

## Status of Leave While Entitled to Income Compensation

The *WCIMA23* clarifies the status of sick leave, annual leave and long service leave (and leave accrual) while a worker is entitled to income compensation.

### Key Points

Act ref: s.61

The *WCIMA23* clarifies that for any period for which a worker is entitled to receive income compensation:

- the worker is entitled to take annual leave or long service leave
- the worker's entitlement to receive income compensation is not affected by the worker being entitled to, or taking, leave of that kind – these leave entitlements are concurrent to the worker's entitlement to income compensation
- the worker accrues entitlements to annual leave, long service leave and sick leave while receiving income compensation – this clarifies a long-standing issue and is consistent with legal precedent and most other jurisdictions
- the worker is not entitled to take sick leave – this reflects section 130(1) of the *Fair Work Act 2009*.

### Questions & Answers

**Q. Can a worker still access sick leave while a claim is being processed?**

**A.** Yes. Like the 1981 Act, the *WCIMA23* requires the sick leave to be reinstated if the worker is subsequently entitled to income compensation for the period of the sick leave. The *WCIMA23* also clarifies that any amount paid to the worker as sick leave is taken to be paid towards income compensation.

**Q. Why does a worker get access to compensation entitlements as well as annual leave payments?**

**A.** Leave entitlements and workers compensation are concurrent entitlements. The position in the *WCIMA23* reflects the current legal position.

