

## Payments & leave while on workers compensation

Workers compensation is a form of insurance payment paid to employees if they are injured at work or become sick due to their work.

### Payment of workers compensation

The amount of money paid to employees on workers compensation will depend on the state or territory.

The amount paid to an employee is an insurance payment and not a wage. The employee is paid:

- directly by the insurer
- from the insurer through the employer or
- by the workers compensation regulator.

### What if my employer does not pay the workers compensation?

Sometimes the insurer accepts the workers compensation claim and the employer doesn't pass on the insurance money to the employee.

An employee can take the following steps to resolve this issue:

- Contact the employer regarding the payment
- Contact the insurance company regarding the matter
- Contact the [workers compensation regulator \(www.fairwork.gov.au/Leave/Workers-compensation/default\)](http://www.fairwork.gov.au/Leave/Workers-compensation/default) in their state or territory.

### Superannuation and workers compensation

Some awards and registered agreements may give employees an entitlement to superannuation while they're away from work on workers compensation. For more information and to check your award go to [Tax & superannuation \(www.fairwork.gov.au/pay/tax-and-superannuation\)](http://www.fairwork.gov.au/pay/tax-and-superannuation).

### Accident pay

Some awards have entitlements to accident pay for employees on workers compensation. Accident pay is the difference between what an employee would normally get paid and the amount they get paid from workers compensation. It's paid by the employer.

To check whether your award has accident pay, select from the list below:

Based on what you've told us, it looks like you're covered by the Building and Construction General On-site Award 2010 [MA000020].

Under the Building and Construction Award, employees are entitled to accident pay for up to 26 weeks.

### Amount of accident pay

If an employee is on workers compensation, their employer has to pay them the difference between:

- the amount they get paid from workers compensation, and
- the amount they would have got for 38 hours work and any [RDO entitlements \(www.fairwork.gov.au/employee-entitlements/hours-of-work-breaks-and-rosters/rostered-days-off\)](http://www.fairwork.gov.au/employee-entitlements/hours-of-work-breaks-and-rosters/rostered-days-off) (excluding over award payments, shift loadings or overtime).

For casual employees, this is calculated by averaging their hours over the 12 months before the day they started getting workers compensation payments. It includes their casual loading but doesn't include over award payments, shift loadings or overtime.

### How and when accident pay applies

An employee is entitled to accident pay if they're injured at work and begin receiving workers compensation payments. The accident pay starts from the time they start getting the workers compensation payments and can apply for up to 26 weeks. The 26 weeks starts from the day the employee is injured.

If an employee is terminated they're still entitled to accident pay.

If an employee returns to work on less hours or modified duties, their accident pay is reduced by how much they get paid for that work.

### **Example: Return to work on modified duties/less hours**

Joe worked 38 hours a week at \$25 an hour, totalling \$950 per week. Joe was injured at work and went on workers compensation, getting \$500 a week in workers compensation payments and \$450 in accident pay. After 8 weeks, Joe returns to work on modified duties that pay \$20 for 20 hours a week, totalling \$400. Joe's accident pay is reduced by \$400, meaning that Joe is now getting \$50 accident pay per week.

If an employer has an accident pay scheme that has the same or better entitlements, the employer can apply to the Fair Work Commission to use that scheme instead.

If an employee gets a lump sum instead of weekly payments from workers compensation, their employer doesn't have to pay accident pay.

To find out more about who this award applies to, go to the [Building and Construction Award summary \(www.fairwork.gov.au/awards-and-agreements/awards/award-summary/ma000020-summary\)](http://www.fairwork.gov.au/awards-and-agreements/awards/award-summary/ma000020-summary) .

Source reference: [Building and Construction General On-site Award 2010 \[MA000020\] clauses 3 and 27 \(http://award-viewer.fwo.gov.au/award/show/MA000020\)](http://award-viewer.fwo.gov.au/award/show/MA000020) 

## **Leave and workers compensation**

Employees on workers compensation can take unpaid parental leave if they're eligible. Go to [Maternity and parental leave \(www.fairwork.gov.au/leave/maternity-and-parental-leave/default\)](http://www.fairwork.gov.au/leave/maternity-and-parental-leave/default) to find out who is eligible for parental leave.

If it's allowed under the state or territory workers compensation legislation, employees can take or accrue:

- annual leave
- personal leave
- long service leave.

Visit our Library to learn more about [Annual leave and sick leave on workers compensation \(www.fairwork.gov.au/library/k600454\\_annual-leave-sick-leave-during-workers-compensation\)](http://www.fairwork.gov.au/library/k600454_annual-leave-sick-leave-during-workers-compensation) .

You can also contact the relevant [workers compensation regulator \(www.fairwork.gov.au/Leave/Workers-compensation/default\)](http://www.fairwork.gov.au/Leave/Workers-compensation/default) in your state or territory for information about long service leave on workers compensation.

Employees don't get public holidays while on workers compensation.

## **Dismissed by an employer while on workers compensation**

The requirement for an employer to pay out the notice period to an employee who is dismissed while on workers compensation is currently under review. We will update this page following the outcome of the review.

Please [get in touch with us \(www.fairwork.gov.au/contact-us\)](http://www.fairwork.gov.au/contact-us) if you have any questions.

An employee who is not at work and is getting workers compensation due to an injury gets payment in lieu of notice on termination. A notice period doesn't apply as an employee getting workers compensation is unfit for work.

## **Resignation while on workers compensation**

An employee who resigns on workers compensation may need to provide notice to their employer. Use our [Notice and Redundancy Calculator \(https://calculate.fairwork.gov.au/EndingEmployment\)](https://calculate.fairwork.gov.au/EndingEmployment) to work out how much.

## **Think a mistake might have been made?**

Mistakes can happen. The best way to fix them usually starts with talking.

Check out our [Help resolving workplace issues \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/default\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/default) section for practical advice on:

- figuring out if a mistake has been made
- talking to your employer or employee about fixing it

- getting help from us if you can't resolve it.

### What to do next

- Learn how to have [difficult conversations \(www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default\)](http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default) with your employer or employee

### Help for small business

- Find tools, resources and information you might need on our [Small business page \(www.fairwork.gov.au/Find-help-for/Small-business/default\)](http://www.fairwork.gov.au/Find-help-for/Small-business/default) .

#### You might also be interested in:

- [Long periods of sick leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/long-periods-of-sick-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/long-periods-of-sick-leave)
- [Protections at work \(www.fairwork.gov.au/employee-entitlements/protections-at-work/default\)](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/default) .

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### Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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