



6 December 2023

Kia ora [REDACTED]

Your Official Information Act request, reference: GOV-029050

Thank you for your phone call of 16 November 2023 to Recovery Partner, [REDACTED] asking for the following information:

a copy of the Employer Reimbursement Agreement (ERA) with [REDACTED]

Your request was referred to my team for a response under the Official Information Act 1982 (the Act)

A copy of the Employer Reimbursement Agreement is attached

The Employer Reimbursement Agreement (ERA) is a contract ACC has with employers who agree to pay weekly compensation to their injured employees on ACC's behalf. The ERA is the same for all employers who have one.

As this information may be of interest to other members of the public

ACC may decide to release a copy of this response on ACC's website. All requester data, including your name and contact details, will be removed prior to release. The released response will be made available www.acc.co.nz/resources/#/category/12.

If you have any questions about this response, please get in touch

You can email me at GovernmentServices@acc.co.nz.

Ngā mihi

Sara Freitag
Acting Manager Official Information Act Services
Government Engagement

Employer Reimbursement Agreement



The Parties

ACCIDENT COMPENSATION CORPORATION, a statutory corporation continued by the Accident Compensation Act 2001 (called ACC and we)

Legal name of Employer (called Employer and you):

Address (For a company use the registered office. For others use physical address):

Please list the legal name of any subsidiaries that you wish to be covered by this agreement (include a separate page if needed):

The Agreement

Under the Accident Compensation Act 2001, ACC is liable to pay Weekly Compensation for loss of earnings to a person with an incapacity from a covered personal injury who was an earner immediately before their incapacity commenced. ACC may delegate any of its functions or powers in accordance with section 73 of the Crown Entities Act and clause 25 of schedule 5 of the Accident Compensation Act.

We delegate to you the duty to pay Weekly Compensation to your Employees who we accept have cover for a personal injury and who are entitled to Weekly Compensation. This Agreement sets out the Parties' rights and obligations.

The documents forming this Agreement are:

1. This Cover Page
2. Standard Terms and Conditions
3. Any Variations made according to this Agreement.

How to read this Agreement

Together the above documents form the whole Agreement.

Clause numbers refer to clauses in the Standard Terms and Conditions.

Words defined in the Definitions section at clause 1 have the stated meaning throughout the Agreement.

Acceptance

In signing this Agreement, each Party acknowledges that it has read and agrees to be bound by this Agreement.

For and on behalf of

Accident Compensation Corporation:

For and on behalf of

_____:

Name

Date

Name

Date

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Standard Terms and Conditions

1. Definitions of terms used in this Agreement

In this Agreement, when we use the terms listed in this section, they have the meaning given immediately below:

ACC

Where the context requires, the term 'ACC' includes ACC's employees, agents, consultants and contractors, and its successors and assigns. 'Accident Compensation Corporation' has the same meaning.

Act

The Accident Compensation Act 2001.

Agreement

The legal Agreement between ACC and you comprising the Cover Page, these Standard Terms and Conditions, and any Variations made in accordance with this Agreement.

Business day

A day when most businesses in New Zealand are open for business. Saturday, Sunday and public holidays are not business days. A business day starts at 8.30am and ends at 5pm.

Claimant

An Employee who has been accepted by ACC as having cover in respect of a personal injury under the Act.

Employee

A person employed by you.

Employer

The person, business, company or organisation named on the Cover Page, also referred to as 'you'.

Insolvency event

The point at which you become insolvent or unable to pay debts as they fall due. An Insolvency event may be any of the following:

- (a) the appointment of a receiver, or receiver and manager, or statutory manager for the whole or part of the activity or your property

- (b) you entering into, or resolving to enter into, a voluntary agreement with creditors or any class of creditors for partial payment to fully satisfy their claims
- (c) you suspending or stopping payment to your creditors generally, or ceasing to carry on business as normal, or threatening or stating that you will do any of those things.

Notice

A formal or legal written communication from one Party to the other that meets the requirements of clause 12.

Party

ACC and you are each a Party to this Agreement, and together are the Parties.

Start Date

The date this Agreement starts (refer clause 3.1).

End Date

The date this Agreement ends (refer clause 10).

Variation

A change to any aspect of this Agreement that complies with clause 4.

We, us, our, and ours

Accident Compensation Corporation, also known as ACC, as named on the Cover Page.

Weekly Compensation

Compensation for loss of earnings, or loss of potential earning capacity, that is payable to a Claimant in accordance with the Act.

You, your and yours

The Employer named on the Cover Page.

2. How to interpret this Agreement

- 2.1. The rules in this clause apply when interpreting this Agreement, unless the context otherwise requires.
- 2.2. Terms defined in this document bear that defined meaning in the whole of this Agreement.
- 2.3. References to sections, clauses and subclauses are references to sections, clauses and subclauses of this Agreement.

