

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
**ATTENDANCE AND LEAVE MANUAL**  
POLICY BULLETIN 2016-01

Section 21.8

August 2016

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TO: Manual Recipients  
FROM: Scott DeFruscio, Director Staffing Services Division  
SUBJECT: Restoration of Leave Accruals for Employees with a Schedule Loss of Use (SLU) Award

Effective immediately, there is a mandatory change in the way New York State (State) is reimbursed for an employee's period of absence and wages paid due to a work-related injury or illness. Agencies will be required to request full reimbursement of the wages advanced to an employee during such period of absence pursuant to subdivision 4 of Section 25 of the New York State Workers' Compensation Law.

Leave accruals, including sick leave at half-pay eligibility, are restored to an employee when an award of compensation has been made and credited to the State for a period(s) of absence(s) during which accruals were charged in connection with workers' compensation leave granted under Section 21.8 of the Attendance Rules or 28-1.8 of the Management/Confidential Attendance Rules.

When an employee receives full or supplemental pay or charges leave accruals during a period of compensable absence, the State as an employer, is entitled to make a claim for reimbursement for wages paid. Upon receipt of that credit for wages paid [Form C-8EMP issued by the State Insurance Fund (SIF) following a Workers' Compensation Board Notice of Decision or Administrative Determination], the State is obligated to restore those accruals in accordance with the applicable negotiated benefit. Some current State employees' contractual workers' compensation programs provide for full restoration of leave accruals used by an employee during an absence due to a work-related disability; other State employees' current contractual workers' compensation programs provide for a prorated restoration of leave accruals.

The credit for higher reimbursement will only be applicable following the employee's receipt of a SLU award. At that time, SIF will issue a subsequent Form C-8EMP to notify the agency of the full wages credited to New York State. This may require a separate restoration of leave credits. Agencies should take care not to restore greater than 100% of the accruals used for the total periods of compensable absences.

All other provisions of the Workers' Compensation Statutory Program remain unchanged.

Questions regarding restoration of credits due to SLU awards should be directed to the Attendance and Leave Unit of the Department of Civil Service at (518) 457-2295.

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File this material in the section of the manual referenced above.

TO: Personnel Officers  
FROM: Josephine L. Gambino, Commissioner *JLG*  
SUBJECT: M/C Interim Workers' Compensation Program

The following material has been prepared to assist you in administering the workers' compensation program that applies to employees designated Managerial/Confidential for accidents occurring on or after July 1, 1992.

Questions should be directed to the Employee Relations Section of this Department at (518) 457-5167.

Introduction

Legislation in 1992 eliminated authorization from the State Finance Law for payment of the workers' compensation supplement to Managerial/Confidential (M/C) employees for job-related accidents sustained on or after July 1, 1992.

This, in effect, nullified the provisions of Part 89 of the President's Regulations which authorized the supplemental payment system for M/C employees. However, the provisions of the M/C Attendance Rules regarding accidents which occur on or after September 1, 1986, have not yet been amended and, therefore, continue to apply. Specifically, Section 28-1.8 subdivisions (p) through (y) continue in effect, although their application has been altered by the deletion of supplemental payments from the overall benefit.

In summary, this interim benefit for M/C employees continues to provide for a minimum of one cumulative year of disability leave, as provided under Section 71 of the Civil Service Law, or longer at agency discretion. During this absence, employees may use leave credits and sick leave at half-pay (or IPP benefits for those eligible) for all compensable absences during the leave. There is no advancement of leave; after exhaustion of credits and sick leave

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at half-pay eligibility, the employee is entitled to leave without pay. IPP enrollees, after exhaustion of sick leave credits or 14 calendar days of absence, whichever is greater, are eligible for short-term disability (STD) and/or long-term disability (LTD) as appropriate. Since employees remain on the payroll charging credits for the most part, the wage replacements from the State Insurance Fund will be credited to New York State for wages paid. Employees will receive wage replacements directly from the State Insurance Fund generally only during periods of leave without pay; employees receive no supplemental payments from the State. Upon return to work and following a Workers' Compensation Board Notice of Decision, the credits used by the employee will be restored to him/her for all periods (after the initial 14 calendar days of absence) during which New York State receives credit for wages paid. Credits used during the first 14 calendar days of absence are reccredited to the employee upon return to work or separation, whichever occurs first, based on a determination by the SIF that the absence was compensable.

The purpose of this memorandum is to clarify this workers' compensation benefit available to M/C employees injured on or after July 1, 1992. These guidelines will continue to apply until such time as the M/C Attendance Rules are amended.

Benefits Under the Workers' Compensation Law

M/C employees who sustain job-related injuries on or after July 1, 1992, continue to be eligible for reimbursement of medical expenses and for wage replacement benefits from the State Insurance Fund under the Workers' Compensation Law. (New York State generally is credited with the wage replacement benefit for any periods during which the employee receives salary from the State; i.e., periods charged to leave credits or sick leave at half-pay.)

Waiting Period

The statutory waiting period under the Workers' Compensation Law continues to apply.

No wage replacement benefit is payable by the State Insurance Fund (SIF) if the absence due to a workers' compensation injury or disease does not exceed seven calendar days. If absence is for at least eight calendar days, but does not exceed 14 calendar days, SIF wage replacement benefits are payable beginning with the eighth calendar day of disability. Once absence due to a single injury or

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disease exceeds 14 calendar days, SIF wage replacement benefits are payable retroactively to the first day of disability. Employees are permitted to charge credits during the 14 calendar day waiting period. There is no authorization to advance credits. If the employee has no leave credits to charge or has exhausted his/her credits, the employee must be granted, upon request, sick leave at half-pay, if otherwise eligible, or be placed on leave without pay.

At the point the employee returns to work or separates, whichever occurs first, the employee is reccredited with the accruals charged during the first 14 days of absence for days determined to be compensable absences by the SIF. This is the only circumstance under which an employee can be reccredited under this Interim Program.

Absence Beyond the Waiting Period

For absences beyond the first 14 calendar days, employees must be permitted to charge leave accruals and, when leave accruals are exhausted, employees, if otherwise eligible, must be granted sick leave at half-pay upon request. (See "Income Protection Plan" below for a discussion of the treatment of absences for employees enrolled in the IPP.)

While charging leave accruals, employees are treated as any other employee charging credits for purposes of Civil Service law, rule and regulation (earning leave credits, etc.). Similarly, while on sick leave at half-pay, employees are treated as any other employee on sick leave at half-pay for these purposes.

Following exhaustion of leave accruals and sick leave at half-pay, employees must be placed on leave without pay and they are treated as any other employee on leave without pay. (See "Section 71 and Rule 5.9" below for duration of leave.)

Income Protection Plan (IPP)

Employees enrolled in the IPP must serve a waiting period of the greater of exhaustion of sick leave accruals or 14 calendar days before being eligible to receive disability benefits under the Income Protection Plan. (At employee option, other credits may be used as sick leave prior to receipt of IPP benefits.) Employees absent and receiving IPP benefits are treated as any other employee receiving IPP benefits for purposes of Civil Service law, rule and regulation.



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Claims for employees who are eligible for IPP benefits for job-related disabilities are processed as any other IPP claims. However, benefits paid under the IPP are reduced by any wage replacement benefits paid to employees pursuant to the Workers' Compensation Law.

Restoration of Leave Credits

Leave credits charged and sick leave at half-pay eligibility used for absences beyond the first 14 calendar days are restored to the employee following a Workers' Compensation Board Notice of Decision crediting New York State for wages paid. Credits restored are not prorated; the exact amount of credits charged (including full and partial days) is restored. Restored credits cannot be used to cover other absences due to the same injury or illness.

Where the restoration of credits causes an employee to exceed applicable maximums, he/she has one year from the date of return to work or restoration of credits, whichever is later, to reduce balances to applicable maximums. During this one-year time period, the employee continues to be eligible to earn additional leave credits.

Section 71 and Rule 5.9

The M/C Interim Workers' Compensation program in no way changes the provisions of Section 71 of the Civil Service Law which provide that an employee who is disabled as the result of an occupational injury or disease is entitled to a leave of absence for a minimum of one cumulative year unless found to be permanently disabled.

The cumulative year of mandatory leave includes periods of absence charged to leave credits and periods of sick leave at half-pay, periods of leave without pay and periods during which the employee is receiving benefits under the IPP.

Employees absent for one cumulative year because of an occupational injury or disease may be continued in employment at the discretion of the appointing authority, but are not entitled to be so continued.

Procedural guidelines for the implementation of Rule 5.9 of the Rules for the Classified Service, which details the notification and appeal provisions required by Section 71, are

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contained in the State Personnel Management Manual Policy Bulletin #93-02 dated May 12, 1993.

Controverted and Contested Claims

If the State Insurance Fund controverts or contests a claim, the agency cannot grant workers' compensation benefits until such time as the controversion is resolved in the employee's favor by the Workers' Compensation Board.

If the State Insurance Fund controverts a claim on the basis that the employee is disabled, but the disability is not job-related, the absence should be treated as ordinary disability. If the State Insurance Fund contests the claim on the basis that the employee is not disabled, the employee should be placed on unauthorized leave and directed to return to work. If the Workers' Compensation Board resolves the controversion or contest in the employee's favor, the employee should be retroactively granted any workers' compensation benefits to which he/she is entitled.

Benefit Administration

Agency procedures regarding reporting of accidents should be continued. Agencies should continue to report accidents, provide medical documentation and report changes in employee status to the State Insurance Fund.

There is no supplemental payroll process. Employees remain on the regular payroll, either charging leave accruals or using sick leave at half-pay eligibility, and are then placed on leave without pay. IPP enrollees remain on the payroll while charging credits and are then placed on STD or LTD as appropriate.

Agency procedures and requirements concerning medical documentation continue to apply.

Employee absences must be identified as workers' compensation on time records to ensure proper restoration of credits, where applicable, and to calculate length of absence.

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File this material in the section of the manual referenced above.

TO: Personnel Officers

FROM: Virginia M. Apuzzo, Commissioner 

SUBJECT: M/C Workers' Compensation Program  
Effective September 1, 1994

The following material has been prepared to assist you in administering the Workers' Compensation Program that applies to employees designated Managerial/Confidential (M/C) for accidents occurring on or after September 1, 1994.

Questions should be directed to the Employee Relations Section of this Department at (518) 457-5167.

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Introduction

Effective September 1, 1994, the Workers' Compensation Program for State employees designated managerial or confidential and subject to the NYS Civil Service Commission Attendance Rules changes. In summary, this benefit for M/C employees continues to provide for a minimum of one cumulative year of disability leave, as provided under Section 71 of the Civil Service Law, or longer at agency discretion. During this absence, employees may use leave credits and sick leave at half-pay, or Income Protection Plan (IPP) benefits for those eligible, for all compensable absences. There is no advancement of leave; after exhaustion of credits and sick leave at half-pay eligibility, the employee is entitled to leave without pay. IPP enrollees, after exhaustion of sick leave credits or 14 calendar days of absence, whichever is greater, are eligible for short-term disability (STD) and/or long-term disability (LTD) as appropriate. Since employees remain on the payroll charging credits for the most part, the wage replacements from the State Insurance Fund will be credited to New York State for wages paid. Employees will receive wage replacements directly from the State Insurance Fund generally only during periods of leave without pay, STD or LTD. Employees receive no supplemental payments from the State. Upon return to work and following a Workers' Compensation Board Notice of Decision, the credits used by the employee will be restored on a prorated basis to him/her for all periods during which New York State receives credit for wages paid.

In addition, for the first cumulative year of absence, employees will be treated as though they're in full pay status for the purposes of accrual of leave credits, continuous service and retirement service credit. If employees are continued on the payroll beyond one year, they should be reverted to whatever status is appropriate for a nonoccupational disability absence (e.g., sick leave without pay, LTD).

Benefits Under the Workers' Compensation Law

M/C employees who sustain job-related injuries on or after September 1, 1994, continue to be eligible for reimbursement of medical expenses and for wage replacement benefits from the State Insurance Fund under the Workers' Compensation Law. (New York State generally is credited with the wage replacement benefit for any periods during which the employee receives salary from the State; i.e., periods charged to leave credits or sick leave at half-pay.)

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Waiting Period

The statutory waiting period under the Workers' Compensation Law continues to apply.

No wage replacement benefit is payable by the State Insurance Fund (SIF) if the absence due to a workers' compensation injury or disease does not exceed seven calendar days. If absence is for at least eight calendar days, but does not exceed 14 calendar days, SIF wage replacement benefits are payable beginning with the eighth calendar day of disability. Once absence due to a single injury or disease exceeds 14 calendar days, SIF wage replacement benefits are payable retroactively to the first day of disability. Employees are permitted to charge credits during the 14 calendar day waiting period. There is no authorization to advance credits. If the employee has no leave credits to charge or has exhausted his/her credits, the employee must be granted, upon request, sick leave at half-pay, if otherwise eligible, or be placed on sick leave without pay.

Absence Beyond the Waiting Period

For absences beyond the first 14 calendar days, employees must be permitted to charge leave accruals and, when leave accruals are exhausted, employees, if otherwise eligible, must be granted sick leave at half-pay upon request. Following exhaustion of leave accruals and sick leave at half-pay, employees must be placed on sick leave without pay.

Employees enrolled in the IPP must serve a waiting period of the greater of exhaustion of sick leave accruals or 14 calendar days before being eligible to receive disability benefits under the Income Protection Plan. (At employee option, other leave credits may be used prior to receipt of IPP benefits.) Claims for employees who are eligible for IPP benefits for job-related disabilities are processed as any other IPP claims. However, benefits paid under the IPP are reduced by any wage replacement benefits paid to employees pursuant to the Workers' Compensation Law.

Status While Absent

Employees absent due to workers' compensation are to be treated as though in full pay status for the purposes of Civil Service Law, rule and regulation for the first year (12 cumulative months of absence).

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This means that employees continue to accrue leave credits throughout this period regardless of actual payroll status (full pay, half-pay, STD, LTD, leave without pay). Employees earn biweekly vacation; earn biweekly sick leave or are credited with sick leave on their IPP grant dates; are credited with personal leave on their personal leave anniversary dates; and are credited with vacation bonus days or additional vacation days for which they are otherwise eligible on their vacation anniversary dates. Workers' compensation absences count as time worked for the purposes of calculating sick leave at half-pay entitlement. Once eligible employees are placed on sick leave at half-pay, they remain in that status in spite of continuing to earn leave credits. These credits become available for use upon exhaustion of sick leave at half-pay or return to work, whichever occurs first (see Section 21.5, page 8). Likewise, once employees in the Income Protection Plan are placed on STD or LTD, they remain in that status in spite of continuing to accrue sick leave. Employees should not be removed from STD or LTD status to use such credits.

Employees are not eligible to observe holidays except during the seven calendar day waiting period if they are charging credits during that period. If a holiday does fall during the waiting period, the employee would observe the holiday and charge the other four days to leave credits. Employees are eligible to be credited with floating holidays which fall anytime during their absence.

Accrual maximums and expiration dates continue to apply during the employee's absence. Please note the exceptions in the next section of the memorandum concerning restoring credits.

Employees absent due to workers' compensation disabilities are not eligible for the Leave Donation Program nor hazardous duty pay.

Employees are considered to be in full pay status for continuous service purposes and for the purpose of retirement service credit and contributions normally made by the State and/or employee for the first year (12 cumulative months) of absence.

Restoration of Leave Credits

Leave credits charged and sick leave at half-pay eligibility used are restored to the employee following a Workers' Compensation Board Notice of Decision crediting New York State for wages paid. Credits restored are prorated based on the award credited to New York State for wages paid or 60 percent of the employee's gross salary, whichever is greater. Gross salary for the purpose of credit restoration is defined as the employee's base annual salary.

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plus inconvenience and location pay and geographic and shift differential pay to which he/she was entitled at the time of the accident.

To determine what percentage of credits to restore, identify the employee's gross salary and calculate the percentage the SIF net monetary award represents. If it's greater than 60 percent, restore that percentage of credits used. If it's less than 60 percent, restore 60 percent of credits used. Each type of leave credit charged (e.g., sick leave, annual leave) should be prorated and restored separately.

Example: An employee's gross annual salary is \$46,800, biweekly gross salary is \$1,800. The SIF wage replacement credited to New York State was \$400 per week. Dividing \$400 by \$900 (weekly gross salary), the SIF credit represents 44 percent of gross salary. Since 60 percent is greater, restore credits at the 60 percent level.

Where the restoration of vacation or sick leave credits causes an employee to exceed applicable maximums, he/she has one year from the date of return to work or restoration of credits, whichever is later, to reduce balances to applicable maximums. During this one-year time period, the employee continues to be eligible to earn additional leave credits. Personal leave cannot be restored if the employee's anniversary has passed since these credits were charged. There are no limits on the restoration of holiday leave for M/C employees. Floating holidays, however, cannot be restored if more than a year has passed since they were credited.

Restored credits cannot be used to cover other absences due to the same injury or illness.

Section 71 and Rule 5.9

This in no way changes Section 71 of the Civil Service Law which provides that an employee who is disabled as the result of an occupational injury or disease is entitled to a leave of absence for a minimum of one cumulative year unless found to be permanently disabled.

The cumulative year of mandatory leave includes periods of absence charged to leave credits and periods of sick leave at half-pay, periods of leave without pay and periods during which the employee is receiving benefits under the IPP.

Employees absent for one cumulative year because of an occupational injury or disease may be continued in employment at

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the discretion of the appointing authority, but are not entitled to be so continued.

Procedural guidelines for the implementation of Rule 5.9 of the Rules for the Classified Service, which details the notification and appeal provisions to implement Section 71, are contained in the State Personnel Management Manual, Section 2200, Policy Bulletin #93-02 dated May 12, 1993.

Controverted and Contested Claims

If the State Insurance Fund controverts or contests a claim, the agency cannot grant workers' compensation benefits until such time as the controversion is resolved in the employee's favor by the Workers' Compensation Board.

If the State Insurance Fund controverts a claim on the basis that the employee is disabled, but the disability is not job-related, the absence should be treated as ordinary disability. If the State Insurance Fund contests the claim on the basis that the employee is not disabled, the employee should be directed to return to work and placed on leave without pay if he/she does not return. If the Workers' Compensation Board resolves the controversion or contest in the employee's favor, the employee should be retroactively granted any workers' compensation benefits to which he/she is entitled.

Benefit Administration

Agency procedures regarding reporting of accidents should be continued. Agencies should continue to report accidents, provide medical documentation and report changes in employee status to the State Insurance Fund. Rule 5.9 procedures concerning employee notifications continue to apply. If the absence also qualified as a serious health condition under the Family and Medical Leave Act (FMLA) and the employee is eligible for an FMLA leave, agencies should designate the absence as FMLA and properly notify the employee.

There is no supplemental payroll process. Employees remain on the regular payroll, either charging leave accruals or using sick leave at half-pay eligibility, and are then placed on leave without pay. IPP enrollees remain on the payroll while charging credits and are then placed on STD or LTD as appropriate.

Agency procedures and requirements concerning medical documentation continue to apply.



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Employee absences must be identified as workers' compensation on time records to ensure proper restoration of credits, where applicable, and to calculate length of absence. Once an employee exceeds 12 cumulative months of absence, the benefit protections cease and the employee is treated in the same manner as any other employee absent on ordinary disability.

Payroll procedures will be detailed in a memorandum from the Office of the State Comptroller. Health insurance procedures will be explained in a memorandum from the Employee Benefits Division of this Department.

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File this material in the section of the manual referenced above.

TO: State Departments and Agencies

FROM: Josephine L. Gambino, Commissioner *J.L.G.*

SUBJECT: Workers' Compensation Medical Evaluation Program -  
1991-1995 Negotiated Agreement for the  
Professional, Scientific and Technical Services Unit

The following material has been prepared to assist you in implementing the new workers' compensation provisions contained in the 1991-1995 agreement between the State and PEF which are effective for accidents on or after July 1, 1993.

If you have any questions concerning the implementation or administration of the PS&T Workers' Compensation Medical Evaluation Program, please contact the Employee Relations Section of this Department at (518) 457-5167.

Attachments

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**INTRODUCTION**

Effective July 1, 1993, the Workers' Compensation Program for State employees represented by PEF will change. In summary, employees who sustain workers' compensation injuries on or after July 1, 1993, will receive the statutory benefit provided by the Workers' Compensation Law (reimbursement for medical expenses and a wage replacement benefit equal to two-thirds of the employee's average weekly wage, not to exceed \$400). In addition, those who elect to participate in a Medical Evaluation Program will be eligible for a supplement to bring them up to 60 per cent of their gross pay and to participate in a Mandatory Alternate Duty Program. Participating employees will earn leave credits, accrue seniority, receive retirement service credit, and be eligible to continue in the health insurance program paying employee share premiums for a period not to exceed nine months. These employees will not be permitted to charge leave credits (except during the first seven calendar days [five work days] of the statutory waiting period and for partial day absences following return to work). Apart from the waiting period, intermittent full-day absences and all periods of continuous absence due to the disability for the first nine continuous months are leave without pay plus supplement and may not be charged to accrued leave credits.

One of the significant changes in the workers' compensation benefits for injuries occurring on or after July 1, 1993, for Professional, Scientific and Technical Services Unit employees, is the ability of an employee to choose Workers' Compensation Law benefits only or the Medical Evaluation Program provided in the contract. If the contractual benefits are chosen, the individual agrees to be part of a medical evaluation process designed to return individuals to work on alternate duty prior to full recovery.

Another significant change is the elimination of the guarantee of salary continuation pending placement on the supplemental payroll. As explained in this memorandum and the payroll bulletin, disabled employees will be allowed to charge credits only for the first five work days of absence and then they will be placed on workers' compensation disability with percentage supplement, which is a leave without pay status. Only after the State Insurance Fund (SIF) has determined the absence to be compensable and issued their first payment, will the Office of the State Comptroller (OSC) begin to make supplemental payments. Under the previous benefit system, the SIF payment and the OSC payment were issued simultaneously. Under this Medical Evaluation Program, SIF will be making wage

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replacement payments in accordance with their normal procedures under the Workers' Compensation Law and will then be notifying the employing agency and OSC of payments made and time periods covered. OSC will calculate and issue supplemental payments to qualified employees on the State payroll cycle following receipt of this necessary information from SIF and the agency. Therefore, supplemental payments will be issued several weeks after the employee receives the SIF payment for the same period of disability.

The medical evaluation process set up in connection with this benefit is available to management for PEF-represented employees subject to this benefit to verify ongoing disability and to determine eligibility for mandatory alternate duty. The medical examinations conducted under this evaluation process do not replace current requirements, but are in addition to any medical reports required by agencies in connection with the employer granting benefits or by the SIF in connection with their responsibilities to provide benefits pursuant to the Workers' Compensation Law.

Initially, SIF will function as the third party administrator for the group of physicians that will be conducting the examinations under this medical evaluation process. A request for proposal is being developed and if another vendor is selected in the future, a memorandum will be issued announcing the effective date and any procedural changes that become necessary.

An employee who elects Workers' Compensation Law coverage only, should be placed on leave without pay for all absences related to the workers' compensation accident. This is a regular leave without pay with no additional benefits accruing to the individual. The employee continues to be subject to Section 71 of the Civil Service Law and is entitled to a minimum of one cumulative year of absence and due process proceedings pursuant to Rule 5.9.

An employee who elects to receive benefits under the Workers' Compensation Medical Evaluation Program provided in Article 13 must participate in the medical evaluation and mandatory alternate duty components of the Program to receive these benefits.

The chart entitled "Roles and Responsibilities" (Attachment A) identifies the roles and responsibilities of the parties involved in administration of all the various benefit programs currently available. The chart entitled "Program Provisions" (Attachment B) summarizes the major components of each of the current workers' compensation programs applicable to state employees.

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It is essential that agencies take great care to ensure that necessary agency actions are taken in a timely fashion to avoid delays in the employee's receipt of benefits. It is critical that agencies review communications from the State Insurance Fund since certain actions will be required based on these communications.

**APPLICABILITY**

Employees in the Professional, Scientific and Technical Services Unit (PS&T) who have Attendance Rules coverage and whose absence is caused by a workers' compensation injury or disease (as defined in the Workers' Compensation Law) from an accident or incident that occurred on or after July 1, 1993 are eligible for coverage under the Medical Evaluation Program. Although not subject to the Attendance Rules of the Civil Service Commission, PS&T Unit employees subject to the following attendance rules are also covered by the Medical Evaluation Program: Attendance Rules for Institution Teachers of the Department of Correctional Services, Attendance Rules for Institution Teachers of the Office of Mental Health, Attendance Rules for Institution Teachers of the Office of Mental Retardation and Developmental Disabilities, Attendance Rules for Institution Teachers of the Division for Youth, civilian personnel subject to the Attendance Rules of the Division of State Police, and employees of Rome School for the Deaf and Batavia School for the Blind subject to the Regulations of the Commissioner of Education.

Employees without Attendance Rules coverage continue to receive the benefits required by the Workers' Compensation Law but are not subject to the provisions of the contract article or the Attendance Rules.

Annual salaried full-time and part-time employees (including those employed on a seasonal basis) who have Attendance Rules coverage are eligible for this benefit. Full-time and part-time employees (including those employed on a seasonal basis) who are paid on an hourly or per diem basis must have gained Attendance Rules coverage, by having completed the required 19 qualifying biweekly pay periods, prior to becoming eligible for this benefit. However, once Rule coverage is attained, these employees' benefits are identical to those available to annual salaried employees.

For the purpose of entitlement to any employer-provided workers' compensation benefits, the State of New York is considered to be one employer. Therefore, if an employee has a work-related injury or disease from employment with agency A, moves to agency B

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and is again absent for the same condition, agency B must provide such employee with any benefit not already used at agency A and, therefore, still available for this injury or disease. Likewise, if a person works for two State agencies and incurs an occupational injury at one of them, the employee must be given leave benefits by both employers, to the extent he/she is eligible. The benefits provided by each employer must be added together to determine how much of the total available benefit has been used by the employee.

The eligible employee's entitlement to a particular workers' compensation benefit is determined by both the date of the accident and the bargaining unit to which the employee was assigned on the date of the accident. For example, an eligible employee is injured on October 1, 1988 while in the Security Services Unit. He/She changes jobs on October 15, 1988 and is in a PS&T Unit position. On November 3, 1988, the employee begins losing time from work due to the October 1, 1988 accident. This employee is eligible for the Workers' Compensation Leave Benefit for any disability related to the October 1, 1988 accident because the absence is due to an incident that occurred while subject to the provisions of the Security Services Unit agreement. Any incidents which occurred between April 1, 1986 and June 30, 1993 while he/she is a PS&T Unit employee will be subject to the provisions of the Supplemental Pay Program and those that occur on or after July 1, 1993 (if he/she remains in the PS&T Unit) will be subject to the Medical Evaluation Program.

**THE BENEFIT**

**Waiting Period**

1. No wage replacement benefit is payable if the absence due to a workers' compensation injury or disease does not exceed seven calendar days.
2. If absence is for at least eight calendar days, but does not exceed 14 calendar days, wage replacement benefits are payable beginning with the eighth calendar day of disability.
3. Once absence due to a single injury or disease exceeds 14 calendar days, wage replacement benefits are payable retroactively to the first day of disability.

Employees are allowed to charge available leave credits only during the first seven calendar days (five work days) of the

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waiting period. The agency will assume that the employee has elected to be covered by the contractual benefit and that the employee wants to charge leave credits for the first five work days until such time as the employee indicates otherwise in writing. If the agency is notified that the employee did not want to participate or did not want to charge credits, adjustments should be made retroactively. All available leave credits may be charged during the waiting period although sick leave credits should be charged first before other categories of leave in most instances.

Employees may not be advanced leave to cover this period; however, eligible employees who have exhausted their leave accruals must, upon request, be granted sick leave at half-pay during the waiting period. Employees are eligible to be granted sick leave at half-pay under the Attendance Rules if they are permanent non-probationary employees who have completed one cumulative year of state service; contractual waiting periods for mandatory sick leave at half-pay do not apply.

The agency submits a PR-75 placing the employee on workers' compensation disability leave with percentage supplement effective the eighth calendar day of disability. The employee will receive wage replacement benefits from the State Insurance Fund beginning with the eighth day. The employee will also receive a supplemental payment from OSC if eligible.

If the employee requests not to use leave credits or does not request use of sick leave at half-pay, the agency places the employee on workers' compensation disability leave with percentage supplement effective the first day of disability and the employee will receive wage replacement benefits from the SIF beginning with the eighth day of absence for those disabilities that do not exceed 14 calendar days or beginning with the first day of disability once the disability goes beyond 14 calendar days. OSC will pay a supplement to eligible employees for the same period covered by the SIF payment for which the employee was not charging credits.

The employee remains on workers' compensation disability leave with percentage supplement for the duration of disability or nine months, whichever is less. The employee whose absence goes beyond the 14 calendar days will have the credits and/or sick leave at half pay he/she charged during the initial seven calendar days restored (not recredited) on a prorated basis following a Workers' Compensation Board Notice of Decision crediting New York State with the wage replacement. (See Restoring Leave Credits below for further information.)



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The first day of compensable lost time for the purpose of calculating the waiting period and eligibility for benefits is determined by SIF who will inform the agency of this date upon acceptance of the claim. The appointing authority, when reporting an accident or incident to SIF, must include the time and date of the accident/incident.

The Workers' Compensation Law statutory waiting period is applied only once per injury or disease and is met by cumulating the employee's absences in full days.

**Benefit Status**

A participating disabled employee is placed on workers' compensation disability leave with percentage supplement at the end of the seven calendar day waiting period if the employee elected to charge leave credits or as of the first day of absence if the employee did not elect to charge leave credits. The employee continues on workers' compensation disability leave with percentage supplement for the duration of the absence or nine cumulative months whichever is less and is placed in no pay status for all other full day absences related to the incident which occur after return to work. Refer to the Office of the State Comptroller Payroll Bulletin to be issued in the near future for more detailed information on processing these transactions.

In the circumstance where it was not possible to place an employee on workers' compensation disability leave with percentage supplement on the eighth day of absence, the agency should process the transaction as soon as possible upon receiving notice that the employee is absent due to a workers' compensation disability. Credits the employee may have charged after the eighth day and prior to being placed on workers' compensation disability leave with percentage supplement will be restored prorata following an award by the WCB crediting New York State for wages paid.

While an employee is absent on workers' compensation disability leave with percentage supplement and receiving compensation benefits from the State Insurance Fund, and OSC if eligible, the employee is treated as though in full pay status for the purpose of accruing biweekly leave accruals, continuous service, retirement service credit and health insurance for up to nine cumulative months of absence. (See **Earning of Leave Accruals** below for further information on leave accruals.) The nine months is defined as 39 weeks of payments from SIF.

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**Supplemental Payments**

Employees who participate in the Medical Evaluation Program may be eligible to receive a supplemental payment from OSC while absent on workers' compensation disability leave with percentage supplement if their wage replacement from SIF is less than 60% of their pre-disability gross wages. The pre-disability gross wages are defined as the sum of an employee's base annual salary, location pay, geographic differential, shift differential and inconvenience pay. To qualify for a supplement, a participating employee must have a degree of disability of total (100%) or marked (75%) as determined by the State Insurance Fund and must be within the first nine months (39 weeks) of disability. Once an employee is determined to be 50% or less disabled by SIF (moderate or mild disability) or an employee has been absent for more than nine cumulative months (39 weeks), the employee is no longer eligible for supplemental payments except as provided under the Mandatory Alternate Duty policy as explained on page 27. Supplemental payments will be processed by OSC in accordance with their payroll bulletin on this subject. These payments will be made following a determination by SIF that the absence is compensable and after issuance of the SIF wage replacement. Once OSC receives notice, as described in their procedures, from both SIF and the appointing authority that the employee is eligible for a supplement, it will be calculated and issued as indicated.

**Deductions from Supplemental Payments**

For employees eligible for a supplement because their SIF wage replacement is less than 60 per cent of their pre-disability gross salary; taxes, Social Security and Medicare and all deductions taken from the regular payroll check will continue to be taken to the extent the supplement is large enough. If the supplement is not sufficient, the employee is responsible for making the required payments as indicated below:

**Retirement**

The employee will be responsible for payment of the employee contribution (where applicable) to the retirement system and the State will continue its contribution. The employee contributions not taken from the supplemental payments will be taken retroactively via payroll deduction when the employee returns to duty and full pay. Refer to the Employees' Retirement System memorandum for an explanation of this process.

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Health Insurance

The employee will be responsible for the regular biweekly employee share of the health insurance premium. Premiums not taken from the supplemental payments will normally be taken retroactively via payroll deductions when the employee returns to the payroll. For detailed information on health insurance issues refer to the applicable "Memorandum to Agency Health Benefits Administrators."

Other Deductions

Any other deductions not taken because the supplement was not sufficient will not be taken retroactively upon return to the regular payroll. The employee is responsible for making direct payment for these payroll deductions (e.g., life insurance, credit union). Refer to Attendance and Leave Manual General Information Bulletin No. 90-02, issued November 30, 1990, for information on who to contact regarding making direct payments for credit unions, PEF insurances, deferred compensation, individual retirement accounts and any other authorized payroll deductions.

Earning of Leave Accruals

Employees who are on workers' compensation disability leave with percentage supplement earn biweekly sick leave and vacation credits for up to nine cumulative months of absence. For purposes of determining eligibility to earn biweekly leave accruals, a day of workers' compensation disability leave is treated as though it were a day in full pay status. This is true whether the day falls during a period of continuous or intermittent absence. Under the Attendance Rules, employees whose normal work schedule is 10 days in a payroll period must complete a minimum of seven full days out of 10 in full pay status in order to be eligible to earn leave accruals for that payroll period. A day of workers' compensation disability leave counts as a day toward meeting that seven-day eligibility threshold just as do days worked or charged to leave accruals.

For example, a full-time employee absent for four intermittent days of workers' compensation disability leave who works the remaining six days in that payroll period earns his/her normal biweekly accruals as a full-time employee for that payroll period as does the full-time employee who is absent for 10 days on workers' compensation disability leave with percentage supplement. Similarly, a 60 percent part-time employee with a normal schedule of six days per biweekly pay period who is absent for t

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intermittent days of workers' compensation disability leave and works the remaining three days in that payroll period earns his/her normal biweekly accruals (i.e., 60 percent of the full-time accruals) for that payroll period as does the 60 percent employee who is absent for six days on workers' compensation disability leave.

Personal Leave

Employees who are on workers' compensation disability leave with percentage supplement on their personal leave anniversary date are credited with their personal leave days on that date.

Vacation Bonus Days

Employees who are on workers' compensation disability leave with percentage supplement on their vacation anniversary date are credited with any vacation bonus days or additional vacation days for which they are otherwise eligible on that date.

Holidays

Employees on workers' compensation disability leave with percentage supplement are not eligible to observe holidays except those that fall during the initial 7 calendar day waiting period and only if they elect to charge leave credits. If a holiday falls during the seven calendar day waiting period, an employee charging leave credits charges one day less if the holiday coincides with a workday or is credited with holiday leave for a holiday which coincides with the employee's pass day (regular day off). The waiting period is not lengthened because of the holiday.

Employees on workers' compensation disability leave with percentage supplement are eligible to be credited with floating holidays which fall any time during that leave. If the floating holiday falls during the waiting period, the employee who is charging credits charges the day to other accrued leave and accrues the floating holiday (or, with agency permission, may charge the floating holiday on the day it is earned).

Accrual Maximums

Employees continue to be subject to provisions on maximums for accrual of vacation and sick leave credits and expiration dates for personal leave and floating holidays. Refer to the appropriate sections of the Attendance and Leave Manual for clarification as to

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what these limits are. While an employee is on workers' compensation disability leave with percentage supplement, leave credits cannot be accrued above established maximums nor can they be carried beyond the date on which they would otherwise lapse. (See Restoring Leave Accruals for a discussion of the impact of restoration on accrual maximums and expiration dates.)

**Charging Leave Accruals**

Employees absent from work due to a workers' compensation disability may charge any available leave accruals during the initial seven calendar day (five work day) waiting period. All the employee's credits are available during this period although sick leave credits should be charged before other categories of leave accruals in most cases. If sufficient leave credits are not available, the eligible employee must, upon request, be granted sick leave at half-pay. (See page 13 for eligibility criteria.) However, there are no provisions for advancing of leave accruals under this Program. Leave credits used or sick leave at half-pay granted during this initial waiting period are not recredited to the employee. There are no provisions for recrediting of leave accruals used at any time under this Program. (Refer to Restoring Leave Accruals for further information.)

Once the seven calendar day period has passed, the employee is placed on workers' compensation disability leave with percentage supplement and cannot charge leave accruals or be granted sick leave at half-pay for any full day absences in connection with this disability.

Employees may charge leave credits for partial day absences following return to work. However, employees are not permitted to charge leave accruals for full days of intermittent absence following return to work.

When a case is controverted because SIF does not find the disability to be job-related but agrees that the employee is disabled, the employee is permitted to charge the absence to leave credits. Any requests to charge accrued leave credits under these circumstances should be made in accordance with normal agency procedures for use of leave credits. However, when a case is contested because the employee is found to be not disabled, the employee is placed on leave without pay for the period of absence under dispute pending resolution of the claim and is not permitted to charge leave credits.

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**Sick Leave at Half-Pay**

Time spent on workers' compensation disability leave with percentage supplement counts as time worked for purposes of calculating an employee's maximum available sick leave at half-pay entitlement. For example, an otherwise eligible employee on workers' compensation disability leave with percentage supplement for six months earns an additional payroll period of sick leave at half-pay eligibility.

Employees absent under this Medical Evaluation Program are not permitted to use sick leave at half-pay except when they would be permitted to charge leave accruals, if available, for full day absences (see Charging Leave Accruals).

**Restoring Leave Accruals**

Under this Program, leave accruals charged and sick leave at half-pay eligibility used are restored to the employee on a prorated basis only following a Notice of Decision by the Workers' Compensation Board (WCB) crediting New York State for wages paid. There is no recrediting of leave accruals under this Program.

The restoration of leave credits is proportional, based on the credit New York State receives from the State Insurance Fund and the supplement for which the employee may be eligible. The information needed to determine the proportion of credits to be restored is obtained from the C-8 EMP form issued by the State Insurance Fund following a Workers' Compensation Board hearing and the payroll register. If you have a question, please contact your agency's regular claims examiner at the State Insurance Fund upon receipt of the C-8 EMP to verify the number of days for which New York State received credit and the total net dollar amount credited to NYS (the total net credit is the total dollar credit to NYS minus any deductions authorized by the WCB). Using these figures, the supplement amount, if any, and the employee's normal biweekly gross salary at the time of the accident, a percentage of proration of credits to be restored is calculated.

The following procedure explains this process:

- Divide the total net credit from SIF plus the gross supplement paid on the State payroll by the number of days credited to obtain the daily rate for restoration;

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- Divide the employee's normal biweekly gross salary at the time of the accident by 10 to obtain the employee's daily rate (for purposes of proration we are using this simplified version of the daily rate);
- Divide the daily rate for restoration by the employee's daily rate and multiply by 100 to obtain the proration percentage;
- This proration percentage is then applied separately to each category of leave credits charged by the employee to determine the number of days of leave in each category to be restored. (NOTE - the amount of restored credits cannot exceed the actual number of credits charged;)
- Convert the number of days to be restored to hours by multiplying the number of days by either 7.5 or 8 as applicable;
- Round the number of hours up to the nearest quarter hour;
- Sick leave at half-pay eligibility is restored in the same manner. However, there is no conversion to hours, the days restored are rounded up to the nearest whole day.

