



Compensation and its effect on Social Security

This Factsheet explains how receiving compensation may prevent you from receiving a Social Security payment, or you may have your payment reduced. However it provides basic information only. It is important that you or your solicitor contact Centrelink to get advice on how a compensation payment will affect your Social Security payment.

◆ What is compensation?

For Social Security purposes “compensation” is money that includes an amount for loss of earnings or a lost capacity to earn, paid as a result of injuries caused by the negligence of another person (eg, a workplace accident or car injury). Compensation payments can be either paid periodically (eg, fortnightly) or in a lump sum.

◆ What is not treated as compensation?

Some compensation payments are not treated as “compensation” under Social Security law. These include:

- victims compensation;
- compensation for unlawful dismissal, racial discrimination, disability discrimination, work-place harassment and sexual harassment;
- death benefits; and
- disability benefits paid from a superannuation fund.

Note: even though these compensation payments are not treated as “compensation” under Social Security law, they may affect your payment under the assets or income test, so you must tell Centrelink about the payment.

◆ How are compensation payments assessed by Centrelink?

Under Social Security law, compensation is generally assessed differently to other types of income and assets. These special rules are often called the “compensation rules”.

If you receive **periodic payments** of compensation the amount you receive may result in a direct “dollar for dollar” deduction from your fortnightly Social Security entitlement.

If you receive compensation in a **lump sum**, Centrelink will use a formula to calculate a “compensation preclusion period” which means you may not be able to receive Social Security payments for a period of time.

Some other factors which may affect your Social Security entitlement include:

- when you had the injury for which you are receiving compensation;
- when you actually receive the compensation; and
- the start date of your Social Security payment.

Check with your solicitor or Welfare Rights Centre/Advocate to ensure that the correct rules have been applied in your case.

◆ **Which Social Security payments are affected by compensation payments?**

Most Social Security payments are affected by compensation payments, including Age Pension, Newstart Allowance, Disability Support Pension, Parenting Payment, Sickness Allowance, Carer Payment, Youth Allowance, Austudy and Special Benefit.

◆ **Is Family Tax Benefit affected by the compensation rules?**

No. Family Tax Benefit is not affected by the compensation rules, but compensation payments are assessed as taxable income under the income test for Family Tax Benefit. This means you must tell Centrelink if you receive compensation even if Family Tax Benefit is the only Social Security payment you receive.

◆ **Do I have to claim compensation?**

Yes. Social Security law says you cannot be paid some Social Security payments until you have taken reasonable action to claim compensation. This can include seeking legal advice about claiming compensation.

◆ **How do periodic compensation payments affect my Social Security payment?**

If you were already getting Social Security payments when you suffered the injury for which you are being compensated, your periodic compensation payments are treated as ordinary income under the income test.

However, if you were not getting Social Security payments when you suffered the injury, your periodic compensation payments will reduce your payment on a dollar for dollar basis. This means every dollar of compensation reduces your payment by a dollar.

Example: Sarah was injured in a car accident. She gets \$700 per fortnight in compensation and her Disability Support Pension is \$600 per fortnight. The dollar for dollar deduction reduces her pension to zero.

If you are a member of a couple and both on Social Security payments, once the dollar for dollar reduction is applied to reduce your payment to nil, any excess compensation is then applied to reduce your partner's Social Security payment using the ordinary income test.

Example: Alberto is a member of a couple. He gets \$800 per fortnight in compensation payments. His Disability Support Pension of \$500 per fortnight is reduced to zero. The extra \$300 is assessed as income for his partner's Social Security payment under the ordinary income test, as though the partner had earned the \$300 per fortnight.

◆ **How does a lump sum payment affect my Social Security payment?**

If you receive a lump sum payment of compensation, which includes any amount for loss of earnings or lost earning capacity, you may not be able to get Social Security payments for a set period of time. This period is called a "compensation preclusion period".

If your compensation payment was awarded by a Court or Tribunal, the amount of compensation

used to calculate the length of your preclusion period will be the amount awarded for loss of earnings or lost capacity to earn. If you receive compensation after a settlement, then 50% of the total amount you received will be the amount used to calculate the length of your preclusion period. This amount is then divided by the figure that represents the weekly income at which payment cuts out for a single person under the pension income test (\$1,578.20 in November 2010). The result is the number of weeks during which you cannot receive a pension or allowance – the preclusion period. Any Social Security payments made to you during this period will generally need to be repaid to Centrelink, and you will not be able to receive a compensation affected payment until the period is over.

Example: Tom was injured at work. He received Disability Support Pension for nine months waiting for his compensation case to be completed. He received no other income during the nine months. When his case was finally settled out of court, he was awarded \$300,000.

Step 1. $\$300,000/2 = \$150,000$

Step 2. $\$150,000 / \$1,578.20$ (pension income test cut-out point in November 2010) = 95

Preclusion period = 95 weeks

◆ **When will my preclusion period start?**

Your preclusion period will generally start from:

- the day your illness/accident caused your incapacity for work; or
- the day after your periodic compensation payments stopped.

