

Changes to Workers Compensation Laws in WA

Fact Sheet 1

The laws governing workers compensation in WA are changing effective 1 July 2024, with the Workers Compensation and Injury Management Act 2023 (WCIMA23) coming into force. This fact sheet aims to provide a general overview of what's changing in claims and policy as we all transition to the new laws.

GIO is committed to supporting our employers, brokers and injured workers as these changes become effective.

Income compensation (Weekly wages)

What's changing?

- Weekly wages will now be called income compensation payments
- Income compensation payments will be calculated for all workers based on their pre-injury average earnings (from their current role) over a 12-month period, or for the period in which they have been in their current role, whichever is the lesser
- The initial rate will be the average of the above, with only periods of approved leave without pay excluded from the calculation
- Workers will be paid the initial rate for 26 weeks before going to the stepdown rate, which will be 85% of the initial rate. These calculations are subject to maximum and minimum rates and Award workers will have a separately calculated minimum
- The new Act clarifies that workers accrue entitlements to annual, long service and sick leave while receiving income compensation

What is not changing

- Income compensation payments need to start within 14 days after a claim is accepted
- The worker should receive the subsequent payments on the usual pay days and in the way the worker would normally be paid
- If liability to pay weekly payments was accepted before 1 July 2024, then the income compensation payments need to be calculated under the 1981 Act rules
- Workers are entitled to take annual or long service leave while receiving weekly Income Compensation and can receive both concurrently

What does this mean for employers?

- Employers will need to provide their insurer with the following when a claim is lodged
 - The worker's current position and how long the worker has worked in that position (if they have changed position in the last 12 months we will need to consider if the previous position was substantially the same based on the WCIMA23 criteria)
 - The wage history for the 12 months preceding the date of injury
 - The name of the Award under which the worker is employed
 - If the worker is covered under an EBA or other industrial instrument, a copy of their employment contract should be provided
 - Details of any periods of approved leave without pay (definition below)

s54 (6) **Leave without pay** means time off work without pay on leave that is authorised or consented to by an employer for a period the worker would otherwise be required to work.

Provisional Payments and liability decisions

What's changing?

- Pending claims will now be referred to as deferred decision claims
- Where an insurer has deferred liability on a claim, if a liability decision has not been made by the Provisional Payments Day (28 days from the day the claim is received by the insurer), the worker will then be entitled to provisional payments
- Provisional Payments are:
 - Provisional Income Compensation payments – payable from Date of First Incapacity and subject to the income compensation prescribed amount
 - Provisional medical and health expenses – these are payable from date of injury and are capped at 5% of the medical and health expenses prescribed amount
- Provisional payments are to be paid the same as the regular entitlements are paid if the claim were accepted
- Even if a claim is later declined, provisional payments are not recoverable from the worker unless the worker's claim involved fraud



- If a liability decision is not made by Deemed Liability Acceptance Day (120 days from the day the claim is received by the insurer) the claim will be deemed to be accepted
- Claims that were pended before commencement day (1 July 2024), will be subject to transitional provisions. A worker's eligibility for provisional payments will depend on when the liability decision was deferred.

What is not changing

- Liability needs to be accepted, deferred, or declined within 14 days of the claim being received by the insurer, otherwise it is deemed to be accepted

What does this mean for employers?

- Employers will need to ensure all claims are lodged in a timely manner
- If a factual investigation is required, an employer must make themselves and their employees available for statement interviews with the investigator and provide all requested documents promptly

Catastrophic Injuries Support Scheme (CISS)