In each case, the employee will be restored a percentage of the number of days charged and/or sick leave at half-pay granted during the period covered by the Workers' Compensation Board award. Except in controverted cases, most restorations will involve only those credits charged during the seven calendar day initial waiting period for employees whose disability extends beyond 14 calendar days. An exception will occur for employees whose absence does not extend beyond 14 calendar days who receive a schedule loss award. Under Workers' Compensation Law, certain disabilities require the employee to receive an award of a specific number of days of compensation (which are listed on a schedule in the Law) without regard to the number of days actually lost from work due to the injury. In the case of a schedule loss award, the employee will have any credits charged during the initial waiting period restored on a prorated basis because New York State will receive a credit for wages paid.

Credits restored cannot be used again in connection with absences attributable to the same accident or injury. When restoration of leave accruals causes the employee to exceed

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applicable maximums for vacation and/or sick leave, the employee has one year from restoration of credits or return to work, whichever is later, to reduce accruals below applicable maximums. During this period of time, the employee continues to earn vacation and sick leave. There is no restoration of expired personal leave, holiday leave or floating holidays.

**Example:**

An employee charged 4 days of leave accruals, (3 days of sick leave and 1 day of personal leave) and was granted 1 day of sick leave at half-pay, upon exhaustion of credits, to cover the initial waiting period following a workers' compensation injury.

After the WCB hearing, the C-8 EMP from the SIF detailed a credit to NYS of a total of 5 days (1 week) with a net monetary credit of \$300 (\$400 minus \$100 attorney's fee). The employee's supplement from OSC is \$140 per week, so the total on which the prorated restoration of credits is made is \$440. The employee's biweekly gross salary is \$1800. The basic workweek of this employee is 40 hours.

1. 
$$\frac{\text{Total net credit}}{\text{Days Credited}} = \frac{\$440}{5} = \$88 - \text{daily rate for restoration}$$
2. 
$$\frac{\text{Biweekly Gross Salary}}{10 \text{ Day}} = \frac{\$1800}{10} = \$180 - \text{employee's daily rate}$$
3. 
$$\frac{\text{Daily Rate for Restoration}}{\text{Employee's daily rate}} = \frac{\$88}{180} \times 100 = 48.888\% \text{ proration}$$

**Sick Leave Restoral**

$$48.888\% \text{ of 3 days} = .48888 \times 3 = 1.466 \text{ days}$$

$$1.466 \times 8 \text{ hrs/day} = 11.75 \text{ hrs (rounded to nearest 1/4 hr)}$$

**Personal Leave Restoral**

$$48.888\% \text{ of 1 day} = .48888 \text{ days}$$

$$.48888 \times 8 \text{ hrs/day} = 4.00 \text{ hrs (rounded to nearest 1/4 hr)}$$

**Sick Leave at Half-Pay**

$$48.888\% \text{ of 1 day} = .48888 \text{ days} = 1 \text{ day restored (rounded up to nearest whole day)}$$



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**Summary**

Sick leave hours: 24 hrs used - 11.75 hrs restored

Personal leave hours: 8 hrs used - 4.00 hrs restored

Sick leave at half-pay: 1 day used - 1 day restored

**Eligibility for Overtime**

For purposes of determining whether an employee has met the 40-hour per week threshold for eligibility for overtime compensation, time spent on workers' compensation disability leave with percentage supplement counts as time worked. For example, a 40-hour per week employee who has two days of intermittent workers' compensation disability leave with percentage supplement in a workweek and who works or charges credits for the remaining three days in that workweek is deemed to have met the 40-hour threshold and any additional work performed in that workweek is paid at the overtime rate.

**Controverted or Contested Claims**

Eligibility for the workers' compensation benefit under the contract is dependent upon the State Insurance Fund/Workers' Compensation Board determination that a disability exists which resulted from an occupational injury or disease. Whenever the SIF controverts a claim (because it is alleged that the injury or disease did not occur on the job or it is alleged that the employee has not suffered any such injury or disease), the employee is not eligible for benefits under the contract.

In the case of a nonwork-related illness or injury, the employee continues to be eligible to use his/her leave credits and to be granted sick leave at half-pay as is the case for any ordinary disability. On the other hand, if the SIF has denied benefits because they believe there is no illness or injury, an employee is expected to be present at work. Any such absence may be considered unauthorized, until such time as the controversy is resolved, if the employee does not, in fact, return to work. Such employee should be placed on leave without pay pending resolution of the claim, return to work or termination pursuant to Civil Service Law, whichever occurs first.

If the controverted claim is resolved in favor of an employee by the Workers' Compensation Board, the SIF must begin making

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replacement payments. The employee, if charging leave accruals because the controversion was based on a nonwork-related illness or injury, would stop charging credits as of the date of notification from the SIF and no longer receive his/her State salary; the agency must file a PR-75 to place the employee on workers' compensation disability leave with percentage supplement effective as soon as possible following notification by the SIF. Any credits (including sick leave at half-pay) used prior to that point for which the Workers' Compensation Board issues a Notice of Decision and New York State receives a credit, will be restored to the employee on a prorated basis. (See Restoring Leave Credits for further information.)

The employee whose case was controverted due to non-disability will, upon a decision of the Workers' Compensation Board which overturns the controversion, have his/her status changed via PR-75 to workers' compensation disability leave with percentage supplement effective as of the first day of leave without pay and the SIF will make wage replacement payments for this period. OSC will also process a supplement if the employee is eligible. The agency will credit the employee with the leave accruals he/she should have earned during this period since the leave without pay is now retroactively corrected to workers' compensation disability leave with percentage supplement.

Section 71 Civil Service Law and Rule 5.9

The Medical Evaluation Program in no way changes the provisions of Civil Service Law. Section 71 of the Civil Service Law provides that an employee who is disabled as the result of an occupational injury or disease is entitled to a leave of absence for a minimum of one cumulative year (365 calendar days) unless found to be permanently disabled.

The cumulative year of mandatory leave includes periods of absence charged to leave credits, periods of workers' compensation disability leave with percentage supplement and periods of leave without pay following the nine cumulative months of benefits. For calculation of the "cumulative year," see page 3, of Section 21.8 of the Attendance and Leave Manual.

Employees absent for one cumulative year because of an occupational injury or disease may be continued in employment at the discretion of the appointing authority but are not entitled to be so continued. The benefits provided by the negotiated Medical Evaluation Program (accrual of biweekly leave credits, continuous

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service credit, retirement service and health insurance benefits have a nine month cumulative maximum. Employees should be placed on an ordinary leave without pay at the end of that nine month period for the remainder of their absence due to the same injury or disease.

Procedural guidelines for the implementation of Rule 5.9 of the Rules for the Classified Service, which details the notification and appeal provisions required by Section 71, are contained in the State Personnel Management Manual Policy Bulletin #93-02, dated May 12, 1993.

#### CLAIMS PROCESSING

##### Reporting Accidents

The injured employee and the supervisor have the first responsibility for reporting the accident to the personnel office or designated agency contact. Appropriate agency forms and an accident investigation must be completed and, upon receipt of this information, the agency should determine if the accident/injury is reportable to the SIF.

The criteria for determining whether an incident/injury is reportable to the SIF are:

- if the incident causes lost time beyond the shift in which it occurred, or
- requires medical treatment beyond first aid, or
- requires more than two medical treatments (including first aid).

If any of these conditions are met, the incident should be reported to the SIF as soon as practicable, but no later than 10 calendar days from the employee's notice of the incident.

Agencies should refer to the SIF Intake Form (see Attachment C) and provide the SIF with all the information contained within that document.

It is imperative that accidents be reported promptly to avoid delays in processing the employee's claim for benefits.

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Following the initial telephone or FAX report of the accident the agency must file a C-2 (Employer's Report of Accident/Injury) with the SIF and WCB. Any additional information discovered after the initial report should be forwarded to the SIF as quickly as possible following the normal course of ongoing communication between the agency and SIF concerning the claim.

**Medical Documentation**

The employee is responsible for ensuring that his/her treating physician submits the necessary medical information to the SIF. Without medical documentation, the SIF cannot process payment to the employee who may have no other source of income. Employees are also expected to comply with agency procedures for submitting medical documentation in addition to their agreement to participate in the Medical Evaluation Program.

The agency is responsible for informing the employee of the need to have his/her physician submit medical documentation to SIF. In addition, the agency should provide SIF with copies of any medical documentation regarding the case which has been submitted to the agency; it should not be assumed that SIF has received copies of such documentation.

Apart from the requirement to share medical documentation with SIF, any medical documentation should be handled consistent with agency policy and practice regarding the confidential treatment of such information.

For purposes of determining eligibility for benefits under the program, SIF makes the final determination regarding what constitutes satisfactory medical documentation. However, nothing in the provisions of this program precludes the agency from requiring that the employee submit periodic medical documentation directly to the agency to substantiate the absence nor is the agency precluded from requiring the employee to undergo a medical examination by a management-selected physician as a condition of return to work.

Agencies should clearly communicate to employees any requirements concerning medical documentation in connection with return to work procedures to prevent delays in employees being able to return as quickly as possible.

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**Medical Evaluation Process**

Every accident on or after July 1, 1993 for which the employee elects the Medical Evaluation Program and has lost time beyond two full workdays after the date of the accident will be reviewed by management for the purpose of determining the need to schedule a medical evaluation. Agencies should request a medical evaluation under any of the following circumstances:

- the initial prognosis indicates that the absence will last beyond 6 weeks. In this case the medical evaluation should be scheduled at about 5 weeks of absence.
- the individual's prognosis indicates that the absence will be less than 6 weeks, but the employee does not return to work on the specified date. The medical evaluation should be scheduled as soon as possible after the employee fails to return.
- whenever management has reason to believe the individual may be eligible for a limited duty assignment because of the nature of the injury and/or the medical information received.

The employing agency will contact the local SIF representative and request a "PS&T Medical Evaluation" whenever it is determined that such an evaluation is needed. The State Insurance Fund has agreed to schedule these examinations within five work days of receiving the request.

The employing agency is expected to provide the SIF with the following documentation in connection with such a request:

- current medical report(s) and C-2, if not already provided.
- current mailing address and telephone number of employee.
- agency contact person and telephone and telefax numbers.

This information should be "faxed" to SIF to avoid delays in scheduling medical examinations.

The SIF will notify the employee and the employer of the date, time and location of the examination. If an employee is unable to attend a scheduled medical examination, he/she is responsible for

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notifying the employer, in addition to the SIF, and should be so advised at the time the examination is scheduled. SIF will also notify the agency if an employee does not report for a scheduled examination. The agency will advise SIF whether or not the examination should be rescheduled. Employees who do not attend these scheduled medical examinations will be subject to appropriate administrative action.

Reasonable and necessary travel expenses incurred by employees attending these examinations will be paid by SIF in accordance with their normal procedures for travel expense reimbursement. Questions on travel expenses should be directed to the agency's usual SIF contact person.

The medical examination will be detailed enough to allow the evaluating physician to determine the employee's level of disability and prognosis for full recovery. In addition, if the level of disability is found to be at 50 percent or less, the evaluating physician will provide a statement of capabilities/limitations so that the agency has sufficient information to establish a limited duty assignment for the employee. A copy of the Estimated Physical Capabilities Form to be used for this purpose is attached (Attachment E).

The SIF will make the results of the medical evaluation, including the limitations statement, available to the employer, within two work days of the examination. The evaluating physician's report, including the statement of limitations/capabilities, if prepared, will be provided to the employee's treating physician also.

If the employee is more than 50 percent disabled or more than 45 days from expected full recovery, he/she will continue to receive the leave benefits that are appropriate for his/her length of absence.

If the employee is 50 percent or less disabled and within 45 days of full recovery, the employee may request or the agency may require the employee to return to an alternate duty assignment as described beginning on page 27. The alternate duty assignment should be assigned for the duration of the disability or 45 days, whichever is less. Employees who previously were eligible to receive a supplemental payment are no longer eligible since their disability has been established at 50% or less.

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Based on the prognosis given by the evaluating physician and such physician's recommendation, periodic reevaluations should be scheduled until such time as the employee is eligible for an alternate duty assignment or fully recovers and is returned to work. Each time such an examination is scheduled, the time frames described above for scheduling and receipt of reports will be applied. The employing agencies are directed to discuss reevaluations with the local SIF representative upon completion of the initial evaluation and at any time they believe such an evaluation is needed.

**Communication With the State Insurance Fund**

Accurate and timely communication with the State Insurance Fund is the critical link needed for employees to receive benefits under this Program. SIF is now required to make payments to State employees in the PS&T Unit on a current basis in accordance with the Workers' Compensation Law because the employee will not be receiving salary continuation after the first week of absence unless the employee is found eligible for a supplemental payment from OSC. Such supplement cannot be processed, however, until the first SIF payment is made. This is not possible without the information that is supplied by the agency. Agency staff should err on the side of providing too much information rather than too little if there is any doubt as to SIF's need for the information. The SIF must document all the actions taken in connection with a claim and the agency receives copies of each of these forms. The agency is responsible for reviewing these forms and communicating with SIF whenever there is a question about benefits or a change in status which the agency does not understand.

Initial Accident Report

The first piece of information to flow between the agency and SIF is the initial accident report. The employer is required by the New York State Workers' Compensation Law to report accidents within 10 calendar days of the incident or of first learning of the incident. Therefore, agency staff have an obligation to report to SIF within this time frame or possibly be subject to a fine by the Workers' Compensation Board. Aside from this negative action, if the employers' report of injury is not on file, SIF cannot proceed to process the claim which could result in the employee not receiving timely benefits. This lack of timely payment also can lead to a fine by the WCB. The most important reason for timely reporting, however, is to ensure that the injured employee receives benefits from SIF on time so he/she is not without income (since he/she will be off the agency payroll).

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Initial accident reporting can be done by telephone or telefax. Attached to this memorandum as Attachment C is the SIF Intake Form that is mentioned under the Reporting Accidents section. (Attachment D is a list of SIF District Offices and the counties each office serves.) This information is needed by SIF to start a claim file. Once the agency accident report has been reviewed and it has been determined that the accident is reportable to SIF, that initial information should be provided to SIF immediately. If there is any issue of reportability, SIF should be contacted for a determination. After the initial contact has been made, the C-2 must be filed with the WCB and SIF within 10 days.

Employee Status Changes

In addition to the initial accident report, all other employee status changes (including address changes) need to be reported to the SIF so that employees receive the correct benefits and are neither underpaid nor overpaid. For example, if the agency does not report that the employee has returned to work, the employee will continue to receive compensation payments from SIF while back on the payroll and receiving regular salary. In the same vein, the employee could be removed from the regular payroll and placed on workers' compensation disability leave with percentage supplement, but not receive benefits from SIF because SIF was not notified of the absence. The SIF will continue to complete the C-11, "Employer's Report of Injured Employee's Change in Employment Status Resulting From Injury," but they must receive notice from the agency of changes so that they can complete and file the form with the WCB.

Medical Reports

The SIF has established procedures to provide medical reports from consultant physicians and the reports under the Medical Evaluation Program to the employer. It is incumbent upon each agency to ensure that any medical documentation they obtain concerning an employee absent due to a workers' compensation disability be shared with the SIF, even in-house clinic reports for agencies with those capabilities. Many times the critical information in determining compensability of a particular absence is the supporting medical documentation. The agency has an obligation to ensure such documentation is made available to the SIF.

Other

In providing information to SIF, agency staff have an obligation to respond to SIF inquiries in a timely and thorough manner. As New York State's representative before the WCB, SIF



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needs to have complete knowledge of the case. If SIF receives a medical report indicating a work-related disability but has no agency report, they will contact the agency for confirmation that the accident occurred. An agency investigation should be undertaken immediately to ascertain the facts of the case.

SIF Forms

Agency staff's second role in communicating with the SIF is to respond to the information received on the copies they get of the forms SIF is required to file with the WCB. Questions about these forms or their purpose should be directed to SIF. These forms include:

- C-6 Notice That the Payment of Compensation Has Begun Without Awaiting Award of the Workers' Compensation Board
- C-7 Notice That Right to Compensation is Controverted
- C-8 Notice That Payment of Compensation for Disability Has Been Stopped or Modified
- C-8EMP Information from C-8 with Details of Employer Reimbursement
- C-9 Notice That Right to Compensation is Not Controverted But Payment Has Not Begun

The State Insurance Fund will complete the following forms on behalf of state agencies:

- C-11 Employer's Report of Injured Employee's Change in Employment Status Resulting From Injury
- C-22b Notice of Intention to Suspend or Reduce the Payment of Compensation After a Direction to Continue Payments
- C-240 Employer's Statement of Earnings
- C-256.2 Claim for Reimbursement of Wages Paid to State Employees

In summary, agencies should communicate early and often with SIF throughout an employee's absence. They should ensure that SIF knows when the employee is at work or absent and specifically for which days of absence the agency has provided payment or placed the

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employee on leave without pay. This is necessary so SIF can claim reimbursement for wages paid on behalf of the agency and subsequently credit New York State or pay the employee as appropriate. The agency must respond to information provided by SIF so that an employee's status is changed correctly and the person is not underpaid or overpaid.

**Communication With the Employee**

The Medical Evaluation Program relies on the employee, agency and SIF all communicating with each other in a timely fashion with accurate and complete information. Unlike benefits under the Supplemental Pay Program, the employee's benefits from SIF are processed on a current basis. It is essential, therefore, that the agency communicate to the employee his/her responsibilities, obtain the information needed for the SIF to process the claim and ensure that the employee receives all the benefits to which he/she is entitled, but no more than the program allows. Refer to the section entitled **Communication With the State Insurance Fund** for a discussion of the agency's responsibilities to SIF.

After ensuring that the employee receives medical attention as needed, the agency must obtain a completed accident report form from the employee and the supervisor and conduct any investigation deemed appropriate. Once the employee has provided medical documentation, the name, address, and phone number of the attending medical practitioner should be noted in the employee's file.

Although employees are assumed to have selected the Medical Evaluation Program and to have chosen to charge the first five days of absence, agencies must contact each employee regarding his/her options so that time records and payroll transactions for workers' compensation disability leave with percentage supplement can be processed in a timely fashion.

In all communications with the employee it is imperative for the agency to stress that without medical information from the employee's physician, SIF cannot process the claim and begin payments. If the SIF cannot begin payments, the employee will have no other source of income. (Supplemental payments are only made following SIF payments for the same period of disability.)

Throughout the absence, the agency should maintain contact with the employee, including making arrangements for completion of time records, since the employee continues to accrue leave credits during periods of workers' compensation disability leave with

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percentage supplement. When credits are restored pursuant to a WCB hearing, the employee should be notified. (Refer to Earning of Leave Accruals and Restoring Leave Accruals.)

Before the 21st day of absence the agency must notify the employee of his/her rights pursuant to Rule 5.9 and Section 71 of Civil Service Law. Should the employee not return to duty after an absence of 12 cumulative months, the agency may terminate the employee pursuant to Section 71. The specific notifications required prior to termination under the Rules and Law are detailed in the State Personnel Management Manual Policy Bulletin #93-02, dated May 12, 1993.

Agencies should advise employees of return to work procedures as part of the ongoing contact with the employee.

If the employee's case is controverted by the SIF, the agency must notify the employee to either return to duty (where no disability is found) or obtain necessary medical documentation to support use of leave credits in cases of non-job related disability. The employee must be advised of his/her payroll and leave status in either case. Should the controversion be resolved in the employee's favor, the agency should prepare a memo to the employee and the file which details all necessary adjustments in accruals and changes in status which were processed as a result of the Workers' Compensation Board decision.

**Communication with the Office of the State Comptroller**

See OSC's Payroll Bulletin, to be issued soon, for a full explanation of the processing of the payroll transactions when removing and adding PS&T Unit employees subject to this Medical Evaluation Program from the payroll. Supplemental payments will be processed following OSC's receipt of information from both SIF and the agency concerning the employee's entitlement to such payments.

**Record Keeping**

An employee's time record needs to reflect all transactions concerning the employee's absence due to each individual occupational injury or disease. It is recommended that agencies use the SIF case file number or date of accident on time records so that each absence is associated with the appropriate case. This is important not only for payment purposes, but also to calculate the nine months of benefits and one calendar year minimum entitlement to leave available for a single injury or disease and to be able to restore leave credits accurately.

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Time records must be maintained throughout an employee's absence since leave is credited to the employee as if he/she were in full pay status (up to nine cumulative months). See Earning of Leave Accruals for further information.

Additional information that needs to be kept with an employee's time records includes restored leave accruals (kept separately) and the date when leave credits are restored if the restoration brings the employee over the allowable maximum. Employees have one year from return to work or restoration of leave credits, whichever occurs later, to reduce leave credits below the maximum, and employees continue to earn leave credits throughout this period. If the employee chooses not to charge credits, a record of that choice should be maintained also.

The Workers' Compensation Board and State Insurance Fund do not maintain records of benefit enhancements provided to State employees. It is advisable to retain records on each workers' compensation case for six years after an employee retires or, if an employee transfers to another agency, to make them available to that agency. The new agency needs the information in these records to ensure that an employee receives only the benefits to which he/she is entitled if the case is reopened.

**MANDATORY ALTERNATE DUTY PROGRAM**

In the interest of returning employees who have sustained workers' compensation disabilities to duty as soon as possible and in recognition of the fact that the statutory wage replacement benefit may be reduced in proportion to the employee's reduced percentage of disability and that the supplemental payment will stop, the State and PEF have negotiated a Mandatory Alternate Duty Policy in connection with the workers' compensation benefits provided in the 1991-95 agreement. The Mandatory Alternate Duty Policy is effective on July 1, 1993, the effective date of the Medical Evaluation Program.

The Mandatory Alternate Duty Policy is designed to assist employees in returning to work prior to resumption of full job duties and to enable agency management to utilize the capabilities of these employees who would otherwise be unable to return to duty until some future time. In connection with this policy, the term "mandatory" means that (a) an employee who meets the eligibility criteria and requests a mandatory alternate duty assignment must be offered a mandatory alternate duty assignment or the employee must be compensated as provided below, and, (b) that an employee who

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meets the eligibility criteria can be ordered by management to return to work a mandatory alternate duty assignment.

**Eligibility**

The Mandatory Alternate Duty Policy applies to every employee who is eligible for benefits under the workers' compensation article of the negotiated agreement and who has not submitted a written request to the employer requesting not to be covered by the Medical Evaluation Program. In addition, to qualify for participation in the Mandatory Alternate Duty Program, an employee must meet the following criteria:

1. be classified as partially disabled at 50% or less (moderate or mild disability) by the State Insurance Fund; and
2. have a prognosis of full recovery (defined as the ability to perform the full duties of the job in which the employee was injured) within 45 calendar days (defined as 45 calendar days prior to the date of full recovery given by the examining physician);

These medical findings may occur in the course of an examination by an SIF consulting physician, or by the employee's attending physician, or in connection with a management-ordered medical evaluation as described on page 20.

There are no limitations on the number of times an employee can be given a mandatory alternate duty assignment either at employee request or management direction. However, each 45-calendar day period must be discrete; that is, the employee must be absent and must meet the eligibility criteria at the time each request is made. For example, an employee may have had an accident and requested and received a mandatory alternate duty assignment at the time he/she initially returned to work. Now, several months later, the employee is again absent due to surgery to correct a problem caused by the accident and is requesting mandatory alternate duty prior to return to full duties. As long as the employee meets the eligibility criteria, as evidenced by medical documentation satisfactory to management, he/she is again eligible for a mandatory alternate duty assignment.

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**Employee Requests for Mandatory Alternate Duty**

An employee meeting these eligibility criteria may request his/her agency to develop an alternate duty assignment. Such request can be submitted at any time between the date of full recovery specified in the medical documentation and 65 calendar days prior to that date. However, in no instance may the mandatory alternate duty assignment begin earlier than 45 calendar days prior to the date of full recovery provided by the examining physician. For any such employee who meets the eligibility criteria set forth above, as determined on the basis of medical documentation satisfactory to management, the appointing authority is required to take one of the following actions:

1. provide the employee with a mandatory alternate duty assignment for up to 45 calendar days which takes into account the employee's physical limitations;

or

2. where a mandatory alternate duty assignment cannot be provided, arrange for the employee to receive a supplemental payment that will provide the employee, when added to the SIF payment, with 60 per cent of his/her gross income as of the date of accident. This supplement is payable for the period the mandatory alternate duty assignment would have been expected to last, not to exceed 45 calendar days. All requests for payment of a supplement under these circumstances must be submitted to and approved by the Governor's Office of Employee Relations. Please telephone your GOER representative to initiate this supplemental payment process.

**Management-Directed Mandatory Alternate Duty Assignments**

Whether or not an employee who meets the eligibility criteria requests an alternate duty assignment, agency management may direct the employee to return to work on an alternate duty basis. Such mandatory alternate duty assignment shall be for up to 45 calendar days initially and shall take into account the employee's physical limitations. Usually a management directed assignment will be based on an evaluation through the Medical Evaluation Network, but may be based on any acceptable medical documentation as noted above.

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**Assignment to Mandatory Alternate Duty**

The employee who accepts a mandatory alternate duty assignment is returned to the payroll and is entitled to receive his/her regular salary for the period of the mandatory alternate duty assignment. Eligibility for added salary factors is the same as for an employee performing full duties. In addition, time spent in a mandatory alternate duty assignment counts as time served for the purpose of completing an employee's probationary period. Employees working a mandatory alternate duty assignment are in full pay status and are eligible to earn bi-weekly leave accruals, observe holidays, earn holiday pay or holiday leave for work on a holiday, earn floating holidays, and otherwise be treated for attendance and leave purposes as any other employee at work performing his/her regular duties.

Where an employee declines a mandatory alternate duty assignment, the employee will be continued on workers' compensation disability leave with percentage supplement and will be referred to the SIF for an appropriate benefit determination. Employees who neither request nor are ordered to return to work continue on workers' compensation disability leave with percentage supplement receiving wage replacement benefits from the SIF in accordance with the Workers' Compensation Law. Employees in either of these situations are ineligible for a supplement because they are 50% or less disabled.

**Medical Documentation**

Medical documentation submitted to support an employee's participation in the Mandatory Alternate Duty program must be satisfactory to management. This documentation should contain the following information: a statement that the employee is 50% or less disabled, an estimated date of full recovery that is within 65 calendar days of the date of the medical examination, and a statement of the physical limitations which need to be taken into consideration in developing the employee's mandatory alternate duty assignment. This documentation may be provided by an SIF or other State-selected physician or by the employee's attending physician or by a combination of information from these sources.

When the documentation is provided through the Medical Evaluation Program, the physicians will be completing the limitations/capabilities form for all eligible employees and submitting it to the agency for their review in establishing alternate duty assignments.

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Confidentiality

All medical documentation should be treated confidentially and great care should be exercised to protect employees against the indiscriminate dissemination or use of the medical information it contains. However, appropriate agency staff are entitled to have access to the medical information related to an employee's physical limitations to the extent it is necessary (1) to evaluate the employee's ability to participate in the Mandatory Alternate Duty Program and (2) to develop an appropriate assignment.

Disability Rating

The first eligibility criterion for a mandatory alternate duty assignment is having a disability rating of 50 percent or less. The SIF consulting physicians will generally indicate that an employee is totally, marked, moderately or mildly disabled. The moderate and mild disability categories meet the criterion of being 50 percent or less disabled. If the agency has any questions about the disability rating, the SIF should be contacted immediately. The physicians in the Medical Evaluation Network will indicate whether or not the employee is 50 per cent or less disabled in the report following the examination. In the case of an attending physician's report or a management-ordered medical evaluation report other than an SIF report, if the physician's report indicates a partial disability, the SIF should be contacted immediately for their interpretation of the disability rating. If they advise that the medical report is to be interpreted as rating the employee as mildly or moderately disabled, the employee will meet the eligibility criterion of being 50% or less disabled for the Mandatory Alternate Duty Program.

If the employee disputes the disability rating, the case will be referred to the Workers' Compensation Board for a final determination and the employee will remain absent receiving benefits from the SIF as determined appropriate.

Prognosis

The second eligibility criterion is having a prognosis of full recovery within 45 calendar days of the first day a mandatory alternate duty assignment will begin. Generally, medical documentation that indicates a recovery date within 65 calendar days of the date of the medical examination would be considered acceptable although in no case is the employee eligible to be



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returned to duty on a mandatory basis sooner than 45 calendar days from the indicated full recovery date.

Limitations/Capabilities

Once management has acceptable medical documentation indicating the employee's eligibility for mandatory alternate duty, it is necessary to obtain medical information concerning the employee's limitations so that an appropriate assignment can be designed. SIF physicians, both consultants and those doing examinations under the Medical Evaluation Program, are being requested to provide this information at the time of their evaluation so their initial reports should meet management's needs in most cases. If an employee presents documentation from his/her personal physician that does not contain sufficient information, management should contact that physician to obtain additional information since that would generally be the most expedient route to obtain the needed information. The attached Physical Capabilities Form (Attachment E) can be used, as can any existing agency form, to make such a request of an attending physician.

The issue of medical documentation is not reviewable under Article 34 of the Agreement. Employees have the right, however, pursuant to the Workers' Compensation Law, to challenge the determination of level of disability as it impacts on the statutory wage replacement benefits they receive. Decisions of the Workers' Compensation Board are binding on the parties.

**Development of Mandatory Alternate Duty Assignments**

A mandatory alternate duty assignment, to constitute a valid offer, must be reflective of the employee's physical limitations and may involve performance of some duties of the employee's regular position, or some duties of another existing position or a composite of tasks from several positions. Through a review of past workers' compensation experience, agencies may be able to develop an inventory of potential alternate duty assignments or tasks. However, agencies are expected to make every effort to tailor any mandatory alternate duty assignment to the individual employee's specific limitations as well as his/her capabilities.

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An offer of a mandatory alternate duty assignment to an employee should include the following:

- a) description of proposed alternate duties
- b) location of assignment
- c) work hours and workweek
- d) supervisor
- e) starting date (no earlier than 45 calendar days prior to the anticipated date of full recovery) and ending date (the anticipated date of full recovery)

The specifications in the offer will be based on the medical documentation accepted by management. Since an assignment may be for as long as 45 calendar days, management may design an assignment that changes over time. For example, an assignment may begin with training for a week or two and then progress to an assignment that is less sedentary for a second period of time, and finally to more physical tasks at the end of the period immediately prior to return to full duties. Assignments such as this should be explained to the employee when initially offered. In addition, management may find it necessary, occasionally, to offer an employee an assignment defined only for the beginning of the mandatory alternate duty period in order to return him/her to work as quickly as possible. For example, if an employee was eligible for a mandatory alternate duty assignment for four weeks, management could offer the employee an assignment that was defined for two weeks with the understanding that the next two weeks of the assignment would be developed and discussed with the employee prior to expiration of the first two week period.

If an eligible employee believes that some element of the proposed mandatory alternate duty assignment constitutes a personal hardship, he/she may express the claim of hardship to the appropriate agency official who has been designated to fill this role. Such claim of hardship will be considered by the agency official and responded to in writing with a copy to PEF prior to the proposed beginning date of the mandatory alternate duty assignment or as soon thereto as possible. This response shall be considered dispositive of the matter.

As stipulated in the agreement, management has the authority to make mandatory alternate duty assignments to tasks that can be performed by the employee which may not necessarily fall within the employee's regular salary grade, title series or job duties and such assignments are not considered violations of either Article 17 of the agreement or Section 61.2 of the Civil Service Law.

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Additionally, when developing an assignment, management is not restricted to the employee's former work location, work schedule, or workweek and such conditions of the assignment are not considered violations of Article 32. However, once a mandatory alternate duty assignment is specified for the entire period required and has begun, the provisions of Article 32 cover the employee while he/she is working in the assignment.

Notwithstanding this broad latitude to develop assignments, agencies may find that identifying alternate duties as close to the employee's regular duties as possible, given the person's physical limitations, are the most successful assignments and are most helpful in preparing the employee to return to his/her regular duties at the end of the assignment. Agencies may also find that identifying assignments that are similar to the employee's regular job in terms of location, shift and pass days also provide a level of normalcy that improves the employee's prognosis for successful completion of the assignment and return to regular duty at the end of the assignment.

Management is expected to accommodate the employee as much as possible and exercise sound judgment and consistency in the development of mandatory alternate duty assignments. Once management has received satisfactory medical documentation establishing an employee's eligibility and physical limitations, it is incumbent upon them to establish and offer the mandatory alternate duty assignment as soon as practicable and consistent with the employee's first date of eligibility for the assignment. Agency management will discuss, clarify and review the proposed mandatory alternate duty assignment with the employee and will discuss any changes in that assignment that become necessary during the course of the assignment prior to the change taking place. It is not the intent of this policy, however, to in any way entitle an affected employee to negotiate his/her mandatory alternate duty assignment with agency management.

The provisions of this Program including, for example, the nature of alternate duty assignments and the review of personal hardship situations, are appropriate subjects for labor/management discussions.

#### **Expiration of Mandatory Alternate Duty Assignments**

When an employee's mandatory alternate duty assignment expires, the employee will be found able to perform the full duties of his/her regular position in most cases and will return to full

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duty. If not sufficiently recovered, however, the employee either is placed on workers' compensation disability leave with percentage supplement or leave without pay, depending on the length of absence, and is covered by the workers' compensation statute (receiving a wage replacement benefit reflective of the employee's level of disability), or, may request a discretionary extension of the mandatory alternate duty assignment. The employee is no longer eligible for a supplemental payment if his/her disability level is at 50% or less. (Refer to "Extension of Mandatory Alternate Duty Assignments" below.)

Management has the right, whenever necessary, to request an employee to submit additional medical documentation during the course of a mandatory alternate duty assignment to verify on-going eligibility for the Program. An employee determined to be recovered, based on this medical evidence, before the anticipated recovery date should be directed to return to full duty and an employee whose condition worsens may be returned to leave status (See "Termination of Mandatory Alternate Duty Assignments" below.) The most common situation will be a change in the date of return to full duties. Generally a prognosis of return to regular duties that is originally given two to three months in advance could change by a few days or even a week or so. In this case, management should consider extension of the mandatory alternate duty assignment as described below.

Nothing in this policy diminishes management's right to have the employee examined by a physician selected by management as a condition of allowing the employee to return to full duties. In other words, the fact that there was an initial prognosis accepted by management of ability to perform the full duties of the employee's regular job on a specific date does not make return to full duty at the end of the mandatory alternate duty assignment on that date automatic.

**Extension of Mandatory Alternate Duty Assignments**

There will be cases where employees who qualified for and participated in the Mandatory Alternate Duty Program and whose mandatory alternate duty assignment has expired do not fully recover within the specified period. Since their alternate duty assignments automatically expire, these employees may request and management may elect to continue the assignments on a discretionary basis beyond the established ending date.

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One common occurrence will be a change in the date of return to full duties by a few days or a week or so based on more current medical information. Agencies are encouraged to continue employees on alternate duty whose date of return to full duties changes in this manner rather than returning an employee to leave status only to reinstate him/her from leave within a very short period of time.

Any extensions are subject to the terms and conditions of this program, are solely at management discretion and must be supported by the submission of additional medical documentation satisfactory to management. Extensions will be granted only for very limited time periods, for example in single payroll period blocks, and only when supported by satisfactory medical documentation.

**Termination of Mandatory Alternate Duty Assignments**

A mandatory alternate duty assignment may be terminated prior to its expiration if it is determined, based on medical documentation satisfactory to management, that the employee is able to return to full duties earlier than the original prognosis had indicated. When the agency has medical documentation indicating full recovery, the employee should be ordered to return to full duties immediately. If the employee disputes management's finding of full recovery, the employee will be placed on leave without pay and the case will be referred to the SIF for an appropriate benefit determination. If the employee appeals the findings of the SIF, the claim will be resolved by the Workers' Compensation Board whose decision is binding on the parties.

In exceptional cases, management may determine that a mandatory alternate duty assignment in progress is not successful. In that instance, management may elect to modify the mandatory alternate duty assignment to improve the prospects for success. Such changes should be discussed with the employee prior to being implemented. Alternatively, management may rescind the mandatory alternate duty assignment, in which case management is required to provide the employee with a supplement that brings the employee to 60 per cent of gross pay as of the date of the accident. Such supplement will not be paid beyond the point the mandatory alternate duty assignment would have expired. As previously stated, telephone your GOER representative to initiate the payment of a supplement under these circumstances.

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**AGENCY ALTERNATE DUTY POLICIES**

This Mandatory Alternate Duty Program, developed in connection with the negotiation of benefits covering occupational disabilities of PEF-represented employees injured on or after July 1, 1993, does not negate existing agency discretionary alternate/light duty policies that may be available for disabled employees recovering from both occupational and ordinary disabilities. Any such agency policies continue to be available for employees not eligible for this Mandatory Alternate Duty Program. Agencies interested in establishing alternate duty programs in addition to this Program should contact their Governor's Office of Employee Relations representative for guidance.

**Attachment A**

ROLES AND RESPONSIBILITIES		
AGENCY	LEAVE PROGRAM	SUPPLEMENTAL PAY PROGRAM
Appointing Authority	Determines reportability of incident based on Workers' Comp. Law criteria. Makes independent determination of eligibility for Workers' Compensation Leave. Processes PR75s to provide employee with paid leave. Maintains records of leave granted. Monitors six-month benefit entitlement. Restores leave credits. May terminate employee under Section 71 CSL. Files required forms with the Workers' Compensation Board.	Determines reportability of incident based on Workers' Comp. Law criteria. Provides salary continuation benefits to employees based on determination of eligibility by the SIF. Maintains contact with OSC, SIF, employee and supervisor regarding employee's continued eligibility for benefits, payroll status, and leave credits used, recredited and restored. Maintains accurate records. Monitors nine-month benefit entitlement. Files and/or provides information for forms required by OSC, and the Workers' Compensation Board. May terminate employee under Section 71 CSL.
State Insurance Fund (SIF)	Pays Workers' Comp. Law benefits. Determines compensability. May controvert claim.	Pays Workers' Comp. Law benefits. Determines compensability. May controvert claim. Maintains liaison with agency and OSC.
Workers' Compensation Board (WCB)	Hears, judges merits of, and issues determinations on workers' compensation cases. Resolves controversies. Directs SIF to pay benefits to the employee or New York State as appropriate.	No Change.
Office of the State Comptroller (OSC)	Processes PR75s submitted by agency. Issues social security refunds and amended wage statements.	Administers supplemental payment system, including calculating amount of supplemental payment. Maintains liaison with agencies and SIF. Processes forms submitted by agency and resolves overpayments. Issues social security refunds and amended wage statements.
Department of Civil Service (CS)	Administers Attendance Rules provisions as modified by negotiated agreements.	Administers Attendance Rules provisions as modified by negotiated agreements. Acts as liaison between SIF, OSC and agencies. Maintains database on workers' compensation experience.

