

Did you know?



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Recent changes to NSW workers' compensation

The NSW Government has announced significant reforms to the workers' compensation legislation in NSW. These reforms were passed in Parliament on 22 June and assented on 27 June 2012 to law. The new laws change the way workers' compensation benefit claims are assessed and paid. Some changes came into effect immediately and others will come into effect over a transitional period of 12 to 18 months.

The changes will exclude claims from: police officers, paramedics and firefighters; workers injured while working in or around a coal mine; emergency service volunteers (Rural Fire Service, Surf Life Savers, SES volunteers); and people with a dust disease claim under the *Workers' Compensation (Dust Diseases) Act 1942*.

Key changes to workers' compensation in NSW

- **New definitions**

Work capacity assessments – injured workers receiving weekly benefits will undergo work capacity assessments throughout their claim and at least once in every two years.

Journey claims – coverage will only be available where the injured party can show a substantial connection between the person's employment and the incident out of which the injury arose ie. travelling between home and work is excluded unless the above applies.

- **Benefit levels – weekly incapacity payments**

Total incapacity – first 13 weeks of incapacity, those who are totally unfit to work will receive 95 per cent of their pre-injury average weekly earnings. From weeks 14 to 130, 80 per cent of their pre-injury average weekly earnings.

Partial incapacity – workers with partial incapacity who are able to work during the 13 weeks after a claim is made will receive up to 95 per cent of their pre-injury average weekly earnings. Other changes also apply to partial incapacity, in particular, the ability to work 15 hours per week or less.

Capping weekly benefits – continuation of weekly payments after 130 weeks will depend on the person being totally incapacitated, or (if partially fit to work) having achieved an actual return to paid employment of at least 15 hours per week. Weekly payments will be limited to a maximum of five years or retirement age (whichever occurs first).

- **Lump sum payments**

Pain and suffering – payments will no longer be available.

Permanent impairment claims – a threshold of 10 per cent whole person impairment for physical injury and 15 per cent for psychological injury must be attained to access a permanent impairment lump sum, including hearing loss. Assessment of whole person impairment of an injured worker can only occur once.

- **Medical benefits**

Payment for medical and related treatment will end at whichever occurs last:

- 12 months after the claim for compensation is made, or
- 12 months after the last payment of weekly benefits.

This restriction does not apply to workers with a WPI (whole person impairment) of 30 per cent or more.

- **Diseases, heart attack and stroke injuries**

Heart attacks and strokes are only covered if the nature of employment gave rise to a significantly greater risk of the worker suffering the injury. For a disease injury, the worker's employment must be the main contributing

factor.

- **Nervous shock and death benefits**

There is no entitlement for family members of deceased or injured workers to make nervous shock claims.

The existing statutory compensation death payments will continue to apply and include:

- an indexed lump sum (currently \$481,950) payable to financial dependents, or the deceased worker's estate
- indexed weekly payments for dependent children (currently \$122.50 per child per week)
- funeral expenses (\$9,000).

- **Return to work obligations**

The changes mean a worker who is able to work must, in co-operation with the employer or insurer, make reasonable efforts to return to work in suitable employment, and may request their employer to provide such suitable employment. Penalties apply up to \$11,000 if an employer fails to meet their obligations. If a worker fails to make reasonable efforts to do so, he or she may have their weekly payments suspended or – in extreme cases – terminated.

- **Existing claims**

For those already receiving weekly payments immediately prior to the changes, special arrangements apply. The changes differ depending on the length of time that claimant has been receiving payments and their level of work capacity.

The extracted information above has been sourced from the NSW Work Cover website; NSW WorkCover Fact Sheet – Workers compensation changes Catalogue No. WC0379. Access the FULL fact sheet via the following link: <http://www.workcover.nsw.gov.au/formspublications/publications/Documents/wc-changes-fact-sheet-overview-3795.pdf>

Importance of income protection

Individuals have often questioned the need for income protection insurance, particularly if their employer provides workers' compensation. This is often a common objection to taking out income protection cover. Ideally the role of an adviser is to both educate and protect their clients, and when discussing the cover provided by workers' compensation, it is vital that advisers consider all the benefits of protecting their client's most important asset – their income earning capability.

Summary

CommInsure's range of lump sum and income protection products can address the complete risk insurance portfolio required by employees. Employees could be lulled into a state of complacency where workers' compensation benefits are concerned as they may think they are adequately covered against becoming disabled, however often, they are not.

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