- 2.4. The singular includes the plural and vice versa.
- 2.5. Clause and other headings are ignored when interpreting this Agreement.
- 2.6. Any obligation to not do anything includes an obligation not to let, allow or cause that thing to be done.
- 2.7. References to statutes, regulations, ordinances, bylaws or other instruments include any amendment, substitution or re-enactment.
- 2.8. A person includes a company or other entity. Any reference to a person applies to its personal representatives or to its legal successor.

3. Term of this Agreement

- 3.1. This Agreement starts on the date the second Party to sign has signed the cover page or 28 April 2020 (whichever is the later).
- 3.2. This Agreement continues until the End Date.

4. Changes to this Agreement

- 4.1. Any change to this Agreement is called a Variation. Unless clause 4.2 applies, a Variation must be agreed by both Parties and recorded:
 - (a) in writing and signed by both Parties, or
 - (b) through an exchange of emails where the authors have delegated authority to approve the Variation.

Variations to give effect to government policy changes

- 4.2. We may give you a notice varying this Agreement if a change in legislation or regulations or a ministerial directive under the Act requires this Agreement to be varied in any respect. This Agreement will be varied from the date stated in the notice.

5. How each party will behave

5.1. Both Parties agree:

- (a) to act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other
- (b) to discuss matters affecting this Agreement
- (c) to give notice to each other immediately of any actual or anticipated issues that could significantly impact on this Agreement
- (d) to comply with all applicable laws and regulations.

6. Employer's obligations

Paying Weekly Compensation

- 6.1. You agree to pay Weekly Compensation directly to Claimants on behalf of ACC in accordance with this Agreement.
- 6.2. If we give you notice to change the amount of Weekly Compensation paid to a Claimant from a given date, you will change the payments in accordance with this notice.
- 6.3. If we give you notice to cease paying a Claimant Weekly Compensation, you will cease payments in accordance with this notice.
- 6.4. If you wish to cease paying a Claimant Weekly Compensation, you will give us not less than 10 business days' notice of a specified cease date.

Claimant information

- 6.5. If we request that you provide information about a Claimant's remuneration or employment status (e.g. whether they are a current employee), you will provide this information within 10 business days of receiving our request.
- 6.6. You will give us notice of the hours worked by a Claimant for the purposes of abatement and Weekly Compensation recalculation.
- 6.7. If a Claimant is to cease being an Employee, you will give us notice of the date the Claimant's employment will cease as soon as practicable.

Insolvency events

- 6.8. You agree to give us notice of an Insolvency event as soon as it happens.

Amalgamation

- 6.9. You will give us at least one month's notice if you amalgamate with another company. We will then decide whether a Variation is necessary.

7. ACC's obligations

- 7.1. After receiving a Claimant's application for Weekly Compensation from you, as soon as reasonably practicable we will either:
- (a) give you notice of the amounts of Weekly Compensation the Claimant is entitled to and the period Weekly Compensation is payable, or
 - (b) give you notice that we will pay the Claimant Weekly Compensation (for example because the Claimant has multiple employers)

Reimbursing the Employer

- 7.2. We will reimburse you for all Weekly Compensation payments made in accordance with this Agreement.
- 7.3. We will pay you according to your chosen payment period (fortnightly, monthly, or 4 weekly) and you will receive one payment for all Weekly Compensation payments made to Claimants in this period.
- 7.4. If we are satisfied that the amount of Weekly Compensation we have reimbursed to you is incorrect, we will calculate the adjustment required and either:
- (a) offset the adjustment against any other payments owed to you or by you, or
 - (b) arrange payment or recovery of any amounts as soon as practicable.

8. Personal and confidential information will be kept private and secure

Protection of personal information

- 8.1. You will comply with the Privacy Act 1993 and, if it applies to you, the Health Information Privacy Code 1994, including:
- (a) ensuring that any personal or health information you hold about a Claimant is protected by reasonable security safeguards against loss or unauthorised access, use, modification or disclosure
 - (b) advising us promptly if there is a privacy breach involving information about a Claimant, working with us to resolve the breach, and consulting with us before dealing with the media or notifying the public or the Office of the Privacy Commissioner in relation to the breach

- (c) having a privacy policy which complies with the Privacy Act 1993 and, if it applies to you, the Health Information Privacy Code 1994

Protection of confidential information

- 8.2. All information required or received by either Party during or under this Agreement is deemed confidential information.
- 8.3. Each party confirms that it will not use or disclose the other Party's confidential information to any person or organisation other than if:
 - (a) use or disclosure is necessary to provide or use the Services
 - (b) the other Party gives prior written approval for the use or disclosure
 - (c) the use or disclosure is required by law (including under the Official Information Act 1982), Ministers or parliamentary convention
 - (d) information disclosed has already become public, other than through a breach of the obligation of confidentiality by one of the Parties
- 8.4. If we are required to use or disclose any of your confidential information pursuant to clause 8.3(c) we will notify you in advance, unless legally prohibited from doing so.

