

06 August 2020

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Tēnā koe James

Your Official Information Act request, reference: GOV-005765

Thank you for your email of 13 July 2020, asking for the following information under the Official Information Act 1982 (the Act):

1. *Can you please tell me where in the ACC act, that holiday pay and redundancy payments are to be surrendered to ACC.*
2. *Also can you please explain if these payments can be used as the 20% top up to 100% pay?*
3. *All documents in full, related to redundancy and holiday pay!*

Accident Compensation Act 2001 – abatement of holiday pay and redundancy

The Accident Compensation Act 2001 (the AC Act), Schedule 1, clause 51(2) requires ACC to calculate a reduction in your weekly compensation if your total earnings from weekly compensation and any other sources take you above your normal pay level. This is referred to as abatement of weekly compensation. Clause 49(3) of Schedule 1 of the AC Act requires ACC to take into account any payment made on the termination of employment in respect of leave entitlements (holiday pay) when calculating abatement of weekly compensation. Redundancy payments do not count for abatement purposes (Part 1, section 11(1)(e) of the AC Act).

Employer top-ups

Regarding your second question, we assume you are referring to an ‘employer top-up’. If an employee is eligible for weekly compensation following an injury, their employer may make an additional payment each week that tops-up the employee’s income during their inability to work to the level of their normal wage, so the employee has no loss of income.

Unless an employer and an employee have contractually agreed to a top-up, any top-up is at the employer’s discretion. However, an employee can ask an employer to pay out up to a week of holiday pay in lieu of annual leave. Therefore, the employer and employee can agree that the employer will pay out one day’s holiday pay per week as a weekly compensation ‘top-up’ for up to five weeks. Where an employee is entitled to holiday pay on termination of employment, the employee and employer could agree to structure the payment as a top-up in this way depending on how much holiday pay the employee is owed. However, any holiday pay that an employer pays in a week that is more than 20% of the employee’s normal weekly pay will be used to abate weekly compensation.

An employer and employee could agree to structure a redundancy payment in this way as well. However, since redundancy payments cannot be used to abate weekly compensation anyway, this would not provide the employee with any advantage in respect of avoiding abatement.

Policies in relation to abatement of holiday pay and redundancy

ACC’s intranet contains ACC’s policies, processes and guidance for staff working with clients. We have attached the sections from the intranet relevant to your questions as attachments to this response (49 pages, extracted on 23 July 2020).

How to get in touch

If you have any questions, you can email me at GovernmentServices@acc.co.nz.

Nāku iti noa, nā

A handwritten signature in black ink, appearing to read 'Sasha Wood', with a large, stylized initial 'S'.

Sasha Wood

Manager Official Information Act Services
Government Engagement & Support

Summary

Objective

This page provides you with the definition of 'earnings as an employee' as found in the Accident Compensation Act 2001. Use this definition to help you determine what earnings can be included in the calculation of weekly compensation. This guidance applies to claims where the client becomes unable to work from 1 July 2010.

- 1) Earnings as an employee
- 2) Earnings as an employee: what it does not include
- 3) Links to legislation

Owner Martin Shelton

Expert Deborah Doroshuk

Procedure

1.0 Earnings as an employee

a Sections 9-13 of the Accident Compensation Act 2001 defines 'Earnings as an employee', and include the following:

b Salary, wages, overtime and holiday pay, including payments for annual leave, sick leave and statutory holidays

c Allowances, including:

- accommodation allowances
- benefits gained by an employee from an employee share option or share purchase scheme
- benefit allowances, for example:
 - allowance paid to an employee to work in dirty, dusty or unhygienic conditions;
 - allowance paid for special duties;
 - locality allowance;
 - shift allowance; allowance paid to a driver who collects cash.

NOTE Allowances do not include...

Allowances do not include reimbursing allowances, i.e. money which is paid by the employer to reimburse the employee for expenses incurred by the employee on behalf of the employer, such as accommodation costs and airport parking.

d Extra emoluments, for example:

- bonuses which are not made on a regular basis, such as an annual end-of-year bonus or a Christmas bonus;
- gratuity or any payment made in return for services, extra salary, back pay, and share of profits.

e Ex gratia payments received by an employee for past services

f Weekly compensation payments made by ACC, or an accredited employer for:

- loss of earnings
- loss of potential earning capacity
- payments made under section 60 of the Accident Compensation Act 1982

NOTE Weekly compensation to spouse, child or other dependant of a person who has cover for an accidental death

These payments are not classified as earnings for the calculation of weekly compensation.

g Earnings-related compensation payments, which were payable prior to 1 July 1992

h Payments made by partnerships to 'working partners', as defined in Section DF8 of the Income Tax Act 1994, under a written contract of service

i All taxable payments that are expenditure on account of an employee, i.e. expenditure incurred by the employee but which is paid for by the employer

j Payment made in lieu of, or substitution for, earnings as an employee.

NOTE Example

If a school student is in part time work, Inland Revenue may not require the employer to deduct PAYE tax, particularly if the student earns less than \$20 per week. If the employer indicates that payments have been made with no PAYE tax deduction, check with Inland Revenue to make sure these earnings are exempt, before using them for the weekly compensation calculation.

2.0 Earnings as an employee: what it does not include

a Scheduler, formerly withholding, payments which, are defined in Income Tax Act 2007 as casual payments or payments where the relationship of the parties is not strictly one of employer-employee.

NOTE Example

Commissions to insurance agents or salespersons, unless subject to PAYE tax deduction, income earned by self-employed persons, honoraria, or fees earned by entertainers, speakers, freelance journalists, models, jockeys and trotting drivers.

- b** Income-tested benefits, e.g. jobseeker support, sole parent support, supported living payment, independent youth benefit, job search allowances, training benefit
- c** Parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987
- d** Any payment paid under the Compensation for Live Organ Donors Act 2016
- e** Veteran's pensions, i.e. payments made to a person who served New Zealand or any other Commonwealth country as a member of the forces, Mercantile Marine or Emergency Reserve Corps in any war or emergency in which New Zealand forces took part
- f** New Zealand superannuation and living alone payments, or student allowances
- g** Where the client is an employee of their spouse, any amounts paid by the spouse to that person, unless the Commissioner of Inland Revenue has consented to such amounts being earnings as an employee
- h** A pension paid by an employer to a former employee
- i** A pension paid by a business or partnership to a former partner of the business or partnership
- j** A pension from a superannuation scheme or pension fund that is not registered under the Superannuation Schemes Act 1989
- k** The following payments from insurance companies:
 - weekly payments based on the client's earnings, other than weekly compensation payable under the Accident Insurance Act 1998
 - lump sum payments unrelated to earnings
 - weekly payments unrelated to earnings
 - retiring allowances. In the case of employees, this means any payment made, that is all of the following:
 - payment to the employee in consequence of their retirement from employment with their employer
 - payment that is not made on a regular basis
 - a pension from a superannuation scheme or pension fund that is not registered under the Superannuation Schemes Act 1989
 - redundancy payments.

3.0 Links to legislation

-  Accident Compensation Act 2001, section 9 Earnings as an employee: what it means
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100608.html>
 -  Accident Compensation Act 2001, section 10 Earnings as an employee: payments to spouse [or partner]
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100611.html>
 -  Accident Compensation Act 2001, section 11 Earnings as an employee: what it does not include
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100620.html>
 -  Accident Compensation Act 2001, section 12 Earnings as an employee: [Work Account] levy payable under section 168
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100632.html>
 -  Accident Compensation Act 2001, section 13 Earnings of private domestic workers
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100636.html>
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Summary

Objective

If a client receives any income during a period of incapacity, under the Accident Compensation Act 2001, Schedule 1 Clause 49, ACC needs to consider if any part of that income is 'earnings liable for abatement'.

If this is the case, the abatement formula is applied, which reduces base weekly compensation by a proportion of the 'earnings liable for abatement'.

Owner Tui Kailahi

Expert Nick Lamb

Procedure

1.0 Earnings liable for abatement

- a** The following earnings received during the client's inability to work due to their injury are earnings liable for abatement:
- wages, salary, director's fees or self-employed earnings
 - holiday pay for annual leave (if a client cannot take the leave at another time after their return to work) or statutory holidays
 - taxable bonuses or one-off payments (perhaps in return for accepting a lower-paid job)
 - estimated earnings of a self-employed client or shareholder employee, if actual earnings during the inability to work from that employment cannot be determined
 - any leave payments made on, or in respect of, termination of employment.

There are a number of special case scenarios when determining if earnings are liable for abatement:

- holiday pay and reinstatement of leave
- payment during the inability to work.

NOTE Special case 1: Holiday pay and reinstatement of leave

When an employer has made payment of holiday or sick pay during a period the client is unable to work, they should be asked whether the leave can be reinstated. If this is possible, the client should be asked to refund the holiday pay to the employer. Alternately, the amount may be able to be reimbursed under the Approved Employer scheme.

If the employee refunds the leave payment to the employer, seek written confirmation from the employer detailing:

- the total leave payment the employee is refunding
- the period the leave covers.

NOTE Special case 2: Payment during inability to work

If a payment received during incapacity relates to work carried out in a specific period, the payment should be considered as earnings in that period.

Example: A real estate agent receives a quarterly commission payment where PAYE is deducted at source. They suffer an injury on 1 October, and on 14 October receive the commission payment relating to the work they carried out pre-injury. As this payment is related to work done over a specific period before they became unable to work, it should not be used in abatement calculations, but instead should be used in the calculation of their earnings before they became unable to work.

Note: This would not apply if the commission payment were received in a later income year. In that case, such a payment would have to be abated as explained below:

If a payment is related to a period within an income year, but is paid in a later income year, the payment is considered earnings liable for abatement in that later income year rather than a payment related to the period in the period in the earlier income year.

This is because subject to the income tax legislation, the Accident Compensation Act 2001, section 9 specifically defines 'earnings as an employee' in relation to each income year, which is 1 April to 31 March.

If a payment received while the client is unable to work cannot be related to an equivalent period of time, abatement should apply only for the week in which the payment was received.

This will be an unusual and rare occurrence, as payments can generally be related to a period of time. Examples would be:

- a one-off payment paid to an injured worker for accepting a lower paid position
- a taxable bonus payment, such as a profit share or other 'one-off' bonus.

ACC must abate these payments if they are received while the client is unable to work. This can disadvantage the client, particularly if the inability to work is likely to be short-term. In these circumstances, advise the employer that ACC must abate the client's weekly compensation in respect of the payment if, received while they are unable to work and as the inability to work is likely to be short-term, will they consider deferring the payment until after the client's weekly compensation has ceased.

- b** Holiday pay is to be related to the period in which the holiday leave was actually taken. In some cases, a person may take holiday leave, but not receive holiday pay until much later in the year. If this occurs, the holiday pay should be treated as derived in the period the leave was taken.

NOTE Example: An employee took holiday leave in June but received payment for that leave in December. The payment will relate to the actual period that the employee took holiday leave, ie June.

Holiday pay received before the client became unable to work, relating to a period of holiday leave after the date they became unable to work, is not to be used for their earnings before their inability to work, when calculating weekly compensation. These earnings may need to be abated.

If a payment is related to a period within an income year, but is paid in a later income year, the payment is considered earnings liable for abatement in the later income year, rather than a payment related to the period in the earlier income year.

This is because subject to the income tax legislation, the AC Act 2001, Section 9 specifically defines 'earnings as an employee' in relation to each income year, which is 1 April to 31 March.

2.0 Earnings not liable for abatement

a These payments are not classified as earnings liable for abatement:

- redundancy or superannuation payments paid on or in respect of the termination of employment
- weekly compensation, including payments to a surviving client for an accidental death
- parental leave payments paid under the Parental Leave and Employment Protection Act 1987, Part 7A
- employer top-ups
- payment for work done before they became unable to work.

NOTE Employer top-ups:

If an employee is eligible for weekly compensation following an injury, their employer may make an additional payment each week that 'tops up' the employee's income during their inability to work to the level of their normal wage, so the employee has no loss of income.

The 'top up' is exempt from the abatement process as long as it:

- does not relate to work performed by the employee
- represents an amount that 'tops up' the employee's weekly compensation to the level of their normal pay.

Note: The employer may need to adjust the employee's top up amount, if the employee also receives other earnings that reduces their amount of weekly compensation, eg the employee receives some earnings while they gradually return to work. Notify the employer of any changes to the weekly compensation rate in these circumstances.

Because ACC normally calculates abatement retrospectively, the employer could already have paid the top-up for the relevant period. It is possible that by the time ACC calculates the abatement, the top-up amount the employer has paid, when combined with earnings and weekly compensation, could exceed the client's normal earnings. The employer is responsible for adjusting the top-up and recovering any such excess payment.

NOTE Payments for work done before the client became unable to work:

If a client receives earnings that were for work they did before they became eligible for weekly compensation, then abatement will not apply. Instead they could be included in the calculations that determine the weekly earnings.

