



Leave entitlements whilst receiving WorkCover

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Date: Sunday February 4, 2024

When workers suffer a workplace injury and are [eligible for worker's compensation](#), a common question is: "does my annual leave and sick leave accrue while on WorkCover?" In this blog, we look at leave entitlements:

1. between the date of your injury and a determination being made by WorkCover (either to accept or reject your claim) and you are unable to work due to your injury; and
2. when your claim has been accepted, and you are in receipt of [WorkCover weekly payments](#) whilst not working.

If you haven't yet lodged a worker's compensation claim after a workplace injury, you can read more about this in our earlier blog, ["How to lodge a WorkCover claim"](#).

Taking leave before a determination is made on your WorkCover claim – does it still accrue?

Once you lodge a worker's compensation claim, there will be a period of time for WorkCover to determine whether to accept or reject your claim.

During that time, you will usually be asked by your employer to take sick leave. Depending on your leave entitlements and balance (for example, if you have no sick leave left), your employer may also approve the use of annual leave and/or long service leave.

Sick leave, annual leave, and long service leave do **not** accrue whilst you are taking any of these forms of leave (no matter under what circumstances you are taking this leave). Therefore, if you need to take a form of leave due to injuries sustained in a workplace accident, and before your WorkCover claim is accepted, that leave will not accrue.

If you do not have sufficient accrued sick leave, annual leave or long service leave, you will have to consider options to take leave without pay at this point.

Sick leave and annual leave accrual while receiving WorkCover weekly payments?

Annual leave accrual while on WorkCover

Accrual of annual leave whilst on worker's compensation is left to each State's worker's compensation legislation to determine, as per the *Fair Work Act 2009* (Cth). As the Victorian worker's compensation legislation has left the question unanswered, previous cases determined in the Federal Court give us insight into leave accrual whilst on WorkCover.

In Victoria, you will accrue annual leave whilst you remain employed with the same employer and continue to receive WorkCover weekly payments. Annual leave entitlements will accrue on the same basis as if you were working normally, without the injury. As such, part-time employees will accrue their leave on a pro-rata basis.

Sick leave accrual while on WorkCover

In most instances, you will **not** accrue or accumulate sick or personal leave during the time you are receiving WorkCover weekly payments.

Some individual employee contracts, enterprise agreements, awards or other instruments surrounding your employment *may* provide for sick or personal leave to accrue during your receipt of WorkCover. You should seek advice from your union or an employment lawyer to determine if you are covered for sick/personal leave accrual while in receipt of worker's compensation payments.

Long service leave while on WorkCover

Any paid or unpaid WorkCover absence from your employment will count towards the period of continuous employment for the purposes of long service leave entitlements.

Is my leave reimbursed if my WorkCover claim is accepted?

Yes. If your worker's compensation claim is successful and you start to receive WorkCover weekly payments, any sick leave or annual leave you took earlier due to your workplace injury will be reinstated.

My WorkCover claim has been accepted, but I am unsure whether my leave is accruing

If you are unsure whether your leave is accruing whilst on WorkCover, it is imperative that you check your payslips and regularly review them, as they should detail the amount of leave you have accumulated, even whilst on WorkCover.

If you notice your leave has not been accruing correctly, inform your employer. If they are unresponsive, seek legal advice from your union or an employment lawyer.

Other options if you have no leave and your WorkCover claim is rejected

Unfortunately, if you do not have any annual, sick or long service leave balances after a workplace injury requiring you to take time off work, you may not be paid by your employer during this time.

However, you may have access to other entitlements to fall back on.

Income protection (IP)

Income protection (IP) benefits are designed to pay a percentage of your income, either for a set period of time or until retirement age (depending on the policy taken out), if you are unable to work due to injury or illness. It is also sometimes referred to as salary continuance insurance.

You can learn more about this type of disability insurance by visiting [“Income protection insurance claims”](#).

Total and permanent disability claim (TPD)

Total and permanent disability (TPD) is a lump sum payment available to people who are unable to work due to injury or illness. Many Australian workers will have some level of TPD cover through their super.

Each potential benefit is different and is based upon the individual policy, the level of cover you have, and your age at the time you stopped work due to your injury or illness.

It does not matter what your injury or illness is. You simply have to be unable to return to work either doing your own job or a job you are trained for, experienced in or educated for. To be successful with a TPD claim, you will need to meet the definition of total and permanent disablement contained in the insurance policy or super fund’s trust deed.

You can read more about this form of disability insurance in our earlier blog, [“TPD claims – your complete guide”](#).

Guardian Injury Law is experienced in lodging IP and TPD claims and [challenging claims that are rejected](#) or terminated by super funds. Further, as IP claims are considered as “income”, it is crucial that you seek legal advice before making a claim to ensure it will result in a benefit to you. Speak to Guardian Injury Law for clear advice to find out where you stand.

[FREE ADVICE FROM A WORKCOVER LAWYER: 1300 700 761](#)

In addition to accessing your IP or TPD disability insurance cover, we also recommend that you make enquiries to see if you are eligible for any Social Security or Centrelink benefits.

If you are suffering financial hardship due to no income after a workplace injury and you are, for example, unable to pay your mortgage or other critical expenses, we recommend contacting your bank and explaining your situation to see what help they can offer you.

Employees working on a casual basis are not entitled to sick leave or annual leave (unless specified in an individual employment contract or an enterprise agreement) however, they will accrue long service leave.

Get help from a worker’s compensation lawyer

At Guardian Injury Law, we will provide you with clear advice to help you navigate your way through the Victorian WorkCover maze and maximise your entitlements. We can also assist you with all aspects of an income protection and/or TPD claim.

Your first appointment is free, so it costs you nothing to find out where you stand.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

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This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.