
Hornsby Hospital slip and fall case highlights poor workers' comp protections in NSW

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News that a Hornsby Hospital nurse, seriously injured slipping in water from a leaky roof, could lose her home because of inadequate NSW workers' compensation provisions, comes as no surprise to peak, legal body representing the personally injured, the Australian Lawyers Alliance.

"During the first 26 weeks of total incapacity for work following an accident, an injured worker in NSW is only entitled to receive their flat award rate of pay not including overtime, bonuses or penalty rates," Alliance NSW president, Jnana Gumbert said.

"This can have a devastating effect for workers who work shift work and rely heavily on their penalty rates as part of their income. If the worker continues to be unfit after 26 weeks, the maximum amount of weekly compensation they can receive drops even further to a statutory rate of \$396.10 gross per week for a single person," she said.

"This is patently unfair and leads to catastrophic health outcomes for those likely to become more dependent on care, and funds to pay for that care, as they age," Ms Gumbert said.

She said the statutory rate payable to an injured worker with no dependants is only \$396.10 gross per week and for an injured worker with a dependent spouse and child, the rate is \$575.10 gross per week. This was indexed biannually and increased only a few dollars each time.

"This falls well short of the average weekly earnings for employees in NSW of \$1,252.10 and in a great number of cases was impossible to live on."

Sadly, it is a very common story that injured workers are forced to sell their homes as they are unable to make their mortgage repayments when receiving workers compensation benefits," Ms Gumbert said.

"Even though there has been the grossest negligence on the part of a worker's employer in this case, as in many cases, the worker has no entitlement to sue their employer for negligence unless they are assessed at least 15% whole person impairment which is a very high threshold.

If a worker does manage to reach this threshold, then they can only recover damages for economic loss. They cannot make any claim for medical expenses or domestic assistance. Thus severely injured workers, who require ongoing treatment, remain under the statutory compensation scheme and in receipt of the paltry statutory rate; as if they sue their employers to recover their full economic loss they lose the right to keep receiving payment

of much needed medical expenses.”

To view the original article on injured nurse, Andrea Walters, see:

<http://www.smh.com.au/national/from-possums-to-puddles-nurse-hurt-in-fall-at-troubled-hospital-20100209-npt1.html>

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