Cameron Hall
COMPENSATION LAWYERS



Loss of wages in Comcare claims - how are they calculated?

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If you're injured at work and covered by the federal worker's compensation scheme, Comcare, you will be entitled to receive the following benefits if your claim is accepted.

- Weekly incapacity benefits (basically loss of wages);
- Medical expenses;
- Rehabilitation expenses;
- Household attendant care services;
- Travel expenses (in limited circumstances);
- Lump sum compensation (in some, not all, cases).

In this article, we have a close look at how weekly benefits (loss of wages) are calculated.

In the majority of cases, calculating Comcare weekly benefits is a fairly straightforward process. That said, it's still important for injured workers to have a good grasp of how Comcare Australia (or a self-insured employer) goes about working out what the

payments should be.

All Comcare claims are governed by a piece of legislation called the Safety, Rehabilitation and Compensation Act 1988 (Cwth) (**the SRC Act**). The most important (and most often referred to) section of the SRC Act is section 19. It deals with 'how' weekly benefits are calculated once a claim is accepted.

Probably the most important thing to understand about section 19 is the concept of 'Normal Weekly Earnings' (**NWE**).

How are Comcare Normal Weekly Earnings calculated?

Normal Weekly Earnings is an amount derived by calculating what you likely would have earned (per week) had you not been injured.

NWE calculations take into account what you were earning at the time of the injury and can include amounts for overtime if you were required to work overtime on a regular basis and, sometimes, certain allowances. Usually, the two weeks prior to your injury is the period used to calculate what you "would have earned" had you not been injured.

Notably, if you were a part-time or casual worker at the time of injury and you had a second job, earnings from that other employment may also be included when calculating your NWE. If you were working full-time at the time of your injury, any other employment will **not** be included in NWE calculations.

Once your NWE figure is worked out, Comcare will look at what, if any, income you may be able to earn (since your injury) in any given week. For most new Comcare claims, this will be nil or very little as injured workers will still be off work recovering from their injury. But as time passes and you undergo medical treatment/rehabilitation, you may engage in 'return to work' programmes, which see you returning to your job in a limited capacity and/or for fewer hours per week than before your injury.

If you do return to work in a limited capacity, any income you earn from your employer for the work you do will be deducted from your NWE figure to determine your net Comcare weekly benefit.

Will my Comcare weekly benefits reduce over time?

Another concept that is important about Comcare weekly benefits (especially for more significant claims) is that the amount paid is calculated differently after 45 weeks, depending on whether you are unable to work at all or you have returned to work in some capacity.

Workers who have not returned to work 45 weeks after injury

If you are receiving 'full' weekly benefits as you have not returned to work in any capacity 45 weeks after your injury, your weekly benefits will be reduced, usually by 25%, and you will receive 75% of your NWE.

Workers who have returned to work in some capacity 45 weeks after injury

For workers who are able to work in some limited capacity 45 weeks after injury, the amount of weekly benefit paid (after that 45-week period) is calculated based on the number of normal weekly hours worked.

Examples of Comcare weekly benefit calculations

Examples of how Comcare weekly benefits are calculated might help to explain the concept more simply.

Seriously injured worker off work for longer than 45 weeks

Billy is injured at work and can't work at all. He has undergone a few operations and was in hospital for a period and then home recovering. From the date of his injury, his weekly benefits will be his entire 'NWE' as he is unable to work in any capacity.

He has remained off work completely well past 45 weeks since he was injured.

Billy is entitled to the full NWE figure for 45 weeks, and then from the 46th week, his benefits are reduced to 75% of his NWE.

Injured worker able to return to work in a limited capacity

Harry is injured at work. After treatment and some workplace adjustments to accommodate his injury, he is able to return to work but only for half of the normal weekly hours he worked prior to the injury.

At 90 weeks after his injury, he is still working for half the hours he worked prior to the injury.

Because he is able to work at half his normal weekly hours, Harry's benefits are **not** reduced by 25% at week 45 (as he has been able to work half of each of those 45 weeks). By week 90, however, his benefits are reduced by 25% as at this point, he will have been receiving benefits for the equivalent of 45 full-time weeks.

What if I disagree with the NWE calculations provided to me by Comcare?

As you might imagine, calculations can become complicated, particularly when injured workers return to work in a partial capacity and their hours change (for example, increase as their injury improves). At the 45-week mark, they may be working 30% or 70% of their pre-injury hours. The NWE figure needs to take these actual worked hours into account. Needless to say, sometimes they get

it wrong.

So, if you do not agree with aspects of some decisions made about your claim, including changes to your weekly benefits, then you're not alone! The SRC Act is not a straightforward piece of legislation by any means. And quite often injured workers covered by the Comcare scheme will need the assistance and advice of a lawyer experienced in Comcare matters.

If you've got any concerns about your Comcare claim, including weekly benefits, medical expenses payments or eligibility for lump sum compensation, get in touch for some free initial advice.

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.