



Understanding Workcover fraud offences in Queensland

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In Queensland, workers' compensation laws and regulations contain various provisions which are designed to protect the compensation and rehabilitation scheme against misuse and fraudulent claims. Misuse or fraudulent claims against the workers' compensation and rehabilitation system carries severe penalties.

This article explores the most common [fraud offences](#) committed by injured workers and the penalties which typically accompany such offences.

Legal framework for management of Queensland's workers' compensation scheme

The legal framework for managing workers' compensation and rehabilitation in Queensland is comprised of two related laws:

1. *Workers' Compensation and Rehabilitation Act 2003 (the Act)*; and
2. *Workers' Compensation and Rehabilitation Regulation 2014 (the Regulation)*.

Together, the Act and the Regulation confer various rights upon workers in Queensland, the most recognised right being the right for a worker to receive financial support, medical support and compensation after becoming injured at work.

The detection of workers' compensation fraud by WorkCover Qld

Insurers have an obligation to report certain offences to the Workers' Compensation Regulator (**the Regulator**). If WorkCover (or self-insurer) forms a "reasonable belief" that a worker or employer is defrauding or attempting to defraud the insurer or has provided false and misleading information (whether a statement or a document), WorkCover has an obligation to report this to the Regulator without delay.

So, what does reasonable belief mean? For WorkCover to "reasonably believe" that a worker or employer is defrauding the insurer or that a worker or employer has provided false or misleading statements or documents to the insurer, WorkCover must have a subjective belief that is formed by reference to the objective circumstances.

Put simply, a 'reasonable belief' needs to be more than mere suspicion and such that would be a sufficient belief in the mind of a reasonable person.

WorkCover uses a range of techniques and tools to detect fraudulent claims and activities. These include, for example:

Surveillance

Surveillance is often used when there is reason to suspect that a worker may be exaggerating or falsifying their injury. Investigators may monitor (e.g. by way of video recording) the worker's activities to determine whether they are inconsistent with the injury they have claimed.

Audits and investigations

WorkCover conducts regular audits of claims and employers' records to detect discrepancies or inconsistencies that may indicate fraudulent activity.

Reporting by employers or colleagues

Employers, colleagues, or other individuals may report suspected fraud when they observe an injured worker engaging in activities inconsistent with their claimed injuries or if they become aware of deceptive practices.

Medical reviews

In some cases, WorkCover may request an independent medical review or second opinion to verify the extent of a worker's injuries and assess whether the claim aligns with the medical evidence.

Common workers' compensation fraud offences under the Act

The most common types of fraud offences committed by injured workers against the Act include:

1. a worker exaggerating an injury;
2. a worker failing to declare a pre-existing injury; or
3. a worker continuing to receive compensation benefits whilst secretly working for another employer.

These offences are captured by the following provisions within the Act:

Fraud – section 533 of the Act

It is an offence for a person to defraud or attempt to defraud an insurer in any way.

The Act does not define what it means to 'defraud' an insurer. Generally, the elements of a fraud will involve the obtaining of some benefit or advantage (including causing some detriment to another) by dishonest conduct. For example, a worker may exaggerate an injury and state that they are not fit to return to work, in order to obtain a greater amount of compensation.

The maximum penalty for this offence is 500 penalty units (a fine) or 5 years' imprisonment.

Providing false or misleading information – section 534 of the Act

It is an offence for a worker to:

1. state anything to the Regulator, WorkCover, a self-insurer or a registered person that the person knows is false or misleading in a material particular; and/or
2. provide a document containing information to the Regulator, WorkCover, a self-insurer or a registered person that the person knows is false or misleading in a material particular.

A 'registered person' means a registered person in the medical field. This includes but is not limited to those employed as a doctor, dentist, physiotherapist, occupational therapist, chiropractor, osteopath, podiatrist, nurse, audiologist or speech pathologist etc. A 'self-insurer' means a single employer or an employer group who has a licence to provide their own accident insurance for their workers.

In order to prove an offence under this section, the prosecution must establish that the worker knew the statement and/or document was false or misleading. Objectively establishing that a statement and/or document was false or misleading will not make out the offence.

The element of knowledge requires proof of actual knowledge held by the worker. This involves an assessment of the worker themselves and whether they are aware that a statement and/or document is false or misleading in the ordinary course of events.

The maximum penalty for this offence is 150 penalty units (a fine) or 1 years' imprisonment.

