

What to expect at trial

Information for employers

A trial for a claim by a worker against an employer is held before a judge sitting alone, without a jury. The judge determines all matters of fact and law.

A barrister will be engaged by WorkCover to represent WorkCover and your organisation at trial. At the trial the solicitor appointed by WorkCover will be present to instruct the barrister.

Before the trial you will most likely have met with WorkCover's legal representatives to discuss the case. It is usual for arrangements to be made to meet you at court on the first day of the trial.

During the course of the trial the judge is addressed as "Your Honour". Whenever you enter or leave the courtroom, when the judge is present, you will be required to bow as a mark of respect to the court.

The judge sits at the front of the court facing the bar table and the public gallery. The barristers and instructing solicitors sit at the bar table.

As a defendant, you respond to the plaintiff's (worker's) case. The plaintiff has the onus of proving:

- a. On the balance of probabilities (or more likely than not) the injury was caused by the employer's breach of duty of care; and
- b. Damages have been suffered as a result.

The plaintiff's barrister will present the plaintiff's case first. He/she will start with a short summary of the plaintiff's case. This is called an opening address. When our barrister presents the case he/she will also start with an opening address.

During opening addresses you may be present in the courtroom. However, if you are a witness in the trial you may be asked to leave the courtroom once opening addresses have concluded. This is because if a witness hears evidence previously given, the weight of that witness' evidence is reduced.

When you are required to present evidence the court orderly or our solicitor will come out of the courtroom and will take you into the courtroom.

On entering the witness stand you will be asked to take an oath or to affirm that the evidence you give will be the truth.

If you take an oath you will be asked by the court orderly to place your hand on the bible and read the words on a card, which will be handed to you.

The plaintiff will give evidence first. Evidence will include how the accident occurred and the impact the injury has had from a financial, physical and emotional point of view. This is called evidence-in-chief.

After the plaintiff has given their evidence our barrister will have an opportunity to question them, this is what is known as cross-examination.

If cross-examination has produced a false impression or caused confusion, the plaintiff's barrister may ask the

plaintiff further questions in order to correct or clarify matters. This is known as re-examination.

The judge may also question any witness. When answering questions the judge should be addressed as "Your Honour".

After the plaintiff concludes their evidence they will be excused from the witness stand and may then sit in the public gallery and observe the rest of the trial.

The plaintiff's barrister will then call the witnesses to give evidence. As each of these witnesses finishes giving evidence our barrister may cross-examine them. The plaintiff's barrister then has the option to re-examine the witnesses, if necessary.

After all the plaintiff's witnesses have given their evidence, the plaintiff's barrister will make final submissions to the judge. Final submissions mark the conclusion of the case for the plaintiff.

Our barrister will then present our case. You may be called to give evidence. As each witness finishes giving evidence the plaintiff's barrister may cross-examine him or her. Our barrister then has the option to re-examine the witnesses, if necessary.

A barrister may tender documents or items into evidence as part of the case. They are then called exhibits and once accepted by the court become part of the evidence. Exhibits may include such documents as, photographs, invoices, maps, machinery parts or other documents and items relating to the accident. You may be asked to explain or comment upon a document or item.

At the conclusion of our case our barrister will make final submissions.

The judge may hand down a decision immediately (although this generally does not happen). If this occurs, then he/she will deliver his/her judgement orally and you will know the result and the amount of damages awarded.

In most cases, the judge will reserve the decision to give further consideration to the case. When this occurs the outcome may not be known for some weeks.

When a decision has been reserved our solicitor will be advised by the court the date that the judge will hand down the decision. In this case the judgement will usually be delivered in writing. It is not necessary for you to attend on this day, as the outcome will be advised to you by our solicitor.

You should be aware that a case can be settled at any time up until judgement is delivered.

Where can I get more information?

If you would like further information on what to expect at a trial, call us on 1300 362 128 or visit our web site at www.workcoverqld.com.au.