Rehabilitation and Compensation

– Workers' Compensation

A guide for employers and workers >

This information bulletin has been developed to inform employers and workers of their responsibilities relating to workers' compensation under the NT Workers' Compensation scheme.

Workers' compensation insurance

It is compulsory for all employers of workers in the Northern Territory to have a current workers' compensation insurance policy with an approved insurer. A current listing of the approved insurers is available from NT WorkSafe.

For further information see NT WorkSafe bulletin 13.01.08 Compensation - Approved insurers.

Definition of a worker

- A worker is a person who provides work or service for another person and ***does not*** provide that person with an **Australian Business Number** (ABN) in writing.

For further information see NT WorkSafe bulletin 13.01.02 Compensation - Who is eligible.

When is a worker covered for workers' compensation?

In the Northern Territory a worker is entitled to compensation for any personal injury or disease or an aggravation of an injury or disease that occurs:

- during the course of employment;
- by any incident arising out of employment;
- on a journey to or from work, except if the accident involved a motor vehicle.

If someone is involved in a motor vehicle accident travelling to or from work they should claim under the Motor Accidents Compensation Scheme (MACA), which is administered by the Territory Insurance Office (TIO).

How to make a claim

The employer should be informed of a work-related injury or disease, as soon as practicable. This can be done either verbally or in writing.

Claim forms

To claim for workers' compensation entitlements the worker must submit an NT WorkSafe claim form. The worker cannot claim by submitting a medical certificate only. Claim forms can be obtained from the employer, the insurer or NT WorkSafe. The worker must complete the first 2 pages and submit the form to the employer, along with a workers' compensation medical certificate from a doctor. It is advisable to send posted claims to the employer by registered mail.

Worker's important note:

A worker has six (6) months to lodge a claim for workers' compensation from the date of the injury or becoming aware of a disease.

Before giving the claim form to the employer, a worker should remove the blue copy from the claim form and keep this information for his or her records for the duration of the claim.

A worker should be aware that a medical certificate is not taken as a determination of work-relatedness or liability. Liability is not just determined by a physical injury, but must also take into account its relationship to the worker's employment.

Employer's important note:

The employer must complete page 3 of the claim form and submit it to their workers' compensation insurance company within 3 working days of receiving the claim from the worker.

The insurer must make an initial decision on the claim within 10 working days of the employer receiving it. The insurer will manage and make all the decisions regarding the claim on behalf of the employer.

The insurer's decision must be to either:

- ***Accept liability***
  Payment of benefits will commence. These benefits will include lost earnings, reasonable medical and rehabilitation expenses.

- ***Reject liability***
  The worker will be formally advised in writing of the reasons for rejection and the worker's rights of appeal.

- ***Defer liability***
  The worker will receive up to 8 weeks pay while the insurer further investigates the claim. The insurer must make a final decision to accept or reject the claim before 56 days have expired from the date of the decision to defer.

Once the worker has lodged their claim, they will be dealing with different organisations and people. These may include: employers, insurers, medical practitioners, rehabilitation providers, unions, solicitors and NT WorkSafe.

Workers claiming compensation for loss of income must submit a completed **NT WorkSafe claim form *and* workers' compensation medical certificate** to the employer.

Where the claim form is for medical expenses only, the worker needs only to provide the account or receipt with the claim form.

Entitlements

Weekly payments of compensation

If the insurer accepts liability for the worker's claim, then weekly payments of compensation must be made by the employer commencing within 3 working days of the decision to accept the claim.

If the insurer defers liability, weekly payments of compensation must commence within 3 working days of that decision. These payments are to commence with one week's pay and continue for up to 8 weeks within which time the insurer will either accept or reject liability. If the claim is subsequently accepted, compensation owing must be offset by any amounts paid during the period of deferral.

If the claim is rejected the deferral payment will cease. This payment is not recoverable from the injured worker.

Weekly or periodic compensation payments for incapacity for work are based on normal weekly earnings (NWE) immediately before the date of entitlement to compensation.

NWE are a worker's normal number of hours per week, at their normal hourly rate. NWE also includes:

- overtime where the overtime was worked in a regular and established pattern;
- shift penalties where worked in a regular and established pattern;
- over award payments;
- climate allowance;
- district allowance;
- leading hand allowance;
- qualification allowance;
- service grant;

but does not include any other allowance eg. employer contributions to superannuation.

Employer contributions to superannuation

Employer contributions to superannuation are NOT included in the calculations of normal weekly earnings with regards to workers' compensation benefits under the Northern Territory *Workers Rehabilitation and Compensation Act.* Under Section 49 the Act states:

> (1A) For the purposes of the definition of 'normal weekly earnings' in subsection (1), a worker's remuneration does not include superannuation contributions made by the employer.
>
> (1B) Subsection (1A) is taken to have come into operation on 1 January 1987.

There are some instances where individuals are exempt from complying with the above-mentioned two subsections and these are outlined in Section 195 of the *Workers Rehabilitation and Compensation Act*.

On 2 August 2007, The High Court of Australia unanimously found the *Amendment Act*, of which these two subsections are a part of, to be valid.

First 26 weeks of incapacity

A worker is entitled to receive their NWE for the first twenty-six (26) weeks of total or partial incapacity.

After 26 weeks - long-term incapacity

After the first twenty-six (26) weeks a worker is entitled to 75% of their loss of earning capacity subject to a maximum of 150% of average weekly earnings (AWE). This rate can be payable until the injured worker reaches retirement age.

