



Department of
Civil Service

**Worker's Compensation Dispute
Resolution Program Memorandum of
Understanding - RFP entitled:
"Dispute Resolution Program"**

WORKERS' COMPENSATION' DISPUTE RESOLUTION PROGRAM MEMORANDUM OF UNDERSTANDING

The Dispute Resolution Program (DRP) for the employees of the Security Services Unit will provide a process to review conflicting medical opinions regarding an employee's level-of disability for a compensable injury.

Eligibility

Employees shall be eligible for the DRP if a compensable accident pursuant to the Workers' Compensation Law occurred on or after 4/16/93 and such employee elected to participate in the Medical Evaluation Program (MEP) administered by the State Insurance Fund (SIF) and the period of time under dispute occurs after the date of implementation of the program pursuant to a RFP to be issued. The dispute resolution shall be limited to those cases where after the employee has elected to participate in the MEP administered by the SIF and the employing agency has ordered, based on MEP, an employee to return to duty, either light duty or full duty based on the circumstances, because (1) the evaluating physician determines that the employee has injury/illness resulting in a disability of 50 percent or less and the treating physician determined that employee has an injury/illness resulting in a disability of greater than 50 percent or (2) where the evaluating physician determines that the employee has no disability and the treating physician determines that a disability does exist.

Effective Date

The DRP will become effective on the date of implementation as will be set forth in the Request for Proposal for this program.

Program Description

The following definitions apply only to the terms discussed in this section of the Memorandum of Understanding (MOU):

- Work Day - A work day is any day that the employee is scheduled to report to work. Work days include Saturday, Sunday and holidays.
- Business Day - A business day is any day Monday through Friday when there is a reasonable expectation that the majority business is conducted. Business days do not include Saturday, Sunday or legal holidays.
- Calendar Day - A calendar day is any day of the week. Calendar days run sequentially.
- Pass Day - Pass days are the days of the week the employees is

scheduled not to work such as weekends.

- ▶ **Treating Physician** - The treating physician is the doctor that the employee chooses to provide direct care for the disability.
- ▶ **Evaluating Physician** - The evaluating physician is the medical consultant employed by the SIF who determines the degree of medical disability, upon which Management decides if an employee should return to work in light or full duty capacity, as appropriate. However, in no case shall the evaluating physician direct the employee to return to work.
- ▶ **DRP Administrator** - The DRP Administrator will be responsible for the - review of the conflicting medical evaluations which are appealed by the treating physician.

The requests for dispute resolution must be initiated by the employee's treating physician in writing to the Administrator and may be faxed or sent by overnight mail. A request form will be designed by the DRP Administrator with input from the Joint Committee on Workers' Compensation which will require the treating physician to provide sufficient medical information to support an appeal. A physician selected by the Administrator of the DRP shall review the medical information from the treating and evaluating physicians and make a determination and notify in writing the employee, employing agency, evaluating physician, treating physician, NYSCOPBA and the SIF regarding the employee's level of disability within seven calendar days of the receipt of the written appeal.

In all cases it is the employee's responsibility to work light duty. The employee who disputes the evaluating physician's medical determination of degree of disability has three basic courses of action (1) refuses to work and files an appeal or (2) works the light duty assignment and files an appeal or (3) refuses to work and accepts the statutory Workers' Compensation benefits.

If an employee does not report to the employing Agency to accept the medically appropriate assignment: (1) the employee will notify the Agency and be considered to be on Leave Without Pay (LWOP) from the Agency's payroll for a period of three (3) work days; (2) absences during the seven (7) work days following excused LWOP may be charged to accrued leave credits, personal leave, sick leave or sick leave at half-pay if the employee is eligible; (3) if the treating physician does not file an appeal within three (3) business days after being ordered to return to work (4 business days if the order to return to work is given after noon), the employee will be returned to LWOP status; provided, however, once the appeal is filed, the employee may charge the balance of seven (7) work days to accrued leave credits, personal leave, sick leave or sick leave at half-pay in accordance with clause (2) above, after which time the

employee will receive Article 14.9 leave.

Situations (1) and (3): The employee who refuses to return to work will be placed immediately on LWOP.

- ▶ **The employee, whose physician appeals, will be placed in LWOP for three work days followed by up to seven work days charged to available leave credits.**
- ▶ **The employee's treating physician has three business days to submit the appeal to the DRP Administrator.**
 - **The appeal period begins the first business day the employee is notified that he/she must return to work, if such notification occurs prior to 12 Noon.**
 - **If the employee is notified to return to work after 12 Noon or if the employee is notified on a non-business day, the appeal period will begin on the next business day.**
- ▶ **If the appeal is not received during the appeal period as described above, the employee will remain or be placed on LWOP until an appeal is received.**
- ▶ **If the three days of LWOP ends prior to the expiration of the appeal period (three business days), the employee will be allowed to use leave credits until the appeal period expires.**
- ▶ **Following the three days of LWOP and if the appeal is received by the DRP Administrator during the appeal period, the employee will be allowed to charge available leave credits for up to seven work days pending the outcome of the appeal.**
- ▶ **Once the appeal is received the Administrator will have seven calendar days, from the time of receipt, to render a decision.**
- ▶ **If SIF's evaluating physician has determined that the employee is partially disabled, absences during the next seven workdays may be charged to sick leave and sick leave at half-pay, if the employee is eligible.**
- ▶ **If the employee has no leave credits, he/she will be continued on LWOP for the remainder of the seven workdays or until the decision is rendered, whichever occurs first.**
- ▶ **If the Administrator does not render a decision by COB on the seventh**

