



WorkCover weekly payments – a comprehensive guide

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When lodging a WorkCover claim in Victoria, it is important to understand your entitlements. If you are unable to work due to your injury, one of your entitlements is WorkCover weekly payments of compensation. Weekly payments take the place of wages and are crucial to provide financial security to you and your family. This blog sets out what you need to know to ensure your weekly payments are maximised.

Defining “worker” in worker’s compensation claims

Before we look at weekly payments, it is important to ensure that you are eligible to [lodge a WorkCover claim](#). Along with sustaining an injury during the course of your employment, it is crucial that you meet the definition of “worker” within the meaning of the legislation.

The *Workplace Injury Rehabilitation and Compensation Act 2013* (“the Act”) defines the term worker as follows:

“worker” means an individual—

a) who—

- 1. performs work for an employer; or*
- 2. agrees with an employer to perform work—*

at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or

b) who is deemed to be a worker under this Act;'

Who can lodge a WorkCover claim?

Any worker, whether part-time, full-time or casual, is entitled to lodge a WorkCover claim if injured at work or in the course of employment.

When we look at the definition of “worker” above, even workers who are paid cash by a business or who do not have a formal employment contract can still be covered by the Victorian worker’s compensation scheme.

How do I access WorkCover weekly payments?

In order to receive WorkCover weekly payments of compensation, you must lodge a WorkCover claim. It is crucial that you obtain a WorkCover certificate of capacity from your treating doctor to accompany your claim. The certificate of capacity must be completed correctly by your treating doctor and signed by you in order to be considered valid and accepted by the WorkCover insurer.

Your first certificate of capacity must be for a period of 14 days. Every certificate after this can be for 28 days. It is important that the dates on your certificate of capacity are consecutive, and no days are missed.

This certificate of capacity is like your timesheet and must be submitted to your employer (who will provide it to the WorkCover insurer) for you to receive weekly payments.

Once you have lodged a WorkCover claim, your weekly payments will start to be paid when your claim is accepted by the insurer. Whilst waiting for your claim to be accepted, you should look to your leave entitlements in the interim if possible.

Your employer has three days to forward claims for psychological injuries to WorkCover and 10 days to forward claims for physical injuries to WorkCover. WorkCover then has 28 days from the date they receive your claim to make a determination.

If you do not receive a determination within this timeframe or the decision is made to reject your claim, you should seek legal advice immediately.

[Free advice to find out where you stand: 1300 700 761](#)

How are WorkCover weekly payments calculated?

WorkCover weekly payments are calculated based on your pre-injury average weekly earnings (“PIAWE”).

The Act defines pre-injury average weekly earnings as *“the average of the worker’s ordinary earnings during the relevant period”*.

The Act goes on to define the “*relevant period*” for a worker who has been continuously employed by the same employer for the period of 52 weeks before the injury, as 52 weeks.

Where a worker has been employed by the same employer for a period of less than 52 weeks, then the relevant period is the period of continuous employment.

When determining your weekly payments, the WorkCover insurer will look at:

- your average weekly earnings for the relevant period, including the base wage that you earnt;
- any overtime;
- any bonus payments;
- any shift allowances; and
- any piece rates or commissions that you may have earnt.

When calculating your WorkCover weekly payments, the insurer will first look to your WorkCover claim form and what you have listed as your ordinary earnings. It is important that your claim form is filled in with the correct earnings information, including any overtime, bonus' or shift allowances. It is often prudent to include your most recent pay slips and employment contract outlining your earnings when lodging your claim.

If the insurer requires additional information, they may contact you or your employer to clarify your earnings during the relevant period.

How much will my WorkCover weekly payments be?

WorkCover weekly payments are paid as follows:

- For the first 13 weeks after your injury, you will receive 95% of your PIAWE.
- From 14 weeks to 130 weeks, you will receive 80% of your PIAWE.
- At the 130-week mark, you can expect your weekly payments to cease unless you have no capacity to work for any job in the labour market for which you have the necessary skills, training and experience.

If you have no capacity for any form of employment, then your weekly payments will continue so long as you continue to have no capacity for any employment.

