

WORKPLACE INJURY CLAIMS

*A Guide for Injured
Workers*



ACCIDENT AT WORK
CLAIM

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INTRODUCTION

This guide to making a work injury compensation claim aims to provide information about the things you need to consider, and the first steps to take, to ensure that you receive full and fair compensation.

This guide is not intended as a substitute for professional legal advice, but it will help you to understand the issues involved, and to take the necessary steps to ensure that you can be properly compensated for your injury and your financial loss.

Frequently Asked Questions Answered in this Guide

- Who can make a workplace injury claim?
- Can a claim be made if you took no time off work after the injury?
- Who pays the compensation awarded for an accident at work claim?
- Is there an automatic right to compensation after an accident at work?
- What is the employer's *Breach of Duty*?
- How do I know if my employer has allowed or caused a breach of duty?
- Will I lose my job if I make a claim after an accident at work?
- What is the time limit for making a claim?
- Will I have to pay legal fees to make a claim?
- How much compensation?
- What happens if the insurance company dispute the claim?

We will also highlight some important steps which *you* can take to help your claim run smoothly, and to help ensure that you maximise your compensation and recover all of your financial losses.

WHO CAN MAKE A COMPENSATION CLAIM FOR A WORK ACCIDENT OR INJURY?

Any worker injured at work, or in the course of carrying out their work duties, may be able to make a claim for compensation.



The right to make an accident at work claim covers all workers, including temporary, casual and permanent employees. The same rights apply to both full-time and part-time workers.

It is not necessary to have a written contract of employment to make a claim.

Self-employed workers injured at work as a result of another person's actions may also be able to bring a claim, although different rules may apply in these circumstances.

NO TIME OFF WORK OR PAID IN FULL?

CAN A CLAIM FOR WORK INJURY COMPENSATION STILL BE MADE?

Loss of earnings is often a big factor when assessing work accident claims.

Many people believe that a claim can only be made for an accident at work claim if the injury resulted in time off work or loss of earnings. This is not true.

A claim can still be brought by an injured worker, even if they were able to continue working after an accident.

If you received full pay or company sick pay you may not have lost any earnings but you can still make a claim for compensation.

It is important to remember that a significant part of any claim will be for the pain and suffering caused by the actual injury.



WHO PAYS THE COMPENSATION AWARDED FOR AN ACCIDENT AT WORK CLAIM?

By law every employer must have a policy of insurance known as ***Employers Liability Insurance***.

The purpose of this insurance is to pay any compensation awarded following an accident at work claim. This means that the compensation and costs of making a claim are paid by the insurance company rather than the actual employer.

DO I HAVE A RIGHT TO RECEIVE COMPENSATION?

Being injured at work is not enough to trigger a right to compensation.

To receive compensation, an injured worker must be able to show that the injury was caused by a ***negligent breach of duty*** on the part of the employer or other people at work.

A claim can be made if an employer fails to take adequate steps to protect workers' safety.

EMPLOYER'S BREACH OF DUTY

There are a number of 'duties' that an employer owes to his workers.

Examples of the main duties include:

- Providing a safe workplace
- Ensuring that all staff receive adequate training and instruction
- A duty to provide adequate protective clothing and equipment
- Assessing the risk of injury from lifting heavy weights or equipment
- A duty to maintain equipment and machinery in a safe condition

A claim could arise if a worker is injured as a result of the employer's failure to comply with workplace duties.

IS YOUR EMPLOYER AT FAULT?

There are lots of steps that an employer can, and should take, to help to keep workers safe at work. If your employer fails to take reasonable steps to avoid accidents and injuries to workers they could be liable.

There are lots of simple ways that employers can keep workers safe **including:**

Taking steps to avoid workplace trip & slip accidents

Employers can take simple steps to prevent trip and slip hazards from arising and to reduce the risk of accidents including:

- good housekeeping and cleaning regime
- management of spillages and cleaning regimes
- effective matting systems in vulnerable areas such entrance areas
- choice of suitable footwear – for instance provision of slip resistant footwear where appropriate
- maintenance of plant and the work environment
- use of appropriate flooring
- warning workers about hazards



Preventing workers from falling from height at work

Common accidents involving a fall from height at work include:

Accidents using ladders – this includes falls from unsuitable or faulty ladders; falls caused by reaching beyond the height of a ladder; lack of a secure handhold due to carrying tools or other equipment; lack of anti-slip feet, stabilisers or other means to safely secure a ladder and using a ladder on or against an uneven or unsafe surface.

