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LawTalk Blog



Do I receive my full income while on workers compensation?

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This blog relates to the South Australian *Return to Work* Scheme. Many injured workers are covered by the federal Comcare Scheme which provides different rights and entitlements.

Many workers are unfamiliar with the full array of their rights, entitlements and obligations when they suffer a work-related injury.

Injured workers would rightly expect that when they suffer an injury, they will receive compensation for their lost income while off work during their period of recovery as well as reimbursement for reasonable medical expenses associated with their treatment.

In some cases workers may receive additional lump sum benefits depending on the severity of their injury.

But the receipt of these rights and entitlements is rarely clear-cut. Something as simple as receiving your income while you're off work, can lead to complex and lengthy litigation and disputes with case managers.

"Generally, a worker is entitled to receive 100% of their salary for the first year of incapacity and a reduction to 80% for the second year of incapacity."

Many clients come to us complaining that they are not receiving the right amount of income from the workers compensation insurer, and getting to the bottom of the ambiguity and discrepancy often requires a thorough analysis of the injured worker's specific circumstances.

If you disagree with the amount of income being paid to you while you are off work due to a workplace injury, we can seek a review in the [SA Employment Tribunal](#).

What are some of the general rules associated with the payment of wages while you're on workers compensation in South Australia?

1. A worker suffers a work-related injury that incapacitates them from working (either partially or totally);
2. The worker lodges a workers compensation claim and this is accepted by the relevant insurer;
3. The worker is entitled to receive a maximum of two years of income maintenance support;
4. The weekly income maintenance (that is, your wages) is generally calculated on the last 12 months of earnings prior to the injury (this calculated income amount is called your Average Weekly Earnings);
5. The worker is entitled to receive 100% of their salary for the first year of incapacity and a reduction to 80% for the second year of incapacity;
6. If a worker is deemed to be 'seriously injured' then payments can continue beyond the expiry of the 2 years, but workers who are not classified as seriously injured will have their payments discontinued when the two years lapse.

This all seems simple enough, but numerous complexities can arise during the life of a workers compensation claim.

What are some of the complexities and issues worth considering during your workers compensation claim?

1. Consider that you had only been working for a short period of time before suffering the injury? How can your income be calculated based on the last 12 months if you haven't even been working for 12 months?
2. What if you are a casual employee where some weeks you get a lot of shifts and other weeks you received little or no shifts?
3. What if during that relevant 12 month period, you were initially employed as a casual but then were converted to a permanent employee? Surely this should be considered when calculating the weekly income maintenance.
4. What if you were working a lot of overtime, but now the insurer is only paying you the base wage?
5. Can the insurer pay you less than the minimum wage? What if you were only earning the minimum wage but then after 2 years of incapacity, your payments are due to reduce to the 80% rate which would bring your wage below the minimum wage?
6. How do my annual leave and other entitlements continue to accrue during my period of incapacity?
7. What about my [superannuation](#)? It does not appear that the insurer has been making superannuation contributions.
8. What if I was working [multiple jobs](#) and suffer a work related injury resulting in my inability to work in any of my jobs. Is this taken into consideration when calculating the rate of my income maintenance entitlement?

The examples above are just a few of the extensive variety of disputes that may arise in relation to your income maintenance payments.

Sometimes a prior workers compensation settlement (for example, a '[redemption](#)') can have an adverse impact on your entitlements to receive income maintenance. Even a redemption from a decade ago can impact a worker's new claim for income maintenance following a workplace injury. This is a complex area of the law.

Assuming that the weekly income payments are indeed correctly calculated and you start receiving your benefits from the insurer, this does not necessarily mean you will continue to receive income payments for the full two years.

At any time during that two year period, the insurer could look at reducing or discontinuing the benefits for a variety of reasons.

What are some of the reasons why the insurer might reduce or stop your workers compensation benefits?

1. The insurer believes you are no longer injured and therefore no longer entitled to payments (even if you have not returned to work);
2. The insurer believes that you have engaged in some form of misconduct to justify the cessation of payments;
3. The insurer obtains surveillance footage of you showing that you may be faking or exaggerating the injury;
4. The insurer believes you have returned to work (either with the pre-injury employer or elsewhere) and are earning wages to justify the reduction or discontinuance of income maintenance;
5. The insurer alleges that any overtime component of the income maintenance should be removed because of changes in the business operations of the pre-injury employer; etc.

So as you can see, it is not an easy task to answer a relatively simple question 'do I receive my full income while on workers compensation?'

This can be a very complicated area of the law, and a multitude of factors can impact the amount of income a worker receives during their period of incapacity. If you believe that you are not being paid the correct amount, or the insurer is seeking to reduce or discontinue your benefits, please contact today's blog writer, Michael Irvine.

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