



A-Z OF EMPLOYING

Accident Compensation

Our guide for Employers and Managers

**SUPPORTING,
FACILITATING &
REPRESENTING
BUSINESS**

Business**Central** 

Accident Compensation

Our guide for Employers and Managers

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This is only a guide.
It should not be a
substitute for
professional advice.

Please seek advice
from our AdviceLine
Team if you require
specific assistance.

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Overview

The accident compensation scheme set out in the Accident Compensation Act 2001 is administered by the Accident Compensation Corporation (“the Corporation”).

It provides victims of personal injury who are covered by the Act with treatment, weekly compensation and rehabilitation.

A work related personal injury may be suffered by an employee even if the injury was caused by the employee’s own misconduct.

Not every injury arising out of employment fits within the definition of a work-related personal injury to be covered by the Act.

Where a person suffers work-related personal injury and is incapacitated, they are entitled to receive the first week of compensation paid for by their employer.

After the first week of incapacity the Corporation pays the person weekly compensation until that person is rehabilitated to the point of vocational independence.

If an employee requires treatment for a work-related personal injury the employer has no obligation to pay for that treatment.

If you terminate the employment of an employee because of their incapacity, the Corporation cannot require you to reinstate the employee for the purposes of vocational rehabilitation.

Introduction

New Zealand has had a 24-hour no-fault accident compensation scheme since the first Accident Compensation Act came into force in April 1974. The current statute is the Accident Compensation Act 2001 (“the Act”). The emphasis of the Act is injury prevention, then injury rehabilitation, and finally compensation for injury. Previous Acts have placed greater emphasis on the compensation aspect of the scheme.

Definitions

It is very important to understand that the Accident Compensation Act 2001 provides an exhaustive definition for all of the terms below. The definitions provided by this Act are not interchangeable with the definitions provided by other legislation, such as the Health and Safety at Work Act 2015, and are not comparable to common-usage meanings. The definitions are, more often than not, only relevant to the Corporation which determines which fund will pay for a person’s entitlements under the Act.

Example (1):

An employee suffers a hand strain after working with a pneumatic drill for a week. That injury should be noted in your accident register as required by the Ministry of Business, Innovation and

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Employment (formerly the Department of Labour) (“the Ministry”). If that hand strain fits the definition of “serious harm” then the Ministry must be notified of its occurrence; this applies whether or not the hand strain was the result of an “accident”.

Whether or not the employee’s injury will be covered by the Accident Compensation Act 2001 will depend on the facts and if the Corporation accepts the claim. If the claim is accepted, it could then be categorised as either:

- ▶ Personal injury; or
- ▶ Work-related personal injury; or
- ▶ Personal injury caused by work-related gradual process, disease, or infection.

Whether or not the hand strain injury constitutes OOS (Occupational Overuse Syndrome) does not matter for the purposes of determining your obligations in respect of:

- ▶ First week compensation; or
- ▶ Accident / incident recording; or
- ▶ Notification of the occurrence of serious harm to the Ministry.

Example (2):

A volunteer, who performs work for a social agency delivering meals on wheels, is injured in a car accident while travelling between clients and suffers a broken thigh (femur), three broken ribs, and minor cuts and bruises to most of their upper body. For the purposes of the Health and Safety at Work Act 2015 the social agency is an “employer” in respect of the injured volunteer and the volunteer is an “employee”.

The accident happened to the “employee” in a “place of work” so the “employer” must firstly record, and secondly notify, the Department of the accident because it fits within the definition of “serious harm” under that Act.

The volunteer’s injury will be covered by the Accident Compensation Act 2001 but not as a “work-related personal injury”. While the volunteer was at any place for the purposes of their “employment” in common-usage sense and under the Health and Safety at Work act 2015, the volunteer was not entitled to receive “any amount that is treated as income from employment” as the Act requires. The volunteer’s injury is most likely to be categorised by the Corporation as a “motor vehicle injury”.

Note: The words highlighted below are words that are provided with a definition under the Accident Compensation Act 2001.

Work-related personal injury

A work-related personal injury is an injury that occurs to an employee (a person who either receives or is entitled to receive any amount that is treated as income from employment and which is subject

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to income tax) when they are at any place for the purposes of employment, including a place that itself moves or a place to or through which the employee moves; or that occurs to the employee when they are having a break from work for a meal or rest or refreshment at the place of employment. It is irrelevant to the determination that an injury is a work-related personal injury, that at the time of suffering the injury, the employee may have been:

- ▶ Acting in contravention of any Act or regulations applicable to their employment; or
- ▶ Acting in contravention of any instructions, or in the absence of any instructions; or
- ▶ Working under an illegal contract; or
- ▶ Indulging in, or the victim of, misconduct, skylarking, or negligence; or
- ▶ The victim of a force of nature.

A personal injury includes:

- ▶ The death of the employee; or
- ▶ Physical injuries to the employee, including for example, a strain or a sprain; or
- ▶ Mental injuries because of the physical injuries to the employee; or
- ▶ Mental injuries because of certain acts dealt with under the Crimes Act 1961 (sexual crimes) if the employee does not elect to have the personal injury regarded as a non-work injury; or
- ▶ Damage (other than wear and tear) to dentures or prostheses (not: hearing aids, spectacles or contact lenses) that replace a part of the human body; or
- ▶ Any degree of hearing loss that is 6% or more of binaural hearing loss caused by a personal injury described in section 20(2) of the Act.
- ▶ A cardio-vascular (cardio = heart; vascular = blood vessel) or cerebro-vascular (cerebro = brain) episode (most commonly, heart attacks and strokes) if it is caused by physical effort or physical strain experienced by the employee in the course of employment. The effort or strain must have been excessive or abnormal for the employee; even if it may not have been excessive or abnormal for any other person.

A motor vehicle injury is an injury involving a stationary or moving motor vehicle:

- ▶ That occurs to the employee when they are at any place for the purposes of employment including a place that itself moves or a place to or through which the employee moves; or
- ▶ That occurs to the employee when they are having a break from work for a meal or rest or refreshment at the place of employment.

This type of injury is defined as a work related motor vehicle injury rather than a work related personal injury.

- ▶ A gradual process, disease, or infection (the date on which an employee is regarded as having suffered this category of work-related personal injury is either the date on which they first received treatment from a registered health practitioner for that personal injury

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or the date on which the personal injury resulted in their incapacity; whichever is the earlier) caused by either:

- ▶ Exposure to agents, dusts, compounds, substances, radiation or things in employment and the disease contracted by the employee or former employee is an occupational disease as specified in Schedule 2 of the Act.
- ▶ The performance of an employment task or employment in an environment that has a particular property or characteristic and that is (or contributes to) the cause of the personal injury. The particular property or characteristic need not have been present throughout the whole of the period of employment. The person will have cover even if the particular property or characteristic is present in both employment and non-employment tasks/activities or environment. For injuries which occurred between 1 August 2008 and 30 June 2010 it needs to be more likely that the injury was caused by the employment tasks or environment, rather than the non-employment activities or environment. However, even if it is established that the personal injury was caused by employment tasks or environment, the Corporation may decline the claim if the Corporation establishes that the risk of suffering the injury is not significantly greater for persons who are exposed to the task or environment in employment than it is for persons who are not. The Corporation is required to meet the cost of an investigation into any claim made. For injuries occurring before 1 August 2008, or after 1 July 2010, the property or characteristic causing the accident must not be found to any great extent in the employee's non-employment activities or environment. It must be shown that the risk of suffering the gradual process injury is significantly greater for persons who perform that employment task than for persons who do not, or is significantly greater for persons who are employed in that type of environment than for persons who are not.
- ▶ A personal injury resulting from treatment for a work-related personal injury (as defined above) which includes physical rehabilitation, cognitive rehabilitation and medical examinations.