Note: If a payment is related to a period within an income year, but is paid in a later income year, then the payment is considered earnings liable for abatement in that later income year, rather than the period in the earlier income year in which the payments actually relate.

This is because subject to the income tax legislation, the Accident Compensation Act 2001, section 9 specifically defines "earnings as an employee" in relation to each income year, which is 1 April to 31 March.

3.0 When to consider abatement

a For employees:

Any earnings liable for abatement while the client is unable to work due to their injury must be abated against the weekly compensation payable during that period. Consider abatement for employees if:

- the Real Time Earnings (RTE) portal or ACC003 Employee earnings certificate, giving details of dates and gross amounts paid, shows that the client has received payments following DOFI/DOSI
- ACC is aware that the client has returned to work and has derived earnings liable for abatement
- the client produces a 'fit for selected work' medical certificate.

See Determine employee earnings liable for abatement - Reference.

 Determine Employee Earnings Liable for Abatement (CHIPS)

- b** For self-employed and shareholder employees:
Self-employed and non-PAYE shareholder employees only declare actual income to Inland Revenue on an annual basis. However, during the period the client is unable to work, ACC is required to determine on a week by week basis the amount of earnings liable for abatement that the client is likely to generate from the business or company.

Abatement needs to be considered if the client is either:

- a self-employed person and their business is continuing to operate, or the client starts having input into the business
- a shareholder employee and they continue to work and/or derive earnings from the company.

Note: Unless the self-employed person's business ceases to function or the shareholder employee ceases to work for the company, most self-employed or shareholder employees will continue to have some management input, even when they are physically unable to work.

Indications that abatement should be applied are:

- the ACC004 Questionnaire for self-employed, states that the client's business or company is continuing to generate income while they are unable to work or the client has resumed having input into the business or company
- the ACC018 Further medical certificate, states that the client is fit for selected work
- advice has been received in some other way, eg the weekly compensation transcript, that the business or company is continuing to generate income, or that the client is having input into the business or company.

Note: Up until the end of the first income year in which the client became unable to work due to their injury, if the client is self-employed and is having no involvement with the business while they are unable to work, do not apply abatement. This will need to be reviewed when the client resumes working in some capacity for the business, or at the end of the income year in which they became unable to work.

Always make sure that self-employed and shareholder employee clients are aware that weekly compensation is being paid for loss of earnings, not inability to do some tasks because they are working reduced hours, or to reflect costs of replacement labour. Any earnings that a self-employed or shareholder employee continues to generate or receive during incapacity must be abated from weekly compensation.

4.0 Methods of determining earnings while unable to work

- a** Self-employed and shareholder employees:

A self-employed or shareholder employee's actual earnings for a period cannot be established until the end of an income year. However, Clause 50 of Schedule 1 allows ACC to estimate earnings for a period where the actual earnings cannot be ascertained.

ACC has developed two approaches, depending on whether:

- earnings were generated during a period when the client was unable to work that occurred in part of an income year
- earnings were generated over a full income year.

- b** Inability to work for part of an income year:

A claim will always begin partway through an income year, unless the client becomes unable to work on 1 April (or the day their income year started, if the client has a non-standard balance date).

In these cases, ACC makes an estimate of the client's earnings liable for abatement during the period the client is unable to work, based on information about the level of work that the client is able to do. This estimate stands as final assessment, unless fraud is subsequently established.

An estimate is required because actual earnings for the part year period that the client was unable to work cannot be determined. That is, when the client declares their actual income to Inland Revenue, they will declare a sum that represents their earnings over the whole income year. From this figure, there is no way to accurately determine how much of the income declared in that income year was earned:

- before they became unable to work
- while they were unable to work
- after they became able to work again.

Note: Some clients will be able to provide details of actual earnings while they were unable to work by supplying accounts for actual income less expenditure. The details can then be used to estimate the earnings liable for abatement. Before using these accounts, consider whether a referral to the ACC accounting advisor is necessary.

- c** Inability to work for a full income year:

If the client is unable to work for a full income year:

- an interim estimate of earnings while they were unable to work must be completed
- an end of year adjustment is required, based on the actual earnings for that year, as lodged with Inland Revenue.

NOTE For example, a client becomes unable to work due to their injury from 4 July 2001 until 11 November 2003 would have their earnings when they become able to work again determined as follows:

- 4 July 2001 to 31 March 2002
 - Part income year
 - Estimate earnings while unable to work

- 1 April 2002 to 31 March 2003
 - Full income year
 - Interim estimate subject to a final adjustment, based on actual earnings as declared to Inland Revenue for the full income year

- 1 April 2003 to 11 November 2003
 - Part income year
 - Interim estimate with a final adjustment at the end of the period they were unable to work, if required.

d Estimating earnings while unable to work due to the injury:

Estimates of earnings while the client is unable to work can be based on one of the following:

- a comparison of hours worked before and after the period they were unable to work. See Compare hours worked
- a negotiated percentage that estimates the earning capacity of the client. See Negotiate percentage earning capacity or earnings amount
- an estimate of the income that the client would receive during the period they are unable to work. See Assess earnings for the first income year.

Note: For the first income year, abatement based on an estimate can apply as a final assessment, ie there is no need to make an adjustment based on the income return lodged with Inland Revenue, because actual earnings during that part year cannot be determined.

If at the start of an income year, an interim estimate is applied, the risk of overpayment can be reduced by making low payments until the end of a full income year, then making an adjustment based on actual earnings lodged with Inland Revenue for the full income year.

e Self-employed and shareholder employees:

For self-employed and shareholder employees the following factors should be considered when estimating earnings while the client is unable to work due to their injury.

For self-employed consider:

- the effect on the business income of their inability to work
- the cost of replacement labour and the effect of this on the profitability of the business
- if there has been a significant downturn or upturn in the business, eg an apple grower who is facing reduced returns due to low prices on the export crops
- any other issues relevant to the particular business

For shareholder employees consider:

- the amount of work that the shareholder continued to do for the company, including management duties, and the likely remuneration for that work
- any actual earnings the client continues to receive from the company need to be abated. Payments made by the company in the form of wages or salary are actual earnings and must be abated
- there may be a need to estimate additional income that the client may receive at a later time, such as director's fees
- the influence that a shareholder employee has over the income awarded by the company

- Compare Hours Worked (CHIPS)
 - Negotiate Percentage Earning Capacity or Earnings Amount (CHIPS)
 - Determine Earnings if No Agreement (CHIPS)
 - Assess Earnings for the First Income Year (CHIPS)
-

5.0 What to do at the start of a new income year

- a** Overpayments can arise if payments made during the year are higher than the final amount the client is eligible for. To manage this risk one month before the start of a new income year, ACC sends self-employed and shareholder employee clients an on-going claims letter WC004 Self-employed and shareholder employee abatement election which:
- advises clients of the basis of payments for the following income year
 - requests that they elect how payments should be made.

This is required because if the client is unable to work due to the injury for a full income year, an adjustment to the abatement assessment is made, based on the earnings lodged with Inland Revenue at the end of that income year.

The election should aim to reflect the true level of anticipated earnings. It should be conservative to the extent that it will minimise the risk of an overpayment. However, not conservative to the extent that ACC are withholding weekly compensation having regard to the client's likely payment amounts at the end of the income year.

On the election, the client can request one of the following:

- earnings during the new income year continue to be based on an estimated method, and the client will accept the risk that an overpayment may arise if unable to work for the full year
- payments stop in the meantime until actual earnings are lodged with Inland Revenue
- ACC contact them to discuss ways to reduce the risk of overpayment.

When the election is returned, the method for estimated payments for the coming income year is set up.

Note: The client still has to supply regular medical certificates, provide details of any changes in their input into the business or company during their inability to work and comply with their rehabilitation programme.

6.0 Reassessing earnings at the end of a full income year

- a** For a full income year, the client will have received the rate of compensation that they elected at the start of that income year or an assessment of the amount to be abated pending end of year accounts. An adjustment is required to the end of year, or to the end of their eligibility for weekly compensation, for each complete income year that the client is unable to work.
- b** Validating accounts for earnings while unable to work

Be aware that it is possible for the client to make changes in accounting practice after the injury to reduce their earnings while they are unable to work. Common examples of this are:

- charging interest on partners' current accounts where this has not been done previously
- payment of wages to family members. Check that this reasonably reflects tasks undertaken that were previously actioned by a client
- payment of management fees to other entities or other partners
- change in policy for allocating partnership profits or shareholder salary. In order to identify such a change, partnership or company financial statements are required, because the ACC176 Earnings certificate – Inland Revenue and IPS2 do not contain sufficient detail to determine whether or not this has occurred.

 ACC176 Earnings certificate - Inland Revenue

- c** Accounting Advisory Service referrals

If you're unsure of the validity of information about the client's business or company or the client's financial circumstances are complicated, consider referring to the Technical Accounting Specialists for advice (see link below).

- d** What to do if client ceases to be unable to work

Where a claim is in the Actioned Queue and a reassessment is necessary a Team Manager or Team Leader from the Weekly Compensation team may change the LPL indicator to 'No' to allow Pathway to be accessed.

- The request and approval to Activate will be confirmed by use of the most appropriate task in Eos
- The indicator will be changed to 'yes' after the wash-up is completed.

If the client fully returns to work part-way through the income year, and actual earnings for that period of inability to work can not be readily established, then the estimated earnings figure while they were unable to work can be used as a final abatement assessment.

If the client had elected to continue receiving weekly compensation based on estimated earnings while they are unable to work, and this has been updated whenever the client's circumstances change, then there is no need for an adjustment.

If the client elected to receive a lower rate or full rate of payment during the income year:

- an adjustment will be required
- arrears may need to be paid or overpayment may need to be recovered.

Note: The client should have been providing regular declarations on the ACC206 Self-employed work hours declaration form of their involvement with the business or company during the income year.

 ACC206 Self-employed Work Hours Declaration Form (CHIPS)

PROCESS Referring to the Technical Accounting Specialists for Advice

7.0 Special Case: Considering earnings derived in overseas currency

- a** The Accident Compensation Act 2001, Schedule 1, Clauses 49(4) and 49(5) allow ACC to apply abatement to earnings that a client derives in overseas currency.

In some cases, long-term clients have moved overseas and continue to receive weekly compensation. When this applies, if the client starts working and/or deriving income overseas, that income is earnings liable for abatement, which is applied in the abatement formula and may reduce the amount of weekly compensation payable.

See Pay client overseas for information about eligibility to receive weekly compensation overseas and the client's obligations while living outside NZ.

 Eligibility for Weekly Compensation while Client is Overseas Policy

- b** ACC is required to convert the overseas income into NZ dollars at an average rate of foreign exchange applied for the date that the payment is made. To determine the average rate of foreign exchange for a particular currency, ACC uses the following indices:

- If the currency is AUST, UK, USA, YEN, EURO then use the conversion rates published by the Reserve Bank on NZ on the following web site: www.rbnz.govt.nz/statistics/exandint/b1/data.html

- If the currency is not AUST, UK, USA, YEN, EURO, or NZ then use the conversion rates published by the Customs Service on the following web site: www.customs.govt.nz/news/utilities/Pages/Rates-Of-Exchange.aspx

The overseas earnings must be converted to NZ dollars at the rate of foreign exchange applicable for the period or the date on which the payment was made.

 Reserve Bank on NZ
<http://www.rbnz.govt.nz/statistics/exandint/b1/data.html>

 NZ Customs Service
<http://www.customs.govt.nz/news/utilities/Pages/Rates-Of-Exchange.aspx>

- c** When considering the abatement of overseas earnings, decide which earnings category the overseas income falls into:
- earnings as an employee
 - earnings as a self-employed person
 - earnings as a shareholder employee.

This classification will affect how abatement is applied and the dates of payment for when the overseas currency is converted to NZ dollars.

- If the client is an employee and they work for an employer who pays them a wage or salary (ie the employer pays the tax directly to the relevant taxation authority), then convert the overseas earnings to NZ dollars at the "average" rate of foreign exchange applicable on the date each payment is made.

- If the client is self-employed and they work for themselves and declare taxable earnings to the relevant taxation authority on a periodic basis, then convert the overseas income to NZ dollars at the "average" rate of foreign exchange applicable on the date that the income is declared to the relevant taxation authority.

- If the client is shareholder employee and they work for the company in which they are a shareholder, the company may either:

- pay a regular salary to the client
- make periodic payments to the client

then convert the overseas earnings to NZ dollars at the 'average' rate of foreign exchange applicable on the date that each salary payment is made, or that the earnings are declared to the relevant taxation authority if periodic payments.

