

Client Alert

Tasmanian Workers Rehabilitation and Compensation Amendment Act 2009

New legislation that will come into effect on 1 July 2010 will see changes to the current Tasmanian Workers Rehabilitation and Compensation Act 1988 and adoption of the Injury Management Model proposed by WorkCover Tasmania.

This has significant implications for employers in Tasmania. This alert provides a summary of those changes and the likely impact they will have on the workers' compensation programs for clients.

Notification of injury

If a worker is injured and the employer is aware of it, the employer must:

1. Notify the workers' compensation insurer within three working days, either:
 - In instances where the worker is or is likely to be partially or totally incapacitated for work; or
 - If the injury is required to be reported to the insurer under the approved Injury Management Program
2. Within 14 days, provide the worker with the prescribed notice on his/her right to make a claim and the process involved

Notification of claim

An employer has three working days to notify the workers' compensation insurer upon receipt of a claim for compensation from a worker and must forward the claim within five working days.

The penalty for non-compliance with this three day notification time frame is that the employer will be liable for wage payments, without reimbursement from their insurer, for the period during which notice is not given to their insurer. The current five day excess still applies.

The worker is to be advised in writing, within 28 days, of the status of his/her claim (i.e. whether or not it has been accepted), the reason(s) for the decision and any intended action.

Death benefits

The amount of compensation in case of death has increased. Under the new formula, the amount payable will increase from \$236,850.03 to \$266,376.05.

Payments to dependent children will increase from 10% of basic salary to 15% (\$64.19 per week to \$96.28 per week).

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Step down of weekly payments

The entitlement period for full (100%) weekly payments has increased by a further 13 weeks, bringing the total full payment period to 26 weeks.

The first step down after 26 weeks has increased from 85% to 90% of weekly payments.

The final step down of 80% after a total of 78 weeks still applies. In general, the entitlement to weekly payments expires nine years after the date of the initial incapacity, but provision now exists for that period to be extended depending on the extent of a worker's whole person impairment (WPI).

Where the worker participates in an approved return-to-work or approved injury management plan for more than 50% of their normal working hours, the step down provisions **do not** apply.

Payment of medical expenses

The insurer is liable for up to \$5,000 of medical expenses for reasonable treatment up until the time that the claim is accepted or rejected. This is to ensure the worker is receiving ongoing medical treatment pending acceptance or rejection of their claim.

Failure to cooperate with rehabilitation program

An employer can no longer reduce payments where the worker fails to participate in or cooperate with a rehabilitation program. Section 86(1)(d) has been repealed.

Suitable duties

Where an employer has more than 50 persons employed at the workplace, it must identify and provide to the insurer a list of alternative duties (if any) within 60 days of renewal or acceptance of the policy.

Common law

The threshold for access to common law damages is reduced from 30% WPI to 20% WPI.

Settlement by agreement

The period for settlement by agreement has increased from one year to two years, calculated from the date of the worker's claim. Settlement within that period will require the approval of the Workers' Rehabilitation and Compensation Tribunal.

Injury management programs

Licensed insurers are required to develop and implement an injury management program and to notify in writing all employers for whom the insurer is a licensed insurer that such program has been approved by the WorkCover Tasmania Board (Board).

Injury management co-ordinator

Insurers must appoint an injury management co-ordinator on behalf of the employer and assign, as soon as practicable, the worker to the injury management co-ordinator, in the case of a significant injury.

The injury management co-ordinator must have obtained a qualification or completed a course of training approved by the Board.

Return-to-work co-ordinator

An employer that employs more than 50 workers must appoint a return-to-work co-ordinator.

The return-to-work co-ordinator must have obtained a qualification or completed a course of training approved by the Board.

Injury management plans

An injury management plan is required for incapacity of 28 days or more.

For total or partial incapacity of more than five days, but less than 28 days, a return-to-work plan is required.

The injury management plan must be developed in consultation with the injured worker, the worker's employer, the employer's insurer and the medical provider(s).

Time frame

Changes to the WorkCover Scheme are proposed to come into effect on 1 July 2010.

Impact on workers' compensation premiums for businesses

The Tasmanian Government anticipates that the proposed reforms will increase claims cost by around 15% and that, consequently, premium rates are expected to rise by a similar percentage.

Clients can expect to be informed about increases to premiums after May 2010, when underwriters will be required to advise on the industry premium rates they intend to apply for the 12 months commencing on 1 July 2010.

Marsh advisors

If you have any further enquiries please contact your Marsh advisor, or Peter Hurd at the Marsh Tasmania office. A full copy of the Workers Rehabilitation and Compensation Amendment Act 2009 is available at the Australasian Legal Information Institute website at www.austlii.edu.au.

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