## Attachment A

ROLES AND RESPONSIBILITIES		
STATUTORY PROGRAM	C-82 MANAGED CARE PROGRAM	PS&T MEDICAL EVALUATION PROGRAM
Determines reportability of incident based on Workers' Comp. Law criteria. Files and/or provides information for forms required by OSC and WCB. Maintains accurate records. Monitors twelve-month benefit entitlement. Prorates restoral of credits. Maintains contact with SIF, employee and supervisor regarding employee's continued eligibility for benefits and leave status. Develops alternate duties for employees eligible for the Mandatory Alternate Duty Program. May terminate employee under Section 71 CSL.	Determines reportability of incident based on Workers' Comp. Law criteria. Makes independent determination of eligibility for workers' compensation leave. Verifies employee's choice of benefit. Processes PR75s to provide employee with paid leave. Maintains records of leave granted. Monitors six-month benefit entitlement. Restores leave credits. Requests medical evaluations as indicated. Develops alternate duties for employees eligible for limited duty. May terminate employee under Section 71 CSL. Files required forms with the Workers' Compensation Board.	Determines reportability of incident based on Workers' Comp. Law criteria. Verifies employee's choice of benefit. Maintains accurate records. Monitors nine-month benefit entitlement. Files and/or provides information for forms required by OSC and WCB. Maintains contact with SIF, employee and supervisor regarding employee's continued eligibility for benefits, supplemental pay and leave status. Requests medical evaluations as indicated. Develops alternate duties for employees eligible for the Mandatory Alternate Duty Program. May terminate employee under Section 71 CSL.
Pays Workers' Comp. Law benefits. Determines compensability. May controvert claim. Maintains liaison with agency.	Pays Workers' Comp. Law benefits. Determines compensability. May controvert claim. Maintains liaison with agency. Schedules medical evaluations as requested.	Pays Workers' Comp. Law benefits. May controvert claim. Determines compensability. Maintains liaison with agency and OSC. Schedules medical evaluations as requested.
No Change.	No Change.	No Change.
Processes PR75s submitted by agency. Issues social security refunds and amended wage statements.	Processes PR75s submitted by agency. Issues social security refunds and amended wage statements.	Administers supplemental payment process including calculating amount of supplemental payment. Maintains liaison with agencies and SIF. Processes forms submitted by agencies. Issues social security refunds and amended wage statements.
Administers Attendance Rules provisions as modified by negotiated agreements. Acts as liaison between SIF, OSC and agencies. Maintains database on workers' compensation experience.	Administers Attendance Rules provisions as modified by negotiated agreements.	Administers Attendance Rules provisions as modified by negotiated agreements. Acts as liaison between SIF, OSC and agencies. Maintains database on workers' compensation experience.



# WORKERS' COMPENSATION OUTLINE OF BENEFITS

BENEFIT	EMPLOYEE GROUPS COVERED	WAITING PERIOD	BASIC PROVISIONS
NYS Workers' Compensation Law	All employees	- 7 calendar days for wage replacement; after 14 calendar days retroactive to first day of disability.	- Medical expenses - Wage replacement $\frac{1}{3}$ avg. wkly. salary up to: \$340 max 7/1/90 \$350 max 7/1/91 \$400 max 7/1/92
Leave Program	Security Services & Security Supervisors (accidents prior to 4/15/93) ASU, ISU, OSU, DMNA, PS&T, RRSU (accidents prior to 4/1/86) M/C (accidents prior to 9/1/86)	None  - 10 work days per year/per accident - Provisions for waiver - Advance of sick leave if credits are exhausted	- 6 months leave with full pay without charge to credits with benefit continuation - Use of credits after 6 months - SL $\frac{1}{3}$ pay or IPP - LWOP - Section 71 coverage
Supplemental Pay Program	ASU, ISU, OSU, DMNA, RRSU (accidents on or after 4/1/86 and prior to 7/1/92) M/C (accidents on or after 9/1/86 and prior to 7/1/92) PS&T (accidents on or after 4/1/86 and prior to 7/1/93)	Same as WC Law	- 9 months leave with net pay without charge to credits with benefit continuation - Use of credits - SL at $\frac{1}{3}$ pay or IPP - LWOP - Section 71 coverage
Statutory Program	ASU, ISU, OSU, DMNA, RRSU (accidents on or after 7/1/92)	Same as WC Law	- 12 months leave without pay with benefit continuation - Section 71 coverage plus - Mandatory Alternate Duty for employees found to be 50% or less disabled and within 45 days of full recovery Out-of-title work allowed

BENEFIT	EMPLOYEE GROUPS COVERED	WAITING PERIOD	BASIC PROVISIONS
Council 82 Managed Care Program	Security Services and Security Supervisors <i>(accidents on or after 4/15/93)</i>	Same as WC Law or	Choice of WC Law Benefit only or
		None	Managed Care Program including - Leave Program <i>plus</i> - Mandatory Medical Evaluation <i>plus</i> - Mandatory Limited Duty for employees 50% or less disabled No out-of-title work allowed
PS&T Medical Evaluation Program	PS&T <i>(accidents on or after 7/1/93)</i>	Same as WC Law	Choice of WC Law Benefit only or Medical Evaluation Program including - 9 months leave with 60% gross pay without charge to credits with benefit continuation for disability greater than 50% - LWOP - Section 71 coverage <i>plus</i> - Mandatory Medical Evaluation <i>plus</i> - Mandatory Alternate Duty for employees found to be 50% or less disabled and within 45 days of full recovery Out-of-title work allowed
M/C Interim Benefit	M/C <i>(accidents on or after 7/1/92)</i>	None	- Leave with full pay with charge to credits from first day of disability - Use of all credits - Sick Leave $\frac{1}{2}$ pay or IPP - LWOP - Section 71 coverage

# SIF INTAKE FORM

Attachment

Part of Body Injured

Check here if claimant:

- a) ☐ is "Annual Salaried"  
b) ☐ is subject to the NYS Time and Attendance Rules

## CLAIMS MEDICAL DEPARTMENT INITIAL TELEPHONE INQUIRY NYS CASE

1. Case No.	Claimant	Date of Accident	Employer
2. Home Address			
3. Reporter's Name			Title
4. Facility's Address and Code No.			Telephone No.
			5. N. U.      5a. Pass days
6. Has Claimant returned to work? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, date			
7. Notice given to		Title	Date
8. Social Security Number		Date of Birth	Home Phone No.
9a. Title/Occupation		b. How Long Employed?	c. Gross wages per week
10. Days worked per week	Last day worked		Last day paid
11. Doctor/Hospital			

### ANSWER QUESTIONS 12 - 14 ONLY IF THERE IS LOST TIME

12. Is the employee charging any leave credits during the first seven calendar days after the accident? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, how many days will be charged?			
13. Prior conditions - accidents, operations, congenital conditions			
a. Are any of these conditions due to compensation cases? <input type="checkbox"/> Yes <input type="checkbox"/> No      Was SIF Carrier? <input type="checkbox"/> Yes <input type="checkbox"/> No			
b. Explain			
14. Third Party (Name and Address), if none state "None"			
15. Location of Accident (include street address, city, town or village)			
16. History of Accident/Remarks: (Include job description if title is not self-explanatory and there is lost time)			
Print Name		Title	
Signature		Telephone No.	Date

Use Reverse Side for Added Remarks - Make Sure to Tumble Head Sheet

## SIF DISTRICT OFFICES

New York City.....199 Church Street  
New York, NY 10007  
FAX No. (212) 312-7393  
312-7487

Buffalo.....161 Delaware Avenue  
Buffalo, NY 14202  
FAX No. (716) 851-2121

Mr. Morty Blittner: (212) 312-7378

Mr. Phil Staniszewski: (716) 851-2000

Bronx  
Kings  
New York City  
Queens

Richmond  
Rockland  
Westchester

Cattaraugus  
Chautauqua

Erie  
Niagara

Islandia.....2950 Expressway Drive S.  
Islandia, NY 11722  
FAX No. (516) 233-3838  
233-3839

Rochester.....1 Marine Midland Plaza, Suite 300  
Rochester, NY 14604  
FAX No. (716) 258-2120

Ms. Joanna Snow: (516) 233-3700

Mr. Ron Ledwith: (716) 258-2103

Nassau  
Suffolk

Allegany  
Chemung  
Genesee  
Livingston  
Monroe

Ontario  
Orleans  
Schuyler  
Seneca  
Steuben

Tioga  
Tompkins  
Wayne  
Wyoming  
Yates

Albany.....15 Computer Drive West  
Albany, NY 12205  
FAX No. (518) 485-5835  
485-5845

Syracuse.....1045 7th North Street  
Liverpool, NY 13088  
FAX No. (315) 453-6559

Mr. Joe Nolte: (518) 485-5868

Mr. Rick Beardsley: (315) 453-6639

Albany  
Clinton  
Columbia  
Dutchess  
Essex  
Franklin

Fulton  
Greene  
Hamilton  
Montgomery  
Orange  
Putnam

Rensselaer  
Saratoga  
Schenectady  
Schoharie  
Ulster  
Warren  
Washington

Broome  
Cayuga  
Chenango  
Cortland  
Delaware

Herkimer  
Jefferson  
Lewis  
Madison  
Oneida

Onondaga  
Oswego  
Otsego  
St. Lawrence  
Sullivan

White Plains...701 Westchester Avenue  
East Wing, Suite 100-E  
White Plains, New York 10604  
FAX No. (914) 997-4845

Mr. Reggie Wiecezrak: (914) 997-4824

Rockland Psychiatric Center  
Rockland Children's Psychiatric Center  
Westchester Psychiatric Center  
Letchworth Village DDSO  
Helen Hayes Hospital

# ESTIMATED PHYSICAL CAPABILITIES FORM--PROFESSIONAL, SCIENTIFIC & TECHNICAL

Name of Physician \_\_\_\_\_

Name of Employee \_\_\_\_\_

*Note: Important Information on Reverse*

**INSTRUCTIONS:** If the employee is found to be 50% or less disabled, please complete this form based on your estimation of their current physical capabilities.

Medical Diagnosis: \_\_\_\_\_

2a. In an eight hour workday, how many hours can this employee: (Please check appropriate boxes.)

Sit	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Stand	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Walk	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests

b. In a given day, for how many total hours can this employee sit, stand, and/or walk in combination?  
☐ 4      ☐ 6      ☐ 8      ☐ 10      ☐ 12      ☐ 14      ☐ 16

3. Other Capabilities: (Please check appropriate boxes.)

Never      Occasionally      Frequently      Continuously

<b>Lift</b>				
00 - 10 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 - 20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21 - 50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
51 - 100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Carry</b>				
00 - 10 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 - 20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21 - 50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
51 - 100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Push	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pull	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Run	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reach above shoulder level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Operate a motor vehicle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Upper Extremities:

Which hand is dominant? ☐ Right      ☐ Left  
 Can this employee perform repetitive actions such as:

	Simple Grasping	Pushing & Pulling	Fine Manipulation
RIGHT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
LEFT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

## Lower Extremities:

Use of feet/legs for repetitive movement, as in operation of foot controls and motor vehicles.

Right Extremity	Left Extremity	Simultaneous
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. Work Environment Restrictions:

• Can this employee:

Be exposed to marked changes in temperature and humidity? ☐ Yes      ☐ No  
 Be exposed to unprotected heights? ☐ Yes      ☐ No  
 Be around moving machinery? ☐ Yes      ☐ No

5. Other Restrictions:

• Can this employee restrain combative clients? ☐ Yes      ☐ No  
 • Does this employee have any visual or hearing impairment requiring accommodation? ☐ No      ☐ Yes If "Yes," please explain: \_\_\_\_\_

6. Based on your examination(s) of this employee, are there any known problems of a general nature, including any medications prescribed for the diagnosis listed, that would interfere with this employee returning to work?  
☐ No      ☐ Yes If "Yes," please explain: \_\_\_\_\_

When, in your estimation, will this employee be ready to return to full duty?

Date: \_\_\_\_\_

Comments: \_\_\_\_\_

Physician's Signature \_\_\_\_\_

Telephone Number  
( ) \_\_\_\_\_

Date \_\_\_\_\_

## **ALTERNATE DUTY PROGRAM**

New York State and the Public Employees Federation AFL-CIO, (PEF), negotiated an Alternate Duty Program, as part of the employer-provided benefits associated with workers' compensation disabilities, in the 1991-95 agreements.

This program allows employees in the Professional, Scientific & Technical Services Unit, who have been disabled temporarily due to occupational accidents, to return to work prior to full recovery and work in assignments that meet both the needs of the agency and the medical limitations of the employees.

Employees benefit from this Program by returning to work and becoming productive more quickly, thus enhancing the recuperation process. Agencies benefit from this Program because they have the services of employees who would otherwise be unable to return to work.

When an employee's level of disability is classified at 50% or less (mildly or moderately disabled) and the employee is within 45 days of full recovery, he/she is qualified for an alternate duty assignment. The agency will use the information provided on this form to design an assignment that is consistent with the employee's limitations and capabilities. An assignment will be given to an employee initially for no more than 45 days. Agencies can extend assignments on a discretionary basis until the employee has fully recovered and returns to his/her regular assignment.

During the period of alternate duty, the employee will be expected to provide periodic medical documentation from the attending physician to verify that the employee's medical condition and the assignment remain consistent and to confirm full recovery prior to return to the regular job assignment.

Questions concerning the information on this form should be directed to the evaluating physician at the telephone number listed. Questions concerning the alternate duty assignment should be directed to the employee's agency.

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File this material in the section of the manual referenced above.

TO: State Departments and Agencies  
FROM: Josephine L. Gambino, Commissioner   
SUBJECT: State/Council 82 Workers' Compensation Leave Program -  
1991-1995 Negotiated Agreements for Security Services and  
Security Supervisors Units

As stated in our October 22, 1992, Policy Bulletin 92-03 on Attendance and Leave items in the 1991-95 agreements with Council 82, the workers' compensation benefits have changed; these are the guidelines for the Workers' Compensation Leave Benefit Program contained in the Security Services Unit and the Security Supervisors Unit contracts. The implementation date for this new benefit is April 15, 1993. Accidents occurring on or after that date are subject to these guidelines. Accidents occurring prior to April 15, 1993, are subject to the provisions of the 1988-91 contracts.

This material has been prepared to assist you in implementing the revised workers' compensation provisions. If you have any questions, contact the Employee Relations Section of the Department of Civil Service at (518) 457-5167.

Attachments

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INTRODUCTION

The significant change in the workers' compensation benefits for injuries occurring on or after April 15, 1993, for Security Services and Security Supervisors Units' employees, is the ability of an employee to choose Workers' Compensation Law benefits or the Leave Benefit Program provided in the contract. If the contractual benefits are chosen, the individual agrees to be part of a medical evaluation process designed to return individuals to work on limited or light duty prior to full recovery.

The medical evaluation process set up in connection with this benefit is available to management for all Council 82-represented employees who apply for workers' compensation benefits, regardless of the date of the accident, to verify ongoing disability. The medical examinations conducted under this evaluation process do not replace current requirements, but are in addition to any medical reports required by agencies in connection with granting leave benefits or by the State Insurance Fund (SIF) in connection with their responsibilities to provide benefits pursuant to the Workers' Compensation Law.

Initially, SIF will function as the third party administrator for the group of physicians that will be conducting the examinations under this medical evaluation process. A request for proposal is being developed and if another vendor is selected in the future, a memorandum will be issued announcing the effective date and any procedural changes that become necessary.

Only employees whose accidents occur on or after April 15, 1993, are subject to the limited duty portion of the new Leave Benefit Program on a mandatory basis. Other Council 82-represented employees who are recovering from any temporary disability, whether caused by an occupational or ordinary accident or illness, can be offered limited duty under this process, but cannot be required to accept it.

An employee who elects Workers' Compensation Law coverage only, should be placed on leave without pay for all absences related to the workers' compensation accident. This is a regular leave without pay with no additional benefits accruing to the individual. The employee continues to be subject to Section 71 of the Civil Service Law and is entitled to a minimum of one cumulative year of absence and due process proceedings pursuant to Rule 5.9.

An employee who elects to receive benefits under the Workers' Compensation Leave Benefit Program provided in Article 14.9 must



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participate in the medical evaluation and limited duty components of the Program to receive leave benefits. The leave benefit component of the Program has not been changed from the 1988-1991 agreements and continues to be administered in accordance with the explanation provided in the Attendance and Leave Manual, Section 21.8, pp. C10-C19.

FOR EACH SEPARATE ACCIDENT EMPLOYEES MUST ELECT WHICH BENEFIT THEY WANT AT THE TIME THEY REPORT THE ACCIDENT, OR AS SOON THEREAFTER AS POSSIBLE, ON FORMS PROVIDED BY THE STATE. A sample form is attached for agencies to duplicate and use for this purpose. Employees are allowed to make one selection per injury; once a benefit choice has been made, the employee is subject to that benefit for all absences related to that injury.

**BENEFIT DESCRIPTION: Workers' Compensation Leave Benefit Program**

The Workers' Compensation Leave Benefit Program for the Security Services and Security Supervisors Units has three components: the leave benefits as applicable to workers' compensation related absences, the medical evaluation process, and the assignment of limited duty to qualified employees.

**I. Leave Benefits**

As identified in the introduction above, the workers' compensation leave benefits have not been changed except to require that employees participate in the medical evaluation and limited duty components to be eligible for these leave benefits. Employees who elect participation in the Leave Benefit Program and whose absences are accepted by management as workers' compensation are entitled to a cumulative total of six months of leave with pay without charge to credits, followed by use of all available leave credits, by use of sick leave at half-pay (if eligible) and finally, by leave without pay, subject to the provisions of Section 71 of the Civil Service Law and Rule 5.9.

If management denies leave benefits pursuant to the reasons authorized by the negotiated agreements, the employee will either (1) be covered by ordinary disability benefits if the issue is that the disability is not job related, or (2) the employee will be placed on leave without pay if management believes the individual could report for work, subject to resolution of the claim. This represents no change from the administration of workers' compensation leave for accidents occurring prior to April 15, 1993, pursuant to the terms of the 1988-91 agreements.

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**II. Medical Evaluation Process**

Every accident on or after April 15, 1993, for which the employee elects the Leave Benefit Program and has lost time beyond two full workdays after the date of the accident will be reviewed by management for the purpose of determining the need to schedule a medical evaluation. Agencies should request a medical evaluation under any of the following circumstances:

- the initial prognosis indicates that the absence will last beyond six weeks. In this case the medical evaluation should be scheduled at about five weeks of absence.
- the individual's prognosis indicates that the absence will be less than six weeks, but the employee does not return to work on the specified date. The medical evaluation should be scheduled as soon as possible if the employee fails to return.
- whenever management has reason to believe the individual may be eligible for a limited duty assignment because of the nature of the injury and/or the medical information received.

The employing agency will contact the local SIF representative and request a "Security Medical Evaluation" whenever it is determined that such an evaluation is needed. The State Insurance Fund has agreed to schedule these examinations within five work days of receiving the request.

The employing agency is expected to provide the SIF with the following documentation in connection with such a request:

- current medical reports and C-2, if not already provided.
- current mailing address and telephone number of employee.
- agency contact person and telephone and telefax numbers.

This information should be "faxed" to SIF to avoid delays in scheduling medical examinations.

The SIF will notify the employee and the employer of the date, time and location of the examination. If an employee is unable to attend a scheduled medical examination, he/she is responsible for notifying the employer, in addition to the

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SIF, and should be so advised at the time the examination is scheduled. SIF will also notify the agency if an employee does not report for a scheduled examination. The agency will advise SIF whether or not the examination should be rescheduled. Employees who do not attend these scheduled medical examinations will be subject to appropriate administrative action.

Reasonable and necessary travel expenses incurred by employees attending these examinations will be paid by SIF in accordance with their normal procedures for travel expense reimbursement. Questions on travel expenses should be directed to the agency's usual SIF contact person.

The medical examination will be detailed enough to allow the evaluating physician to determine the employee's level of disability and prognosis for full recovery. In addition, if the level of disability is found to be at 50 percent or less, the evaluating physician will provide a statement of capabilities/limitations so that the agency has sufficient information to establish a limited duty assignment for the employee. A copy of the Estimated Physical Capabilities Form to be used for this purpose is attached. The limited duty should be assigned for the duration of the disability or 45 days, whichever is less.

The SIF will make the results of the medical evaluation, including the limitations statement, available to the employer, within two workdays of the examination. The evaluating physician's report, including the statement of limitations/capabilities, if prepared, will be provided to the employee's treating physician also.

If the employee is more than 50 percent disabled, he/she will continue to receive the leave benefits that are appropriate for his/her length of absence.

If the employee is 50 percent or less disabled, the agency must notify the employee whether he/she is being assigned to limited duty or being allowed to continue the absence receiving the benefits appropriate to the length of absence. Details concerning these assignments are in III, below.

Based on the prognosis given by the evaluating physician and such physician's recommendation, periodic reevaluations should be scheduled until such time as the employee is eligible for a limited duty assignment or fully recovers and is returned to work. Each time such an examination is scheduled, the time

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frames described above for scheduling and receipt of reports will be applied. The employing agencies are directed to discuss reevaluations with the local SIF representative upon completion of the initial evaluation and at any time they believe such an evaluation is needed.

III. Limited Duty Assignments

A. Administration

When an employee's level of disability is classified at 50 percent or less, the individual is qualified for a limited duty assignment.

This level of disability determination is made by the State Insurance Fund based on medical information available to that agency. The medical documentation on which the determination is based may have been provided by the attending physician, by an evaluating physician or by a consulting physician.

Medical documentation will be required by management each time an employee is assigned to limited duty. Although the length of time the employee will be partially disabled is not an eligibility criterion for limited duty, management needs the expected full recovery date in order to design the limited duty assignment. Agencies may not approve limited duty assignments in blocks of time greater than 45 days, but based on the employee's prognosis, can assign shorter periods. While there are no restrictions on the number of times an employee can be assigned limited duty in blocks of 45 calendar days or less, agencies should extend additional periods of limited duty to employees in a uniform manner.

Each time a period of limited duty expires, the employee's medical status should be reviewed by management. This review will usually be based on the ongoing medical information provided by the employee during the limited duty assignment, but may involve another medical evaluation through the SIF if management is not satisfied with the available documentation. Based on this review, the employee will be returned to full duty, assigned an additional block of limited duty or returned to the appropriate leave status.

An employee assigned limited duty is returned to the payroll and is entitled to receive regular salary for the

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period of the limited duty assignment. Eligibility for added salary factors is the same as that for an employee performing full duties. In addition, time spent on a limited duty assignment counts as time served for the purpose of completing an employee's probationary period. Employees on limited duty assignments are in full-pay status and are eligible to earn biweekly leave accruals, observe holidays, earn holiday pay or time for work on a holiday and otherwise are to be treated, for attendance and leave purposes, as any other employee at work performing regular duties.

Employees who decline limited duty assignments will be placed on leave without pay and referred to the SIF for appropriate benefit determinations.

Employees who are not offered limited duty assignments continue on the workers' compensation leave benefits appropriate to their length of absence.

During a period of limited duty an employee will be expected to provide ongoing medical documentation at intervals specified by the appointing authority supporting his/her need for continuation of the limited duty assignment and will also be required to provide medical documentation attesting to full recovery before return to full duties.

B. Assignments

A limited duty assignment must reflect the employee's physical condition and be within the following parameters:

1. Limited duty assignments must be developed within the employee's title and current work location. Work location as used in this context is the existing definition of work location within each affected agency, not necessarily the exact location of the employee's bid job, but rather the geographic area within which employees bid on particular assignments. Work location policies for each agency/facility, as they relate to limited duty assignments, should be discussed at appropriate level labor/management meetings.
2. Employees on limited duty assignments may not be counted as part of minimum staffing levels. That

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is, an employee working limited duty cannot be counted as staff in management decisions concerning whether or not there are a sufficient number of employees available.

3. No employee will be bumped from a bid job or be required to work in any job other than his/her bid job to provide limited duty assignments. In other words, no employee at work performing his/her regular assignment can be displaced solely to create a spot for a person returning to work on limited duty.
4. No bid jobs will be abolished to create limited duty assignments. In other words, if an ongoing full-time regular assignment is vacated, for any reason, management cannot eliminate this position solely for the purpose of making the duties available to employees on limited duty. Of course, this has no impact on management's right to hire and deploy the work force as programmatic and operational needs change.
5. Seniority selection for resource assignments, where they exist by labor/management agreement, shall not be changed to accommodate limited duty assignments. Currently, agreements to establish such assignments exist only in the Department of Correctional Services.
6. Every effort will be made to maintain the employee's squad and shift when assigned to limited duty. If the employee's physical limitations are such that management is not able to develop an assignment on the same squad or shift, however, the employee should be given as much advance notice of the change as possible. In addition, if assignment to more than one squad or shift is possible, the employee's preference should be considered.

Items 3 and 4 above are subject to resolution under Article 7 of the collective bargaining agreements up to and including Step 3 of the grievance procedure.

Through a review of past workers' compensation experience, agencies may be able to develop an inventory of potential limited duty tasks that can be combined into an assignment once the employee's limitations are known.

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Management is certainly not limited, however, to such an inventory. Agencies are expected to make every effort to tailor each assignment to the individual employee's specific limitations. Once tasks that an employee can perform are identified, management needs to determine which tasks will be combined to establish an assignment for that individual. Some employees may perform only one task for their period of limited duty; others may be assigned a variety of tasks based on their physical limitations. It would be an unusual situation if a limited duty assignment corresponded to a regular assignment in the combination of tasks and length of the workday spent on each.

Since each limited duty assignment may be for 45 calendar days, management may design an assignment that changes over time. For example, an assignment may begin with training for a week or two and then progress to an assignment that is less sedentary for a second period of time and finally, to more physical tasks at the end of the period immediately prior to return to full duties. Assignments such as this should be explained to the employee upon return to limited duty. Management may also find it necessary to begin an assignment defined only for a portion of the 45 days, in order to return the employee to work as quickly as possible, with the understanding that the rest of the assignment would be developed and discussed with the employee prior to expiration of the initial time period.

When an employee is assigned limited duty, the following information should be provided:

- Description of the specific duties
- Location, work hours, workweek of the assignment
- The name of the supervisor, the starting and ending dates

In addition, employees should be advised that (1) limited duty assignments may be changed over the length of the assignment to reflect both changes in the employee's physical limitations as the rehabilitation process progresses and changes in the agencies needs and (2) limited duty assignments may be required for additional blocks of 45 days or less at agency discretion.

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Nothing in this policy diminishes management's right to have the employee examined by a physician selected by management as a condition of allowing the employee to return to full duties. Return to full duty at the end of a limited duty assignment is not automatic. An initial prognosis accepted by management of an employee's ability to perform full duties on a specific date does not prevent management from reconsideration should circumstances appropriately indicate.

C. Termination of Limited Duty Assignments

A limited duty assignment may be terminated prior to its expiration if it is determined, based on medical documentation satisfactory to management, that the employee is able to return to full duties earlier than the original prognosis had indicated. When the agency has medical documentation indicating full recovery, the employee should be ordered to return to full duties immediately. If the employee disputes management's finding of full recovery, the employee will be placed on leave without pay and the case will be referred to the State Insurance Fund and the Workers' Compensation Board.



# ESTIMATED PHYSICAL CAPABILITIES FORM--SECURITY SERVICES AND SUPERVISORS

Name of Physician \_\_\_\_\_

Name of Employee \_\_\_\_\_

**Note: Important Information on Reverse**

**INSTRUCTIONS:** *If the employee is found to be 50% or less disabled, please complete this form based on your estimation of their current physical capabilities.*

Medical Diagnosis: \_\_\_\_\_

2a. In an eight hour workday, how many hours can this employee: *(Please check appropriate boxes.)*

Sit	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Stand	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Walk	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests

b. In a given day, for how many total hours can this employee sit, stand, and/or walk in combination?  
☐ 4      ☐ 6      ☐ 8      ☐ 10      ☐ 12      ☐ 14      ☐ 16

3. Other Capabilities: *(Please check appropriate boxes.)*

Never      Occasionally      Frequently      Continuously

<b>Lift</b>				
00 - 10 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 - 20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21 - 50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
51 - 100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Carry</b>				
00 - 10 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 - 20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21 - 50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
51 - 100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Push	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
at	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crawl	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Run	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reach above shoulder level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Operate a motor vehicle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Upper Extremities:**

Which hand is dominant? ☐ Right      ☐ Left  
 Can this employee perform repetitive actions such as:

	Simple Grasping	Pushing & Pulling	Fine Manipulation
RIGHT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
LEFT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Lower Extremities:**

Use of feet/legs for repetitive movement, as in operation of foot controls and motor vehicles.

Right Extremity	Left Extremity	Simultaneous
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. Work Environment Restrictions:

• Can this employee:

Be exposed to marked changes in temperature and humidity? ☐ Yes      ☐ No  
 Be exposed to unprotected heights? ☐ Yes      ☐ No  
 Be around moving machinery? ☐ Yes      ☐ No

5. Other Restrictions:

• Can this employee restrain combative clients? ☐ Yes      ☐ No  
 • Does this employee have any visual or hearing impairment requiring accommodation? ☐ No      ☐ Yes *If "Yes," please explain:* \_\_\_\_\_

6. Based on your examination(s) of this employee, are there any known problems of a general nature, including any medications prescribed for the diagnosis listed, that would interfere with this employee returning to work?

☐ No      ☐ Yes *If "Yes," please indicate:* \_\_\_\_\_

When, in your estimation, will this employee be ready to return to full duty?      Date: \_\_\_\_\_

Comments: \_\_\_\_\_

Physician's Signature \_\_\_\_\_

Telephone Number  
(      )      \_\_\_\_\_

Date \_\_\_\_\_

## **LIMITED DUTY PROGRAM**

New York State and Council 82, AFSCME, AFL-CIO, negotiated a Limited Duty Program, as part of the employer-provided benefits associated with workers' compensation disabilities, in the 1991-95 agreements.

This program allows employees in the Security Services and Security Supervisors Units, who have been disabled temporarily due to occupational accidents, to return to work prior to full recovery and work in assignments that meet both the needs of the agency and the medical limitations of the employees.

Employees benefit from this Program by returning to work and becoming productive more quickly, thus enhancing the recuperation process. Agencies benefit from this Program because they have the services of employees who would otherwise be unable to return to work.

When an employee's level of disability is classified at 50% or less (mildly or moderately disabled), the employee is qualified for a limited duty assignment. The agency will use the information provided on this form by the evaluating physician to design a limited duty assignment that is consistent with the employee's limitations and capabilities. Usually an assignment will be given to an employee in blocks of time of no more than 45 days each until the employee has fully recovered and returns to his/her regular assignment.

During the period of limited duty, the employee will be expected to provide periodic medical documentation from the attending physician to verify that the employee's medical condition and the assignment remain consistent and to confirm full recovery prior to return to the regular job assignment.

Questions concerning the information on this form should be directed to the evaluating physician at the telephone number listed. Questions concerning the limited duty assignment should be directed to the employee's agency.

# WORKERS' COMPENSATION BENEFIT ELECTION FORM

1991 - 95 New York State/Council 82 Negotiated Agreements

To be completed by the employee

**INSTRUCTIONS:** Please complete this form and submit it to your agency with your accident report each time you file an accident report.

- ☐ Security Services Unit  
☐ Security Supervisors Unit

Name	Social Security Number		
Street Address	Home Telephone Number (      )		
City or Post Office	State	ZIP Code	Date of Accident

I elect the following benefit program for *all* absences related to this accident:

1. **New York State Workers' Compensation Law Coverage only** ☐ Yes ☐ No  
I understand that if I elect Law coverage only I will be placed on leave without pay for *all* absences related to this accident and I will receive only the benefits provided by the New York State Workers' Compensation Law.
2. **Workers' Compensation Leave Benefit Program** ☐ Yes ☐ No  
I understand that if I elect the Leave Benefit Program, in addition to Law coverage, I will be eligible for the benefits as provided in the 1991-95 State/Council 82 negotiated agreements which include up to 6 months of paid leave, and use of credits and sick leave at half pay, if eligible. I also understand that to receive these benefits I must participate in the medical evaluation and limited duty components of this Program.

## PERSONAL PRIVACY PROTECTION LAW NOTIFICATION

The information which you are being asked to provide on this form is being requested pursuant to Article 14 of the 1991-95 State - Council 82 negotiated agreements for the principal purpose of determining whether you qualify for employer-provided workers' compensation benefits and will be maintained by the Personnel Office in the agency or facility in which you are employed. Failure to provide this information may result in delay of processing benefits. This information will be used in accordance with Section 96 (1) of the Personal Privacy Protection Law particularly subdivisions (b), (d), and (e). For further information relating *only* to the Personal Privacy Protection Law, contact your Personnel Office.

Signature	Date
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File this material in the section of the manual referenced above.

TO: State Departments and Agencies

FROM: Josephine L. Gambino, Commissioner



SUBJECT: State/CSEA and State/DC-37  
Mandatory Alternate Duty Policies -  
1991-95 Negotiated Agreements

As provided in the 1991-95 negotiated agreements between the State and CSEA and the State and DC-37, a Mandatory Alternate Duty Policy has been negotiated by the parties and was disseminated with GOER Memorandum Number 92-03, dated August 12, 1992. The purpose of this memorandum is to set forth guidelines for administration of the Mandatory Alternate Duty Policy. Questions concerning the information in this bulletin should be directed to the Employee Relations Section of this Department at (518) 457-5167.

Attachment

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**Introduction**

In the interest of returning employees who have sustained workers' compensation disabilities to duty as soon as possible and in recognition of the fact that the statutory wage replacement benefit may be reduced in proportion to the employee's reduced percentage of disability, the State and CSEA and the State and DC-37 have negotiated a Mandatory Alternate Duty Policy in connection with the workers' compensation benefits provided in the 1991-95 agreements between the State and CSEA and the State and DC-37. The Mandatory Alternate Duty Policy became effective on July 1, 1992, the effective date of the Statutory Workers' Compensation Program.

The Mandatory Alternate Duty Policy is designed to assist employees in returning to work prior to resumption of full job duties and to enable agency management to utilize the capabilities of these employees who would otherwise be unable to return to duty until some future time. In connection with this policy, the term "mandatory" means that (a) an employee who meets the eligibility criteria and requests a mandatory alternate duty assignment must be offered a mandatory alternate duty assignment or the employee must be compensated as provided below, and, (b) that an employee who meets the eligibility criteria can be ordered by management to return to work a mandatory alternate duty assignment.

**Eligibility**

The Mandatory Alternate Duty Policy applies to every employee who is eligible for benefits under the workers' compensation article of the negotiated agreements. See Policy Bulletin 92-01, dated July 1, 1992 for an explanation of those eligibility criteria. In addition, to qualify for participation in the Mandatory Alternate Duty Program, an employee must meet the following criteria:

1. be classified as partially disabled at 50% or less by the State Insurance Fund (SIF); and
2. have a prognosis of full recovery (defined as the ability to perform the full duties of the job in which the employee was injured) within 45 calendar days (defined as 45 calendar days prior to the date of full recovery given by the examining physician);

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These medical findings may occur in the course of an examination by an SIF consulting physician, or by the employee's attending physician, or in connection with a management-ordered medical evaluation. (Refer to "Medical Documentation" below for a more detailed discussion.)

There are no limitations on the number of times an employee can be given a mandatory alternate duty assignment either at employee request or management direction. However, each 45 calendar day period must be discrete; that is, the employee must be absent and must meet the eligibility criteria at the time each request is made. For example, an employee may have had an accident and requested and received a mandatory alternate duty assignment at the time he/she initially returned to work. Now, several months later, the employee is again absent due to surgery to correct a problem caused by the accident and is requesting mandatory alternate duty prior to return to full duties. As long as the employee meets the eligibility criteria, as evidenced by medical documentation satisfactory to management, he/she is again eligible for a mandatory alternate duty assignment.

**Employee Requests for Mandatory Alternate Duty**

An employee meeting these eligibility criteria may request his/her agency to develop an alternate duty assignment. Such request can be submitted at any time between the date of full recovery specified in the medical documentation and 65 calendar days prior to that date. However, in no instance may the mandatory alternate duty assignment begin earlier than 45 calendar days prior to the date of full recovery provided by the examining physician. For any such employee who meets the eligibility criteria set forth above, as determined on the basis of medical documentation satisfactory to management, the appointing authority is required to take one of the following actions:

1. provide the employee with a mandatory alternate duty assignment for up to 45 calendar days which takes into account the employee's physical limitations;
- or
2. where a mandatory alternate duty assignment cannot be provided, arrange for the employee to receive a supplemental payment that will net the employee the difference between that employee's full statutory benefit rate based on 100% disability and the partial disability statutory benefit rate being paid to that employee by the State Insurance Fund. This supplement is payable for the

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period the mandatory alternate duty assignment would have been expected to last, not to exceed 45 calendar days. All requests for payment of a supplement must be submitted to and approved by the Governor's Office of Employee Relations. Please telephone your GOER representative to initiate this supplemental payment process.

**Management-Directed Mandatory Alternate Duty Assignments**

If an employee who meets the eligibility criteria does not request an alternate duty assignment, agency management may direct the employee to return to work on an alternate duty basis. Such mandatory alternate duty assignment shall be for up to 45 calendar days and shall take into account the employee's physical limitations.

**Assignment to Mandatory Alternate Duty**

The employee who accepts a mandatory alternate duty assignment is returned to the payroll and is entitled to receive his/her regular salary for the period of the mandatory alternate duty assignment. Eligibility for added salary factors is the same as for an employee performing full duties. In addition, time spent in a mandatory alternate duty assignment counts as time served for the purpose of completing an employee's probationary period. Employees working a mandatory alternate duty assignment are in full pay status and are eligible to earn bi-weekly leave accruals, observe holidays, earn holiday pay or holiday leave for work on a holiday, earn floating holidays, and otherwise be treated for attendance and leave purposes as any other employee at work performing his/her regular duties.

Where an employee declines a mandatory alternate duty assignment, the employee will be continued on workers' compensation disability leave without pay and will be referred to the SIF for an appropriate benefit determination.

Employees who neither request nor are ordered to return to work continue on workers' compensation disability leave without pay receiving wage replacement benefits from the SIF in accordance with the Workers' Compensation Law.

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**Medical Documentation**

Medical documentation submitted to support an employee's participation in the Mandatory Alternate Duty program must be satisfactory to management. This documentation should contain the following information: a statement that the employee is 50% or less disabled, an estimated date of full recovery that is within 65 calendar days of the date of the medical examination, and a statement of the physical limitations which need to be taken into consideration in developing the employee's mandatory alternate duty assignment. This documentation may be provided by an SIF or other State-selected physician or by the employee's attending physician or by a combination of information from these sources.

Confidentiality

All medical documentation should be treated confidentially and great care should be exercised to protect employees against the indiscriminate dissemination or use of the medical information it contains. However, appropriate agency staff are entitled to have access to the medical information related to an employee's physical limitations to the extent it is necessary (1) to evaluate the employee's ability to participate in the Mandatory Alternate Duty Program and (2) to develop an appropriate assignment.

Disability Rating

The first eligibility criterion for a mandatory alternate duty assignment is having a disability rating of 50 percent or less. The SIF consulting physicians will generally indicate that an employee is totally, marked, moderately or mildly disabled. The moderate and mild disability categories meet the criterion of being 50 percent or less disabled. If the agency has any questions about the disability rating, the SIF should be contacted immediately. In the case of an attending physician's report or a management-ordered medical evaluation report other than an SIF report, if the physician's report indicates a partial disability, the SIF should be contacted immediately for their interpretation of the disability rating. If they advise that the medical report is to be interpreted as rating the employee as mildly or moderately disabled, the employee will meet the eligibility criterion of being 50% or less disabled for the Mandatory Alternate Duty Program.



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If the employee disputes the disability rating, the case will be referred to the Workers' Compensation Board for a final determination and the employee will remain absent receiving benefits from the SIF as determined appropriate.

Prognosis

The second eligibility criterion is having a prognosis of full recovery within 45 calendar days of the first day a mandatory alternate duty assignment will begin. Generally, medical documentation that indicates a recovery date within 65 calendar days of the date of the medical examination would be considered acceptable although in no case is the employee eligible to be returned to duty on a mandatory basis sooner than 45 calendar days from the indicated full recovery date.

Limitations/Capabilities

Once management has acceptable medical documentation indicating the employee's eligibility for mandatory alternate duty, it is necessary to obtain medical information concerning the employee's limitations so that an appropriate assignment can be designed. SIF physicians are being requested to provide this information at the time of their evaluation so their initial reports should meet management's needs in most cases. If agency management directs an employee to have a physical examination, the request to the physician to schedule the examination should include a request for a statement of limitations/capabilities in order for the information to be available in a timely manner. If an employee presents documentation from his/her personal physician that does not contain sufficient information, management should contact that physician to obtain additional information since that would generally be the most expedient route to obtain the needed information. The attached Physical Capabilities Form can be used, as can any existing agency form, to make such a request of an attending physician or a physician selected by management to perform an evaluation.

