

## WORKERS' COMPENSATION

This policy establishes procedures for compliance with WV Code 18A-4-10 and WV Code 23-4-1, related to Board of Education employees who sustain a work-related injury and are awarded Workers' Compensation benefits and to prohibit an employee from receiving compensation for personal and/or annual leave in excess of the amount that is required, when added to the Workers' Compensation benefits, to equal the amount of compensation regularly paid to the employee.

The Board may join other political subdivisions to establish and maintain a self-insurance pool to insure their workers' compensation risks upon approval of the Insurance Commissioner. If it so chooses, the group may contract with any person, any licensed West Virginia insurance agent, other political subdivision, municipal association, county association or regional council of governments for purposes of the administration of the program or pool. The purchase of liability insurance, or the establishment and maintenance of a self-insurance program, by a political subdivision does not constitute a waiver of any immunity it may have or any defense of the political subdivision or its employees.

### Definitions:

- a) **Eligible to Receive TTD Benefits**  
Having been ruled eligible by the Workers' Compensation Commission to receive Temporary Total Disability (TTD) benefits, regardless of whether the employee is actually receiving benefits or has opted to receive personal leave (or annual leave, if requested after having exhausted personal leave).
- b) **Medical Professional**  
A person licensed according to the laws of the State of West Virginia to practice medicine or a medical practitioner approved by the Workers' Compensation Commission.
- c) **Net Value**  
Gross wages less employee deductions for State and Federal income taxes, FICA, and Medicare, and contributions to a teachers' retirement system.
- d) **Separate Dischargeable Offense**  
Misconduct by the injured employee wholly unrelated to the injury or the absence from work resulting from the injury. A separate dischargeable offense shall not include absence resulting from the injury or from the inclusion or aggregation of absence due to the injury with any other absence from work.
- e) **Personal Leave**  
An earned employee benefit of paid time off as specified in WV Code 18A-4-10. Accrued annual leave, if requested by the employee, may be utilized in circumstances when personal leave is exhausted.
- f) **TTD Benefits**  
Temporary Total Disability benefits paid by the Workers' Compensation Commission.
- g) **Work-Related Injury**  
An injury or occupational illness having been determined to be compensable by the Workers' Compensation Commission.

### Administration

The Board shall administer Workers' Compensation claims and related employee leave in accordance with all applicable statutes, rules, regulations, procedures, and local policies.

An employee who sustains a work-related injury shall submit an Election of Option Form (see Form 8442.01 F1) to the Board's payroll office within three (3) working days of the date of the injury. The Election of Option Form will designate the employee's choice of receiving either TTD benefits only for the period of absence from work, personal leave compensation, or a combination of both. The payroll office shall attach the original Election of Option Form to the Employer's Report of Injury Form (WC-3) and forward both to the Workers' Compensation Commission.

An employee, who is incapacitated and unable to submit the Election of Option Form shall be granted accrued personal leave, then accrued annual leave if the employee is entitled to annual leave, after exhausting personal leave. An Election of Option Form must be completed by an appropriate individual on behalf of the employee as prescribed by the employer.

If a previous Workers' Compensation claim is reopened after the effective date of this policy and additional TTD benefits are paid, the procedures outlined in this policy will be in effect and the employee must complete a new Election of Option Form.