Falls from Machines – when operating, cleaning or maintaining machinery.

Falls from Vehicles – such as from the back of HGV vehicles.

Falls from or through roofs or roof-lights – for instance an employee working on a fragile roof which gives way

Accidents on scaffolding – which has not been erected correctly.

Falls from unfenced or unguarded drops – any significant drop which has no safety barrier can cause a hazard and allow an employee to fall. Using unsuitable equipment – for instance using a chair to gain access to places which are not high but which cannot be reached from the ground

Why do falls from height happen at work?

There are many factors which can cause or contribute to an accident whilst working at height. Some of the most common causes of falls from height work accidents are:

- not having a safe system of work in place for the work at height
- not identifying the risks from working at height
- failure to provide proper training, instruction and supervision for employees working at height
- failure to provide proper equipment for working at height
- the employer's failure to carry out a suitable and proper risk assessment to assess the risk of falling

Avoiding accidents involving machinery and work equipment

Risks from work equipment can be reduced in a number of ways, including:

- Risk assessments
- Safety design and controls: it is important that all work equipment has proper safety controls built-in to the design.
- Equipment should be well designed and suitable for the job
- Guards should be in place on work equipment and machinery
- Information & training of workers using work equipment
- Proper supervision of workers to ensure that safety procedures are followed correctly
- Regular maintenance and inspection of work equipment
- A safe work environment and safe working practice
- Use of personal protective equipment and clothing
- Maintenance, inspection and testing of work equipment: all work equipment and machinery, including any guards or safety devices, must be inspected and checked regularly to make sure that they are in good, safe, working order.



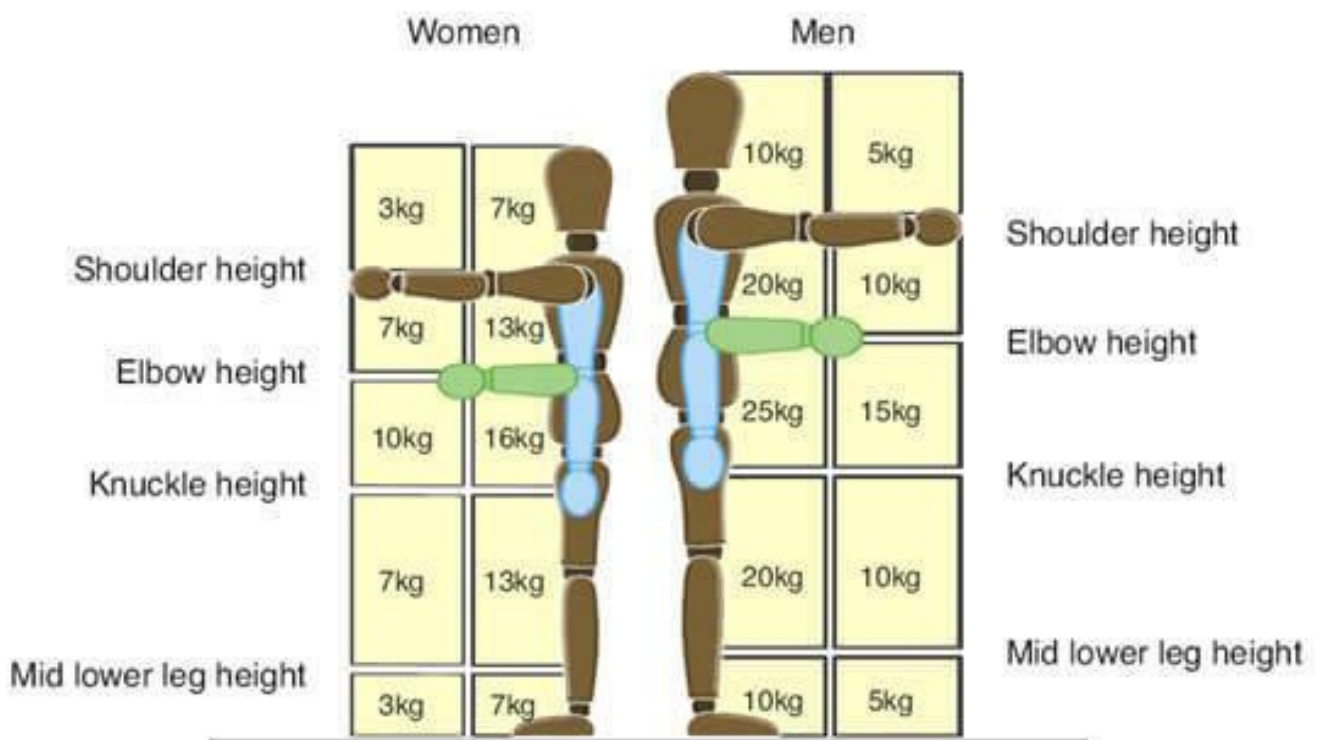
Injuries Caused by Manual Handling & Lifting