As indicated above, there are occasions when agency management will need additional medical information beyond the original documentation regarding an employee's participation in the Mandatory Alternate Duty Program. While this need usually can be met by requesting more detailed information from the examining physician, occasionally, agencies may need to have the employee

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examined by a physician selected by management. In those cases where agency management feels the need to have the employee examined by a physician selected by management, the agency shall make a reasonable effort to complete a medical examination within 20 calendar days from receipt of the employee's request for a mandatory alternate duty assignment.

When agency management fails to complete the medical examination and reach a decision regarding the employee's eligibility for a mandatory alternate duty assignment within the 20 calendar day period, the employee shall receive a supplement that will net the employee the difference between the employee's full 100% disability statutory benefit rate and the partial statutory benefit rate being paid to the employee by the State Insurance Fund until the examination is completed and a decision made. This provision shall not apply where the failure of the agency-selected physician to complete the medical examination is attributable to the employee's failure to appear for the examination, the employee's refusal to allow it to be held, or the employee's refusal to cooperate or provide the necessary documentation.

This is the same supplement due an employee when management fails to provide a mandatory alternate duty assignment to a qualified employee who requests one. Please contact your GOER representative if you anticipate the need to pay a supplement under the conditions outlined above.

If, following this examination, the agency-selected physician does not find the employee eligible to participate in the Mandatory Alternate Duty Program, the employee will be referred to the SIF for an appropriate benefit determination.

The issue of medical documentation is not reviewable under Article 34 of the Agreement. Employees have the right, however, pursuant to the Workers' Compensation Law, to challenge the determination of level of disability as it impacts on the statutory wage replacement benefits they receive. Decisions of the Workers' Compensation Board are binding on the parties.

#### **Development of Mandatory Alternate Duty Assignments**

A mandatory alternate duty assignment, to constitute a valid offer, must be reflective of the employee's physical limitations and may involve performance of some duties of the employee's

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regular position, or some duties of another existing position or a composite of tasks from several positions. Through a review of past workers' compensation experience, agencies may be able to develop an inventory of potential alternate duty assignments or tasks. However, agencies are expected to make every effort to tailor any mandatory alternate duty assignment to the individual employee's specific limitations as well as his/her capabilities.

An offer of a mandatory alternate duty assignment to an employee should include the following:

- a) description of proposed alternate duties
- b) location of assignment
- c) work hours and workweek
- d) supervisor
- e) starting date (no earlier than 45 calendar days prior to the anticipated date of full recovery) and ending date (the anticipated date of full recovery)

The specifications in the offer will be based on the medical documentation accepted by management. Since an assignment may be for as long as 45 calendar days, management may design an assignment that changes over time. For example, an assignment may begin with training for a week or two and then progress to an assignment that is less sedentary for a second period of time, and finally to more physical tasks at the end of the period immediately prior to return to full duties. Assignments such as this should be explained to the employee when initially offered. In addition, management may find it necessary, occasionally, to offer an employee an assignment defined only for the beginning of the mandatory alternate duty period in order to return him/her to work as quickly as possible. For example, if an employee was eligible for a mandatory alternate duty assignment for four weeks, management could offer the employee an assignment that was defined for two weeks with the understanding that the next two weeks of the assignment would be developed and discussed with the employee prior to expiration of the first two week period.

If an eligible employee believes that some element of the proposed mandatory alternate duty assignment constitutes a personal hardship, he/she may express the claim of hardship to the appropriate agency official who has been designated to fill this role. Such claim of hardship will be considered by the agency official and responded to in writing with a copy to CSEA prior to

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the proposed beginning date of the mandatory alternate duty assignment or as soon thereto as possible. This response shall be considered dispositive of the matter.

As stipulated in the Agreements, management has the authority to make mandatory alternate duty assignments to tasks that can be performed by the employee which may not necessarily fall within the employee's regular salary grade, title series or job duties and such assignments are not considered violations of either Article 24 of the Agreements or Section 61.2 of the Civil Service Law. Also, such assignments are not considered violations of Articles 44 or 45 of the Agreements since mandatory alternate duty assignments exist outside the posting and bidding process. Additionally, when developing an assignment, management is not restricted to the employee's former work location, work schedule, or workweek and such conditions of the assignment are not considered violations of Article 32. However, once a mandatory alternate duty assignment is specified for the entire period required and has begun, the provisions of Article 32 cover the employee while he/she is working in the assignment.

Notwithstanding this broad latitude to develop assignments, agencies may find that identifying alternate duties as close to the employee's regular duties as possible, given the person's physical limitations, are the most successful assignments and are most helpful in preparing the employee to return to his/her regular duties at the end of the assignment. Agencies may also find that identifying assignments that are similar to the employee's regular job in terms of location, shift and pass days also provide a level of normalcy that improves the employee's prognosis for successful completion of the assignment and return to regular duty at the end of the assignment.

Management is expected to accommodate the employee as much as possible and exercise sound judgment and consistency in the development of mandatory alternate duty assignments. Once management has received satisfactory medical documentation establishing an employee's eligibility and physical limitations, it is incumbent upon them to establish and offer the mandatory alternate duty assignment as soon as practicable and consistent with the employee's first date of eligibility for the assignment. Agency management will discuss, clarify and review the proposed mandatory alternate duty assignment with the employee and will discuss any changes in that assignment that become necessary during

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the course of the assignment prior to the change taking place. It is not the intent of this policy, however, to in any way entitle an affected employee to negotiate his/her mandatory alternate duty assignment with agency management.

The provisions of this Program including, for example, the nature of alternate duty assignments and the review of personal hardship situations, are appropriate subjects for labor/management discussions.

**Expiration of Mandatory Alternate Duty Assignments**

When an employee's mandatory alternate duty assignment expires, the employee will be found able to perform the full duties of his/her regular position in most cases and will return to full duty. If not sufficiently recovered, however, the employee either is placed on workers' compensation disability leave without pay and is covered by the workers' compensation statute (receiving a wage replacement benefit reflective of the employee's level of disability), or, may request a discretionary extension of the mandatory alternate duty assignment. (Refer to "Extension of Mandatory Alternate Duty Assignments" below.)

Management has the right, whenever necessary, to request an employee to submit additional medical documentation during the course of a mandatory alternate duty assignment to verify on-going eligibility for the Program. An employee determined to be recovered, based on this medical evidence, before the anticipated recovery date should be directed to return to full duty and an employee whose condition worsens may be returned to leave status (See "Termination of Mandatory Alternate Duty Assignments" below.) The most common situation will be a change in the date of return to full duties. Generally a prognosis of return to regular duties that is originally given two to three months in advance could change by a few days or even a week or so. In this case, management should consider extension of the mandatory alternate duty assignment as described below.

Nothing in this policy diminishes management's right to have the employee examined by a physician selected by management as a condition of allowing the employee to return to full duties. In other words, the fact that there was an initial prognosis accepted by management of ability to perform the full duties of the employee's regular job on a specific date does not make return to

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full duty at the end of the mandatory alternate duty assignment on that date automatic.

**Extension of Mandatory Alternate Duty Assignments**

There will be cases where employees who qualified for and participated in the Mandatory Alternate Duty Program and whose mandatory alternate duty assignment has expired do not fully recover within the specified period. Since their alternate duty assignments automatically expire, these employees may request and management may elect to continue the assignments on a discretionary basis beyond the established ending date.

One common occurrence will be a change in the date of return to full duties by a few days or a week or so based on more current medical information. Agencies are encouraged to continue employees on alternate duty whose date of return to full duties changes in this manner rather than returning an employee to leave status only to reinstate him/her from leave within a very short period of time.

Any extensions are subject to the terms and conditions of this program, are solely at management discretion and must be supported by the submission of additional medical documentation satisfactory to management. Extensions will be granted only for very limited time periods, for example in single payroll period blocks, and only when supported by satisfactory medical documentation.

**Termination of Mandatory Alternate Duty Assignments**

A mandatory alternate duty assignment may be terminated prior to its expiration if it is determined, based on medical documentation satisfactory to management, that the employee is able to return to full duties earlier than the original prognosis had indicated. When the agency has medical documentation indicating full recovery, the employee should be ordered to return to full duties immediately. If the employee disputes management's finding of full recovery, the employee will be placed on leave without pay and the case will be referred to the SIF for an appropriate benefit determination. If the employee appeals the findings of the SIF, the claim will be resolved by the Workers' Compensation Board whose decision is binding on the parties.

In exceptional cases, management may determine that a mandatory alternate duty assignment in progress is not successful.

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In that instance, management may elect to modify the mandatory alternate duty assignment to improve the prospects for success. Such changes should be discussed with the employee prior to being implemented. Alternatively, management may rescind the mandatory alternate duty assignment, in which case management is required to provide the employee with a supplement equal to the difference between the employee's full 100% statutory benefit rate and the partial disability benefit rate paid to that employee by the State Insurance Fund. Such supplement will not be paid beyond the point the mandatory alternate duty assignment would have expired. As previously stated, please telephone your GOER representative to initiate the payment of a supplement.

**Agency Alternate Duty Policies**

This Mandatory Alternate Duty Program, developed in connection with the negotiation of benefits covering occupational disabilities of CSEA- and DC-37-represented employees injured on or after July 1, 1992, does not negate existing agency discretionary alternate/light duty policies that may be available for disabled employees recovering from both occupational and ordinary disabilities. Any such agency policies continue to be available for employees not eligible for this Mandatory Alternate Duty Program. Agencies interested in establishing alternate duty programs in addition to this Program should contact their Governor's Office of Employee Relations representative for guidance.

# NEW YORK STATE ESTIMATED PHYSICAL CAPABILITIES FORM

Name of Physician _____	Name of Employee _____
-------------------------	------------------------

**INSTRUCTIONS:** Please complete the following items based on your estimation of this employee's physical capabilities.

Medical Diagnosis: \_\_\_\_\_

In an eight hour workday, how many hours can this employee: (Please check appropriate boxes.)

Sit	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Stand	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Walk	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests

b. Can this employee sit, stand and/or walk in combination for an eight hour workday? ☐ Yes ☐ No

3. Other Capabilities: (Please check appropriate boxes.)

Never      Occasionally      Frequently      Continuously  
                  (0 - 33%)      (34 - 66%)      (67 - 100%)

<b>Lift</b>					<b>Upper Extremities:</b> Which hand is dominant? <input type="checkbox"/> Right <input type="checkbox"/> Left Can this employee perform repetitive actions such as:									
0 - 10 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
11 - 20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
21 - 50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
51 - 100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Carry</b>					<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <th style="width: 33%;">Simple Grasping</th> <th style="width: 33%;">Pushing &amp; Pulling</th> <th style="width: 33%;">Fine Manipulation</th> </tr> <tr> <td>RIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td>LEFT <input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Simple Grasping	Pushing & Pulling	Fine Manipulation	RIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	LEFT <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Simple Grasping	Pushing & Pulling	Fine Manipulation												
RIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No												
LEFT <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No												
0 - 10 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
11 - 20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
21 - 50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
51 - 100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Bend</b> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Lower Extremities:</b> Use of feet/legs for repetitive movement as in operation of foot controls and motor vehicles.									
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Climb</b> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Run</b> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Reach above shoulder level</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <th style="width: 33%;">Right Extremity</th> <th style="width: 33%;">Left Extremity</th> <th style="width: 33%;">Simultaneous</th> </tr> <tr> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Right Extremity	Left Extremity	Simultaneous	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Right Extremity	Left Extremity	Simultaneous												
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No												
<b>Operate a motor vehicle</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										

4. Work Environment Restrictions:

- Can this employee:
 

Be exposed to marked changes in temperature and humidity?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Be exposed to unprotected heights?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Be exposed to dust, fumes and gases?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Be around moving machinery?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

5. Other Restrictions:

- Does this employee have any visual or hearing impairment requiring accommodation? ☐ No ☐ Yes If "Yes," please explain: \_\_\_\_\_

- Can this employee restrain combative patients/clients? ☐ Yes ☐ No

6. Based on your examination(s) of this employee, are there any known problems of a general nature, including any medications prescribed for the diagnosis listed, that would interfere with this employee returning to work?

☐ No ☐ Yes If "Yes," please explain: \_\_\_\_\_

7. When will this employee be physically ready to return to full duty? Date \_\_\_\_\_

When will this employee be physically ready to return to alternate duty? Date \_\_\_\_\_

8. Comments: \_\_\_\_\_

Physician's Signature _____	Telephone Number (      ) _____	Date _____
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TO: State Department and Agencies

FROM: Josephine L. Gambino, Commissioner 

SUBJECT: Access to Employee Personal History Records by  
State Insurance Fund Investigators

The purpose of this bulletin is to clarify the responsibilities of agency staff in providing State Insurance Fund investigators access to personnel records of injured employees when an investigation of an employee's workers' compensation claim is being conducted.

New York State employees who have job-related disabilities are eligible for benefits provided by the Workers' Compensation Law. The State Insurance Fund (SIF), serving as New York State's administrator, is responsible for determining the source, extent and duration of the disability; and based on that information, ensuring that employees receive the correct Workers' Compensation Law benefits.

Determination of the extent of disability and entitlement to benefits under the Workers' Compensation Law can require an investigation by the State Insurance Fund. When this happens, authorization for release of information to Fund representatives derives from the following:

1. The Workers' Compensation Law authorizes the Workers' Compensation Board to "...determine all questions in relation to the payment of claims . . ." and " . . . to make or cause to be made such investigation as it deems necessary . . ." to be able to make a decision on a claim. The SIF, as New York State's representative before the Board, is obligated to provide any information the Board requests and is obligated to present the State's position, including all supporting documentation, when the Board requires a hearing.
2. The insuring agreement between New York State and the State Insurance Fund says that New York State, as an employer, shall cooperate with the Fund, assist in effecting settlements, and

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secure and give evidence as authorized by the Workers' Compensation Law. Since SIF is acting as an agent of management in the settlement of compensation cases, it is an agency's responsibility, as well as being in its best interest, to assist and cooperate with all parties involved in the timely resolution of workers' compensation claims.

Questions have been raised concerning an agency's ability to release records to the SIF in light of an employee's right to privacy under both the Personal Privacy Protection Act and the Americans with Disabilities Act (ADA). We are advised that the personnel records of an employee who has filed a claim for workers' compensation disability benefits are releasable to the State Insurance Fund pursuant to Section 96.1 (d) of the Public Officer's Law. In addition, the Technical Assistance Manual on the ADA published by the Equal Employment Opportunity Commission states:

An employer may submit medical information and records concerning employees and applicants (obtained after a conditional job offer) to State workers' compensation officers and "second injury" funds without violating ADA confidentiality requirements.

The SIF presents records to the Workers' Compensation Board on behalf of the agency. In summary, these laws allow the release of personnel information to SIF representatives in connection with their responsibilities to provide benefits pursuant to the Workers' Compensation Law.

When SIF determines an investigation is warranted, the investigators, as representatives of New York State management, must have access to all information pertinent to the job-related injury, including medical documentation, witness statements, accident reports, and any other information related to the incident. This might include reference to a pre-existing injury or condition (job-related or not) that the investigator believes is relevant to the case under review. Regardless of where the information is filed, the investigator or agent should be allowed access under the following conditions:

1. The SIF investigator provides a request to the appointing authority in advance, when possible, describing the specific information needed.

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2. The SIF investigator produces proper identification, which can be verified by calling the appropriate regional State Insurance Fund office.

Usually the SIF will send staff investigators to State agencies, but occasionally they will use private investigators. In either case, the agency should verify the credentials of the investigator and, if necessary, contact the appropriate State Insurance Fund District Office for confirmation if there is a question; for example, when advance notice has not been received.

It is recommended that agencies establish procedures for review of records by SIF investigators and advise the SIF of the procedures. A routine that includes whom to contact, the location of records, identification requirements, etc., should be included so that the investigation proceeds smoothly, which minimizes both the agency and SIF staff time involved.

Please direct questions concerning the accessibility of information in employee personal history folders for workers' compensation claims investigations to the Employee Relations Section of this Department at (518) 457-5167.

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File this material in the section of the manual referenced above.

TO: State Departments and Agencies  
FROM: Commissioner Josephine L. Gambino *JLG*  
SUBJECT: Workers' Compensation Items  
1991-1995 Negotiated Agreements  
Administrative Services Unit (ASU), Institutional  
Services Unit (ISU), Operational Services Unit (OSU)  
and Rent Regulation Services Unit (RRSU)

The following material has been prepared to assist you in implementing the new workers' compensation provisions contained in the 1991-1995 agreements negotiated with CSEA and DC37. If you have any questions concerning this material, contact the Employee Relations Section of this Department at (518) 457-5167.

Attachment

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ATTACHMENTS

- A. Roles and Responsibilities
- B. Program Provisions
- C. Agency Action Checklist
- D. The State Insurance Fund Intake Form
- E. State Insurance Fund District Offices

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**INTRODUCTION**

Effective July 1, 1992, the Workers' Compensation program for State employees represented by CSEA and DC37 will change. In summary, employees who sustain workers' compensation injuries on or after July 1, 1992, will receive the statutory benefit provided by the Workers' Compensation Law (reimbursement for medical expenses and a wage replacement benefit equal to two-thirds of the employee's average weekly wage, not to exceed \$400). They will not receive a supplemental payment from their agencies. They will, however, earn leave credits, accrue seniority, receive retirement service credit, have Employee Benefit Fund contributions made on their behalf and be eligible to continue in the health insurance program paying employee share premiums for a period not to exceed 12 months. These employees will not be permitted to charge leave credits (except during the first seven calendar days [five work days] of the statutory waiting period and for partial day absences following return to work). Apart from the waiting period intermittent full-day absences and all periods of continuous absence due to the disability are leave without pay and may not be charged to accrued leave credits.

The following materials contain a detailed description of the new Statutory Benefit Program and guidelines for administration of this program.

The chart entitled "Roles and Responsibilities" (Attachment A) identifies the changes in the roles and responsibilities of the parties involved in administration of the Statutory Benefit Program, as compared to their roles and responsibilities under the previous programs. The chart entitled "Program Provisions" (Attachment B) summarizes the major ways in which the new Statutory Benefit Program differs from both the Supplemental Pay Program and the Workers' Compensation Leave Program.

Also attached is an agency checklist (Attachment C) of steps which need to be taken in processing a claim under the new Statutory Benefit Program. A discussion of what these steps entail is contained in the narrative portion of this bulletin.

It is essential that agencies take great care to ensure that necessary agency actions are taken in a timely fashion to avoid delays in the employee's receipt of benefits. It is critical that agencies review communications from the State Insurance Fund since certain actions will be required based on these communications.

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**APPLICABILITY**

Employees in Administrative Services Unit (ASU), Institutional Services Unit (ISU), Operational Services Unit (OSU) and the Rent Regulation Services Unit (RRSU) who have Attendance Rules coverage and whose absence is caused by a workers' compensation injury or disease (as defined in the Workers' Compensation Law) from an accident or incident that occurred on or after July 1, 1992 are eligible for coverage under the Statutory Benefit Program. (Although not subject to the Attendance Rules, the Division of Military and Naval Affairs [DMNA] CSEA unit employees are also covered by the Statutory Benefit Program.) Employees without Attendance Rules coverage continue to receive the benefits required by the Workers' Compensation Law but are not subject to the provisions of the contract articles or the Attendance Rules.

Annual salaried full-time and part-time employees (including those employed on a seasonal basis) who have Attendance Rules coverage are eligible for this benefit. Full-time and part-time employees (including those employed on a seasonal basis) who are paid on an hourly or per diem basis must have gained Attendance Rules coverage, by having completed the required 19 qualifying biweekly pay periods, prior to becoming eligible for this benefit. However, once Rule coverage is attained, these employees' benefits are identical to those available to annual salaried employees.

For the purpose of entitlement to any employer-provided workers' compensation benefits, the State of New York is considered to be one employer. Therefore, if an employee has a work-related injury or disease from employment with agency A, moves to agency B and is again absent for the same condition, agency B must provide such employee with any benefit not already used at agency A and, therefore, still available for this injury or disease. Likewise, if a person works for two State agencies and incurs an occupational injury at one of them, the employee must be given leave benefits by both employers, to the extent he/she is eligible. The benefits provided by each employer must be added together to determine how much of the total available benefit has been used by the employee.

The eligible employee's entitlement to either the Workers' Compensation Leave Program, Supplemental Pay Program or Statutory Benefit Program is determined by both *the date of the accident and the bargaining unit to which the employee was assigned on the date of the accident*. For example, an eligible employee is injured on October 1, 1988 while in the Security Services Unit. He/she

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changes jobs on October 15, 1988 and is in an Institutional Services Unit position. On November 3, 1988, the employee begins losing time from work due to the October 1, 1988 accident. This employee is eligible for the Workers' Compensation Leave benefit for any disability related to the October 1, 1988 accident because the absence is due to an incident that occurred while subject to the provisions of the Security Services Unit agreement. Any incidents which occurred between April 1, 1986 and June 30, 1992 while he/she is an Institutional Services Unit employee will be subject to the provisions of the Supplemental Pay Program and those that occur after July 1, 1992 (if he/she remains in the Institutional Services Unit) will be subject to the Statutory Benefit Program.

**THE BENEFIT**

**Waiting Period**

1. No wage replacement benefit is payable if the absence due to a workers' compensation injury or disease does not exceed seven calendar days.
2. If absence is for at least eight calendar days, but does not exceed 14 calendar days, wage replacement benefits are payable beginning with the eighth calendar day of disability.
3. Once absence due to a single injury or disease exceeds 14 calendar days, wage replacement benefits are payable retroactively to the first day of disability.

Employees are allowed to charge available leave credits only during the first seven calendar days (five work days) of the waiting period. (If the employee is unable to notify the agency of his/her option to charge leave accruals during the waiting period, the agency should assume the employee wants to charge accruals. In such cases, adjustments should be made retroactively if it is subsequently determined that the employee did not want to charge credits.) Sick leave credits should be charged first before other categories of leave.

Employees may not be advanced leave to cover this period; however, eligible employees who have exhausted their leave accruals must, upon request, be granted sick leave at half-pay during the waiting period. Employees are eligible to be granted sick leave at half-pay under the Attendance Rules if they are permanent non-probationary employees who have completed one cumulative year of



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state service; contractual waiting periods for mandatory sick leave at half-pay do not apply. The agency submits a PR-75 placing the employee on workers' compensation disability leave without pay effective the eighth calendar day of disability. The employee will receive wage replacement benefits from the State Insurance Fund (SIF) beginning with the eighth day.

If the employee elects not to use leave credits or does not request use of sick leave at half-pay, the agency places the employee on workers' compensation disability leave without pay effective the first day of disability and the employee will receive wage replacement benefits from the SIF beginning with the first day of disability once the disability exceeds 14 calendar days.

Once the absence due to a single injury or disease is for 15 calendar days or more, wage replacement benefits from SIF are payable retroactively to the first day of disability; the employee remains on workers' compensation disability leave without pay for the duration of disability. The employee whose absence goes beyond the 15 calendar days will have the credits he/she charged during the initial seven calendar days *restored* (*not* recredited) on a prorated basis following a Workers' Compensation Board Notice of Decision crediting New York State with the wage replacement. (See **Restoring Leave Credits** below for further information.)

The first day of compensable lost time for the purpose of calculating the waiting period and eligibility for benefits is determined by SIF who will inform the agency of this date upon acceptance of the claim. The appointing authority, when reporting an accident or incident to SIF, must include the time and date of the accident/incident.

The Workers' Compensation Law statutory waiting period is applied only once per injury or disease and is met by cumulating the employee's absences in full days.

**Benefit Status**

A disabled employee is placed on workers' compensation disability leave without pay at the end of the seven calendar day waiting period if the employee elected to charge leave credits or as of the first day of disability if the employee did not elect to charge leave credits. The employee continues on workers' compensation disability leave without pay for the duration of the absence and is placed in no pay status for all other full day absences related to the incident which occur after return to work.

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Refer to Office of the State Comptroller Payroll Bulletin P-734 dated July 12, 1992, for more detailed information on processing these transactions.

While an employee is absent on workers' compensation disability leave without pay and receiving compensation benefits from the State Insurance Fund, the employee is treated as though in full pay status for the purpose of accruing biweekly leave accruals, continuous service, retirement service credit, Employee Benefit Fund contributions and health insurance for up to 12 cumulative months of absence. (See **Earning of Leave Accruals** below for further information on leave accruals.)

Although the employee is treated as though he/she were in full pay status for certain benefit purposes, the employee is on leave without pay for salary purposes, and the agency has no further financial obligation to the employee until the employee returns to work.

*Retirement*

The employee will be responsible for payment of the employee contribution (where applicable) to the retirement system and the State will continue its contribution. These contributions will be made by the employee via payroll deduction when the employee returns to duty and full pay. Refer to the Employees' Retirement System memorandum for an explanation of this process.

*Health Insurance*

Health insurance coverage for the employee and his/her dependents (as applicable) will continue. The employee will be responsible for payment of the regular biweekly employee share of the health insurance premium, however, these payments will be deferred until the employee returns to the payroll. For detailed information on health insurance issues refer to the "Memorandum to Agency Health Benefits Administrators # NY 92-19."

*Other Deductions*

While the employee is in leave without pay status, the employee is responsible for making direct payment for any other payroll deductions (e.g., life insurance, credit union). Refer to Attendance and Leave Manual General Information Bulletin No. 90-02, issued November 30, 1990, for information on who to contact regarding making direct payments for credit unions, CSEA

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insurances, deferred compensation, individual retirement accounts and any other authorized payroll deductions.

**Earning of Leave Accruals**

Employees who are on workers' compensation disability leave without pay earn biweekly sick leave and vacation credits for up to 12 cumulative months of absence. For purposes of determining eligibility to earn biweekly leave accruals, a day of workers' compensation disability leave without pay is treated as though it were a day in full pay status. This is true whether the day falls during a period of continuous or intermittent absence. Under the Attendance Rules, employees whose normal work schedule is 10 days in a payroll period must complete a minimum of seven full days out of 10 in full pay status in order to be eligible to earn leave accruals for that payroll period. A day of workers' compensation disability leave without pay counts as a day toward meeting that seven-day eligibility threshold just as do days worked or charged to leave accruals.

For example, a full-time employee absent for four intermittent days of workers' compensation disability leave without pay who works the remaining six days in that payroll period earns his/her normal biweekly accruals as a full-time employee for that payroll period as does the full-time employee who is absent for 10 days on workers' compensation disability leave without pay. Similarly, a 60 percent part-time employee with a normal schedule of six days per biweekly pay period who is absent for three intermittent days of workers' compensation disability leave without pay and works the remaining three days in that payroll period earns his/her normal biweekly accruals (i.e., 60 percent of the full-time accruals) for that payroll period as does the 60 percent employee who is absent for six days on workers' compensation disability leave without pay.

*Personal Leave*

Employees who are on workers' compensation disability leave without pay on their personal leave anniversary date are credited with their personal leave days on that date.

*Vacation Bonus Days*

Employees who are on workers' compensation disability leave without pay on their vacation anniversary date are credited with any vacation bonus days or additional vacation days for which they are otherwise eligible.

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*Holidays*

Employees on workers' compensation disability leave without pay are not eligible to observe holidays except those that fall during the initial 7 calendar day waiting period and only if they elect to charge leave credits. If a holiday falls during the seven calendar day waiting period, an employee charging leave credits charges one day less if the holiday coincides with a workday or is credited with holiday leave for a holiday which coincides with the employee's pass day (regular day off).

Employees on workers' compensation disability leave without pay are eligible to be credited with floating holidays which fall any time during that leave. If the floating holiday falls during the waiting period, the employee who is charging credits charges the day to other accrued leave and accrues the floating holiday (or, with agency permission, may charge the floating holiday on the day it is earned).

*Accrual Maximums*

Employees continue to be subject to provisions on maximums for accrual of vacation and sick leave credits and expiration dates for personal leave, floating holidays and, in the ASU and OSU, holiday leave. Refer to the appropriate sections of the Attendance and Leave Manual for clarification as to what these limits are. While an employee is on workers' compensation disability leave without pay, leave credits cannot be accrued above established maximums nor can they be carried beyond the date on which they would otherwise lapse. Please note, however, that whenever an employee in one of the CSEA units is absent under this program, he/she is considered to have invoked the contract provisions which allow exceeding the 40-day vacation maximum and, therefore, must be allowed to accumulate vacation beyond the maximum until the following March 31. Employees in the RRSU can always exceed 40 days except on April 1 of each year. For both the CSEA units and RRSU, excess vacation credits must be forfeited on April 1. (See **Restoring Leave Accruals** for a discussion of the impact of restoration on accrual maximums and expiration dates.)

**Charging Leave Accruals**

Employees absent from work due to a workers' compensation disability may charge any available leave accruals during the initial seven calendar day (five work day) waiting period. Sick leave credits should be charged first before other categories of leave accruals. If sufficient leave credits are not available, the

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eligible employee must, upon request, be granted sick leave at half-pay. (See page 3 for eligibility criteria.) However, there are no provisions for advancing of leave accruals under this program. Leave credits used or sick leave at half-pay granted during this initial waiting period are *not* recredited to the employee. There are no provisions for recrediting of leave accruals used at any time under this program. (Refer to **Restoring Leave Accruals** for further information.)

Once the seven calendar day period has passed, the employee is placed on workers' compensation disability leave without pay and cannot charge leave accruals or be granted sick leave at half-pay.

Employees may charge leave credits for partial day absences following return to work. However, employees are not permitted to charge leave accruals for full days of intermittent absence following return to work.

When a case is controverted because SIF does not find the disability to be job-related but agrees that the employee is disabled, the employee is permitted to charge the absence to leave credits. Any requests to charge accrued leave credits under these circumstances should be made in accordance with normal agency procedures for use of leave credits. However, when a case is contested because the employee is found to be *not* disabled, the employee is placed on unauthorized leave without pay pending return to work and is not permitted to charge leave credits.

#### **Sick Leave at Half-Pay**

Time spent on workers' compensation disability leave without pay counts as time worked for purposes of calculating an employee's maximum available sick leave at half-pay entitlement. For example, an otherwise eligible employee on workers' compensation disability leave without pay for six months earns an additional payroll period of sick leave at half-pay eligibility.

Employees absent under the Statutory Benefit Program are not permitted to use sick leave at half-pay except when they would be permitted to charge leave accruals, if available, for full day absences (see **Charging Leave Accruals**).

#### **Restoring Leave Accruals**

Under the Statutory Benefit Program, leave accruals charged are restored to the employee on a prorated basis only following a Notice of Decision by the Workers' Compensation Board (WCB)

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crediting New York State for wages paid. There is no recrediting of leave accruals under the Statutory Benefit Program.

The restoration of leave credits is proportional, based on the credit New York State receives from the State Insurance Fund. The information needed to determine the proportion of credits to be restored is obtained from the C-8 form issued by the State Insurance Fund following a Workers' Compensation Board hearing. Contact your agency's regular claims examiner at the State Insurance Fund upon receipt of the C-8 to verify the number of days for which New York State received credit and the total net dollar amount credited to NYS (the total net credit is the total dollar credit to NYS minus any deductions authorized by the WCB). Using these figures and the employee's normal biweekly gross salary at the time of the accident, a percentage of proration of credits to be restored is calculated.

The following procedure explains this process:

- Divide the total net credit by the number of days credited to obtain the daily rate for restoration;
- Divide the employee's normal biweekly gross salary at the time of the accident by 10 to obtain the employee's daily rate (for purposes of proration we are using this simplified version of the daily rate);
- Divide the daily rate for restoration by the employee's daily rate and multiply by 100 to obtain the proration percentage;

This proration percentage is then applied separately to each category of leave credits charged by the employee to determine the number of days of leave in each category to be restored. (NOTE - the amount of restored credits cannot exceed the actual number of credits charged;)

- Convert the number of days to be restored to hours by multiplying the number of days by either 7.5 or 8 as applicable;
- Round the number of hours up to the nearest quarter hour;
- Sick leave at half-pay eligibility is restored in the same manner. However, there is no conversion to hours, the days restored are rounded up to the nearest whole day.

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In each case, the employee will be restored a percentage of the number of days charged and/or sick leave at half-pay granted during the period covered by the Workers' Compensation Board award. Except in controverted cases, most restorations will involve only those credits charged during the 7 calendar day initial waiting period for employees whose disability extends beyond 14 calendar days. An exception will occur for employees whose absence does not extend beyond 14 calendar days who receive a schedule loss award. Under Workers' Compensation Law, certain disabilities require the employee to receive an award of a specific number of days of compensation (which are listed on a schedule in the Law) without regard to the number of days actually lost from work due to the injury. In the case of a schedule loss award, the employee will have any credits charged during the initial waiting period restored on a prorated basis because New York State will receive a credit for wages paid.

Credits restored cannot be used again in connection with absences attributable to the same accident or injury. When restoration of leave accruals causes the employee to exceed applicable maximums for vacation and/or sick leave, the employee has one year from restoration of credits or return to work, whichever is later, to reduce accruals below applicable maximums. During this period of time, the employee continues to earn vacation and sick leave. There is no restoration of expired personal leave, holiday leave or floating holidays.

**Example:**

An employee charged 4 days of leave accruals, (3 days of sick leave and 1 day of personal leave) and was granted 1 day of sick leave at half-pay, upon exhaustion of credits, to cover the initial waiting period following a workers' compensation injury.

After the WCB hearing, the C-8 from the SIF detailed a credit to NYS of a total of 5 days (1 week) with a net monetary credit of \$250 (\$350 minus \$100 attorney's fee). The employee's biweekly gross salary is \$770. The basic workweek of this employee is 40 hours.

1. 
$$\frac{\text{Total net credit}}{\text{Days Credited}} = \frac{\$250}{5} = \$50 - \text{daily rate for restoration}$$
2. 
$$\frac{\text{Biweekly Gross Salary}}{10 \text{ Days}} = \frac{\$770}{10} = \$77 - \text{employee's daily rate}$$

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3.  $\frac{\text{Daily Rate for Restoration}}{\text{Employee's daily rate}} = \frac{\$50}{77} \times 100 = 64.935\%$  proration

**Sick Leave Restoral**

64.935% of 3 days =

.64935 x 3 = 1.948 days

1.948 days x 8 hours per day =

15.5 hours (rounded to nearest 1/4 hour)

**Personal Leave Restoral**

64.935% of 1 day = .64935 days

.64935 days x 8 hours per day =

5.25 hours (rounded to nearest 1/4 hour)

**Sick Leave at Half-Pay**

64.935% of 1 day =

.64935 days =

1 day restored (rounded up to nearest whole day)

Total sick leave hours used = 24 hours

Total sick leave hours restored = 15.5 hours

Total personal leave hours used = 8 hours

Total personal leave hours restored = 5.25 hours

Total sick leave at half-pay used = 1 day

Total sick leave at half-pay restored = 1 day

**Eligibility for Overtime**

For purposes of determining whether an employee has met the 40-hour per week threshold for eligibility for overtime compensation, time spent on workers' compensation disability leave



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without pay counts as time worked. For example, a 40-hour per week employee who has two days of intermittent workers' compensation disability leave without pay in a workweek and who works or charges credits for the remaining three days in that workweek is deemed to have met the 40-hour threshold and any additional work performed in that workweek is paid at the overtime rate.

**Mandatory Alternate Duty Policy**

The State and CSEA are engaged in the development of a mandatory alternate duty policy. Information on that program will be issued in a separate bulletin.

**Controverted or Contested Claims**

Eligibility for the workers' compensation benefit under the contracts is dependent upon the State Insurance Fund/Workers' Compensation Board determination that a disability exists which resulted from an occupational injury or disease. Whenever the SIF controverts a claim (because it is alleged that the injury or disease did not occur on the job or it is alleged that the employee has not suffered any such injury or disease), the employee is not eligible for benefits under the contracts.

In the case of nonwork-related illness or injury, the employee continues to be eligible to use his/her leave credits and to be granted sick leave at half-pay as is the case for any ordinary disability. On the other hand, if the SIF has denied benefits because they believe there is no illness or injury, an employee is expected to be present at work. Any such absence may be considered unauthorized, until such time as the controversy is resolved, if the employee does not, in fact, return to work. Such employee should be placed on unauthorized leave without pay pending resolution of the claim, return to work or termination pursuant to Section 71 CSL, whichever occurs first.

If the controverted claim is resolved in favor of an employee by the Workers' Compensation Board, the SIF must begin making wage replacement payments. The employee, if charging leave accruals because the controversion was based on a nonwork-related illness or injury, would stop charging credits as of the date of notification from the SIF and no longer receive his/her State salary; the agency must file a PR-75 to place the employee on workers' compensation disability leave without pay effective as of the date of notification by the SIF. Any credits (including sick leave at half-pay) used prior to that point for which the Workers' Compensation Board issues a Notice of Decision and New York State

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receives a credit, will be restored to the employee on a prorated basis. (See **Restoring Leave Credits** for further information.)

The employee whose case was controverted due to non-disability will, upon a decision of the Workers' Compensation Board which overturns the controversion, have his/her status changed via PR-75 to an authorized workers' compensation disability leave without pay effective as of the first day of unauthorized leave and the SIF will make wage replacement payments for this period. The agency will credit the employee with the leave accruals he/she should have earned during this period since the unauthorized leave without pay is now retroactively workers' compensation disability leave without pay.

**Section 71 Civil Service Law and Rule 5.9**

The Statutory Benefit Program in no way changes the provisions of Civil Service Law. Section 71 of the Civil Service Law provides that an employee who is disabled as the result of an occupational injury or disease is entitled to a leave of absence for a minimum of one cumulative year (365 calendar days) unless found to be permanently disabled.

The cumulative year of mandatory leave includes periods of absence charged to leave credits and periods of workers' compensation disability leave without pay. For calculation of the "cumulative year," see page 3, of Section 21.8 of the Attendance and Leave Manual.

Employees absent for one cumulative year because of an occupational injury or disease may be continued in employment at the discretion of the appointing authority but are not entitled to be so continued. The benefits provided by the negotiated Statutory Benefit Program (accrual of biweekly leave credits, continuous service credit, retirement service, Employee Benefit Fund contributions and health insurance benefits) have a one cumulative year maximum.

Procedural guidelines for the implementation of Rule 5.9 of the Rules for the Classified Service, which details the notification and appeal provisions required by Section 71, are contained in the State Personnel Management Policy Bulletin #90-02 dated July 5, 1990.

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**CLAIMS PROCESSING**

**Reporting Accidents**

The injured employee and the supervisor have the first responsibility for reporting the accident to the personnel office or designated agency contact. Appropriate agency forms and accident investigation must be completed and, upon receipt of this information, the agency should determine if the accident/injury is reportable to the SIF.

The criteria for determining whether an incident/injury is reportable to the SIF are:

if the incident causes lost time beyond the shift in which it occurred

or

requires medical treatment beyond first aid

or

requires more than two medical treatments (including first aid).

If any of these conditions are met, the incident should be reported to the SIF as soon as practicable, but no later than 10 calendar days from the employee's notice of the incident.

Agencies should refer to the SIF Intake Form (see Attachment D) and provide the SIF with all the information contained within that document.

It is imperative that accidents be reported promptly to avoid delays in processing the employee's claim for benefits.

Following the initial telephone or FAX report of the accident the agency must file a C-2 (Employer's Report of Accident/Injury) with the SIF and WCB. Any additional information discovered after the initial report should be forwarded to the SIF as quickly as possible following the normal course of ongoing communication between the agency and SIF concerning the claim.

