



WR&C ACT 1986
INJURY MANAGEMENT PRACTICE NOTE
FOR THE PUBLIC SECTOR

DISCONTINUANCE OF WEEKLY PAYMENTS DURING A PERIOD OF PAID LEAVE

1. PURPOSE

- 1.1 To ensure a consistent approach is adopted across all public sector agencies when determining whether an injured worker who is in receipt of weekly payments should be asked to consent to the discontinuance of those payments during a period of paid annual or long service leave.

2. BACKGROUND

- 2.1 The practice of having injured workers consent to the discontinuance of their workers compensation weekly payments during a period of paid annual or long service leave is long standing and common to both public and private sector compensating authorities. The practice has, at times, been routinely applied to all situations where an injured worker is absent from work on a period of leave.
- 2.2 Section 40(1) of the WRC Act states “.....*neither the liability to make weekly payments to a worker in respect of a period of incapacity nor the amount of such weekly payments is affected by a payment, allowance or benefit for annual leave or long service leave to which the worker is entitled in respect of that period.*”
- 2.3 S40(1) means that an injured worker who has taken or wishes to take a legitimately accrued period of annual or long service leave cannot have his/her workers compensation weekly payments set off against that leave in such a way as to reduce the value of the weekly payments.
- 2.4 S41 of the WRC Act allows for the suspension of weekly payments in situations where the injured worker will be absent from Australia for a period in excess of 28 (calendar) days and it is considered that the period of absence is likely to impair the rehabilitation prospects of the worker.
- 2.5 The WRC Act does not support the principle that an injured worker cannot receive both a workers compensation weekly payment and a payment for annual or long service leave for the same period. It is permissible, in some situations, for injured workers to receive both.
- 2.6 There are also occasions where receiving both a workers compensation weekly payment and a payment for annual or long service leave is not appropriate. Instances where it would be appropriate to ask the injured worker to consent to the discontinuance of their workers compensation weekly payments during a period of paid leave may include, but not be limited to, situations where:
- 2.6.1 The worker has requested the leave and taking the leave is likely to disrupt or impair the injured worker’s rehabilitation and return to work process;
- 2.6.2 The worker has requested the period of leave and the employer has indicated that it is prepared to pay that period of leave at the worker’s pre-injury level of entitlement;
- 2.6.3 The worker has returned to suitable employment and taking leave at the time requested is contrary to the employer’s business requirements and therefore likely to cause inconvenience to the employer.

3. PRACTICE

- 3.1 Public sector agencies are requested to adhere to the following guidelines before deciding whether it is reasonable to ask an injured worker to consent to the discontinuance of weekly payments during a period of annual or long service leave:
- 3.1.1 An injured worker must not be advised that it is a requirement of the WRC Act that they consent to the discontinuance of their workers compensation weekly payments during a period of annual or long service leave.

- 3.1.2 It is permissible, in some situations, for an injured worker to receive both a workers compensation weekly payment and a payment for annual or long service leave, during the same period;
- 3.1.3 Case managers shall consider the circumstances of each case before reaching a decision on whether it is appropriate to ask the injured worker to consent to the discontinuance of weekly payments during the period of leave;
- 3.1.4 If it is decided that it would be appropriate to ask the injured worker to consent to the discontinuance of weekly payments, the injured worker should be provided with an explanation as to how and why the decision was reached and the options available should he/she elect not to give their consent;
- 3.1.5 Consent to discontinue weekly payments must be given voluntarily by the worker after receiving accurate information, as consent based on incorrect or misleading advice is not true consent.

Should you have any questions in relation to this advice please direct your enquiry to Public Sector Workforce Relations (Workers Compensation Performance), Department of the Premier and Cabinet (phone: 822 62683).

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