Manual handling is moving, lifting or supporting any load or item at work. This includes the actions of lifting, putting down, pushing, pulling, carrying or moving anything by hand or using bodily force.

In many manual handling and lifting cases the injury is not sustained in an 'accident' but as a result of poor lifting techniques, unsafe systems of work, poor workplace layout and inadequate training. Common lifting injuries include back injuries and muscle strains.

There is no legal maximum weight to lift at work. There are *guidelines* which set out the recommended safe maximum weight for lifting at work by men and women.

The recommended maximum weight limit should be adjusted depending on how the load is being lifted, how close to the body the weight is held, and how high or how low the weight is lifted.



IS MY EMPLOYER LIABLE?

In some cases it will be very clear that an employer is at fault and therefore liable for the accident. This is not, however, always the case.

Sometimes it is not immediately clear who is legally responsible, or liable for an accident.

You may think that you are at fault. You might think that it was 'just an accident' that caused your injury.

There are many rules and regulations which an employer must comply with in order to protect the safety of workers. The rules are far too detailed to cover in this guide which is why **expert legal advice** is usually needed to establish whether an employer is likely to be held liable for an injury sustained at work.

THE IMPORTANCE OF EXPERT LEGAL ADVICE

We always recommend that you take expert legal advice to establish if there has been negligence or a breach of duty.

Even in cases where a worker is partly at fault, a claim against the employer may still be possible.

Even if it appears that you are at fault, don't assume that a claim cannot be made.

Seek a free consultation with a solicitor for advice regarding your claim.



WILL I LOSE MY JOB IF I MAKE A CLAIM AFTER AN ACCIDENT AT WORK?

It is against the law for an employer to dismiss a worker simply because they make an accident at work claim.

Employees are often reluctant to make a work injury claim against their employer. This may be because they are worried that it may cause difficulties for them at work. It is important to remember that your employer is not allowed to take any action against you simply because you make a claim.

Legally you cannot be dismissed after an accident at work simply because you have made a work injury compensation claim. Employers are aware of this fact and it is very unlikely that you will be sacked because you make a claim.

If your employer does sack you because you bring a personal injury claim you are likely to be able to make a separate employment tribunal claim for unfair dismissal.

If you are partly at fault by breaking broken company health & safety rules:

If the accident at work was caused because you acted against company health & safety rules, or against company policy, your employer *does* have the right to deal with this as part of the company's disciplinary procedure. This could result in your receiving a warning about your conduct at work. If your breach of health & safety rules amounted to gross misconduct you could be dismissed for breaking company rules, but you cannot be dismissed simply because you make a compensation claim.

A company's internal disciplinary process is entirely separate to your right to make a claim. Even if your actions partly caused the accident you could still be able to bring a claim for injury compensation if your employer was also partly at fault.

TIME LIMITS FOR MAKING A WORK INJURY CLAIM

In general, *most* work injury compensation claims are subject to a strict time limit. This means that court proceedings to be commenced within **3 years** of the date of injury or within 3 years of the date of knowledge of the injury.

This known as the ***Limitation Period***.

It is usually obvious at the time of the accident that an injury has been sustained. In such cases the 3 year limitation period will run from the date of the accident.

For many industrial disease cases, such as cases involving exposure to harmful substances such as asbestos or noise-induced hearing loss cases, the injured worker might not know that they have suffered an injury until years after the exposure. In such cases the 3 year time period will generally run from the date of knowledge of the injury.

Some cases are subject to different time limits, there are different rules for those injured under the age of 18, and the rules relating to personal injury claim limitation periods can be complex. **It is therefore always better to seek early legal advice if you think that you have suffered an injury as a result of your work.**



**The Clock is
Ticking!**

DON'T LEAVE IT TOO LATE TO CLAIM COMPENSATION FOLLOWING A WORK INJURY

We are often contacted by workers who have left it too late to bring their claim. This can be because they have been waiting for their medical treatment to finish or have been waiting to see if they ultimately make a full recovery.

