

## WorkCover and Employers Rights

February 2010

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Frustrated by Workers Compensation? Our team has received a lot of feedback from clients that they sometimes feel powerless when decisions are made in relation to an employee's compensation claim. There is a lot at stake for employers in the Workers Compensation process, including increased levies and the obligation to provide suitable duties. It is important to realise however that you are not powerless within the system, and that you have rights too and can become actively involved.

Your rights include:

- **The right to dispute decisions made by Employers Mutual**

If you are not happy with a decision of Employer's Mutual you may file a formal dispute in the Workers Compensation Tribunal. So if you, as an employer, believe that a decision made regarding a claim, including whether or not to accept the claim, or what types of treatment or services will be paid for, or even a return to work, you are quite within your rights to file a dispute in the Tribunal.

- **The right to take part in proceedings in the Workers compensation Tribunal**

Where an employee disputes a decision, you also have a right to be heard in any proceedings. Quite often it is worthwhile taking a role in any such dispute to ensure your voice is heard, and that your rights aren't forgotten if a compromise position is being considered.

- **The right to review the amount of income maintenance being paid to a Worker**

If you consider that the income maintenance being paid to a worker is in excess of their average weekly earnings, you can ask Employers Mutual to review the amount of income maintenance. This is particularly useful in situations where an employee's income maintenance was calculated at a time when overtime was being offered, but where overtime is no longer available.

- **The right to view medical reports pertaining to the Worker's claim for compensation**

It is good practice for you to stay involved in the Workers Compensation process. Having access to medical reports not only helps you as an employer to understand any restrictions that the worker is facing, but also provides an opportunity for you to keep an eye on progress and ensure your rights are being protected.

This Alert is intended as an alert only. It does not purport to be a comprehensive advice. Readers should seek professional advice before acting in relation to these matters.

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- **The right to request that a worker attend for a medical examination**

If there is a dispute before the Workers Compensation Tribunal, and the employer has elected to take part in the proceedings, the employer has the right to require the worker to submit to a medical examination. Even if there are no proceedings at the Tribunal, the employer may make a request to Employers Mutual that the worker submit to a medical examination. This is a useful tool particularly where you may have some suspicions about a worker's condition.

- **The right to request that the worker's claim be classified as a secondary disability**

Accepted Workers Compensation claims can result in increased levies for employers. However, if the Worker had a pre-existing medical condition you can argue to ensure that the claim is classified as secondary, which won't have an impact on your bonus/penalty calculations.

It is always worth remembering that you have some important rights, don't let yourself get forgotten in the process.

*Finlaysons Workplace team is a leader in providing specialist advice on workplace issues to businesses across Australia. Led by highly regarded partner Grant Archer the team is recognised for its experience in all workplace issues, from recruitment and employment management, OH&S, workers compensation and industrial concerns. Grant can be contacted on 8235 7851 or [grant.archer@finlaysons.com.au](mailto:grant.archer@finlaysons.com.au).*