

**WORKERS' COMPENSATION/SICK LEAVE**

**I. PURPOSE:** The purpose of this policy is to ensure compliance with West Virginia Code § 23-4-1, which, in pertinent part, prohibits employees of the State of West Virginia and its political subdivisions from receiving payment for sick leave and for Workers' Compensation Temporary Total Disability (TTD) benefits for the same period. This policy is intended to supplement 143CSR3, the Division of Personnel's *Workers' Compensation Temporary Total Disability Rule*, effective July 1, 2000, and is subject to change through the Legislative rule making process.

**II. DEFINITIONS:**

- A. **Eligible to Receive:** Having been ruled eligible by Workers' Compensation to receive Temporary Total Disability (TTD) benefits, but opting to receive sick leave (or annual leave after exhausting sick leave) instead.
- B. **Medical Professional:** A person licensed according to the laws of a state to practice medicine or a medical practitioner approved by the Workers' Compensation Division.
- C. **Net Value:** Gross wages less employee deductions for State and federal income taxes, FICA and Medicare, and contributions to a State 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. This 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. **Sick Leave:** An earned employee benefit of paid time off as specified by subsection 14.4 (f) of the Division of Personnel's *Administrative Rule* (143CSR1). Annual leave, if requested, shall be granted in circumstances when sick leave is exhausted.
- F. **TTD Benefits:** Temporary Total Disability Benefits paid by Workers' Compensation.
- G. **Work-Related Injury:** An injury or illness found to be compensable by the Workers' Compensation Commissioner.

**III. POLICY:**

- A. **Administration**
  - 1. Agencies shall administer Workers' Compensation claims and employee leave in accordance with all applicable statutes, rules, regulations, and procedures of the respective governing agencies.
  - 2. An employee who sustains a work-related injury shall submit an Election of Option form (see page 5, Attachment 1) to the agency payroll office within 3 working days of the date of the injury. The Election of Option form will designate the employee's choice of either sick leave or TTD

benefits for the period of absence. The payroll office shall attach the original Election of Option form to the Employee's Report of Occupational Injury form (WC-123), and forward both to the Workers' Compensation Division.

3. An employee who is incapacitated and unable to submit the Election of Option form shall be granted accrued sick leave, then accrued annual leave after exhausting sick leave. An Election of Option form must be completed by an appropriate individual on behalf of the employee as prescribed by the employer.
4. If a previous compensable Workers' Compensation claim is reopened after July 7, 1989 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.

B. Election to receive TTD Benefits

1. An employee electing to receive TTD benefits must apply for a leave of absence without pay in accordance with the provisions of subsection 14.8 of the *Administrative Rule* of the Division of Personnel (143CSR1).
  - a. Employees of the State of West Virginia continue to accrue annual increment pay and years of service while receiving TTD benefits during absences from work due to a work related, compensable injury.
  - b. Periods during which an employee is on a leave of absence without pay and receiving TTD benefits under the provisions of *W. Va. Code* § 23-4-1, are included as tenure, regardless of job class or title, for purposes of order of separation as provided in subsection 12.4 of the Division of Personnel's *Administrative Rule* and Section 5 of the *Workers' Compensation Temporary Total Disability Rule*.
  - c. Sick leave shall not accrue while an employee is on such leave of absence without pay and holidays occurring during this period will not be paid.
2. If an employee elects to receive TTD benefits, paid leave (sick/ annual after exhausting sick) may be utilized **only until the initial benefit check is received**.
  - a. When the initial TTD check is received, the employee must reimburse his employer the net value of sick and annual leave benefits paid, according to the formula designated in this policy. (See Page 7, Attachment 2). Such paid leave shall be restored to the employee's leave balance.
  - b. Any employee who refuses to reimburse the net value of the paid sick/annual leave to his employer shall be subject to disciplinary action and deductions from subsequent paychecks shall be made until the total amount of paid leave used is reimbursed. Such deductions will be made in accordance with the West Virginia Division of Labor regulations on wage payments and collections. The employee and the employing agency shall complete the Assignment of Future Wages form (see Page 8, Attachment 3).