Many people only decide to make a claim when they realise that their injury is more serious than they first thought, or they realise that they will not make a full recovery.

Delaying your claim can lead to the time limit for bringing a claim being missed and could result in the loss of the right to pursue a claim.

It is always much better to start your personal injury claim sooner rather than later. Contacting a solicitor doesn't have to be the very first thing that you do following an injury at work, but taking early advice can ensure that you do not lose your right to claim. Obtaining early legal advice will also ensure that all necessary steps can be taken to ensure that you are properly and fully compensated.

A photograph of a sailboat on the ocean. The sailboat is white with a tall mast and a large white sail. The sail has some text on it, including 'FRA 1990' and 'RR 7.60'. The boat is on the right side of the image, and the ocean is a deep blue. The sky is light blue with some white clouds.

Don't miss the boat

.... by delaying your claim

FIRST STEPS TO TAKE AFTER AN INJURY OR ACCIDENT AT WORK

Starting a personal injury claim can seem like a difficult process but a good personal injury solicitor will walk you through the process.

There are, however, some things which you can do to help your claim be successful.

You can do *your* part to help to ensure that the claim progresses smoothly.



In the next few pages we will look at the steps that *you* can take to help your claim, including

- Reporting the accident or injury at work
-
- Recording important information that your solicitor will need
-
- Providing photographs or video evidence
-
- Keeping details and receipts for your financial losses and expenses
-
- Keeping a diary of important events and the impact of the injury
-
- Ensuring that the right medical evidence is available to support your claim

REPORT YOUR WORKPLACE INJURY

All accidents and injuries sustained at work must be reported. This includes minor injuries.

All employers must have a method of recording workplace injuries. This is usually an accident book. Some companies have an accident reporting helpline or online reporting system.

If the employer does not have an accident book you should still tell your employer or manager about the accident. Ask your employer to make a record of the accident and injury.

Note down the date and time that you reported the injury and include the name of the person to whom the injury was reported. Consider also putting the report in a letter or email to your employer and keeping a copy for your records.

The accident record will be useful in supporting any compensation claim brought later on.

CHECK FOR CCTV

Ask your employer if there is any CCTV footage of the accident.

If CCTV is available, ask your employer to show you a copy.

If your employer will allow it, one way to get a quick copy of the CCTV footage is to use your mobile phone to record the CCTV footage as you view it.

You should ask your employer to retain a copy and also request a copy of the CCTV for your own records.



RECORD IMPORTANT DETAILS ABOUT THE ACCIDENT AT WORK

Your solicitor needs full details about the accident. It is important that you keep a record of important details including:

- **What happened?** Keep a detailed record of how the accident happened.
- **When did the accident happen?** Record the accident date and time.
- **Where did it happen?** This will include addresses, street names, company details.
- **How were you injured?** What injuries did you sustain?
- **What medical treatment did you require?**
- **Who was involved?** Note the names and addresses of anyone involved in the accident.
- **Are there witnesses?** Make a note of the contact details for any witnesses
- **Registration numbers** of any vehicles involved if you were injured while driving as part of your employment
- **Important dates:** including the dates of any absence from work and the date of any medical treatment, x-rays or scans

SUPPORT YOUR PERSONAL INJURY CLAIM WITH PHOTOGRAPHS & VIDEO



Photographs and video can be very helpful to support your claim. If possible, you should try to take photographs of:

- The accident location
- The cause of the accident - e.g. the spillage or defect
- Damage to any property, including photos of any damaged clothing
- Visible injuries such as bruising
- Dashcam footage can be very useful evidence in road accident cases

KEEP DETAILS OF ANY FINANCIAL LOSSES AND EXPENSES INCURRED AS A RESULT OF A WORKPLACE INJURY

You must provide evidence of any financial losses claimed.

Keep details of **any** financial loss or expense which has been incurred as a result of being injured. This will include such things as loss of earnings, prescription and medication charges, hospital parking charges, medical treatment fees, the costs of replacing any items damaged items such as clothing or equipment, and travel expenses.

Keep receipts or other evidence for expenses incurred.

You should also retain all payslips for the 3 months prior to injury as well as payslips for any period of absence and up to 3 months after your return to work.

Record details of travelling expenses. You should record details of any car journeys made in respect of your accident – for instance, trips to and from hospital or medical appointments. Keep details of dates, destinations and the miles travelled. This information can form the basis of a claim for travel expenses.