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**Medical Documentation**

The employee is responsible for ensuring that his/her treating physician submits the necessary medical information to the SIF. *Without medical documentation, the SIF cannot process payment to the employee who will have no other source of income.*

The agency is responsible for informing the employee of the need to have his/her physician submit medical documentation to SIF. In addition, the agency should provide SIF with copies of any medical documentation regarding the case which has been submitted to the agency; it should not be assumed that SIF has received copies of such documentation.

Apart from the requirement to share medical documentation with SIF, any medical documentation should be handled consistent with agency policy and practice regarding the confidential treatment of such information.

For purposes of determining eligibility for benefits under the program, SIF makes the final determination regarding what constitutes satisfactory medical documentation. However, nothing in the provisions of this program precludes the agency from requiring that the employee submit periodic medical documentation directly to the agency to substantiate the absence nor is the agency precluded from requiring the employee to undergo a medical examination by a management-selected physician as a condition of return to work.

Agencies should clearly communicate to employees any requirements concerning medical documentation in connection with return to work procedures to prevent delays in employees being able to return as quickly as possible.

**Communication With the State Insurance Fund**

*Accurate and timely communication with the State Insurance Fund is the critical link needed for employees to receive benefits under this program.* For the first time SIF is required to make payments to State employees on a current basis in accordance with the Workers' Compensation Law because the employee will not be receiving salary continuation after the first week of absence. This is not possible without the information that is supplied by the agency. Agency staff should err on the side of providing too much information rather than too little if there is any doubt as to SIF's need for the information. The SIF must document all the actions taken in connection with a claim and the agency receives

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copies of each of these forms. The agency is responsible for reviewing these forms and communicating with SIF whenever there is a question about benefits or a change in status which the agency does not understand.

*Initial Accident Report*

The first piece of information to flow between the agency and SIF is the *initial accident report*. The employer is required by the New York State Workers' Compensation Law to report accidents within 10 days of the incident or of first learning of the incident. Therefore, agency staff have an obligation to report to SIF within this time frame or possibly be subject to a fine by the Workers' Compensation Board (WCB). Aside from this negative action, if the employers' report of injury is not on file, SIF cannot proceed to process the claim which could result in the employee not receiving timely benefits. This lack of timely payment also can lead to a fine by the WCB. The most important reason for timely reporting, however, is to ensure that the injured employee receives benefits from SIF on time so he/she is not without income (since he/she will be off the agency payroll).

Initial accident reporting can be done by telephone or telefax. Attached to this memo as Attachment D is the SIF Intake Form that is mentioned under the **Reporting Accidents** section. (Attachment E is a list of SIF District Offices and the counties each office services.) This information is needed by SIF to start a claim file. Once the agency accident report has been reviewed and it has been determined that the accident is reportable to SIF, that initial information should be provided to SIF immediately. If there is any issue of reportability, SIF should be contacted for a determination. After the initial contact has been made, the C-2 must be filed with the WCB within 10 days.

*Employee Status Changes*

In addition to the initial accident report, all other *employee status changes* (including address changes) need to be reported to the SIF so that employees receive the correct benefits and are neither underpaid nor overpaid. For example, if the agency does not report that the employee has returned to work, the employee will continue to receive compensation payments from SIF while back on the payroll and receiving regular salary. In the same vein, the employee could be removed from the regular payroll and placed on workers' compensation disability leave without pay, but not receive benefits from SIF because SIF was not notified of the absence. The SIF will continue to complete the C-11, "Employer's Report of

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Injured Employee's Change in Employment Status Resulting From Injury," but they must receive notice from the agency of changes so that they can complete and file the form with the WCB.

*Medical Reports*

The SIF has established procedures to provide medical reports to the employer; it is incumbent upon each agency to ensure that any medical documentation they obtain concerning an employee absent due to a workers' compensation disability be shared with the SIF, even in-house clinic reports for agencies with those capabilities. Many times the critical information in determining compensability of a particular absence is the supporting medical documentation. The agency has an obligation to ensure such documentation is made available to the SIF.

*Other*

In providing information to SIF, agency staff have an obligation to respond to SIF inquiries in a timely and thorough manner. As New York State's representative before the WCB, SIF needs to have complete knowledge of the case. If SIF receives a medical report indicating a work-related disability but has no agency report, they will contact the agency for confirmation that the accident occurred. An agency investigation should be undertaken immediately to ascertain the facts of the case.

*SIF Forms*

Agency staff's second role in communicating with the SIF is to respond to the information received on the copies they get of the forms SIF is required to file with the WCB. Questions about these forms or their purpose should be directed to SIF. These forms include:

- |     |   |
|-----|---|
| C-6 | Notice That the Payment of Compensation Has Begun Without Awaiting Award of the Workers' Compensation Board |
| C-7 | Notice That Right to Compensation is Controverted   |
| C-8 | Notice That Payment of Compensation for Disability Has Been Stopped or Modified                             |
| C-9 | Notice That Right to Compensation is Not Controverted But Payment Has Not Begun                             |

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The State Insurance Fund will complete the following forms on behalf of state agencies:

- C-11            Employer's Report of Injured Employee's Change in Employment Status Resulting From Injury
- C-22b          Notice of Intention to Suspend or Reduce the Payment of Compensation After a Direction to Continue Payments
- C-240          Employer's Statement of Earnings
- C-256.2        Claim for Reimbursement of Wages Paid to State Employees

In summary, agencies should communicate early and often with SIF throughout an employee's absence. They should ensure that SIF knows when the employee is at work or absent and specifically for which days of absence the agency has provided payment or placed the employee on leave without pay. This is necessary so SIF can claim reimbursement for wages paid on behalf of the agency and subsequently credit New York State or pay the employee as appropriate. The agency must respond to information provided by SIF so that an employee's status is changed correctly and the person is not underpaid or overpaid.

**Communication With the Employee**

The Statutory Benefit Program relies on the employee, agency and SIF all communicating with each other in a timely fashion with accurate and complete information. Unlike the Supplemental Pay Program, the employee's benefits from SIF are processed on a current basis. It is essential, therefore, that the agency communicate to the employee his/her responsibilities, obtain the information needed for the SIF to process the claim and ensure that the employee receives all the benefits to which he/she is entitled, but no more than the program allows. Refer to the section entitled **Communication With the State Insurance Fund** for a discussion of the agency's responsibilities to SIF.

After ensuring that the employee receives medical attention as needed, the agency must obtain a completed accident report form from the employee and the supervisor and conduct any investigation deemed appropriate. Once the employee has provided medical documentation, the name, address, and phone number of the attending medical practitioner should be noted in the employee's file.

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Agencies must contact the employee regarding his/her option to charge leave credits or be placed on leave without pay during the initial 7 calendar day waiting period. This choice must be noted on the time record and the agency must process a payroll transaction for leave without pay when applicable.

Employees should be provided with a copy of the informational brochure "Workers' Compensation for CSEA-Represented NYS Employees" and receive notification of their payroll status. When employees are placed on workers' compensation disability leave without pay, notification to the employee of this change in status must be accompanied by information on how to make direct payments of those items normally deducted from his/her paycheck.

In all communications with the employee it is imperative for the agency to stress that without medical information from the employee's physician, SIF cannot process the claim and begin payments. If the SIF cannot begin payments, the employee will have no other source of income.

Throughout the absence, the agency should maintain contact with the employee, including making arrangements for completion of time records, since the employee continues to accrue leave credits during periods of workers' compensation disability leave without pay. When credits are restored pursuant to a WCB hearing, the employee should be notified. (Refer to **Earning of Leave Accruals** and **Restoring Leave Accruals**.)

Before the 21st day of absence the agency must notify the employee of his/her rights pursuant to Rule 5.9 and Section 71 of Civil Service Law. Should the employee not return to duty after an absence of 12 cumulative months, the agency may terminate the employee pursuant to Section 71. The specific notifications required prior to termination under the Rules and Law are detailed in the State Personnel Management Manual Policy Bulletin 90-02.

Agencies should advise employees of return to work procedures as part of the ongoing contact with the employee.

If the employee's case is controverted by the SIF, the agency must notify the employee to either return to duty (where no disability is found) or obtain necessary medical documentation to support use of leave credits in cases of non-job related disability. The employee must be advised of his/her payroll and leave status in either case. Should the controversion be resolved in the employee's favor, the agency should prepare a memo to the employee and the file which details all necessary adjustments in



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accruals and changes in status which were processed as a result of the Workers' Compensation Board decision.

**Record Keeping**

An employee's time record needs to reflect all transactions concerning the employee's absence due to each individual occupational injury or disease. It is recommended that agencies use the SIF case file number or date of accident on time records so that each absence is associated with the appropriate case. This is important not only for payment purposes, but also to calculate the one calendar year minimum entitlement available for a single injury or disease and to be able to restore leave credits accurately.

Time records *must* be maintained throughout an employee's absence since leave is credited to the employee as if he/she were in full pay status (up to 12 cumulative months). See **Earning of Leave Accruals** for further information.

Additional information that needs to be kept with an employee's time records includes restored leave accruals (kept separately) and the date when leave credits are restored if the restoration brings the employee over the allowable maximum. Employees have one year from return to work or restoration of leave credits, whichever occurs later, to reduce leave credits below the maximum, and employees continue to earn leave credits throughout this period.

The Workers' Compensation Board and State Insurance Fund do not maintain records of benefit enhancements provided to State employees. It is advisable to retain records on each workers' compensation case for six years after an employee retires or, if an employee transfers to another agency, to make them available to that agency. The agency needs the information in these records to ensure that an employee receives only the benefits to which he/she is entitled if the case is reopened.

Attachments

ROLES AND RESPONSIBILITIES			
Agency	Leave Program	Supplemental Pay Program	Statutory Benefit Program
Appointing Authority	Makes independent determination of eligibility for WCL. Process PR75s to provide employee with paid leave. Maintains records of leave granted Restores leave credits. May terminate employee under Section 71 CSL. Files required forms with the Workers' Compensation Board.	Determines reportability of incident based on Workers' Compensation Law criteria. Provides salary continuation benefits to employees based on determination of eligibility by the State Insurance Fund (SIF). Maintains contact with Office of the State Comptroller (OSC), SIF, employee and supervisor regarding employee's continued eligibility for benefits, payroll status, and leave credits used, recredited and restored. Maintains accurate records. Files and/or provides information for forms required by OSC, and the Workers' Compensation Board. May terminate employee under Section 71 CSL.	Determines reportability of incident based on Workers' Compensation Law criteria. Files and/or provides information for forms required by Civil Service, OSC, and WCB. Maintains accurate records. Maintains contact with SIF, employee and supervisor regarding employee's continued eligibility for benefits and leave status. Develops alternate duties for employees eligible for the Mandatory Alternate Duty Program. May terminate employee under Section 71 CSL.
State Insurance Fund (SIF)	Pay Workers' Compensation Law benefits to employee. (The wage replacement portion of the benefit is credited to New York State if the employee is granted paid leave.) Determines compensability. May controvert claim.	Pays Workers' Compensation Law benefits to employees. (The wage replacement portion of the benefit is credited to New York State if employee absence is charged to leave credits.) May controvert claim. Maintains liaison with agency and OSC.	Pays Workers' Compensation Law benefits to employees. (The wage replacement portion of the benefit is credited to New York State if employee absence is charged to leave credits.) May controvert claim. Maintains liaison with agency.

ROLES AND RESPONSIBILITIES			
Agency	Leave Program	Supplemental Pay Program	Statutory Benefit Program
Workers' Compensation Board (WCB)	Hears, judges merits of, and issues determinations on all workers' compensation cases. Directs SIF to pay benefits to the employee or New York State as appropriate.	Hears, judges merits of, and issues determinations on all workers' compensation cases. Resolves controversies. Directs SIF to pay benefits to the employee or New York State as appropriate.	No change.
Office of the State Comptroller (OSC)	Processes PR75s submitted by agency.	Calculates amount of supplemental payment. Maintains liaison with agencies and State Insurance Fund. Administers supplemental payment system. Processes forms submitted by agency.	Processes PR75s submitted by agency.
Civil Service	Administers Attendance Rules provisions as modified by negotiated agreements on Workers' Compensation Leave*	Administers Attendance Rules provisions as modified by negotiated agreements on Workers' Compensation Leave and Supplemental Pay Programs. Acts as liaison between SIF and agencies. Maintains database on Supplemental Pay Program experience.	Administers Attendance Rules provisions as modified by negotiated agreements on Workers' Compensation Leave, Supplemental Pay, and Statutory Benefit Programs. Acts as liaison between SIF and agencies. Maintains database on Supplemental Pay and Statutory Benefit Programs experience.

WORKERS' COMPENSATION PROGRAM PROVISIONS			
Subject	Leave Program	Supplemental Pay Program	Statutory Benefit Program
<b>Applicability</b>	All employees covered by the Attendance Rules are eligible. Applies to any injury or illness arising from an incident that occurred prior to April 1, 1986, regardless of the date of absence for ASU, ISU, OSU, PS&T and RRSU. Applies to Security Services and Security Supervisors regardless of date of incident.	Applies to employees covered by the Attendance Rules whose injury or illness arose from an incident that occurred on or after April 1, 1986. Applies to ASU, ISU, OSU, and RRSU.	Applies to employees covered by the Attendance Rules whose injury or illness arose from an incident that occurred on or after July 1, 1992. Applies to ISU, OSU, ASU, and RRSU.
<b>Section 71</b>	Employee may be terminated after one cumulative year of absence due to occupational injury or disease, subject to certain reinstatement rights upon recovery in accordance with Rule 5.9	No change.	No change.
<b>Waiting Period</b>	There is an annual ten-workday waiting period which may be waived upon request or is suspended if employee is absent for at least 20 consecutive workdays or hospitalized within first ten consecutive days of absence in calendar year. (No waiting period in Security Services and Security Supervisors Units.)	One waiting period per injury or disease. 1-7 calendar days of absence-no wage benefit payable. 8-14 calendar days - wage benefit payable beginning day 8. 15 calendar days or more - wage benefit retroactive to day one.	Same as Supplemental Pay Program

WORKERS' COMPENSATION PROGRAM PROVISIONS			
Subject	Leave Program	Supplemental Pay Program	Statutory Benefit Program
<b>Advancing Leave</b>	Agencies must advance sick leave to cover ten-workday waiting period to employees who have no leave accruals unless employee requests otherwise. Credits so advanced are repaid from future accruals.	If there is evidence of compensability confirmed by the SIF, agency must place employees who have no leave accruals on advanced leave until SIF begins making payments. Advanced leave is repaid by continuing employee on award and supplement following return to work for a period equal to the period of advanced leave.	There is no advancement of leave credits under the Statutory Program.
<b>Compensation Benefit</b>	Employee continues to receive full salary, while on six months paid workers' compensation leave without charge to credits and subsequently while charging credits. This is followed by sick leave at half-pay for which employee may be eligible and by LWOP	Employee receives normal full salary while charging leave credits or while on advanced leave before SIF payments begin. When SIF payment begins, employee receives net pay (gross minus income taxes and FICA) comprised of SIF wage benefit and supplemental payment while on nine-month paid benefit.  After nine-month benefit, employee receives normal full salary while charging leave credits, followed by sick leave at half-pay for which employee may be eligible and LWOP.	Employees may charge the initial waiting period to leave credits. After the initial waiting period, the employee is on LWOP receiving the statutory wage replacement from SIF. The employee does not receive any portion of his/her State salary. Partial day absences after return to work may also be charged to leave credits.
<b>Rate</b>			
<b>Duration</b>	Entitled to one year of leave of which the first six months are workers' compensation leave with full pay without charge to leave credits. The remaining six months are charged to accruals, sick leave at half-pay or LWOP.	Entitled to one year of leave of which nine months consist of net pay benefit (workers' compensation wage award plus supplement). The remaining three months are charged to accruals, sick leave at half-pay or LWOP.	Employee entitled to up to one cumulative year of leave.

WORKERS' COMPENSATION PROGRAM PROVISIONS			
Subject	Leave Program	Supplemental Pay Program	Statutory Benefit Program
<b>Status</b>	Employees on leave with pay without charge to credits are in full pay status for Civil Service Rules and Regulations	Employees on the supplemental pay system are treated as though they are in full pay status for Civil Service Rules and Regulations.	Employees on disability leave without pay under the statutory program are treated as though in full pay status for Civil Service Rules and Regulations.
<b>Leave Credits</b>			
Earning Leave Credits	Employee earns normal biweekly leave accruals while on workers' compensation leave without charge to credits and while charging leave accruals.	Employee earns normal biweekly leave accruals while charging leave accruals, while on advanced leave and while on the supplemental pay system.	Employee earns normal biweekly leave accruals while on workers' compensation disability leave without pay and receiving the SIF wage replacement.
Use of Leave Credits	<p>Leave credits may be used to cover ten-day waiting period if not waived or automatically suspended.</p> <p>Leave Credits may be used prior to (or at any time during) the six-month workers' compensation leave upon employee request.</p> <p>Leave credits may be used following six months of workers' compensation leave at full-pay without charge to leave credits.</p>	<p>Leave credits may be used to cover 7 calendar day statutory waiting period and the period of absence until SIF begins making payments.</p> <p>Leave credits may be used prior to the nine-month supplemental pay benefits upon employee request.</p> <p>Leave credits may be used following nine months of supplemental pay benefits</p>	<p>Leave credits may be used to cover the seven calendar day waiting period. Leave credits may be used for partial day absences, after return to duty, which may be required for treatment related to the disability. Credits may not be used for full day absences related to the disability.</p>

WORKERS' COMPENSATION PROGRAM PROVISIONS			
Subject	Leave Program	Supplemental Pay Program	Statutory Benefit Program
Restoration of Leave Credits	<p>Applies only to credits used following six months of paid workers' compensation leave (or used earlier at employee option). Leave credits restored cannot be used for absences due to same illness or injury.</p> <p>Employees may exceed vacation and sick leave maximums for one year following restoration of credits or return to payroll, whichever occurs later.</p>	<p>Applies only to credits used following nine months of award and supplement (or used prior to wage benefit at employee option). Leave credits restored cannot be used for absences due to same illness or injury.</p> <p>No change.</p>	<p>Credits used during the initial waiting period will be restored on a prorated basis. Leave credits restored cannot be used for absences due to same illness or injury.</p> <p>No change.</p>
Holidays	Employees observe holidays while charging leave accruals but not during the six months' leave with pay without charge to credits.	Employees observe holidays while on advanced leave, while charging leave accruals and when on the supplemental payment system following return to work but not while absent due to injury on the supplemental payment system.	Employees observe holidays while charging credits during initial waiting period but do not observe while on workers' compensation disability leave without pay receiving SIF wage replacement.
Other Leaves Example: Jury, Civil Service Exams, Military	An employee disabled by an on-the-job injury remains on workers' compensation leave even though able to perform other activities.	There is no change under the plan. Employees continue on the workers' compensation benefit as long as they are disabled	There is not change under the plan. Employees remain on workers' compensation disability leave without pay while disabled even though able to perform other activities.

WORKERS' COMPENSATION PROGRAM PROVISIONS			
Subject	Leave Program	Supplemental Pay Program	Statutory Benefit Program
<b>Controverted or Contested Claims</b>	<p>An employee is ineligible for workers' compensation leave if agency determines that injury is not job related or that employee is not or is no longer disabled. Agency cannot grant workers' compensation leave if SIF controverts claim until such controversy is resolved.</p> <p>If contest or controversy is resolved in employee's favor by Workers' Compensation Board, agency may continue to withhold workers' compensation leave for reasons other than controversy, of which agency advised employee in writing.</p>	<p>An employee is ineligible for supplemental payments if SIF controverts the claim on grounds that injury is not job related or that employee is not disabled.</p> <p>If contest or controversy is resolved in favor of employee by Workers' Compensation Board, SIF must begin making payments and employee becomes eligible for these workers' compensation benefits, including supplemental pay benefits.</p>	<p>An employee is ineligible for SIF wage replacement if the SIF controverts the claim. If the controversy is based on the grounds that the injury is not job related but medical evidence supports a disability, the employee may be able to charge leave accruals. If the grounds for controversy are that the employee is not disabled, the employee will be on unauthorized LWOP. If the contest or controversy is resolved in favor of the employee by WCB, SIF must begin making payments and employee will be placed on workers' compensation disability leave without pay.</p>
<b>Medical Exams</b>	<p>Decision to grant workers' compensation leave based on employee's doctor's statement and/or EHS or SIF medical</p> <p>Return to work decision made by agency based on employee submitted documentation or EHS physical or SIF physical.</p>	<p>Decision on eligibility for workers' compensation benefits made by SIF or WCB.</p> <p>Return to work decision made by agency based on employee submitted documentation, Workers' Compensation Board awards, EHS physical or SIF documentation.</p>	<p>Same as Supplemental Pay Program</p> <p>Same as Supplemental Pay Program</p>



WORKERS' COMPENSATION PROGRAM PROVISIONS			
Subject	Leave Program	Supplemental Pay Program	Statutory Benefit Program
<b>Medical Documentation</b>	Obtained from employee's physician and EHS or SIF physician	Obtained from employee's physician and EHS or SIF physicians.	Same as Supplemental Pay Program
<b>Limited/Light Duty</b>	On a case-by-case basis at agency discretion.	No change.	Alternate duty for a maximum of 45 days is mandatory upon request for employees who meet medical criteria, including a classification of partial disability of 50% or less and a prognosis of full recovery within 45 calendar days.
<b>Payroll Matters</b>	Employee remains on regular payroll receiving full salary.	Employee placed on supplemental payment system. Salary adjustments may be made while employee is on supplemental payment system.	Employee is on workers' compensation disability leave without pay from regular payroll.
<b>Record Keeping</b>	Source documents include agency accident report forms, regular payroll and time records.	Additional source documents include supplemental payment records and SIF records.	Source documents include agency accident report forms, regular payroll and time records and SIF records.

# AGENCY ACTION CHECKLIST FOR WORKERS' COMPENSATION BENEFIT

SIF Case Number ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ Employee Name \_\_\_\_\_

## ACTION

## DATE

Complete agency accident reporting form

\_\_\_\_\_

Advise employee to notify medical provider that this is a workers' compensation case

\_\_\_\_\_

Determine if accident is reportable to SIF. Accident is reportable if: it causes lost time beyond the shift, or requires medical treatment beyond first aid or requires more than two medical treatments (including first aid)

\_\_\_\_\_

Determine if employee wants to charge leave credits during initial 7 calendar day waiting period

\_\_\_\_\_

Call or Fax SIF to report accident using SIF intake form

\_\_\_\_\_

Inform employee and supervisor of employee's charge to leave credits or leave without pay status during waiting period. Submit PR-75 to place employee on workers' compensation disability leave without pay if credits are not charged

\_\_\_\_\_

Complete C-2 and send to SIF

\_\_\_\_\_

Advise employee of his/her responsibilities and rights including submission of medical documentation to SIF and Agency, leave status and return to work procedures

\_\_\_\_\_

Submit PR-75 to place employee on workers' compensation disability leave without pay on 8th calendar day (6th workday) of absence if credits were charged for first 7 calendar days

\_\_\_\_\_

Inform SIF that employee has been placed on leave without pay

\_\_\_\_\_

Provide employee with a written notice of the terms and conditions of the leave (Rule 5.9) prior to employee's 21st workday of absence

\_\_\_\_\_

Submit any additional medical documents to SIF

\_\_\_\_\_

Maintain contact with employee and supervisor throughout disability

\_\_\_\_\_

Advise employee of return-to-work procedures

\_\_\_\_\_

Notify SIF of date employee returns to work

\_\_\_\_\_

Submit PR-75 to reinstate the employee from workers' compensation disability leave without pay

\_\_\_\_\_

### *If employee remains disabled and does not return to work:*

Advise employee of rights and benefits legally required under Section 71, Civil Service Law and Rule 5.9 including notification of pending termination, due process procedures, and right of application for reinstatement.

\_\_\_\_\_

## SIF INTAKE FORM

## EXHIBIT 2

Part of Body

Injured \_\_\_\_\_

Check here if claimant:

a) is "Annual Salaried" \_\_\_\_\_

b) is subject to the  
NYS Time and  
Attendance Rules \_\_\_\_\_CLAIMS MEDICAL DEPARTMENT  
INITIAL TELEPHONE INQUIRY  
NYS CASE

1. Case No. .... Claimant .... Date of Accident .... Employer .....
2. Home Address .....
3. Reporter's name: ..... Title .....
4. Facility's address & code No.: ..... Phone No.: .....
5. Neg. Unit ..... 5a. Pass days .....
6. Has claimant returned to work? ..... Date of return: .....
7. Notice given to: ..... Title: ..... Date: .....
8. Social Security No.: ..... Date of Birth: ..... Home Phone# .....
9. Title/Occupation: ..... How long employed: .....
- Gross wages: ..... Per week
10. Days worked per week: ..... Last Day Worked ..... Last Day Paid .....
11. Doctor/Hospital .....

## ASK QUESTIONS 12 - 14 ONLY IF THERE IS LOST TIME:

12. Is the employee charging any leave credits during the first seven calendar days after the accident? No \_\_\_ Yes \_\_\_. If yes, how many days will be charged? \_\_\_\_\_
13. Prior Conditions - accidents, operations, congenital conditions: .....
- a. Are any of these conditions due to compensation cases? ..... WAS SIF CARRIER? .....
- b. Explain .....
14. Third Party (Name & Address), if none, state "None": .....

HISTORY OF ACCIDENT/REMARKS: - (Include job description if title is not self-explanatory and there is lost time)

..... Print Name ..... Telephone Number .....

Date: ..... Signature ..... Title .....

C-142.1S (11/86)

Use reverse side for added remarks--make sure to tumble head sheet

## SIF DISTRICT OFFICES

**New York City.....**199 Church Street  
New York 10007  
FAX No. (212) 385-2072

Mr. Morty Blittner: (212) 312-7378

Bronx	Richmond
Kings	Rockland
New York City	Westchester
Queens	

**Islandia.....**2950 Expressway Drive S.  
Islandia, NY 11722  
FAX No. (516) 233-3793

Ms. Joanna Snow: (516) 233-3700

Nassau  
Suffolk

**Albany.....**15 Computer Drive West  
Albany, NY 12205  
FAX No. (518) 437-1324

Mr. Joe Nolte: (518) 485-5868

Albany	Fulton	Rensselaer
Clinton	Greene	Saratoga
Columbia	Hamilton	Schenectady
Dutchess	Montgomery	Schoharie
Essex	Orange	Ulster
Franklin	Putnam	Warren
		Washington

**White Plains...**701 Westchester Avenue  
East Wing, Suite 100-E  
White Plains, New York 10604  
FAX No. (914) 997-7279

Regina Margolies: (914) 487-4800

Rockland Psychiatric Center  
Rockland Children's Psychiatric Center  
Westchester Psychiatric Center  
Letchworth Village DDSO  
Helen Hayes Hospital

June 1992

**Buffalo.....**161 Delaware Avenue  
Buffalo, NY 14202  
FAX No. (716) 851-2090

Mr. Phil Staniszewski: (716) 851-2000

Cattaraugus	Erie
Chautauqua	Niagara

**Rochester....**1 Marine Midland Plaza, Suite 300  
Rochester, NY 14604  
FAX No. (716) 258-2065

Mr. Ron Ledwith: (716) 258-2000, Ext. 203

Allegany	Ontario	Tioga
Chemung	Orleans	Tompkins
Genesee	Schuyler	Wyoming
Livingston	Seneca	Yates
Monroe	Steuben	Wayne

**Syracuse.....**1045 7th North Street  
Liverpool, NY 13088  
FAX No. (315) 453-6559

Mr. Don Cleaver: (315) 453-6500

Broome	Herkimer	Onondaga
Cayuga	Jefferson	Oswego
Chenango	Lewis	Otsego
Cortland	Madison	St. Lawrence
Delaware	Oneida	

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POLICY BULLETIN 90-02

Section 21.8

August 1, 1990

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TO: State Departments and Agencies  
FROM: Josephine L. Gambino, Commissioner *J.L.G.*  
SUBJECT: Rule 5.9 of the Rules for the Classified Service and Its  
Impact on Sections 28.1 and 28-1.8 of the Attendance  
Rules

The Rules for the Classified Service were recently amended to add new Rule 5.9 which provides for due process in connection with Section 71 of the Civil Service Law. Section 71 (which has not changed) authorizes leave for up to one year in conjunction with occupational injury or disease and termination of employment following one cumulative year of leave, or earlier termination in the event the employee is found to be permanently disabled.

SPMM Policy Bulletin #90-02, dated July 5, 1990, describes the operation of Rule 5.9 which applies equally and in the same manner to all covered employees. Both sets of Attendance Rules, Nonmanagerial/Confidential (Non-M/C) and Managerial/Confidential (M/C), had to be amended to make reference to Rule 5.9. The construction of the Managerial/Confidential Rules (adopted in 1981 and modified to add the Workers' Compensation Supplemental Pay Program in 1986) is different from the Nonmanagerial/Confidential Rules. Therefore, the Managerial/Confidential Rule amendments are necessarily somewhat different to accomplish the same results.

The specific changes in the Attendance Rules are as follows:

<u>Non-M/C Rules Section</u>	<u>M/C Rules Section</u>	<u>Effect</u>
21.8(a)(2)	28-1.8(a)(2) 28-1.8(p)(2)	Provides that the appointing authority must notify the employee granted workers' compensation leave in writing as specified in Rule 5.9(b).

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Non-M/C Rules Section

M/C Rules Section

Effect

21.8(a)(3)

28-1.8(a)(3)

28-1.8(p)(3)

Provides that no less than 30 nor more than 60 days prior to anticipated termination date, the employer must provide the employee with written notice as specified in 5.9(c).

21.8(h)

--

Provides that the employee is entitled to make application for restoration to duty from leave in accordance with Rule 5.9 and that employee applications for reinstatement following termination must be processed in accordance with Rule 5.9.

21.8(j)

--

Provides that where an employee has been denied leave or terminated because of a finding of permanent disability and the employee disputes that finding, the employee may apply for continued leave up to a maximum of one year, restoration to duty, or reinstatement to employment in accordance with Rule 5.9.

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<u>Non-M/C Rules Section</u>	<u>M/C Rules Section</u>	<u>Effect</u>
--	28-1.8(m)	Provides that employee requests for return to duty from leave shall be processed in accordance with Rule 5.9.
--	28-1.8(x)	

Any questions should be directed to the Employee Relations Section of this Department at (518) 457-2295.

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ADVISORY MEMORANDUM NO. 89-02

Section 21.8

February 10, 1989

Page 1 of 2

File this material in the section of the manual referenced above.

TO: State Departments and Agencies

FROM: Peter Elmendorf

SUBJECT: Workers' Compensation Supplemental Pay Program - Restoration of Credits Charged After 39 Weeks of Benefit

It has come to our attention that agencies have received Workers' Compensation Board Notices of Decision which incorrectly attempt to pay the employee/claimant directly for periods of disability occurring after the first 39 weeks, which were covered by the supplemental pay program, when the employee has charged leave accruals. The State Insurance Fund is working with the Workers' Compensation Board to resolve this misunderstanding. In the meantime, the following information should help in dealing with this problem.

Employees subject to the workers' compensation supplemental pay benefit (those whose work-related illness or injury occurred on or after April 1, 1986 in Administrative Services, Institutional Services, Operational Services, Professional, Scientific and Technical Services and Rent Regulations Services Units and on or after September 1, 1986 who are designated Managerial/Confidential) are eligible to charge leave credits, if still disabled, after exhaustion of the nine month (39 week) supplemental pay benefit. Such leave credits charged after 39 weeks of absence must be restored to an employee when an award of compensation has been made and credited to the State for periods of absence during which the credits were used. At this point the employee has received all workers' compensation benefit entitlements including full salary and restoration of leave credits. Monetary awards for this post 39 week period, therefore, should properly be credited to New York State as the employer, not to the employee.

To help prevent the Board from making incorrect assumptions about this time period, communication between the State Insurance Fund and the employing agency is essential. Agencies must provide the State Insurance Fund with confirmation that credits will be restored for compensable absences. This information can then be presented by the Fund at the Compensation Board hearing. It is important to remember that the agency does not have the option to refuse restoration of leave credits used in connection with compensable absences once an award has been made; such credits are restored even if the employee has separated from State service.



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File this material in the section of the manual referenced above.

If your agency does receive a Notice of Decision which directs payment to the employee for periods when leave credits were charged, contact the State Insurance Fund immediately for clarification. The State Insurance Fund will take action to have the Notice of Decision changed. The agency is not obligated to restore credits until receipt of a corrected Notice of Decision; however, the agency is obligated to follow-up with the Fund to ensure that a copy of the corrected notice is received.

Please direct any questions on this issue or other workers' compensation benefit problems to the Employee Relations Section of this Department at (518) 457-5167.

  
Director, Policy Analysis  
and Research Division

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June 15, 1990

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File this material in the section of the manual referenced above.

TO: State Departments and Agencies

FROM: Nicholas Vagianelis,<sup>N</sup> Director, Division of Work Force  
Planning Services

SUBJECT: Workers' Compensation Program Update

This Bulletin seeks to clarify certain issues that have been brought to our attention by agency staff administering the workers' compensation benefit. These issues are: the recrediting of personal leave; the treatment of absences in connection with doctor's visits; and accident reporting criteria.

I. Recrediting of Personal Leave

The purpose of this item is to clarify the limitations on the recrediting of personal leave.

Employees covered by the Supplemental Pay Program are entitled to have leave accruals that they charged during the first 39 weeks of compensable absence, as determined by the State Insurance Fund (SIF) or the Workers' Compensation Board (WCB), recredited to them when they return to work, are placed on the supplemental payroll, or are separated, whichever occurs first. This recrediting includes personal leave. None of the provisions for recrediting, however, supersede the Attendance Rules which state that: "Personal leave shall not be cumulative, and any personal leave credits remaining unused by an employee on the date immediately preceding the anniversary date . . . shall be cancelled." In other words, personal leave is available for one year from the date it is credited. Personal leave cannot be recredited beyond the date it expired.

When an employee charges personal leave while waiting to be placed on the supplemental payroll and the personal leave anniversary date passes prior to recrediting of the used personal leave, the employee is credited with new personal leave days on the anniversary date and is not recredited with previously used personal leave.

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File this material in the section of the manual referenced above.

II. Doctor Visits and Therapy Treatments after an Employee has Returned to Work

The purpose of this item is to clarify the Supplemental Pay Program benefits available for short-term absences related to an employee's workers' compensation case, such as doctor's appointments, after return to work.

The design of the Supplemental Pay Program requires that an employee who is absent due to a workers' compensation disability initially charge that absence to leave credits. The credits charged during the first 39 weeks of disability are recredited, as noted in (I.) above, when the absences have been determined compensable by the SIF or WCB.

After an employee has returned to work following an accident, and perhaps an initial period of disability, occasional absences related to his/her workers' compensation case, such as doctor visits or therapy treatments, may occur. These absences must initially be charged to leave credits as all absences are charged. Until these absences are deemed compensable by the WCB following a hearing, the supplemental pay benefit will not be provided and agencies are precluded from recrediting the time charged.

These Supplemental Pay Program procedures differ from the provisions of the Leave Program which allow for the granting of workers' compensation leave with pay without charge to credits for all absences related to an occupational disability, up to the 6-month entitlement, including those due to disability, doctor visits, medical treatments and even WCB hearings.

III. Reporting Accidents per Section 110 of the Workers' Compensation Law

The purpose of this item is to confirm the accident reporting criteria established by the Workers' Compensation Law. A December 19, 1989 memorandum from the Governor's Office of Employee Relations advised that Section 110 of the Workers' Compensation Law (WCL) had been modified to authorize the Workers' Compensation Board, as well as the courts, to impose a penalty of up to \$500 on employers for refusal or failure to report accidents within the 10 days required by that

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section. This amendment has no effect on the established criteria that should be used in determining whether an accident is reportable in the first instance.

Section 110 WCL states that an accident should be reported if it meets any one of the following conditions:

1. The accident results in lost time beyond the working day or shift on which it occurred;
2. The accident requires medical treatment beyond ordinary first aid;
3. The accident requires more than two treatments by a physician or person rendering first aid.

If an accident does not meet any of the above criteria, the accident report should be completed and retained by the agency for use if the case becomes reportable in the future. Agencies are reminded that the accident information in the Department of Civil Service database, the Occupational Disability Data System (ODDS), is taken directly from the State Insurance Fund's automated records of accidents. Therefore, individual agency and statewide information is only as accurate as the information initially reported.

Agencies are encouraged to review their reporting procedures to ensure that reportable accidents are filed in a timely manner. Agencies are encouraged also to file only those accidents meeting the above conditions.

Staff from the Employee Relations Section are available to agency staff on specific matters, including attendance and leave administration, agency/facility specific accident experience data, and other workers' compensation issues. For assistance or further information, please call the Employee Relations Section at (518) 457-5167.

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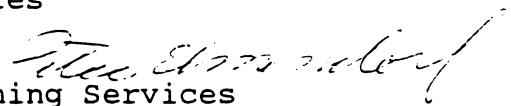
November 30, 1990

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This Replaces General Information Bulletin No. 89-02

NOTE: This General Information Bulletin has been revised to include the changes specified in the Office of the State Comptroller's Payroll Bulletin No. P-665 issued on September 4, 1990.

TO: State Departments and Agencies

FROM: Peter Elmendorf, Director   
Division of Work Force Planning Services

SUBJECT: Revised Sample Workers' Compensation Letter to Inform Employees of the Supplemental Pay Program

Employees covered under the Workers' Compensation Supplemental Pay Program<sup>1</sup> receive, as part of their benefit, net pay for up to 39 weeks of disability. This net pay is derived from two sources: an award payment from the State Insurance Fund and a supplemental payment from the Office of the State Comptroller distributed with the agency's regular payroll. Employees affected by this program are understandably concerned about their benefit entitlement and the different payroll procedures that they encounter.

In an effort to provide agencies with a resource to respond to these concerns, the Department of Civil Service has developed the attached sample letter. Included in this general letter is an explanation of the supplemental pay program, an identification of authorized payroll deductions and procedures for employees to follow when all deductions are not taken from their supplemental checks.

This letter is intended as a sample and should be modified to accommodate specific agency or facility personnel procedures. Agencies and facilities that have developed such a letter already may want to consider revisions based upon this sample.

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<sup>1</sup>Those whose workers' compensation incident occurred on or after April 1, 1986 in Administrative, Institutional, Operational, Professional, Scientific and Technical and Rent Regulation Services Units and on or after September 1, 1986 who are designated Managerial/Confidential.

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Please direct any questions on the sample letter or other workers' compensation benefit problems to the Employee Relations Section of this Department at (518) 457-5167.

Sample Workers' Compensation Letter

Dear Employee:

The State Insurance Fund has notified us that your claim for workers' compensation benefits has been accepted. You have been receiving workers' compensation benefits for your work-related injury/illness sustained on \_\_\_\_\_. Effective \_\_\_\_\_ you will begin receiving supplemental payments as part of your benefit entitlement. You will receive supplemental payments for the number of workdays equal to the period of time found compensable by the State Insurance Fund and Workers' Compensation Board up to a maximum of 39 weeks. Prior to your return to work you must notify the Personnel Office to receive clearance to report to your supervisor.

The Award and Supplement Program

While on the supplemental payment system you will receive, instead of your regular paycheck, an award payment from the State Insurance Fund mailed directly to your residence and a supplemental payment from the Office of the State Comptroller that will be distributed on your regularly scheduled payday at the \_\_\_\_\_. Together these payments will equal your current net pay. Net pay is defined as your normal gross salary minus federal, state and city withholding taxes, FICA (Social Security) or Medicare taxes. It is possible, depending upon the amount of the award payment, that you will receive no supplemental check. You will be notified if this is the case.