Loss of earning capacity is the difference between the amount a worker is reasonably capable of earning in a week and their pre-injury NWE.

AWE is the average weekly earnings as published by the Australian Statistician for the Northern Territory Full-Time Adult Persons, Ordinary Time Earnings, last published before January each year.

104 weeks provision

At any stage of long term incapacity (after 26 weeks) a worker can be deemed to have an earning capacity.

Up until 104 weeks of incapacity has elapsed, suitable employment must be reasonably available.

After 104 weeks (2 years) of total or partial incapacity, the worker, once assessed, may be deemed to have an earning capacity on the most profitable employment that could be undertaken by that worker, whether or not such employment is available to the worker and the worker's entitlements may be reduced or ceased accordingly.

If, after two years of total or partial incapacity, the injured worker still has no current work capacity, they will continue to receive 75% of normal weekly earnings (NWE) until they acquire a capacity for suitable employment, or they reach age 65, whichever is the earlier.

This provision will only apply after 104 weeks of total or partial incapacity. It will not affect those who, because of the seriousness of their injury, will have little or no real ability to return to the workforce.

Note:

- The 104 weeks (2 years) is calculated from the first day of total or partial incapacity.
- The assessment is carried out by appropriately qualified medical practitioners and allied professionals.

For further information see NT WorkSafe bulletin 13.01.17 Compensation – 104 weeks provision.

Medical treatment and expenses

If liability for a claim has been accepted, all reasonable medical and rehabilitation services are paid for by the insurer through the workers' compensation scheme. The insurer in conjunction with the employer is responsible for organising this. There is no cost to injured workers.

Reasonable expenses incurred include:

- medical, surgical and rehabilitation treatment;
- hospitalisation in a public or private hospital;
- pharmaceutical expenses;
- travelling or being transported to and from any place in order to attend for treatment or hospitalisation, including a kilometre allowance for use of a private vehicle;
- accommodation costs incurred while away from the normal place of residence to attend for treatment;
- upgrading of job skills or retraining in order to undertake suitable employment;
- workplace, vehicle and home modifications;
- household services, eg domestic help;
- attendant care services.

Where a worker has maintained a regular relationship with a treating doctor/practice for more than 30 days but wishes to transfer to a new treating doctor/practice, it is advisable for the worker to notify the insurer within 14 days of that change, including the name of the new treating doctor and reason for the change.

Permanent impairment benefit

If a worker is left with a permanent impairment as a result of a work related injury or illness, there is provision under the *Workers Rehabilitation and Compensation Act* for payment in respect of that permanent impairment.

Payment to the worker may be made to compensate for the permanent impairment when the injury or illness has stabilised.

This payment does not affect the worker's rights to weekly compensation benefits, medical or rehabilitation expenses.

Payment for permanent impairment

No benefit is payable if the assessed impairment percentage is assessed at less than five percent (5%) of the whole person. For injuries occurring prior to 15 October 1991, no benefit is payable if the permanent impairment percentage is assessed at less that 15%.

The entitlement is calculated using the assessed impairment percentage as a percentage of the maximum amount payable of 208 times average weekly earnings (AWE) (as published by the Australian Bureau of Statistics).

For example: If your assessment is 34% of the whole of body, then the amount payable is 34% of 208 times AWE.

For injuries occurring prior to 15 October 1991, the entitlement is calculated using 104 times AWE.

If the assessed percentage is between 5% and 15%, the amount of compensation payable is calculated on a sliding scale.

For further information see NT WorkSafe bulletin 13.01.10 Compensation – Permanent impairment.

Fatal injuries

If a work related injury or disease results in the death of a worker then the worker's dependants will be entitled to claim the following benefits:

- A lump sum benefit of 260 times AWE;
- A payment of 10% of AWE per week for each dependent child (maximum of 10 children) of the deceased worker (dependent children are those children under 16 years of age or those under 21 who are full-time students or who have a medical or physical disability);
- A funeral benefit to a maximum of 10% of the annual equivalent of AWE is payable to the person liable to meet the cost of the funeral.

Commutation

Commutation is converting (or exchanging) your workers' compensation entitlements of weekly benefits, to a lump sum payment. You need to have an ability to work to enable this to occur.

Where a partially incapacitated worker is receiving weekly benefits as a top up of his or her loss of earning capacity, this benefit can, in certain circumstances, be commuted to a once only lump sum payment.

Entitlements to weekly benefits may be commuted to a lump sum upon application to the Work Health Court by:

- the employer/insurer or worker, where because of the small amount of the regular payment, the administration cost in making the payments is disproportionate to the benefit received;

  or otherwise,

- a worker. In this case the Work Health Court must be satisfied that the worker's:
  - condition has stabilised;
  - rehabilitation is complete;
  - the worker is not totally incapacitated for work; and
  - has received financial counselling.

The maximum commutation to be linked to the worker's normal weekly earnings (NWE) or average weekly earnings (AWE), whichever, in the case of a particular worker, is the greater.

Note: This payment does not affect the worker's rights to medical or rehabilitation expenses.

Further information

Any enquiries regarding the management of claims should firstly be directed to the employer's workers' compensation insurer. If disputes arise regarding a claim, there are dispute resolution mechanisms available. For further advice contact NT WorkSafe.

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