calendar day following receipt of the appeal, the employee will be placed on WCL, not charged to credits, pursuant to Article 14.9 of the negotiated Agreement on the next scheduled workday pending the outcome of the appeal.

- ▶ **Whenever LWOP is referenced it is presumed that eligible employees will receive the statutory benefits pursuant to the Workers' Compensation Law.**
- ▶ **The statutory benefit is creditable to New York State as wages paid whenever the employee is in pay status.**

Situation (2): The employee works light duty pending the outcome of the appeal and will receive full pay.

- ▶ **Once the appeal is received, the Administrator will have seven calendar days from the time of receipt to render a decision.**
- ▶ **If the Administrator does not render a decision by COB on the seventh calendar day following receipt of the appeal, the employee will be placed on WCL not charged to credits pursuant to Article 14.9 of the negotiated Agreement on the next scheduled workday pending the outcome of the appeal.**
- ▶ **The statutory benefit is creditable to New York State as wages paid whenever the employee is in pay status.**

The outcome of the dispute resolution shall be reported, in writing, to the employee, employing agency, the evaluating physician, the treating physician, NYSCOPBA and the SIF, by the DRP Administrator.

If the physician selected by the Administrator of the DRP finds in favor of the treating physician's determination of level of disability, the employee will receive the appropriate level of Workers' Compensation Leave, as defined in Article 14.9 of the Security Services Unit/New York State contracts, retroactive to the first day of LWOP.

- ▶ **The first day of LWOP is the first day the employee did not report for work.**
- ▶ **Receiving Workers' Compensation Leave in accordance with Article 14.9 means, that depending on how much absence the employee has already had for this injury, an employee may be on Workers' Compensation leave with pay without charge to credits, charging leave credits, using sick leave at**

half-pay, or on LWOP.

If the DRP's physician finds in favor of the SIF evaluating physician's determination of level of disability, the employing agency shall notify the employee to return to work, the employee shall report to the employing agency on the next assigned workday for the medically appropriate assignment, or if the employee refuses to return to work, he/she will be placed on LWOP.

- ▶ **No change will be made in the employee's status retroactively based on the denial of an appeal for any absence which occurred during pendency of the appeal.**
- ▶ **Any leave credits used during the appeal period will not be returned to the employee.**
- ▶ **If, at a subsequent hearing of the Workers' Compensation Board, the appeal period is found compensable, restoration of such leave credits will be proportional to the wage award.**
- ▶ **The employee who chooses to remain absent and is placed on LWOP will receive benefits as directed by the Workers' Compensation Board only, and is entitled to no benefits pursuant to Article 14.9.**

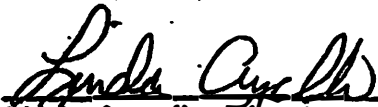
Requests for further appeals beyond the DRP pertaining to issues of eligibility for statutory benefits shall be to the Workers' Compensation Board pursuant to the New York State Workers' Compensation Law.

Joint Committee on Workers' Compensation

The Joint Committee on Workers' Compensation established pursuant to the Workers' Compensation MOU signed July 1, 1991, and modified by the Workers' Compensation MOU dated November 9, 1995, shall, in addition to the responsibilities outlined in the November 9, 1995 MOU, work with the parties in the development and implementation of the NYSCOPBA Workers' Compensation DRP as follows:

- ▶ **Review and comment on the Request for Proposals (RFP);**
- ▶ **Attend the Bidders' Conference;**
- ▶ **Review, comment and provide feedback on the proposals submitted by potential vendors in response to the RFP;**
- ▶ **Attend and take an active role in the Management Interviews;**

- ▶ Attend any site visits planned in conjunction with the RFP process;
- ▶ Consult on the selection of the finalist vendor;
- ▶ Review and comment on the employee communication material developed for the Program including the DRP appeal request form;
- ▶ Review reports produced by the Program Administrator which monitor the ongoing administration of the Program;
- ▶ Participate in joint educational conferences with the agencies and facilities;
- ▶ Establish a schedule for periodic reviews of the Medical Evaluation Program;
- ▶ Provide the Program Administrator with copies of Department of Civil Service job descriptions.



Linda Angello, Director
For the State of New York



Brian Shanagher, President
For NYSCOPBA

Dated: May 18, 2000

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