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- c. When leave is restored to an employee, appropriate adjustments must be made by the agency's payroll office to obtain credits for the agency's share of deductions for Social Security payments and retirement contributions that were withheld from the employee's sick leave pay and to make any necessary adjustments in taxable wages, tax deductions, retirement contributions, FICA and Medicare deductions, and sick/annual leave records.
- C. Election to Receive Sick Leave
1. An employee electing to receive accumulated sick leave benefits, instead of TTD benefits, is treated the same as any other employee granted sick leave in accordance with the provisions of the *Administrative Rule* of the Division of Personnel.
  2. After an employee exhausts his accrued sick leave and, if requested, accrued annual leave, the employee may then receive TTD benefits during the remaining absence from work due to the compensable injury pursuant to *W. Va. Code* § 23-4-6.
    - a. After exhausting paid leave, the employee shall request a leave of absence without pay according to the provisions of subsection 14.8 of the *Administrative Rule*.
    - b. Employees of the State of West Virginia continue to accrue annual increment pay and years of service while receiving TTD benefits during absences from work due to a work related, compensable injury.
    - c. Periods during which an employee is on a leave of absence without pay and receiving TTD benefits under the provisions of *W. Va. Code* § 23-4-1, are included as tenure, regardless of job class or title, for purposes of order of separation as provided in subsection 12.4 of the Division of Personnel's *Administrative Rule* and Section 5 of the *Workers' Compensation Temporary Total Disability Rule*.
    - d. Sick leave shall not accrue while an employee is on such leave of absence without pay and holidays occurring during this period will not be paid.
  3. Nothing in this policy prohibits an employee from electing to request a medical leave of absence without pay instead of using sick leave, even though the employee will not be receiving TTD benefits. For example, if an employee is absent from work for only 3 calendar days due to a compensable injury, the employee is not eligible for TTD benefits. The employee may, if desired, choose not to use sick leave and, instead, request a Medical Leave of Absence Without Pay according to subparagraph 14.8 (c) 1. a. of the *Administrative Rule*.
- D. A Return to Work Notice (WC-309) must be completed by the employing agency and be sent to the Workers' Compensation Division when the employee returns to work regardless of whether the employee elected to receive TTD benefits or sick/annual leave benefits.
- E. Discriminatory Practices:
1. *W. Va. Code* § 23-5A-1 *et seq.* provides that an employer shall not terminate an injured employee while the injured employee is off work due to a compensable injury and is receiving or is



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“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 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.
2. It shall be a discriminatory practice for an employer to fail to reinstate an employee who has sustained a 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 duties of the position.
- a. If the former position is not available, the employee shall be reinstated to another comparable available position with duties 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 medical professional that the medical professional approves the injured employee's return to regular employment shall be prima facie evidence that the worker is able to perform such 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 open after the injured employee notifies the employer reinstatement is desired.
  - d. The right of preferential recall shall be in effect for one 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-year period.

#### IV. REFERENCES

- A. *W. Va. Code* § 23-5A-4, effective March 11, 1999 (Senate Bill No. 351).
- B. *W. Va. Code* § 23-4-1, et seq.
- C. *W. Va. Code* § 23-5A-3.
- D. 143CSR1, West Virginia Division of Personnel *Administrative Rule*, effective July 1, 2000.
- E. 143CSR3, West Virginia Division of Personnel *Workers' Compensation Temporary Total Disability Rule*, effective July 1, 2000.
- F. *Canfield, et al v. WV Division of Corrections* (No. 32287) (2005).



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**V. EFFECTIVE DATE:** May 1, 1993.

### VI. REVISIONS

- A. Previous Revisions: July 15, 1999 and July 1, 2000.
- B. Latest Revision: November 1, 2005.

**VII. POLICY NUMBER:** DOP-P7.

Approved:

Willard M. Farley, Acting Director  
West Virginia Division of Personnel

Date Signed: November 1, 2005.

WORKERS' COMPENSATION TEMPORARY TOTAL  
DISABILITY BENEFITS OR SICK LEAVE BENEFITS  
**ELECTION OF OPTION**

|                                 |                             |
|---------------------------------|-----------------------------|
| Employee Name: _____            | Soc. Sec. No.: _____        |
| Date of Injury: _____           | Claim No. (if known): _____ |
| Employer: _____<br>(Department) | _____<br>(Division/Section) |

**To the Employee:** *Please submit this completed form to your agency payroll office.* If you are absent from work due to a work-related injury, you must choose to receive *either* Temporary Total Disability benefits (TTD benefits) from Workers' Compensation or paid sick and/or annual leave, according to the Workers' Compensation Temporary Total Disability Benefits/Sick Leave policy. If you elect to receive TTD benefits, you may use sick leave *until* you receive your initial TTD benefit check; however, this leave will be restored when you reimburse your employer the net value of the paid sick leave used, according to the provisions of this policy.

**Option 1**

I elect to receive Workers' Compensation TTD benefits; however, I understand that I may use sick leave and/or annual leave *only until* I receive my initial TTD benefits check. I understand that while receiving TTD benefits, I will be in a leave of absence without pay status. During this leave of absence without pay, I understand that I will continue to accrue tenure credit for reduction in force calculation and for the calculation of annual increment pay. I will accrue annual leave. **I will not accrue** sick leave and **I will not be paid** for holidays during this leave of absence without pay.

