

Workers' Compensation

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Statutory Authority

The North Carolina Workers' Compensation Act (WC Act), Chapter 97 of the NC General Statutes, governs claims for compensation for injuries arising out of employment. The North Carolina Industrial Commission (NCIC) maintains claim records, adjudicates disputes, and approves certain awards of benefits in accordance with the WC Act.

The Office of State Human Resources (OSHR) pursuant to Chapter 143, Article 63 of the General Statutes, administers the State Workers' Compensation Program (SWCP) for all claims arising in State agencies. The State is self-insured for workers' compensation liabilities. OSHR contracts with vendor(s) to provide workers' compensation claim administration and related services. Each State agency is responsible for paying individual claim costs. The SWCP covers all agency and university full-time, part-time, and temporary State employees and officers including all State elected officials, members of the General Assembly and those appointed to serve on a per diem, part-time or fee basis.

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Special Considerations

Claims of employees of the North Carolina Department of Public Instruction are administered through a separate workers' compensation program per N.C.G.S. §115C-337. This policy applies to employees eligible for salary continuation pursuant to N.C.G.S. §143-166.14 and §115C-338.

Temporary employees are not eligible for leave; thus, leave related benefits described in this policy do not apply to temporary employee injuries.

Purpose

The purpose of this policy is to provide a brief overview of the SWCP including the responsibilities of employees, employers, and OSHR. It is the goal of the SWCP to consistently apply the WC Act, administrative rules, policies, and procedures to provide benefits to which an injured employee is entitled under the WC Act.

Employee Responsibility

An injured employee is responsible for making a workers' compensation claim pursuant to the WC Act. In accordance with the WC Act, no compensation shall be payable unless written notice is given within 30 days unless reasonable excuse is made to the satisfaction of the NCIC for not giving such notice, and the NCIC is satisfied that the employer has not been prejudiced thereby.

An injured employee or the employee's legal representative shall:

- give notice of an accident to the employee's supervisor immediately following the accident;
- give written notice of an accident to the employer within 30 days after occurrence of the accident or death;
- obtain authorized medical treatment as directed by employer;
- timely provide all written statements from authorized treating physician regarding the employee's work status to supervisor;
- cooperate with authorized medical providers, vendors, and employer; and

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- if appropriate, file a claim with the NCIC within two years from the date of injury or knowledge of an occupational disease.
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Employer Responsibilities

Each State agency is responsible for administering an effective and efficient workers' compensation program. The agency shall ensure injured employees receive benefits which are paid with State funds to which the employee is entitled under the WC Act while controlling and containing claim costs. To meet these objectives, each agency shall:

- designate a Workers' Compensation Administrator responsible for ensuring appropriate reporting and monitoring of all agency claims;
 - timely pay all claim costs;
 - communicate workers' compensation policies and procedures to all employees and supervisors;
 - report injuries to the State's claims administration vendor who shall make required injury reports to the NCIC within five days from knowledge of any claim that results in more than one day's absence from work or if medical expenses exceed the reportable amount established by the NCIC;
 - communicate regularly with workers' compensation vendors, OSHR, and the Attorney General's office, if applicable, to assist in handling of claims; and
 - actively participate in claim related decision-making processes, mediations, NCIC hearings, settlement negotiations, and execution of settlement documents as needed.
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Office of State Human Resources (OSHR) Responsibilities

OSHR shall:

- serve as SWCP information resource and liaison for employees and employers;

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- provide consultation to agency staff in managing their workers' compensation programs regarding application of WC Act requirements, administrative rules, policies and procedures to all claims;
 - measure and evaluate the effectiveness of agencies' workers' compensation programs and recommend changes to achieve optimum results;
 - engage in vendor contract oversight and monitoring, evaluate vendor effectiveness, and serve as liaison between all workers' compensation vendors and State agencies; and
 - develop training and educational materials for use in training programs for the agencies and provide periodic training for agency workers' compensation administrators.
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Leave on Day of Injury

An injured employee receives usual pay and no leave is charged for the day of injury if the employee is treated by an authorized treating physician who instructs the employee not to return to full duty or restricted duty work.

When an injured employee is treated by an authorized treating physician who instructs the employee to return to full duty or restricted duty work on the date of injury, the injured employee will not be charged leave for time spent obtaining authorized medical treatment.

An injured employee shall obtain a written statement from the authorized treating physician indicating that the employee was instructed not to return to full duty or restricted duty work on the date of injury and present it to the supervisor as soon as practical thereafter.

Leave During Seven-Day Waiting Period

During the seven-day waiting period required by N.C.G.S. §97-28, an injured employee must select one of the options listed below. Once an election is made, it may not be rescinded for the duration of the claim.

Option 1: Employee may use available sick, vacation, bonus, or compensatory leave if applied within the time frames provided under the Hours of Work and Overtime Compensation policy.

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Option 2: Employee may go on leave without pay.

If the injury results in disability of more than seven days, the weekly disability compensation benefit shall be allowed from the first date of disability. If this occurs in the case of an employee who elected to use leave during the waiting period, no adjustment shall be made for leave used for these days.

Workers' Compensation Leave of Absence

After the N.C.G.S. §97-28 waiting period is satisfied, an injured employee who is full-time or part-time (half-time or more) permanent, probationary, trainee, or time limited and is unable to return to full duty or restricted duty work as certified by a written statement from the authorized treating physician will be placed on workers' compensation leave.

Use of Supplemental Leave

After an injured employee has been placed on workers' compensation leave (i.e. waiting period is exhausted), an employee may supplement weekly disability compensation by use of leave (sick, vacation, or bonus) earned prior to the injury in accordance with a schedule published by OSHR each year. Compensatory leave may also be used if applied within the timeframes provided under the Hours of Work and Overtime Compensation policy. An injured employee may be eligible for transferred/donated leave for use as supplemental leave.