9. How information will be managed and monitored

- 9.1. You must:
 - (a) keep and maintain accounting records relating to this Agreement using prudent business practice and according to all applicable laws
 - (b) make sure the records are easy to access
 - (c) keep the records safe
- 9.2. When we make a reasonable request for information about Weekly Compensation payments, you must provide that information in a format we can use within ten business days of the request.
- 9.3. If we need information to comply with an enquiry or our statutory, parliamentary, or other reporting obligations, you must co-operate with us to provide information within the timeframe specified by us.
- 9.4. You must make your records available to us during the term of the Agreement and for 10 years after the End Date (unless you have already provided them to us).
- 9.5. You must make sure that records provided by ACC or created for ACC, are securely managed. When records are disposed of, you must make sure they are securely destroyed.

10. Ending this Agreement

By notice as of right

- 10.1. Either party may at any time give to the other no less than three calendar months' notice of termination of this Agreement.
- 10.2. The End Date is the later of:
- (a) three calendar months after the date on which notice under clause 10.1 is received by either Party
 - (b) any date specified in the notice as the date on which this Agreement will come to an end

Termination without notice on insolvency

- 10.3. The Employer's insolvency or liquidation is a deemed breach of Agreement. This Agreement will end immediately (without any requirement for prior notice). This will not apply, however, if the liquidation is for the purpose of reconstruction or amalgamation, the terms of which have been approved by ACC.
- 10.4. The date you are judged bankrupt or the date of appointment of a liquidator is the End Date.

Termination with notice on insolvency

- 10.5. An Insolvency event may be deemed to be a breach of Agreement. If an Insolvency event has occurred and if, at any time after that event, ACC gives notice to you of termination of this Agreement, this Agreement will end immediately.
- 10.6. The date a notice given by ACC under clause 10.5 is received by you is the End Date.

Termination for breach

- 10.7. If either Party considers that the other has breached any provision of this Agreement, that Party may give notice to the other specifying the breach. The notice must give the other Party 10 business days to stop or to remedy the breach (if it is capable of remedy). ACC will consider you have breached this Agreement if we consider on reasonable grounds that you have defrauded ACC (whether or not you are prosecuted for that fraud).
- 10.8. If the breach has not stopped or been remedied within 10 business days, the Party that gave the notice may forward to the other Party a notice of termination.
- 10.9. The End Date is either:
- (a) the date of receipt by the other Party of the notice of termination given under clause 10.8, or

- (b) any later date specified for that purpose in the notice

11. Rights after termination cancellation or expiry

- 11.1. Termination, cancellation or expiry does not affect any rights, other remedies or obligations of either Party under this Agreement or under legislation that arose before or on the date of termination, cancellation or expiry. These rights, other remedies and obligations continue to have effect and may be enforced after the relevant date.

12. Notices

- 12.1. You will be a registered user of MyACC for Business and will use the online services and forms to send and receive information where practicable.
- 12.2. All notices to a Party must be in writing and sent through MyACC for Business, delivered by hand or sent by post, courier or email.
- 12.3. All notices must be signed or, in the case of email and online services, sent by the appropriate manager or person having authority to do so.
- 12.4. A notice received after 5pm on a business day, or on a day that is not a business day, will be considered to be received on the next business day.

13. Limits on the contractual relationship

- 13.1. Nothing in this Agreement shall be construed as creating, and Parties will not state, imply or do anything to suggest that this Agreement creates, an Employer/Employee, partnership, or principal/agent relationship between the Parties.

Transfer of rights or obligations

- 13.2. You shall not, without our prior written consent, assign, transfer, sub-contract or otherwise dispose of any of your obligations under this Agreement. Doing so, even if we agree, does not relieve you of any obligation under this Agreement.

The Agreement does not affect statutory obligations

- 13.3. Nothing in this Agreement affects the statutory obligations of either Party to Claimants. Nor does the Agreement bind either Party to do or refrain from doing anything in a manner which is not consistent with the law.

14. General

New Zealand law and time

- 14.1. This Agreement will be governed and interpreted under the laws of New Zealand.
- 14.2. Dates and times are New Zealand time.

Signing the Agreement

- 14.3. The Start Date is the date this Agreement is signed or 28 April 2020 (whichever is the later). This Agreement is properly signed if each Party signs the same copy, or separate identical copies, of the cover page. If this Agreement is signed on two separate dates or separate copies are signed, the Start Date is the later of the two dates. Where separate copies are signed, the signed copy can be the original document, or an emailed copy.