**Option 2**

I elect to receive sick leave and/or annual leave benefits instead of Workers' Compensation TTD benefits for the period that I am absent from work due to a work-related injury. While I am receiving paid leave benefits, I understand that I will continue to accrue annual leave, sick leave, and be paid for holidays that occur during this period. I also understand that while I am receiving paid leave benefits, I will continue to accrue annual increment pay and years of service credit for increment calculation as well as tenure credit for reduction in force calculation. After I exhaust my sick leave and/or annual leave, I understand that I am eligible to receive TTD benefits during any remaining period of absence from work due to a compensable injury. If I receive TTD benefits, I understand that while receiving these benefits, I will be in a leave of absence without pay status. During this leave of absence without pay, I understand that I will continue to accrue tenure credit for reduction in force calculation and for the calculation of annual increment pay. I will accrue annual leave. **I will not accrue** sick leave and **I will not be paid** for holidays during this leave of absence without pay.

**Employee's Statement:** I understand that I must choose *either* Workers' Compensation TTD benefits or paid sick leave and/or annual leave, and that I am not legally entitled to both for the same period. I understand that if I elect to receive TTD benefits and choose to receive paid sick leave and/or annual leave until I receive my initial TTD benefits check, I must reimburse the net value of the paid leave to my employer, who will then restore that leave. If I fail to reimburse my employer the net value of the paid leave used, I understand such amount will be deducted from future wage payments.

Employee's  
Signature: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

**TO BE COMPLETED BY THE EMPLOYER** - This document was received by:

Signature: \_\_\_\_\_ Date Received: \_\_\_\_\_

**THE TERMS OF THE OPTIONS ARE BASED ON CURRENT RULES (07/01/05, 143CSR1, and 143CSR3) AND  
ARE SUBJECT TO CHANGE THROUGH THE LEGISLATIVE RULE-MAKING PROCESS.**

## WORKERS' COMPENSATION INJURY/ILLNESS FORMULA FOR SICK LEAVE "BUY BACK"

### DETERMINE:

- ◆ Gross wages for pay period = \$\_\_\_\_\_\*
- ◆ Gross wages minus federal/State withholding minus FICA and Medicare minus RT = \$ NET
- ◆ Number of days in pay period = \_\_\_\_\_

### ◆ EXAMPLE:

Single employee, no dependents, grossed \$720. and used 8 sick leave days in an 11-day pay period.

|                                     |                   |  |
|-------------------------------------|-------------------|--|
| From the \$720.00, deductions were: | \$ 91.78          | Fed./State Taxes (take actual \$ withheld) |
|                                     | 55.08             | FICA and Medicare (7.65%)                  |
|                                     | 32.40             | Retirement (4.5%)                          |
|                                     | <b>\$179.26**</b> | <b>TOTAL DEDUCTIONS</b>                    |

\* Not to include overtime payments

\*\* Does not include deductions for PEIA/Optional Insurance, Flexible Savings Accounts, Parking, Credit Union, Savings Bonds, Garnishments, etc.

### CALCULATE "BUY BACK" AMOUNT:

- ◆ 

|           |       |            |   |            |
|-----------|-------|------------|---|------------|
| GROSS     | minus | DEDUCTIONS | = | NET        |
| (\$720.00 | -     | \$179.26   | = | \$540.74 ) |
  
- ◆ 

|           |            |             |   |            |                              |
|-----------|------------|-------------|---|------------|------------------------------|
| NET       | divided by | DAYS IN P/P | = | DAILY RATE | (for buy-back purposes only) |
| (\$540.74 | ÷          | 11          | = | \$49.16 )  |                              |
  
- ◆ To "buy back" the 8 sick leave days used, the employee would reimburse the agency at a rate of \$49.16 x 8, or \$393.28

### FOR USE BY AGENCY PAYROLL OFFICE:

- ◆ To determine the dollar amount for which the agency should take credit on the total deductions for federal and State withholding, FICA, and retirement:
  1. Divide the number of days in the pay period (11) into the deduction amounts.
  2. Multiply this figure by number of sick leave days used (8).

### ◆ EXAMPLE:

|                    |           |   |     |   |   |   |          |
|--------------------|-----------|---|-----|---|---|---|----------|
| Fed./State taxes:  | (\$ 91.78 | ÷ | 11) | x | 8 | = | \$ 66.74 |
| FICA and Medicare: | (\$ 55.08 | ÷ | 11) | x | 8 | = | \$ 40.00 |
| Retirement:        | (\$ 32.40 | ÷ | 11) | x | 8 | = | \$ 23.60 |

## ASSIGNMENT OF FUTURE WAGES FORMS

House Bill 4368, passed March 7, 2018 during the regular session of the Legislature, permits a State employee to voluntarily assign up to three-fourths of his or her periodical earnings or wages to the state to repay an overpayment of wages.

Please use the applicable voluntary wage assignment form found on the West Virginia Division of Labor's website.

State Employee - WV State Government Employee Wage Assignment

Non-State Employee (i.e., employee of a political subdivision) - Wage Assignment Form

For additional information, contact the Division of Personnel's Employee Relations section at 681-313-2706.

Pursuant to West Virginia Code §21-5-3, approved as to form by the  
West Virginia Division of Labor. June 25, 2018