 Abate Overseas Earnings (CHIPS)

If the client is...	and...	then...
an employee	they work for an employer who pays them a wage or salary, ie the employer pays the tax directly to the relevant taxation authority	convert the overseas earnings to NZ dollars at the "average" rate of foreign exchange applicable on the date each payment is made
self-employed	they work for themselves and declare taxable earnings to the relevant taxation authority on a periodic basis	convert the overseas income to NZ dollars at the "average" rate of foreign exchange applicable on the date that the income is declared to the relevant taxation authority
shareholder employee	they work for the company in which they are a shareholder, the company may either: <ul style="list-style-type: none"> • pay a regular salary to the client • make periodic payments to the client 	convert the overseas earnings to NZ dollars at the 'average' rate of foreign exchange applicable on the date that each salary payment is made or that the earnings are declared to the relevant taxation authority, if periodic payments

 Dates of payment for when overseas currency is converted to NZ dollars.PNG

8.0 Links to legislation

-  Accident Compensation Act 2001, section 9 - earnings as an employee
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100608.html>
-  Accident Compensation Act 2001, Schedule 1, Clause 49 - earnings definitions
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104895.html>
-  Accident Compensation Act 2001, Schedule 1, Clause 50 - estimation for abatement purposes of earnings that cannot be ascertained
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM105401.html>

Summary

Objective

Use this guidance to help you ensure that claims made by earners, but that are non-work injuries, are funded accurately. This page informs you about how the Earners' Account is funded, and what it covers.

- 1) Rules
- 2) Other criteria for funding from the Earners' Account
- 3) Link to Legislation

Background

An earner is a person who is in employment for financial gain or profit as an employee, a self-employed person or a shareholder employee.

The Earners' Account is funded from levies paid by all earners, regardless of whether they are employees or self-employed.

The Earners' Account funds support for non-work injuries suffered on or after 1 July 1992, by people who have some paid employment (except motor vehicle and treatment injury accidents).

Owner Martin Shelton

Expert Deborah Doroshuk

Policy

1.0 Rules

- a The Earners' Account is funded from levies paid by all earners, regardless of whether they are employees or self-employed.

 Fund code: earners (non-work)

2.0 Other criteria for funding from Earners' Account

- a Earners may include people who:
 - are on unpaid leave
 - have recently stopped working as an employee
 - are in casual or seasonal work
 - have purchased Earner status, e.g. TimeOut cover
 - are receiving weekly compensation.

Clients who have finished work before they are injured can be considered an employee at date of injury if they either:

- received holiday pay and become unable to work due to the injury during the period covered by the holiday pay
- become unable to work within 28 days of finishing work and would have been in employment within three months of the date of their injury.

•they meet specific rules and criteria to be considered as seasonal workers

NOTE The holiday leave period and the 28-day period are not added together.

The holiday leave period and the 28-day period are not added together. Only one period can be applied. People in this situation have 'extended earner' status. See example below, or they meet specific rules and criteria to be considered as seasonal workers.

NOTE Example of 'extended earner' status:

An employee leaves their job on 10 August 2010 and is due to start a new job on 1 October 2010. They are paid two weeks' holiday pay. They slip and suffer a leg injury on 31 August.

- The injury occurred fewer than 28 days after they finished work and they are due to start their new job within three months

- We can attribute claim costs to the Earners' Account because their employee status is extended.

3.0 Link to Legislation

 Accident Compensation Act 2001, Section 218, Earners' Account: Application and source of funds
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM102831.html>

Summary

Objective

Use this guidance to help you determine whether a client is eligible for weekly compensation from ACC under the Accident Compensation Act 2001. This policy applies to claims where the client became unable to work from 1 July 2010.

- 1) Eligibility criteria
- 2) Section 103 - Can the client do the job they were doing before they were injured?
- 3) Section 105
- 4) Extension of Earner Status
- 5) Eligibility
- 6) Review inability status periodically
- 7) Termination of an employment
- 8) Links to legislation

Owner Martin Shelton

Expert Deborah Doroshuk

Procedure

1.0 Eligibility criteria

a For a client to be eligible for weekly compensation from ACC, all the following criteria must be met:

- the claim for personal injury is accepted for cover under the Accident Compensation Act 2001, and
- ACC is responsible for managing the claim (that is, it is not a work-related personal injury suffered by an employee of an accredited employer), and
- the client has made a written or verbal application for weekly compensation, and
- the client is unable to work because of the personal injury under either section 103 or section 105.

2.0 Section 103 - can the client do the job they were doing before they were injured?

a Under section 103 of the Accident Compensation Act 2001, ACC must determine a client's inability to work – and therefore their eligibility to weekly compensation – by determining whether they could do the job they were doing before they were injured.

b The people who are eligible for weekly compensation include those who, at the time they suffered their personal injury, were:

- in employment and had earnings immediately prior to becoming unable to work as one or more of an employee, self-employed and shareholder employee; or
- on unpaid parental leave; or
- a recuperating organ donor and receiving payments under the Compensation for Live Organ Donors Act 2016; or
- in consecutive periods of unpaid parental leave and a payment period under the Compensation for Live Organ Donors Act 2016.

c In all cases, the client must have earnings immediately prior to becoming unable to work as one or more of an employee, self-employed and shareholder employee.

NOTE What if they are on unpaid parental leave?

Clients on unpaid parental leave at the time of their injury are deemed to be in employment for the purposes of Section 103.

NOTE What if clients are receiving organ donor compensation?

Clients who are recuperating organ donors under the Live Organ Donors Act 2016 are deemed to be earners if they:

- are injured during a payment period under that Act which was immediately preceded by a period of employment in which they were receiving earnings. Their inability to work is tested under section 103; or
- are injured during consecutive periods of unpaid parental leave and a payment period under the Live Organ Donors Act 2016. Their inability to work is tested under section 103; or
- had no earnings immediately prior to the organ donor payment period, they meet the timeframes under clause 43 of Schedule 1 at the commencement of the payment period. Their inability to work is tested under section 105.

3.0 Section 105

a We can't determine inability to work under section 103 for those clients who:

- have an extension of earner status under clause 43 of Schedule 1
- are a potential earner (LOPE) at the time he suffered his injury, they may be eligible for loss of potential earnings
- have purchased weekly compensation under section 223.

4.0 Extension of earner status

a Clients may have an extension of earner status under clause 43 of Schedule 1 because:

- leave payments that are liable for earner levy on ceasing employment extend the period of employment up to or beyond the date they became unable to work, or
- they became unable to work within 28 days after ceasing employment as an employee and had an employee job to return to within 3 months, or
- they became unable to work within 28 days after ceasing seasonal employment as an employee where they had been employed in the two previous seasons and the employer confirms that the client could reasonably expect to have been employed again within 12 months, or
- they became unable to work during a payment period under the Live Organ Donor Compensation Act 2016 and they satisfy the timeframes under clause 43 of Schedule 1 at the start of that payment period (as if that was the date they were unable to work).

b Please ask the client to sign the ACC165 Declaration of rights and responsibilities form, as described in the method for the initial interview, declaring that they understand their responsibilities for receiving weekly compensation.

 ACC165 Declaration of rights and responsibilities

5.0 Eligibility

a The rules for determining the level and duration of support are driven by:

- the dates when a client initially and/or subsequently became unable to work in the employment they held at that date (date of first incapacity 'DOFI', or date of subsequent incapacity 'DOSI')
- confirmation of ongoing inability to work.

b Refer to links below for additional information.

-  Definition of Incapacity
-  Determine incapacity dates – date of first incapacity (DOFI) (CHIPS)
-  Determine if a subsequent incapacity (CHIPS)

6.0 Review inability status periodically

a When a client is eligible for weekly compensation it is important to continue to periodically review their inability to work.

b See the link below for additional information.

-  Determine incapacity under section 103
<http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/incapacity-187/determine-incapacity-under-s103/index.htm>
-  Determine incapacity under section 105
<http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/incapacity-187/determine-incapacity-under-s105/index.htm>

7.0 Termination of an employment

a If the employment a client held at DOFI/DOSI is terminated during the period that they are unable to work, they are still eligible for weekly compensation so long as they continue to be unable to work.

8.0 Links to legislation

-  Accident Compensation Act 2001, section 103
http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM101458.html?search=ts_act%40bill%40regulation%40deemedreg_Accident+COmpensation+Act_resele_25_a&p=1
-  Accident Compensation Act 2001, section 105
http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM101462.html?search=ts_act%40bill%40regulation%40deemedreg_Accident+COmpensation+Act_resele_25_a&p=1
-  Accident Compensation Act 2001, Schedule 1, Clause 43, Weekly earnings if employment ended before commencement of incapacity
http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104879.html?search=ts_act%40bill%40regulation%40deemedreg_Accident+COmpensation+Act_resele_25_a&p=1
-  Compensation for Live Organ Donors Act 2016
<http://www.legislation.govt.nz/act/public/2016/0096/latest/DLM4297829.html?src=qs>

Summary

Objective

Refer to this guidance to help you determine whether a client is eligible to receive weekly compensation while overseas, and how to manage ongoing eligibility for weekly compensation.

- 1) Personal injury within New Zealand
- 2) Personal injury outside New Zealand
- 3) Medical certification by overseas medical/nurse practitioner
- 4) Taxation of weekly compensation paid to Australian residents
- 5) Determine eligibility for weekly compensation if injured overseas
- 6) Overseas income and weekly compensation
- 7) Criteria for earner in receipt of New Zealand taxable earnings at DOFI

Owner Tui Kailahi

Expert Nick Lamb

Policy

1.0 Personal injury within New Zealand

- a** Both the following points apply for the period they are outside New Zealand:
- they must provide ACC with ongoing medical confirmation that they are unable to work due to the injury
 - ACC must approve the doctor/nurse practitioner providing that medical certificate

If weekly earnings were based on earnings from illegal employment, eg working without a work permit, then:

- a reassessment is required, to remove the illegal earnings from the weekly compensation calculation.

This is effective for the period the client is outside New Zealand

2.0 Personal injury outside New Zealand

- a** Section 127 of the Accident Compensation Act 2001 (AC Act 2001) outlines the criteria for the payment of weekly compensation to a client while they are overseas.
-  Section 127, AC Act 2001 - Payment of weekly compensation and lump sum compensation to claimant outside New Zealand and
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM101806.html>
- b** Clients who have sustained personal injury while overseas, and who are living outside New Zealand, are eligible for weekly compensation in limited circumstances, which are described below:
- the general eligibility rules apply, i.e. they must be an earner with New Zealand taxable earnings at the date they became unable to work due to the injury
 - a client may be eligible for consideration if they had earnings within the six-month period prior to leaving New Zealand, but they must still meet the first criterion, above
 - they must provide ACC with satisfactory medical confirmation of their inability to work.

This also applies when establishing weekly compensation payable on a fatal claim, if the deceased client was overseas at the date of death

Go to Accidental Death Support Policy.

 [Accidental Death Support Policy](#)

3.0 Medical certification by overseas medical/nurse practitioner

- a** Special criteria apply for accepting medical certificates for the client becoming unable to work while overseas, in both the following instances:
- a client is injured in New Zealand and goes overseas
 - a client sustains an injury overseas that has cover

If the client is overseas and provides medical certificates for inability to work from an overseas doctor or nurse practitioner, these can be accepted if the:

- medical certificate clearly states the limitations the client is experiencing
- medical certificate states the period that the client is unable to work as a result of these limitations, up to a maximum of 13 weeks
- doctor or nurse practitioner has provided sufficient details of their qualifications and these qualifications are comparable to registered medical or nurse practitioners, who are able to practice in New Zealand
- medical certificate is written in English.

A decision on acceptability can then be made taking into consideration qualifications of the practitioner, the nature of the injury, and the limitations being experienced in relation to the client's pre-injury employment.

4.0 Taxation of weekly compensation paid to Australian residents

- a** A person is considered a tax-resident in Australia if they live there for more than six months a year. Any other clients who are about to move to Australia must be advised of these new tax rules, and instructed to contact the Inland Revenue Department (IRD) and the Australian Tax Office (ATO) about their tax liability. It can be difficult to identify clients who are Australian residents as we do not explicitly identify clients by country. A report has been generated of all clients who are currently receiving weekly compensation, and searched for some derivative of 'Australia' in their postal, residential or case payee addresses.

- b** The IRD and the ATO have agreed that weekly compensation for Australian residents will no longer be taxed in New Zealand but in Australia.

- c** These clients must approach the ATO to seek information about their tax liability in Australia. For people who have been living there and receiving weekly compensation for a number of years, it is likely that the ATO will seek back-taxes from them for the entire period of their residency in Australia. These clients will also need to contact IRD to discuss any tax refunds for those years.

ACC has no jurisdiction in this matter, and is required by law to implement these changes. We cannot enter into any discussion about the tax treatment of these payments, and anyone enquiring about this needs to be directed to either the Australian Tax Office or the Inland Revenue Department.

