

Workers' Compensation

Weekly compensation and Job Keeper Payments

Summary of status at 25 May 2020

Context

This Fact Sheet has been designed to help employers who already have a good knowledge of weekly compensation to understand the impact of Job Keeper Payments (JKP) on weekly compensation payable to injured workers. Employers who do not have this base level of knowledge should seek assistance from Ai Group's Workplace Advice Line.

It is important to recognise that the JKP is described by the legislation as a fortnightly payment of \$1500. This makes comparison with workers' compensation payments complex, as payments in these schemes are described as weekly compensation payments. For this reason, any reference to the JKP in this Fact Sheet is as a weekly payment of \$750.

Some jurisdictions have produced information about how JKP will be taken into account in relation to weekly compensation (see links at the end of this document). Whilst presenting the information in varying detail, these jurisdictions appear to have reached the same conclusion about the application of JKP.

Based on the information currently available from schemes, Ai Group has developed the following summary of the expected impact on weekly compensation and will update this Fact Sheet if extra information becomes available.

The scheme Agent/Insurer will make the final decision on weekly compensation impacts and reimbursement amounts.

Eligibility for Job Keeper Payments when in receipt of weekly compensation

If a person is totally incapacitated

If a worker is totally incapacitated and receiving weekly compensation from the scheme the employer cannot claim JKP. This is determined by the Job Keeper legislation, not individual workers' compensation schemes. It is the responsibility of the employer not to make a claim for JKP for a worker who is totally incapacitated.

It may be that a worker is totally incapacitated for part of the fortnight. A general feature of the JKP scheme is that if an employee is eligible for part of the fortnight, the employer is eligible to claim and pass on the full amount for that fortnight. Hence, in this scenario JKP could be claimed by the employer.

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If a new claim for weekly compensation is lodged by a worker who is totally incapacitated, advice should be obtained from Ai Group about how best to deal with any delays in a claim being accepted and weekly compensation payments being made, as this may impact the ability to claim the JKP for that period.

If a person is partially incapacitated

A worker who is partially incapacitated and back at work for reduced hours within a JKP fortnight week, will be entitled to receive a JKP (subject to other qualifying provisions of the employer and worker). Hence, it is necessary to identify how the various components of payments will interact – wages paid in exchange for labour, JKP payments, and workers compensation entitlements.

As illustrated in the examples in Table 1:

- A worker will receive either the combined earnings and weekly compensation amount, or the JKP, whichever is greater;
- If the combined value of earnings and weekly compensation is less than or equal to the JKP, the employer will receive no reimbursement from the scheme;
- If the combined value of earnings and weekly compensation is equal to or greater than \$750 and earnings is less than \$750, the reimbursement from the scheme will be the amount payable that is in excess of \$750.
- If the worker is earning more than \$750, the reimbursement from the scheme will not be impacted by JKP.

It should be noted that the examples have been simplified to enable them to be applied across all workers' compensation jurisdictions, and do not reflect the exact calculation of weekly compensation for a worker who has returned to work on part time modified duties (some schemes apply a sliding scale increase once a person returns to some hours of work).

Table 1: Impact of JKP on weekly compensation payments and reimbursements (simplified)

| Compensation Amount (with no earnings) | Earnings for reduced hours | | Employer pays worker | JKP (weekly amount) | Scheme reimbursement |
|----------------------------------------|----------------------------|-------------|----------------------|---------------------|----------------------|
| \$500 | \$300 | Without JKP | \$500 | | \$200 |
| | | With JKP | \$750 | \$750 | Nil |
| \$1000 | \$400 | Without JKP | \$1000 | | \$600 |
| | | With JKP | \$1000 | \$750 | \$250 |
| \$1000 | \$800 | Without JKP | \$1000 | | \$200 |
| | | With JKP | \$1000 | \$750 | \$200 |

In some situations, where workers are being paid directly by the scheme (a common situation in Queensland) an administrative arrangement will need to be entered into that enables: the employer to make the \$750 weekly JKP to the worker; the scheme to pay the worker any additional amounts; and the scheme to reimburse the employer for any compensation paid up to \$750.

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Calculating Average Weekly Earnings if Job Keeper Payments are being made prior to the injury/claim

Average weekly earnings form the basis of calculating the weekly compensation amount for a worker, generally taking into account what the person has earned in the preceding 12 months. In some jurisdictions the weekly compensation amount is equal to average weekly earnings; in other jurisdictions it is a percentage of average weekly earnings.

All jurisdictions have determined that any top-up being paid to a worker due to the application of the JKP, is not to be treated as wages for the purpose of workers' compensation premiums (see Ai Group's COVID-19 Fact Sheet: Wages on Costs). Therefore, it follows that these payments should not be treated as wages for the purpose of calculating weekly compensation.

It is essential that employers have systems in place to ensure that the JKP can be separately identified in the payroll system. This will enable the employer and the scheme Agent/Insurer to take appropriate account of wages paid in exchange for labour compared to the impact of JKP.

Ai Group is aware that there may be some disputes over the application of weekly compensation amounts for a worker who has been in receipt of JKP. Workers may not differentiate between earnings and JKP top-up and expect compensation to be based on the JKP amount.

This will be particularly difficult in situations where a worker has had their hours reduced due to COVID-19 and topped up due to JKP. The longer the worker is on reduced hours the lower their average week earnings for the last 12 months will become.

We are yet to see any information from the workers' compensation regulators as to whether any adjustments to the calculation of the average earnings will be made to take this into consideration. Ultimately the outcome may be determined by the courts.

Any employer who believes the application of average earnings is being applied unfairly, to the worker or the employer, should discuss the issue with their Agent/Insurer. If you need assistance considering this issue contact Ai Group's Workplace Advice Line.

Links to websites that have published information on these issues are provided below.

[Queensland](#) [South Australia](#) [Northern Territory](#) [Tasmania](#) [ACT](#)

FURTHER INFORMATION

For further information or assistance, please contact the
Ai Group Workplace Advice Service on 1300 55 66 77