

POLICY

WEEKLY COMPENSATION FOR SELF-EMPLOYED VOLUNTEERS

1. PURPOSE

To provide a fair and reasonable method of determining the weekly entitlement for self-employed volunteers who are incapacitated for work as a result of an injury that entitles them to compensation under to the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987.

2. DETERMINATION OF WEEKLY BENEFIT

Information Required

Once liability for the injury has been determined, in order to assess the weekly entitlements of self-employed volunteers the following information is to be provided by the claimant to WorkCover:

- Completed Statement of Claim for Time Lost by Self Employed Volunteers form;
- Documentation as required below for the Option (A, B or C) selected by the volunteer to enable calculation of the amount of the weekly compensation benefit to be paid
- Employment (Tax) Declaration Only Section A needs to be completed;
- Medical Certificate/s confirming capacity for work

Calculation of Weekly Benefit

Option A

- The claimant is to provide WorkCover with details of their “average weekly earnings” during the 12-month period prior to the date of injury. That information may need to be ratified by an accountant.
- WorkCover will nominate the most appropriate award that is to be utilised to determine the “current weekly wage rate” for the claimant. The award will reflect the type of work in which the claimant was engaged just prior to the injury.
- A comparison will be made of the values of the “average weekly earnings” and the “current weekly wage rate”.
- Should the “average weekly earnings” exceed the “current weekly wage rate” then those “average weekly earnings” will be payable.
- Should the “average weekly earnings” be less than the “current weekly wage rate” then the “average weekly earnings” will again be payable even though they are less than the “current weekly wage rate”.

At this point it should be noted that the terms “average weekly earnings” and “current weekly wage rate” are defined by the Workers Compensation Act 1987 and carry the same meaning in the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987.

Option B

- The claimant is unable to provide details of their “average weekly earnings” during the 12-month period prior to the date of injury.
- WorkCover will nominate the most appropriate award that is to be utilised to determine the “current weekly wage rate” for the claimant. The award will reflect the type of work in which the claimant was engaged just prior to the injury.
- The value of the “current weekly wage rate” will then be payable as the claimant’s weekly entitlement.

Option C

- The claimant has chosen to engage some other person to perform the work that they themselves would normally have done had they not have been injured.
- The claimant provides WorkCover with details of the type of work that the hired person is performing and the actual period that the person has been engaged.
- The claimant provides WorkCover with details of the weekly rate that the hired person is to be paid.
- WorkCover will nominate the most appropriate award that is to be utilised to determine the “current weekly wage rate” for the claimant. The award will reflect the type of work in which the claimant was engaged just prior to the injury.
- WorkCover will also nominate the most appropriate award that describes the type of work that the “hired hand” is performing.
- WorkCover will compare the values of the claimant’s “current weekly wage rate” (or the “average weekly earnings” if they are greater) and the weekly award rate that is to be paid to the hired person.
- Should the hired hand’s award rate be greater than the claimant’s own weekly rate then WorkCover will limit the weekly payment to that of the claimant’s current weekly wage rate (or the average weekly earnings if they are greater).
- Should the hired hand’s award rate be less than the greater of the claimant’s average weekly earnings and current weekly wage rate, then WorkCover will pay the amount that is represented by the hired hand’s award rate.

3. EXCEPTIONAL CIRCUMSTANCES

It is acknowledged that certain unforeseen scenarios may arise that are not adequately addressed by the above three options. Those instances will be specially considered in an effort to achieve a fair and reasonable resolution of the particular issue at hand.

Example 1 – Calculation of “average weekly earnings”.

When determining the value of the claimant’s “average weekly earnings”, the claimant’s earnings are averaged over the 12-month period prior to the date of injury. Occasions may arise where it can be shown that the utilisation of the 12-month period does not produce a just and equitable result. In those instances consideration will be given to the application of a longer period in order to reach a value that is truly representative of the claimant’s situation.

Example 2 – Replacement labour employed in excess of the award hours.

In some circumstances it is conceivable that due to the nature of the volunteer's business the replacement labour may be required for periods in excess of the normal award hours. For example, in lieu of the usual weekly award of 38 hours, the replacement labour may be required to work for say, 55 hours. This may be due to the fact that the claimant regularly works 55 hours per week to operate the business.

If neither of the above options can provide adequate compensation then consideration would be given to the application of the following alternative means of determining the weekly entitlement.

The claimant would be required to clearly establish the number of hours that were usually worked each week. If it were shown that those hours exceeded the normal award hours then consideration would be given to providing compensation for the equivalent hours.

Evidence of the actual rate that was being paid for the replacement labour would need to be provided by the claimant. That would be compared with the claimant's award rate and the lesser of these two rates would be paid to the claimant.

In this example, the claimant would need to clearly prove that the replacement labour was required for the claimed 55 hours per week. The hourly rate paid for the replacement labour would be compared with the claimant's award rate. The lesser of the two hourly rates would be utilised to calculate the weekly amount payable to the claimant. In this case the weekly amount would be calculated by multiplying the lesser hourly rate by 55 hours, i.e. simply a pro-rata of the weekly award without reference to penalty or overtime rates.

This procedure would place the injured volunteer in a comparable position to that which was experienced prior to the injury. It would also provide the claimant with the means of meeting the ongoing expenses of running his business.

4. INTERIM PAYMENT ARRANGEMENTS

In cases where liability has been accepted, interim weekly payments will commence immediately while the election of Option A, B or C and the necessary supporting information is being obtained by the claimant to be forwarded to WorkCover.

The actual weekly rate to be applied for the interim payment arrangement is determined by the application of Schedule 6, Part 4, Clause 7 of the Workers Compensation Act 1987, i.e. weekly wage rate where no award exists. This weekly rate is indexed biannually on 1 April and 1 October each year.

These payments are payable for a maximum period of 12 weeks.

So that the interim payment arrangements do not continue past 12 weeks the claimant is required to provide the election of Option A, B or C and the necessary supporting information within a reasonable timeframe. If the information is not supplied within 12 weeks Option B will be implemented as the method of calculating the amount of weekly compensation benefits to be paid.

STATEMENT OF CLAIM FOR TIME LOST BY SELF-EMPLOYED VOLUNTEERS

I
hereby declare that option ___ would most likely be applicable to my current financial
circumstances resulting from the injury of ____ / ____ / ____ while participating in an
authorised activity with _____

I submit the following documentation in support of my claim for WorkCover’s consideration.
(Please tick whichever is applicable to your claim)

- Financial business records from my accountant substantiating my average weekly earnings
of \$_____ calculated on a 12-month period immediately prior to the above date
of injury.
- A list of the duties I was engaged in just prior to the above date of injury.
- Copy of wage records showing hours worked, weekly rate of pay and list of duties of the
hired person performing my pre-injury duties.
- Medical certificate confirming my incapacity for work.
- Employment (Tax) Declaration form with Section A only duly completed.

_____ I _____ hereby solemnly and sincerely declare that the
foregoing particulars are true and correct in every detail, and I havenot withheld any information and
that the injuries I have received were caused in the manner stated above and in no other way
whatsoever.

And I make this solemn declaration by virtue of the provisions of the Oaths Act 1900.

Signature of claimant _____

TAKEN and declared at _____ on (date) _____

Before

Justice of the Peace/solicitor