Personal injury that is both work related and motor vehicle injury

An injury is a work related personal injury when the injury falls within the work related personal injury and motor vehicle injury definitions and happens:

- ▶ At the start or finish of the day's work when employees are being driven by their employer, or by another employee at the direction of the employer, or in employer-provided transport; or
- ▶ When the employee is travelling by the most direct practicable route (a route that does not include unreasonable deviations or interruptions and journeys for purposes unrelated to the employment or the treatment) between the workplace and some other place to obtain treatment for a work-related personal injury.

Note: The phrase "any place for the purposes of employment" is not the same as either "place of employment" defined by this Act, or "workplace" as defined by the Health and Safety in at Work

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Act 2015. However an employee who was injured in a “place of work” may have also been at “any place for the purposes of employment” and a “place of employment”.

Mental injury

Means a clinically significant behavioural, cognitive, or psychological dysfunction.

Work related mental injury

A work related mental injury suffered by a person at work on or after 1 October 2008 will be covered if the mental injury is caused by a single event that the person experiences, sees, or hears directly. That means the person is involved in, or witnesses the event himself or herself, and is in close physical proximity to the event at the time it occurs.

- ▶ The event must be one that could reasonably be expected to cause mental injury to people generally and must occur in New Zealand, or outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs.
- ▶ ‘Event’ is defined in the Act as being an event that is sudden, or a direct outcome of a sudden event. It includes a series of events that arise from the same cause or circumstance, and together comprise a single incident or occasion, but does not include a gradual process.

Occupational disease

Means a disease that is described in Schedule 2 of the Act.

Employment

Means work engaged in or carried out for the purposes of pecuniary gain or profit and in the case of an employee, includes a period of paid leave other than paid leave on the termination of employment (an entitlement of annual holidays that is deemed to run from the date of termination).

Impairment

Means a loss, loss of use, or derangement of any body part, organ system, or organ function.

Incapacity

- ▶ The employee is unable, because of the personal injury, to engage in employment in which they were employed when they suffered the personal injury.

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- ▶ Includes absence from employment in order to get treatment for personal injury if the treatment is necessary for the injury and the treatment is for rehabilitation, both social and vocational.

First week of incapacity

Means the period starting:

- ▶ In a case where there are separate periods of incapacity resulting from the same personal injury, on the day on which the initial period of incapacity commences; or
- ▶ In any other case, on the day on which an incapacity resulting from a personal injury first commences; and
- ▶ Ending with the close of the sixth day after that day.

Ordinarily resident in New Zealand

Means a person who:

- ▶ Has New Zealand as their permanent place of residence (which means the person has been personally present in New Zealand for a period or periods exceeding in total 183 days in the 12-month period immediately before last becoming absent from New Zealand); and
- ▶ Is either:
 - A New Zealand citizen; or
 - Holds a Residence Class Visa granted under the Immigration Act 2009; or
 - A spouse, child or dependant of any person who fits one of the above and who generally accompanies that person; or
- ▶ A person does not cease to have a permanent place of residence in New Zealand because he or she is absent from New Zealand primarily in connection with the duties of their employment (and for up to six months following the completion of the period of employment) and the remuneration they receive is treated as income derived in New Zealand for income tax purposes and they intend to resume a place of residence in New Zealand.

Practicable

In relation to rehabilitation, means practicable after considering and balancing:

- ▶ The nature and the consequences of the injury; and
- ▶ The achievement of rehabilitation outcomes; and
- ▶ The costs; and
- ▶ The cost effectiveness; and
- ▶ The availability of other forms of rehabilitation; and
- ▶ Any other relevant factors.

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Registered health professional

Means a temporarily or permanently registered or certified person acting in accordance with any conditions of such temporary or permanent registration or certification, and who is a:

- ▶ Chiropractor, clinical dental technician, dental technician, dentist, medical laboratory technologist, medical practitioner, medical radiation technologist, midwife, nurse, occupational therapist, optometrist, pharmacist, physiotherapist, podiatrist.

Vocational independence

Means in relation to the injured employee, the employee's capacity to engage in work for which they are suited by reason of experience, or training, or both, and for 30 hours or more a week.

Cover Under the Act and Entitlements

Cover

Cover under the Act means that the personal injury that a person has suffered is covered by the Act. It does not necessarily mean that the person will be entitled to any of the entitlements described and provided for, by the Act.

If a person suffers a personal injury that is covered by the Act then that person may not bring proceedings (legal action) independently of the Act for damages arising directly or indirectly out of that personal injury, however this is subject to some exceptions. It is possible for an employee who the Corporation accepts as having suffered a work-related personal injury to:

- ▶ Pursue a personal grievance under the Employment Relations Act 2000;
- ▶ Pursue proceedings for exemplary damages for a personal injury;
- ▶ Pursue proceedings related to or arising from:
 - ▶ Any damage to property; or
 - ▶ Any express term of any contract or agreement (including employment).

It should be noted however, that an employee cannot be compensated for the same personal injury more than once. Cover extends to personal injury that occurs outside New Zealand. If you have employees who travel overseas for work and perform work overseas, they are covered by the accident compensation scheme if they are ordinarily resident in New Zealand and as if the personal injury had been suffered in New Zealand.

ACC as a no fault scheme

Recent changes to the Sentencing Act 2002 bring into question whether ACC is a completely no fault scheme. The Supreme Court in 2009 ruled that reparation could not be ordered for earnings lost due

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to an injury, even if ACC compensation did not meet the full extent of the loss. However the Sentencing Amendment Act 2014 has overturned that decision. Under the amendment Courts will now be able to order reparation to top-up any shortfall in a victim's ACC compensation. Shortfalls include the 20 percent of wages not recoverable under ACC compensation, any shortfall in earnings if the ACC compensation has been calculated on artificially low earnings, and the shortfall if a claimant's weekly earnings exceed the maximum weekly compensation under ACC.

This is relevant for employers who are found liable under the Health and Safety at Work Act 2015 for workplace injuries resulting in an employee needing time off work. The employer could be made to top up the weekly compensation to address any of the above shortfalls. The amendment came into effect on 6 December 2014.

Entitlements

The entitlements provided by the Accident Compensation Act 2001 are:

- ▶ Rehabilitation, comprising treatment, social rehabilitation, and vocational rehabilitation;
- ▶ First week compensation;
- ▶ Weekly compensation;
- ▶ Lump sum compensation for permanent impairment;
- ▶ Funeral grants, survivors' grants, weekly compensation for the spouse, children and other dependants of a deceased person, and child care payments;

Disentitlements

The Corporation is not liable to provide statutory entitlements for personal injury caused by a work-related gradual process, disease, or infection:

- ▶ If the injury was suffered before 1 April 1974 and the claimant had, prior to 1 April 1993, commenced any proceedings relating to the personal injury other than under the current Act and had received or is entitled to receive, any sum of money as a result of the proceedings; or
- ▶ If the gradual process injury was suffered before 1 April 1974 and the claimant received a sum of money, whatever the amount, by way of damages, compensation, or settlement of any claim other than under the current Act.