While on the award and supplement wage benefit, you are considered to be in full pay status for the purposes of accruing seniority, continuing retirement service credit and social security credit. You will continue to accrue vacation and sick leave and be granted personal leave. If at any time your State Insurance Fund award payment changes, your supplement will be recalculated to ensure you continue to receive net pay for all eligible absences.

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Sample Workers' Compensation Letter (continued)

Authorized Payroll Deductions

In addition to taxes, Social Security or Medicare, all deductions previously deducted from your regular paycheck will be deducted from your supplemental check if the supplement is sufficient. If your supplement is insufficient to cover all fixed deductions, it will be necessary to cancel those deductions. If your supplement becomes sufficient, deductions will be automatically restarted again; with the exception of Health Insurance.

You are responsible for arranging to make payments directly for all payroll deductions not taken. All payroll deductions are listed on your paycheck stub and are "coded." The codes are on the reverse side of your check stub. It is important to carefully review your check stub every two weeks as deductions may be added or deleted as your supplement changes.

Retirement

If your supplement is insufficient, a partial retirement deduction will be taken and a supplemental check issued for \$1.00. When you start receiving a regular pay check again, the Retirement System will automatically adjust the amount of your contribution to allow for deductions not taken during award and supplement. If you have any questions, please call the Retirement System at (518) 474-7736.

Health Insurance

If your supplement is insufficient, the Department of Civil Service will bill you directly for the employee share. If you do not receive a bill after one month, contact the Health Insurance Administrator in the Personnel Office. Health insurance deductions dropped due to insufficient supplement will not be restarted automatically by the Office of the State Comptroller even if your supplement becomes sufficient to do so. Your agency must file the appropriate forms with the Department of Civil Service to have the deduction restarted.

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Sample Workers' Compensation Letter (continued)

Direct Deposit Program

If you participate in the Direct Deposit program, you may continue to have these supplemental payments deposited in your bank account.

Credit Union

If you have any questions, please call or write to your local Credit Union Office.

CSEA Insurances

Contact the Personnel Office or Payroll Office to obtain a copy of the CSEA Leave Form. Fill out the form and mail it to CSEA.

PEF Insurances

The Public Employees Federation will bill you directly on a monthly basis. Please notify PEF when you complete the award and supplement wage benefit to discontinue direct billing:

NYS Public Employees Federation  
Membership Benefits  
P.O. Box 12414  
Albany, New York 12212-2414  
1-800-342-4306  
(518) 785-1900

M/C Auto/Home Insurance

Call Jardine Group Services Corporation at (518) 869-1901 or 1-800-342-1166 to make arrangements for direct payment.

M/C Life Insurance

Forward the first life insurance payment to the Personnel Office. The Personnel Office will provide you with a supply of PS-909, Premium Remittance forms to make payments directly.



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Sample Workers' Compensation Letter (continued)

Deferred Compensation

Deferred Compensation deductions can only be made through payroll deduction. If your supplement is insufficient for this payment to be taken, Copeland will not accept direct payments. Questions regarding Deferred Compensation can be directed to :

The Copeland Companies  
New York State Deferred Compensation Plan  
14 Corporate Woods Boulevard  
Albany, New York 12211  
1-800-422-8463

Individual Retirement Accounts

If you want to continue contributions to your Individual Retirement Account, arrangements for direct payment can be made by calling or writing to the agent handling your account:

Dreyfus Service Corporation  
(718) 895-1397 (call collect)  
Security Mutual  
1-800-382-6400

It is important to notify the Personnel Office and deduction agents of any changes in name, address or phone number during your absence.

Very truly yours,

Director of Personnel

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General Information Bulletin No. 91-01

Section 21.8

February 1, 1991

Page 1 of 2

File this material in the section of the manual referenced above.

TO: State Departments and Agencies

FROM: Peter Elmendorf, Director, Division of Work Force  
Planning Services *P.E.*

SUBJECT: Workers' Compensation Supplemental Pay Program:  
Use of Sick Leave and Sick Leave at Half-Pay

A number of recent inquiries have concerned the proper use of sick leave and sick leave at half-pay in connection with an employee's claim of disability due to an occupational injury. This memorandum discusses those uses in some detail.

Eligible employees<sup>†</sup> who are necessarily absent due to work-related disabilities are entitled to 39 weeks of net pay without charge to leave accruals under the Supplemental Pay Program, followed by use of all available leave credits and sick leave at half-pay, if any. Such entitlement is determined initially by the State Insurance Fund and ultimately by the Workers' Compensation Board. Only those absences for which the employee is found to be disabled by either the State Insurance Fund or the Workers' Compensation Board should be considered under the workers' compensation supplemental pay benefit.

During the first 39 weeks of disability, while waiting to be placed on the supplemental pay system, an employee is eligible to charge all leave credits, including sick leave, as long as the appointing authority is satisfied that the individual continues to be disabled. (The credits are reccredited upon placement on the supplemental payroll system, return to work or separation, whichever occurs first.) Verification of ongoing disability is usually obtained from the State Insurance Fund and confirmed by medical documentation from the employee's physician.

Once an absence extends beyond 39 weeks the employee must be allowed use of all leave credits and any sick leave at half-pay entitlement as long as the disability continues. (These credits and half-pay eligibility are restored following a Workers' Compensation Board award.) Before approving the use of sick leave credits or other available credits and sick leave at half-pay, the appointing authority should confirm ongoing disability with the State Insurance Fund. The appointing authority also should require the employee to follow normal agency

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<sup>†</sup>Those whose workers' compensation incident occurred on or after April 1, 1986 in Administrative, Institutional, Operational, Professional, Scientific and Technical and Rent Regulation Services Units and on or after September 1, 1986, who are designated Managerial/Confidential.

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February 1, 1991

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File this material in the section of the manual referenced above.

procedures for requesting sick leave at half-pay and to supply periodic medical documentation supporting the ongoing disability. The agency is not required to continue to employ an individual beyond the one year minimum leave mandated under Section 71 of Civil Service Law solely for the purpose of using available leave credits or sick leave at half-pay. However, the employee is entitled to use all available paid leave benefits until actually separated in accordance with Section 71 and Section 5.9 of the Rules of the Classified Service.

There is one additional situation where the use of sick leave and sick leave at half-pay is appropriate: when the State Insurance Fund or Workers' Compensation Board controverts a claim based on a determination that the disability is not job related. In other words, the appointing authority and other review agencies agree the employee is disabled but have taken the position that the disability did not arise out of the course of employment. Under this circumstance, the employer should treat the absence as an ordinary disability until or unless the controversion is overturned.

Whenever an employee is found not to be disabled, by either the State Insurance Fund or the Workers' Compensation Board, the use of sick leave or sick leave at half-pay is inappropriate for continued absence. Use of sick leave or sick leave at half-pay should be denied even if an employee provides conflicting medical evidence from his or her personal physician that indicates the employee is still disabled. Similarly, when a claim for workers' compensation benefits is controverted by the State Insurance Fund on the basis of a finding of no disability, sick leave and sick leave at half-pay should not be used.

In the situation of an employee being absent but not being considered disabled by the State Insurance Fund or the Workers' Compensation Board, the agency may either allow the employee to charge leave accruals, other than sick leave or sick leave at half-pay, or place the employee on leave without pay until such time as the situation is resolved.

Staff from the Employee Relations Section are available to answer questions and provide information to agency staff on specific matters including: attendance and leave administration issues such as the use of sick leave, agency/facility specific accident experience data and other workers' compensation issues. For assistance or further information, please call the Employee Relations Section at (518) 457-5167.

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December 14, 1992

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TO: State Departments and Agencies

FROM: Peter Elmendorf, Director  
Division of Work Force Planning Services

SUBJECT: New State Insurance Fund Report based on Form C-8,  
"Notice That Payment of Compensation for Disability has  
been Stopped or Modified"

The State Insurance Fund has advised us that as part of the development of their information management system, they are revising the format and the frequency in which wage replacement payment information will be provided to State agencies.

A new State Insurance Fund report based on the information contained on Form C-8 will be issued to State agencies for employees receiving wage replacement awards from the Fund. This report, which will replace the employer's copy of the C-8, will be mailed on a monthly basis directly to the employee's agency, facility, campus or personnel office at the address indicated on the C-2, "Employer's Report of Injury/Illness." The employee will continue to receive the current Form C-8, which will be mailed to the employee's residence.

The new report, "State Insurance Fund - Compensation Payment System, Information From C-8 with Details Of Employer Reimbursement" (see sample copy attached), will include the information that was contained on the C-8 and the following new information that formerly was not provided to agencies:

1. the payroll code of the employing agency.
2. the employee's pass days (fixed at the time of the accident for employees with rotating pass days) as reported by the employer.
3. the employee's negotiating unit at the time of the accident.
4. the letter "N" following the "End-Date" of compensability indicating that the employee was paid under the Supplemental Pay Program.

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5. the "Detail of New York State Credit" section identifying the period(s) of compensability in which New York State will receive credit for wages paid by the employer. (Please disregard the "A" following "End-Date" of compensability in the State Credit Section; it is for State Insurance Fund purposes only.)

The "Detail of New York State Credit" section is needed for agencies to restore leave accruals following a Workers' Compensation Board hearing and Notice of Decision (C-23 or C-18) or Motion Calendar Notice of Decision (EC-200X). Leave accruals may be restored only for periods of compensability in which a NYS credit was issued by the State Insurance Fund in accordance with the Workers' Compensation Board's decision. For employees covered by the Statutory Benefit Program (i.e., CSEA and DC 37 represented employees with workers' compensation incidents on or after July 1, 1992) leave accruals should be restored on a prorated basis as detailed in Department of Civil Service Policy Bulletin 92-01. In all other situations where employees are eligible to have credits restored, they are restored in full.

Questions regarding this report should be directed to your usual State Insurance Fund district office contact.

Attachment

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S A M P L E

SIF \* NY STATE INSURANCE FUND - COMPENSATION PAYMENT SYSTEM  
C8EMP/INFO INFORMATION FROM C8 WITH DETAILS  
OF EMPLOYER REIMBURSEMENT

PAGE: 1  
DATE: 11/13/92

P A Y M E N T H I S T O R Y

Claim: 23456789 Unit 69  
Jones Jill E.  
123 Maple Avenue  
Anytown, NY 12345

① NY State Agency 50120  
ST LAWRENCE PSYCHIATRIC CENTER  
OGDENSBURG NY 13669  
OGDENSBURG NY00000136

1/A: 07/17/86 Soc. Sec.: 987654321

② Off Days: TUE, WED ③ Barg Unit 05

Pay CD	Start-Date	End-Date	LDW	Num Wks	Comp Rate	Amount
TPD	10/25/92	11/08/92	④	2.0000	150.00	300.00
TPD	07/04/92	10/25/92		16.2000		0.00
TPD	04/01/92	07/04/92	N	13.6000	150.00	2040.00
TTD	11/27/91	04/01/92	N	18.0000	300.00	5400.00
NLT	03/12/88	11/27/91				0.00
TTD	03/08/88	03/12/88	N	.6000	300.00	180.00
NLT	08/18/86	03/08/88				0.00
TTD	07/19/86	08/18/86	N	4.4000	300.00	1320.00
NLT	07/18/86	07/19/86				0.00

NYS Special weeks paid = 36.6000

GROSS TOTAL \$9240.00

⑤ DETAIL OF NEW YORK STATE CREDIT

Pay Code	Start-Date	End-Date	Num Wks	Rate	Amount
PAY	02/06/92	02/19/92	A		270.00
GROSS TOTAL					\$270.00
Less Liens					\$75.00-
Net NYS Lien					\$195.00

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TO: State Departments and Agencies

FROM: Peter Elmendorf, Director  
Division of Work Force Planning Services

SUBJECT: Revised Sample Workers' Compensation Letter to Inform  
Employees of the Statutory Benefit Program

Under the new Statutory Benefit, employees represented by CSEA and DC 37 who sustain a Workers' Compensation injury on or after July 1, 1992, will be removed from the State payroll and placed on Workers' Compensation Disability Leave Without Pay for up to 12 cumulative months of absence. While absent, employees are on leave without pay for salary purposes but treated as though they are in full pay status for certain other benefit purposes. Employees affected by this program are understandably concerned about their benefit entitlement and the impact it will have on their deductions.

The Department of Civil Service has developed the attached sample letter to provide agencies with a resource to respond to employees' concerns. Included in this general letter is an explanation of the statutory benefit program and procedures for employees to follow to continue deductions during a period of disability leave without pay.

This letter is intended as a sample and should be modified to accommodate specific agency or facility personnel procedures. Agencies and facilities that have developed such a letter already may want to consider revisions based upon this sample.

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SAMPLE WORKERS' COMPENSATION LETTER  
FOR CSEA-REPRESENTED EMPLOYEES  
WORKERS' COMPENSATION CLAIMS ON OR AFTER JULY 1, 1992

Dear Employee:

The State Insurance Fund has advised us that you may be eligible to receive Workers' Compensation Wage Replacement Benefits due to injuries you sustained from an accident on \_\_\_\_\_. (For a more detailed explanation of the Benefit, please refer to the pamphlet entitled: Workers' Compensation for CSEA-represented NYS Employees.)

Once your absence exceeds the five day waiting period, you will be removed from our payroll and begin receiving wage replacement benefits from the State Insurance Fund mailed directly to your home. Once you are removed from the payroll, you are considered to be on Workers' Compensation Disability Leave Without Pay.

The Statutory Benefit Program

While on Workers' Compensation Disability Leave Without Pay you are considered to be in full pay status for the length of your disability for up to a maximum of 12 months for the following purposes:

- health insurance
- accruing biweekly leave accruals,
- continuous service,
- retirement service credit,
- Employee Benefit Fund contributions.

You should be aware, however, that although you are considered to be in full pay status, payroll deductions you previously authorized cannot be taken while you are on leave without pay. This is because you will no longer receive a payroll check from this agency and deductions are not allowed to be taken from your workers' compensation wage replacement check under the Workers' Compensation Law.

Authorized Payroll Deductions

To help you during your absence, we have compiled the following list of the most common deductions, what you should do to



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continue or discontinue them, and/or whom to contact if you have any questions.

Retirement (Tier III and Tier IV Members)

Upon return to the payroll, the Retirement System will automatically adjust the amount of your contributions to allow for deductions not taken during leave without pay.

Health Insurance

Health insurance coverage for you and your dependents will continue automatically at the employee share for a cumulative 12 months of disability. When you return to work, you will be responsible for paying the retroactive health insurance premiums. If you wish to cancel your health insurance coverage while you are on Workers' Compensation leave, contact your agency health benefits administrator.

Credit Union

Call or write to your local Credit Union Office to make arrangements for making direct payment.

CSEA Dues

Contact CSEA's Membership Department at 1-800-342-4146 to have your CSEA dues waived for up to one year.

CSEA Insurances

Contact your Personnel Office or Payroll Office to obtain a copy of the CSEA Leave Form. Fill out form and mail it to CSEA. If you have any questions, please call CSEA at 1-800-342-4146.

State Employees' Federated Appeal (SEFA)

If you wish to fulfill your pledge, mail your contribution to the community campaign where your pledge was initiated. Checks should be made payable to SEFA and include the name and location of the employing agency. If you are uncertain where the pledge was initiated, the community campaign code is on the back of your SEFA pledge card.

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Payroll Savings Bonds

Once you return to the payroll, deductions to purchase savings bonds should automatically resume. If they do not, fill out Form AC 846 available from your payroll office and forward it to the Office of the State Comptroller.

Deferred Compensation

Payments to the Deferred Compensation Plan through the Copeland Companies can only be made by payroll deduction. Copeland will not accept direct payments toward this plan. Therefore, while you are on leave without pay, payments to Deferred Compensation will not be made. Upon return to the payroll, however, you will be automatically reinstituted in the Deferred Compensation Plan. If you wish to discontinue participation, fill out a participation authorization card and send it to the Copeland Companies. Questions regarding Deferred Compensation can be directed to:

The Copeland Companies  
New York State Deferred Compensation Plan  
Two Tower Center  
East Brunswick, New Jersey 08816  
Tel. No. Toll Free 1-800-422-8463

Individual Retirement Accounts

If you want to continue contributions to your Individual Retirement Account, arrangements for direct payment can be made by calling or writing to the agent handling your account:

Dreyfus Service Corporation  
(718) 895-1397 (call collect)  
Security Mutual  
1-800-382-6400

It is important to notify your Personnel Office and deduction agents of any changes in name, address and phone number during your absence.

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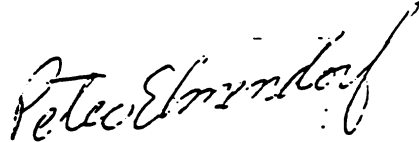
April 1, 1993

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File this material in the section of the manual referenced above.

TO: Personnel Officers

FROM: Peter Elmendorf, Director  
Personnel Services Division



SUBJECT: Workers' Compensation Statutory Benefit Program Update

The Employee Relations Section, Department of Civil Service, assists agencies in administering the workers' compensation program. To facilitate communication, bulletins are issued periodically as part of the State Attendance and Leave Manual to provide additional information regarding the various aspects of the benefits under the workers' compensation program for State employees.

Staff from the Employee Relations Section are available to assist agency staff with specific problems. Additionally, detailed accident experience pertaining to individual facilities or agencies is available upon request. Such information is valuable in monitoring an agency's workers' compensation experience and in developing occupational safety programs. For assistance or further information, please call the Employee Relations Section at (518) 457-5167.

This general information bulletin covers the following subjects as they relate to employees whose disabilities are subject to the provisions of the Statutory Benefit Program, which included CSEA-and DC-37-represented employees whose accidents occur on or after July 1, 1992: (1) employees' status after 12 cumulative months of absence, (2) employees' status while a claim is contested and (3) employees returning to work on a part-time basis.

1. Employees whose absences in connection with an occupational disability are subject to the provisions of the Statutory Benefit Program are eligible for certain benefits for the first 12 cumulative months of compensable absence. Briefly, these include continuation of accrual of biweekly leave credits, continuous service and seniority credit, retirement service credit, Employee Benefit Fund contributions and health insurance. More detailed information is available on pages 4-5 of the Attendance and Leave Manual Policy Bulletin 92-01 and corresponding publications from the Office of the State Comptroller and Employee Benefits Division of the Department of Civil Service.

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At the end of this period, if the employee has not returned to work or been separated, it is necessary to change the employee's payroll status to notify the various agencies providing continuation of benefits that eligibility has ceased. The employee's status needs to be changed from Workers' Compensation Disability Leave Without Pay to regular Leave Without Pay. Refer to the Office of the State Comptroller's Payroll Bulletin for details concerning the processing of this transaction at the end of 12 cumulative months of absence and prior to termination.

2. As explained on pages 12-13 of Attendance and Leave Manual Policy Bulletin 92-01, eligibility for workers' compensation benefits under the contracts is dependent on the State Insurance Fund/Workers' Compensation Board determining that a disability exists which is the result of an occupational disability or disease. When an employee's claim is contested based on the State Insurance Fund determining that a disability exists, the employing agency is expected to order the employee to return to work. If the employee contests the claim of no disability and does not return to work, he/she is no longer eligible for the benefits resulting from Workers' Compensation Disability Leave Without Pay. The employee's payroll status should be changed to regular leave without pay for the period under dispute until the claim is resolved by the Workers' Compensation Board. Refer to the Office of the State Comptroller's Payroll Bulletin for details concerning the correct payroll transaction.

If the claim is resolved in the employee's favor, he/she should be granted the appropriate benefits retroactively, including correcting the employee's payroll status to workers' compensation disability leave without pay. If the determination is made that no disability existed during the absence, the employee's status for that period should remain a regular leave without pay and there are no additional benefits due.

3. An employee who is not able to return to duty and work his/her full normal work schedule may be allowed to return to work in a modified capacity until full recovery. This return could be on a full-time or part-time basis. Refer to Attendance and Leave Manual Policy Bulletins 92-01 and 93-01 for more detailed information concerning eligibility criteria and procedures for returning employees subject to the Statutory

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Benefit Program to work prior to full recovery whether pursuant to the Mandatory Alternate Duty Program or agency discretionary procedures. Refer to the Office of the State Comptroller's Payroll Bulletin for information concerning processing the payroll transaction returning the person to the payroll on a part-time basis.

The purpose of this item is to address the narrow issue of an employee's status when returning to work on less than a full time basis prior to recovery. When an employee returns to work on a part-time basis for some period of time before returning to full duties on a full-time basis, the employee's time records should reflect workers' compensation disability leave for the portion of the individual's schedule he/she is not scheduled to be at work. Since this leave status entitles the person to be treated as though he/she were on leave with pay, the employee continues to receive full leave accruals, seniority and continuous service credit, retirement service credit, Employee Benefit Fund contributions and health insurance for this period.

As with any return to work in less than full capacity, the details of the assignment and the end date should be made clear to the employee at the beginning of the assignment. Also, the State Insurance Fund should be notified because the employee may qualify for continuing wage replacement payments from the SIF during this period based on a reduced earning capacity.

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June 23, 1993

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File this material in the section of the manual referenced above.

TO: Personnel Officers

FROM: Peter Elmendorf, Director *Peter Elmendorf*  
Personnel Services Division

SUBJECT: Workers' Compensation Update

This General Information Bulletin covers the following subjects: reporting accidents for volunteers and patients to the State Insurance Fund (SIF) and procedures when leave credits are used beyond the waiting period under the CSEA and DC-37 Statutory Benefit Program.

I. REPORTING ACCIDENTS SUSTAINED BY VOLUNTEERS AND PATIENTS TO THE STATE INSURANCE FUND

When a State agency reports an accident to the State Insurance Fund, it is critical that the agency identify the injured employee's negotiating unit. The State Insurance Fund requires the negotiating unit to establish a workers' compensation claim and to identify the employee's benefit entitlement. If you are unable to identify the employee's negotiating unit, please contact the Employee Relations Section at the Department of Civil Service (518) 457-5167.

As part of the ongoing effort to improve the negotiating unit information contained in our database, we have identified two groups of individuals that are entitled to benefits pursuant to the Workers' Compensation Law that we do not currently identify separately. They are:

1. authorized volunteers who are providing services at State agencies; and
2. patients of the Office of Mental Health (OMH) and clients of the Office of Mental Retardation and Developmental Disabilities (OMRDD) who are working in sheltered workshops that are operated by either OMH or OMRDD.

Although none of these individuals are employees for the purposes of other benefits, they are eligible for Workers'

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Compensation Law coverage under the New York State workers' compensation policy with the State Insurance Fund for accidents sustained while working in their respective programs.

Accordingly, it is necessary to identify these individuals as program participants to ensure that they are provided the proper benefits as specified under New York State Workers' Compensation Law. To identify a program participant at the time the accident is reported to the State Insurance Fund, please provide the following program participant designation on the initial written and/or telephone accident report to SIF in lieu of the negotiating unit code provided for other employees.

PROGRAM	DESIGNATION
Volunteer	VV
OMH patient or OMRDD client at a State-operated sheltered workshop	PA

Please begin using these program participant designations immediately. As always, if you have any questions concerning an individual's entitlement to workers' compensation coverage, contact SIF immediately.

II. PROCEDURE WHEN AN EMPLOYEE CHARGES CREDITS BEYOND THE WAITING PERIOD UNDER THE CSEA AND DC-37 STATUTORY BENEFIT PROGRAM.

Employees covered under the CSEA and DC-37 Statutory Benefit Program (i.e., employees in ASU, ISU, OSU, DMNA, and RRSU with accidents on or after July 1, 1992) are allowed to charge leave credits to cover their first five days of absence, which is the waiting period, and then are placed on workers' compensation disability leave without pay for the duration of their full day compensable work-related absences. The use of leave credits is not allowed for any full day absences beyond the five day waiting period.

Occasionally, the situation will arise when an employee who is absent due to a work related injury charges leave credits beyond the five-day waiting period. This may happen when either the employee does not timely report his or her injury to the agency or when the agency does not learn of the accident until after the waiting period even though the employee reported the accident

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timely. Once an agency is aware that an employee is absent due to an occupational injury, the employee should be placed on workers' compensation disability leave without pay at the first possible date for which the employee has not already been paid and the SIF should be notified immediately of the date the employee is placed on leave without pay. If a paycheck has been issued but has not been released, it is appropriate to return the unreleased paycheck and back date the leave without pay transaction accordingly. If a paycheck(s) has already been issued to an employee that covers a period beyond the first five days for which the employee used leave credits, the agency should not submit a PR-75 to retroactively change an employee's status to workers' compensation disability leave and, therefore, attempt to collect an overpayment from the employee. Should the period of time that the employee inappropriately charged leave credits beyond the five day waiting period be found compensable by the Workers' Compensation Board, those credits will be restored on a prorated basis following a credit to New York State as detailed in Policy Bulletin 92-01, Section 21.8 of the Attendance and Leave Manual.

For assistance or further information on this bulletin or for assistance in administering the workers' compensation benefit programs, please contact the Employee Relations Section at (518) 457-5167.



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General Information Bulletin 93-04

Section 21.8

September 10, 1993

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Please retain this memorandum until the next one is received.

TO: Personnel Officers

FROM: Peter Elmendorf, Director  
Personnel Services Division



SUBJECT: Reporting Workers' Compensation Incidents to the State Insurance Fund for Individuals Participating in the Working Toward Independence Program

Individuals participating in the Working Toward Independence (WTI) program, coordinated by the Department of Social Services, are eligible for coverage under the New York State workers' compensation policy with the State Insurance Fund for accidents sustained during their WTI work at State agencies. The WTI Agreement With Worksite Sponsor Agency, specifies that the sponsoring state agency shall provide workers' compensation coverage for WTI participants.

When a WTI participant sustains a reportable work-related injury, the accident report to the State Insurance Fund must clearly identify the individual as being a WTI participant. The same reporting criteria that are used with agency employees apply to WTI participants:

- the individual lost time beyond the shift that the incident occurred; or
- the individual received medical treatment beyond first aid; or
- the individual received two or more first aid treatments.

The agency must identify the individual as being a WTI participant so that the appropriate benefit entitlement can be determined by the State Insurance Fund. (WTI participants are only entitled to benefits under the Workers' Compensation Law and are not entitled to any enhancements provided to employees covered by the Attendance Rules and through negotiated agreements.) The agency should identify a WTI participant with the code WI for the negotiating unit for either a telephone report or when using the Claims Medical Department Initial Telephone Inquiry form with the State Insurance Fund.

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WTI participants who seek medical attention as a result of a work-related injury, should advise the medical provider that the medical bill should be forwarded to the State Insurance Fund for consideration under the New York State workers' compensation policy.

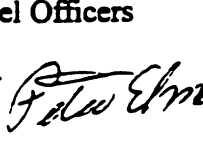
For questions regarding the Working Toward Independence program, please call the New York State Department of Social Services contact person listed in the WTI Application Package for State Agencies. For a WTI application packet, please contact Jim Cook at the Department of Social Services (518) 474-9320. Questions regarding specific workers' compensation claims should be directed to your regional State Insurance Fund office. For assistance in administering workers' compensation benefits with state employees, please contact the Employee Relations Section at the Department of Civil Service, (518) 457-5167.

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GENERAL INFORMATION BULLETIN 95-02**

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November 1, 1995

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TO: Agency Personnel Officers  
FROM: Peter Elmendorf   
SUBJECT: Workers' Compensation Update

This bulletin covers the following subjects: updated benefit chart, communication with the State Insurance Fund concerning employee absences, use of leave accruals, restoration of leave accruals - proration and timing, and change in employees' status after 12 months of absence.

Updated Benefit Chart

The attached Workers' Compensation Benefit Chart has been revised to include the benefit changes negotiated in the 1995-99 agreements between the State and CSEA and the State and PEF. These changes include (1) extending the Mandatory Alternate Duty Program assignment period from 45 to 60 days and (2) for accidents on or after April 2, 1995, extending the benefit continuation period under the PEF Medical Evaluation Program from 9 to 12 months. This chart provides a brief summary of the major components of each benefit and replaces the chart distributed with General Information Bulletin 94-03.

Communication with the SIF

When an employee is allowed to charge leave credits for work-related absences, regardless of which benefit program the absence is under, New York State, as the employer, is obligated to make a claim with the Workers' Compensation Board for a credit for wages paid. The State Insurance Fund (SIF), as our representative, files this claim on our behalf. It is critical, therefore, that the employing agency keep the SIF up-to-date on an employee's status during the absence. Please advise the SIF of each employee's *exact* dates of absence and the person's status on those dates, e.g., leave with pay, charging credits, leave without pay, etc. The SIF cannot file a claim for reimbursement with the Board without this information, nor can the SIF's hearing representatives properly present our claim before the Board if they don't have up-to-date, accurate information in the file.

Each of you has established working relationships with the SIF's claims examiners who process claims for your agency. We encourage you to discuss the issue with them to come to a mutually acceptable method of exchanging information on employee lost time and pay status during those absences so that information is timely and accurate. Establishing these procedures should reduce the potential for Board awards for wage replacements being issued to the wrong party.

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Along these same lines, it has come to our attention that in the pay period that an employee returns to work, the number of days of disability as determined by the SIF may not correspond to the actual number of days lost. The SIF is working from the information available to them at the time of the injury that, in many cases, has now changed. The most common situation brought to our attention is the employee whose regular days off (pass days) are different when he/she returns to work than they were at the time of the accident. Another situation generating discrepancies is the employee on a compressed workweek who has more than two days off each week.

The SIF has instituted a procedure to correct these situations so that the number of days paid and the number of days lost are reconciled. When this situation arises, please contact your SIF representative and advise him/her of the problem. Please provide the exact details on the actual days of disability and work days in the applicable pay period. The SIF will make the necessary corrections and, if an additional payment is due, you will receive a Form C-8 EMP indicating the change.

Finally, please remember when an employee charges leave credits during a period of compensable absence, New York State, as the employer, is obligated to make a claim for reimbursement for wages paid. Upon receipt of that credit for wages paid (the Notice of Decision from the Workers' Compensation Board), we are obligated to restore those credits in accordance with the applicable benefit. Under normal circumstances, agencies and employees do not have any options in this matter.

Use of Leave Accruals

Each workers' compensation program that is available currently to State employees has different provisions concerning the use of leave accruals during absence due to a work-related disability. Please refer to this section of the Manual and the applicable policy bulletins for a complete description of the various benefits and appropriate use of credits under those benefits.

The Statutory Benefit Program (applies to accidents of CSEA-represented employees on or after July 1, 1992) and the Medical Evaluation Program (applies to accidents of PEF-represented employees on or after July 1, 1993) allow charging of leave accruals during the first five work days of absence and for partial day absences after the employee returns to work. Generally, *all* other absences for disabilities subject to these benefits are without pay for the employee's entire disability. Agencies are encouraged to review their procedures for the reporting of workers' compensation accidents and the processing of those reports so that employees are removed from the payroll in a timely manner and placed in the correct payroll status (pursuant to Comptrollers' instructions) to ensure benefit continuation.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
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GENERAL INFORMATION BULLETIN 95-02

Section 21.8

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Restoration of Leave Accruals

Some current workers' compensation programs available to New York State employees provide for full restoration of leave accruals used by an employee during absence due to work-related disability; some benefits provide for a proration of these restored credits. A complete explanation of restoring credits is found in each benefit description. This memorandum provides further clarification on some issues and is in addition to those explanations.

Regardless of which program applies to the particular absence, *credits are restored only following a notice of decision (NOD) from the Workers' Compensation Board crediting New York State for wages paid.* In addition, for those benefits that require prorated restoration of accruals, the agency needs the C-8 EMP that is issued by the State Insurance Fund to implement the NOD in order to determine the net credit to New York State on which to base the prorated restoration. We recommend that agencies wait for the C-8 EMP in all cases to ensure that the payments made by the SIF are in concert with the NOD and therefore the restoration is correct.

Prorated restorations are based on the actual amount of the credit to New York State for wages paid. The C-8 EMP reports this exact amount of State credit and the period of time covered by the credit. The agency does not need to do any calculation to determine the amount of the credit. The only calculation necessary is the determination of the percentage of accruals to be restored. If an agency has a question about reading the C-8 EMP, either the SIF representative or this office should be contacted.

Under the provisions of some benefits, timely removal of employees from the payroll will serve to limit the amount of accruals that need to be restored. For example, as noted above, the Statutory Benefit Program and the Medical Evaluation Program allow charging of leave accruals during the first five work days of absence and for partial day absences after the employee returns to work. The potential for errors and overpayments is reduced proportionally to the extent agencies process status changes for employees in a timely fashion.

This paragraph refers *only* to the restoration of credits under the PEF Medical Evaluation Program, which is applicable to PS&T Unit employees whose injuries occurred on or after July 1, 1993. Under this benefit, credits restored are prorated based on the award credited to New York State for wages paid or 60 percent of the employee's gross salary, whichever is greater. To determine what percentage of credits to restore, identify the employee's gross salary and calculate the percentage of this gross salary which is represented by the SIF net monetary award (as shown on the C-8 EMP). If it's greater than 60 percent, restore the percentage of credits used, to a maximum of 100 percent. If it's less than 60 percent, restore 60 percent of the credits used. The remainder of the explanation on restoration of credits

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found on pages 13-16 of Policy Bulletin 93-04 continues to apply to the PEF Medical Evaluation Program.

**Employee Status After 12 Cumulative Months of Absence**

This paragraph updates the information provided in General Information Bulletin 93-02 which discussed employee status for CSEA-represented employees only.

CSEA-represented employees whose accidents occur on or after July 1, 1992, M/C designated employees whose accidents occur on or after September 1, 1994, and PEF-represented employees whose accidents occur on or after April 2, 1995, have certain benefits available to them during their first 12 cumulative months of absence. (PEF-represented employees whose accidents occur on or after July 1, 1993, and before April 2, 1995, have these benefits for the first nine cumulative months.) Briefly, these include continuation of accrual of biweekly leave credits, continuous service and seniority credit, retirement service credit, Employee Benefit Fund contributions (as applicable) and health insurance. Detailed information is in the various bulletins describing these benefits.

At the end of this period, if the employee has not returned to work or has not been separated, it is necessary to change the employee's payroll status to notify the various agencies providing continuation of benefits that eligibility has ceased. The employee's status needs to be changed from workers' compensation disability leave without pay to regular sick leave without pay. Refer to the Office of the State Comptroller's Payroll Bulletins for details concerning the processing of this transaction at the end of 12 cumulative months of absence and prior to termination.

For CSEA- and PEF-represented employees, this change is to sick leave without pay since there is no entitlement to charge leave accruals for these full day absences, even after a year of absence. For M/C employees this is a change to one of several appropriate states, depending on the individual's circumstances, for example, sick leave at half-pay or long term disability leave or sick leave without pay.

Please call the Employee Relations Section at (518) 457-5167 for assistance or further information on any of these issues or other workers' compensation benefit related matters.

Attachment

# WORKERS' COMPENSATION BENEFIT OVERVIEW

BENEFIT	EMPLOYEE GROUPS COVERED	WAITING PERIOD	BASIC PROVISIONS
<b>NYS Workers' Compensation Law</b>	<i>All employees</i>	<ul style="list-style-type: none"> <li>• 7 calendar days for wage replacement; after 14 calendar days, retroactive to first day of disability</li> </ul>	<ul style="list-style-type: none"> <li>• Medical expenses</li> <li>• Wage replacement 2/3 avg. wkly. salary up to: \$340 max 7/1/90 \$350 max 7/1/91 \$400 max 7/1/92</li> </ul>
<b>Leave Program</b>	Security Services & Security Supervisors <i>(accidents prior to 4/15/93)</i> <hr/> ASU, ISU, OSU, DMNA, PS&T, RRSU <i>(accidents prior to 4/1/86)</i> M/C <i>(accidents prior to 9/1/86)</i>	None <hr/> • 10 workdays per year/per accident • Provision for waiver • Advance of sick leave if credits are exhausted	<ul style="list-style-type: none"> <li>• 6 months' leave with full pay without charge to credits with benefit continuation</li> <li>• Use of credits after 6 months</li> <li>• SL at 1/2 pay or IPP</li> <li>• LWOP</li> <li>• Section 71 coverage</li> </ul>
<b>Supplemental Pay Program</b>	ASU, ISU, OSU, DMNA, RRSU <i>(accidents on or after 4/1/86 and prior to 7/1/92)</i> M/C <i>(accidents on or after 9/1/86 and prior to 7/1/92)</i> PS&T <i>(accidents on or after 4/1/86 and prior to 7/1/93)</i>	Same as WC Law	<ul style="list-style-type: none"> <li>• 9 months' leave with <i>net</i> pay without charge to credits with benefit continuation</li> <li>• Use of credits</li> <li>• SL at 1/2 pay or IPP</li> <li>• LWOP</li> <li>• Section 71 coverage</li> </ul>
<b>Statutory Program</b>	ASU, ISU, OSU, DMNA, RRSU <i>(accidents on or after 7/1/92)</i>	Same as WC Law	<ul style="list-style-type: none"> <li>• 12 months' leave without pay with benefit continuation</li> <li>• Section 71 coverage <i>plus</i></li> <li>• Mandatory Alternate Duty for employees found to be 50% or less disabled and within 60 days of full recovery</li> </ul> <p style="text-align: center;">Out-of-title work allowed</p>
<b>Council 82 Managed Care Program</b>	Security Services & Security Supervisors <i>(accidents on or after 4/15/93)</i>	Same as WC Law or None	Choice of WC Law Benefit only or Managed Care Program including <ul style="list-style-type: none"> <li>• Leave Program <i>plus</i></li> <li>• Mandatory Medical Evaluation <i>plus</i></li> <li>• Mandatory Limited Duty for employees 50% or less disabled</li> </ul> <p style="text-align: center;">No out-of-title work allowed</p>

# WORKERS' COMPENSATION BENEFIT OVERVIEW

BENEFIT	EMPLOYEE GROUPS COVERED	WAITING PERIOD	BASIC PROVISIONS
<b>PEF Medical Evaluation Program</b>	<b>PS&amp;T</b> <i>(accidents on or after 7/1/93)</i>	Same as WC Law	<ul style="list-style-type: none"> <li>• 9 months leave without pay with benefit continuation <i>(accidents on or after 7/1/93 and before 4/2/95)</i> or</li> <li>• 12 months of leave without pay with benefit continuation <i>(accidents on or after 4/2/95)</i> plus</li> <li>• 60% gross pay minimum for disability greater than 50% for 9 months</li> <li>• LWOP</li> <li>• Mandatory Medical Evaluation</li> <li>• Section 71 coverage</li> <li>• Mandatory Alternate Duty for employees found to be 50% or less disabled and within 60 days of full recovery</li> </ul> <p>Out-of-title work allowed (Program may be waived, at employee request, which provides WC Law benefit only)</p>
<b>M/C Interim Program</b>	<b>M/C</b> <i>(accidents on or after 7/1/92 and prior to 9/1/94)</i>	None	<ul style="list-style-type: none"> <li>• Leave with full pay with charge to credits from first day of disability</li> <li>• Use of all credits</li> <li>• Sick Leave at 1/2 pay or IPP</li> <li>• LWOP</li> <li>• Section 71 coverage</li> </ul>
<b>M/C Program</b>	<b>M/C</b> <i>(accidents on or after 9/1/94)</i>	None	<ul style="list-style-type: none"> <li>• Leave with full pay with charge to credits from first day of disability with benefit continuation</li> <li>• Use of all credits</li> <li>• Sick Leave at 1/2 pay or IPP</li> <li>• LWOP</li> <li>• Section 71 coverage</li> </ul>



NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
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GENERAL INFORMATION BULLETIN No. 96-01

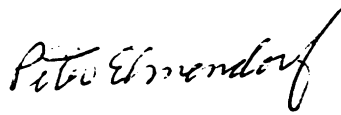
Section 28.1

March 18, 1996

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TO: State Departments and Agencies

FROM: Peter Elmendorf, Director  
Personnel Services Division



SUBJECT: Physical Capabilities Form

Attached is a revised Physical Capabilities Form which replaces the two separate forms issued with Policy Bulletins No. 93-04 for PEF-represented employees and No. 93-01 for CSEA-represented employees.

