

Do I still accrue leave entitlements while I'm receiving workers compensation payments?

It's understandable that a worker may be concerned about whether or not their leave entitlements are affected if they are unable to work and receiving **workers compensation** payments. However, generally speaking, a worker is entitled to sick leave and annual leave accrued at their full rate regardless of their incapacity.

Section 50(2) of the Return to Work Act 2014 confirms that:
If a worker is absent from employment in consequence of a work injury, the period of absence must for the purposes of computing the worker's entitlement to annual leave or sick leave under any Act, award or industrial agreement, be counted as a period of service in the worker's employment.

There is however an exception to the rule as covered in section 50(3) of the Act and relates to where a worker has received weekly payments of income maintenance for 52 weeks or more.

The Act states:
If a worker has received weekly payments in respect of total incapacity for work over a period of 52 weeks or more, the liability of the employer to grant annual leave to the worker in respect of a year of employment that coincides with, or ends during the course of that period shall be deemed to have been satisfied.

This exception only applies to annual leave where an incapacity lasts for 12 months or more a worker's annual leave will be deemed to be taken. However, Employers are still required to pay workers their annual leave loading as they would have normally been entitled to it.

Sick leave is not affected which means that workers will continue to accrue sick leave even when they have been absent from work for more than 52 weeks (continuous or separate periods).

In South Australia the Long Service Leave Act 1987 ensures that an employee continues to accrue long service leave even if they are absent from employment due to an incapacity to work and receiving workers compensation payments.

It's important to note however; that there may be some exception for workers who are covered by a federal award or enterprise agreement which addresses long service leave.

If at any time a worker ceases their employment with their employer, all leave entitlements should be paid out immediately and will no longer accrue.
Annual and long service leave is the responsibility of the employer and any concerns with the accrual of leave should be discussed directly with the employer.

If you plan on taking leave during a time in which you are receiving **workers compensation** payments you should discuss this with you Return to Work case manager as it may impact on your rehabilitation and return to work obligations under the act.

How Can Andersons Help?

Our Personal Injury lawyers are experienced in Workers' Compensation claims and can guide you through each step of the process.

See this link for more detailed information on **Worker' Compensation including the Return to Work scheme or the Comcare scheme.**

To contact our **Workers Compensation lawyers**, you can **contact us here.**

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.