

## WORKPLACE INJURY REHABILITATION AND COMPENSATION ACT 2013

### Compensation Benefits

Compensation benefits may take the following:

- a lump sum to the dependents of a worker whose death arises from employment;
- weekly payments for a period for a dependent spouse or dependent child of a worker whose death arises from their employment;
- reasonable medical and like costs;
- a lump sum for a permanent impairment that exceeds 10 per cent of whole body impairment (*WIRC Act 2013*, Division 5);
- weekly payments of compensation for incapacity due to injury;
- if the worker incurs a permanent impairment which exceeds 30 per cent of whole body impairment or has a serious injury which will result in reduced earnings of greater than 40 per cent, the worker may pursue a Common Law lump sum for either or both pain and suffering damages and pecuniary loss damages.

### When has the Employer received a Compensation Claim?

A claim for medical expenses requires the worker to complete a 'claim for compensation form'. A medical certificate (Certificate of Capacity) must accompany the claim for compensation form. The employer may accept this claim and pay any accounts as part of their medical excess. If the employer disputes liability, they must send the claim form and their completed 'Employer Information Form' to their agent within 10 days of receiving the claim.

Payment of an amount under the employer excess does not constitute an admission of liability for the injury.

A claim for weekly payments of compensation has been served when a signed and completed 'Worker's Claim for Compensation' form, which includes a signed medical authority, has been received. If the form alone is served on the employer a claim has officially been made, however no weekly payments can be made to the worker until a Certificate of Capacity from a medical practitioner is provided. If a certificate is received that is not accompanied by a completed claim form, a claim has not been made on the employer.

On receipt, the employer should sign and date that part of the worker's claim form allocated to the employer's signature. This does not signify acceptance. It is only a receipt. Alternatively an employer must provide written acknowledgment to the worker that a claim has been received.

### Legal time frames

- Claims that exceed the employer's excess or involve any lost time must be forwarded to the agent within 10 calendar days of the employer receiving it.
- Claims for less than the excess amount which the employer wishes to dispute must be sent to the agent within 10 calendar days.
- Claims that involve no lost time and are less than the employer medical excess, require the employer to send the 'Minor Claim Report' to their Agent by the end of the quarter year in which the claim was received.
- Claims received by the employer for death or a permanent impairment lump sum must also be sent to the agent within 10 calendar days of receiving them.
- If a claim for lost time is properly made on the employer and is not forwarded to the Agent within 30 days, the claim is deemed as accepted.

### Medical costs

Medical and like costs must be reasonable. In determining 'reasonableness', the agent must consider the amount charged for the service rendered and the relevance of the service given the nature of the injury. WorkSafe Victoria publishes agreed maximum service costs for medical, physio and rehabilitation services based on consultation with professional bodies representing these providers.

Travel, rehabilitation services, domestic services, rescue, burial costs and provision of medical aids all come under the 'medical and like' heading.

### Weekly benefits

In Victoria, weekly benefits are based on a percentage of the worker's Pre-Injury Average Weekly Earnings (PIAWE) for the 12 months prior to the worker's injury.

WorkCover weekly benefits are intended as income replacement and are calculated as a percentage of the worker's PIAWE. This means the base pay (ordinary time pay) the worker was entitled to before he or she was injured.

Benefits for the first **13 weeks** the worker is entitled to compensation payments include **regular overtime and weekend rates and shift allowances**. For claims made on or after that date regular overtime and shift and weekend rates are included for the first 52 weeks of payments. The employer should contact their WorkCover agent to find out if workers are eligible.

Both overtime and shift rates are included only if there is an expectation that these earnings would have continued for the period following the injury.

A worker can be classified by the agent as 'having no current work capacity' or as 'having a capacity for suitable employment.' The capacity of the worker is a decision of the Agent not the practitioner issuing the certificates. The Agent may make a different decision based on other medical advice.