The revised Physical Capabilities Form reflects the change in both eligibility and length of assignments for mandatory alternate duty programs from 45 to 60 calendar days prior to an employee's date of full recovery. This change became effective on April 2, 1995, for accidents on or after July 1, 1992, for ASU, ISU, OSU, DMNA and RRSU employees and for accidents on or after July 1, 1993, for PS&T Unit employees.

A copy of this Physical Capabilities Form is also being sent to the State Insurance Fund for their use. Please feel free to photocopy the attached form for your agency's use.

For assistance or further information on this bulletin or for assistance in administering the Workers' Compensation Programs, please contact the Employee Relations Section at (518) 457-5167.

Attachment

# ESTIMATED PHYSICAL CAPABILITIES FORM FOR NEW YORK STATE EMPLOYEES

Name of Physician	Name of Employee
-------------------	------------------

**Note: Important Information on Reverse**

**INSTRUCTIONS:** If the employee is found to be 50% or less disabled, please complete this form based on your estimation of his/her current physical capabilities.

1. Medical Diagnosis: \_\_\_\_\_

2 a. In an eight-hour workday, how many hours can this employee: (Please check appropriate boxes.)

Sit	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Stand	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Walk	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests

b. In a given day, for how many total hours can this employee sit, stand, and/or walk in combination?

☐ 4      ☐ 6      ☐ 8      ☐ 10      ☐ 12      ☐ 14      ☐ 16

3. Other Capabilities: (Please check appropriate boxes.)

	Never	Occasionally	Frequently	Continuously													
<b>Lift</b>					<b>Upper Extremities:</b>  Which hand is dominant? <input type="checkbox"/> Right <input type="checkbox"/> Left Can this employee perform repetitive actions such as:												
00–10 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
11–20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
21–50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
51–100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
<b>Carry</b>					<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <th></th> <th>Simple Grasping</th> <th>Pushing &amp; Pulling</th> <th>Fine Manipulation</th> </tr> <tr> <td>RIGHT</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td>LEFT</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>		Simple Grasping	Pushing & Pulling	Fine Manipulation	RIGHT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	LEFT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Simple Grasping	Pushing & Pulling	Fine Manipulation														
RIGHT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No														
LEFT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No														
00–10 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
11–20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
21–50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
51–100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
and	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
Squat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
Crawl	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
Climb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
Run	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Lower Extremities:</b>  Use of feet/legs for repetitive movement, as in operation of foot controls and motor vehicles.												
Reach above shoulder level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
Operate a motor vehicle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													

4. Work Environment Restrictions:

- Can this employee:
  - Be exposed to marked changes in temperature and humidity?    ☐ Yes    ☐ No
  - Be exposed to unprotected heights?    ☐ Yes    ☐ No
  - Be around moving machinery?    ☐ Yes    ☐ No

5. Other Restrictions:

- Can this employee restrain combative clients?    ☐ Yes    ☐ No
- Does this employee have any visual or hearing impairment requiring accommodation?    ☐ No    ☐ Yes    If "Yes," please explain: \_\_\_\_\_

6. Based on your examination(s) of this employee, are there any known problems of a general nature, including any medications prescribed for the diagnosis listed, that would interfere with this employee returning to work?

☐ No    ☐ Yes    If "Yes," please explain: \_\_\_\_\_

When, in your estimation, will this employee be ready to return to full duty?    Date \_\_\_\_\_

Comments: \_\_\_\_\_

Physician's Signature	Telephone Number (    )    -	Date
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## **ALTERNATE DUTY PROGRAM**

New York State and several public employee unions have negotiated Alternate Duty Programs as part of the employer-provided benefits associated with workers' compensation disabilities.

These programs allow employees in the affected bargaining units, who have been disabled temporarily due to occupational accidents, to return to work prior to full recovery and work in assignments that meet both the needs of the agency and the medical limitations of the employees.

Employees benefit from these programs by returning to work and becoming productive more quickly, thus enhancing the recuperation process. Agencies benefit from these programs because they have the services of employees who would otherwise be unable to return to work.

When an employee's level of disability is classified at 50 percent or less (mildly or moderately disabled) and the employee is within 60 days of full recovery, he/she is qualified for an alternate duty assignment. The agency will use the information provided on this form to design an assignment that is consistent with the employee's limitations and capabilities. An assignment will be given to an employee initially for no more than 60 days. Agencies can extend assignments on a discretionary basis until the employee has fully recovered and returns to his/her regular assignment.

During the period of alternate duty, the employee will be expected to provide periodic medical documentation from the attending physician to verify that the employee's medical condition and the assignment remain consistent and to confirm full recovery prior to returning to the regular job assignment.

Questions concerning the information on this form should be directed to the evaluating physician at the telephone number listed. Questions concerning the alternate duty assignment should be directed to the employee's agency.

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General Information Bulletin 94-03

Section 21.8

December 1994

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TO: State Departments and Agencies

FROM: Peter Elmendorf, Director  
Personnel Services Division

SUBJECT: Revised Workers' Compensation Benefit Overview Chart

The attached Workers' Compensation Benefit Chart has been revised to include the workers' compensation program that applies to employees designated Managerial/Confidential for accidents occurring on or after September 1, 1994.

This revised chart is intended to provide agencies with a brief summary of the major components of each of the workers' compensation programs applicable to State employees. This incorporates and updates the information provided on the charts included as Appendix B in Policy Bulletins #92-01 and #93-04. Please refer to Section 21.8 of the Attendance and Leave Manual for a detailed description of each benefit.

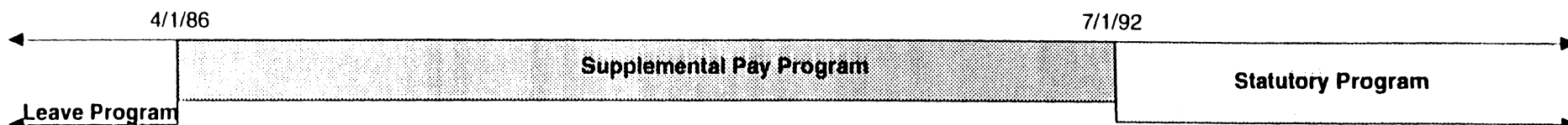
Also included is a Workers' Compensation Benefit timeline detailing the effective dates of implementation by negotiating unit.

For assistance or further information in determining an employee's workers' compensation entitlement, please contact the Employee Relations Section at (518) 457-5167.

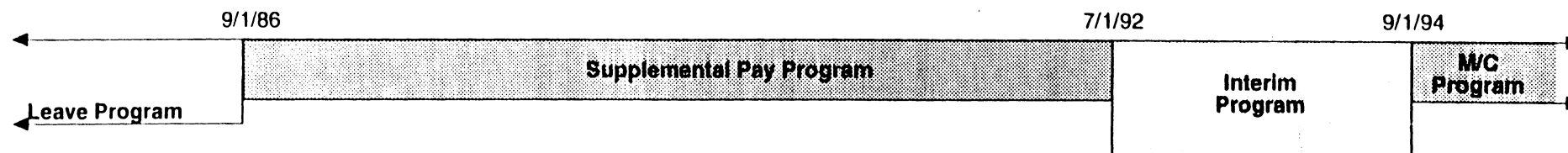
Attachments

# TIMELINE OF WORKERS' COMPENSATION PROGRAMS\*

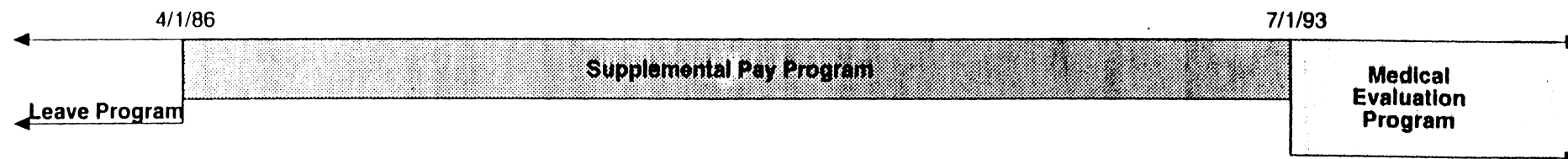
## ASU, OSU, ISU, DMNA, RRSU



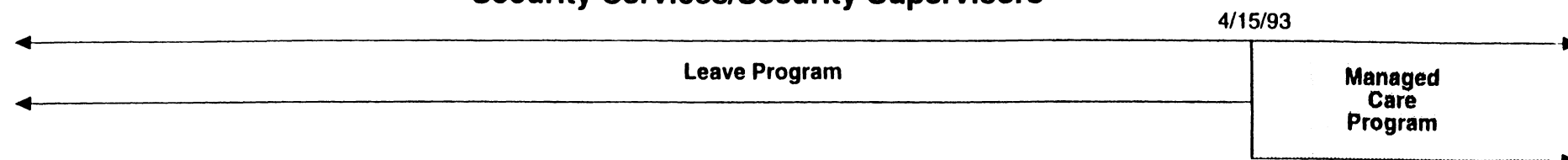
## M/C



## PS&T



## Security Services/Security Supervisors



\*The Program is determined by the date of accident and negotiating unit regardless of the date of absence.

# WORKERS' COMPENSATION BENEFIT OVERVIEW

BENEFIT	EMPLOYEE GROUPS COVERED	WAITING PERIOD	BASIC PROVISIONS
<b>NYS Workers' Compensation Law</b>	<i>All employees</i>	<ul style="list-style-type: none"> <li>• 7 calendar days for wage replacement; after 14 calendar days, retroactive to first day of disability</li> </ul>	<ul style="list-style-type: none"> <li>• Medical expenses</li> <li>• Wage replacement 2/3 avg. wkly. salary up to: \$340 max 7/1/90 \$350 max 7/1/91 \$400 max 7/1/92</li> </ul>
<b>Leave Program</b>	Security Services & Security Supervisors <i>(accidents prior to 4/15/93)</i> <hr/> ASU, ISU, OSU, DMNA, PS&T, RRSU <i>(accidents prior to 4/1/86)</i> M/C <i>(accidents prior to 9/1/86)</i>	None <hr/> <ul style="list-style-type: none"> <li>• 10 workdays per year/per accident</li> <li>• Provision for waiver</li> <li>• Advance of sick leave if credits are exhausted</li> </ul>	<ul style="list-style-type: none"> <li>• 6 months' leave with full pay without charge to credits with benefit continuation</li> <li>• Use of credits after 6 months</li> <li>• SL at 1/2 pay or IPP</li> <li>• LWOP</li> <li>• Section 71 coverage</li> </ul>
<b>Supplemental Pay Program</b>	ASU, ISU, OSU, DMNA, RRSU <i>(accidents on or after 4/1/86 and prior to 7/1/92)</i> M/C <i>(accidents on or after 9/1/86 and prior to 7/1/92)</i> PS&T <i>(accidents on or after 4/1/86 and prior to 7/1/93)</i>	Same as WC Law	<ul style="list-style-type: none"> <li>• 9 months' leave with <i>net</i> pay without charge to credits with benefit continuation</li> <li>• Use of credits</li> <li>• SL at 1/2 pay or IPP</li> <li>• LWOP</li> <li>• Section 71 coverage</li> </ul>
<b>Statutory Program</b>	ASU, ISU, OSU, DMNA, RRSU <i>(accidents on or after 7/1/92)</i>	Same as WC Law	<ul style="list-style-type: none"> <li>• 12 months' leave without pay with benefit continuation</li> <li>• Section 71 coverage <i>plus</i></li> <li>• Mandatory Alternate Duty for employees found to be 50% or less disabled and within 45 days of full recovery</li> </ul> <p style="text-align: center;">Out-of-title work allowed</p>
<b>Council 82 Managed Care Program</b>	Security Services & Security Supervisors <i>(accidents on or after 4/15/93)</i>	Same as WC Law or None	Choice of WC Law Benefit only or Managed Care Program including <ul style="list-style-type: none"> <li>• Leave Program <i>plus</i></li> <li>• Mandatory Medical Evaluation <i>plus</i></li> <li>• Mandatory Limited Duty for employees 50% or less disabled</li> </ul> <p style="text-align: center;">No out-of-title work allowed</p>

# WORKERS' COMPENSATION BENEFIT OVERVIEW

BENEFIT	EMPLOYEE GROUPS COVERED	WAITING PERIOD	BASIC PROVISIONS
<b>PS&amp;T Medical Evaluation Program</b>	<b>PS&amp;T</b> <i>(accidents on or after 7/1/93)</i>	Same as WC Law	<p>Medical Evaluation Program including</p> <ul style="list-style-type: none"> <li>• 9 months' leave without pay with benefit continuation plus 60% gross pay minimum for disability greater than 50%</li> <li>• LWOP</li> <li>• Section 71 coverage <i>plus</i></li> <li>• Mandatory Medical Evaluation <i>plus</i></li> <li>• Mandatory Alternate Duty for employees found to be 50% or less disabled and within 45 days of full recovery</li> </ul> <p>Out-of-title work allowed (Program may be waived, at employee request, which provides WC Law benefit only)</p>
<b>M/C Interim Program</b>	<b>M/C</b> <i>(accidents on or after 7/1/92 and prior to 9/1/94)</i>	None	<ul style="list-style-type: none"> <li>• Leave with full pay with charge to credits from first day of disability</li> <li>• Use of all credits</li> <li>• Sick Leave at 1/2 pay or IPP</li> <li>• LWOP</li> <li>• Section 71 coverage</li> </ul>
<b>M/C Program</b>	<b>M/C</b> <i>(accidents on or after 9/1/94)</i>	None	<ul style="list-style-type: none"> <li>• Leave with full pay with charge to credits from first day of disability with benefit continuation</li> <li>• Use of all credits</li> <li>• Sick Leave at 1/2 pay or IPP</li> <li>• LWOP</li> <li>• Section 71 coverage</li> </ul>

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Absence With Pay  
Workers' Compensation Leave

Section 21.8

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Purpose

The purpose of Workers' Compensation Leave is to protect employees against loss of income or loss of employment when they are necessarily absent from work because of an on-the-job injury or disease.

NOTE: The workers' compensation benefit available to eligible employees has been significantly changed by negotiated agreement from that provided by these Rules. Manual users should be careful to read and to apply the references to the negotiated provisions in the Related Contract Provisions column.

Eligibility

All employees subject to the Attendance Rules are eligible for leave under this Section provided the absence is caused by an occupational injury or disease as defined in the Workers' Compensation Law; the appointing authority is notified that the absence is caused by an occupational injury or disease and that the employee wishes to claim benefits under the Workers' Compensation Law; the claim for benefits is not controverted by the State Insurance Fund (see "Controverted Cases" below); and the employee incurred the injury or disease while he/she was a State employee.

The appointing authority may withhold or terminate leave under this Section if it is determined that the employee has been permanently incapacitated from the performance of his/her duties. The notification of termination of leave under this Section must occur no less than 30 days nor more than 60 days prior to the effective date of termination in the manner prescribed by Section 5.9 of the Rules for the Classified Service.

Procedures for Granting Workers' Compensation Leave

Agencies must establish uniform criteria and procedures for the granting of leave under this Section. The procedures must incorporate notification as specified in Section 5.9 of the Rules for the Classified Service which includes the effective date of leave, the amount of paid leave to be granted and the employee's rights pursuant to Section 71 of the Civil Service Law.

Related  
Contract  
Provisions

C-11

C-20



NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Absence With Pay  
Workers' Compensation Leave

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Controverted Cases

The State Insurance Fund, at the request of the appointing authority or on its own initiative, may controvert an employee's claim for benefits under the Workers' Compensation Law.

An employee whose case is controverted may not be granted leave under this Section. However, controversion does not affect eligibility for leave under other provisions of the Attendance Rules.

If the final determination in a controverted case is in favor of the employee, he/she is entitled to leave under this Section for all absences covered by this determination and all future compensable absences attributable to this work related injury, provided the eligibility requirements are met, and in accordance with "Amount of Leave to be Granted" below.

Amount of Leave to be Granted

An eligible employee must be granted a leave of absence under this Section for the period necessitated by the injury or disease up to a cumulative maximum of one year (365 calendar days).

The appointing authority may grant an extension of this one year maximum in accordance with Section 22.1 of the Attendance Rules.

At the discretion of the appointing authority, a cumulative maximum of six months (182.5 calendar days) of this leave may be granted at full pay without charge to leave credits. (See Appendix F for additional information on the leave entitlement for managerial/confidential employees).

Sick leave, vacation, holiday, and overtime credits may be used during such leave. Following this, and at the discretion of the appointing authority, an employee may use personal leave and be granted extended sick leave and sick leave at half-pay in accordance with the Attendance Rules.

Related  
Contract  
Provisions

C-11

C-20

C-12

C-26

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Workers' Compensation Leave

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An employee who is eligible for leave under this Section may be granted compensation leave with pay without charge to leave credits to attend hearings or medical examinations ordered by the Workers' Compensation Board. Such compensation leave with pay must be counted when computing the cumulative maximum of six months of leave with pay without charge to credits allowed under this Section.

Leave under this Section need not be granted beyond the date when the employee's job would normally terminate by operation of law or rule.

Calculation of Amount of Leave

Calculation of the "cumulative year" is based on calendar days (365 calendar days). Extended periods of absence are simply counted on a day-for-day basis. Intermittent short-term absences are counted on a day-for-day basis including all non-workdays that fall between two workday absences. For example, an employee with regular days off on Saturday and Sunday who is absent on workers' compensation leave on Friday and the following Monday has used up four days of his/her 365 calendar day entitlement. Such absences are counted toward the year regardless of the employee's pay status (i.e., on full pay with no charge to credits, on full pay with charge to credits, on half-pay or on leave without pay.)

Calculation of the six months of workers' compensation leave at full pay without charge to credits is also based on calendar days (182.5 calendar days). Extended periods of absence are counted on a day-for-day basis including all non-workdays that fall between two workday absences. (See Appendix F for additional information on managerial/confidential employees).

In calculating the six months of leave with pay and in calculating the cumulative year, less than full day absences are counted as fractions of a day. The partial day absence is calculated based on the number of hours of absence and the number of scheduled hours in the workday on which the absence took place. For example, an employee with a regular workday of ten hours who is absent for five hours has used 1/2 day of entitlement; an employee who has a regular workday of 7 1/2 hours who is absent 5 1/2 hours has used 3/4 day of entitlement.

Related  
Contract  
Provisions

C-13

C-26

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Earning of Vacation and Sick Leave Credits

An employee who is on leave with full-pay as provided by this Section shall earn vacation and sick leave credits in accordance with the Attendance Rules.

An employee who is on leave with full-pay or half-pay as provided in this Section shall be credited with personal leave and receive vacation bonus days on his/her anniversary date in accordance with the Attendance Rules.

Holiday Observance

An employee on leave with full-pay without charge to credits as provided by this Section on days observed as holidays by the State as an employer shall not be entitled to holiday compensation pay for these days nor to compensatory time off in lieu thereof.

Award Credited to State

An award by the Workers' Compensation Board of compensation for any period for which the employee receives or has received salary from the State is credited to the employee's agency as reimbursement for wages paid.

However, workers' compensation leave with pay cannot be rescinded nor can the employee be required to make reimbursement for the leave if no wage award is made for the period for which the leave was originally granted.

Restoral of Leave Credits

Leave credits, including sick leave at half-pay eligibility, are restored to an employee when an award of compensation has been made and credited to the State for a period(s) of absence(s) during which credits were used in connection with the grant of workers' compensation leave made under this Section. These credits are restored whether or not the employee ever returns to service. (Personal leave is not restored if the employee used this leave prior to the last anniversary date on which he/she was granted it.)

An employee who has returned to service after a leave of absence granted under this Section has one year in which to reduce his/her accrued credits to the maximum allowed beginning on the date of his/her return to service or the date on which his/her credits are restored, whichever is later. The employee continues to earn accruals during this period.

Related  
Contract  
Provisions

C-14  
C-25

C-28

C-20

C-14

C-27

Sec. 21.2,  
C-6

# NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

## ATTENDANCE AND LEAVE MANUAL

### Absence With Pay Workers' Compensation Leave

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Leave credits restored under the provisions of this Section may not be used again as part of leave granted under this Section for the same compensable injury or disease.

Cash payment for restored credits is made in accordance with the provisions of Part 23, "Drawing of Earned Credits Upon Separation or Entry Into Armed Forces," of the Attendance Rules.

#### Medical Examinations

An employee may be required to undergo a medical examination by a physician designated by the appointing authority in order to provide a basis for controversion of the claim, withholding or terminating leave under this Section because the employee is permanently incapacitated or determining the fitness of an employee prior to his/her return to work. The employee and designated physician will be provided a statement of the duties of the position in accordance with Section 5.9 of the Rules for the Classified Service.

On the basis of this examination the appointing authority may approve or deny the employee's return to work. If return is denied, the employee must be notified in accordance with the provisions of Section 5.9 of the Rules for the Classified Service of the right to contest this determination.

#### Procedures Upon Denial of Benefits

An employee may request the Civil Service Commission to review the appointing authority's determination in the event he/she is denied pay (full or half), as provided by the Attendance Rules, while on Workers' Compensation Leave. For further information see Section 26.3.

When the appointing authority has withheld or terminated a leave of absence under this Section on the grounds that the occupational injury or disease has permanently incapacitated the employee for performance of the duties of the position, the employee may appeal this determination in accordance with Rule 5.9 of the Rules for the Classified Service. State Personnel Management Policy Bulletin #90-02 dated July 5, 1990 details procedural guidelines for the notification and appeal process required pursuant to Rule 5.9.

#### Related Contract Provisions

C-30

C-11

C-29

C-24

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Negotiating Units:

Administrative Services Unit Article 11  
Institutional Services Unit Article 11  
Operational Services Unit Article 11  
Professional, Scientific and Technical  
Services Unit Article 13  
Rent Regulation Services Unit Article 13  
Security Services Unit Article 14.9  
Security Supervisors Unit Article 14.9

Effect:

The Workers' Compensation Leave provisions on pages C-10 through C-19 of this Section apply to all eligible Security Services Unit and Security Supervisors Unit employees regardless of the date of the accident or incident causing the current absence.

For employees in the other units listed above (ASU, ISU, OSU, PS&T and RRSU), the provisions on pages C-10 through C-19 apply to all eligible employees whose absence is the result of an accident or incident that occurred before April 1, 1986. For employees in one of these five units who incur or suffer an occupational injury or disease on or after April 1, 1986, the description of the benefits available for related absences begins on page C-20 of this Section.

As a handy reference, pages C-2 through C-9 of this Section contain a brief comparison of the benefits.

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ROLES AND RESPONSIBILITIES

<u>Agency</u>	<u>Leave Program</u>	<u>Supplemental Pay Program</u>
APPOINTING AUTHORITY	Makes independent determination of eligibility for WCL. Processes PR75s to provide employee with paid leave. Maintains records of leave granted. Restores leave credits. May terminate employee under Section 71 CSL. Files required forms with the Workers' Compensation Board.	Determines reportability of incident based on Workers' Compensation Law criteria. Provides salary continuation benefits to employees based on determination of eligibility by the State Insurance Fund (SIF). Maintains contact with Office of the State Comptroller (OSC), SIF, employee and supervisor regarding employee's continued eligibility for benefits, payroll status, and leave credits used, re-credited and restored. Maintains accurate records. Files and/or provides information for forms required by OSC, and the Workers' Compensation Board. May terminate employee under Section 71 CSL.
STATE INSURANCE FUND (SIF)	Pays Workers' Compensation Law benefits to employee. (The wage replacement portion of the benefit is credited to N.Y.S. if the employee is granted paid leave.) Determines compensability. May controvert claim.	Pays Workers' Compensation Law benefits to employees. (The wage replacement portion of the benefit is credited to N.Y.S. if employee absence is charged to leave credits.) May controvert claim. Maintains liaison with agency and OSC.
WORKERS' COMPENSATION BOARD (WCB)	Hears, judges merits of, and issues determinations on all workers' compensation cases. Directs SIF to pay benefits to the employee or N.Y.S. as appropriate.	Resolves controversies and may direct SIF to pay Law benefits to employee or agency.

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ROLES AND RESPONSIBILITIES

<u>Agency</u>	<u>Leave Program</u>	<u>Supplemental Pay Program</u>
OFFICE OF STATE COMP- TROLLER (OSC)	Processes PR75s submitted by agency.	Calculates amount of supple- mental payment. Maintains liaison with agencies and State Insurance Fund. Administers supplemental payment system. Processes forms submitted by agency.
CIVIL SERVICE	Administers Attendance Rules provisions as modified by negotiated agreements on Workers' Compensation Leave.	Administers Attendance Rules provisions as modified by negotiated agreements on Workers' Compensation Leave and Supplemental Pay Programs. Acts as liaison between SIF and agencies.

# NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

## ATTENDANCE AND LEAVE MANUAL

### Absence With Pay Workers' Compensation Program

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#### WORKERS' COMPENSATION PROGRAM PROVISIONS

	<u>Leave Program</u>	<u>Supplemental Pay Program</u>
APPLICABILITY	All employees covered by the Attendance Rules are eligible. Applies to any injury or illness arising from an incident that occurred prior to April 1, 1986, regardless of the date of absence for ASU, ISU, OSU, PS&T and RRSU. Applies to Security Services and Security Supervisors regardless of date of incident.	Applies to employees covered by the Attendance Rules whose injury or illness arose from an incident that occurred on or after April 1, 1986. Applies to ASU, ISU, OSU, PS&T and RRSU.
SECTION 71	Employee may be terminated after one cumulative year of absence due to occupational injury or disease, subject to certain reinstatement rights upon recovery in accordance with Rule 5.9.	No change.
WAITING PERIOD	There is an annual ten-work-day waiting period which may be waived upon request or is suspended if employee is absent for at least 20 consecutive workdays or hospitalized within first ten consecutive days of absence in calendar year. (No waiting period in Security Services and Security Supervisors Units.)	One waiting period per injury or disease. 1-7 calendar days of absence- no wage benefit payable. 8-14 calendar days - wage benefit payable beginning day 8. 15 calendar days or more - wage benefit retroactive to day one.



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Leave Program

Supplemental Pay Program

ADVANCING  
LEAVE

Agencies must advance sick leave to cover ten-workday waiting period to employees who have no leave accruals unless employee requests otherwise. Credits so advanced are repaid from future accruals.

If there is evidence of compensability confirmed by the SIF, agency must place employees who have no leave accruals on advanced leave until SIF begins making payments. Advanced leave is repaid by continuing employee on award and supplement following return to work for a period equal to the period of advanced leave.

COMPENSATION  
BENEFITS

Rate

Employee continues to receive full salary, while on six months paid workers' compensation leave without charge to credits and subsequently while charging credits. This is followed by sick leave at half-pay for which employee may be eligible and by LWOP.

Employee receives normal full salary while charging leave credits or while on advanced leave before SIF payments begin. When SIF payments begin, employee receives net pay (gross minus income taxes and FICA) comprised of SIF wage benefit and supplemental payment while on nine-month paid benefit.

After nine-month benefit, employee receives normal full salary while charging leave credits, followed by sick leave at half-pay for which employee may be eligible and by LWOP.

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	<u>Leave Program</u>	<u>Supplemental Pay Program</u>
Duration	Entitled to one year of leave of which the first six months are workers' compensation leave with full pay without charge to leave credits. The remaining six months are charged to accruals, sick leave at half-pay or LWOP.	Entitled to one year of leave of which nine months consist of net pay benefit (workers' compensation wage award plus supplement). The remaining three months are charged to accruals, sick leave at half-pay or LWOP.
STATUS	Employees on leave with pay without charge to credits are in full pay status for Civil Service Rules and Regulations.	Employees on the supplemental system are treated as though they were in full pay status for Civil Service Rules and Regulations.
LEAVE CREDITS		
Earning Leave Credits	Employee earns normal biweekly leave accruals while on workers' compensation leave without charge to credits and while charging leave accruals.	Employee earns normal biweekly leave accruals while charging leave accruals, while on advanced leave and while on the supplemental pay system.
Use of Leave Credits	Leave credits may be used to cover ten-day waiting period if not waived or automatically suspended.  Leave credits may be used prior to (or at any time during) the six-month workers' compensation leave upon employee request.  Leave credits may be used following six months of workers' compensation leave at full-pay without charge to leave credits.	Leave credits may be used to cover 7 calendar day statutory waiting period and the period of absence until SIF begins making payments.  Leave credits may be used prior to the nine-month supplemental pay benefit upon employee request.  Leave credits may be used following nine months of supplemental pay benefits.

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Leave Program

Supplemental Pay Program

Restoration  
of Leave  
Credits

Applies only to credits used following six months of paid workers' compensation leave (or used earlier at employee option). Leave credits restored cannot be used for absences due to same illness or injury.

Applies only to credits used following nine months of award and supplement (or used prior to wage benefit at employee option). Leave credits restored cannot be used for absences due to same illness or injury.

Employee may exceed vacation and sick leave maximums for one year following restoration of credits or return to payroll, whichever occurs later.

No change.

Holidays

Employees observe holidays while charging leave accruals but not during the six months' leave with pay without charge to credits.

Employees observe holidays while on advanced leave, while charging leave accruals and when on the supplemental payment system following return to work but not while absent due to injury and on the supplemental payment system.

OTHER LEAVES

Ex: Jury,  
Civil  
Service  
Exams,  
Military

An employee disabled by an on-the-job injury remains on workers' compensation leave even though able to perform other activities.

There is no change under the plan. Employees continue on the workers' compensation benefit as long as they are disabled.

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	<u>Leave Program</u>	<u>Supplemental Pay Program</u>
CONTROVERTED OR CONTESTED CLAIMS	<p>An employee is ineligible for workers' compensation leave if agency determines that injury is not job related or that employee is not or is no longer disabled. Agency cannot grant workers' compensation leave if SIF controverts claim until such controversion is resolved.</p> <p>If contest or controversion is resolved in employee's favor by Workers' Compensation Board, agency may continue to withhold workers' compensation leave for reasons, other than controversion, of which agency advised employee in writing.</p>	<p>An employee is ineligible for supplemental payments if SIF controverts the claim on grounds that injury is not job related or that employee is not disabled.</p> <p>If contest or controversion is resolved in favor of employee by Workers' Compensation Board, SIF must begin making payments and employee becomes eligible for these workers' compensation benefits including supplemental pay benefits.</p>
MEDICAL EXAMS	<p>Decision made to grant workers' compensation leave based on employee's doctor's statement and/or EHS or SIF medical examination at agency option.</p> <p>Return to work decision made by agency based on employee submitted documentation or EHS physical or SIF physical.</p>	<p>Decision on eligibility for workers' compensation benefits made by SIF or WCB.</p> <p>Return to work decision made by agency based on employee submitted documentation, Workers' Compensation Board awards, EHS physical or SIF documentation.</p>
MEDICAL DOCUMENTATION	<p>Obtained from employee's physician and EHS or SIF physicians.</p>	<p>Obtained from employee's physician and EHS or SIF physicians.</p>

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	<u>Leave Program</u>	<u>Supplemental Pay Program</u>
LIMITED/ LIGHT DUTY	On a case-by-case basis at agency discretion.	No change.
PAYROLL MATTERS	Employee remains on regular payroll receiving full salary.	Employee placed on supplemental payment system. Salary adjustments may be made while employee is on supplemental payment system.
RECORD KEEPING	Source documents include agency accident report forms, regular payroll and time records.	Additional source documents include supplemental payment records and SIF records.

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Workers' Compensation Program  
Leave Program

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Introduction

The discussion on pages C-10 through C-19 is a description of the workers' compensation leave program which applies to the following employees:

1. Employees in ASU, ISU, OSU, PS&T and RRSU who have Attendance Rules coverage and whose absence is caused by a workers' compensation injury or disease resulting from an incident that occurred before April 1, 1986.
2. Employees in the Security Services and Security Supervisors Units who have Attendance Rules coverage and whose absence is caused by a workers' compensation injury or disease regardless of the date of the incident.

Contract provisions concerning workers' compensation leave are virtually identical for all units with the following exceptions:

For Institutional Services Unit employees, denial of workers' compensation leave for the reason that the employee could report to work on a full-time or part-time basis must be based on a medical report submitted by a physician appointed by the Civil Service Commission and not employed in the same department or agency as the employee. The proviso applies only to those cases where the employee is on compensation leave and the issue involves his/her ability to report for duty on a full-time or part-time basis. It does not apply to medical examinations required under Section 21.8 of the Attendance Rules or under Article 11 for other purposes.

For Security Supervisors and Security Services Unit employees there is no provision for a waiting period before granting workers' compensation leave with full pay without charge to credits.

In addition, the article on jury duty (14.8[c]) in these two agreements requires the appointing authority to reschedule midnight or afternoon shift employees to a normal day shift for the day on which they are required to attend a workers' compensation hearing, provided the employee submits a written request for the shift change at least three days prior to the scheduled hearing. The employee's written request should be accompanied by a copy of the notice of the hearing.

Once changed to the day shift, employees are required to be at work except for the actual time of attendance at the workers' compensation hearing, including necessary travel time.

# NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

## ATTENDANCE AND LEAVE MANUAL

### Absence With Pay Workers' Compensation Program Leave Program

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#### Eligibility

An employee who is eligible for and is granted a leave of absence up to a cumulative total of one year, pursuant to Section 21.8 of the Attendance Rules (see Section 21.8, pages 1 and 2), is entitled to such leave of absence unless:

1. the appointing authority has good and sufficient reason to believe that the employee's disability is not job related or is primarily due to some preexisting medical condition;
2. the appointing authority has good and sufficient reason to believe that the employee could return to work on a full-time or part-time basis (for employees in the Institutional Services Unit, such belief must be based exclusively on a medical report from a physician appointed by the Civil Service Commission who is not employed in the same agency as the employee);
3. the employee's services would have been terminated under the law (e.g., position abolished, temporary service funds exhausted, eligible list certified, permanent disability, etc.); or
4. the employee's claim for benefits is controverted by the State Insurance Fund. (In such a case, the employee would not be eligible for leave under Section 21.8 in any event until or unless the Workers' Compensation Board resolves the controversion in the employee's favor and the controversion was the agency's sole reason for denying the workers' compensation leave.)

#### Denial of Leave Benefits

When an employee is denied workers' compensation leave, he/she must be advised in writing of such denial and the reasons therefore within the time frames and guidelines established pursuant to Rule 5.9 of the Rules for the Classified Service. As additional reasons for withholding compensation leave with pay are ascertained these should be forwarded to the employee. Whenever all of the acknowledged reasons for denying compensation leave with pay are resolved in favor of the employee (as determined by the appointing authority or pursuant to the grievance procedure), the employing agency may not continue withholding leave for reasons not previously given the employee in writing.

If an employee is granted workers' compensation leave and the appointing authority subsequently determines that he/she was not entitled to the leave, the appointing authority is obligated to provide the same written notice as in the case of initial denial.

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Where the sole stated reason for denying workers' compensation leave is that the State Insurance Fund has controverted the case, the agency may no longer continue to withhold workers' compensation leave if the Workers' Compensation Board rules in favor of the employee. However, if controversion was only one of the stated reasons for denying workers' compensation leave, the agency may continue to withhold workers' compensation leave despite the fact that the Workers' Compensation Board has resolved the controversion in the employee's favor.

#### Pay During Leave - Full-Pay

The subject contract provisions on workers' compensation leave mandate the extension of compensation leave with pay without charge against credits for up to six months before the employee is required to charge absences to leave credits, unless the employee elects to use his/her credits first.

An employee granted workers' compensation leave with pay shall be granted such leave without charge to credits (up to a cumulative total of six calendar months) and, unless he/she elects to use leave credits, may not be required to charge such absences against credits until he/she is absent in excess of six months (cumulative total). An employee may elect to use credits while absent on compensation leave for all or part of the period of absence. (Normally an employee would elect to do so only when he/she has accumulated maximum or near maximum leave accruals and wishes to avoid losing additional leave accruals while on compensation leave with pay. Agencies should advise employees of their leave balances during a period of absence and alert them to their rights.)

#### Pay During Leave - Half-Pay

The appointing authority must grant paid leave in the order prescribed by the contract provisions, including the extension of sick leave at half-pay. However, sick leave at half-pay may not be granted until the employee has first exhausted eligibility for compensation leave with pay without charge to leave credits and then his/her own leave accruals.

While sick leave at half-pay must be granted if the employee continues on leave after exhausting leave credits, the amount of sick leave at half-pay extended cannot exceed that which is otherwise available to the employee pursuant to Section 21.5 of the Attendance Rules.

#### Section 71 Civil Service Law

Section 71 provides that an employee who is disabled as a result of an occupational injury or disease is entitled to a leave of absence for a minimum of one cumulative year (365 calendar days), unless found to be permanently disabled.

The cumulative year of mandatory leave includes periods of leave with pay (with or without charge to leave credits), periods of sick leave at half-pay and periods of leave without pay. For calculation of the "cumulative year" see page 3 of this Section.



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An employee absent on workers' compensation leave for a cumulative total of one year may have the leave ended as provided by Section 71 and in accordance with Rule 5.9 of the Rules for the Classified Service, irrespective of the employee's remaining balance of leave credits or eligibility for sick leave at half-pay. Nothing in the contract items should be construed to require extension of compensation leave beyond that required under law or rule. However, an employee who is granted leave beyond the one-year period is entitled to the paid leave benefits provided by the Attendance Rules and negotiated agreements.

An employee entitled to compensation leave with pay (with or without charge to leave credits) is entitled to leave irrespective of whether the employee is absent for a full day, for less than a full day, for a block of time or for intermittent absences.

Procedural guidelines for the implementation of Rule 5.9 of the Rules for the Classified Service which details the notification and appeal provisions required by Section 71 are contained in the State Personnel Management Manual Policy Bulletin #90-02 dated July 5, 1990.

#### Return to Duty on a Reduced Schedule or to a Limited Duty Assignment

An employee may be denied compensation leave with and/or without pay if the appointing authority has good and sufficient reason (e.g., competent medical evidence) to believe that the employee is not so disabled as to prevent him/her from reporting for work. (For employees in the Institutional Services Unit, such denials of leave will be based on medical examinations and reports made by a physician designated by the Employee Health Service of the Department of Civil Service.)

An employee who is not able to return to duty and work his/her full normal work schedule may, at the discretion of the appointing authority, be allowed to return to modified duty. The employee might work on a reduced schedule or limited duty for a brief or extended period of time pending full recovery. The employee, however, is not entitled to return to duty until he/she is able to perform the normal and regular duties of his/her position working his/her normal work schedule. If the employee is allowed to return on modified duty, such employee may, at the discretion of the appointing authority, be granted compensation leave with pay (subject to the cumulative six-month limitation) to cover the difference between the hours worked and the number of hours in the normal workday or workweek.

In the case where an employee is allowed to return to work on a reduced schedule or to a limited duty assignment, the appointing authority should specify in writing the duration of the arrangement. If the employee is not able to return to full duty status at the end of this period, the appointing authority must decide whether to continue the arrangement for an

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## ATTENDANCE AND LEAVE MANUAL

### Absence With Pay Workers' Compensation Program Leave Program

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additional limited period or to return the employee to full-time workers' compensation leave.