KEEP A DIARY TO SUPPORT YOUR PERSONAL INJURY CLAIM

Record the impact of your injury on your day to day activities.

Include details of the way in which your sleep, hobbies, work, ability to drive, ability to care for your children or others, and other everyday activities have been affected. Try to include as much detail as possible.

Include details of any care & assistance that you require as a result of your injury. For example, if you need help from your family or friends with personal care or domestic assistance.

Keep details of the kind of assistance required, how many hours assistance is required, and how often you receive the assistance. It can be hard to remember all the details later on.

A record made after the accident will ensure that all relevant details are taken into account when assessing the value of your claim.



MEDICAL EVIDENCE TO SUPPORT YOUR WORK INJURY CLAIM


If you are injured in an accident at work you will most likely receive some kind of first aid at work.

While it is not always necessary to attend hospital after an accident or injury, it is usually sensible to seek some kind of medical treatment after a workplace injury.

If you don't feel that your injury is so severe to require hospital treatment you should at least make an appointment to see your GP. Your GP will give advice about your injury and any follow-up treatment that might be required.

Make sure that you tell the doctor how the injury was sustained. This is important because your medical records will form part of the evidence used to support your claim.

You should take photographs of any visible injuries such as bruising.



Your claim will be supported by medical evidence:

1. Your medical records

2. X-rays & scans

3. A medical report prepared by an independent doctor

WILL I HAVE TO PAY LEGAL FEES TO MAKE A CLAIM?

Most solicitors offer a free initial consultation to discuss and assess your claim.

During that free consultation the solicitor will also discuss with you the different options that may be available for funding the legal costs of the claim.

Funding options vary from case to case and include funding via an existing legal expenses insurance policy (also known as a Before-the-Event policy), trade union funding, and no win - no fee agreements (also called Conditional Fee Agreements).

The solicitor will discuss which method of funding is appropriate for your case and explain about any fees that you might be required to pay.

Never be afraid to ask a solicitor for information about the costs of making a claim.

In most cases a claim can be made without any up front costs or payments, allowing you to make a claim regardless of your financial position.



In most cases a claim can be made without any up front costs or payments.

This means that you can make a claim regardless of your financial position.

STARTING A WORK INJURY CLAIM

If you are happy with the funding method suggested by the solicitor, you will be asked to sign a formal agreement for your solicitor to act on the basis that you have agreed.

Your solicitor will discuss the legal issues which may affect your claim and will explain the claims process, including any steps or action that you should take.

You will be asked to sign some claim documents and consent forms to enable the claim to be progressed. Your solicitor will explain any documents to you.

Your solicitor will submit details of your claim to your employer and their insurance company. The insurers will respond to the claim and confirm whether the claim is admitted or disputed.

If the claim is disputed, the Defendant must say why the claim is denied and provide evidence and documentation that is relevant to the claim.

Your solicitor will review the Defendant's response and provide you with further advice at that stage. Your solicitor will discuss with you the next steps, any further investigations and any further evidence required to establish your claim.

It is important that you continue to keep your solicitor informed of any developments regarding your recovery and of any additional financial losses that have been incurred throughout the claim.



If you have any queries or questions about your claim you should not be afraid to ask your solicitor to explain things to you in detail.

Your solicitor is used to answering questions and will be happy to assist.

WHY IS MEDICAL EVIDENCE NECESSARY TO PROVE A PERSONAL INJURY CLAIM?

Every personal injury claim involves consideration of three important issues:

1. **Liability:** who is to blame for the accident?
2. **Causation:** was the injury directly caused as a result of the accident
3. **Quantum:** how much compensation should the injured claimant receive?

When considering *liability*, the extent or seriousness of the injury is not taken into account. This is because liability relates only to whether the employer has been negligent or breached a duty of care owed to the injured worker (the Claimant).

If the Claimant can prove that liability for the accident rests with the employer, the next step is to prove **causation**.

In a personal injury compensation claim, medical evidence evidence is important to help to prove causation. The claimant must prove that the injury and symptoms complained of were *caused*, or at least contributed to, by the accident.

Only when liability and causation have been proved will the *quantum* or value of the claim be assessed.

INDEPENDENT MEDICAL EXAMINATION

To claim compensation you will need to be examined by an independent doctor who will provide the independent medical report for use in support of your claim. This medical examination is usually arranged by your solicitor.

Prior to arranging the examination, your solicitor will ask you to sign consent forms to obtain copies of your medical records and any x-rays and scans.

