



## **KEPT ON SALARY (KOS) FREQUENTLY ASKED QUESTIONS & ANSWERS**

### **How do I establish the Kept on Salary (KOS) wage for a worker?**

Your worker must be paid 100% of their usual rate of pay based on wages PRIOR to the injury date, including any tips, commission, etc. If you have questions regarding the KOS wage you should be paying your worker, contact your ERNwest Claim Manager.

### **The injured employee's work schedule varies from week to week. What should I pay them?**

Work with your ERNwest claim manager to determine the amount of KOS you should pay, but the KOS wages would normally be based on an average number of hours worked.

### **Whose responsibility is it to notify an employee they will be kept on salary?**

You should notify your employee as soon as possible when you intend to keep them on salary. You may wish to point out that by paying wages versus allowing time loss they receive their regular rate of pay whereas L&I time loss is a reduced wage (60%-75%). This is also your opportunity to inform them of any requirements such as providing you with continued medical updates on their ability to work, picking up their check in person, etc.

### **Must I compensate the injured employees for the first 3 days of absence?**

Yes. L&I recently published a procedural rule requiring employers pay the first 3 days of a time loss claim for a claim to be considered a Kept on Salary claim.

### **How do I know when the worker is entitled to receive wage replacement (KOS)?**

In order to be eligible for wage replacement benefits (time loss or KOS) the worker must have "certification" meaning they must have current (within 30 days) work restrictions preventing them from performing their job of injury and there must be objective medical findings related to the work injury which supports the work restrictions given. A current activities prescription form (APF) is the commonly accepted form for a physician to communicate certification. You may require a current APF in order to issue the KOS check. When in doubt, please communicate with your ERNwest claims manager.

### **Must I immediately keep them on salary?**

The technical answer is "no", but in 99% of cases it is recommended you do. Rarely, you may encounter a situation where you do not want to immediately pay KOS while the facts of the case are being determined. L&I may initiate time loss while additional information is gathered and if the claim is deemed valid KOS may be paid retroactively up to 60 days after the time loss payment was made. These situations are rare and should be handled in consultation with your ERNwest claim manager.

### **Do we still have to pay KOS if we question the validity of the claim?**

Communicate with your ERNwest claims manager in this regard. L&I may allow an employer to wait and KOS only if the claim is determined valid, but this needs to be done in close communication with L&I and ERNwest.

### **If I pay KOS on a claim, and the claim is ultimately rejected, can I get the KOS money back?**

ERNwest has a KOS Agreement you may choose to have a worker sign whereby if the claim or restrictions are deemed invalid by L&I, the worker would be legally obligated to return the compensation to their employer. We recommend you have your legal counsel review this agreement to ensure it does not conflict with any employment law or collective bargaining your business may be subject to.

### **Do I need to continue to pay health care benefits during the KOS period?**

Yes. If the employee qualified for employer paid health coverage before the injury you must continue to pay your portion of the health coverage during the KOS period.

### **If a worker uses sick or vacation leave, do I have to pay them their regular wage in addition to this?**

Yes. Sick leave or vacation benefits cannot be paid in lieu of regular wages. If you pay only sick leave or vacation benefits, Labor and Industries will pay time loss on top of these wages.

**When does KOS need to be paid?**

Employers need to pay KOS on the same timeframes at which the worker would normally receive their paycheck. Consider having them pick up their check so you can talk with them about treatment, work restrictions, and future return-to-work. If you are unable to pay a worker at the normally scheduled date/time, please contact your ERNwest claims manager for assistance.

**What if my worker has more than one job? Am I required to replace the lost wages from all employment?**

The Hospitality Association only requires that you provide modified-duty or KOS to cover the hours worked in your business. Work missed for additional employment elsewhere maybe compensated by L&I. There are situations where it could be advantageous for you to pay KOS for the lost wages from all employment, but again, this is not required and should be discussed with your ERNwest Claim Manager.