#### Earning Vacation and Sick Leave Accruals, Crediting Personal Leave and Holiday Observance

These contract provisions do not provide any benefit not already provided under the Rules or other contract provisions. Upon request, employees are entitled to interrupt workers' compensation leave with pay without charge to leave credits at any point in order, for example, to charge vacation or personal leave to avoid exceeding the allowable maximum or forfeiting personal leave prior to their personal leave anniversary date. Agencies should advise employees of their leave balances during a period of absence and alert them to their rights to request use of leave credits. There is no provision for employees in the ASU, ISU, OSU, Security Services, or Security Supervisors Units who are on workers' compensation leave with pay without charge to credits to automatically exceed the vacation maximum. PS&T and RRSU represented employees retain their rights under the contract to exceed the vacation maximum (except on April 1 of each year) while on workers' compensation leave with pay without charge to credits. See p.4 for a further discussion of entitlement to these benefits.

#### Reimbursement to State

An employee allowed compensation leave with pay without charge to leave credits shall be required to reimburse the State for such paid leave from current or subsequent accumulations of leave credits if it is subsequently found that the employee was not entitled to such paid leave. For example, an employee on compensation leave with pay without charge to credits for 15 days who is subsequently determined to have been absent from work for reasons not related to an on-the-job injury would owe the State 15 days of leave accruals and would be required to make repayment in a manner devised by the agency.

#### Restoration of Leave Credits

See p.4 of this Section for a complete discussion of restoration of leave credits for employees who have been granted workers' compensation leave pursuant to the Rules and agreements. Should the restoration of leave credits bring an employee's balances over the allowable maximums, the employee will have one year from the date of restoration or return to work, whichever is later, to reduce the balances to the allowable maximums. This provision is considered to supersede Article 10.5 of the ASU agreement, 10.6 of the ISU agreement, 10.5 of the OSU agreement, 12.4(c) of the PS&T agreement and 12.4(a) of the RRSU agreement on vacation maximums. Credits restored pursuant to these provisions are not lost on March 31.

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#### Medical Examinations

See pp.5 and C-30 of this Section for information on medical examinations. The State Insurance Fund (SIF) has a program which includes priority medical examinations following accidents or incidents and comprehensive medical examinations for long-term or problem cases. This program is available to State agencies for all employees who claim occupational illness or injury. Details are available from the appropriate SIF Regional Office.

It should be stressed that absences in connection with occupational injuries are subject to the same medical substantiation requirements as are other absences chargeable to sick leave. Acceptable medical documentation should be obtained when making the decision to grant workers' compensation leave, at appropriate intervals throughout the leave and as a condition of return to work.

#### Waiting Period

The agreements for ASU, ISU, OSU, PS&T and RRSU provide for a ten-workday waiting period for employees who are granted workers' compensation leave in accordance with relevant contract provisions for injuries/diseases which began prior to April 1, 1986. Nothing in the subject contract articles should be construed to require the extension of workers' compensation leave under Section 21.8 of the Attendance Rules or compensation leave with pay under the negotiated agreements in any case where the leave would not otherwise be approved. The ten-workday waiting period and the provisions for advancing of leave credits apply only to persons granted such leave in accordance with the Attendance Rules and the agreements.

#### Determination of Waiting Period

An employee granted workers' compensation leave with pay shall, for each separate injury or disease, charge the first ten workdays of compensation leave in any one calendar year or in any one continuous period of leave to leave accruals, if available. If the employee is on leave for a continuous period spanning successive calendar years, he/she is subject to the ten-workday waiting period at the beginning of his/her absence in the first year but not for another ten days during the first ten "workdays" of the second year. However, if the employee returns to work during the second year and is subsequently absent later that same year, the employee must again charge the first ten workdays of absence in the second calendar year to leave accruals. Although the ten-workday waiting period is imposed for each separate accident or incident and for each calendar year for each separate accident or incident, an employee may not be required to charge more than ten workdays in any one calendar year to accrued credits for

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absences attributable to the same accident or incident. An employee absent intermittently each year for five years, because of a disability arising out of an accident which occurred in the first year, is required to charge the first ten workdays in each of those five years to accrued credits. An employee who suffers three separate injuries or diseases as a result of three separate accidents or incidents in one calendar year is subject to the ten-workday waiting period for each separate accident or incident for a total of 30 workdays during that calendar year.

#### Determination of Waiting Period for Employees Who Work Less Than Five Days Per Week

For an employee who works on a part-time basis or on a full-time basis but for less than five days a week, the total amount of leave charged during the waiting period per accident per calendar year shall not exceed the number of hours normally and regularly worked by the employee in a biweekly pay period; i.e., the usual waiting period for full-time employees is 75 or 80 hours and for 1/2 time 1/2 pay employees, it is 37 1/2 or 40 hours.

#### Waiting Period Must Be Charged to Available Credits

The requirement that the waiting period be charged to credits (as opposed to leave without pay) is not optional so long as leave credits are available.

#### Advancing of Credits to Cover Absence During Waiting Period

In accordance with contract provisions, the appointing authority shall advance leave credits to any employee who normally earns and accumulates leave credits if the employee does not have sufficient accruals to cover the ten-workday waiting period unless the employee advises the appointing authority, in writing, that he/she does not wish to be advanced credits and prefers to go on workers' compensation leave without pay. An employee who does not earn and accumulate leave credits (e.g., a part-time annual salaried employee working less than half-time and less than five days a week) and has no available accruals against which to charge the waiting period must be placed on workers' compensation leave without pay for the ten workdays.

All credits advanced under this Section must be repaid by the employee from subsequent leave accumulations at a rate and in a manner determined by the appointing authority. In no event can credits so advanced for any one accident or incident in any one calendar year exceed the number of hours normally and regularly worked by the employee in a biweekly pay period--75 or 80 hours for full-time employees or 37 1/2 or 40 hours for 1/2 time 1/2 pay employees. (The outstanding unrepaid leave credits advanced to any

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employee shall not at any time exceed a cumulative total of ten workdays or the number of hours normally and regularly worked by the employee in a biweekly pay period and leave credits should not be advanced in any case where repayment cannot possibly be made by the employee; e.g., where the employee's services are expected to terminate during or at the close of the waiting period.)

#### No Restoration of Credits Used During Waiting Period

When the employee is required to serve a waiting period, the subject contract articles prohibit the restoration of leave credits to the employee as otherwise provided in Section 21.8 of the Attendance Rules and in the negotiated agreements if the credits were used to cover absences during a ten-workday waiting period. In no event may credits used during the first ten workdays of a compensation leave be restored to the employee even if the Workers' Compensation Board rules in his/her favor. Pursuant to a court decision (Jefferson decision), where the employee is required to serve a waiting period, the workers' compensation wage award for the waiting period is no longer credited to New York State as reimbursement for wages paid but is paid directly to the employee. (In cases where the waiting period is initially charged to credits and is subsequently waived or suspended, the employee's leave record is reconstructed. See p. C-19.)

#### Hearings or Ordered Medical Examinations During Waiting Period

Absences necessitated by attendance at Workers' Compensation Board or State Insurance Fund-ordered hearings or ordered medical examinations shall not be charged against leave credits even though they occur during the ten-workday waiting period. If an employee is required to attend a hearing or examination during a ten-workday waiting period, time off for attendance including reasonable travel time should be charged as workers' compensation leave with pay and the balance of his/her absences during that ten-day period charged against leave credits. If, for example, the employee is necessarily absent at a Board ordered hearing for two full days during a ten-day waiting period, eight days would be charged against leave credits and two days as workers' compensation leave with pay without charge to leave credits--the waiting period is not extended by two workdays. These absences to attend hearings or ordered medical examinations are charged against the six-month maximum of workers' compensation leave at full pay.

#### Holidays Which Fall During Waiting Period

When an employee is required to serve a waiting period and a holiday occurs during the waiting period, the absence on that day should be charged as a holiday and not against credits; i.e., the waiting period would consist of nine days charged to sick leave credits and one day as a holiday.

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#### Suspension of Waiting Period

The subject contract provisions provide for suspension of the ten-workday waiting period under the following conditions:

1. If an employee is required by a physician to be admitted to a hospital as an inpatient at any time during the first ten consecutive workdays following injury or onset of disease, the normal waiting period is automatically suspended and he/she is not required to charge the first ten days of absence to leave credits. If an employee is similarly hospitalized at any time during the first ten consecutive workdays of related absences in subsequent years, the waiting period normally applied during those ten days is also suspended.
2. If an employee is necessarily absent on workers' compensation leave for 20 or more consecutive workdays at any time following injury or onset of disease, the waiting period for that calendar year is automatically suspended. It is also suspended if the employee is absent for 20 or more consecutive workdays in subsequent years; i.e., the waiting period is not applied in any calendar year during which the employee is necessarily absent for 20 or more consecutive workdays in that calendar year.

#### Waiver of Waiting Period

An employee necessarily absent from duty because of an occupational injury or disease may, within 45 calendar days of the occurrence of the injury or disease or first day of related absence, make written application for waiver of the ten-workday waiting period. If the request for waiver is approved by the department or agency head, the employee is not required to serve the normal waiting period. These requests should not be unreasonably denied. (Denial of a waiver request is not grievable or otherwise reviewable.) For related absences in subsequent calendar years, waiver applications must be filed within 45 calendar days of the first day of absence in each calendar year.

In cases where the appointing authority has no doubt concerning the legitimacy of the employee's claim for workers' compensation leave, and, in fact, has granted workers' compensation leave to the employee, and would have granted a timely request by the employee for a waiver of the initial ten-day charge, the appointing authority should grant the employee's request for a waiver even though the request is not made within the 45-day time limit specified in the agreement. (See GOER Memorandum OER-83-3, dated April 1, 1983.)

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Reconstruction of Leave Record Following Waiver or Suspension of Waiting Period

Where the employee has charged the ten-workday waiting period to leave credits and a waiver request is subsequently approved, or the employee qualifies for suspension of the waiting period, the agency reconstructs the employee's leave record as though workers' compensation leave with pay without charge to credits had been granted from the first date of absence. Inasmuch as this is a reconstruction or correction of a leave record and is not a restoration of credits as contemplated in Section 21.8 of the Attendance Rules and related contract provisions, the employee is entitled to use credits originally charged in connection with the waiting period for absences resulting from the same injury or illness.

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#### Introduction

The discussion on pp. C-20 through C-33 of this Section is a description of the workers' compensation benefit that applies to the following employees:

Employees in ASU, ISU, OSU, PS&T and RRSU who have Attendance Rules coverage and whose absence is caused by a workers' compensation injury or disease resulting from an accident or incident that occurred on or after April 1, 1986.

#### Eligibility

To be eligible to receive benefits, an employee must have attendance rules coverage and must be disabled because of an occupational injury or disease as defined in the Workers' Compensation Law. In addition to bargaining unit employees who are subject to the Attendance Rules of the Civil Service Commission, employees subject to the following Attendance Rules are eligible: Attendance Rules for Institution Teachers of the Department of Correctional Services, Attendance Rules for Institution Teachers of the Office of Mental Health, Attendance Rules for Institution Teachers of the Office of Mental Retardation and Developmental Disabilities, Attendance Rules for Institution Teachers of the Division for Youth; civilian personnel subject to the Attendance Rules of the Division of State Police; and employees of Rome School for the Deaf and Batavia School for the Blind who are subject to the Regulations of the Commissioner of Education.

Annual salaried full-time and part-time employees (including those employed on a seasonal basis) have attendance rules coverage and are eligible for this benefit. Full-time and part-time employees (including those employed on a seasonal basis) who are paid on an hourly or per diem basis must have gained Attendance Rules coverage, by having completed the required 19 qualifying biweekly pay periods, prior to becoming eligible for this benefit. However, once rule coverage is attained, these employees' benefits are identical to those available to annual salaried employees.

For the purpose of entitlement to any employer-provided workers' compensation benefits, the State of New York is considered to be one employer. Therefore, if an employee has a work-related injury or disease from employment with agency A, moves to agency B and is again absent for the same condition, agency B must provide such employee with any benefit not already used at agency A and, therefore, still available for this injury or disease. Likewise, if a person works for two state agencies and incurs an occupational injury at one of them, the employee must be given leave benefits by both employers, to the extent he/she is eligible, and the benefits provided by each employer must be added together to determine the total benefit used by the employee.



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An employee who has a full-time annual salaried position in one agency and an extra-service position in another agency, who incurs an occupational injury with either employer, is entitled to leave from the annual salaried position (Attendance Rules coverage) and no leave from the extra-service position (no Attendance Rules coverage).

The eligible employee's entitlement to either the workers' compensation leave program or supplemental pay program is determined by the bargaining unit to which the employee belonged at the time of the accident or injury. For example, an eligible employee is injured on October 1, 1988 while in the Security Services Unit. He changes jobs on October 15, 1988 and is in an Institutional Services Unit position. On November 3, 1988 he begins losing time from work due to his October 1, 1988 accident. This employee is eligible for the workers' compensation leave benefit for any disability related to the October 1, 1988 accident because his absence is due to an incident that occurred while he was subject to the provisions of the Security Services Unit agreement. Any new incidents which occur while he is an Institutional Services Unit employee will be subject to the provisions of the supplemental pay program.

#### Waiting Period

1. No wage replacement benefit is payable if the absence due to a workers' compensation injury or disease does not exceed seven calendar days.
2. If absence is for at least eight calendar days, but does not exceed 14 calendar days, wage replacement benefits are payable beginning with the eighth day of absence.
3. Once absence due to a single injury or disease is for 15 calendar days or more, wage replacement benefits are payable retroactively to the first day of absence.

These waiting period provisions contained in the Workers' Compensation Law have been incorporated into the workers' compensation benefit provided in the subject negotiated agreements. During the waiting period, employees must be allowed to charge absences to leave credits. If the absence due to an injury or disease never exceeds 14 calendar days, credits charged during the first seven calendar days are not returned because there is no wage replacement benefit payable.

There is, however, one exception to the statutory waiting period. An employee whose injury involves limbs or facial disfigurement may be entitled, under the Workers' Compensation Law, to a wage award based on a "schedule loss." That is, the employee is eligible for a minimum number of weeks of wage replacement, as identified on a schedule in the Law, regardless of the actual amount of lost time. An employee who receives a schedule loss and whose absence is less than eight calendar days, is entitled to have leave accruals that were charged as a result of the occupational disability reccredited. State Insurance Fund Form C-8 indicates the time period covered by the schedule loss award. Only accruals that were actually charged should be reccredited.

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The first day of compensable lost time for the purpose of calculating the waiting period and eligibility for benefits is determined by the State Insurance Fund (SIF). The appointing authority, when reporting an accident or incident to SIF, must include the time and date of the accident/incident. When SIF notifies the agency that it is ready to begin making payments, it will specify the dates covered. From that, the agency will know which day is considered to be the first day of compensable lost time for the purpose of calculating both the nine-month supplemental benefit and the total absence.

The Workers' Compensation Law statutory waiting period is applied only once per injury or disease and is met by cumulating the employee's absences in days.

#### Advanced Leave

This workers' compensation benefit contains a provision for keeping an employee eligible for benefits in full-pay status during the time between exhaustion of all available leave credits and receipt of the award and supplement. This is called "advanced leave." (Please note that this is not Extended Sick Leave under Section 21.4 of the Rules which has a five-day maximum.) Once an employee has been absent for at least eight calendar days and the appointing authority is satisfied that such employee will be eligible for the supplemental pay benefit, the employee must be placed on "advanced leave," upon exhaustion of all other leave credits, unless the employee requests otherwise in writing. An employee absent for 15 calendar days or more is eligible for advanced leave beginning with the first day of lost time. This advanced leave is "repaid" by the employee because the employee remains on the supplemental payment system upon return to work for the number of work days equal to the number of days he or she received "advanced leave" at the beginning of his/her absence. The only difference between charging leave credits and being on "advanced leave" during the period prior to receipt of the supplemental pay benefit is that, when the employee is reccredited with leave used during that period, there is nothing to be reccredited for a period of "advanced leave."

An employee who is continuously absent for six weeks, for example, is eligible for the pay benefit beginning with the first day of compensable lost time. Assume that this employee charges two weeks (weeks 1 and 2) to leave credits and then runs out of credits and is placed on advanced leave for two weeks (weeks 3 and 4) before the supplemental pay begins (weeks 5 and 6). When the supplemental pay begins, the employee is eligible to have the two weeks of leave credits (weeks 1 and 2) reccredited. This employee remains on the supplemental payment system for the remaining two weeks of absence (weeks 5 and 6) and continues on the supplemental payment system for the next four weeks (weeks 7-10) that he or she is back at work (the two weeks of charging leave credits [weeks 1 and 2] and the two weeks of advanced leave [weeks 3 and 4]).

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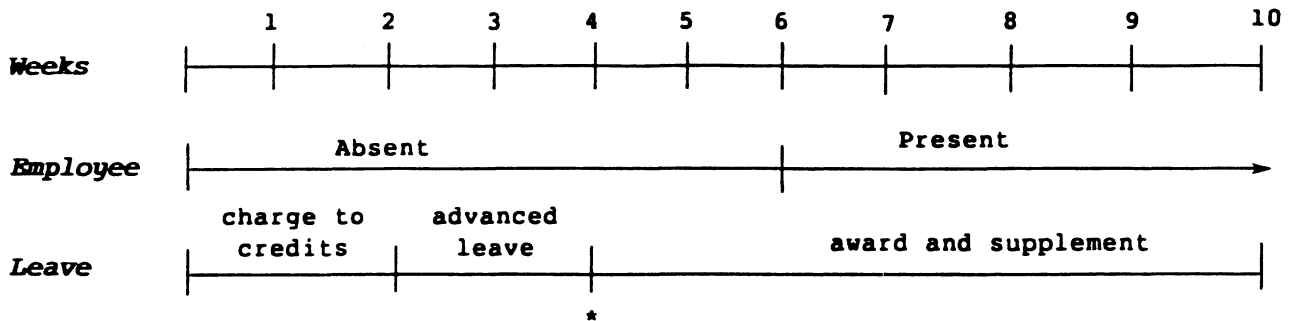
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The time line below graphically illustrates this example.



\*Recredit two weeks of accruals.

An employee absent on advanced leave accrues biweekly credits and is eligible to be granted vacation bonus days, additional vacation days and personal leave but is not entitled to have his/her status changed to use those credits.

If it is subsequently determined that an employee was not eligible for advanced leave, for example, because he/she was not absent due to a work-related injury/illness, the employee must repay all advanced leave in a manner prescribed by the State Comptroller.

An employee who is receiving advanced leave, prior to being placed on the supplemental payment system, is considered to be in full-pay status for the purpose of Civil Service Rules and Regulations.

#### Compensation Benefit

This workers' compensation benefit is payable for nine cumulative months (39 weeks) of absence for each occupational injury or disease as determined by the Workers' Compensation Board. The wage benefit is payable from two sources. The employee will receive direct payments from the State Insurance Fund of the wage replacement benefits due under the Workers' Compensation Law. The employee will also receive from the Office of the State Comptroller a supplemental paycheck which will be calculated to provide the employee with his/her current net salary.

Net salary is defined as an employee's normal gross salary minus all taxes and FICA. The Office of the State Comptroller will calculate an employee's net salary and will recalculate the supplemental paycheck each time the State Insurance Fund payments change to ensure that the employee receives full "net" salary for all eligible absences in the combined income from the two checks. The payroll requirements are detailed in Office of State Comptroller Payroll Bulletin No. P-665, dated September 4, 1990.

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Following exhaustion of this nine-month compensation benefit, an employee is eligible to charge leave credits and must be granted any sick leave at half-pay for which he/she is eligible and leave without pay until the absence totals one cumulative year for any single injury or disease. (Further leave is at the discretion of the appointing authority.)

Regardless of the employee's eligibility for workers' compensation benefits from his/her employer under either the Leave Program or the Supplemental Pay Program, both medical expenses and wage replacement benefits provided by the Workers' Compensation Law continue while the employee is disabled. To insure the employee receives the correct benefit pursuant to the Workers' Compensation Law and negotiated agreements, it is critical that the agency keep the State Insurance Fund informed of the employee's status throughout the period of disability.

#### Status

While an employee is absent and receiving pay from the supplemental payment system he/she is considered to be on a full paid leave for the purpose of Civil Service Rules and Regulations. An employee who has returned to work, although still being paid from the supplemental payment system, is treated in the same manner as any other employee who is physically present at work. That is, an employee present at work but on the supplemental payment system earns overtime compensatory time and must be paid overtime (based on normal gross salary) if he/she works beyond 40 hours. Also, the employee is eligible for holiday pay and all other additional salary factors available to employees who are at work.

#### Section 71 Civil Service Law

The supplemental payment system in no way changes the provisions of Civil Service Law. Section 71 provides that an employee who is disabled as the result of an occupational injury or disease is entitled to a leave of absence for a minimum of one cumulative year (365 calendar days) unless found to be permanently disabled.

The cumulative year of mandatory leave includes periods of award and supplement, periods of absence charged to leave credits, periods of advanced leave, sick leave at half-pay and periods of leave without pay. For calculation of the "cumulative year" see page 3 of this Section.

Employees absent for one cumulative year because of an occupational injury or disease may be continued in employment at the discretion of the appointing authority but are not entitled to be so continued.

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Procedural guidelines for the implementation of Rule 5.9 of the Rules for the Classified Service which details the notification and appeal provisions required by Section 71 are contained in the State Personnel Management Policy Bulletin #90-02 dated July 5, 1990.

#### Earning Leave Credits

While absent and charging leave credits or receiving advanced leave because of an occupational injury or disease, an employee earns normal biweekly leave credits. This employee is also granted vacation bonus days or additional vacation credits and personal leave, if the anniversary dates fall during this period. An employee absent and on the supplemental payment system is considered to be in full-pay status for the purpose of crediting leave and, therefore, earns and is granted leave credits in the same manner as the employee in full-pay status. Once an employee returns to work, eligibility to earn and be granted leave credits is determined by his/her actual attendance during each pay period.

Whenever an employee in one of the bargaining units covered by this benefit is absent due to an occupational injury or disease, he/she is considered to have invoked the contract provisions which allow exceeding the 40-day vacation maximum and, therefore, must be allowed to accumulate vacation beyond the maximum until the following March 31. (Employees in the PS&T Unit and RRSU can always exceed 40 days except on April 1 each year.) Refer to p. C-27 of this Section for the impact of restored credits on vacation maximums.

Agencies should advise employees of their leave balances during a period of absence and alert them to their rights to request use of leave credits prior to issuance of the nine-month supplemental pay benefit to avoid losing these credits. For example, an ISU employee who has a high vacation balance and whose disability may extend through April might request use of vacation to avoid losing credits over 40 days on April 1. An employee may choose to use personal leave prior to placement on the pay benefit to avoid loss of those days if his/her anniversary date is approaching. Of course, this extends entitlement to the supplemental pay benefit for the same number of days in the future as the employee has charged to leave credits.

Credits used in lieu of placement on the supplemental payment system will be restored to the employee pursuant to a Workers' Compensation Board award. They are not reccredited credits because the employee chose to use credits rather than start the supplemental pay benefit. These periods are treated in a manner similar to those that occur after exhaustion of the nine-month benefit when the employee is charging credits (which are later restored following an award by the Workers' Compensation Board).

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#### Use of Leave Credits

Leave credits may be used during the waiting period or an employee may request leave without pay. Leave credits may also be used for all absences prior to the start of the compensation benefits from the State Insurance Fund and State Comptroller. An employee may request to use leave credits prior to receiving the nine-month supplemental pay benefit and the request must be approved. An employee may not interrupt a period of payment on the supplemental payment system to charge leave credits. The option to charge credits rather than begin the supplemental pay benefit can only be exercised prior to placement on the supplemental payment system. Once the nine-month pay benefit is exhausted, an employee is eligible to use leave credits and must be granted the sick leave at half-pay for which he/she is eligible for all additional absences until the cumulative total absence exceeds one year.

Once an employee has returned to work (whether receiving full pay or supplemental pay), use of leave credits is subject to the same procedures applied in any other circumstance. For example, holiday time off and requests for vacation are processed in the same way regardless of payroll status. Leave credits used are charged in accordance with the employee's actual work schedule. An employee who returns to work on a five 8-hour-day schedule who requests and has approved a day of personal leave charges eight hours, the number in the actual schedule. (This use of leave credits while on the supplemental payment process in no way entitles an employee to any additional salary.)

After an employee has returned to work following the initial period of disability, occasional absences related to the workers' compensation case, such as doctor visits, therapy or workers' compensation board hearings may occur. These absences must initially be charged to leave credits as all absences are charged. Until these absences are deemed compensable by the Workers' Compensation Board and a Notice of Decision is issued, the supplemental pay benefit will not be provided and agencies are precluded from recrediting or restoring the time charged.

These Supplemental Pay Program procedures differ from the provisions of the Leave Program which allow for the granting of workers' compensation leave with pay without charge to credits for all absences related to the disability up to the 6-month entitlement.

#### Recrediting Leave Credits

The employee absent due to a work related disability shall not suffer any loss of wages because of the disability. In order to maintain the employee in pay status while awaiting placement on the supplemental payment system, the agency "borrows" leave credits from the employee. At the point the employee returns to work, begins receiving supplemental payments, terminates service, or the nine-month benefit expires, whichever occurs first, these credits (used for compensable absences) are recredited to the

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employee (i.e., given back). The employee will receive the wage replacement (supplemental pay plus award) for periods of compensable absence for which leave credits were charged and recredited.

Leave credits used during the first seven calendar days of absence cannot be recredited unless an employee's absence exceeds 14 calendar days. These leave credits are then recredited to the employee when the employee begins receiving supplemental payments or returns to work, whichever occurs first, because he/she is eligible for wage benefits retroactive to the first day of absence. Leave credits used during the eighth through fourteenth day of absence are recredited to the employee when he/she begins receiving supplemental payments or returns to work, whichever occurs first, because he/she is eligible for wage replacement benefits beginning on the eighth day of absence. Leave credits used to keep an employee who is absent in full-pay status pending receipt of the supplemental pay benefit are also recredited to the employee when he/she begins receiving supplemental payments or returns to work, whichever occurs first. There are no restrictions on the use of the leave so recredited to the employee.

The contract language provides no benefit not already provided under the Attendance Rules for employees who exceed the vacation maximum or pass their personal leave anniversary. Personal leave cannot be recredited beyond the date it expired. When an employee charges personal leave while waiting to receive supplemental payments and the personal leave anniversary date passes prior to recrediting of the used personal leave, the employee is credited with new personal leave days on the anniversary date and is not recredited with previously used personal leave.

#### Restoring Leave Credits

Credits considered to have been used and restored are those leave credits and sick leave at half-pay entitlement used by an employee after exhaustion of the 9-month benefit (or prior to receipt of the benefit at the employee's request). When the Workers' Compensation Board issues an award in favor of the employee, the wage replacement is credited to the State and all leave credits and sick leave at half-pay charged for the period of time covered by the Board award are restored to the employee. (If an employee's personal leave anniversary date has passed prior to restoral, personal leave credits cannot be restored.) These restored leave credits cannot be used for future absences caused by the same injury or disease. Should the restoration of these leave credits bring an employee's balances over the allowable maximums, the employee will have one year from the date of restoration or return to work, whichever is later, to reduce the balances to the allowable maximums. This provision is considered to supersede Article 10.5 of the ASU agreement, 10.6 of the ISU agreement, 10.5 of the OSU agreement, 12.4(c) of the PS&T agreement and 12.4(a) of the RRSU agreement.

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on vacation maximums. (These provisions pertain only to restored credits not recredited credits). Credits restored pursuant to these provisions are not lost on March 31. Refer to p. C-25 of this Section for the impact of earning leave credits while absent due to a work-related injury.

#### Holidays

Employees absent in full-pay status charging leave credits or receiving advanced leave are eligible to observe holidays. If a holiday occurs during this period and coincides with a regular workday, the employee is considered to have observed the holiday; i.e., the employee remains in pay status, no leave credits of any kind are earned or charged for the day and no leave is advanced for the day. However, employees are eligible to earn pass day holidays and floating holidays that occur during these periods.

Employees absent and receiving the supplemental pay benefit do not observe holidays and may not be credited with any holiday leave, except floating holidays. Of course, they do receive the award and supplement continuously whether or not a designated holiday falls during the period of absence.

Upon return to work, employees are eligible for holiday benefits even though they may continue on the supplemental payment system. That is, employees on approved absence on a holiday receive their supplemental pay and are considered to be observing the holiday. Employees who work on a holiday are eligible to receive holiday pay (based on normal gross salary) or holiday leave as appropriate.

#### Other Leaves

An employee absent due to an occupational injury or disease receives workers' compensation benefits pursuant to the negotiated agreements, as long as such employee remains disabled due to that injury or disease. Days of absence are counted toward the cumulative total of one year regardless of the employee's ability to engage in activities other than his/her regular job duties. Therefore, an employee may be able to perform jury service, take a Civil Service examination or complete some military duty while absent and receiving a workers' compensation benefit. The employee remains on the supplemental payment system while he/she is engaged in these other activities as long as he/she remains disabled from his/her regular job duties.

Once an employee returns to work, eligibility for other leaves is based on applicable rule and contract provisions. The fact that the employee is receiving supplemental payments does not change eligibility for these leave benefits for the employee who is at work.



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#### Controverted or Contested Claims

Eligibility for the workers' compensation benefit under the contracts is dependent upon the State Insurance Fund/Workers' Compensation Board determination that a disability exists which resulted from an occupational injury or disease. Whenever the SIF controverts a claim (because it is alleged that the injury or disease did not occur on the job or it is alleged that the employee has not suffered any such injury or disease), the employee is not eligible for benefits under these Articles. In the case of nonwork-related illness or injury, the employee continues to be eligible to use his/her leave credits and be granted sick leave at half-pay as is the case for any ordinary disability. If the SIF has denied benefits because they believe there is no illness or injury, an employee is expected to be present at work. An absence may be considered unauthorized, until such time as the controversy is resolved, if the employee does not, in fact, return to work.

If a controverted claim is resolved in favor of an employee by the Workers' Compensation Board, the SIF must begin making payments and the employee becomes eligible for the negotiated benefit, including supplemental payments from Office of the State Comptroller. If an employee was on leave without pay during the period of contested absence, SIF payments and supplemental payments will be made in lump sums directly to the employee. An employee who used leave credits should be reccredited with all such credits used, will be placed on the supplemental payment system and will receive the award and supplement for a period of time equivalent to the previous absence for which the Board award was made.

For example, an employee absent for eight weeks due to an alleged compensable injury charges four weeks to leave credits (weeks 1-4) and is placed on sick leave without pay for four weeks (weeks 5-8) because SIF controverts the claim as not being job-related. The Workers' Compensation Board subsequently holds a hearing and finds the employee's claim to be compensable. SIF is obligated to make a lump sum payment for wage replacements due for the four weeks of leave without pay (weeks 5-8). The Office of the State Comptroller will then calculate the supplement due for the same four weeks (weeks 5-8) and issue a lump sum payment. The employee will be placed on the supplemental payment system receiving an award and supplement for four weeks to provide the benefit that should have been received during the four weeks the employee was charging credits (weeks 1-4). At the time the employee is placed on the supplemental payment system the appointing authority will reccredit the credits the employee used for the first four weeks (weeks 1-4) and credit the employee with accruals he/she should have earned for the next four weeks (weeks 5-8) but didn't because of the leave without pay.

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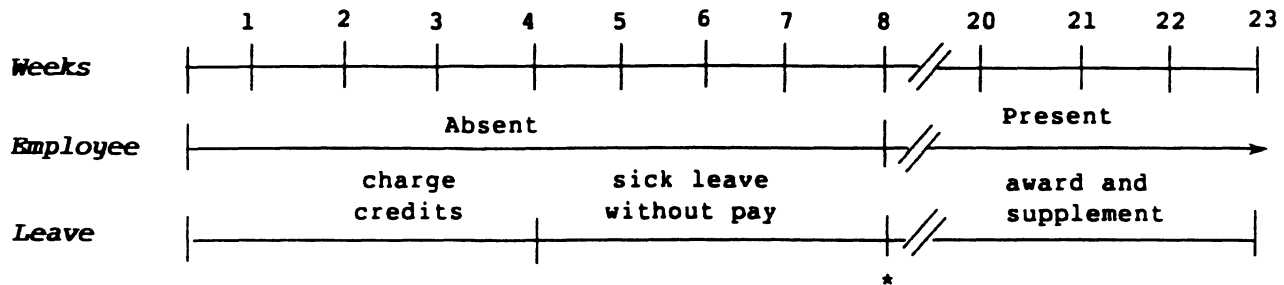
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The time line below graphically illustrates this example.



\*Four weeks of leave credits recredited. Lump sum payment of both SIF payment and State Comptroller supplement to be made.

#### Priority Medical Examinations

A priority medical examination's (PME) purpose is to determine as quickly as possible after an incident whether an employee is disabled. The PME determines disability on the day of the exam and is used to grant or deny the employee's claim for workers' compensation benefits.

PMEs are scheduled by the State Insurance Fund to be conducted within 3 days of receiving a request from an agency. A PME will have the greatest impact if it is completed within seven calendar days of the beginning of the employee's absence from work.

An agency should request a priority medical examination when any of the following conditions exist:

1. The period of disability is indeterminate.
2. The liability is questionable.
3. The existence of disability is questionable.

Effective April 1, 1988 the three CSEA unit agreements contain provisions which authorize appointing authorities to place employees who miss priority medical examinations on leave without pay. Specifically, the employee may be placed on leave without pay beginning with the day of the missed exam until the next appointment which the employee attends or the date the employee returns to work, whichever is sooner, but not to exceed two days for each missed priority medical examination. The appointing authority may waive this provision upon receipt of an acceptable explanation from the employee. Prior to placing an employee on leave without pay, the appointing authority must verify with the State Insurance Fund that the Fund can attest to a timely notification to the employee of the scheduled exam.

There is no limit on the number of times an employee may be placed on leave without pay for missing priority medical exams but each leave shall not exceed two days. Appointing authorities should notify employees of their rights and responsibilities under this provision and should include procedures for submitting waiver requests.

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When either the State Insurance Fund or the Workers' Compensation Board determines that a period of leave without pay under this provision is a compensable absence, and the employee has met the waiting period, the employee will receive award and supplement for those days in the same manner as he/she would for any absences on leave without pay that were subsequently found to be compensable. If, however, the absence occurred during a waiting period that will not be covered by award and supplement, the appointing authority may either let the leave without pay stand or allow the employee to charge credits upon receipt of a satisfactory explanation for missing the exam in accordance with the provisions of the agreement.

#### Consultant Medical Examinations Thru SIF

In addition to the priority medical examination program, the State Insurance Fund utilizes consultant physicians with expertise in various medical specialties who can conduct examinations to verify continuing disability and causal relationship. The SIF may schedule consultant examinations based on their review of the case. The agency can also request an examination when, for example, the information provided by the employee's personal physician is insufficient or there is a question of continuing disability. Agency personnel should discuss their concerns with the SIF representative to determine at what point a consulting physician examination is warranted.

#### Return-to-Work Examinations

At the time an employee wishes to return to work, if an agency is in doubt as to the employee's fitness, the agency may request the Employee Health Services (EHS) to examine the employee prior to allowing the individual to return to work. These examinations should not be routinely scheduled. Where there is medical documentation from the employee's physician or an SIF physician that the employee is fit to return, the agency should, in the majority of cases, accept this documentation. If, however, the agency has good and sufficient reason to doubt the employee is capable of performing the job duties of the position, the agency can request the employee be examined by EHS. This request should include all pertinent identifying information on the employee, a complete duties description and copies of all medical documentation pertaining to the injury/illness.

#### Medical Documentation

In addition to documentation provided by the SIF physicians, EHS physicians and, in some cases, agency physicians, appointing authorities should continue to request and expect to receive medical documentation from the employee's personal physician substantiating the employee's need to be absent due to the workers' compensation disability. Except for a priority medical by SIF immediately following an incident, the initial source of

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medical documentation usually will be the employee's personal physician. (An employee who refuses a reasonable request to provide medical documentation to substantiate an absence, pursuant to rule or contract, can be placed on unauthorized absence pending receipt of acceptable documentation or notification by the SIF that such documentation exists and the absence is considered compensable).

Appointing authorities are expected to share all pertinent medical documentation with appropriate SIF officials. The SIF staff will be sharing medical documentation they obtain with their agency contacts.

#### Return to Duty on a Reduced Schedule or to a Limited Duty Assignment

An employee who is not able to return to duty and work his/her full normal work schedule may, at the discretion of the appointing authority, be allowed to return to modified duty. The employee might work a reduced schedule or limited duty for a brief or extended period of time pending full recovery. The employee, however, is not entitled to return to duty until he/she is able to perform the normal and regular duties of his/her position working a normal work schedule. If the employee is allowed to return on modified duty, such employee may be granted the supplemental leave benefit (subject to the 39-week limitation) to cover the difference between the hours worked and the number of hours in the normal workday or workweek. Arrangements must be made with the State Insurance Fund to process these payments.

In the case where an employee is allowed to return to work on a reduced schedule or to a limited duty assignment, the appointing authority should specify in writing the duration of the arrangement. If the employee is not able to return to full duty status at the end of this period, the appointing authority must decide whether to continue the arrangement for an additional period or to return the employee to full-time supplemental leave.

#### Record Keeping

An employee's time record needs to reflect all transactions concerning the employee's absence due to each individual occupational injury or disease. It is recommended that agencies use the SIF case file number or date of accident on time records so that each absence is associated with the appropriate case. This is important not only for payment purposes, but also to calculate the one calendar year minimum entitlement available for a single injury or disease and to be able to recredit or restore leave credits accurately.

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Once an employee has been absent for more than 14 calendar days, the time records should be corrected to reflect workers' compensation benefit eligibility beginning with the first day of compensable lost time. It will be some time from the first day of compensable lost time to the first day of supplemental payment and the employee will be charging leave credits or be receiving "advanced leave" during this period. Careful notations need to be made on the time records so that when an employee begins the supplemental payment system, credits charged can be recredited appropriately and total absence properly documented. While each time record should not be changed physically, there should be an official memorandum to the file and a notation on the time record to reflect the recrediting of used leave at the time the employee begins award and supplement. The record of actual absences on full-pay shown on the time records, prior to beginning award and supplement, is documentation that substantiates the amount of time it is necessary for the employee to remain on the supplemental payment system either following return to work or while charging leave credits following exhaustion of the nine-month benefit.

Time records must be maintained throughout an employee's absence since leave is credited to the employee as if he/she were in full-pay status and the absences need to be documented. Once an employee returns to work, he/she earns the usual leave credits consistent with his/her actual attendance without regard to the fact that salary payments are being received from the supplemental payment system. In other words, time records reflect real time and not delayed time (unlike the award and supplemental payments).

Additional information that needs to be kept with an employee's time records includes the dates when leave credits are restored if the restoration brings the employee over the allowable maximum. Employees have one year from return to work or restoration of leave credits, whichever occurs later, to reduce leave credits below the maximum, and employees continue to earn leave credits throughout this period. Also, the amount of restored leave credits needs to be recorded because such restored credits are not available for reuse for an absence related to the same injury or disease. Restored leave credits should be charged for unrelated absences until these restored credits are used up. (In contrast, recruited leave credits are available for use in connection with the same accident or injury.)

The Workers' Compensation Board and State Insurance Fund do not maintain records of benefit enhancements provided to State employees. It is advisable to retain records on each workers' compensation case for six years after an employee retires or, if an employee transfers to another agency, to make them available to that agency. The agency needs the information in these records to ensure that an employee receives only the benefits to which he/she is entitled if the case is reopened.