

Provisional Payments

The *Workers Compensation and Injury Management Act 2023 (WCIMA23)* requires insurers and self-insurers to make provisional payments to a worker if a deferred decision notice was initially given but the insurer or self-insurer has not given a liability decision notice before the prescribed day (the provisional payments day specified in the *Workers Compensation and Injury Management Regulations 2024 (the WCIMR24)*).

Key Points

Act ref: ss. 29, 36- 44 Reg ref: reg 22

- If a deferred decision notice is given to a worker a liability decision notice must be given as soon as possible.
- An employer will be required to make provisional payments to a worker if a deferred decision notice was initially given but the insurer or self-insurer has not given a liability decision notice before the provisional payments day.
- The provisional payments day is the day after the period of 28 days beginning on the day the claim is received by the insurer or self-insurer (reg. 22) and will be specified on the deferred decision notice.
- Provisional payments are based on medical and health expenses compensation and income compensation only. Provisional payments are to be calculated and paid in the same way as the corresponding compensation payments would be made.
- Provisional payments for medical and health expenses compensation are to be paid for the period beginning on the day the worker's injury occurred.
- Provisional payments for income compensation are to be paid for the period beginning when the worker first has an incapacity for work.
- If liability is accepted or deemed to be accepted, provisional payments are taken into account when calculating the total amount of compensation payable to the worker.

Key Points

- Provisional payments are not recoverable from a worker unless the worker's claim involved fraud.
- An insurer or employer who has paid provisional payments may recover those payments from another insurer or employer in certain circumstances.

Questions & Answers

Q. How long is the period an employer is required to make provisional payments to a worker?

A. An employer must continue to make provisional payments to a worker until:

- The insurer or self-insurer gives the worker a liability decision notice by the prescribed deemed liability acceptance day¹ or
- The insurer or self-insurer fails to give a liability decision notice by the prescribed deemed liability acceptance day¹ (payments of compensation must then be paid by the employer) or
- In the case of provisional payments based on income compensation, a certificate of capacity states the worker no longer has any incapacity for work.

¹the prescribed 'deemed liability acceptance day' is the day after the period of 120 days beginning on the day the insurer or self-insurer received the claim (reg. 19).