

**Western Australia
Workers' Compensation
A guide for businesses**



EBM
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About WA Workers' Compensation

In Western Australia (WA)¹, employers are legally required to hold a current Workers' Compensation insurance policy² from an approved insurer to cover their workers and business against a workplace injury/illness as per the Workers' Compensation and Injury Management Act 1981 (the Act).

EBM Insurance & Risk (EBM) has prepared the following summary to assist and support our clients³ and includes the following key information:

- Definitions of who is considered a worker
- Legal requirements
- Location of employment and considerations
- Additional insurance cover requirements
- Submitting a workers' compensation claim
- Injury Management system.

Your EBM Account Manager is also available to help with any queries you may have.

Further information is available from [WorkCover WA](#) or alternatively, you may wish to contact a legal advisor.

¹ Workers' Compensation is compulsory for all employers in Australia. Please refer to each state or territory regulator for more information or contact your EBM Account Manager for assistance.

² WA Employer Indemnity Policy is standard policy wording set by WorkCover WA.

³ This document is not intended to be comprehensive and does not constitute legal advice.

We draw your attention to the following key information about the WA Workers' Compensation Employer Indemnity Policy to assist your business in understanding your insurance and risk requirements.

Covering Your Workers

The Act provides a very broad definition of what is considered a Worker. It is important to discuss your workforce structure (including your working arrangement with contractors and sub-contractors) with your EBM Account Manager to understand your workers' compensation policy obligations.

Please refer to [WorkCover WA](#) for more information on the definition of a worker, including:

- Primary definition of a worker
- Extended definition of a worker
- Contractor/Sub-contractors
- Interstate workers
- Working Directors.

Of note, only private companies (not public companies) have the option of covering their working directors. Each director must be named on the policy with an estimate of their remuneration.

In relation to private companies, a working director means a director of a company:

- who executes work for or on behalf of a company; and
- whose earnings as a director of the company by whatever means are in substance for personal manual labour or services.

Failure to nominate a working director on the Salary & Wages Declaration form will result in such person(s) not being insured for workers' compensation.

In some cases, it may be preferable to effect alternative income protection options for working directors. Please ask your EBM Account Manager for details.

Workers' Compensation Substitutes are Illegal

An employer cannot contract out of their liability under the Act.

- A personal sickness and accident policy cannot be substituted for a workers' compensation policy. An employer must have a workers' compensation policy regardless of the fact that the worker may also choose to take out a personal accident policy
- Sometimes a contractor/sub-contractor is asked to sign an agreement with the employer to the effect that the contractor/sub-contractor is not entitled to claim workers' compensation. If the contractor/sub-contractor is defined as a 'worker' under the Act, then this agreement is prohibited and invalid
- An employer must not deduct monies for payment of a workers' compensation policy from any workers wages. If deducted, all deductions, may be recovered from the employer or the insurance company who deducted it.

Avoidance Arrangements

Some employers may attempt to engage in 'avoidance arrangements' to try to avoid their liabilities under the Act. That is, they may ask individuals to incorporate (set up their own company) as a condition of getting a contract for work. Employers commit an offence by engaging in these arrangements⁴.

For details of fines and penalties that may be imposed, refer to [WorkCover WA](#).

Workers Employed Across State Boundaries

The Act provides that the workers' compensation premium payable and entitlement for injured workers are determined by each worker's "State of Connection".

A worker's State of Connection is identified by applying the following sequential tests:

- a. The State in which the worker usually works in that employment
- b. If no State is identified by test (a), the State in which the worker is usually based for the purposes of that employment
- c. If no State is identified by test (a) or (b), the State in which the employer's principal place of business in Australia is located.

This applies to all workers interstate or overseas and the Act extends to cover those workers for six months only. If your worker is going to be out of the State for longer than six months, then it is essential that the following action is taken:

- You advise EBM and we will negotiate with your insurer to arrange a policy to cover that worker, if possible and if required; or
- You take out an Employers' Liability policy in that state or country, if possible and if required.

Industrial Disease Workers' Compensation

Industrial Disease Workers' Compensation insurance is **compulsory** for any workers who visit or work on a mine site in WA. This is a separate insurance policy that is provided by the Insurance Commission of Western Australia.