Employer's Obligations

First week compensation

Employers are liable to pay first week compensation when an employee suffers:

- ▶ A work-related personal injury including a motor vehicle injury; and

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- ▶ A motor vehicle injury that is defined as a motor vehicle injury that is also a work-related personal injury.

Employers have a duty to pay this compensation, which is 80% of the amount of earnings as an employee lost by the employee, as a result of the incapacity, during the first week of incapacity. There is a presumption that the earnings an employee loses as a result of the incapacity is the difference between:

- ▶ The employee's earnings in the 7 days before the incapacity commenced, and
- ▶ The employee's earnings in the first week of incapacity.

The presumption about an employee's lost earnings may be rebutted. If the employee in the 7 days prior to the incapacity was rostered off or worked part-time, then the amount of lost earnings will be artificially low. You may determine the amount of lost earnings yourself, however you may be liable (a fine not exceeding \$500) for an offence under the Act if you fail to pay all the first week compensation to which the employee is entitled.

An option available to you is to apply the calculations that the Corporation applies, which is:

- ▶ The employee's earnings as an employee in the 4 weeks immediately before the incapacity commenced; divided by
- ▶ The number of full or part weeks during which the employee earned those earnings as an employee in those 4 weeks.

The duty is to pay all the first week compensation to which the employee is entitled. If your employee is employed elsewhere and by some other organisation other than yours and as a result of the accident the employee loses earnings from that employment, those earnings are part of the earnings lost by the employee as a result of the incapacity.

Before paying first week compensation you may require your employees to meet reasonable requirements as to the production of proof of either their work-related personal injury. This will usually be the Accident Compensation Claim form or a medical certificate provided by the registered health professional who first provided the employee with treatment for the injury. However, it may be a medical certificate provided by a registered health professional at your expense if you require independent evidence that the injury in question is work-related.

Public holidays

If a public holiday falls on an otherwise working day for the employee in the first week of incapacity for which you are required to pay first week compensation, then you must treat that day as part of their lost earnings for which the employee is entitled to be paid. Because the payment for that day is part of the lost earnings calculation, it too, is subject to the 80% rate. If an employee is on ACC weekly compensation the Corporation will pay the employee for any public holiday that falls on an otherwise working day for the employee.

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Sick leave

Section 71 of the Holidays Act 2003 states that an employer is not required to pay an employee sick leave for the time the employee is being paid ACC compensation and must not require an employee to take sick leave for the employer paid first week of compensation or any week when the employee is receiving ACC compensation. However, if an employer pays the difference between the employee's first week compensation or weekly compensation and ordinary weekly pay, the employer may agree with the employee that he or she may deduct from the employee's current sick leave entitlement 1 day for every 5 whole days that the employer makes that payment.

When an employer is not liable for the first week of compensation because an employee suffers an injury that is not a work-related injury, the employee may elect to take their sick leave and use it in the first week of incapacity.

Weekly compensation

Weekly compensation is calculated and paid by the Corporation to a person who suffers personal injury that is covered by the Act, and, who is incapacitated and loses earnings as a consequence of that incapacity. The decisions in respect of incapacity are made by the Corporation in consultation with the assessing registered health practitioner(s) and any other professional, technical or specialised people it considers appropriate. Employers have no obligation in respect of weekly compensation other than to provide the Corporation with information about employees' income as requested. You should be aware that the Corporation has the ability to swap information with the Inland Revenue Department.

Treatment costs

The Corporation has an obligation to pay the cost of treatment in some circumstances. Employers, even in the event of work-related personal injury, are not liable for the treatment costs of their employees.

If you as an employer decide to pay the cost of treatment for an employee who suffers a work-related personal injury then before you do so, and set a precedent, you may want to consider how much you are prepared to pay and for how long. Sometimes on entering into an agreement to pay an employee's medical expenses it is not possible to foresee how much those expenses will add up to and how long the employee will be unable to work for.

Lump sum compensation for permanent impairment

The Corporation administers these payments. Eligibility depends upon an assessment establishing a degree of whole-person impairment of 10% or greater. Employers have no obligations in relation to these payments.

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Annual holidays

Under section 16 of the Holidays Act 2003, continuous employment includes any period an employee on is ACC compensation therefore their entitlement to annual holidays continues to accrue while they are absent from work on weekly compensation under the accident compensation scheme. Refer to the A-Z guide on Annual Holidays for information about how holiday pay for annual holidays must be calculated in these circumstances.

Individual rehabilitation plans

Within 13 weeks of accepting an injured employee's claim for cover under the Act, the Corporation must determine whether or not a social or vocational rehabilitation will be necessary after the 13 weeks is up (whether or not the cover is for a work-related personal injury). If the Corporation decides that such rehabilitation will be necessary, then it must prepare an individual rehabilitation plan in consultation with the injured employee. Once that plan is agreed, then the Corporation must provide rehabilitation in accordance with the plan. An individual rehabilitation plan identifies:

- ▶ The injured employee's needs for rehabilitation (social and vocational); and
- ▶ The assessments that need to be done; and
- ▶ The appropriate services to meet those needs; and
- ▶ Which of the services so identified, that the Corporation will pay for or contribute to.

Vocational rehabilitation

The Act provides that where a person has cover for personal injury, then the Corporation will be liable to provide entitlements to that person. The primary entitlement is rehabilitation, which comprises treatment, social rehabilitation and vocational rehabilitation. The purpose of vocational rehabilitation is to help an injured employee to:

- ▶ Maintain employment; or
- ▶ Obtain employment; or
- ▶ Regain or acquire vocational independence.

Where the Corporation decides that it is reasonably practicable to return an injured employee to the same employment in which the employee was engaged prior to their incapacity, then the Corporation must give the employer written notice of that decision. Employers then have an obligation to take all practicable steps to assist an employee with their vocational rehabilitation under their individual rehabilitation plan. If you have terminated the employment of an injured employee when the Corporation makes this decision, you do not have any obligation to re-employ that employee. Previously the Corporation could not provide vocational rehabilitation for longer than three years. However since the 2008 amendment to the Act, the corporation now has discretion to extend the three year limit.

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Termination of Employment

While an employee is on ACC they remain employed despite their absence. An employer should maintain regular contact with the employee to keep updated on their progress and their expected date of return to work. When an employee has been incapacitated and unable to attend work for an extended period of time due to an injury an employer may have to assess the employee's on-going employment with the Company. An employee should first be given a reasonable opportunity to recover and any decision to terminate their employment should be based on the business need to replace that employee. For further information, please refer to the section on Incapacity/Long Term Illness in the Employer Guide on discipline and termination and contact the AdviceLine Team or your Business Central Employment Relations Consultant for further advice.