The contact details for IRD and the ATO are:

- Inland Revenue Department (calling from overseas) on +64 4 978-0779
- Australian Tax Office (calling from Australia) on 13 28 61.

5.0 Determine eligibility for weekly compensation if injured overseas

- a** A client may have cover through ACC for an injury that occurred overseas, because they were ordinarily resident in New Zealand at the time.

The following criteria must be met for a client to be eligible for weekly compensation in these circumstances:

- the client must be an earner receiving New Zealand taxable earnings as at start of the period they were unable to work due to the injury
- ACC must be satisfied that the client is unable to work due to the injury. See Determine if medical certificate completed overseas is acceptable.

 Determining if Medical Certificate Completed Overseas is Acceptable (CHIPS)

6.0 Overseas income and weekly compensation

- a** 7. Overseas income and weekly compensation

When a person has earned overseas income before becoming unable to work due to the injury, it is possible that some or all of this income can be included in the calculation of their weekly compensation. The following should be considered:

- In all cases, they must be a New Zealand tax resident to have their income considered for ACC purposes
- If the person is employed overseas and paid PAYE deducted salary or wages by a New Zealand based employer, and the employer declares the wages to IRD, these will be considered 'earnings as an employee'.
- If the person works overseas for an overseas company, the earnings they receive may be classed as self-employed earnings, and would need to be declared on an IR3 as 'Overseas Income'. Regardless of whether the person is classed as an employee, the earnings would not meet the definition of 'earnings as an employee' as defined in section 9 of the Accident Compensation Act 2001.
- Earnings declared as 'overseas income' still may not have been billed ACC levies. Any claim with overseas income should be referred to the Technical Accounting Specialists to determine how much of the income is relevant for ACC's purposes.

 Accident Compensation Act 2001, section 9: Earnings as an employee
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100608.html>

7.0 Criteria for earner in receipt of New Zealand taxable earnings at DOFI

- a** ACC needs to determine whether the client can be classified as an earner, in receipt of New Zealand taxable earnings, at the start of the period they became unable to work.
- b** The following categories of client could meet the criteria:
- working overseas and receiving New Zealand taxable earnings
 - overseas on a brief period of unpaid leave (see the guidance 'Deciding eligibility and employment' linked below)
 - eligible under AC Act 2001, Schedule 1 Clause 43, i.e. overseas on leave and received holiday pay before they left (see the guidance 'Extension of employee status' linked below)
 - eligible under AC Act 2001, Schedule 1 Clause 44, i.e. they are on a period of unpaid parental leave
 - eligible under AC Act 2001, Section 223 (see guidance 'Purchased TimeOut cover' linked below)
 - eligible under AC Act 2001, Schedule 1 Clause 47 and have received earnings in the six months before leaving NZ. Go to Loss of Potential Earnings (LOPE) to determine, gather information and calculate loss of potential earning capacity (LOPE)
-  Deciding Employment Type and Eligibility (CHIPS)
-  Purchased TimeOut Cover
-  Loss of Potential Earnings (LOPE)
-  Section 223 Persons eligible to purchase weekly compensation
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM102844.html>
-  Schedule 1, Clause 43 Weekly earnings if employment ended before commencement of incapacity
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104879.html>
-  Schedule 1, Clause 44 Weekly earnings if employee on unpaid parental leave immediately before his or her incapacity commenced
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104883.html>
-  Schedule 1, Clause 47 Corporation to pay weekly compensation for loss of potential earnings capacity
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104891.html>
-

Summary

Objective

Refer to this guidance to help you determine when extension of employment status applies. This guidance applies to claims where the client became unable to work from 1 July 2010.

- 1) When to consider extension of employment status
- 2) Confirm employment has ceased
- 3) Required information to confirm cessation for self or shareholder employment
- 4) Extension of employment status applies
- 5) Eligibility criteria
- 6) Situations where the client had 'arranged' to enter an employment agreement
- 7) Criteria for extension: termination pay
- 8) Criteria for extension: employee job to go to
- 9) Seasonal workers
- 10) Level of proof: employee job to go to

Owner Martin Shelton

Expert Deborah Doroshuk

Policy

1.0 When to consider extension of employment status

- a** Consider a client's eligibility for extension of employment status under the Accident Compensation Act 2001, Schedule 1 Clause 43, if all the following apply:
- they are unable to work due to the injury
 - the date they first or subsequently became unable to work (date of first incapacity 'DOFI' or date of subsequent incapacity 'DOSI') is after the date that the client recently ceased employment as either:
 - an employee
 - a self-employed person
 - a shareholder employee
 - they do not otherwise have employment.

2.0 Confirm employment has ceased

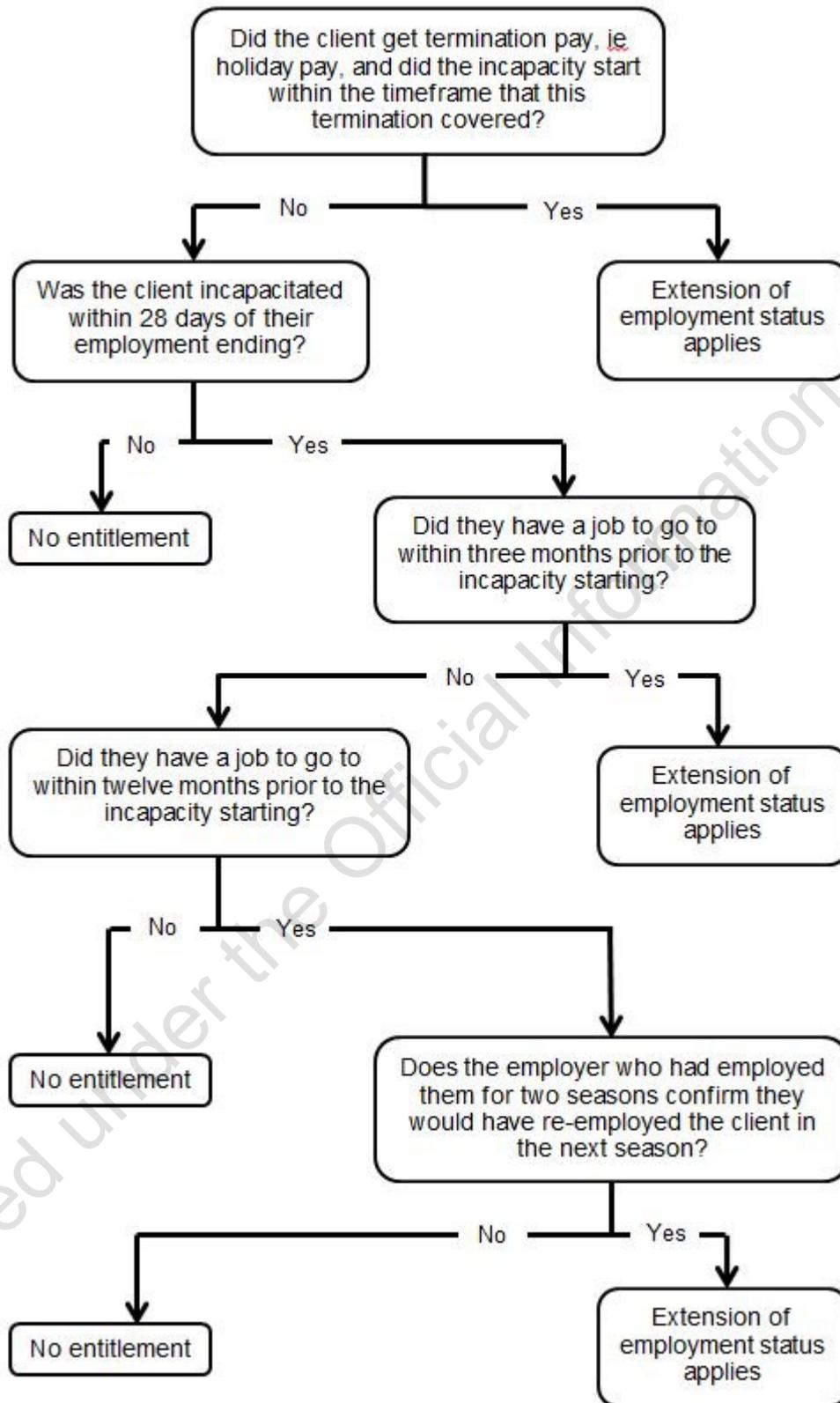
- a** For clients who were employees before they became unable to work, confirm the date their employment was terminated with their last employer.
- b** For clients who were either self-employed or shareholder employees before they became unable to work, as these clients were their own employers, determining the date that employment ceases requires more information.

3.0 Required information to confirm cessation of self or shareholder employment

- a** ACC can generally accept that self-employment or shareholder employment has ceased from the date the last of the following activities is carried out, including:
- the date the client's business ceased to trade
 - the date the client fulfilled the business tax obligations required by Inland Revenue when, ceasing to operate a business, e.g. completing a business cessation form, cancelling employer registration, cancelling GST registration, and filing a final tax return
 - the date their accountant confirms the client has ceased their employment
 - the date the premises used for carrying out the business has either been sold or a lease has expired or been terminated
 - the date when assets essential for the continuation of the business have been disposed of
 - the date when services previously used by the business, such as telephone, bank accounts, insurances and power, have been discontinued
 - the date of bankruptcy of a self-employed person or the date the company of a shareholder employee, has been struck off the Companies Register, if applicable.
- b** If further clarification is required to determine if a client's self-employment or shareholder employment has ceased, please contact the Technical Accounting Services team.

4.0 Extension of employment status

- a Use the flowchart attached to help determine when extension of employment status applies.



Does extension of employment status.jpg

5.0 Eligibility criteria

- a** A client can have extended employment status if, at DOFI/DOSI, they had recently stopped work, and fit one of the following scenarios:
- they received a termination payment on ceasing employment that equates to a certain number of days pay; this number of days is added to their employment cease date and they become unable to work within this extended period
 - they become unable to work due to the injury within 28 days of ceasing employment and if it were not for the inability to work, they would have been employed as an employee within either:
 - three months after the date they became unable to work, had entered an employment agreement or had arranged to enter an employment agreement before they became unable to work
 - twelve months after the date they became unable to work, if the client is a seasonal worker and the employer, who must have employed the client for the last two seasons, confirms there is a reasonable expectation they would have re-employed the client in the next season.

The business rule below defines the Extension of Earner Criteria.

-  Extension of earner status criteria
-  Determine extension - termination pay - Reference
<http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/eligibility-187/determine-extension---termination-pay/index.htm>

- b** When considering Accident Compensation Act 2001, Schedule 1 Clause 43:

- the above scenarios run concurrently, not consecutively. That is, consider the 28 days in scenario 2 as running from the last day of employment, not from any extended date due to termination pay
- the extension due to termination pay, runs from the day the employment ceased
- the period that the client has been employed prior to DOFI/DOSI is not relevant in determining if the extension applies.

See 'Determine extension - employee job to go to' below.

-  Accident Compensation Act 2001, Schedule 1 Clause 43
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104879.html>
-  Determine extension - employee job to go to - Reference
<http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/eligibility-187/determine-extension---employee-job-to-go-to/index.htm>

6.0 Situations where the client had 'arranged' to enter into an employment agreement

- a** Under the Accident Compensation Act 2001, Schedule 1 Clause 43(3)(a), extension of earner status can apply if a client had entered into an employment agreement, or had arranged to enter an employment agreement, before the client became unable to work due to the injury (i.e. something short of an employment agreement, but also something more than a mere hope of employment).

NOTE Example

If an employer advises that a client was 'on my staffing list awaiting a vacancy', ACC would need to seek further clarification of what the staffing list entailed. If this was simply a list used for replacements once a current employee resigned, this could be considered insufficient to constitute 'an arrangement to enter into an employment agreement'.

However if the employer advised the list was used to take on workers as work became available and it is clear the work due to its nature would become available, and the client would have been hired in the immediate future, then this could constitute an 'arrangement to enter into an employment agreement'.

- b** Ultimately the question that needs to be satisfied is whether at the date the client became unable to work due to the injury, the arrangement in place meant it was more likely than not that they would have been in employment in the immediate future.
- c** If there are doubts about a client's eligibility when they have 'arranged to enter into an employment agreement', a comprehensive referral can be completed and forwarded to the Weekly Compensation Panel. See the below link for the referral process to the Weekly Compensation Panel.

-  Technical Services Panels
<http://thesauce/team-spaces/technical-services-ts/technical-policy/panels/index.htm>

7.0 Criteria for extension: termination pay

- a** If a client received a payment of earnings on which an earner levy is payable (such as holiday pay) upon ceasing work as an employee, they are considered to be an earner for the equivalent number of days to which the payment relates.

NOTE Example

If a person is paid 10 days' holiday pay upon termination, they continue to be classified as an employee for 10 working days after the actual date they finished work. In this situation, if they became unable to work due to the injury within those 10 working days of ceasing employment, they are eligible for weekly compensation under this category.