As Tom received no periodic compensation, his preclusion period starts from the date of his injury, which was nine months (38 weeks) ago. That leaves 57 weeks of the preclusion period remaining. Unless Tom has “special circumstances”, he will not be eligible for Social Security payments for another 57 weeks, and from his lump sum compensation he will have to pay back the Disability Support Pension payments he got for the previous nine months (38 weeks).

◆ **Will I have to repay any money to Centrelink?**

If you were getting a Social Security payment during the preclusion period you will have to repay this money to Centrelink. This amount is usually called a “compensation charge”. Generally, the insurer will pay this out of your lump sum before it is paid to you.

◆ **Before accepting a lump sum settlement offer, what should I do?**

Before accepting a settlement offer, your solicitor should contact Centrelink to find out the length of your preclusion period, and/or the amount of the charge you will have to repay. You and your solicitor need to take into account the following:

- Does Centrelink have to be repaid? If so, how much?
- When will the preclusion period start and finish?
- Are you receiving enough compensation to support yourself during the compensation preclusion period?
- What legal costs and disbursements will be deducted from the compensation amount?

◆ **What if my partner receives a lump sum compensation payment?**

Your partner's lump sum compensation payment will not be regarded as your income. It is important to remember that if your partner's lump sum compensation is invested, any interest earned will be assessed under the normal income test rules. This may reduce your Social Security payment.

◆ **Can my compensation be disregarded or the preclusion period reduced?**

If you have "special circumstances" your compensation preclusion period may be reduced or some of your periodic compensation payments may be disregarded. Special circumstances may include:

- Financial hardship;
- You or your family's ill-health and disabilities, including addictions;
- High and/or unusual medical costs;
- Incorrect advice from Centrelink about the effect of your compensation.

The tests applied to establish whether "special circumstances" exist are tough. Paying off your mortgage or debts, or spending the compensation money during a preclusion period will not in itself be considered special circumstances. If you have an asset that can be sold to provide funds to live on, you would generally be expected to do so.

If you believe Centrelink should disregard some or all of your compensation, or reduce your compensation preclusion period, you should appeal (see below for details). As well as appealing, you should also lodge a claim for payment. This is so that if your appeal is successful, you may be entitled to backpayments from when you lodged the claim form.

◆ **Can I get a Health Care Card?**

If you are not entitled to a Social Security payment because you receive compensation you may qualify for a low income Health Care Card. You will need to lodge a claim with Centrelink, providing information about your income over the last eight weeks.

◆ **Appeal rights**

If you think a Centrelink decision is wrong you have the right to appeal against it. **Appealing is easy and free.** To appeal simply tell Centrelink that you are not happy with its decision and that you would like to appeal to an Authorised Review Officer (ARO). It is best to lodge an appeal in writing and you should keep a copy of your appeal letter. However, you can lodge an appeal over the telephone.

The ARO is a senior officer in Centrelink who has the power to change the original decision. Many people are successful at this level.

You can appeal to an ARO at any time. However, to receive back pay from the date you were affected by the original decision, you must appeal to an ARO within 13 weeks of receiving written notice of the original decision. If you appeal more than 13 weeks after receiving the notice and you are successful, you will only receive back pay from the date you appealed.

If you think the ARO decision is wrong you can appeal to the Social Security Appeals Tribunal

(SSAT). The SSAT is independent of Centrelink.

You have further appeal rights to the Administrative Appeals Tribunal and the Federal Court. Time limits apply.

◆ Interpreters

If you think you need an interpreter, or if you feel more confident with an interpreter, you should use one of the three **free** available interpreter services.

- Most Centrelink offices have interpreters available at regular times each week. Your local Centrelink office can tell you about their available languages and times.
- You can telephone the Centrelink Multilingual Call Centre on 131 202 and speak to a bilingual Centrelink officer.
- You can also call the **free** Telephone Interpreter Service (TIS) on 131 450 and ask for an interpreter.

Please note: This factsheet contains general information only. It does not constitute legal advice. If you need legal advice please contact your local Welfare Rights Centre/Advocate.

For more information please contact your union. This Literature is recommended as a guide only and is not a substitute for professional or legal advice. If you need clarification or further advice please consult your Union for further information or Contact the Workers Health Centre. The [Workers Health Centre](#) is a non-profit organisation that has provided workers with quality health and safety services since 1976.



If you are an Injured Worker and in need of assistance and support when injured, please contact us
The Injured Workers Support Network

Address:
Phone:
Email:
Website:

The Injured Workers Support Network is a Not for Profit Organisation.

Who can participate?

- **All injured workers**
- **Any immediate family or support persons of injured workers.**

If interested in further information concerning meetings, membership or other forms of support for the Injured Workers Support Network, please contact us.