



## WORKERS' COMPENSATION/SICK LEAVE

### I. PURPOSE:

The purpose of this policy is to ensure compliance with W. VA. Code §23-4-1, *et seq*, which, in pertinent part, prohibits employees of the State of West Virginia and its political subdivisions from receiving payment for accrued sick leave while receiving benefit payments due to a work-related injury compensable under workers' compensation as provided in W. VA. CODE §23-4-9. This policy is intended to supplement 143CSR3, the Division of Personnel's *Workers' Compensation Temporary Total Disability Rule*, and is subject to change through the Legislative rule-making process. The provisions of this policy apply to Temporary Total Disability, Temporary Total Rehabilitation, and Temporary Partial Rehabilitation benefits as provided in W. VA. CODE §23-4-9, §85-15-2, and §85-15-7.

### II. DEFINITIONS:

- A. Annual Increment: The incremental salary increase based on years of service as provided in W. Va. Code §5-5-1 and §5-5-2.
- B. Carrier: An insurer authorized by the Commissioner to provide workers' compensation insurance and any third-party administrator designated by the private carrier to adjust West Virginia workers' compensation claims.
- C. Commissioner: The Insurance Commissioner of West Virginia or any designated third-party administrator of the Insurance Commissioner.
- D. Eligible to Receive: An employee having been medically certified as unable to work or return to their regular job duties or other available work and ruled eligible by the carrier or the Insurance Commission to receive Temporary Total Disability (TTD) benefits, Temporary Total Rehabilitation (TTR) or Temporary Partial Rehabilitation (TPR), but opting to receive sick leave (or annual leave after exhausting sick leave) instead.
- E. Net Value: Gross wages less employee deductions for State and federal income taxes, FICA and Medicare, and contributions to a State retirement system.
- F. Rehabilitation Services: Services intended to increase the injured worker's ability to return to suitable employment. Participation in an authorized physical rehabilitation plan includes but is not limited to work hardening/conditioning, part-time, modified, transitional return to work or in an authorized vocational rehabilitation plan, job search, training, or other approved service.
- G. 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 the inclusion or aggregation of absence due to the injury with any other absence from work.

- H. Sick Leave: An earned benefit of paid time off from work due to illness, injury, or other circumstances as provided in the Division of Personnel's Administrative Rule (143CSR1).
- I. Temporary Partial Rehabilitation (TPR) Benefits: Benefits eligible to an injured employee gainfully employed and fully participating in an authorized rehabilitation plan, modified return to work plan, or in an authorized vocational rehabilitation plan, and ruled eligible by the carrier or the Insurance Commission to receive benefits.
- J. Temporary Total Disability (TTD) Benefits: Benefits eligible to an injured employee having been medically certified as unable to work or return to his or her regular job duties or other available work and ruled eligible by the carrier or the Insurance Commission to receive benefits.
- K. Temporary Total Rehabilitation (TTR) Benefits: Benefits eligible to an injured employee unable to work during the period of participation in an authorized physical rehabilitation plan or an authorized vocational rehabilitation plan for modified work, job search, training, or other approved service paid by a carrier and ruled eligible by the carrier or the Insurance Commission to receive benefits.
- L. Work-Related Injury: An injury or illness found to be compensable by the carrier or the Insurance Commission.

### 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 to his or her employer within three (3) working days of the date of the injury. The Election of Option form will designate the employee's choice to receive either sick leave or TTD benefits for the period of absence(s). The employer shall immediately submit to the carrier the Employee's Election of Option and the notification of injury claim prescribed by the carrier.
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.

#### B. Election to receive TTD, TTR, or TPR Benefits (Option 1)

1. An employee electing to receive TTD, TTR, or TPR benefits must apply for a leave of absence without pay in accordance with the provisions of subsection 14.8 of the Division of Personnel's *Administrative Rule* (143CSR1).
  - a. Employees of the State of West Virginia continue to accrue annual increment pay and years of service while receiving TTD, TTR, and TPR 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, TTR, or while receiving TPR benefits under the provisions of W. Va. Code §23-4-1 *et seq.*, are included as tenure, regardless of job class or title, for purposes of the 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. Annual leave shall accrue and be carried forward from one calendar year to another in accordance with subsection 14.3 of the Division of Personnel's *Administrative Rule*, and service credit for accrual of annual leave shall accrue in accordance with 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 receiving TTD or TTR. Sick leave shall be prorated during periods an employee is receiving TPR in accordance with subdivision 14.8.c of the Division of Personnel's *Administrative Rule*. Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period. Sick leave cannot be accrued for hours not paid. Official holidays occurring during periods of unpaid medical leave of absence will not be accrued nor paid.
2. Paid leave (sick/annual after exhausting sick) may not be utilized for periods during which an employee is receiving TTD, TTR, or TPR benefit payments. If an employee elects to receive TTD, TTR, or TPR benefits, paid leave may only be used until the initial benefit payment is received.
- a. Upon receipt of the initial TTD, TTR, or TPR benefit payment, the employee must reimburse the employer the net value of sick leave, annual leave, and holiday benefits paid. Such paid leave shall be restored to the employee's leave balances.
  - b. Any employee who refuses to reimburse the net value of the paid sick/annual leave to his or her 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 §21-5-1 and §42-5-9 on wage payments and collections.
  - c. When accrued leave balances are restored to an employee, the employer must make appropriate adjustments to update the employee sick/annual leave records, obtain credits for the employer'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.

