



Customer Circular

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• Issue No. 37 • December 2000 •

Calculation of incapacity payments *after* the first 45 weeks.

Subsection 19(3) of the *Safety, Rehabilitation and Compensation Act 1988*

Purpose

The purpose of this Circular is to advise agencies of a change in the way that Comcare calculates incapacity payments after the first 45 weeks of incapacity, under subsection 19(3) of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

Background

There have been differing interpretations of the application of subsection 19(3) of the SRC Act relating to the calculation of incapacity payments after the first 45 weeks of incapacity.

The difference is apparent in the situation where an employee has returned to normal hours of work after 45 weeks of incapacity, but requires occasional time off due to incapacity or to undertake medical treatment for their compensable condition:

1. some determining authorities have assessed all incapacity payments under paragraph 19(3)(a), with all payments at 75% of Normal Weekly Earnings (NWE) for the period of the absence. For example, one day's incapacity would be paid as compensation at 75% NWE, and the remainder of the week on salary at normal pay rate. This application was based upon the employee being considered to be "not employed" for the period of their absence.
2. other authorities have based the level of payment on the percentage of Normal Weekly Hours (NWH) worked by the employee during the week in which the absence took place.

In the past, Comcare followed the first interpretation. However, the Safety, Rehabilitation and Compensation Commission has directed that all determining authorities use the second interpretation of the legislation.

Legislation

Subsection 19(3) of the SRC Act is reproduced at the end of this Circular.

Policy Advice

Weekly determination of incapacity payments should not be based directly on the amount of time taken off, but on the amount of work actually performed by the employee during that week.

Therefore, the method of calculation for compensation that is payable under subsection 19(3) is, either:

- (a) where an employee is not employed for any period during a week: 75% of NWE less any amount the employee is able to earn in suitable employment (paragraph 19(3)(a)); or
- (b) where an employee is employed during a week: an incremental percentage of NWE based on the percentage of NWH worked, less any amount the employee is able to earn in suitable employment (paragraphs 19(3)(b) to (f)).

In the following examples the employee will have their entitlement calculated based on the number of hours they worked in the week:

- (i) an employee who has returned to work on a full-time basis, and is then incapacitated for two days in a particular week.
- (ii) an employee who has returned to work on a gradual basis for a particular number of hours per week, but also has a day of incapacity during that week.
- (iii) an employee who, having returned to work on a full-time basis, claims two hours incapacity to obtain medical treatment

Impact

In order for calculations to be made on a week-by-week basis in these situations it must be decided exactly what period a week should cover, for example, Sunday to Saturday, Thursday to Wednesday. Each agency may choose to use whichever period best suits their administrative arrangements, as long as it is applied consistently.

Claims for time off work of less than one week's duration (including GRTWs) must be reported in weekly periods or multiples of weeks.

It is also recommended that agencies do not submit claims for time off work until after the end date of the period claimed. If not, the percentage of Normal Weekly Earnings applied may be incorrect where, for example, two separate periods are claimed in the same week.

Date of implementation

Comcare will apply this interpretation of subsection 19(3) to incapacity that occurs on and after **1 January 2001**. Comcare is trialing the use of a new form that combines the *Claim for time off work* and the *Claim for period of reduced earnings*. This allows agencies to provide Comcare with details of weeks in which a claimant is on a GRTW and has a day's incapacity for work because of the compensable injury or where they have a day's incapacity after 45 weeks.

The new form is available on our website at www.comcare.gov.au.

Comcare welcomes your feedback on the new form. Please email any comments to Dave Byers, (byers.dave@comcare.gov.au).

Further information

Comcare's training courses will be amended to reflect this change. Please call your National Customer Manager on 1300 366 979 if you would like someone from Comcare to visit your agency.

Agencies must provide NWE rates for separated employees

Section 8 of the SRC Act provides for the calculation of an employee's incapacity entitlement based on the Normal Weekly Earnings (NWE) figure which is supplied to Comcare by employers.

Employers must also advise Comcare of changes in salary rates that affect the calculation of NWE rates for separated employees.

If your agency has separated employees who are currently being paid incapacity payments by Comcare, please ensure you advise us when you have a new Certified Agreement.

For information on the calculation of incapacity during the first 45 weeks please see Customer Circular No 36. Copies of all circulars are available on our website.

Disclaimer

The contents of this Circular are provided for general information. Please contact Comcare before any action or decision is taken on the basis of the contents of this Circular. Also, advice from an appropriately qualified professional person should be obtained before relying on the contents of this Circular. Comcare, the Commonwealth of Australia, their officers, servants and agents, will not be liable for any loss howsoever caused whether due to negligence to otherwise arising from any use or reliance on any of the contents of this publication.



Safety, Rehabilitation and Compensation Act 1988— subsection 19(3)

“(3) Subject to this Part, Comcare is liable to pay to the employee, in respect of the injury, for each week during which the employee is incapacitated, other than a week referred to in subsection (2), compensation:

- (a) where the employee is not employed during that week—of an amount equal to 75% of his or her normal weekly earnings less the amount (if any) that he or she was able to earn during that week in suitable employment;
- (b) where the employee is employed for 25% or less of his or her normal weekly hours during that week—of an amount that, when added to the amount that he or she was able to earn during that week in suitable employment, results in an amount equal to 80% of his or her normal weekly earnings;
- (c) where the employee is employed for more than 25% but not more than 50% of his or her normal weekly hours during that week—of an amount that, when added to the amount that he or she was able to earn during that week in suitable employment, results in an amount equal to 85% of his or her normal weekly earnings;
- (d) where the employee is employed for more than 50% but not more than 75% of his or her normal weekly hours during that week—of an amount that, when added to the amount that he or she was able to earn during that week in suitable employment, results in an amount equal to 90% of his or her normal weekly earnings;
- (e) where the employee is employed for more than 75% but less than 100% of his or her normal weekly hours during that week—of an amount that, when added to the amount that he or she was able to earn during that week in suitable employment, results in an amount equal to 95% of his or her normal weekly earnings; and
- (f) where the employee is employed for 100% of his or her normal weekly hours during that week—of an amount that, when added to the amount that he or she was able to earn during that week in suitable employment, results in an amount equal to 100% of his or her normal weekly earnings.”