

Workers Compensation

Work Health and Safety (WHS) laws require that all workers be covered by Workers' Compensation so that in the event that a worker is injured at work, they will have access to first aid, fair workers' compensation and return to work rehabilitation. Penalties may apply if persons or organisations are required to obtain Workers' Compensation for their workers and do not do so. Each state and territory has their own Workers' Compensation scheme.

Contractors

Organisations who engage contractors to perform duties for their business may be obliged to obtain workers' compensation insurance policies on their behalf under the relevant state or territory legislation. However, like superannuation, this requirement does not extend when engaging a company. If engaging a company to provide services, then that company is required to have Workers' Compensation for the person providing the services. Members engaging a company are entitled to request a certificate of currency for the company's current Workers' Compensation policy to be satisfied that the requirement is met.

Although varying from State to State, the provisions of the particular legislation provide the following obligations for persons or organisations engaging contractors. Penalties may apply if persons or organisations are required to obtain Workers' Compensation for their workers and do not do so. Below is a brief summary of the various legislative requirements. Should a more detailed analysis of the legislation be required, Members should contact the various State Authorities as provided below.

Australian Capital Territory: www.worksafe.act.gov.au

The legislation in the Australian Capital Territory defines a "worker" to be an individual who works under a contract of service, which includes contractors engaged under an ABN, and requires Workers' Compensation to be provided for these workers. However, where the contract is for a stated outcome, then the individual is excluded from being a "worker" for Workers' Compensation purposes. Examples of contracts for a stated outcome include a contract to commission a new work or for a set design, but not for directing, musical directing or choreographing a production. It is compulsory for all employers to have a current Workers' Compensation policy for their "workers".

New South Wales: <http://www.safework.nsw.gov.au>

In New South Wales, where a person or organisation contracts a contractor to perform any work exceeding \$10 in value and that contractor performs the work, the contractor is deemed to be a "worker" for Workers' Compensation purposes. Entertainers are also specifically included as a deemed "worker". Employers who pay more than \$7500 in wages per annum, employ an apprentice or trainee, or are part of a group for premium purposes must take out Workers' Compensation for all their "workers".

Northern Territory: www.worksafe.nt.gov.au

Unlike all other Australian States, if a person or organisation engages an individual under an ABN and they do not withhold tax under PAYG, then they are not required to obtain a Workers' Compensation policy on their behalf. However, if the contractor notifies the person or organisation that they no longer want to operate under the ABN, then they become a "worker" under the legislation and Workers' Compensation must be taken out on their behalf. All employers in the Northern Territory must insure their workers for Workers' Compensation.

Queensland: www.workcoverqld.com.au

Under the Queensland legislation, a person or organisation that engages an individual should obtain Workers' Compensation for that individual. This includes employees, contractors or sole traders engaged under an ABN, and a person who works substantially for labour only. There is no threshold that you must reach in Queensland before insuring workers; anyone that meets the definition of a "worker" must be insured within 5 days from the start of their employment.

South Australia: <https://www.safework.sa.gov.au>

South Australia extends the requirement to obtain Workers' Compensation to self-employed workers and any person who performs work under a contract of service, whether they are an employee or not. Therefore, contractors are covered by this requirement and any person or organisation in South Australia who engages a contractor to perform work under an ABN should take Workers' Compensation out on their behalf. Employers who pay more than \$11,155 in wages in the 2011 calendar year must register for WorkCover within 14 days of employing workers for all their "workers". This threshold is indexed annually.

Tasmania: www.workcover.tas.gov.au

In Tasmania, if a person hires a contractor to perform work for a fee of more than \$100 then the contractor is taken to be a "worker" under the legislation and Workers' Compensation should be taken out on their behalf. All employers must have a Workers' Compensation insurance policy or obtain a permit from the WorkCover Tasmania Board to self-insure against Workers' Compensation claims by workers.

Victoria: www.worksafe.vic.gov.au

Under the Victorian legislation, where a contractor is engaged to perform work and actually performs some or all of that work, then they are deemed to be a "worker" for Workers' Compensation purposes. Therefore, the person or organisation hiring the contractor is obliged under the legislation to take out Workers' Compensation on their behalf. If they pay or expect to pay more than \$7,500 a year in wages or if they engage apprentices or trainees, then the person or organisation is required to obtain Workers' Compensation insurance for all their "workers".

Western Australia: www.workcover.wa.gov.au

Western Australia requires that an organisation who engages any person under a contract for service or labour (including contractors or sub-contractors) must take out Workers' Compensation on their behalf. This includes contractors engaged on a one-off or per job basis and who work for more than one employer. Generally, individual workers cannot cover themselves for Workers' Compensation, even if they are self-employed and have an ABN. There is no threshold in Western Australia that an employer must meet before taking out Workers' Compensation; it applies to all employers of "workers" as defined.

Should Members have specific inquiries with regard to their Workers' Compensation requirements, it is recommended that they contact their Work Cover authority in their relevant State or Territory.