Eligibility Criteria for Weekly Compensation Policy v29.0

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 [Name withheld]

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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, or.

• the client is in employment at the time they suffer their injury, and was an earner immediately before incapacity commenced, or has been assessed as being an earner under the Accident Compensation Act 2001. (see the 'Definition of an Earner' policy page to determine if the client is an earner).

- Definition of an Earner
- Weekly compensation for maternal birthing injury clients
- Weekly compensation for clients injured with an end date for employment

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 at the time they suffered their injury, they may be eligible for loss of potential earnings (LOPE)
- 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 responsibilites

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

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.

Definition of Incapacity

Establishing Date of First Incapacity (DOFI)

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%40deeme

Accident Compensation Act 2001, section 105
http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM101462.html?search=ts_act%40bill%40regulation%40deeme

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%40deeme

Compensation for Live Organ Donors Act 2016
http://www.legislation.govt.nz/act/public/2016/0096/latest/DLM4297829.html?src=qs

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