



FREQUENTLY ASKED QUESTIONS

Accrual of leave during a period of compensation leave

SCHEME GUIDANCE AND DATE OF EFFECT

Q1: Why is this scheme guidance required?

The operation of section 116 of the SRC Act and the interaction with the Fair Work Act are complex. The scheme guidance is required to support scheme employers understand and correctly calculate leave entitlements for employees who are injured and on compensation leave under the SRC Act.

Q2: Why are scheme employers obliged to review and correct leave calculations from 1 July 2006?

The changes to section 116 commenced on 1 July 2006 and therefore leave accrual and entitlements under the SRC Act applies from then.

Q3: Why is it being released now?

The interactions between the Fair Work Act and the SRC Act are complex and scheme stakeholders have sought clarity on the issue. Comcare and AGD have considered all the relevant issues before finalising the position on the accrual of leave during a period of compensation leave under the SRC Act.

We understand that revisiting historical compensation leave payments and accruals (from 1 July 2006) may be administratively burdensome, however there are obligations imposed on employers under the Fair Work Act to ensure employee leave entitlements and leave payments are correctly calculated.

A priority for all employers should be to ensure that leave accrual calculations on all current and new claims for compensation leave from employees is done in accordance with the scheme guidance.

Q4: How do we work out whether we have calculated leave correctly?

To work out if you have calculated leave correctly you will need to identify employees (current and exited) who have been on compensation leave at any point from 1 July 2006. Where the leave calculations have not been made in accordance with the scheme guidance you may need to correct the leave calculations. This may result in employees having over-accrued leave or under-accrued leave entitlements.

Q5: How will Comcare support scheme employers to review and correct leave calculations?

Employers who are premium payers under the SRC Act have access to a wide range of reports in the Customer Information System (CIS). Comcare have updated our CIS reporting to identify the start of the post-determination compensation leave period for the purpose of leave accrual under the SRC Act.

The start of the post-determination period commences the day after the first currently accepted incapacity determination has been made. During the post-determination compensation leave period, sick leave (paid as personal leave) and recreation leave (paid as annual leave) accrues during each of the first 45 weeks and long service leave accrues during the whole of the period of post-determination compensation leave. The date of the first incapacity determination is taken to be the date the claim for incapacity compensation is verified in PRACSYS, the claims management system used by Comcare to administer claims made by employees of premium paying agencies in the Comcare scheme.

The post-determination start date is available in CIS Reports 30, 31, 32, 66 and 70 and will also soon be found in the 'View Claim' and 'View Claim for Finance' functions in CIS.

You can access CIS via the [Comcare website](#). Please speak to your Account Manager if you require any assistance with the reports.

Employers who are self-insured under the SRC Act should have access to their compensation leave payments from 1 July 2006. However, if compensation leave payment data is not available please contact your Account Manager who can organise a data extract to be made available from the Commission Data Warehouse

OVERPAYMENTS AND UNDERPAYMENTS

Q6: How do employers correct incorrect leave payments or leave accruals?

In determining appropriate remedial action, employers should refer to their own policies and procedures in relation to managing leave entitlements and debts, and seek advice as required, including in relation to compliance of obligations under the Fair Work Act.

Commonwealth entities should also ensure compliance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), taking into account their Accountable Authority Instructions.

COMPENSATION LEAVE

Q7: Is an employee on compensation leave when the weekly incapacity compensation amount is nil? For example, the employee is working 35 hours a week due to their compensable injury (pre-injury normal weekly hours are 38 hours a week). In one week, they receive shift penalties, and their actual earnings (AE) are greater than their normal weekly earnings (NWE) and incapacity compensation is not payable.

Yes. Where the relevant authority determines that compensation is not payable for that week (where the AE exceeds the NWE) the employee is on compensation leave for the purpose of leave accrual under section 116 of the SRC Act.

This is because the term 'payable' in the definition of compensation leave [section 4(1) of the SRC Act] is attached to the injury. For example, in the above scenario, compensation would be payable under section 19 in respect of the employee's injury. The employee would be on compensation leave on their day off because their day off would be a period during which the employee is absent from their employment due to an incapacity for work resulting from the injury. The amount of compensation does not have to be greater than zero for the employee to be on compensation leave.