When considering the number of days pay, have regard to the person's work pattern. For example, 10 days holiday pay for a 3 day per week worker would extend the person status as an employee by 3 weeks and 1 day.

8.0 Criteria for extension: Employee job to go to

a The client is eligible for weekly compensation if all the following criteria are met:

- they become unable to work due to the injury within 28 days of ceasing employment either as an employee, a self-employed person or a shareholder employee, and
- if it was not for the inability to work, they would have been employed as an employee within:

— three months after the date they became unable to work and had entered an employment agreement or had arranged to enter an employment agreement before they became unable to work

— twelve months after the date they became unable to work, if the client is a seasonal worker and the employer (who must have employed the client for the last two seasons, over the last two years) confirms that there is a reasonable expectation that they would have re-employed the client in the next season.

b The prospective employer is required to complete a ACC685 Prospective employer declaration.

 ACC685 Prospective employer declaration

9.0 Seasonal workers

a A seasonal worker is an employee:

- whose employment is governed by the availability of work, and
- there is an understanding between the employer and employee that the employment will terminate when the work is no longer available.

To meet this definition of a seasonal worker, the client must demonstrate that they have worked for the employer for at least the last two seasons over the last two years.

NOTE Examples

A person is employed as an apple picker on the understanding that the work will terminate for that season when there are no more apples to be picked; therefore, they are a seasonal worker.

A university student is employed in a supermarket for each holiday period, and the work terminates when the student returns to university. This is not considered to be seasonal employment as the availability of work continues despite the fact that the student is not available to work.

b Typical types of seasonal workers include:

- shearers
- freezing workers
- floriculture workers
- horticulture workers
- ski industry workers.

c This is not an exhaustive list. If unsure if a client is a seasonal worker, contact a Technical Specialist.

10.0 Level of proof: employee job to go to

a If a client is injured within 28 days of ceasing employment, ACC will accept that a client is eligible for weekly compensation, if either of the following applies:

• They will be employed as an employee within 3 months of the date they became unable to work due to the injury, and had entered an employment agreement or had arranged to enter the employment agreement before they became unable to work, and the prospective employer confirms in writing the date the arrangement was made and the expected start date.

• They will be employed as an employee within 12 months (for seasonal workers) and the employer confirms in writing that they have employed the client for the last two consecutive seasons and would, if not for the inability to work, be likely to re-employ the client for the next season.

b The prospective employer must be a valid employer registered with Inland Revenue and ACC for the purposes of paying PAYE tax and employer levy respectively. Use the employer search on Pathway to establish if an employer is registered with ACC.

NOTE Example 1

A hardware shop assistant ceases employment as an employee on 20 May and gets no termination pay. On 25 May, they sustain personal injury and become unable to work. There is no indication they had a job to go to.

They become unable to work within 28 days of ceasing work, so the first criterion is met, but they do not have a job to go to within 3 months of DOFI and therefore this person is not eligible for extension of employee earner status.

NOTE Example 2

A person works every year in a fruit pack house from December to March. The person suffers an injury and becomes unable to work within 28 days of finishing the 2009 season. The employer is contacted and confirms in writing that the person has worked for them in the last two seasons, ie 2008 and 2009 and that there is a reasonable expectation that the person would be called upon to work in the next season, ie 2010. The employer is confirmed as a registered employer for tax and levy purposes.

ACC would accept that the person meets the extension of employment criteria and would provide weekly compensation to that client.



Determine extension - employee job to go to - Reference

<http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/eligibility-187/determine-extension---employee-job-to-go-to/index.htm>

Released under the Official Information Act 1982

Summary

Objective

A customer's Liabe Earnings (LE) are used to calculate the amount of levies that they are liable to pay. This policy explains how the LE is calculated for different policy types and situations.

Owner Ronel Gerber

Expert Christopher Brake

Policy

1.0 What are Liabe Earnings?

- a LE are income that a person or company has declared to IR that is liable for ACC levies.

2.0 How are Liabe Earnings calculated?

- a The LE calculation depends on the type of policy or if the customer is a mixed earner.

NOTE CoverPlus (CP) - Self-Employed

The LE calculation on a CP policy is as follows:

Schedular payments + Total active partnership income + LTC income + Self-Employed income - Expenses

Please note that as of 1 April 2019, the calculation uses the information from the customer's current levy year's IR3. For example, the 2021 invoice is calculated using the liabe earnings from the 2021 levy year's IR3.

Prior to 1 April 2019, the calculation used the information from the customer's previous levy year's IR3, unless it was the customer's final year of self-employment (in which case the calculation used the information from the final levy year's IR3.)

For example, the 2019 invoice is calculated using the liabe earnings from the 2018 year's IR3. If 2019 is the final year of self-employment, the 2019 invoice is calculated using the liabe earnings from the 2019 year's IR3.

NOTE WorkPlace Cover for Employers (WPC)

The LE calculation on a WPC policy is as follows:

Total Gross Earnings - Earnings Not Liable For ACC - Schedular Payments - Excess Over The Maximum - Payments To Employees For First Week Injury - Payments After First Week

The calculation uses the LE information from the customer's IR348 Employer Monthly Schedule (EMS) as well as the first/post-first week payments to employees. Each month, employers send an EMS to IR, and after the end of the levy year, IR sends ACC the annualised LE information.

- A final audit (final invoice) uses the EMS information from that levy year.
- A provisional (provisional invoice) uses the EMS information from the previous levy year plus an adjustment for inflation.

NOTE WorkPlace Cover for Shareholders (WPS)

The LE calculation on a WPS policy is as follows:

Shareholder Remuneration - Excess Over The Maximum - Payments For First Week Injury - Payments After First Week

The calculation uses the LE information from the customer's IR4.

3.0 What is a mixed earner and how are their Liabe Earnings calculated?

- a Mixed earners are self-employed customers who also have employee earnings from a PAYE job(s) and/or shareholder income. Their LE depends on the combination of their self-employed income and employee earnings.
- b The LE calculation for a mixed earner is as follows:

If the combined income (self-employed earnings + employee earnings) is:

- under the minimum level of liabe income and they are full-time, the LE is adjusted to the minimum level minus the employee earnings.
- under the minimum level of liabe income and they are part-time, the LE is not adjusted.
- under the maximum level of liabe income but over the minimum level, the LE will be the self-employed income.
- over the maximum level of liabe income, the LE will be the maximum level minus the employee earnings.

4.0 What if the customer's LiabE Earnings have been filed incorrectly?

- a Advise the customer to amend their tax return with IR.
-

5.0 What is Passive Income?

- a Passive income is earned from a passive source. The definition of passive is outlined in legislation as not being dependant on mental or physical exertion.
- b If the customer advises that the income is passive, advise them to amend their tax return with IR, unless it is one of the exceptions (see Notes below), in which case make the change by following the Maintain Default Policy Information process on Pro mapp.

NOTE EXCEPTION: Royalties in the year after they did the work

As this income is generated from the re-use of the material, no mental or physical exertion was performed by the customer to make that income, therefore it is not liable for levies.

Please note that this can only be amended by ACC if it has been filed as schedular payments. If the income has been filed as self-employed income, the customer must amend their tax return with IR.

NOTE EXCEPTION: Depreciation recovered in the year after cease

When you cease a business or sell or dispose of a business asset, you must make an adjustment in your end of year tax return to account for the gain or loss. A gain is included as gross income and a loss (except buildings) is included as an allowable deduction. As no mental or physical exertion was performed to make that income, it is not liable for levies.

NOTE EXCEPTION: Expenses filed after a cease date that relate to accounting fees

When self-employed people cease, they are still required to finalize their income with IR. This may cause an accounting fee to be filed (normally as a loss) in the year after the cease. As no mental or physical exertion was performed to make that income, it is not liable for levies.

NOTE EXCEPTION: ACC attendant care payments paid directly to the customer who is the claimant

This income is paid by ACC directly to the customer as carer payments. As this is an entitlement for the customer and they did not actively work for the income, it is not liable for levies.

Please note:

- If the income is paid by ACC directly to the caregiver (e.g. mother of the customer), it is liable for levies as the caregiver actively worked for the income.
- If the customer has received an employer invoice, they may have been making the carer payments to their caregiver as PAYE wages. The employer invoice is liable.

Once it is confirmed that the income was paid to the customer who is the claimant, an IR confirmation Activity is created and sent to the Policy Administration team, who will confirm with IR that the income was paid by ACC and amend the income in Juno_PolicyCenter. There is no need for the client to contact IR.

NOTE EXCEPTION: Expenses only filed

If the only income filed for that policy is expenses (example below) and there's no income in any other boxes, then it's not liable for ACC levies. Expenses alone are not liable, thus we can manually remove the expenses.

These expenses have to be in the "Total other expenses claimed" box. If it is expenses/loss in any other box, then it is liable (unless it is accounting fees or depreciation recovered).

NOTE Renewal or trail income

Renewal or trail income is not passive. It is considered liable as there is still work involved to manage the relationship. One exception is if the company that paid the income to the customer provides a letter to confirm its trail income and the customers' non-active involvement. The letter should be addressed to the Channel Support Advisor (CSA) team.

NOTE Gratuities to volunteer firefighters for long service

This can be passive income if:

- We can be reasonably comfortable the person is a volunteer and not an employee of the Fire Service.
- The amount paid is a genuine gratuity.
- We receive a letter from the Fire Service confirming this information.

The CSAs can amend this income.

NOTE Sharemilking income

Sharemilking income is not usually passive, and there is often confusion around sharemilking and what BIC/CU should apply.

- If the customer is the milker, the most accurate BIC is A016010 Dairy cattle farming.
- If the customer is the farm owner but is not actively involved any physical farming activities, the most accurate BIC is L662085 Share milking (non-milking participant).

See the Business Industry Classification Code website for more information on the above BICs.

If the customer insists that they do no physical or mental work, request for copy of their sharemilking agreement. The agreement should be addressed to the CSA team, who would then forward it to the Legal team to determine the customer's liability (usually within five business days).

Once a decision is made the CSA team will advise the customer.

- 📄 <https://www.businessdescription.co.nz/#/search/?searchTerm=sharemilking>
- 📄 <https://www.businessdescription.co.nz/#/search/?searchTerm=sharemilking>

NOTE Equalisation payments

Equalisation payments are not passive income. Income refunded as part of the income equalisation scheme is liable for levies. When a refund is made, the amount of the refund is gross income in the year in which the application for a refund is received.

NOTE Shareholder remuneration (salaries)

All shareholder remuneration (salaries) are liable for ACC levies. These non-PAYE salaries cannot be made passive. This includes companies who rent property or undertake activities overseas. Do not refer customers back to IR to have these earnings amended.

PROCESS Maintain Default Policy Information

6.0 What is Non-liable Income?

- a** Non-liable income is income that is not liable for levies e.g. redundancy payments. This is defined by IR.

- 📄 IRD website - Non-liable income
<http://www.ird.govt.nz/income-tax-individual/different-income-taxed/salaries-wages/acc/iit-salaries-acc.html>

NOTE What is considered to be Non-liable income for self-employed customers?

- Income from a non-active partner in a partnership (i.e. a silent partner)
- Rental income
- Estate and trust income
- Pensions
- Redundancy payments
- Beneficiary income from trusts
- Income from a non-active owner of a look-through company (LTC)
- Interest and Dividends
- Retirement payments
- Overseas pensions
- Witness fees

NOTE What if a customer wants to amend their Non-liable income?

We are unable to do this. Customers need to have non-liable income amended with IR as we shouldn't treat income in a way that goes against how it is filed with IR.

NOTE What if a customer can't or won't amend their income with IR?

If the income has been filed as partnership income, self-employed income or LTC income, it will be treated as liable income and any invoice generated from that income is liable.

NOTE EXCEPTION: Tribunal work income earned by Ministry of Justice (MOJ) employees

Dispute Tribunal Referees earning income from MOJ will be paid as schedular payments. As Section 59 of the Disputes Tribunals Act 1988 states 'A Referee, while acting as such, is an employee employed by the Crown for the purposes of the Accident Compensation Act 2001', the customer themselves are not liable for the ACC levies on this income. Once you have confirmed that the customer has this type of income request that they send proof of how much schedular income they earned from dispute tribunal work for each financial year to business@acc.co.nz. Once we receive this information we can amend their income.

Note, this only applies to Disputes Tribunal Referees. Other tribunal referees e.g. Tenancy Tribunal Referees will be governed by separate Acts which do not have this same provision, and these customers are liable for levies themselves

7.0 What is the difference between Non-liable Income and Passive Income?

- a** Non-liable income is income not included in the self-employed customer's LE calculation, whereas passive income is income that is not dependant on mental and/or physical exertion.