Cover for Non Work-Related Personal Injury

If an employee suffers a non-work related personal injury and needs time off work because of it, the employer is not required to pay first week compensation. Time off in the first week of incapacity would be covered by sick leave if the employee has entitlement. If the Corporation accepts the employee's claim, the Corporation will pay the employee 80 percent compensation for time off due to the injury after the first week.

Employer Liability Outside the Act

Mental injury, unless it is caused by physical injury, or is a work related mental injury (see page 7 above) is not covered by the Act. Legal proceedings can be taken for a personal injury which the Act does not cover therefore a stand-alone mental injury is actionable. However, the success rate of an action for a mental injury arising out of employment is poor. Very few employers have been successfully sued, either by way of personal grievance or damages at common law for mental injury. Further, very few employers have been successfully sued outside the cover of the Act for personal injury that was physical. The legal threshold for exemplary damages is very high and very few cases would meet that threshold.

Claims Process

Claims can be made personally or a treatment provider can lodge the claim on the injured person's behalf. A claim can be lodged whether an injury is work-related or non-work-related. The employee does not have to inform the employer that an injury accident has occurred. However the real likelihood of apparently quite minor accidents having more serious outcomes means all employers should require their employees, as a term of their employment agreement, to report every workplace accident to their employer or manager.

Claims must be lodged within 12 months of the date on which a claimant (injured employee) suffers a personal injury, or in the case of a claim for an entitlement, within 12 months of the date on

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which the need for the entitlement arose. However, the Corporation must not decline a claim lodged after these time limits unless lateness prejudices its ability to make decisions. Every claim decision must be made on reasonable grounds and in a timely manner. If the Corporation accepts a claim, it will provide the injured person with information about entitlements.

A claimant may be required to provide a certificate from a registered health professional and/or undergo a medical assessment at the Corporation's expense.

Special provisions apply in respect to complicated claims, defined as those relating to mental injuries caused by certain criminal acts, gradual process injuries, treatment injuries and claims lodged later than the specified 12-month period. If faced with such a claim you should seek advice from your Business Central OH&S Consultant.

Code of ACC Claimants' Rights

The Act provides for a Code of ACC Claimants' Rights. This code was developed in 2002 so that claimants can know what they can reasonably expect when dealing with the Accident Compensation Corporation. A claimant who wants a review will be able to use the dispute resolution procedures set out in the Act. The Code's rights and obligations are additional to any other claimant rights or Corporation obligations. They do not affect claimants' entitlements or responsibilities under the Act itself, under any other enactment, or under the general law. The Code applies both to the Corporation itself and to accredited employers under ACC's Partnership Programme in their dealings with accident compensation claimants. You can obtain a copy of the Code of ACC Claimants' Rights at: ACC Publications

Dispute Resolution

Decisions that can be reviewed

An injured employee (or any claimant) may apply to the Corporation for a review of any:

- ▶ Decision on a claim; or
- ▶ Delay in processing a claim considered unreasonable.

An employer may apply to the Corporation for a review of its decision that an injury is a work-related personal injury suffered during employment with that employer. An employer may not apply to the Corporation for a review of its decision about entitlements provided or to be provided to an employee who has suffered a work-related personal injury.

A levy payer (including an employer) may apply, within three months of notification, for a review of a Corporation determination regarding the levy paid or payable. A levy payer is not entitled, for Income Tax Act 1994 purposes, to seek a review of the calculation of someone's taxable income. A

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registered health professional or organisation may apply for a review of a Corporation decision that it contributed to a treatment injury.

How to apply for a review

Review applications must be:

- ▶ Made in writing, wherever practicable on a form provided by the Corporation; and
- ▶ Identify the decision or decisions, to which they relate; and
- ▶ State the grounds for the application; and
- ▶ State the relief sought (if the applicant knows this); and
- ▶ Made within three months of the date of a decision reached because the Corporation has failed to meet statutory time limits (when an injured employee is automatically considered to have cover); or
- ▶ Made within three months of the injured employee receiving the Corporation's notice regarding a claim; or
- ▶ Made within three months of the injured employee being notified of a decision under the Code of Claimants' Rights.

A review application relating to a claim for entitlement cannot be made until at least 21 days have passed since the entitlement claim was made. In all cases, late review applications will be accepted if the applicant:

- ▶ Was so affected or traumatised by the personal injury giving rise to the review as to be unable to consider his or her review rights; or
- ▶ Made reasonable arrangements for the application to be made by an agent but the agent unreasonably failed to ensure it was made on time; or
- ▶ Was not notified by the Corporation of the obligations of someone making an application.

Once a review application is received

The Corporation must acknowledge review applications and explain that the reviewer will be deemed to have made a decision in the applicant's favour if a hearing date has not been set within three months of it receiving the application and the applicant did not cause or contribute to the delay. The Corporation must also explain that a review decision binds both the applicant and the Corporation, any person who the decision states has a responsibility under the Act (such as an employer, where the applicant is an employee), and any other party to the review. The decision will apply as from the date the review application was received by the Corporation.

A claimant who is not an applicant cannot lose cover because of a deemed review decision unless he or she caused or contributed to the delay. So even though an employer applicant receives a favourable "deemed" review decision, a claimant employee will still retain cover provided there was no delay on the employee's part. The Corporation is not liable to provide entitlements as the consequence of a deemed review decision other than those that can be provided under the Act.

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The Corporation must allocate a reviewer as soon as possible after receiving an application, even if it considers that in the circumstances there is no right to a review. Reviews are conducted in accordance with relevant provisions of the Act and with the principles of natural justice, and are held at a time and place agreed to by all parties to the application. Reviewers can admit any relevant evidence from anyone entitled to be present and heard whether or not the evidence would be admissible in a court of law.

The hearing must be held at a time and place agreed to by all parties to the application and by the reviewer. Everyone entitled to be present and heard should be notified at least seven days prior to a hearing. Where the applicant is an injured employee, this will include the employer. Those entitled to be present at a review hearing with a representative, if they want to be are:

- ▶ The applicant and the Corporation;
- ▶ A registered health professional or organisation whose inaction or action is the basis for a claim for treatment injury;
- ▶ A registered health professional or organisation (as above) where the applicant is a treatment provider;

Or, if the review relates to a decision to accept or decline cover for a work-related personal injury:

- ▶ The claimant,
- ▶ The claimant's employer, and
- ▶ In the case of a gradual process claim, any employer whose name the reviewer receives from the claimant, from the claimant's employer, or from the Corporation (Any other employer or former employer of the claimant is to be given seven days' notice of the hearing.)

The reviewer must either:

- ▶ Dismiss the application, or
- ▶ Modify the Corporation's decision, or
- ▶ Quash the Corporation's decision, or
- ▶ Direct that a decision be made within a timeframe specified by the reviewer, if the Corporation has not made a decision in a timely manner, or
- ▶ Make a decision for the Corporation if it has not made a decision in a timely manner.

If the decision is quashed, the reviewer must either provide a substitute decision or direct the Corporation to make the decision again as directed by the reviewer. A reviewer is deemed to have made a decision in an applicant's favour if the Corporation has received a review application but has not set a hearing date within three months of receiving the application.