This means that the weekly incapacity determination (\$0 payment) will count towards the 45 weeks of post-determination compensation leave.

Q8: Is an employee on compensation leave when they are not absent from work but in receipt of weekly incapacity compensation? For example, the employee is working full time (pre-injury normal weekly hours) but performing modified duties. They receive weekly incapacity compensation because their normal weekly earnings (NWE) include shift penalties, but their actual earnings (AE) are less because they have not returned to pre-injury duties.

No. Section 116 provides that sick leave and recreation leave entitlements continue to accrue during each of the first 45 weeks during which the employee is on 'post-determination compensation leave'. Under this provision, post-determination compensation leave means 'compensation leave' that takes place after a relevant authority has determined an incapacity claim in favour of the employee. Compensation leave is defined by section 4 of the Act to mean any period during which an employee is absent from his or her employment due to an incapacity for work resulting from an injury in respect of which compensation is payable under section 19 or 22. For example, in the above scenario the employee is not absent from work from their employment.

This means that weekly incapacity compensation payments will not count towards the 45 weeks of post-determination compensation leave.

Q9: Is an employee on compensation leave when they are undertaking a full time, or a part time rehabilitation program and weekly incapacity compensation is payable by reference to subsection 37(5) of the SRC Act?

Yes. If the employee is undertaking a rehabilitation program and is absent from work for this purpose. The employee is on compensation leave because they are absent from their employment due to an incapacity for work and the relevant authority has technically determined a claim for incapacity under section 19 of the SRC Act, even though the employee is now being compensated under section 37(5).

This means that weekly incapacity compensation payments will count towards the 45 weeks of post-determination compensation leave.

Q10: How can you have less than 45 aggregate weeks incapacity but more than 45 calendar weeks incapacity?

There are essentially two 45-week periods to consider under the SRC Act:

- > Section 19(2) of the SRC Act provides for the calculation of weekly incapacity for the first 45 weeks
- > Section 116 of the SRC Act provides for 45 weeks leave accrual during the post determination compensation period.

In most cases the 45-week counts do not align. This first 45 weeks of incapacity compensation is based on the employee's absence from work (hours) and the clock starts on the first day of incapacity payable (i.e. retrospective incapacity payments are counted). By contrast leave accrual during the post determination period starts the day after the incapacity claim is determined in favour of the employee and any absence during a calendar week is counted as a week.

SUSPENSION OF WEEKLY INCAPACITY COMPENSATION

Q11: How does leave accrue when the employee's rights to compensation are suspended because they refuse or fail, without reasonable excuse, to undergo an assessment of capability of undertaking a rehabilitation program, attend or obstruct a medical examination, or comply with the requirements of a rehabilitation program?

The relevant authority is not liable to make incapacity compensation determinations during the suspension period. Therefore section 116 does not apply for the purpose of leave accrual during the suspension period.

PERIODS OF EMPLOYMENT AND EXITED EMPLOYEES

Q12: Are employees in receipt of incapacity payments under the superannuation provisions of the SRC Act (sections 20, 21, and 21A) entitled to accrue leave?

No. Retired employees in receipt of a superannuation amount are not entitled to accrue leave. However, any compensation leave taken before day of retirement [sections 19, 22 or 37 (5)] will need to be reviewed in accordance with the scheme guidance.

Q13: An ex-employee with a workers' compensation claim reengaged in employment with their previous employer, how is leave accrual calculated in this scenario?

If the employee continues to be incapacitated for work as a result of a compensable injury any period of compensation leave during the post-determination period will count towards the 45 weeks of leave accrual under the SRC Act. For example, if the employee had accrued 10 weeks of leave before they exited employment, on recommencing with the employer their entitlement to leave accrual during the post-determination period, as a result of the same compensable injury, under section 116 of the SRC Act will be 35 weeks.

Q14: What if the employee is now deceased?

Employers should refer to their overpayment and underpayment policies and procedures and/or seek their own advice.

MORE INFORMATION

Questions about accrual of leave under the SRC Act may be sent to the [scheme policy helpdesk](#).