Factsheet: Crashed your car while working? Know your rights

Redfern Legal Centre

This factsheet is for employees in NSW. This fact sheet is not for independent contractors or workers outside of NSW.

You will have different rights and obligations depending on who was at fault:

- who was at fault;
- what you were doing at the time of the crash; and
- your employment contract and your employer's policies (if any).

Who was at fault?

Usually, the person who was at fault in a car accident has to pay for the damage caused to other vehicles. If the other driver was at fault, then they will likely pay for any damage. If you, the employee, were at fault, your employer may be liable (responsible for paying) for the damage instead of you.

Regardless of who was at fault, you should tell you employer as soon as possible if you are involved in a work-related car accident.

When will your employer be vicariously liable for damage you caused?

If you are at fault, your employer may be liable for any damage. This is known as 'vicarious liability'. An employer will generally be vicariously liable if the accident occurred in the course of the employee's work.

Did the accident happen in the course of employment?

For an employer to be liable for damage caused by an employee's car accident, the accident must have been sufficiently connected to the employee's work and duties.

An accident will not generally be considered to have occurred in the course of employment if:

- it involved "serious or wilful misconduct". For example, if the driver did not have a valid driver's licence or was under the influence of alcohol or drugs;
- it occurred because of negligent driving. For example, while the driver was speeding;
- it occurred when the employee was not carrying out their duties. For example, if the crash occurred while picking up a friend from the airport.

The above list is not exhaustive. If your employer is claiming that the accident did not occur in the course of your employment, and you disagree, you should seek legal advice.

Redfern Legal Centre
Gadigal Land, 73 Pitt Street, Redfern NSW 2016
tel (02) 9698 7277 **email** info@rlc.org.au **web** rlc.org.au

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What you should you do if you have been involved in an accident?

If you have been in a car accident while at work, or in your work car, you should tell your employer immediately.

You should keep your employer up to date with any developments, for example, if you receive a letter from another driver in the accident, or an insurance company.

If you don't tell your employer quickly, the other party (for example, the other driver, or their insurance company) might try to make you pay the cost of any damage.

If your employer and they refuse to accept liability, you should get legal advice.

What should you do if you have been injured in a car accident?

If you have been injured in a work-related car accident, you may be entitled to claim workers' compensation. You can speak to a doctor and/or get free information and advice through the Independent Review Office about making a claim.

Can your employer make you pay for the damage caused in a car accident?

In most scenarios, employees cannot be forced to pay for damage.

An employer cannot deduct money from an employee's wages without the employee's permission. Similarly, an employer cannot unreasonably require an employee to pay an amount of money for the employer's benefit.

However, if the accident did not occur in the course of employment, then it may be lawful to require the employee to pay for the damage.

What should you say if your boss has tried to take money out of your wages after an accident?

If your employer has tried to take money out of your wages or requested that you pay for any costs in connection with a car accident, such as insurance excess or repair costs, you can adapt and send the template letter on the next page. If you can't resolve the situation yourself, you should get legal advice.

Need help?

Employment Rights Legal Service: Call us on 02 8004 3270 or go to www.erls.org.au. We can arrange an interpreter if you do not speak English.

Legal Aid NSW: In some circumstances you can get free, one-off legal advice from Legal Aid NSW. You can call LawAccess NSW on 1300 888 529 to make an appointment.

State Insurance Regulatory Authority (SIRA): You can find information about how to lodge a workers' compensation claim, or ask for help lodge a claim on the State Insurance Regulatory Authority website.

Law Society NSW: If you can afford to pay for a lawyer, the Law Society of NSW can help you find contact details for law firms in your area that have relevant expertise.

This factsheet is not a substitute for legal advice.