



Unlawful Discontinuance of Workers' Compensation Payments

Despite clear legislative prohibition there are employers who discontinue or reduce employee's weekly payments of workers' compensation without notice to the employee. Section 61 of the *Workers' Compensation and Injury Management Act* (the Act) makes it an offence for an employer to discontinue workers' compensation payments otherwise than in accordance with the Act.

Employees who find themselves on the receiving end of this unlawful practice are either forced back into the workforce or onto Centrelink payments before they have recovered from their injuries. In *Qantas Flight Catering v Joncevski* [2004] WASCA the court stated that the purpose of section 61 was to "limit the circumstances in which the employer may unilaterally discontinue or reduce the payments without the consent of the worker or an order of the Directorate".

An employer is not entitled to discontinue or reduce weekly payments of compensation unless the employee has:

1. consented; or
2. returned to work; or
3. been served with a valid notice and a medical certificate.

The Notice must:

- Inform the employee of the effect of failing to make an application if they dispute the right of the employer to discontinue or reduce payments; and
- Inform the employee that they may obtain information from Workcover

The medical certificate must state the injury that caused the incapacity and then by way of an opinion certify that:

- The employee has wholly recovered;
- The employee has partially recovered; or
- The incapacity is no longer a result of the injury.

In circumstances where the employer discontinues or reduces the employee's weekly payments without notice the employee is entitled to an order from an Arbitrator that weekly payments be reinstated.