



CLIENTS RECEIVING WORK CAPACITY NOTICES

By Peta Kava, Solicitor

NEW Law anticipates that several thousand injured workers in NSW will receive notification from their insurer some time in the near future advising them that their claim is now the subject of a transitional work capacity decision **and /or** this has resulted in a notice of reduction or cessation of wages.

The NSW State Liberal government led by Premier Barry O'Farrell introduced sweeping changes to the Workers' Compensation Scheme in 2012. From 1 January 2013, all injured workers in NSW who made claims prior to 1 October 2012 and who have been in receipt of weekly benefits for a period of more than 130 weeks, will gradually be transitioned on to the new scheme.

One of the steps the legislation requires the insurer to undertake as part of this transitioning is a Work Capacity Assessment and decision. This assessment is done by your case manager on the documents in the insurer's possession. The insurer must undertake this exercise prior to reducing or ceasing your weekly benefits.

Under the new scheme, weekly benefit entitlements for all injured workers in NSW will now cease after 130 weeks of benefits having been received **unless**:

- the worker is assessed as having no current work capacity
- or:
- the worker has a capacity to work and has returned to work for no less than 15 hours a week and is earning at least \$155.00 per week.

If you have no work capacity or are working more than 15 hours per week your weekly payments will continue at 80% of your Average Weekly Earnings.

In summary, if the insurer decides you have some work capacity but you are not working 15 hours or more per week, then your weekly payments will cease. In reality, only those injured workers who can successfully demonstrate total incapacity to work will have ongoing entitlements. The aim of the legislation appears to be to dramatically reduce the number of workers entitled to any ongoing weekly payments after they have received them for 2 and a half years.

WORKERS WHO ARE PARTIALLY INCAPACITATED FOR WORK AFTER 130 WEEKS

If you are working and earning more than the “deemed transitional amount” (currently \$920.20 gross) you will no longer be entitled to ongoing weekly compensation.

It should be noted that after the first 52 weeks of incapacity, Average Weekly Earnings (AWE) under the new scheme does not include overtime payments, shift allowances or penalties.

WORKERS WHO ARE TOTALLY INCAPACITATED FOR WORK AFTER 130 WEEKS

If you are a worker who is found to have no current work capacity and you are considered likely to continue to remain incapacitated for work indefinitely you will be entitled to 80% of your average weekly earnings up to the maximum of \$1,838.70 per week. You will be entitled to this amount up until 260 weeks or 5 years. After 5 years only the most seriously injured workers (>20% WPI) will be entitled to ongoing weekly payments of workers’ compensation.

The Workers’ Compensation Commission has no jurisdiction to deal with disputes arising from the work capacity decisions of insurers.

The worker can, as a first step, apply for a review of the decision of the insurer and it will be allocated to a different Case Manager for internal review. The worker would need to put on some medical evidence around capacity at this step and only has **30 days** to do so. The next step is a review of the insurer’s decision by Workcover and lastly, by the Workplace independent Review Office.

If you are an injured worker and you receive a Work Capacity Assessment or decision notice,

we would invite you to contact our office on (02) 8595 1295 as soon as possible for advice and assistance, noting that the worker only has **30 days** to request a review of the insurer’s decision.

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