

EMPLOYER UPDATE – SICK LEAVE & PUBLIC HOLIDAYS

SICK LEAVE

There has been a change in relation to sick leave being considered earnings from paid employment for the purposes of the Return to Work Act 2014.

Previously, sick leave was considered as 'other leave' (refer to Section 37(b)(i)) and was not deemed as earnings from employment. This meant an injured worker could receive both sick leave and income support payments for the same period.

A recent review has prompted a change in this position. Sick leave is now considered to be earnings from employment. This means an injured worker should not be paid both sick leave and income support payments for the same period (refer to Section 39(2)).

Note: if an injured worker takes sick leave, which is unrelated to their compensable injury/illness, they should only be paid sick leave that specific period.

PUBLIC HOLIDAYS

There has also been a review of how Public Holidays are treated. Previously, payments received for public holidays were not considered as 'other leave'.

The position is that if an injured worker has returned to work in any capacity and would have worked the public holiday, money paid for that public holiday is to be considered as earnings.

Note: this only applies to injured workers who have returned to work.

For an injured worker who hasn't returned to work, continue to make income support payments to the injured worker and claim reimbursements.

Important: these instructions are effective for all payments made from 1st October 2016.

Example:

- Notional Weekly Earnings of \$500
- Normal days/hours worked; 5 days, 37.5 hours per week.
- Injured worker has returned to work 4 days per week.
- Week commencing 29/08/2016:
 - There is public holiday, which the injured worker would have usually worked
 - Injured worker had one day off sick due to the flu
 - Injured worker worked two full days of paid employment.

- Injured worker should be paid as follows:
 - Normal pay for the **two days** worked
 - Normal public holiday pay (considered to be earnings from employment)
 - Sick leave for the **one day** off (considered to be earnings from employment)
 - **One day** of income support payments (injured worker didn't work due to their injury)

- On your WPRR you can claim for the **one day** of income support payments made to the injured worker as this was the only day they didn't work due to their injury.

- Under "Earnings from Paid Employment" you would put what they earned for that week, which includes:
 - the pay from the days worked
 - the day of paid sick leave
 - the day of paid public holiday leave

- You will then be reimbursed the difference between the Notional Weekly Earnings (\$500) and the earnings from paid employment (\$400), which is \$100.

Pay Week Starting	Pay Week Ending	Nil Earnings	Earnings from Paid Employment	Hours Worked
29/08/2016	4/09/2016		400.00	30.00

RETURN TO WORK ACT 2014 - SECT 37

37—Prescribed benefits

The following are "prescribed benefits" for the purposes of this Division:

- (a) any amount paid to the [worker](#) by the [Corporation](#) or a [self-insured employer](#) in respect of an [employment](#) program provided or arranged by the [Corporation](#) or [self-insured employer](#) for the purposes of this Act;
- (b) any of the following received by the [worker](#) from an [employer](#):
 - (i) any payment, allowance or benefit related to annual or other leave;
 - (ii) any payment, allowance or benefit paid or conferred by the [employer](#) on the [worker's](#) retirement;
 - (iii) any payment, allowance or benefit paid or conferred under a superannuation or pension scheme;
 - (iv) any payment, allowance or benefit paid or conferred on the retrenchment, or in relation to the redundancy, of the [worker](#);
- (c) any other payment, allowance or benefit of a prescribed kind.

RETURN TO WORK ACT 2014 - SECT 39

39—Weekly payments over designated periods for [workers](#) other than [seriously injured workers](#)

(1) Subject to this Act, if a [worker](#), other than a [seriously injured worker](#), suffers a [work injury](#) that results in incapacity for work, the [worker](#) is entitled to [weekly](#) payments in respect of that incapacity in accordance with the following principles:

- (a) if any period of incapacity for work occurs within the period of 52 weeks from the date on which the incapacity for work first occurs (the "first designated period")—
 - (i) for any period during the first designated period when the [worker](#) has [no current work capacity](#)—the [worker](#) is entitled to [weekly](#) payments equal to the [worker's](#) [notional weekly earnings](#); and
 - (ii) for any period during the first designated period when the [worker](#) has a [current work capacity](#)—the [worker](#) is entitled to [weekly](#) payments equal to the difference between the [worker's](#) [notional weekly earnings](#) and the [worker's](#) [designated weekly earnings](#);
- (b) if any period of incapacity for work occurs within the period of 52 weeks beginning immediately after the end of the period that applies under paragraph (a)

(the "second designated period")—

- (i) for any period during the [second designated period](#) when the [worker](#) has [no current work capacity](#)—the [worker](#) is entitled to [weekly](#) payments equal to 80% of the [worker's](#) [notional weekly earnings](#); and
- (ii) for any period during the [second designated period](#) when the [worker](#) has a [current work capacity](#)—the [worker](#) is entitled to [weekly](#) payments equal to 80% of the difference between the [worker's](#) [notional weekly earnings](#) and the [worker's](#) [designated weekly earnings](#).

(2) For the purposes of this section, the "designated weekly earnings of a [worker](#) will be taken to be the current [weekly](#) earnings of the [worker](#) in [employment](#) or self-employment (if any) but not so as to include a prescribed benefit.

(3) A [worker](#) has no entitlement to [weekly](#) payments under this section in respect of a [work injury](#) after the end of the period of 104 weeks from the date on which the incapacity for work first occurs (that is, after the end of the [second designated period](#)).