## **Election of Option**

### **A. Election to Receive TTD Benefits Only**

1. An employee may elect to receive TTD benefits only by selection Option I on the Election of Option Form (see Form 8442.01 F1). The employee will not receive leave compensation from the Board, except for the initial period prior to receiving a benefit check from the Workers' Compensation Commission.
  - a. Employees of the Board continue to accrue seniority credit while receiving TTD benefits during absences from work due to a work-related, compensable injury, but do not accrue credit for years of experience.
  - b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of WV Code 18-4-10.
  - c. Any legal school holidays, election days, other noninstructional days such as outside school environment (OS), continuing professional development (CE), teachers-student-parent conferences (TP), and inclement weather days occurring during the period when TTD benefits only are being received, will NOT be paid.
2. When an employee elects to receive TTD benefits only, paid personal leave may be utilized only until the initial benefit check is received.
3. When the initial TTD check is received, the employee must reimburse the Board the net value of personal leave benefits paid, according to the procedures presented in the *Accounting Procedures Manual for County Boards of Education*. If payment is not made in full at the time the initial TTD check is received, the employee and the employing agency shall complete the Assignment of Future Wages Form (Form 8442.01 F2). The number of days of paid leave shall be restored to the employee's leave balance as the repayments are made.
  - a. Any employee who refuses to reimburse the net value of the paid personal leave shall be subject to disciplinary action.
  - b. When leave is restored to an employee, appropriate adjustments shall be made by the Board's payroll office to obtain credit for its share of contributions for social security and retirement and for the deductions that were withheld from the employee's personal leave pay and to make any necessary adjustments in taxable wages, tax deductions, retirement contributions, FICA, and Medicare deductions, and personal leave records.

**B. Election to Receive Leave Compensation Only**

1. An employee may elect to receive compensation for accumulated personal leave only, or annual leave if requested by the employee, instead of TTD benefits by selecting Option 2 on the Election of Option Form (see Form 8442.01 F1). The employee is treated the same as any other employee granted personal leave pursuant to WV Code 18-4-10.
  - a. Employees of boards of education continue to accrue seniority credit while receiving leave compensation during absences from work due to a work-related, compensable injury, and accrue credit for years of experience.
  - b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of WV Code 18-4-10.
  - c. Any legal school holidays, election days, other noninstructional days such as outside school environment (OS), continuing professional development (CE), and teachers-student-parent conferences (TP), and inclement weather days occurring during the period when leave compensation is being received will be paid.
2. After an employee exhausts his/her accrued personal leave, and accrued annual leave if requested, the employee may start receiving TTD benefits during the remaining absence from work due to a work-related, compensable injury, pursuant to WV Code 23-4-6. The employee is responsible for contacting the Workers' Compensation Commission to make this request.
  - a. Employees of county boards of education continue to accrue seniority credit while receiving TTD benefits during absences from work due to a work-related, compensable injury, but do not accrue credit for years of experience.
  - b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of WV Code 18-4-10.
  - c. Any legal school holidays, election days, other non-instructional days such as outside school environment (OS), continuing professional development (CE), and teachers-student-parent conferences (TP), and inclement weather days occurring during the period when TTD benefits only are being received will NOT be paid.

**C. Election to Receive a Combination of TTD Benefits and Compensation for Accrued Leave**

1. An employee may elect to receive a combination of TTD benefits and compensation for accrued personal leave, or accrued annual leave if requested by selecting Option 3 on the Election of Option Form (see Form 8442.01 F1). The employee shall receive leave compensation only to the extent the leave compensation is required, when added to the TTD benefits, to equal the amount of gross wages regularly paid the employee.
2. Personal leave compensation equal to the employee's regular gross pay may be paid prior to the award of TTD benefits.
  - a. If the personal leave compensation paid to the employee prior to the award of TTD benefits, when added to the TTD benefits, is in excess of the employee's regular gross pay, the excess payment shall be deducted from the employee's subsequent pay, according to the procedures presented in the *Accounting Procedures Manual for County Boards of Education*. The employee and the Board shall complete the Assignment of Future Wages Form (Form 8442.01 F2). The number of days of paid leave shall be restored to the employee's leave balance as the deductions are made.
  - b. Any employee who refuses to have the excess payment deducted from the employee's subsequent pay until the total amount of the overpayment is recovered shall be subject to disciplinary action.
  - c. When leave is restored to an employee, appropriate adjustments shall be made by the Board's payroll office to obtain credit for the agency's share of contributions for social security and retirement and for the deductions that were withheld from the employee's personal leave pay and to make any necessary adjustments in taxable wages, tax deductions, retirement contributions, FICA, and Medicare deductions, and personal leave records.

3. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular gross rate of pay.
  - a. Employees of county boards of education continue to accrue seniority credit while receiving leave compensation during absences from work due to a work-related, compensable injury, and may accrue credit for years of experience by use of accrued personal leave.
  - b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of WV Code 18-4-10.
  - c. Any legal school holidays, election days, other noninstructional days such as outside school environment (OS), continuing professional development (CE), and teachers-student-parent conferences (TP), and inclement weather days occurring during the period when leave compensation is being received will be paid.
4. After an employee exhausts his/her accrued personal leave, and annual leave if requested, the employee may then receive TTD benefits only during the remaining absence from work due to the work-related, compensable injury, pursuant to WV Code 23-4-6.
  - a. Employees of county boards of education continue to accrue seniority credit while receiving TTD benefits during absences from work due to a work-related, compensable injury, but do not accrue credit for years of experience.
  - b. Personal leave shall accrue while an employee is absent from work receiving TTD benefits, pursuant to the provisions of WV Code 18-4-10.
  - c. Any legal school holidays, election days, other non-instructional days such as outside school environment (OS), continuing professional development (CE), and teachers-student-parent conferences (TP), and inclement weather days occurring during the period when TTD benefits only are being received will NOT be paid.
  - d. Nothing in this policy prohibits an employee from electing to request a medical leave of absence without pay instead of using personal/annual leave, even if an employee will not be receiving TTD benefits. For example, if an employee is absent from work for only three (3) calendar days due to a work-related, compensable injury, the employee is not eligible for TTD benefits. The employee may, if desired, choose not to use personal leave and instead, request a medical leave of absence without pay.

### **Return to Work Notice**

Workers' Compensation Form WC309, Return to Work Notice, must be timely completed by the Board and be forwarded to the Workers' Compensation Commission when the employee returns to work, regardless of which of the preceding options the employee elected.

### **Discriminatory Practices Prohibited**

WV Code 23-5A-1 provides that an employer shall not terminate an injured employee while the employee is absent from work due to a work-related, compensable injury and is receiving or is eligible to receive TTD benefits, unless the injured employee has committed a separate dischargeable offense.

- A. A separate dischargeable offense shall mean misconduct by the injured employee wholly unrelated to the injury or the absence from work resulting from the work-related, compensable injury.
- B. A separate dischargeable offense shall not include absence resulting from the injury or from the inclusion or aggregation of absence due to the injury with any other absence from work.

If the Board has provided any type of medical insurance for an employee or his/her dependents by paying premiums, in whole or in part, on an individual or group policy, shall not cancel, decrease participation on behalf of the employee or his/her dependents or cause coverage provided to be decreased during the entire period for which that employee during the continuance of the employer-employee relationship is claiming or is receiving benefits under Chapter 23, WV Code for a temporary total disability. If the medical insurance policy requires a contribution by the employee, that employee must continue to make the contribution required, to the extent the insurance contract does not provide for waiver of the premium.

It shall be a discriminatory practice for an employer to fail to reinstate an employee who has sustained a work-related, compensable injury to the employee's former position of employment, upon demand for such reinstatement, provided that the position is available and the employee is not disabled from performing the essential duties of the position, with or without accommodations.

- A. If the former position is not available, the employee shall be reinstated to a comparable position which is available and which the employee is capable of performing. A comparable position shall mean a position which is comparable in wages, working conditions, and, to the extent reasonably practicable, duties to the position held at the time of injury.
- B. A written statement from a duly licensed physician that the physician approves the injured employee's return to regular employment shall be prima facie evidence that the employee is able to perform his/her duties.
- C. In the event that neither the former position nor a comparable position is available, the employee shall have a right to preferential recall to any job which the injured employee is capable of performing which becomes available after the employee notifies the Board that reinstatement is desired.
- D. The right of preferential recall shall be in effect for one (1) year from the day the injured employee notifies the employer that reinstatement is desired. The employee must provide the employer with a current mailing address during the one (1) year period.

Reference: WV Code 18A-4-10, 23-1-1 et seq., 23-5A-1 et seq.  
WV C.S.R. 114-65-1 et seq.  
WV State Board of Education Policy 5612

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