Managing Commission and Workers' Compensation



Workers' compensation provides financial support to employees who suffer work-related injuries or illnesses. For HR and OHS directors and managers, it's critical to understand how compensation interacts with commission-based pay. Since eligibility rules and benefit calculations vary by jurisdiction, organizations must take a careful, compliant approach. This checklist is designed to guide you through assessing how workers' compensation impacts employees' commission earnings and ensuring fair and lawful application.

Commission and Workers' Compensation Checklist

1. **Verify Jurisdictional Rules**

   □ Confirm the provincial/territorial jurisdiction governing workers' compensation for your employees.

   □ Review local workers' compensation board (WCB/WSIB/WorkSafe) policies on commission inclusion in wage-loss calculations.

   □ Note any sector-specific variations (e.g., construction, sales, or healthcare).

2. **Determine Employee Eligibility**

   □ Check whether the employee's role is covered by workers' compensation insurance.

   □ Verify if commissioned employees are explicitly included in earnings definitions.

   □ Confirm the waiting period before wage-loss benefits begin.

3. **Calculate Average Earnings**

   □ Identify the base period used to calculate average earnings (e.g., last 12 months, last 3 months, or most recent pay cycle).

□ Confirm whether commissions, bonuses, and overtime are included in the wage-loss calculation.

□ Ensure accurate payroll records are maintained for at least the required period (often 12 months).

4. **Assess Impact on Commission Payments**

   □ Determine whether commissions stop, continue, or are prorated during WCB leave.

   □ Review if the employer must top up WCB payments to reflect commission-based earnings.

   □ Check for employer policy provisions that supplement WCB benefits for commissioned employees.

5. **Communicate with Employees**

   □ Provide employees with a clear explanation of how their workers' comp benefits will be calculated.

   □ Document and share how commissions will be treated during the recovery period.

   □ Offer written guidance (e.g., in employment contracts or policy manuals) to avoid disputes.

6. **Compliance and Documentation**

   □ Ensure compliance with both employment standards legislation and workers' compensation regulations.

   □ Keep detailed records of communications and calculations regarding commission adjustments.

   □ Review annually to confirm policies remain up to date with regulatory changes.

7. **Plan for Return-to-Work Programs**

   □ Evaluate whether a gradual return-to-work program affects commission eligibility.

   □ Document whether modified duties will continue to generate commission opportunities.

   □ Coordinate with supervisors to ensure fair distribution of sales or commissionable tasks during transitional work.

Key Insights for HR/OHS Directors

Consistency Matters: Across the three jurisdictions with distinct workers' comp boards — Ontario, Alberta, and British Columbia — commissions are only included in wage-loss calculations if they are a regular, ongoing component of pay.

Payroll Documentation is Critical: Ensure thorough records of commission payments are available for at least the last 12 months.

Employer Top-Ups are Voluntary: None of the three jurisdictions require employers to top up WCB/WSIB benefits to match lost commission earnings. However, some employers choose to do so through internal policy for retention and fairness.

Jurisdictional Definitions Differ: While all three boards recognize commissions, the rules for irregular or seasonal commissions vary, so local interpretation can affect benefits.

Return-to-Work Planning: When transitioning an employee back, review how modified duties may limit commission opportunities and address potential income gaps.