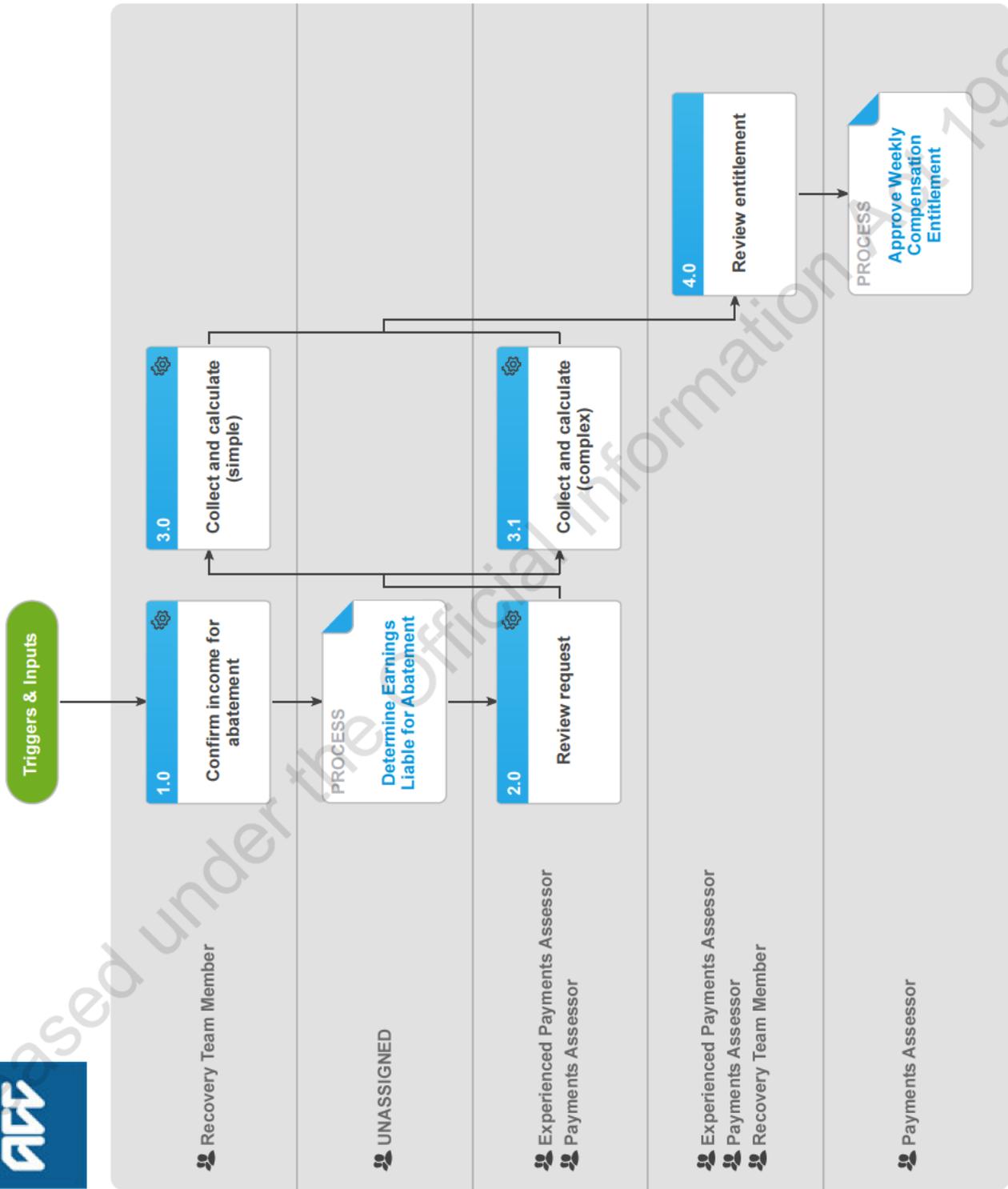
It is possible for income to be either non-liable, or passive, or both:

- Silent partner income is both non-liable and passive.
- Rental income is not passive but is non-liable.

8.0 Related Liabile Earnings Policies

-  Levy Liabile Earnings - Embassy Workers Policy
-  Levy Liabile Earnings - Look-Through Companies (LTC) Policy
-  Levy Liabile Earnings - Maximums and Minimums Policy
-  Levy Liabile Earnings - Mixed Earner Over Maximum (Mix Max) Policy
-  Levy Liabile Earnings - Multiple Employers Policy
-  Levy Liabile Earnings - Scheduling Payments Policy

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Summary

Objective

Use this procedure when a client has other earnings whilst in receipt of weekly compensation.

Background

The Manage Abatement procedure can be used by some Frontline staff, as well as the Payments Team to manage a client's abatement if they are earning while receiving weekly compensation.

Managing Abatement is a new task for Frontline staff, so they will calculate and manage simple abatements only. More complex abatements will be referred to the Payments Team.

Simple abatement is when:

- You have negotiated an earnings rate with the client and employer
- The client has not been paid for any part of the payment period that the abatement will be applied to.
- The client only has one employer which abated earnings can be applied to
- The employment work type is either permanent or non-permanent employee

All other abatement earnings details are complex. These include:

- Any abatement for a period that has been previously paid
- Self-employed or Shareholder abatements
- Manually calculated abatements that derived from a percentage of earnings or hours based amounts
- Periods where holiday pay or termination pay apply
- Top up periods
- Periods with Bonus payments, back pay, directors fees or other allowances apply
- Commission payments
- Section 60 Permanent Incapacity claims or weekly comp payments with a S60 component

Owner Tui Kailahi

Expert Tracey Horrell

Procedure

1.0 Confirm income for abatement

Recovery Team Member

NOTE What if you have received a Reminder Action to check up on a client's abatement?

- 1) Review the claim (in particular the Vocational Life Area) and Weekly Compensation history
- 2) Contact the client via their preferred method to review their latest earnings
- 3) Update the client's abatement

NOTE What if the client has been on abated weekly compensation for a full tax-year?

If the client is Self-Employed or a Non-PAYE Shareholder Employee, their abatement will need to now be washed up for that tax year.

Create and send a 'Recalculate Tax Year' task to the payments team, advising 'Tax Year abatement wash up required - Employment type - Employer number - tax year for wash up. For example:

Tax Year abatement wash-up required
Self-employed H1234567 S 2021 (being 01 April 2020 - 31 March 2021)

- a** Confirm with the client they will be earning income while receiving weekly compensation

NOTE How will I know the client will be earning income?

If the client is fit for some work this will generally be stated on the ACC18 or ACC45
The client or employer may also inform you during discussions with them, such as during a Welcome or Check In Conversation

NOTE What if the client has Cover Plus Extra?

Clients who have Cover Plus Extra don't require abatement, except for Lower Level Weekly Compensation Cover Plus Extra (LLWC CPX)

 [View Cover Plus Extra](#)

- b** Review pre-incapacity work pattern in the Welcome Conversation transcript.

NOTE What if the client has a new post incapacity employer?

Request the post incapacity employer (PIE) work pattern from the client or employer

- c** Collect earnings information from the client or employer as necessary.

NOTE What are the acceptable means of gathering abatement information?

- MyACC
- Email confirmation of periods and amounts paid, from client or employer
- Copies of pay-slips or payroll reports, from client or employer
- Real time earnings request (see attached policy information)
- Negotiated abatement, which should be evidenced on file. See information link below
- ACC038 Declaration of employee earnings to the employer
- ACC206 Weekly work hours declaration to the client if they are self employed

NOTE What if the client's employment has terminated?

Obtain final pay details from the employer via the 'ACC040 Termination pay information request - employer' form (generate in EOS)

NOTE What if the claim is set up as Employer Reimbursement Agreement (ERA) payments to the employer?

Abatement must be gathered via the ACC038 Declaration of employee earnings form from the employer (MyACC and real time earnings requests for abatement are not acceptable on ERA claims).

NOTE What if the abatement contains Holiday and/or Sick pay?

Holiday and/or Sick pay needs to be abated over the period (days) it relates to.

When an employer has made payment of holiday and/or sick pay during a period the client is unable to work, they should be asked whether the leave can be reinstated. If this is possible, the client should be asked to refund the holiday and/or sick pay to the employer.

If the employee refunds the leave payment to the employer, seek written confirmation from the employer detailing:

- the total leave payment the employee is refunding
- the period the leave covers

Alternatively, ask that the client and employer complete an ACC5791 Declaration for the repayment of weekly compensation and reinstatement of leave.

If confirmed, we would not abate the Holiday and/or Sick pay.

 ACC5791 Declaration for the repayment of weekly compensation and reinstatement of leave

 Negotiated Abatement

<http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/negotiating-abatement-for-employees--guidelines/index.htm>

d Determine abatement complexity

NOTE What is the difference between a simple or complex abatement?

Simple abatement is when:

- You have negotiated an earnings rate with the client and employer (see 'Negotiating Abatement for Employees' guidelines below)
- The client has not been paid for any part of the payment period that the abatement will be applied to and if back-dated abatement applies, the period is less than 90 days from DOFI.
- The client only has one employer which abated earnings can be applied to
- The employment work type is either permanent or non-permanent employee

All other abatement earnings details are complex. These include:

- Any abatement for a period that has been previously paid
- Claims where the client has more than one employer
- Self-employed or Shareholder abatements
- Manually calculated abatements that derived from a percentage of earnings or hours based amounts
- Periods where holiday pay or termination pay apply
- Periods where the employer has also paid a Top up
- Periods with Bonus payments, back pay, directors fees or other allowances apply
- Commission payments
- Periods where the claim is paying as Employer Reimbursement Agreement (ERA) payments to the employer
- Abatement is managed in Pathway

NOTE How do I identify a period that has previously been paid?

Check the payment history for payments that have been made to determine if any payments have been made in a period that abated earnings will apply. This can be done at the party level (across all claims) or claim level and weekly compensation subcase level.

 View complete payment history

e Explain the client's obligations while receiving abatement and consider sending them the FSWC05 'Earning while on weekly compensation' factsheet

 FSWC05 Earning while on weekly compensation

NOTE What are the client's obligations?

It is in the client's best interests to advise us of their earnings accurately and in a timely manner. Failing to do so can increase their risk of receiving an overpayment which will need to be recovered.

NOTE What if the client is Self-Employed or a Shareholder Employee?

It's important we explain to Self-Employed and Shareholder Employee clients that abated weekly compensation is related to loss of earnings, rather than hours worked.

For example, a Shareholder Employee whose Shareholder income isn't impacted by their injury shouldn't be compensated for this. A Self-Employed client who normally works 40 hours a week and earns \$1000 a week pre-incapacity. Post-incapacity works 20 hours a week but earns \$800 a week. The correct action would be to abate their weekly compensation based on the \$200 lost as a result of their incapacity.

- f** Agree with the client how they will notify ACC of their earnings and whether their abatement may need to be reviewed in the future.

NOTE What should you consider?

If it is likely that your client's earnings will vary quite often (for example, if they are self-employed), then consider setting reviews with your client by creating forward-dated Reminder Actions to ensure that we are paying them accurately.

If you need guidance on how to manage a client's ongoing abatement then refer to Seek Internal Guidance

 **PROCESS** Seek Internal Guidance

- g** Record the agreed plan and any important information such as hourly rate, post-incapacity work schedule in the Vocational Life Area.

- h** Determine next steps.

NOTE What if the abatement is complex?

Create an Abate Weekly Comp or Abate Weekly Comp Self-Employed task and assign it to the Centralised WC Queue. In the task, include:

- Employer name
- Post incapacity period from and to dates
- Gross income amount, or percentage of earnings capacity, or work hours and hourly rate where required
- Work pattern if the post incapacity earnings are not from the current employer
- Attach any relevant documents (for example ACC038, ACC206 or ACC040)

NOTE What if the abatement is simple?

If you are setting up abatement as part of the set up of weekly compensation, go to Step 3.0 Collect and calculate (simple).

If the abatement is due to extended incapacity or a change in the approved incapacity and you will be processing the abatement in Eos, you will need to assign the system generated task that went to the weekly compensation centralised queue, to yourself. The task type will be either 'Modified Incapacity' or 'Automatic entitlement authorisation prevented'. Go to Step 3.0, Collect and calculate (simple).

 **PROCESS** **Determine Earnings Liable for Abatement**
UNASSIGNED

2.0 Review request

Experienced Payments Assessor Payments Assessor

- a** In Eos, review Abate Weekly Comp Employee task or Abate Weekly Comp Self-Employed task to ensure it contains all necessary information to proceed

NOTE What information is required?

- Employer name
- Post incapacity period from and to dates
- Gross income amount, or percentage of earnings capacity, or work hours and hourly rate where required
- Work pattern if the post incapacity earnings are not from the current employer

If there is missing information, check the documentation on the claim to confirm. Then contact the applicable staff member for clarification if necessary

- b** Go to either 3.0 "Collect and calculate (simple)" or 3.1 "Collect and calculate (complex)"
-

3.0 Collect and calculate (simple)

Recovery Team Member

- a** Create the abatement in Eos by using the System Steps "Add post incapacity earnings for Abatement".