Costs on review

The Corporation must meet all the costs a reviewer incurs in conducting a review. Applicants who have a decision fully or partly in their favour must be awarded costs and expenses, whether or not there is a hearing. Costs and expenses may also be awarded to unsuccessful applicants if the

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reviewer considers an applicant acted reasonably in applying for a review. A reviewer may, but need not, award costs and expenses to any person other than the applicant in whose favour a decision is made.

If following a review application, the Corporation revises its decision fully or partly in favour of the applicant before the review is heard, the Corporation must award the applicant costs and expenses. The Corporation must pay any costs and expenses awarded within 28 days.

Appeals

Who may appeal

Employers may appeal to the District Court against a review decision that an injury was a work-related personal injury. In the case of a gradual process injury, any employer entitled to be present and heard at a review hearing may appeal any decision that the injury was work-related. As costs and expenses awards can be appealed by “any affected person” employers have the right to appeal against them.

Employees, and the Corporation, may appeal review decisions, including awards of costs and expenses, except where these relate to a decision by the Corporation under the Code of Claimants’ Rights on a complaint by the claimant. Registered health professionals and organisations may appeal decisions relating to treatment injuries.

Bringing an appeal

A notice of appeal must be filed in the prescribed form within 28 days of a reviewer giving an appellant a copy of the review decision. The District Court has discretion to allow a longer time for filing.

The time and place for a review is fixed by the Court Registrar and notified to the appellant and to persons who were entitled to be present and heard at the review hearing. Anyone with a right to be heard may ask the Corporation for any of the items the Act requires it to provide to the Registrar - a copy of the decision appealed against, the record of the review hearing, documents and exhibits relating to the review, and any notes or directions of the reviewer.

The District Court may hear any evidence it thinks fit whether admissible in a court of law or not. Appeals may be dismissed, or the Court may modify or quash the review decision. If the decision is quashed, the Court must indicate what the effect of this will be.

Further appeals

Appeals to the High Court must be made within 21 days of the District Court’s decision. These, and subsequent appeals to the Court of Appeal are but are confined to questions of law.

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Monetary Entitlements

Claimant's responsibilities

A claimant who has received any entitlement, if reasonably asked to so by the Corporation, must:

- ▶ Provide a certificate from a registered health professional or treatment provider,
- ▶ Provide any other information required,
- ▶ Authorise the Corporation to obtain medical and other information relevant to the claim,
- ▶ Be assessed, at the Corporation's expense, by a registered health professional specified by the Corporation,
- ▶ Undergo assessment at the Corporation's expense,
- ▶ Co-operate with the Corporation in the development and implementation of an individual rehabilitation plan, where necessary,
- ▶ Have present and likely capabilities assessed for rehabilitation purposes, at the Corporation's expense,
- ▶ Participate in rehabilitation,
- ▶ Provide a written statement about any matters relating to any entitlement (The Corporation may ask for this in the form of a statutory declaration).

Weekly compensation

Weekly compensation is payable to any eligible person who was an earner when the personal injury was suffered or who was on unpaid parental leave. To determine eligibility the Corporation must decide whether the injured employee cannot, because of the injury, continue to do the work he or she was doing when the injury occurred. An employee who cannot continue is considered "incapacitated" for employment.

This also applies to self-employed people and to anyone who has applied to purchase weekly compensation while still employed, or within one month of ceasing employment, to cover a period when not employed, as anyone continuously employed for the previous 12 months is entitled to do. In determining incapacity, the Corporation must consider a registered health practitioner's assessment. It may also obtain professional, technical, specialised, or other advice from some other appropriate person.

The Corporation may from time to time reconsider the situation of an employee who is receiving weekly compensation. If it decides the employee is no longer incapacitated, entitlement to weekly compensation will be lost three months after the Corporation has notified the employee of its decision.

Entitlement where claimant no longer employee

A claimant who is no longer employed will, for a short time, be deemed to be an employee for the purposes of entitlement to weekly compensation. That period is the longer of:

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- ▶ 28 days from the date of ceasing to be an employee, if employed within 28 days before the incapacity commenced and would have been employed within 3 months of the incapacity commencing, but for the incapacity; or
- ▶ The period for which the earner levy is payable on earnings to which there is entitlement when employment ceases (i.e. outstanding holiday pay). Here the “employee” is deemed to be deriving earnings at the same rate as immediately before employment ceased.

In the case of seasonal employment, appropriate entitlements will be available if the claimant:

- ▶ Would have been an employee within 12 months of the incapacity commencing, and
- ▶ Was employed by the same employer in the two seasons prior to incapacity.

The employer must confirm that the claimant had a reasonable expectation of re-employment in the season following the commencement of incapacity. In the above situations, the start of incapacity for weekly earnings calculation purposes is deemed to be the last date of employment although entitlement will run from the date of injury. The employer has no obligation to pay first week compensation but the Corporation will subsequently pay weekly earnings compensation, if required. Payments will come from the Work Account, Motor Vehicle Account, or Treatment Injury Account, depending on circumstances.

For an employee on parental leave any personal injury incapacity is deemed, for calculation purposes, to date from the day on which the leave began. This means that a claimant is entitled to weekly compensation for loss of earnings equivalent to what was earned immediately before going on leave. However, the commencement date for entitlement to payment is the date on which the claimant would otherwise have been required to return to work when the leave period ends. In other words, no earnings-related payment is available for the leave period itself unless the personal injury is a motor vehicle, treatment, or work-related personal injury.

Treatment costs

The Corporation must pay the cost of treatment necessary to restore an injured employee’s health to the maximum extent practicable but must first agree what treatment will be provided. Without prior agreement, the Corporation is not liable to pay treatment costs, except in the case of an emergency where acute treatment is required.

Treatment must be necessary and appropriate and of the required quality. It must be carried out at an appropriate time and place, by a qualified person who normally does provide that kind of treatment, but not for any longer time than is necessary to restore health.

In deciding whether or not to pay for treatment, the Corporation must take into account the nature and severity of the injury and what, in New Zealand, is the generally accepted treatment for an injury of that kind. It must also consider any other available options, together with the cost of the usual means of treatment and that of other options, compared with the likely benefit to the injured employee. The Corporation must pay for any ancillary service that will assist an employee to obtain treatment. The term “ancillary service” covers things like accommodation, transport, escort for treatment, prescribed pharmaceuticals, and laboratory tests.

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The Corporation may ask injured employees to supply information about their injury and about the treatment they want and unless the information is provided, may refuse to pay the costs of treatment. It must not, however, refuse to pay because the injured employee declines to pay any part of the treatment provider's fee that the Corporation is liable to pay, or because the injured employee has not agreed to go to a particular treatment provider.

Lump sum compensation for permanent impairment

Lump sum compensation payments relate only to injuries suffered after 1 April 2002 and are not payable for an injury suffered before that date, or for the subsequent consequences of such an injury. Lump sum compensation will be payable if the claimant has cover under the Act, has survived the injury for not less than 28 days, and is alive when an assessment for eligibility purposes is carried out.

Eligibility depends on an assessment establishing a degree of whole-person impairment of 10% or more. Payments currently range from \$2,500 for 10% impairment to \$100,000 for impairment of 80% or more but could change in the future, since they are indexed to the Consumer Price Index.

