



Crashed your car while working?

Know your rights

If you are involved in a car crash while working, it is important to know your rights and obligations.

You will have different rights and obligations depending on:

- who was at fault
- whether you are an employee or contractor
- the terms of your employment contract and your employer's policies (if any), and
- what you were doing at the time of the crash.

Who was at fault?

Usually, the person who was at fault in a motor vehicle accident (car accident) has to pay for the damage caused to other vehicles.

Working out who was at fault can be complicated, especially if there were more than two vehicles involved. You might disagree with the other driver(s) about who was at fault.

A person will usually be at fault if they failed to take reasonable care while driving, were in breach of road rules, or drove in a negligent or dangerous manner. For example, you might be at fault if you were driving over the speed limit, or ran a red light.

If you are an employee and you are involved in a car accident while working, you should tell your employer as soon

as possible. If you were at fault, your employer may be liable (responsible for paying) for the damage instead of you. However, if you are an independent contractor, you will be personally liable for any damage you caused, unless your contract states otherwise.

This factsheet does not address your rights and obligations in a car accident if you are a contractor. If you are a contractor, or do not know if you are an employee or contractor, you should seek legal advice. You'll find information about the differences between employees and contractors on the [Australian Taxation Office's website](#).

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

If you are at fault, your employer may be liable (responsible for paying) for the damage. This is known as “vicarious liability”.

An employer will generally be vicariously liable if:

- you are an employee (not a contractor), and
- the accident occurred “in the course of” your employment.

Were you driving “in the course of” your employment?

If you are at fault in a motor vehicle accident (car accident), your employer



may be liable for the damage you caused if the accident occurred “in the course of” your employment. This will depend on what you were doing at the time of the accident, and what you were employed to do.

Your accident will not generally be considered to have occurred in the course of your employment if, for example:

- the accident involved “serious or wilful misconduct” by you, such as driving without a current driver licence, while under the influence of alcohol or drugs, or because you disobeyed a traffic sign,
- you used your car in a way that had nothing to do with what you were employed to do, such as if you were employed to deliver documents during the week, but you crashed your car while picking up a friend from the airport on the weekend, or
- you allowed someone else to drive your work car.

Sometimes, a court might decide that the accident occurred in the course of your employment even if you were not following instructions from your employer at the time.

Most employers will have written policies about how you may use company vehicles and what you should do if there is an accident. As a starting point, you should check these policies.

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

If you have been in a motor vehicle accident while at work, or in your work car, you should tell your employer immediately. You should also give your employer a copy of any letters or communications you receive from anyone else who was involved in the accident, or their insurance company.

If you don’t tell your employer quickly enough, the other party (for example, the other driver, or their insurance company) might try to make you pay the cost of the damage to their vehicle. They might contact a debt collector, or take you to court.

If the other party obtains a judgment against you for the cost of the damage, it can be hard for you to avoid paying, even if your employer is the one who should be liable.

If you report the accident to your employer and they refuse to accept liability for the accident, you should get legal advice urgently.

Can your employer take money out of your pay to cover the cost of damage after a motor vehicle accident?

You should check your employment contract and any policies your employer may have to find out when an employer may require you to pay for some of the costs after a motor vehicle accident. For example, some employers have a policy that an employee who is at fault has to pay the excess on an insurance claim. In this scenario, the employer will usually request the payment from you directly. Generally, an employer cannot take money from an employee’s wages without the employee’s authority



(permission). If an employer makes deductions from your wages to cover the cost of any excess payable on an insurance claim, or to cover the cost of repairs, this could be in breach of the *Fair Work Act 2009* (Cth). You should seek legal advice if you believe your employer has made unauthorised deductions from your wages.

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

If you have been injured in a car accident that happened at work, you may also be able to get workers' compensation. Workers' compensation law is complicated, so you should seek legal advice if this applies to you.

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 motor vehicle accident, such as insurance excess or repair costs, you can adapt the sample letter on the next page for your situation. 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 to help if you need it.

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 worker's 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

This factsheet was last updated on 24 June 2024. It was produced by the Employment Rights Legal Service. This factsheet provides general information about the law. It won't tell you how the law applies in your situation, and is not a substitute for legal advice.



Sample letter to employer

Change this to fit your situation

Dear [manager or relevant member of staff],

On [date] I had an accident driving vehicle [NUMBERPLATE]. I had a current driver licence at the time of the accident. I was driving responsibly: I had not been drinking alcohol or taken any drugs and I was not driving dangerously. I did not cause the accident intentionally and the accident was not the result of serious or wilful misconduct. I was driving the vehicle [NUMBERPLATE] for work purposes, with the full knowledge and approval of [EMPLOYER]. I was driving in accordance with [the EMPLOYER'S] vehicle policy. The accident occurred in the course of, or arose out of, my employment.

[EMPLOYER] is vicariously liable for the accident in accordance with common law. It is the business that is responsible to pay for the damage (also s 66 of the *Insurance Contracts Act 1984* (Cth)). Under s 3 of the *Employees Liability Act 1991* (NSW), [EMPLOYER] will indemnify me for any liability for the accident, and I do not have to pay any contribution to [EMPLOYER].

[You are not allowed to withhold my wages to cover the costs of the accident because this is not a permitted deduction in accordance with s 324(1) of the *Fair Work Act 2009* (Cth).

(OR)

You are not allowed to demand that I pay the costs of the accident and this is an unreasonable requirement to spend within the meaning of s 325(1).]

I am not liable for [the repairs OR premiums OR excess] associated with the accident.

Regards
[Your name]