


ACCIDENT MAKE UP PAY

What is Accident Make-up Pay?

Employees receiving workers compensation in the form of weekly payments are entitled to a percentage of their pre-injury earnings. In Victoria, the *Workplace Rehabilitation and Compensation Act 2013* entitles a worker to 95% of their average pre-injury earnings for the first 13 weeks. After 13 weeks have elapsed, compensation payments drop to 80%.

Accident make-up pay requires an employer to “top up” the compensation payments received by the worker to their relevant award or above-award rate, so he or she is not financially disadvantaged.

 Workers' compensation entitlements vary throughout Australia. It is important to check which entitlement applies in your state or territory. Call the Workplace Relations Advice Line for further information.

A brief history of the entitlement

Historically, accident pay entitlements derived from the relevant pre-modern award. Following the introduction of the modern award system in 2010, many of these entitlements were preserved on a transitional basis, with the intention to eventually formulate a clear national standard for accident pay. Accident make-up pay was removed from all but one award (the Air Pilots Award 2010) on the 31st of December 2014.

A new entitlement to accident pay

As part of the four-yearly review of the modern awards, accident pay was incorporated into a number of modern awards on the 15th of October 2015. These awards cover industries that historically had a “clear national standard” of accident pay in their respective pre-modern awards.

List of modern awards with accident pay provisions:

- > Airline Operations – Ground Staff Award 2010
- > Air Pilots Award 2010
- > Building and Construction General On-Site Award 2010
- > Business Equipment Award 2010
- > Concrete Products Award 2010
- > Dry Cleaning and Laundry Industry 2010
- > Fast Food Industry Award 2010
- > Horticulture Award 2010
- > Hydrocarbons Industry (Upstream) Award 2010
- > Joinery and Building Trades Award 2010
- > Labour Market Assistance Industry Award 2010
- > Mannequins and Models Award 2010
- > Marine Towage Award 2010
- > Mobile Crane Hiring Award 2010
- > Oil Refining and Manufacturing Award 2010
- > Professional Diving Industry (Industrial) Award 2010

- > Stevedoring Industry Award 2010
- > Storage Services and Wholesale Award 2010
- > Textile, Clothing, Footwear and Associated Industries Award 2010
- > Timber Industry Award 2010
- > Vehicle Manufacturing, Repair, Services and Retail Award 2010
- > Wine Industry Award 2010



There is now a nationwide entitlement to accident pay in the above awards.

When does accident make-up pay not apply?

The relevant industrial award or enterprise agreement may provide conditions where accident make-up payments do not apply. For further information, contact the Workplace Relations Advice Line on (03) 8662 5222.

How is the Weekly Amount of Compensation Calculated? (Victoria)

Workers compensation payments under the Workplace Rehabilitation and Compensation Act 2013 (Vic) are based on employees' 'Pre-Injury Average Weekly Earnings' (PIAWE) in the 52 weeks prior to their injury. The PIAWE figure is determined by the insurer and is based on ordinary earnings for the normal number of hours worked per week. Payments included in the PIAWE are listed below:

- > base rate of pay;
- > overtime and shift allowances; (for the first 52 weeks of weekly payments)
- > piece rates;
- > commissions;
- > the monetary value of certain non-pecuniary benefits*; and
- > the value of any part of a worker's salary that is directed to another party at the request of the worker – salary sacrifice.

*non pecuniary benefits are entitlements which are part of an employee's annual salary or package, including residential accommodation, a motor vehicle or private health insurance.

The insurer will compensate an injured employee 95% per cent of the PIAWE for the first 13 weeks following the injury. This amount will reduce to 80% percent after 13 weeks.

Frequently Asked Questions

Can an employee accrue leave while on accident make-up payments and on restrictive duties?

Yes, an employee will accrue leave entitlements on hours worked. Likewise, due to recent Fair Work Commission decisions ([\[2017\] FWCFB 4420](#) and [\[2017\] FWCFB 4537](#)), employees receiving workers compensation payments and accident make-up pay will be entitled to accrue and take annual leave. Employees are not entitled to accrue personal leave however, unless they are performing work for the business.

Can an employee accrue Long Service Leave whilst receiving accident make-up payments?

Yes. Section 13 of the *Long Service Leave Act 2018 (Vic)* provides that any absence from work on account of illness or injury will be counted as service for the purpose of Long Service Leave.

However, each State and Territory has its own Long Service Leave legislation and there are also some pre modern awards which contain their own long service leave requirements still in operation. We advise that employers contact the Workplace Relations Advice Line to confirm their obligations.

What is the maximum period required to make accident payments?

The maximum amount is 52 weeks for any one injury. However, accident make-up pay periods can also be for periods of 26 and 39 weeks, depending on the applicable modern award provisions. For further information, contact the Workplace Relations Advice Line.

Are casuals entitled to accident make-up payments and how would this be calculated?

Yes, casuals are entitled to accident make-up pay. However, employers should check the relevant accident pay clause in their modern award to ascertain how this is to be calculated.

Is an employer required to make superannuation contributions while an employee is receiving accident make-up payments?

Generally, an employer is required to make superannuation contributions only on hours worked (e.g. when performing light duties as part of a return to work program). However, some modern awards require an employer to pay superannuation contributions for the whole period of incapacity – contact the Workplace Relations Advice Line to clarify your obligations.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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