C. Election to Receive Sick Leave (Option 2)

- 1. An employee electing to receive accumulated sick leave benefits, instead of TTD, TTR, or TPR benefits, is treated the same as any other employee granted sick leave in accordance with the provisions of the Division of Personnel's *Administrative Rule*.
- 2. After exhausting accrued sick leave and, if requested, accrued annual leave, an employee may receive TTD, TTR, or TPR 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 Division of Personnel's *Administrative Rule*.
  - b. Employees of the State of West Virginia continue to accrue annual increment pay and years of service while receiving TTD, TTR, and TPR 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, TTR, and TPR benefits under the provisions of W. Va. Code §23-4-1 *et seq.*, are included as tenure, regardless of job class or title, for purposes of the 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. Annual leave shall accrue and be carried forward from one calendar year to another in accordance with subsection 14.3 of the Division of Personnel's *Administrative Rule*, and service credit for accrual of annual leave shall accrue in accordance with Section 5 of the *Workers' Compensation Temporary Total Disability Rule*.
  - e. Sick leave shall not accrue while an employee is on such leave of absence without pay or for hours during which the employee receives TPR benefits. Official 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, TTR, or TPR benefits. For example, if an employee is absent from work for only three (3) consecutive calendar days due to a compensable injury, the employee is not eligible for TTD or TTR benefits. The employee may, if desired, choose not to use sick leave and, instead, request a medical leave of absence without pay according to subsection 14.8 of the *Administrative Rule*.
4. An employee may change an Election of Option choice once per compensable claim or when benefit eligibility is ruled by the carrier or the Insurance Commission to have changed. The new Election of Option form must be accompanied by a signed statement from the injured employee explaining why the change is being requested and specifying the effective date of the change. The employee may make this single change in Option any time within six (6) months of the date the claim was filed, provided a change from Option 2 to Option 1 cannot be approved for individuals who have separated from employment.
- D. A Return-to-Work Notice must be completed by the employing agency and be sent to the carrier when the employee returns to work regardless of whether the employee elected to receive TTD, TTR, or TPR benefits or sick/annual leave benefits.
- E. Discriminatory Practices
- 1. W. Va. Code §23-5A-3 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 "eligible to receive" TTD, TTR, or TPR 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 made in writing and transmitted by the United States Postal Service, return receipt requested, to the employer's principal office for such reinstatement, provided that the position in which the employee sustained the compensable injury 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 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.

### III. REFERENCES:

- A. W. VA. CODE §23-5A-1, *et seq.*
- B. W. VA. CODE §23-4-1, *et seq.*
- C. W. VA. CODE §85-15-1, *et seq.*
- D. W. VA. CODE R. §143-1-1 *et seq.*, West Virginia Division of Personnel *Administrative Rule*.
- E. W. VA. CODE R. §143-3-1 *et seq.*, West Virginia Division of Personnel *Workers' Compensation Temporary Total Disability Rule*.
- F. *Canfield, et al. v. WV Division of Corrections*, 217 W. Va. 340, 617 S.E. 2d 887 (W. Va. July 6, 2005).

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

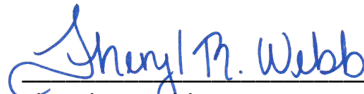
**V. REVISIONS:**

A. Previous Revisions: July 15, 1999, July 1, 2000, November 1, 2005, February 15, 2022, and November 11, 2022.

B. Latest Revision: June 22, 2023.

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

Approved:



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Sheryl R. Webb, Director  
West Virginia Division of Personnel  
Date Signed: June 22, 2023

WORKERS' COMPENSATION TEMPORARY TOTAL  
DISABILITY BENEFITS OR SICK LEAVE BENEFITS

**INITIAL REPORT OF INJURY ELECTION OF OPTION**

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Employee Name: \_\_\_\_\_ Soc. Sec. No. (Last 4): \_\_\_\_\_

Date of Injury: \_\_\_\_\_ Claim No. (If Known): \_\_\_\_\_

Employer: \_\_\_\_\_  
(Department) (Division/Section)

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**To the Employee:** Please submit this completed form to your employer. If you are absent from work due to a work-related injury, you must choose to receive either workers' compensation Temporary Total Disability benefits (TTD benefits) or accrued paid sick leave, and accrued annual leave upon exhaustion of sick leave, according to the Division of Personnel's (DOP) Workers' Compensation Temporary Total Disability Rule (143CSR3) and Workers' Compensation/Sick Leave policy (DOP-P7). If you elect to receive TTD benefits, you may use accrued sick leave until you receive your initial TTD benefit payment. Upon receipt of the initial benefit payment, you are obligated to reimburse your employer the net value of the paid sick leave used. Leave balances will then be restored according to the provisions of this policy.