In relation to work-related gradual process injuries, there is no entitlement to a lump sum payment if one of the following dates preceeded 1 April 2002, and is the date on which:

- ▶ The person last performed the particular task or was employed in the particular environment;
- ▶ Treatment was first received for that particular personal injury.

Someone who suffers a mental injury caused by an act to which the Crimes Act applies is not entitled to lump sum compensation if the criminal act last occurred before 1 April 2002.

Rehabilitation

Anyone (including an injured employee) suffering a personal injury for which he or she has cover is entitled to rehabilitation provided by the Corporation to assist in restoring health, independence, and participation, to the maximum extent practicable. At the same time, individuals, to the extent practicable having regard to the consequences of their particular injury, are responsible for their own rehabilitation.

Individual rehabilitation plans

Within 13 weeks of accepting an injured employee's claim for cover, the Corporation must determine whether a social or vocational rehabilitation plan will be necessary after the 13 weeks are up. If so, the Corporation must prepare an individual rehabilitation plan in consultation with the injured employee (or any other claimant).

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The Corporation must provide an injured employee with information about:

- ▶ Rehabilitation to which there may be an entitlement, and
- ▶ The plan development process, and
- ▶ The employee's right to have a representative involved in preparing the plan, and
- ▶ The Corporation's right to require an assessment of vocational independence when vocational rehabilitation is completed, and the potential consequences of such an assessment (that is, where the plan includes vocational rehabilitation), and
- ▶ The potential consequences of agreeing to the rehabilitation plan.

In preparing an individual rehabilitation plan the Corporation must assess the need for rehabilitation to assist in restoring independence, maintaining or obtaining employment, or regaining or acquiring vocational independence. The plan itself must:

- ▶ Identify rehabilitation needs,
- ▶ Identify the assessments to be done,
- ▶ Identify the service or services appropriate to needs, and whether the Corporation is liable to provide any or all of these, and
- ▶ Specify which services the Corporation will provide, pay for, or contribute to.

The Corporation must assess whether there is a need for social and vocational rehabilitation but does not have to assess a need solely related to maintaining employment. Even though an injured employee does not agree to a plan, the Corporation can advise that the plan has been finalised and is to be regarded as if the employee had agreed to it. When finalised, the Corporation must implement the plan, although the injured employee can seek a review of its decision. The Corporation and the employee may also agree to modify the plan. To the extent that they are willing and able to do so, the following persons must be given the opportunity to participate in the preparation and costing of a plan (although costs of preparation are met by the Corporation):

- ▶ The injured employee,
- ▶ Any registered health practitioner who is providing treatment,
- ▶ Any employer or potential employer.

The Corporation must provide rehabilitation in accordance with any agreed individual rehabilitation plan but only to the extent that it has specified which services it will provide. Individual rehabilitation plans must be updated from time to time to reflect the outcome of an employee's progress, based on assessments that have been carried out. Social and vocational rehabilitation (see below) may be provided before any assessment of entitlement has been undertaken or completed or before the Corporation starts or concludes its consideration of the matters it must otherwise take into account in considering whether to provide vocational rehabilitation. In other words, social and vocational rehabilitation may be begun before the Corporation has complied with official requirements.

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Vocational rehabilitation

The purpose of vocational rehabilitation is to help an incapacitated employee maintain employment, obtain employment, or regain or acquire vocational independence. The employment must be suitable for the particular employee and appropriate to the employee's levels of training and experience (an injured pianist cannot be expected to work in a factory).

The Corporation must provide vocational rehabilitation to an employee who has suffered a workplace injury and is entitled to weekly compensation, or who, without vocational rehabilitation, is likely to be entitled to weekly compensation, or who is on parental leave. Vocational rehabilitation must be provided for the minimum period to achieve its purpose, although not for longer than three years (and not necessarily consecutive years). An assessment of an injured employee's vocational rehabilitation needs must consist of:

- ▶ An initial occupational assessment to identify appropriate types of work, and
- ▶ An initial medical assessment to determine whether the types of work identified are, or are likely to be, suitable for the injured employee from a medical point of view.

Assessors who carry out assessments must be people the Corporation considers have the necessary qualifications and experience to do so.

Matters considered in providing vocational rehabilitation

In deciding whether vocational rehabilitation is appropriate to achieve its purpose, the Corporation must consider whether it is reasonably practicable to:

- ▶ Return the injured employee to his or her previous employment with the same employer, or (if not)
- ▶ Return the employee to employment of a different kind with the same employer, or
- ▶ Return the employee to the same kind of employment with a different employer, or
- ▶ Return the employee to different employment with a different employer where the employee can use his or her experience, education or training, or
- ▶ Help the employee use as many pre-injury skills as possible to obtain employment.

In deciding whether to provide vocational rehabilitation the Corporation must consider whether rehabilitation is likely to:

- ▶ Achieve its purpose under the injured employee's rehabilitation plan,
 - ▶ Be cost effective (in the sense of reducing the costs of entitlements under the Act), and
 - ▶ Be appropriate in the circumstances.
- An injured employee must be told that once vocational rehabilitation has been completed he or she may be assessed for vocational independence.

The Corporation may engage someone suitably qualified to assist in the assessment, preparation, and costing of a vocational rehabilitation plan and to provide a link between the employee and the

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services the plan identifies. It must give the following persons the opportunity to participate in the preparation and costing process:

- ▶ The injured employee,
- ▶ Any registered health practitioner who is providing treatment,
- ▶ The employee's employer, or any potential employer, to the extent that he or she is willing and able to participate.

The Corporation meets the cost of preparation of such a plan, including the costs of any assessment approved as necessary so that the plan can be prepared. As with the rehabilitation plan, the Corporation must ask an injured employee to agree to a vocational rehabilitation plan. If, after a reasonable time the employee has not agreed, it can advise that the plan has been finalised and that the employee is regarded as having agreed. However, the injured employee can apply to have the plan reviewed.

Changing circumstances

Vocational rehabilitation may start or resume if circumstances change. The Corporation may decide at any time that there has been a change of circumstances affecting the need for vocational rehabilitation. If so, the Corporation and the injured employee may agree to modify the current plan to reflect changed circumstances.

The Corporation may restart vocational rehabilitation under the injured employee's plan (with any agreed modifications) if, having obtained employment as a result of vocational rehabilitation, the employee's incapacity means he or she is not able to maintain it.

Initial occupational assessment

An initial occupational assessment to assess vocational rehabilitation needs must be carried out by an occupational assessor (a person nominated by the Corporation with appropriate qualifications and experience) who must in carrying out the assessment:

- ▶ Take into account information provided by the injured employee and the Corporation (which must provide all the information it has relevant to an occupational assessment),
- ▶ Discuss with the injured employee all suitable types of work available in New Zealand,
- ▶ Consider any comments made by the injured employee about those types of work.

The assessor must then prepare a report for the Corporation identifying appropriate types of work and taking into account information provided by the injured employee as well as any discussions held with the injured employee. A copy of the report goes to the employee and the medical assessor but not to the employer. Employers should therefore ensure every employment agreement, collective or individual, requires an injured employee to give the employer a copy of any such report.

