or if the information is provided through a medical practitioner in the course of the claim.

All impacted claims will be discussed with the Agency, assessed on merit and any enquiries should be directed to workers' compensation claims contact.

Liability Cover

Issues relating to employment practices liability; such as unfair dismissal, and issues relating to general liability; such as legal action from vaccinated persons against an agency for exposing them to unvaccinated persons, will be topical. It is important to remember that the Liability and Property/Business Interruption policies have a sweeping communicable disease exclusion for pandemic related claims. The Liability cover provided by the RiskCover Fund would therefore not respond on these claims. It is recommended that agencies assess and understand the risks with these matters and implement the appropriate controls and processes.

The communicable diseases exclusion does not apply to workers' compensation claims.

Commonwealth Government COVID-19 Vaccination Claim Scheme and Claim Recovery

The Commonwealth is developing a claims scheme for people who suffer a moderate to significant impact following an adverse reaction to a TGA approved COVID-19 vaccine. The legislation is yet to be released but it's considered it will be similar to the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*, wherein employees receiving workers compensation for total incapacity are excluded.

It is anticipated that the legislation will prevent recovery of claims costs from this Scheme.



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