Supplemental leave is paid at the employee's hourly rate of pay and is subject to State and Federal withholding taxes and Social Security, but not subject to retirement withholding.

No Leave Required for Follow-up Authorized Medical Treatment After Return To Work

An injured employee that has returned to work is not charged leave for time lost from work for authorized injury related medical treatment that occurs during regularly scheduled work hours. However, time away from work attending authorized medical treatment shall be noted in the injured employee's payroll records. Paid time is limited to reasonable time for medical treatment and travel. Any excess time away from work shall be unpaid or recorded as leave without pay or charged to earned leave (sick, vacation, or bonus) or compensatory

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leave if applied within the time frames provided under the Hours of Work and Overtime Compensation policy.

If an employee previously incurred a compensable injury while working for another State employer, the workers' compensation administrator or human resources representative of the current employing agency shall contact the prior State employer to confirm employee's attendance at authorized injury related medical appointments. The injured employee is not charged leave for time lost from work for authorized injury related medical treatment related to the previously occurring injury in accordance with guidelines described above.

A State employee injured while working for a non-State employer is charged leave for time away from work for medical treatment.

Attending Workers' Compensation Legal Proceedings

Employees as follows are not charged leave for reasonable time away from work attending workers' compensation related legal proceedings

- Injured employee, witness, or other employee requested to attend by the Attorney General's office;
 - Employee subpoenaed by either party;
 - Employee whose attendance is approved by their employing agency.
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Vacation and Sick Leave Credits Continue

While on workers' compensation leave, an injured employee continues accumulating vacation and sick leave to be credited to the employee's account for use upon return to work.

Leave Payout if Employee Does Not Return to Work

If an injured employee does not return to work following workers' compensation leave, the employee shall be paid a lump sum for unused vacation and bonus leave eligible for payout already earned as of the date of injury, unused vacation and sick leave accumulated only during the first 12 months of workers' compensation leave, and any unused bonus leave eligible for payout on or after the date of injury.

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Vacation Leave in Excess of 240 Hours

When an injured employee returns to work following a period of workers' compensation leave, the employee's vacation leave balance may exceed the 240-hour maximum as the employee has been unable to exhaust leave during the period of workers' compensation leave. This shall be handled as follows:

- The 240-hour maximum to be carried forward to the next calendar year may be exceeded by the amount of vacation accumulated during workers' compensation leave. The excess vacation leave may be used after returning to work or carried on the leave account until the end of the calendar year at which time any vacation leave exceeding the 240-hour maximum shall be converted to sick leave.
- If the employee separates for any reason during the period (i.e. calendar year) that excess vacation is allowed, the employee shall be paid a lump sum for unused vacation and bonus leave eligible for payout already earned as of the date of injury, unused vacation leave accumulated during the first twelve months of workers' compensation leave, and unused bonus leave eligible for payout granted on or after the date of injury.

Health Insurance

While on workers' compensation leave prior to separation, an injured employee may elect to continue or not continue health insurance coverage under the State Health Plan or other employer-based health plan. All injured employees are responsible for paying directly the employee's share of monthly premiums for the employee coverage and premiums for any dependent coverage. Employers should provide detailed information to all injured employees regarding health insurance coverage continuation and premium payments while an injured employee is receiving weekly disability compensation.

Retirement Service Credit

While on workers' compensation leave, an injured employee does not receive retirement service credit. After returning to work, an injured employee may purchase service credits for

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the time period on workers' compensation leave. Upon employee request, the Retirement System will provide a statement of the cost and date by which purchase must be made. If purchase is not made by the deadline date, the cost must be recomputed.

Total State Service Credit

While on workers' compensation leave, an injured employee remains in pay status and continues to receive total state service credit.

Longevity Pay

While on workers' compensation leave, an injured employee remains in pay status and continues to receive longevity credit. Injured employees eligible for longevity pay receive their annual payments.

Severance Salary Continuation Eligibility

While on workers' compensation leave, an injured employee is not excluded from eligibility for severance salary continuation if the employee otherwise meets the eligibility requirements set forth in 25 NCAC 01D .2702.

Reinstatement of Salary

Upon return to work following a period of workers' compensation leave, an employee's salary shall be computed based on the last salary plus any legislative increase to which entitled. Any performance increase which would have been given had the employee been working may be included in the reinstatement of salary, or it may be given on any payment date following reinstatement.

Return to Work

When an injured employee is released to return to work by the authorized treating physician and the employee has not been separated, the employer should act as follows:

1. If an injured employee has reached maximum medical improvement and has been released to return to work by the authorized treating physician without restrictions or

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with restrictions that can be accommodated, the agency shall return the employee to the same position held prior to the period of workers' compensation leave.

2. If an injured employee has reached maximum medical improvement and has been released to return to work by the authorized treating physician but has been assigned work restrictions which cannot be accommodated in the previous position, the agency shall attempt to place the employee in another position that is suitable to the employee's capacity.
3. If an injured employee has not reached maximum medical improvement but is able to return to work with restrictions assigned by the authorized treating physician, the agency shall provide a work assignment suitable to the employee's capacity and approved by the treating physician if such work is available.

Advisory Note: The WC Act does not prohibit the separation of an employee in receipt of workers' compensation benefits. Employees should not be separated in retaliation for filing a workers' compensation claim. Separation may occur anytime in accordance with 25 NCAC 01C .1007 Separation.

Refusal of Suitable Employment

If an employee who is released to return to work by written statement of the authorized treating physician refuses suitable employment, the employer shall request termination of disability compensation payments and implement separation procedures.