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LAWSON
RISK MANAGEMENT



NEWSLETTER

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Workers Compensation Changes are now Legislated

On the 17th June 2008, 125 legislative amendments to the Workers Rehabilitation and Compensation Act 1986 were passed in Parliament, assented to on the 23rd June and are to be progressively implemented from the 1st July 2008.

The changes are planned to reduce WorkCover SA's \$1b scheme debt and reduce the levy rate to be more competitive with other Australian states.

Major changes are as follows: -

Weekly payments to a disabled worker – The calculation takes into account average weekly earnings over the past 12 months, overtime where a pattern continues or removal if no pattern, salary sacrificing, non cash components and minimal entitlements provided under an industrial agreement. Weekly payments allows for adjustments due to working arrangements.

- Weekly payments from 0 to 13 weeks the worker is entitled to 100% of entitlement to weekly payments.
- Weekly payments from 14 to 26 weeks the worker is entitled to 90% of entitlement to weekly payments.
- Weekly payments from 27 to 130 weeks the worker is entitled to 80% of entitlement to weekly payments.

As at 1st April 2009, Weekly payments after 130 weeks will cease unless the worker has no current work capacity or likely to continue indefinitely with no work capacity.

Payments for Permanent serious injury – This section will be effective from 1st April 2009 and the regulations have not been released by the Government.

A threshold has been set at 5% for physical injury. It is anticipated that lump sums will remain much the same; except for death or exceptionally serious injuries where the prescribed sum has increased to \$400,000.

A more precise method of calculating lump entitlements will be introduced by "Medical Panels" referring to the American Medical Association "Guidelines of the Evaluation of permanent Impairment – 6th edition (with amendments).

Apprentices and trainees – Wages and superannuation paid to apprentices and trainees will be excluded from the calculation of employers' levy.

Redemptions – One-off final payments have been used in the past to finalise all aspects of workers compensation claims. This has been severely reduced and restricted to age 55 years, a limit of \$30 a week or in the best interests from a psychological and social perspective.

Cessation of weekly payments – Cessation of weekly payments will be 14 days for claims less than 52 weeks old and 28 days for older claims and implemented despite an appeal from the worker. However, an appeal can be quickly reviewed by the Ombudsman and in due course by the Conciliation / Judicial / Full Bench of the Workers Compensation Tribunal.

Provisional liability – As from 1st January 2009 – A claim must be determined with-in 7 days or provisional weekly payments will commence. Liability extends to 13 weeks of weekly payments and \$5,000 medical expenses. A formal determination will over-rule a provisional determination.

Rehabilitation Coordinators – As from 1st January 2009 Company based Rehabilitation Co-ordinators will require designated training to assist in the Return-to-work process of injured workers.

Retirement – Payments continue to a near retired worker for up to a 2 year period.

Availability of duties – The provision by Companies to offer appropriate duties to injured workers is critical to the success of the return-to work process and company liabilities.

Self-insured changes – The "one-in-all-in" rule has been included in the legislation. (Companies are either all registered with a claims agent or all self insured).

Visa Labour

Staff shortages inhibit the growth of any company and the failure to meet contractual or other deadlines. The solution on offer by the Federal Government is the increased availability of workers on 457 Visas.

This may seem attractive in the short term. There are however a number of challenging implications for the management system of your organisation. Failure to address these challenges will increase the risk profile of your business. Recent events in Victoria demonstrate clearly the impact on the safety of your workers and the 457 visa holders.

The South Australian Legislation is clear on the **Duty of Care** owed by the employer to their employees: -

S19 (1) (c) must provide such information, instruction, training and supervision as are reasonably necessary to ensure that each employee is safe from injury and risks to health.

And

*S19 (3) (c) provide information to the employer's employees (in such languages as are appropriate) in relation to health, safety and welfare in the workplace (including the names of persons to whom the employees may make inquiries and complaints about matters affecting occupational health, safety or welfare); and
(d) ensure that any employee who is to undertake work of a hazardous nature not previously performed by the employee receives proper information, instruction and training before he or she commences that work;*

The OHS&W Regulations 1995 provide further statements: see Regulation 1.3.4 and Regulation 1.3.5

The Victorian prosecution arose from two separate incidents involving two Chinese Nationals working utilising the 457 Visas at a Company. The company had engaged them through a labour hire firm.

In the first incident the employee while trying to remove a paper block and had his arm crushed in an unguarded printing machine. The crush injury has left the employee with a permanent incapacity in the use of the arm.

In the second incident, the employee broke his wrist, struck his head and chipped teeth when he fell from a ladder (working at heights). At the time of the injury he was performing electrical work for which he had no Australian qualifications to perform. The employee returned to work 5 days later and despite one of his hands being in plaster, he was provided with tasks requiring the use of two hands.

The Company was prosecuted under the Victorian legislation after pleading "guilty" and fined \$100,000.

The court found: -

- The employer paid little regard to the safety of the employees
- The situation was aggravated because they involved "vulnerable employees from a foreign country on limited work visa and with little understanding of the English language" (both spoke Mandarin)
- Inadequate induction of employees
- Not trained or instructed in duties or OHS requirements in Mandarin language.

The use of 457 Visa employees places on the HR and OHS management systems a number of requirements. If a company is recruiting in its own right; then the HR department's selection processes, it is suggested, must ensure: -

- Clear understanding of the skills and experience required to do the work
- The hazards that are involved in the job
- Ascertain the candidate's ability to speak, write and importantly comprehend English or, the capability of the organisation to manage a person with a language other than English as their first language. (This could mean that translation and interpretation services are required).
- That claims of skill or licences are verified against the Australian requirements.
- That adequate induction is performed not only for the organisation and HR matters such as wages but induction to the area in which the person is to work and the tasks they are to perform
- Adequate supervision is available and the Supervisor (s) are competent to manage a person whose first language is not English.

