

Weekly benefits and employer paid leave

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This guidance note relates to the *Motor Accident Injuries Act 2017* (the Act) and the Motor Accident Guidelines published by the State Insurance Regulatory Authority (SIRA). It provides information and guidance for insurers on employer paid leave considerations when determining a claim for weekly payments of statutory benefits for a motor accident injury on or after 1 December 2017. This information is guidance only and cannot be used for legal advice.

Eligibility for weekly statutory benefits

A person is entitled to weekly payments of statutory benefits during the first and second entitlement periods (weeks 1-13 and 14-78 after the motor accident, respectively) if the person is:

- injured as a result of a motor accident in NSW on or after 1 December 2017, and
- an earner, and
- suffering a total or partial loss of earnings as a result of the injury.

Note: 'Earner' and 'loss of earnings' are defined in [Schedule 1](#) of the Act.

Weekly payments of statutory benefits and employer paid leave

An earner can make a claim for weekly payments of statutory benefits at the rate calculated under the Act. An earner does not have to use employer paid leave (including sick and annual leave) but may choose to do so.

Insurers should not treat employer paid leave as 'income from personal exertion' when determining if a person has had a 'loss of earnings'. A person is still entitled to weekly payments of statutory benefits even if they have received employer paid leave for the same period.

An earner who is receiving weekly payments of statutory benefits does not have to repay their employer for paid leave taken to restore their leave balance. However, an earner may choose to do so in discussion and agreement with their employer.

Example

Marta was injured in a motor accident and the insurer accepted Marta's claim for statutory benefits. Marta worked 5 days per week before the accident and earned \$2,200 per week (\$440 per day). Marta has provided evidence of her income to the insurer. Marta returned to work 3 days a week and the remaining 2 days a week were being paid as sick leave by her employer.

Even though Marta is receiving pay for her sick leave days taken, the insurer must still pay Marta for these two days.

The insurer determined Marta's loss of earnings as follows:

$$\begin{aligned} &= (\text{pre-accident weekly earnings} - \text{post-accident earning capacity}) \times 95\% \\ &= (\$2,200 - [\$440 \times 3 \text{ days}]) \times 95\% \\ &= (\$2,200 - \$1,320) \times 95\% \\ &= \$880 \times 95\% \\ &= \$836 \end{aligned}$$

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