Initial medical assessment

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An initial medical assessment to assess must be carried out by a medical assessor who in carrying out the initial medical assessment must take into account:

- ▶ Information provided by the Corporation; and
- ▶ Reports provided to the Corporation including any medical reports provided by the Corporation before the individual rehabilitation plan was prepared, and any other relevant medical reports; and
- ▶ The report of the occupational assessor on the initial occupational assessment; and
- ▶ The medical assessor's clinical examination of the claimant; and
- ▶ Any other information that the claimant requests the medical assessor to take into account and that the medical assessor agrees is relevant; and
- ▶ Any condition suffered by the claimant that is not related to the claimant's personal injury.

Medical assessors must be registered health practitioners who hold vocational registration in general practice under the Health Practitioners Competence Assurance Act and have an interest and proven work experience either in disability management in the workplace or in occupational rehabilitation. They must also have at least five years' experience in general practice and be Fellows of the Royal New Zealand College of General Practitioners. Otherwise they must be undertaking training for that purpose or towards an equivalent qualification, or have undertaken relevant advanced training (in which case they must also be members of recognised colleges and have work experience in disability management or occupational rehabilitation).

However, if a qualified practitioner is not available without unreasonable delay or inconvenience, and if the delay would adversely affect the provision of an injured employee's vocational rehabilitation, it will be possible for a practitioner with broadly comparable qualifications and experience to assess the employee.

Vocational independence

Assessment

The Corporation has the right to determine the vocational independence of an employee who is receiving weekly compensation or who may have an entitlement to weekly compensation. It will do this by assessing that the comprehensive vocational rehabilitation identified in the individual rehabilitation plan has been completed and has focused on the employee's needs and that any injury-related barriers have been addressed so that the employee is able to maintain or obtain employment, or to regain or acquire vocational independence. Vocational independence will be assessed from time to time, at such reasonable intervals as the Corporation thinks appropriate.

A vocational independence assessment, like assessments for vocational rehabilitation purposes, comprises both an occupational and a medical assessment. An occupational assessment considers the progress and outcomes of vocational rehabilitation carried out under the employee's individual rehabilitation plan. The assessment also considers whether the types of work identified in that plan (available or not) are still suitable because they match skills gained through education, training and experience.

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The purpose of the medical assessment is to provide the Corporation with an opinion whether, given the particular injury, the employee has the capacity to undertake any type of work identified in the occupational assessment and reflected in the rehabilitation plan. The Corporation must give notice of a requirement to participate in an assessment of vocational independence stating:

- ▶ The purpose, nature and effect of the assessment,
- ▶ That the injured employee has to participate,
- ▶ The consequences of not participating,
- ▶ The right to be accompanied by someone else during the assessment.

The Corporation cannot require an injured employee to participate in an assessment unless the employee is likely to achieve vocational independence and has completed any rehabilitation the Corporation had to provide under an individual rehabilitation plan.

If vocational independence is established

If the Corporation decides an injured employee has achieved vocational independence that employee is no longer regarded as being incapacitated for employment. Instead, the employee will be considered able to engage in work for which he or she is suited by reason of experience, education, or training, or any combination of the three, for a period of 30 hours a week or more. The entitlement to weekly compensation will then be lost three months after the employee has been notified of the Corporation's decision. A person whose vocational independence is established will be eligible for the unemployment benefit if he or she fails to find employment during the three-month period.

If vocational independence is lost

The Corporation must reconsider vocational independence if, having previously decided an injured employee was vocationally independent (or if this was determined under the Accident Insurance Act 1998 or under the Accident Rehabilitation and Compensation Insurance Act 1992), later there are reasonable grounds for believing vocational independence or capacity for work may have deteriorated. A claimant would need to provide information to this effect. If the Corporation does subsequently decide that vocational independence has been lost, the employee will regain his or her weekly compensation entitlement.

Levies

The Accident Compensation Corporation maintains seven accounts out of which it funds claims for entitlements covered by the Act. Employers, employees and the self-employed are required to pay levies into these accounts.

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Employer's levy

The Act requires employers to pay a levy to fund the cost of entitlements for work-related personal injuries. Payment (which may be by instalments) must be made by the date specified by the Corporation in an invoice or "other appropriate document". The date must be not less than two months after the date of the invoice. A levy rate is prescribed in regulations made under the Act and the levy itself is paid into the Work Account.

The levy rate must be wholly or partially related to the amount of earnings paid, estimated to be paid, or deemed by regulation to have been paid by the employer to his or her employees for the relevant period. Levies are calculated so that the cost of Work Account claims is fully funded. "Fully funded" means that the levy collected each year must be sufficient to cover the total on-going costs of all claims occurring in the premium year.

As an employer, you will not be required to pay any levy on an employee's earnings above a specified maximum. If an employee's total earnings exceed the specified maximum, and there are two or more employers but one of which has paid up to the specified maximum, then that employer may apply to the Corporation for a pro-rata refund of the excess levy paid.

Levies are paid for a prescribed period and the Corporation may require you (as an employer) to pay a levy based on its reasonable estimate of the levy payable. When the prescribed period ends, the Corporation must, as soon as practicable, calculate the levy actually payable, and refund any amount greater than \$20 with interest on any amount in excess of \$1,000. Similarly, you must pay the Corporation any outstanding amount greater than \$20; anything less will not be invoiced.

If, in any income year, you believe relevant employee earnings are likely to vary by 20% or more from those of the previous year, then you must notify the Corporation of the estimated increase or decrease. The Corporation will recalculate the levy in line with any estimate received and will notify you accordingly. It may also require you to provide further information.

Classification of employers

For levy purposes, the Corporation must classify employers in industry or risk classes that most accurately describe the particular employer's activity. Industry or risk classes are set out in regulations made under the Act.

For an employer engaged in two or more activities, classification will be under the industry or risk class attracting the highest levy. However, in certain circumstances, where the employer requests this, the Corporation may classify such an employer separately for different activities, provided thresholds specified in regulations are met. For this to happen, the activities in question must be distinct and independent and provide services or products to customers in such a way that each could, without adaptation, continue on its own without the other activities. As well, the employer's accounting records must demonstrate the separate management and operation of each activity and allocate to each the earnings of employees engaged solely in that activity.

Where an employer is engaged in two or more activities (as above) any employee engaged in two or more of those activities must be classified in the industry or risk class attracting the higher or highest

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levy rate. However, if the particular activity accounts for 5% or less of an employee's earnings for the year, then that activity need not be considered when determining the appropriate classification. But the employer must maintain records sufficiently accurate to satisfy the Corporation that the apportionment of total earning is correct.

If none of the classifications of industry or risk defined in regulations apply to the activity of a particular employer, or self-employed person, the Corporation may define a classification that it considers appropriate. The new classification will then apply to all persons involved in the activity not covered by a classification defined by regulations, and may be incorporated in the relevant regulations when these are next amended.

In some cases it will be possible for the Corporation to make arrangements that enable employers to carry out self-assessments but, in any event, levies may not be prescribed by the Minister responsible for the administration of the Act unless he or she first considers a recommendation from the Corporation, based on its consultations with levy payers (although the Minister is entitled to reject that recommendation). Corporation intentions in regard to levy and certain other regulations must be advertised in national newspapers and submissions called for.