-  Add post incapacity earnings for abatement
-  View collection point details (CSD Frontline)

NOTE What if the employer is the current post incapacity employer?

Use the pre-incapacity work pattern from the collection point for that employment

NOTE What if the employer is a new post incapacity employer?

The post incapacity employer (PIE) work pattern will need to be provided. If it hasn't been provided contact the client or employer to confirm the work pattern.

NOTE What if the client will be receiving earnings beyond the first abatement period?

Select the 'Ongoing abatement' indicator when you are adding post incapacity earnings information to prevent future periods being paid without abatement being calculated.

NOTE What if I need to add more abatement periods to an employer?

You can add multiple abatement periods to an existing employment. For example, if you have been provided with a month of earnings information rather than a week.

NOTE Where can I find more information on abatement?

For more detail and examples, refer to the Managing Abatement Information Sheet

 [Managing Abatement Information Sheet](#)

b Review post incapacity earnings and employer summary

 [View post incapacity earnings](#)

NOTE What if the summary is incorrect?

Amend the following details as required

- Employer details
- Effective from and to dates
- The amount and frequency of the abatement
- The ongoing abatement indicator is set if there's an on-going abatement

c Go to step 4.0 'Review Entitlement'

3.1 Collect and calculate (complex)

Experienced Payments Assessor, Payments Assessor

a Create the abatement in Eos.

- If the abatement is for the current pre-incapacity employer, use the pre-incapacity work pattern from the collection point for that employer.

- If the abatement is for a new post-incapacity employer, use the new post-incapacity work pattern provided. If not provided, contact the client or employer for the correct work pattern.

 [Add post incapacity earnings for abatement](#)

NOTE What if the abatement applies to a period that has already been paid?

You will need to create an abatement period for earnings that have been received and enter the post incapacity earnings. For PAYE earner types, pay particular attention to the payment cycles due to a mix of monthly reporting and pay day reporting cycles, which may introduce 'extra pays' depending on the pay day filing cycle. Use the RTE calculation tool to determine what earnings qualify for abatement.

Eos will recalculate the payment period and if the client has been overpaid, the overpayment will show as part of the recalculation. Refer to the Recalculation Weekly Compensation process.

 **PROCESS** [Recalculate Weekly Compensation](#)

NOTE What if there is more than one employer with abatement to apply?

Add the abatement for each employer and ensure you use either the ongoing abatement indicator, or create a non-payable period and leave in place until the abatement can be confirmed for all employments.

NOTE What if the abatement is based on a percentage of earnings, or hours based amounts?

The abatement rate has to be manually calculated as a percentage of, or based on the hours of, the collection point earnings/hours, then entered in Eos.

NOTE What if the abatement contains Holiday and/or Sick pay?

Holiday and/or Sick pay needs to be abated over the period (days) it relates to.

When an employer has made payment of holiday and/or sick pay during a period the client is unable to work, they should be asked whether the leave can be reinstated. If this is possible, the client should be asked to refund the holiday and/or sick pay to the employer.

If the employee refunds the leave payment to the employer, seek written confirmation from the employer detailing:

- the total leave payment the employee is refunding
- the period the leave covers

Alternatively, ask that the client and employer complete an ACC5791 Declaration for the repayment of weekly compensation and reinstatement of leave.

If confirmed, we would not abate the Holiday and/or Sick pay.

 [ACC5791 Declaration for the repayment of weekly compensation and reinstatement of leave](#)

NOTE What if the abatement contains Termination Pay?

Review the completed 'ACC040 Termination pay information request – employer' form on the claim and apply abatement accordingly.

We must apportion the termination payment over the number of working days it represents from the first working day after termination.

Refer to Process – Determine Earnings Liable for Abatement in 1.0 above

NOTE What if the abatement contains a 'top up' from the employer?

The 'top up' is exempt from the abatement process as long as it:

- does not relate to work performed by the employee
- represents an amount that 'tops up' the employee's weekly compensation to the level of their normal pay.

Unless all or part of the Top-up relates to work completed by the client, we would NOT include it in an abatement calculation.

Refer to Process – Determine Earnings Liable for Abatement in 1.0 above

NOTE What if the abatement contains bonus payments, directors fees, back pay or commission payments?

If a payment received during incapacity cannot be related to an equivalent period of time, the earnings will apply to the period in which it was paid (Example: one-off taxable bonus).

If a payment received during incapacity relates to a specific period of time, the payment should be considered as earnings in that period (whether that be pre or post incapacity), dependent on when it was paid (Example: commission).

- If a payment is related to a period within an income year (1 April to 31 March) and the payment is also made within that same income year, we will consider the earnings in the period they relate to.
- If a payment is related to a period within an income year (1 April to 31 March) but is paid in a later income year, the payment is considered earnings in the period in which it was paid.
- If a payment is related to a period across income years (Example: relating to 01 March to 30 April) and paid in that later income year, the payment that relates to the previous income year (in this Example: 01 March to 31 March) will be considered earnings in the period in which it was paid, and the payment that relates to the current income year in which it was paid (in this Example: 01 April to 30 April), will be considered earnings in the period it relates to.

This is because subject to the income tax legislation, the Accident Compensation Act 2001, section 9 specifically defines 'earnings as an employee' in relation to each income year, which is 1 April to 31 March.

Refer to Process – Determine Earnings Liable for Abatement in 1.0 above

NOTE What if the post incapacity earnings are earned overseas?

Then enter the overseas income after you have calculated the correct amount in New Zealand dollars using the current exchange rate. In the 'Additional Notes' section, record the exchange rate you have used in the calculation and the date you did the calculation.

NOTE What if I received a system alert "Please determine whether clients section 60 weekly compensation is greater than the weekly compensation calculated on this claim for each period. A Don't pay period type with reason 'Overlapping WC period' must be used to prevent weekly compensation being paid on the claim that calculated the lesser amount" when I clicked on the abatement tab?

- Subsequent injury weekly comp rate after abatement is higher than section 60 payment (per period):

Continue payments for applicable periods on subsequent injury claim. You will need to consider which claim is the higher rate for each period during any subsequent reassessment.

- Abated rate is now less than the section 60 payment:

You will need to manage any periods previously paid or not yet paid to ensure the client receives the correct payment amount. Because these weekly compensation entitlements are managed on separate claims Eos cannot automatically adjust payments.

For each period that has paid, apply a manual override using the Section 60 rate as the 'Amount' - Go to Apply a Top Up or Override Payment procedure.

Overpayments will result from the manual override action. Manage these as per the normal debt process, go to Assess Client Overpayment procedure. If the decision is to recover the debt from ongoing entitlement you may need to transfer the debt to Oracle and have C & R manage this from the Section 60 entitlement. Ensure you provide enough clarification in the task to C & R.

For each period that hasn't yet paid, edit the payment period and apply the 'Do Not Pay' - 'overlapping WC period' status for all applicable periods. On the Section 60 claim, from the date of the last payment, edit each applicable payment period (previously set to 'Do Not Pay' - 'overlapping WC period') to 'Calculate and Pay'. Review the calculated payments and initiate payments for approval. Be sure to provide enough information in the description of the task.

You will need to suppress the automatic payment notification and send the client a manual payment notification letter explaining the outcome of this decision on their weekly compensation entitlement.

You will need to consider which claim is the higher rate for each period during any subsequent reassessment.

NOTE What if the client has a CPX LLWC or TimeOut policy?

We will need to calculate and apply abatement manually.

- Take the policy amount and multiply by 1.25 to get the 100% rate.
- Manually calculate the new rate by applying the abatement formula to the entitlement amount
- Reduce the override amount to the new calculated rate after abatement has been applied.
- Add a contact or upload your workings into Eos for future reference.

NOTE What if the client will be receiving earnings beyond the first abatement period?

Then select the 'Ongoing abatement' indicator when you are adding post incapacity earnings information to prevent future periods being paid without abatement being calculated.

NOTE What if I need to add more abatement periods to an employer?

You can add multiple abatement periods to an existing employment.

 Real time earnings calculation tool
<http://thesauce/team-spaces/chips/index.htm>

 Retrieve earnings from IR

 View collection point details (CSD Frontline)

b Review post incapacity earnings and employer summary

NOTE What if the summary is incorrect?

Amend the following details as required

- Employer details
- Effective from and to dates
- The amount and frequency of the abatement
- The ongoing abatement indicator is set if there's an on-going abatement

 View post incapacity earnings

4.0 Review entitlement

Experienced Payments Assessor, Payments Assessor, Recovery Team Member

a Adjust the payable and non payable periods as required. (If new incapacity, update the payment period status from 'Pending' to 'Approved') so that a payment schedule of due events can be created, then review the calculation.

NOTE What if the payment period status is 'Approved - Calculate and Hold' or 'Approved - Do not Calculate - Status Reason 'Awaiting further information'?

Check the Notes section of the period:

- Any comments (for example - MSD reimbursement required) - Payments will need to process this - task your abatement to Centralised Weekly Compensation
- No comments - Change the status to Approved - Calculate and Pay

 Edit a payment period (Eos Online Help)

b Review the entitlement to ensure that the correct period has been abated and initiate (tick) the payments for approval.

 Initiate payments for approval (Eos Online Help)

 View abatement calculations for a period

NOTE Refer to Maintain Weekly Compensation process - Review entitlement

 **PROCESS** Maintain Weekly Compensation

NOTE What if the abatement is complex?

- Create an Abate Weekly Comp Employee, or Abate Weekly Comp Self-Employed task at the claim level.
 - Add required information to the task
 - The task will automatically send to Centralised Weekly Compensation queue to be actioned by the Weekly Compensation Team.
- This process ends

c If you are the Recovery Team Member/Case Manager, create and send the Approve Weekly Compensation task to the Centralised Weekly Compensation Approval queue so that the payments can be approved. Add any notes or instruction to the task description field that the approver may require, such as fast track.

 Add an approval task (Eos Online Help)

NOTE What information should you include in the approval task to the payments team?

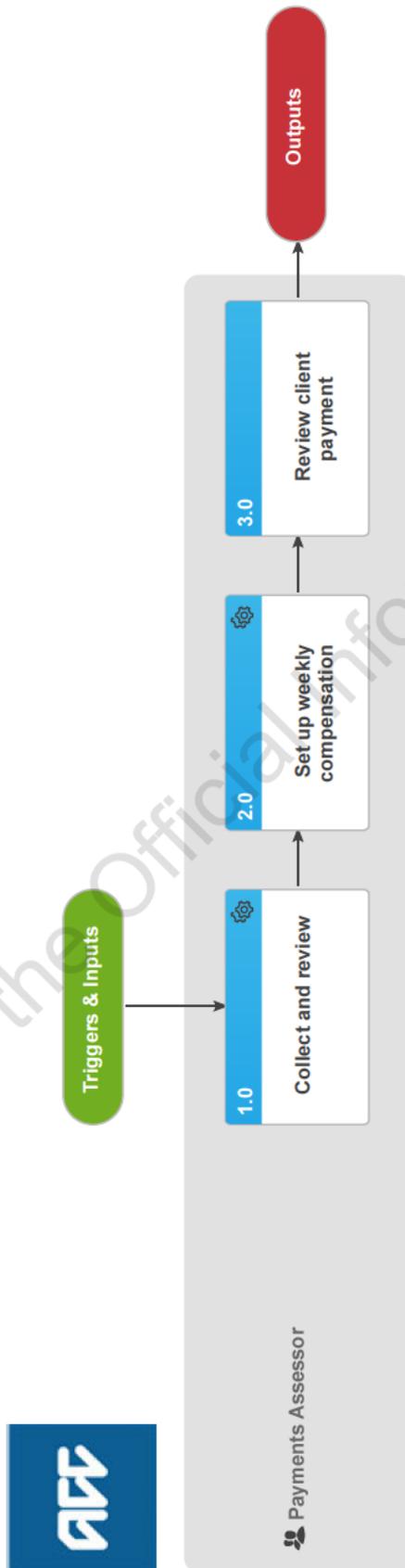
The abatement Period(s) and Amount(s) that require approval.

If available, link any documentation to the task to support the request.

This process ends.

d If you are the Payments Assessor you will have received the Abate Weekly Comp Employee, or Abate Weekly Comp Self-Employed task. Transfer this task to the Centralised WC Approvals queue so that the payments can be approved.

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Summary

Objective

To set up a new weekly compensation entitlement on a claim for a permanent employee (with one employer only).

Background

This procedure should be used when the set up of weekly compensation meets the following criteria.

