

I am writing in regard to the National Workers' Compensation and Occupational Health and Safety Frameworks.

In any framework, and particularly given recent pushes for maternity leave and part-time/family friendly workplaces, the issue of workers injured during a period of part-time work must be addressed. Current compensation law fails to adequately address part-time employment and can cause women returning from maternity leave to be severely disadvantaged financially as a result of balancing work and family life by working part-time for a period.

Take the example of a 35 year old woman with 15 years full-time employment. She returns from maternity leave and decides to work part-time, 20 hours per week until her child is 2 years old. When her child is one year old the worker is permanently injured at work. Compensation is payable based on the hours worked at the time of injury – so the woman suddenly discovers that she will be paid a salary of 15 hours per week (75% of 20 hours), possibly for the rest of her life and possibly less any superannuation payable, or whilst paying super at the higher rate. She will end up fighting the case in court on a number of grounds including contract law, and struggling to support her family whilst paying legal bills. If she were injured a year later she would be paid 75% of her full-time hours, but because the injury was whilst on part-time the legal issues become pretty complex and she is forced to court.

Such a scenario raises a great many issues across areas of compensation, fairness, and sex discrimination. It affects not only future earning capacity (not taken into account in legislation) and ignores past work history and future history, but superannuation accumulation also. It may well throw the woman onto social security rather than being covered, as she is supposed to be, by workers compensation.

Another scenario, common in the Public Service, is a person who goes part-time for 1-2 years to finish a university degree. Again, is it fair that when the part-time is for a defined period that people are penalised if injured in that time? The degree probably benefits their workplace.

Another scenario: a person who works part-time for a short period to care for an elderly or sick relative. The same issues apply.

Long Service leave legislation uses a formula based on the higher of the last 12 months service or the average of the last 10 years. It would not be unreasonable for compensation legislation to work in a similar way, at least where a person remains in the same employment (or very similar) with the same employer. Such a solution would resolve many of the problems associated with the current legislative frameworks and any impact on workers' compensation payments would reflect the hours actually worked part-time and full-time over a person's period of employment.

The issues associated with part-time are complex. They affect a substantial part-time workforce – many of them women. The impact of being injured whilst part-time is not being made known to women yet they are encouraged to use flexible family workplace practices. The issues can and must be addressed by any national framework, to create a fair and equitable compensation system.

Another issue which a compensation framework needs to address is the Graduated Return to work (GRTW). In theory this is fine and should help an injured worker improve their work capacity. In practice there is no limit on how long a worker stays on a GRTW. When a condition ‘stabilises’ and a person reaches say 20 hours a week there is no time when they are told the GRTW has finished. A full-time worker who achieves a 50% return to work can – and does – get left on the GRTW year after year. Whilst on the GRTW, (and receiving compensation for the other 50% at a percentage of full-time pay) they are prohibited from accessing conditions a full-time or part-time worker has access to, such as flextime, and leave (including maternity leave without pay). Yet effectively the worker has become a defacto part-time employee, their injury has stabilised, and if the medical consensus is that flexibility will not aggravate the injury it seems unreasonable to apply the same rigid guidelines applying at the start of the GRTW.

A GRTW is supposed to be just that: a graduated return to work. It is not supposed to leave someone on fixed hours for the next 15 years with no access to flexible working conditions – and potentially more difficulties finding other work when admitting to still being on a GRTW. There has to be a date when all parties agree on an end to a GRTW (not necessarily precluding going back on one if changes occur in work or treatment that could make a GRTW beneficial).

Yours sincerely

T. Henderson
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