

LOSS OF EARNINGS AND PERSONAL INJURY* CLAIMS

Accidents happen suddenly and without warning. In our experience, bringing a claim for compensation is never a priority for our clients. However, the impact of an accident can have serious consequences for a person such as injuries, property damage, high cost medical bills and a loss of income due to an inability to work as a result of the injuries suffered.

There is no requirement in law for your employer to pay your wages while you are on sick leave from work. At a minimum, you may be entitled to the benefit of public holidays if your sick leave falls on a public holiday provided certain requirements are met. The Organisation of Working Time Act 1997 will also cover the following scenarios in relation to your absence from work immediately before a public holiday and your entitlement to the benefit of that public holiday: -

1. An absence from work up to 52 consecutive weeks by reason of an injury sustained in an occupational accident, i.e. an accident at work.
2. An absence from work up to 26 consecutive weeks by reason of an injury sustained in any accident.
3. An absence from work up to 13 consecutive weeks caused by any reason not referred to at number 1 and 2 above but being an absence authorised by your employer.

Whether or not you will be paid your wages in full will depend on the contents of your contract of employment and/or the policies in your workplace. If your employer has a sick pay policy, you may be in a position to receive your usual pay in full. In those circumstances, your employer will more than likely require that you sign over any illness benefit payment received from the Department of Social Protection to him/her for the duration of your sick leave policy. Once the sick leave policy expires, your employer may have a permanent health insurance protection policy in place. This is a policy that would pay out a regular income if you suffer a loss of earnings due to sickness lasting longer than a deferred period of time.

Unfortunately, many people who have been injured in an accident will not have the benefit of a paid sick leave policy at work or a permanent health insurance policy. As a result, they may have no option but to consider a claim for loss of earnings as part of a personal injuries

claim. If a person is successful with a personal injuries claim, he/she is entitled to recover the net loss of earnings suffered for the period they were unable to work as a result of the injury to the date on which the claim is finalised. In order to prove this aspect of the personal injuries claim, the medical report will need to speak to the absence from work due to injury. In addition, the earnings will need to be vouched with Revenue documentation for at least one year prior to the injury as well as a selection of payslips which will speak to a person's usual gross and net earnings prior to the accident having occurred. Self-employed persons can prove their loss of earnings by relying on their annual accounts and having their accountant give evidence in court, if the figures can not be agreed upon.

A person may try to mitigate their loss by attempting a return to work or taking up suitable alternative employment which is more accommodating for their injuries than their usual work. It is extremely important that this information is disclosed fully to the defendant(s) and to the court. In addition, any earnings received during this period must be deducted from the claim for loss of earnings. Most social welfare benefits such as injury benefit, illness benefit and invalidity pension must also be deducted from the claim for loss of earnings. However, pursuant to Section 2(1) of the Civil Liability (Amendment) Act 1964, as amended, payments received by way of any policy of insurance or "*pension, gratuity or other like benefit payable under statute or otherwise, in consequence of the injury*" are not deductible from a claim for loss of earnings in a claim for damages for personal injuries.

Claims for serious personal injuries will usually include a claim for future loss of earnings as well as loss of earnings to the date on which the claim has finalised. In the Supreme Court case of Long -v- O'Brien and Cronin Limited 24th March 1972 (unreported), Walsh J set out a list of factors to be considered when calculating a claim for future loss of earnings: -

1. The former earning capacity of the plaintiff;
2. The plaintiff's present physical condition;
3. The plaintiff's perspective physical condition;
4. The state of the labour market;
5. The particular trade or skill of the plaintiff and their prospects for exercising it in the future having regard to the diminution in their capacity to do so resulting from the injuries sustained.

Accordingly, it is extremely important that the medical reports speak to the plaintiff's ability to return to the labour market. Furthermore, an expert report from a suitably qualified vocational assessor will also be important as this will deal with the plaintiff's employability in their current industry or an alternative industry. Such a report will also set out the plaintiff's earnings in their current industry and what they are likely to earn in suitable alternative employment, if applicable. This report should then be furnished to a consulting actuary for actuarial calculation.

If you have suffered personal injuries in an accident and you are suffering loss of earnings or loss of employment opportunity as a result, it is advisable that you contact a solicitor with experience in both employment law and personal injuries litigation. You can only claim once for your injuries so it is important that all of your losses are included in the claim. A solicitor will review your doctor's medical report with you and advise you as to whether you should be obtaining a report from a vocational assessor and consulting actuary in order to consider a claim for loss of earnings.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor. In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**