

What is “economic loss” workers compensation under the SA Return to Work scheme?

We often work with clients who have suffered significant physical injuries during the course of their employment. We have always maintained that a strong workers compensation scheme should properly and reasonably compensate workers for their period of incapacity and we will continue to highlight what we consider to be unfair laws.

In our view, one of the fundamental flaws with the **South Australian Return to Work workers compensation** laws which came into effect in July 2015, is the fact that unless a worker is deemed “seriously injured”, their entitlement to income maintenance (that is your wages) expires after a maximum of two years. To be deemed “seriously injured” a worker must be assessed to have a permanent impairment of 30% or greater.

There are some exceptions to this rule, including some potential extra payments after the two year period expires if a worker subsequently undergoes a surgical procedure, but the vast majority of injured workers will have their payments automatically discontinued upon reaching the two year anniversary date of their injury.

The payments will cease even if the worker remains extremely injured and totally incapacitated for employment, simply because they fail to meet the arbitrary “seriously injured” threshold.

When implementing the Return to Work legislation, the Government somewhat recognised that cutting workers’ payments automatically after a maximum of two years could cause some significant financial hardship. So, in an attempt to provide some compensation to these workers, an entitlement was introduced regarding “economic loss”.

There are many workers who DO NOT qualify for “economic loss” compensation

This economic loss payment is only applicable to workers who have suffered a physical injury. Workers with psychological injuries are precluded from accessing this form of compensation. Workers who meet the seriously injured 30% impairment threshold, also do not receive this form of compensation. Nor do workers who suffer an impairment of less than 5%.
In other words, this discreet form of compensation only applies to certain workers who have suffered physical injuries with an overall permanent impairment between 5% and 29% inclusive.

How much compensation can workers get for “economic loss”?

The amount of compensation is contingent on certain factors, and the calculation of entitlements can be tricky. The worker needs to be assessed to determine their percentage of impairment, and if they are assessed at between 5% and 29% whole person impairment, then each percentage equates to a specific dollar amount. But the dollar amount is then subject to change based on:

1. The amount of hours performed by the worker at the time of the injury;
2. The age of the worker at the time of the injury.

A worker who is entitled to economic loss compensation will receive a larger amount if they were working full time at the time of the injury, compared to a worker who was only performing 10 hours per week.

Also, a worker who was only 20 years old at the time of the injury will generally receive much more compensation than a worker who was 60 years old at the time of the injury, even if they both suffered the exact same injury, in the exact same circumstances and both suffer from the exact same percentage of impairment. Does that seem fair?

If you are confused by the above, you are not alone. The calculation of this economic loss compensation can be relatively complex.

It is also worth noting that this form of compensation is only applicable to workers who suffered their work related injuries after the Return to Work laws became operational on 1 July 2015. Workers who

injured themselves prior to that date when the old law existed, cannot pursue workers compensation for lump sum economic loss.

Notwithstanding the availability of this form of compensation for certain workers, we still consider that it is not fair and reasonable compensation considering workers income entitlements still arbitrarily cease for most workers, after a maximum of two years.

At Andersons, we will continue to fight for strong workers compensation protections.

If you have suffered a workplace injury and you need advice or assistance about the claims process and your entitlements, feel free to get in touch directly with the **workers compensation lawyers** at Andersons.

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