     **Option 1**

I elect to receive workers' compensation TTD benefits; however, I understand that I may use accrued sick/annual leave only until I receive my initial TTD benefits payment. 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 a 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 official holidays during this leave of absence without pay.

     **Option 2**

I elect to receive accrued sick/annual leave benefits instead of workers' compensation TTD benefits for the period 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, and sick leave and be paid for official holidays that occur during this period. I also understand that while receiving accrued 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 a reduction in force calculation. After I exhaust my accrued sick/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 a reduction in force calculation and the calculation of annual increment pay. I will accrue annual leave. I will not accrue sick leave, and I will not be paid for official holidays during this leave of absence without pay.

Employee's Statement: I understand that I must choose either workers' compensation TTD benefits or accrued paid sick/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/annual leave until I receive my initial TTD benefits payment, I must reimburse the net value of the accrued 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 July 1, 2022, §143CSR1, and July 1, 2012, §143CSR3) AND ARE SUBJECT TO CHANGE THROUGH THE LEGISLATIVE RULE-MAKING PROCESS.

WORKERS' COMPENSATION  
TEMPORARY TOTAL DISABILITY, TEMPORARY TOTAL REHABILITATION,  
TEMPORARY PARTIAL REHABILITATION BENEFITS OR SICK LEAVE BENEFITS

**CHANGE IN STATUS ELECTION OF OPTION**

**To the Employee:** Please submit this completed form to your employer. Based upon medical evaluation and disability determination, you have been medically certified as unable to work or return to your regular job duties or other available work and ruled eligible by the carrier or the Insurance Commission for Temporary Total Disability (TTD) or Temporary Total Rehabilitation (TTR) benefits or Temporary Partial Rehabilitation (TPR) benefits.

If you are absent from work due to a work-related injury, you must choose to receive *either* TTD, TTR, or TPR benefits from Workers' Compensation or paid sick leave and annual leave upon exhaustion of sick leave, if requested according to the Division of Personnel's (DOP) *Workers' Compensation Temporary Total Disability Benefits Rule (143CSR3)* and *Workers' Compensation/Sick Leave* policy (DOP-P7).

       **Option 1**

I elect to receive workers' compensation TTD, TTR, or TPR benefits. I understand while receiving TTD, TTR, or TPR benefits, I will be on a continuous leave of absence without pay status. If I elect to receive TPR benefits, I understand I shall be placed on an intermittent leave of absence without pay while receiving TPR benefits. I understand that I will continue to accrue tenure credit for a reduction in force calculation and the calculation of annual increment pay while on a leave of absence without pay status. I will accrue annual leave. I understand sick leave shall NOT accrue while on a leave of absence without pay status. Sick leave shall be prorated during periods receiving TPR in accordance with subdivision 14.8.c of the Division of Personnel's *Administrative Rule*. W. VA. CODE R. §143-1-1 *et seq.* Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period. Sick leave cannot be accrued for hours not paid. Holidays occurring during this period of unpaid medical leave of absence will not be accrued nor paid.

       **Option 2**

I elect to receive accrued sick/annual leave benefits instead of workers' compensation TTD, TTR, or TPR benefits for the period that I am absent from work due to a work-related injury. While I am receiving accrued paid leave benefits, I understand that I will continue to accrue annual leave and sick leave and be paid for holidays that occur during this period. I also understand that while receiving accrued 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 a reduction in force calculation. After I exhaust my accrued sick/annual leave, I understand that I am eligible to receive workers' compensation benefits during any remaining period of absence from work due to a compensable injury. If I receive 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 a reduction in force calculation and the calculation of annual increment pay. I will accrue annual leave. I understand sick leave shall NOT accrue while in a leave of absence without pay status. Sick leave shall be prorated during periods receiving TPR in accordance with subdivision 14.8.c of the Division of Personnel's *Administrative Rule*. Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave

during the pay period. Sick leave cannot be accrued for hours not paid. Official holidays occurring during this period of unpaid medical leave of absence will not be accrued nor paid.

**Employee's Statement:** I understand that I must choose either workers' compensation benefits or accrued paid sick/annual leave and/or annual leave and that I am not legally entitled to both for the same period. I understand I must reimburse the net value of the paid leave to my employer, who will then restore that leave should I receive payment for both at any time. 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 (July 1, 2022, §143CSR1, July 1, 2012, §143CSR3) AND ARE SUBJECT TO CHANGE THROUGH THE LEGISLATIVE RULE-MAKING PROCESS.