



Australian Government

Comcare

FAQS—EMPLOYEE/EMPLOYER EXPECTATIONS

1. CAN AN EMPLOYEE OBTAIN MEDICAL TREATMENT DURING WORKING HOURS?

There is no specific information in either *the SRC Act 1988* or the [Guidelines for Rehabilitation Authorities 2012](#) as to whether an employee should attend medical appointments within their own time or within work time. This is a decision for the Rehabilitation Authority (the employer). Comcare generally recommends that a position be established by the Rehabilitation Authority on this issue and communicated through the agency's policies and procedures, the Rehabilitation Management System or other appropriate mechanism such as the rehabilitation program.

Wherever possible, employees should obtain approved medical treatment outside normal working hours rather than claiming incapacity payments. However, noting that this is not always possible, incapacity payments are usually payable by Comcare when accompanied by a certificate of attendance. It should be further noted that where the employee is on a rehabilitation program graduated return to work (GRTW), and still on reduced hours, it may be considered unreasonable to make appointments during scheduled hours of work, except in exceptional circumstances. Otherwise, the employee runs the risk of non-compliance.

When an [employee](#) claims time off work to attend [medical treatment](#), the time taken must be reasonable. When looking at what amount of time is reasonable you must consider:

- > the amount of time it would take to travel to the appointment
- > the duration of the appointment (including delays at the surgery)
- > the amount of time it would take to travel back to the employee's [place of work/home](#), and
- > whether it is reasonable for the employee to travel from home to the appointment before attending work for that day.

Explanation:

The legislation allows an employee to claim incapacity payments under s19, as long as there is evidence to support that the incapacity is associated with the accepted compensable injury. In the case of federal employers, Comcare is the delegated authority which makes this decision.

The employee in signing the s37 rehabilitation program has agreed to comply with the requirements of their rehabilitation program and has committed to meeting these requirements. The s37 rehabilitation program should clearly define the expectation of the return to work schedule, and identify the barriers for success. In this instance the barrier could be medical treatment impacting on hours of work. In this instance the Case Manager should document and clarify that medical treatment should be outside the hours of the GRTW program to ensure the maximum potential for a successful return to work. This expectation should be communicated to the employee. However, the Case Manager has the discretion to assess each case on its own merits as it is possible that there are circumstances where this is not possible. Where it is considered unreasonable and it has been clearly communicated and documented in the s37 rehabilitation program, but the employee continues to access treatment during agreed work hours then employee non-compliance can be considered.



2. HOW CAN THE EMPLOYEE ACCESS MATERNITY LEAVE WHILST ON COMPENSATION LEAVE?

An employee accesses maternity leave under the same provisions as they do if they do not have a compensable condition. At the conclusion of the maternity leave, the employee is required to participate in rehabilitation should they still suffer from a compensable condition or have medical restrictions in place.

3. CAN THE EMPLOYEE ACCESS FLEX, ANNUAL OR LONG SERVICE LEAVE WHILST ON COMPENSATION LEAVE? IF SO HOW DOES THIS WORK?

Australian Government agencies will usually have provisions in place for assessing applications for leave while an injured employee is on a rehabilitation program under s. 37 of *the SRC Act 1988*. When assessing such leave applications, the agency, in consultation with the Rehabilitation Case Manager would endeavour to ensure that the employee maintains the program without jeopardising progress towards a sustainable return to work.

S. 116 of *the SRC Act 1988* states that:

'In spite of the provisions of any other Act or an award, an employee is not entitled to be granted any kind of leave with pay (other than maternity leave) during, or in respect of, any period when the employee is or was on post-determination compensation leave.'

For an employee who is working reduced hours whilst on a graduated return to work (GRTW), they can apply for their own leave for the hours they would normally be working, and the approval or otherwise would be subject to the agency's regular process for assessing and approving leave. The hours they are normally absent from work whilst participating in the GRTW is still considered 'compensation leave', and are subject to the provisions of s. 116 of *the SRC Act 1988*. The employee may alternatively apply for the whole of the period as their own leave if they wish (and again, subject to departmental approval processes), as long as they have not already applied for and received compensation leave for that period.

In cases where the GRTW has plateaued at a particular level for some time, there may not be too much of an issue in approving annual leave and as such, the leave could probably be assessed for approval in the normal manner. However, in cases where a GRTW may be in its infancy or at some other important or critical stage, the employer would need to take account of these factors in addition to their usual approval assessment processes. Additional factors such as considering whether the taking of leave will jeopardise the Return To Work (RTW) process need to be assessed in such cases.

4. IS THE EMPLOYEE ALLOWED TO TRAVEL OVERSEAS FOR AN EXTENDED PERIOD WHILST ON ANNUAL LEAVE?

There is no legislative restriction in *the SRC Act 1988* that would disallow employees with a workplace injury or disease from travelling overseas. However, if an employee with a workplace injury or disease intends to travel overseas for an extended period, it is recommended that the employee discuss their plans with their doctor. Travelling overseas may expose them to a risk of aggravating their condition before they have fully recovered and may restrict their ability to obtain appropriate medical treatment.

Where the employee has little or no capacity for work but is evidently fit to travel overseas, it may be worth exploring this apparent contradiction of capacity in some cases.

Employees with a workplace injury or disease should be reminded of their obligations under s. 120 of *the SRC Act 1988* i.e. they are required to advise Comcare in writing of their overseas travel arrangements (applicable only where section 19 payments have been made to the injured employee for a period of three months or longer).