Visa Labour (cont'd)

In the Case of utilising a Labour Hire Firm to provide the labour required it is suggested that your company should: -

- Review the selection process for candidates.
- Review the methodology utilised for ascertaining the candidates English language skills and comprehension levels. (the company may still need translation and interpreter services)
- Review and obtain clear statements on the checking of visas and any skills or qualifications claimed. It is suggested the Labour Hire Firm should provide these in writing.
- If supervision is to be part of the Labour supplied this need to reviewed as to the expected levels of
- language and supervisory skills
- The provision of induction if provided by the Labour Hire company will need to be reviewed and monitored to assure the quality of the induction to your company. It is unlikely your company will be able to avoid the site and task inductions.
- The frequency and nature of the contact between the 457 visa workers and representatives of the Labour Hire firm. The skills and levels of competency of the Labour Hire Firm representative should also be checked.

Further information can be obtained by contacting Stewart Allan, Senior Consultant, Lawson Risk Management Services on Ph: 08 8210 2813.

Changes to Weekly Payments to a Disabled Worker for all New Claims Received on or after 1st July 2008

AVERAGE WEEKLY EARNINGS

The notional weekly earnings calculation has now been removed from the Workers Rehabilitation and Compensation Act 1986 as amended and replaced with "Average Weekly Earnings" (AWE).

In your claims manual/procedures you will need to replace the following:-

Calculation of average weekly earnings

Claims Manager

To determine an employee's average weekly earnings you will be required to view the previous 12 months preceding the date of injury. The figure should include overtime (if it is expected that the overtime would have continued). You should also take into account shift allowance, voluntary salary sacrifice for superannuation and non-cash components (e.g. if they had a car and the car was taken from them).

When a new claim is received (and lost time involved), relevant overtime should be established through a summary report of the employee's earnings for the previous 12 months (obtained from Payroll).

Overtime will only be included if they the overtime was expected to continue and the employee would have been expected to work the overtime.

If an employee has not been employed for more than 12 months then depending on the length of employment you have 3 options:

- If employed more than 3 months then average the 3 months of earnings; or
- Determine by reference to the average weekly amount being earned by other persons in the same employment with the same employer who perform similar work at the same grade as the worker; or
- Look at the employee's previous employment history and request a copy of their group certificate to determine average weekly earnings.

If an employee has other employment, the total earnings from all employment shall be considered when calculating the employee's average weekly earnings.

The Claims Manager will outline, detail and show the breakdown of the employee's average weekly earnings in the determination letter.

The Claims Manager will complete the average weekly earnings checklist.

Changes to Weekly Payments to a Disabled Worker for all New Claims Received on or after 1st July 2008. (Cont'd).

Payroll

If the employee was performing overtime and this overtime would have continued then a report will need to be printed out for the previous 12 months and attached to the claim form. If employed less than 12 months then a report can be provided for the previous 3 months.

Payroll is to advise the Claims Manager if the employee participates in a voluntary salary sacrifice for superannuation and provide a report to confirm the amount that has been sacrificed.

Weekly payments of compensation can only be paid to an employee following written confirmation from the Claims Manager.

FIRST YEAR REVIEW

First year review no longer exists and has been replaced with reduction to weekly payments after 13 weeks and 26 weeks.

In your claims manual/procedures you will need to replace the following:-

Claims Manager

First entitlement period means an aggregate period not exceeding 13 weeks (whether consecutive or not) in respect of which an employee has an incapacity for work and is entitled to the payment of compensation under this Act.

For any period when the worker has no current work capacity - the employee is entitled to weekly payments equal to the employee's average weekly earnings.

For any period when the worker has a current work capacity – the employee is entitled to weekly payments equal to the difference between the employee's average weekly earnings and the employee's designated weekly earnings.

Second entitlement period means an aggregate period not exceeding 13 weeks (whether consecutive or not) commencing after the end of the first entitlement period, (13 to 26 weeks) in respect of which a worker has an incapacity for work and is entitled to the payment of compensation under this Act.

For any period when the worker has no current work capacity - the employee is entitled to weekly payments equal to 90% of the average weekly earnings.

For any period when the worker has a current work capacity – the employee is entitled to weekly payments equal to 90% of the difference between the employee's average weekly earnings and the employee's designated weekly earnings.

Third entitlement period means an aggregate period not exceeding 104 weeks (whether consecutive or not), commencing after the end of the second entitlement period, (26 to 130 weeks) in respect of which a worker has an incapacity for work and is entitled to the payment of compensation under this Act.

For any period when the worker has no current work capacity - the employee is entitled to weekly payments equal to 80% of the average weekly earnings.

For any period when the worker has a current work capacity – the employee is entitled to weekly payments equal to 80% of the difference between the employee's average weekly earnings and the employee's designated weekly earnings.

Injury Management

You will need to add in an Average weekly earning checklist pro forma into the claims file for all lost time claims.

Further information can be obtained by contacting either Chris Lynch on 08 8210 2804 or Deirdre Black on 08 8210 2805.

Disclaimer

The purpose of this newsletter is to advise you of information that may be of interest to you and your company. We recommend that prior to implementing programs they are planned and implemented in a consultative manner.

While every effort has been made to ensure that the information contained in this newsletter is free from error and/or omissions, no responsibility can be accepted by Lawson Risk Management, its employees or any other persons involved in the preparation of this newsletter for any claim which may arise from any person acting on information contained herein.

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