Experience rating

On 1 April 2011 the Corporation introduced experience rating. This is a system of modifying a business's ACC work levy based on its claims history. Historically, the work levy has been based on injury rates across industry categories. A business has paid the same work levy as others operating in the same industry, despite differences in their safety record. Experience rating will reward those business owners with safer workplaces, and encourages a focus on improving workplace safety and making New Zealand businesses better places to work.

Experience rating takes into account a business's ACC claims history when setting its levies. Under the experience rating framework, employers who have lower-than-average injury rates, with better-than-average rehabilitation or return to work rates, may receive a discount on their ACC work levy. Those with worse-than-average claims experience may receive a loading on their levy. Experience rating will be applied in two different methods based on the employer's levies.

No-claims discount programme

Businesses (including self-employed people) who have paid an annual levy of less than \$10,000 for all, or part, of the experience period will receive a no claims discount or a high claims loading of up to 10 percent on the current work portion of their levy.

The levy adjustments for these businesses are:

- ▶ a 10% discount if no weekly compensation days paid have been made over the experience period

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- ▶ a 10% loading (increase) if the business has generated more than 71 weekly compensation days paid, or any fatal claim
- ▶ no change for a business generating between one and 71 weekly compensation days paid.

Experience rating programme

Based on their claims history, businesses who paid \$10,000 or more in levies for each of the three years in the experience period could receive a discount or loading of up to 50% on the current portion of their work account levy. ACC will compare the number of weekly compensation days that injuries in the workplace have generated plus, all claims with medical costs of \$500 or more or any fatal claim.

This information will be compared to other businesses in their Industry Levy Risk Group (LRG) - a group of businesses operating in the same or similar industries, with similar injury risk profiles. If a business's performance compares favourably with others in its LRG its levy may be discounted up to 50%. A loading of up to 50% may be applied to the work levy for employer's who do not compare favourably.

Businesses that fall below minimum liable earnings (currently \$26,520 in the 2011/12 levy year) or have not been invoiced for an ACC levy for each of year of the experience period are exempt. Their levies will continue to be calculated as usual. Even if you are currently exempt, improving the safety and wellbeing of the people in your workplace will be reflected in your levy when you become eligible for experience rating.

Accredited employers

The Act allows employers - in particular larger employers - to enter into accreditation agreements with the Corporation to provide at their own cost entitlements in respect of work-related personal injuries suffered by their employees. Before entering into an accredited employer agreement the employer must consult his or her employees, or their representatives, including any registered union, about the employer's ability to comply with the relevant statutory requirements. Accreditation, reducing the cost of levies payable to the Corporation (some payment will be required to fund the cost of residual, unfunded claims), will be granted if the Corporation considers the employer:

- ▶ Has appropriate experience in managing occupational health and safety issues "positively", and
- ▶ Has demonstrated a commitment to injury prevention and an understanding and awareness of the importance of rehabilitation and the employer's involvement in rehabilitation, and
- ▶ Has appropriate injury prevention policies and procedures in place and adequate resources to manage work-related personal injury claims, to promote and manage rehabilitation, and to fulfil reporting requirements (see below), and
- ▶ Is financially solvent, and therefore able to continue, to meet expected financial and other obligations relating to work-related personal injury claims.

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The Corporation may revoke an accreditation agreement at any time if, having discussed the matter with the employer, it decides that the employer no longer fulfils the above requirements or complies with the framework to be established by the Minister for accreditation purposes.

Under an accreditation agreement an employer is liable for some or all of the entitlements accruing in respect of a work-related personal injury suffered by his or her employees. In return, reduced levies are charged on the basis set out in the framework. An accreditation agreement may provide for the employer to recover contributions from insurers (in respect to the period when private accident insurance applied), other accredited employers, and/or the Corporation, as, for example, in the case of gradual process and subsequent injuries. An accreditation agreement may also provide for an accredited employer to make contributions to insurers, other accredited employers, and the Corporation.

During the claim management period, an accredited employer must manage every work-related personal injury claim suffered by an employee, provide any entitlements, and pay the costs specified in relation to such claims. However, the Corporation may, in some cases, agree to assume some or all of the employer's liability on such terms and conditions as it thinks fit.

The Act provides for what will happen if an accredited employer ceases to exist or fails, or is unable to perform obligations under an accreditation agreement. (In the event of insolvency, receivership, or liquidation, any debt constituting payment of weekly compensation will rank in priority next after wages or salary.) In dealing with any injured employee an accredited employer must comply with the Code of ACC Claimants' Rights.

A Corporation monitoring programme may audit the activities of accredited employers to ensure statutory requirements are being met and that accurate and complete reports have been provided to the Corporation. Where an audit is carried out, the employer, and employee representatives (including any registered union) must be given the opportunity to be heard.

Accredited employers must report to the Corporation in accordance with their accreditation agreement. Information supplied will be available for use by the Corporation's information manager in facilitating the Government's overall injury management strategy. An accredited employer must also, without charge, provide each employee with a written statement setting out the procedures and requirements under the accreditation agreement relating to the lodging of claims, claims' handling, provision of rehabilitation, assessment of incapacity, and dispute resolution.

Risk adjustments

An employer levy may be adjusted up or down following an audit of an employer's safety management practices. The Corporation may start on a process to increase levies if it considers the number of injuries occurring to the employer's employees is significantly greater than might reasonably be expected for a comparable employer of that type and size in that industry or risk class. (Criteria on which to base its decision are set out in the Act.)

In initiating the process the Corporation must notify the employer of its reasons for doing so and explain that the purpose of the process is to decide whether or not the employer's safety management practices should be audited.

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The employer must be given a reasonable opportunity to explain and comment on the health and safety situation in the workplace.

When the Corporation/employer dialogue has concluded, the Corporation must, on the basis of the information gathered, decide whether to carry out an audit of the employer's health and safety management practices and notify the employer of its decision.

If the employer fails to reach the required standard, the Corporation must increase the employer's levies. It must not do so if the standard required by the audit tool is reached. If, later on, an employer whose levies have increased reaches the audit tool standard and a levy readjustment is required, the levies must return to the standard rate for an employer in that industry or risk class.

Workplace Safety Management and Workplace Safety Discount programmes

These programmes have ended and employers are unable to join. However if you are already a part of WSMP or WSD you will continue until your contract ends.

Conclusion

Accident compensation is a complicated matter and at some point in time every employer will question their obligations to their employees in respect of it. An employee may be unable to work for a prolonged period of time while in receipt of accident compensation and you want to calculate their holiday pay, or it may be that an employee has been injured in an accident at work and you want to pay some of the treatment costs but don't know if you have to or not.

This A-Z guide has sought to answer the commonly asked questions about accident compensation and set out your obligations in respect of work-related personal injury. If you require assistance with any of the details covered in this guide contact the AdviceLine team.

Remember:

- ▶ Always call AdviceLine to check you have the latest guide (refer to the publication date below).
- ▶ Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- ▶ Use our AdviceLine employment advisors as a sounding board to test your views.
- ▶ Get one of our consultants to draft an agreement template that's tailor-made for your business.
- ▶ Visit our website www.businesscentral.co.nz regularly.
- ▶ Attend our member briefings to keep up to date with all changes.
- ▶ Send your staff to Business Central Learning courses and conferences designed for those who manage employees.

Accident Compensation

Our guide for Employers and Managers

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