Is overtime included in average weekly earnings?

Overtime is included in the calculation of your weekly earnings for the first 52 weeks of receiving WorkCover weekly payments. After the 52-week period, overtime is removed from calculating your pre-injury average weekly earnings.

Are bonuses included in average weekly earnings?

Bonus' are included in average weekly earnings for the first 52 weeks of WorkCover weekly payments. After 52 weeks of receiving weekly payments, bonus' are removed from calculating your pre-injury average weekly earnings.

What if I earn a base wage plus commission?

If you were paid a base wage plus a commission prior to your injury, the commission will be included in the calculation of your WorkCover weekly payments for the first 52 weeks only. After this, the commission payments are removed from calculating your pre-injury average weekly earnings.

What if I am paid cash in hand?

From our experience, we know there is usually one key distinction when it comes to cash paid to workers in Victoria, and that is whether the income is declared to the Australian Taxation Office (ATO) or not.

Workers can be paid cash in Victoria and still be eligible for WorkCover weekly payments so long as the income is declared to the ATO and your employer is covering their other obligations such as paying mandatory superannuation payments for the worker and WorkCover premiums.

We know from our experience that there are many jobs out there where workers are paid 'cash in hand' but do not receive any of their other entitlements and where this income is not declared to the ATO. This is particularly common amongst international students and in the hospitality industry.

Regardless of whether your income was declared, if you are deemed a "worker" in accordance with the above definition, you may be entitled to WorkCover benefits for a work-related injury.

No matter how you were paid as a worker, we would encourage you to explore your potential compensation options through WorkCover, as they can be sizeable, particularly if your injury is serious.

[Free advice to find out where you stand: 1300 700 761](#)

What if I was on extended leave before my injury?

If you were on extended leave before your injury, such as maternity leave, sick leave or long service leave, the insurer will not have regard to the period of extended leave when calculating your PIAWE. They will base your PIAWE upon the income you could have expected to receive on an ongoing basis had you been at work.

Are WorkCover weekly payments payable after retirement age?

WorkCover weekly payments of compensation cease at retirement age. For those born from 1 January 1957 onwards, retirement age is 67 years.

For those who are still working after the official retirement age and sustain an injury, you are still entitled to 130 weeks of weekly payments. Payments cannot be extended beyond 130 weeks even if you don't have a work capacity.

Are WorkCover weekly payments capped?

Yes, WorkCover weekly payments are capped at an amount of twice the Victorian average weekly earnings. Victorian average weekly earnings are \$2,590 (as of March 2023). This means that the current maximum that you can receive for WorkCover weekly payments is \$5,180 per week.

What if I disagree with the calculation of my WorkCover weekly payments?

If the WorkCover insurer has made a decision about your weekly payments that you don't agree with, for instance, if you disagree with the amount of your pre-injury average weekly earnings or your weekly payments have been terminated because you have a work capacity, you should seek legal advice as soon as possible.

[Free advice to find out where you stand: 1300 700 761](tel:1300700761)

Decisions made by the insurer concerning weekly payments that you don't agree with can be appealed to the [Workplace Injury Commission](#) for conciliation. Your WorkCover lawyer can advise you about the conciliation process and how best to prepare. You can also read more about appealing decisions in our earlier blog, ["Can I review a decision made by WorkCover?"](#)

Get help from a WorkCover lawyer

WorkCover weekly payments can make a real difference for people injured at work. However, it is important to ensure that they are calculated correctly.

If you have concerns about the calculation of your WorkCover weekly payments or your claim for weekly payments has been denied, you should seek legal advice from an experienced WorkCover lawyer.

At Guardian Injury Law, we take the time to get to know you and provide clear, straightforward advice to ensure you receive maximum compensation to ensure your life is made a little bit easier whilst recovering from your workplace injury.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

enquiries@guardianinjurylaw.com.au

Further reading about WorkCover claims

- [WorkCover lump sum compensation for permanent impairment](#)
 - [WorkCover common law claims and serious injury applications](#)
 - [WorkCover and mental health claims for psychological injury](#)
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