Engaging in a calling – section 535 of the Act

There is a strict obligation on injured workers to provide written notice to WorkCover when they return to work (whether that work is paid or not). Such notification needs to be provided within 10 business days. One particular act which is taken to be fraud is when a worker returns to work whilst receiving workers' compensation benefits, without informing Workcover. This is an offence formally known as 'engaging in a calling under the Act.

The Act specifically prescribes that where compensation is paid by Workcover to a worker after they started an engagement in a calling and before Workcover is informed of such engagement, the worker is taken to have defrauded WorkCover of any compensation benefits they received under section 533 of the Act.

This offence recognises that an insurer wants to know whether an injured worker's capacity for work is total or partial and either permanent or temporary so that any compensation entitlement can be calculated at the correct level.

The maximum penalty for this offence is 500 penalty units (a fine) or 5 years' imprisonment.

Consequences of convictions for WorkCover fraud offences

In addition to the serious penalties which accompany Workcover fraud offences, being found guilty of WorkCover fraud can have far-reaching consequences beyond legal penalties, including:

1. Loss of future benefits: Workers who commit fraud may lose access to future WorkCover benefits and may be disqualified from making any further claims.
2. Employment consequences: A fraud conviction can severely damage an individual's reputation and employability. Workers may lose their current employment and find it challenging to secure future work.

Furthermore, and more specifically, upon conviction for a fraud offence under section 533 of the Act, if the prosecution proves the person obtained payment of compensation or damages by dishonest conduct, whether or not a penalty is imposed, the Court must order that all amounts of compensation or damages paid upon commission of the offence is repaid to the insurer. This can be very tough where there is a legitimate injury which has been exaggerated to some extent.

Case studies

Case study one

On 28 July 2023, a worker was sentenced in relation to one count of fraud and one count of failing to notify Workcover of their engagement in a calling.

The circumstances of the offending were as follows:

- The worker sustained injuries to their neck, right upper limb and right ankle as a result of a physical altercation at their workplace.
- On 17 December 2020, the worker lodged a claim for compensation, which was accepted. During the claim, the worker was certified not to have any capacity for any type of work.
- In February 2021, surveillance was undertaken of the worker, which revealed that they were engaged in physical tasks at a workplace and undertaking truck driving.
- The worker failed to disclose this (unpaid) work to Workcover whilst they were also in receipt of compensation for injuries and deemed unfit for all work.

The worker was sentenced to six months imprisonment, wholly suspended, for an operational period of 12 months in relation to the fraud charge and was convicted and not further punished in relation to their failure to notify WorkCover of their engagement in a calling.

The worker was also ordered to pay \$10,020.98 in restitution to WorkCover and \$17,238.17 in costs.

Case study two

On 21 March 2023, a worker was sentenced in relation to one count of fraud and one count of attempted fraud in relation to their failure to disclose a relevant pre-existing injury.

The circumstances of the offending were as follows:

- The worker attended upon their General Practitioner in December 2018 in relation to right knee pain. The worker was prescribed medication and referred to radiological imaging.
- In February 2019, the worker made a claim to WorkCover and said they sustained an injury to their right knee in early February during their employment.
- In the worker's application for compensation, they agreed to a statement which required them to acknowledge that it was an offence to make a statement that was false or misleading. In the application, the worker denied having previously suffered from any similar injuries or conditions.
- WorkCover accepted the worker's claim and commenced paying applicable benefits. Over the course of the claim, the worker made dishonest statements to various orthopaedic specialists about having no previous injuries to their right knee.
- At no point during the worker's claim did they disclose to Workcover or the medical practitioners that they had sustained a prior injury to their right knee. The worker received \$108,398.58 in compensation as a result of their conduct.

The worker was sentenced to two years imprisonment, wholly suspended, in relation to the fraud charge and two years imprisonment, wholly suspended, in relation to the attempted fraud charge.

The worker was also ordered to pay \$108,398.58 in restitution to WorkCover and \$23,577.50 in costs.

These cases serve as examples of how the workers' compensation scheme in Queensland serves to protect not only the rights of workers, but also the interests of employers and insurers against workers who seek to claim benefits to which they are not entitled. It also serves as a reminder that WorkCover will investigate and prosecute fraudulent and misleading conduct and failing to disclose a return to work can see injured workers lose more than just their entitlement to pursue their claim.

Get help from a criminal lawyer

WorkCover fraud is a serious criminal offence. If you or a loved one is being investigated or has been charged with this offence, you should obtain urgent advice about your options.

Our lawyers at Gilshenan &Luton Legal Practice are experts in white-collar crime and fraud offences and regularly assist our clients to achieve optimal results.

Contacting Gilshenan &Luton Lawyers

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