Summary

- The CISS is administered by the Insurance Commission of Western Australia (ICWA) and currently covers those who are catastrophically injured in a motor vehicle accident in WA and are unable to claim against CTP
- This cover is being extended to workers compensation claimants who are catastrophically injured due to work
- Catastrophic injuries are spinal cord injuries, traumatic brain injuries, multiple amputations, severe burns and permanent traumatic blindness. Specific criteria applies to each injury type
- Participation in the scheme is voluntary. The worker's entitlements under the scheme will be suspended when they are absent from Australia or incarcerated. They can also be suspended for non-compliance with treatment
- If they are accepted to the scheme, the employer/insurer will no longer need to pay any medical and health expenses, workplace rehabilitation, travel or miscellaneous expenses.
- The worker can still settle their statutory claim or pursue common law damages, however no allowances for past or future care can be included, as this is covered under the CISS scheme. If a worker receives a settlement or judgement including these costs, they are barred from entering the scheme at a later date
- All insurers will contribute a levy towards the Catastrophic Injury Fund (CIF) to cover the cost of the scheme extension
- The insurer must notify ICWA of any catastrophic claims (or those likely to be catastrophic) within 7 days of claim acceptance

What is not changing

- The worker's income compensation will continue to be paid and managed by the insurer regardless of participation in CISS

- If the worker does not participate in the scheme the employer remains liable for all the expenses

What does this mean for employers?

- Employers should flag any claim they think may meet the catastrophic injury criteria with their insurer as soon as possible

Return to Work and Employer Obligations

What's changing?

- Vocational rehabilitation will be referred to as Workplace Rehabilitation
- A worker can now be compelled to attend and actively engage in periodic Return to Work Case Conferences (which the employer and insurer can attend) no more than once every 4 weeks
- The Regulations specify what can and cannot be discussed at a case conference; your Claims Advisor can go over this with you before the case conference.
- The new Act stipulates that neither the employer nor the insurer can be present during a worker's treatment appointment or medical examination by their treating medical practitioner
- A worker cannot be dismissed solely or mainly due to the worker's incapacity
- Host employers now have an obligation to cooperate with the labour hirer employer in facilitating the worker's return to work (to the extent that is it reasonable to do so)
- The worker must be given a chance to choose their own Workplace Rehabilitation Provider
- The new Act prohibits the disclosure of information about a worker's claim or claims history to another person for pre-employment screening. They cannot be required to disclose information about prior claims for the purpose of selection for employment
- There is a new claim form, which has removed the question pertaining to a worker's previous claims
- The worker must provide a copy of the medical certificate to their employer within 7 days of it being issued, unless their treating medical practitioner has already done so

What is not changing

- An Employer is still required to establish a Return to Work Plan if the worker returns to work with restricted capacity
- Employers are still required to keep a worker's position open for 12 months or provide a new one, where reasonably practicable. They must provide notice in the approved form at least 28 days before the dismissal takes effect

What does this mean for employers?

- Employers should reach out to their insurer if they require assistance completing a Return to Work Plan.
- Fines for failing to establish a RTW program has increased from \$2,000 to \$5,000
- Fines for failing to provide proper notice before dismissing a worker has increased from \$5,000 to \$10,000

Policy Changes

- Section 203 of the new Act outlines that employers are to provide a statement of estimated and actual **remuneration** declarations as opposed to just wages. WorkCover WA has published guides that explain what is considered remuneration.
- The new Act will also specify additional information that an employer needs to provide to a licenced insurer in order for a workers compensation policy to be issued including but not limited to; business activities, description of business, total cost and number of claims for the last 5 years, working director remuneration
- Section 237 provides for the terms, content and conditions of a policy be prescribed in regulations. This will ensure that workers compensation policy key terms are **standardised** in regulations, rather than as contractual conditions made by an insurer at its discretion. WorkCover WA has provided wording for new policies which licenced insurers will be required to use
- Section 238 provides a framework for managing adjustable premium policies, also known as burning cost policies. Where there is an adjustable premium policy between an insurer and an employer, the right to have the premium reviewed by WorkCover WA is no longer available.

Cancellation

The new regulations specify that a licenced insurer can only be permitted to cancel a workers compensation policy after a period of 90 days of unpaid premiums has been incurred from the commencement of the policy period.

Further details on the operational process will be advised.

Policy wording

Defines Worker in greater details than previously.

Exclusions related to specified industrial disease have been removed as licenced insurers will provide indemnity including statutory entitlements, for these diseases.

Terrorism now excluded but insurers will still be liable to contribute in the event of a terrorist act up to a limit of \$100M.

Contact us

For further information, please talk to your Relationship Manager or email us at WAWCReforms@gio.com.au