The [Insurance Commission of Western Australia](#) advises: Liability is limited to workers' compensation payments for the respiratory diseases of pneumoconiosis, lung cancer, mesothelioma and diffuse pleural fibrosis, all of which may arise from exposure to harmful mineral dust through employment in mining activities.

The minimum premium for the policy is issued for a three-year period or part thereof.

Should you have any workers who visit or work on a mine site in WA, this separate policy will be required. Please speak to your EBM Account Manager who will be able to arrange this cover on your behalf.

Extra Territorial Workers' Compensation

If your workers go overseas on business, you should consider effecting Extra Territorial Workers' Compensation Insurance cover. This cover is usually incorporated as an extension of a Corporate Travel Policy.

You should be aware that workers' compensation is dealt with differently in all overseas countries.

⁴ Source: WorkCover WA

Below is a guide to the optional extensions⁵ available under WA workers' compensation insurances.

Workers' Compensation in WA can be extended to provide additional cover where required by the business. Where it has been identified that your business requires an optional extension (and you request EBM to arrange this option on your behalf), EBM will negotiate with your insurer, and where able, arrange any required extensions.

A summary of the optional extensions available are outlined below:

1. Principal Indemnity Extension – Statutory Benefits and/or at Common Law

A Principal Indemnity Extension, covering a named Principal for claims under Section 175 of the Act and/or at Common Law, will enable the insurer to respond in the event your worker pursues a claim against the Principal.

The indemnity provided by the Principal Indemnity Extension only applies where a **contractual obligation** exists to the Principal to obtain employers indemnity insurance in respect to one of your workers.

This extension must be specifically requested and agreed to by insurers and is considered in conjunction with the Waiver of Subrogation extensions.

2. Waiver of Subrogation – Statutory Benefits and/or at Common Law

Waiver of Subrogation waives the right of the insurer under the Employer Indemnity Policy to pursue recovery from the Principal.

The indemnity provided by the Waiver of Subrogation only applies where a **contractual obligation** exists to the Principal to obtain employers indemnity insurance.

This extension is considered in conjunction with the Principals Indemnity extension.

3. Increased Common Law Limit

Additional Common Law cover can be negotiated up to a maximum of \$200 million.

The standard Employers Indemnity Policy and cost in respect to any one event, regardless of how many workers are injured by that one event, is limited to \$50 million.

4. Overseas Common Law

This important extension extends common law to workers for work related injuries that occur while working **temporarily overseas (6 months)**, therefore providing the same policy benefits as if they were working in WA.

This extension may **not**:

- be available for all locations
- apply at any time during the period of travel where the Australian Government has issued travel advisory warnings.

In these situations, it is important to contact your EBM Account Manager to discuss alternative options.

⁵ All extensions are subject to the Terms, Conditions, Limitations and Exclusions of each of the Policies as issued by the insurer.

5. Industrial Disease Common Law

The Industrial Disease Common Law extension indemnifies against legal liability to pay damages (and in addition will pay legal costs and expenses incurred with the insurer's written consent) at Common Law for any prescribed industrial disease, which a person is entitled to recover under the Act.

To apply for this extension, employers will require an Industrial Disease Workers' Compensation policy from the Insurance Commission of Western Australia.

Please speak to your EBM Account Manager who will be able to arrange this separate cover on your behalf.

Submitting a Workers' Compensation Claim

Employers have five working days to lodge a workers' compensation claim with their insurer once they have received the following from the injured worker:

- the completed Workers' Compensation Claim Form and
- the WorkCover WA prescribed First Certificate of Capacity.

Failure to meet this statutory requirement may result in WorkCover WA imposing a financial penalty of \$1,000.

An employer's report of injury form should also be completed.

The insurer is responsible for assessing the workers' compensation claim. Liability is determined by the insurer within 14 days, and they must advise in writing whether the claim has been accepted, disputed or if additional time is required to make a decision.

Injury Management System documentation you are required to have

Even if you only employ one person you are now required by the Workers' Compensation Code of Practice (Injury Management) 1981 to have in place an Injury Management System.

A \$2,000 penalty applies to all employers for not having an Injury Management System in place which is in accordance with the Code of Practice.

[WorkCover WA](#) has a template available for download and can be modified as required.

Here to assist

If you have any questions or would like to discuss the workers' compensation and/or alternative insurance options in more detail, please contact your EBM Account Manager on 1300 755 112.



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