The medical records will be reviewed by the independent doctor when they prepare the report.

If you have sustained multiple injuries, more than one report may be required.

THE ROLE OF INDEPENDENT MEDICAL EVIDENCE IN A WORK INJURY CLAIM

The independent medical report is one of the most important pieces of evidence which will be used in support of your claim.

The medical report will include full details of the injury, including:

- the details of how the the injury was sustained
- details of the pain and suffering caused by the injury
- the effects of the injury upon your ability to carry out your day to day activities, including any impact upon work, sleep, and hobbies
- details of the treatment received and any future treatment that will be required
- any requirements for care and assistance which have arisen due to the injury
- how long it will take for a full recovery to be made
- details of any lasting symptoms, scarring, or lasting disability caused by the injury, including any long-term impact on your ability to work or enjoy your usual day to day activities

The medical report will also provide information about any future medical complications or problems that you may have as a result of the injury.



MEDICAL EVIDENCE SUPPORTS THE CLAIM

The medical report will help your solicitor to assess the value of your claim for compensation for the pain and suffering caused by the accident.

The information contained in the medical report will also support any claims for financial losses such as past and future loss of earnings or treatment and care needs.

While there are lots of factors which are taken into account when assessing the value of a compensation claim, the medical evidence is extremely important.

It is not possible to accurately assess the value of most personal injury claims without medical evidence. There is a real risk that the claim will be under-valued if it settled without proper medical evidence.

HOW MUCH COMPENSATION?

Once the medical evidence is complete, and your financial losses have been properly assessed, your solicitor will be in a position to value your claim.

Every claim is assessed on an individual basis and therefore awards of compensation vary from case to case.

When valuing your claim your solicitor will take into account a number of factors including the nature and the severity of the injury, the extent to which the injury prevented you from doing your normal activities, any effect on your work and home life, whether a full recovery has or is expected to be made, and any symptoms or complications which might arise in the future.

Your solicitor will advise you about making an offer to settle your claim and responding to any offers received from the Defendant. Your solicitor will negotiate with your employer's insurance company on your behalf and ensure that you receive the proper amount of compensation to which you are entitled.

BEWARE EARLY, OR DIRECT, INSURANCE COMPANY OFFERS

In some cases you may receive an offer directly from the insurance company.

Don't accept any offer without first taking legal advice from your own solicitor.

Remember that there is a conflict of interest between your best interests and the interests of the insurance company. The offer may be far less than the amount to which you are actually entitled.

If you agree an early settlement of your claim, and then go on to have complications with your recovery, it will not be possible for you to claim extra compensation at a later stage. A claim should only be settled when the full extent of an injury and any financial losses have been fully and properly assessed.

You should always seek your own independent legal advice before agreeing a settlement with an insurance company.

WHAT HAPPENS IF THE INSURANCE COMPANY DISPUTE THE CLAIM?

In most cases a fair settlement can be agreed with the Defendant without the need to go to court.

In cases where a reasonable settlement cannot be agreed with the Defendant, or in cases where the Defendant disputes the claim, it will be necessary to commence court proceedings.

Your solicitor will advise you if he or she thinks that the case should be pursued via the court. If court proceedings are commenced, it may still be possible to reach an agreement for settlement prior to the final court hearing.

If a settlement cannot be agreed with the Defendant the claim will be decided by the court at a court hearing. If the claim is successful the court will make an order for an award of compensation to be paid by the Defendant.

DON'T GAMBLE WITH YOUR CLAIM ...



Obtain *independent* legal advice about making a work injury compensation claim

The simplest way to check if you are able to make a claim is to take legal advice from a specialist personal injury solicitor.

A solicitor will advise you of any further steps you need to take and will give advice about progressing your claim. Most solicitors are happy to offer a free consultation. Take advantage of a free consultation to obtain information and advice about your potential claim, the evidence that will be required, and the prospects of success.

A solicitor will also give you information and advice about the options for funding the legal fees for bringing a claim, including legal expenses insurance, trade union funding and no win - no fee funding.

CONTACT THE AUTHOR

Donna Walmsley is the owner of Beckett & Co Solicitors and a specialist personal injury solicitor with over 25 years experience of acting on behalf of injured workers.

Donna is happy to discuss your potential claim by way of a free, no obligation telephone consultation.

You can book a free telephone consultation via our website .

Alternatively contact us on 01482 458826 to arrange your free consultation.



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