

COMPENSATION PRACTICE AND QUALITY DEPARTMENT

PRACTICE DIRECTIVE # C5-2

TOPIC: Commencement of Payments
ISSUE DATE: November 19, 2004

This practice directive is intended to clarify the application of section 5(2) of the *Workers Compensation Act* for shift workers where the wage rate is established based on an artificial 7-day work week, due to the irregular nature of the shift or limitations in the AWL system.

Law & Policy

Section 5(2) requires compensation for wage loss to be paid from the first working day following the day of injury. Policy item #34.30, *Commencement of Payment*, defines "day of injury" to mean "calendar day" and interprets the section to require payment to commence effective the "shift" next following the "shift" on which the worker was injured. This is straight forward where the worker has a clear and established work pattern. Determining when to commence payments is more challenging where the worker is considered a "variable shift worker", as defined in Policy item #65.01, *Variable Shift Workers*.

Adjudicative Guidelines

When determining the appropriate commencement date for a shift worker, the employer should be contacted to confirm the worker's shift schedule. This advice will aid in determining when the worker's next shift would have commenced, but for the injury. Payment will commence the next day following the day of injury where it can be reasonably established that the worker would have been scheduled to work on that day or would have been required to be "on-call". In other cases, a longer period of time may be identified between the day of injury and the date on which the worker's next shift would have commenced. Where an officer is unable to determine the worker's next shift, payments may commence the next day following the day of injury, under the assumption that the worker may have been required to work that day.

It is important to note that the determination regarding commencement of payments is not dependent upon how the worker's wage rate is established. For example, it is incorrect to assume that compensation will always commence on the next day following the day of injury where a variable shift worker's wage rate is established based on a 7-day work week. Ideally, compensation payments for shift workers should mirror the worker's employment pattern (e.g., 4 on, 4 off). However, for a number of reasons, this will not always be possible. Often a worker's shift pattern is translated into a regular 7-day work week for administrative reasons - e.g., because the AWL system cannot accommodate the worker's shift pattern; the worker may have secondary employment; or, a 3-

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month average was taken due to the irregular nature of the worker's shifts. In any event, establishing the wage rate is a separate adjudicative matter and the resulting payment schedule should not be viewed as the determining factor for when compensation should commence pursuant to section 5(2).