- 1) The client is eligible for weekly compensation.
- 2) The weekly compensation can/is being paid through Eos .
- 3) The client's earnings are available in RTE, are up to date and there are no gaps or major variances in earnings.
- 4) The client is a PAYE employee only, and doesn't earn income from other sources (such as self-employed or shareholder).
- 5) The client only has one current employer, although they may have had different employers previously .
- 6) The client has not resigned from their job or received a redundancy payment.
- 7) The backdated incapacity is less than 90 days.
- 8) The client bank account, IRD number and tax code are available, or you can easily update them.
- 9) There is no MSD benefits that have been paid that may require reimbursement.

Owner Tui Kailahi

Expert Tracey Horrell

Procedure

1.0 Collect and review

Payments Assessor

- a Receive [Setup Weekly Comp Entitlement] task.
- b Gather earnings and employment information from Inland Revenue via RTE Web Service.
 - Use of Inland Revenue Real-Time Earnings Web-Service Policy
 - Retrieve earnings from IR
- c Using the IR number for the employer check employer pay record to determine whether they are an ERA (Employer Reimbursement Agreement) employer.

NOTE What if the employer is an ERA employer?

The entitlement will need to be set up in Pathway. Send the [Setup Weekly Comp Entitlement] task to the Centralised Weekly Compensation queue with any relevant information. This procedure ends.

- d Review the flags that have been indicated on the Real Time Earnings output from IR, and if any of these flags are indicated, then this would make it complex WC set up:
 - Self-employed income
 - Scheduler income

NOTE What if the permanent / non-permanent employee had previous weekly compensation (ACC earnings) within 52 weeks prior to the DOFI date?

Review ACC earnings on the collection point in Eos. Check the previous weekly compensation claim for the entitlement(s) which may need to be excluded, and manually adjust the dates.

- e Review the employee income section. If any of the following is indicated this would make it a Complex WC Set Up, and the process ends here:
 - Client has started with a new employer, but has not been employed for a full pay cycle at the time of accident and therefore earnings are not captured.
 - There is a variance in the client's regular earnings (greater than 20% as a guide)
 - There are gaps in their income.
 - There are multiple concurrent employers.
 - Client has received an MSD benefit (not pension) at the time of injury.

- f Using the RTE calculator, calculate the short term earning and the long term earnings rate (if the long term earnings are a full 52 week period), so that the employer's pay cycle is factored into the Eos calculation for weekly compensation.

Save the calculation as a pdf file and upload to 'Documents' on the claim as this will be reviewed by the person approving the payments.

- Add an employer participant
- Real time earnings calculation tool
<http://thesauce/team-spaces/chips/index.htm>
- Add a digital document to a claim or WC sub case (Eos Online Help)
- Making a weekly compensation payment from Eos

2.0 Set up weekly compensation

Payments Assessor

- a** Create the collection period on the claim, this is either the date of first incapacity (DOFI) or DOSI if this is a subsequent incapacity on the same claim.

NOTE What if the DOFI or DOSI date is incorrect?

If you have not added any earnings or employment information on the collection point, you can remove the DOFI or DOSI and add the correct date.

If you have entered earnings and employment on the collection point but the collection point has not been calculated, you can remove the DOFI or DOSI and this will also remove the collection point data.

If you have entered earnings and employment on the collection point and the collection point has been calculated but no payments have been made, you will need to cancel the collection period. This will result in the earnings and employment information that was on the collection point, showing as replaced earnings. However, once the collection point has been cancelled, you must calculate the collection point first before adding employment or earnings information to the collection point.

 Remove a collection period and collection point (Eos Online Help)

 Cancel a collection period and collection point (Eos Online Help)

NOTE What if I cant add a DOFI date?

Check the incurred date on the claim to see whether the date is after the DOFI, if it is contact the case owner to modify the incurred date so that it matches the DOFI, or occurs prior to DOFI date.

NOTE What if I can't add a DOSI date?

Eos requires a DOFI to be added in all cases. You will need to add a DOFI then you can add the DOSI.

- b** Add earnings and employment information to the collection point. Use the 4 and 52 week calculations from the RTE tool to populate the earnings fields.

 Add collection point information for a permanent employee

- c** Set up the weekly compensation subcase.

 Set up a Weekly Compensation entitlement subcase (Eos Online Help)

- d** Review information from the approved medical incapacity and the script to determine if abatement has been indicated.

NOTE What if an abatement needs to be applied?

If abatement is being applied for the first time, proceed with the Manage Abatement process.

 **PROCESS** Manage Abatement in Eos

- e** Check that the system derived NZSQA date is correct, this will need to be modified in the situations detailed in the notes below.

NOTE What if you are calculating a further injury period where the entitlement is still in the first week of the further injury claim?

Then you will need to adjust the entitlement end date (NZSQA) so that it is correctly calculated from the date of first entitlement (DOFE) on the further injury claim so that the NZSQA election date is correct

NOTE What if the client was not paid an entitlement on the date of first entitlement (DOFE)?

Then the entitlement end date (NZSQA) will need to be adjusted from the date of subsequent incapacity (DOSI) so that the NZSQA election date is correct.

 Weekly Compensation and New Zealand Superannuation (pre-1 July 2019)

- f** Review the script for the clients elected pay day. If this is not 'Monday', change the pay day to the client's preference..

 Set a preferred pay day

- g** Check that all the medical incapacity needed for set up has been approved.

NOTE What if all the medical incapacity has not been approved?

Then before progressing the calculating the weekly compensation, contact the case owner to approve the outstanding medical incapacity.

- h** Update the "Calculate and Pay' payable period status to 'Approved' so that a payment schedule of due events can be created.

NOTE What if additional incapacity has been approved or approved incapacity has been changed prior to the set up of weekly compensation?

When incapacity is approved and weekly compensation has not been set up, Eos creates a payable period that aligns to dates of the approved incapacity. This may result in more than one payable period being created. You will need to adjust the dates of the payable periods to ensure there is no overlap. Make sure that the first payable period does not include the 7 day stand down, ie the first week is excluded from the payment period. Close all associated 'Modified incapacity' or 'Automatic entitlement period authorisation prevented' tasks.

 Edit a payment period (Eos Online Help)

3.0 Review client payment

Payments Assessor

- a Review the calculation and initiate payments for approval.

 Initiate payments for approval (Eos Online Help)

- b Send the [Setup Weekly Comp Entitlement] task to the Centralised Weekly Compensation Approval queue. Add any notes or instruction to the task description that the approver may require, such as whether the payment should be fast tracked.

NOTE What if I didn't receive a Setup Weekly Comp Entitlement task?

Create an Approve Weekly Compensation Entitlements task. Add any notes or instruction to the task description that the approver may require, such as fast track. Send to the Centralised Weekly Compensation Approval queue.

 Add an approval task (Eos Online Help)

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Using the Employee Earnings in the Self Employed or Shareholder Employee Calculation Policy v5.0



Summary

Objective

When calculating employee earning in the self employed or shareholder employee calculation all earnings must be used in earnings assessment.

Owner Tui Kailahi

Expert Nick Lamb

Policy

1.0 Rules

- a Under AC Act 2001, Schedule 1 Clauses 38 and 39, self employed and shareholder employees must have any past employee earnings in the 52 weeks prior to DOFI/DOSI used in their weekly earnings assessment, if it is beneficial to do so.

The client's total employee earnings must be tested under all eligible calculation provisions, with the client getting the calculation that provides the highest rate.

ACC's calculator will test the employee earnings in all relevant weekly compensation assessments behind the scenes. It is programmed to provide the client with the highest weekly compensation rate in the short and long term periods, automatically.

Some examples of how the employee earnings must be tested are shown in the table attached.

- AC Act 2001, Schedule 1 Clauses 38 and 39
https://www.westlaw.co.nz/maf/wlnz/app/document?docguid=167904768e03211e08eefa443f89988a0&isTocNav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&startChunk=1&endChunk=1

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If...	then...
<p>the client is self employed or a non paye shareholder employee and held no employee job at DOFI/ DOSI, but did have past employee earnings in the 52 weeks prior to DOFI/DOSI</p>	<p>the client is entitled to have their employee earnings used in their self employed or shareholder employee calculation under Clause 38 or 39 of the AC Act 2001, only if it is beneficial to include the employee earnings</p>
<p>the client is a self employed or a non paye shareholder employee and held employee position(s) at DOFI/DOSI</p>	<p>the client is entitled to have their employee earnings used in either:</p> <ul style="list-style-type: none"> • the self employed or shareholder employee calculation under Clause 38 or 39 of the AC Act 2001 • the employee calculation under Clause 34 or 36 Schedule 1 of the AC Act 2001 <p>The client will get the calculation that provides the highest rate</p>
<p>the client is a PAYE shareholder employee at DOFI DOSI and held past position(s) as an employee in the 52 weeks prior to DOFI/DOSI</p>	<p>the client is entitled to have their earnings used as follows:</p> <p>either:</p> <ul style="list-style-type: none"> • using the total earnings as a shareholder employee in the relevant year, and any employee earnings in the 52 weeks prior to DOFI in a calculation under Clause 39 Schedule 1 of the AC Act 2001 • using only the PAYE portion of the shareholder earnings in a calculation under Clause 34 or 36 Schedule 1 of the AC Act 2001 <p>Note:</p> <p>If the PAYE shareholder earnings are used as PAYE shareholder earnings under Clause 39 Schedule 1 of the AC Act 2001, they cannot also be considered employee earnings in that calculation, ie the earnings can only be used once in a calculation.</p> <p>If a calculation is done under Clause 34 Schedule 1 of the AC Act 2001 then earnings from past employee employments that have ceased prior to DOFI cannot be used in a separate calculation under Clause 39 Schedule 1 of the AC Act 2001.</p> <p>Pathway will assess the 'greater of' all possible scenarios and pay the client the highest rate.</p>

 Using the employee earnings in the self employed or shareholder employee calculation Policy.PNG

2.0 Using the 'greater of' provisions

- a** AC Act 2001, Schedule 1 Clauses 38(4) and 39(4) allow self employed and shareholder employee calculations to be made with or without employee earnings included. Depending on which calculation provides the client with the highest rate of weekly compensation, this is the 'greater of' calculation.

The client may be better off not having the employee earnings used in the assessment, if either:

- the client is a recent, or established shareholder employee, and the employee earnings were low
- if the employment is still held at DOFI, and the client would be eligible for a lesser divisor and therefore have a higher weekly compensation rate if the earnings are used in an assessment under the employee weekly compensation provisions.

The following are examples of the calculations.

-  AC Act 2001, Schedule 1 Clauses 38(4) and 39(4)
https://www.westlaw.co.nz/maf/wlnz/app/document?&src=rl&docguid=167904768e03211e08eefa443f89988a0&hitguid=I9377c95be01911e08eefa443f89988a0&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&extLink=false#anchor_I9377c95be01911e08eefa443f89988a0

NOTE Example 1: An established self employed person or non-payee shareholder employee with \$40,000 earnings in the relevant year.

Calculation (a) test the employee earnings in the self employed or shareholder employee calculation:

- earnings as an employee divided by 52 ($5000 / 52 = \$96.15$) plus
- shareholder employee earnings divided by number of weeks in relevant year ($\$40,000 / 52 = \769.23)

TOTAL = \$865.38

NOTE Example 2: a permanent employee job held at DOFI which had commenced 20 weeks prior to DOFI with total employee earnings of \$5000.

Calculation (b) test employee earnings in the employee calculation under AC Act 2001, Schedule 1 Clause 34 and then combine the figure with the shareholder employee amount:

- earnings as an employee divided by 20 ($5000 / 20 = \$250$) plus
- shareholder employee earnings divided by number of weeks in relevant year ($\$40,000 / 52 = \769.23)

TOTAL = \$1019.23

- b** In this scenario the client would not be better off under calculation (a) where the employee earnings are included in the shareholder employee calculation.

If a client has their employee earnings used in the shareholder employee assessment, they cannot have those earnings also used under any other calculation provision.

Pathway or Eos will perform the 'greater of' assessment behind the scenes. It is programmed to test all possible scenarios and provide the client with the highest weekly compensation rate in each period.

3.0 Special case: Multiple employee jobs or multiple periods of employment in the 52 weeks prior to DOFI/ DOSI

- a** If a client has more than one set of employee earnings in the 52 weeks prior to DOFI/ DOSI, or there are gaps in employment, it may be more difficult to work out the exact periods of employment to establish a divisor.

If the client is a new or recent shareholder employee, the divisor will be the number of full or part weeks in which the earnings were earned over. It is important to collect the exact date periods for each employment, giving consideration to any termination pay or holiday pay paid in each employment.

See Calculate weekly earnings - Shareholder employee with multiple jobs.

-  Calculate weekly earnings – shareholder employee with multiple jobs
<http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/calculate-entitlement-187/shareholder-employee-with-multiple-jobs/index.htm>