### No current work capacity

**First 13 weeks:** If the worker has no current work capacity (which means he or she cannot do any work), WorkCover will pay 95 per cent of the worker's pre-injury weekly base pay (to a maximum

amount). The maximum is indexed annually and is advised by the Agent. Claims made on or after 5 April 2010 have a higher maximum of twice the state average wage.

**14 weeks to 130 weeks:** If the worker still cannot do any work after 13 weeks, WorkCover will pay 80 per cent of the worker's pre-injury weekly base pay (to the maximum that applies).

**After 130 weeks:** If the worker still cannot do any work and this is not likely to change, WorkCover will continue to pay 80 per cent of the worker's pre-injury weekly base pay (to a maximum). Payments can continue until the worker retires.

### Current capacity for suitable employment

**First 13 weeks:** If the worker has a current work capacity, WorkCover will pay 95 per cent of the worker's pre-injury weekly base pay, less what the worker is currently earning a week (to the maximum applying).

### Death Benefits

The dependents of a worker who dies as a result of an injury or disease that is significantly due to the worker's employment are entitled to compensation. This compensation is paid as a lump sum and as a limited pension. Death benefits were previously only paid if there was a dependent. However, the Authority may also pay expenses related to the death to non-dependent family members who have incurred costs. Reasonable burial costs are paid as well as medical and like expenses.

Death benefits include:

- a lump sum payment;
- a pension of 95 per cent of pre-injury average earnings for 13 weeks then 50 per cent until the third anniversary of the death. If there are dependent children, a formula will provide a pension higher than the 50 per cent;
- dependents of a worker may also take action under the *Wrongs Act* for Common Law damages up to an indexed maximum Lump Sums for Permanent Impairment

A worker who suffers a permanent impairment which exceeds 10 per cent of whole body impairment (more than 30 per cent for psychiatric injury) is entitled to claim a lump sum as compensation for that impairment. This amount is in addition to, not in place of, any entitlement to weekly compensation or medical and like expenses. Spinal injuries are eligible for a lump sum if the impairment exceeds five per cent whole body impairment.

The worker is not required to show fault to access the amount. The payment is based on the worker's percentage of impairment. The maximum amount is paid to workers exceeding 80 per cent impairment. Impairment is assessed under the American Medical Association Guidelines for evaluating impairment and is applied by doctors approved by the WorkSafe Victoria as able to apply those guidelines.

Hearing loss claims are a common example of impairment claims. Unless the loss exceeds 10 per cent of hearing, no payment is made.

Insurers often build a lump sum amount into the estimate they place on a claim, whether a worker has sought to claim the amount or not.

If there is a dispute as to the assigned impairment percentage, the worker can apply to the WorkCover medical panel who will assess the worker. The medical panel determination is final and cannot be challenged in any court.

Impairment lump sums do not extinguish entitlement to weekly compensation or medical costs.

## Contacting the Victorian Chamber of Commerce and Industry

---

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

Our experienced health, safety and wellbeing and 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 health, safety and wellbeing consulting and training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

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

### **Disclaimer**

The information contained in this document has been prepared by the Victorian Chamber of Commerce and Industry in this format for the convenience and benefit of its members and is provided as a source of information only. The Victorian Chamber does not accept responsibility for the accuracy of the information or its relevance or applicability in particular circumstances. The information does not constitute, and should not be relied on, as legal or other professional advice about the content and does not reflect the opinion of the Victorian Chamber, its employees or agents. The Victorian Chamber and its employees, officers, authors or agents expressly disclaim all and any liability to any person, whether a member of the Victorian Chamber or not, in respect of any action or decision to act or not act which is taken in reliance, whether partially or wholly, on the information in this communication. Without limiting the generality of this disclaimer, no responsibility or liability is accepted for any losses incurred in contract, tort, negligence, or any other cause of action, or for any consequential or other forms of loss. If you are uncertain about the application of this information in your own circumstances you should obtain specific advice.