

Work capacity decisions

Based on continual assessment of a claim, the insurer will make decisions on your work capacity throughout the life of your claim. These decisions can be about things like:

- your current work capacity
- your pre-injury average weekly earnings
- suitable employment options

Notice of intention to make a capacity decision:

Before making a work capacity decision that may result in a reduction or discontinuation of the worker's weekly payments **the insurer must, at least two weeks prior** to work capacity decision, communicate this to the worker by phone or in person and then be confirmed in writing to the worker.

This information must include:

- information that a review is being conducted and a decision is to be made
- review may include further discussions with other parties such as their employer, nominated treating doctor or other treatment providers
- advise the potential outcome of this review and detail the information that has led the insurer to their current position
- provide an opportunity for the worker to supply any further information to the insurer for further consideration and the date that this information is to be provided by
- tell the worker when this decision is expected to be made
- What constitutes "suitable" employment for you.

These decisions can affect your entitlement to weekly payments. For example, after two and a half years of receiving weekly payments, if the insurer decides you have

some work capacity but you are not working 15 hours or more per week then your weekly payments will cease.

Work capacity decisions by insurers are decisions defined in section 43 of *the 1987 Workers Compensation Act* as:

“(a) a decision about a worker’s current work capacity,

(b) a decision about what constitutes suitable employment for a worker,

(c) a decision about the amount an injured worker is able to earn in suitable employment,

(d) a decision about the amount of an injured worker’s pre-injury average weekly earnings or current weekly earnings,

(e) a decision about whether a worker is, as a result of injury, unable without substantial risk of further injury to engage in employment of a certain kind because of the nature of that employment,

(f) any other decision of an insurer that affects a worker’s entitlement to weekly payments of compensation, including a decision to suspend, discontinue or reduce the amount of the weekly payments of compensation payable to a worker on the basis of any decision referred to in paragraphs (a)–(e).

The following are not work capacity decisions:

(a) a decision to dispute liability for weekly payments of compensation,

(b) a decision that can be the subject of a medical dispute under Part 7 of Chapter 7 of the 1998 Act”

Notification of a work capacity decision

The insurer must notify the worker in writing of the work capacity decision if it will result in a reduction or discontinuation of a worker's weekly payments. The insurer will prior to doing so :

- telephone and speak to the injured worker at the time of the decision and inform the worker that a work capacity decision has been made
- explain the outcome and consequences of this decision and the information that has led the insurer to reaching their current position
- clearly explain the internal review process and that a review application will be sent with the notice
- Confirm that the decision will be conveyed in writing.

The insurer must provide the worker and other relevant parties with plain language communication regarding the work capacity decision.

Plain language communication requires:

- being considerate of the nature of the worker's circumstances
- communicating respectfully
- communicating a clear message
- presenting concise information
- adapting communication style to meet the worker's needs. Eg: utilising an interpreter if necessary.

The insurer must provide 3 months' notice before reducing or discontinuing an injured worker's weekly payments.

If you require any further information please contact:

Workers Health Centre on 02 97497666 or admin@workershealth.com.au

Injured Workers Support Network on 02 97497566 or Injuredworkerssupport.org.au

Your Union organiser or Unions NSW on 1800688919

Your legal representative

Work Cover Claims Assistance Service 131050 or www.workcover.nsw.gov.au

Work Cover Independent Review Officer or wiro.nsw.gov.au or call 13 94 76

This information is guidance material only and should not be used to replace legal information provided by your solicitor or by Work Cover NSW.

