

VII - 7.40 - POLICY ON ACCIDENT LEAVE FOR NONEXEMPT AND EXEMPT STAFF EMPLOYEES

(Approved by the Board of Regents, May 1, 1992; Amended November 12, 1993; Amended December 13, 1996; Amended April 16, 2004; Amended October 9, 2015)

I. PURPOSE AND SCOPE

This policy governs Accident Leave for employees in compliance with state workers compensation law (Ann. Code of Maryland § 9-701 – 9-705). It applies to all Regular status Nonexempt and Exempt Staff employees holding leave-eligible appointments who experience a work-related injury that is compensable under the Maryland Workers' Compensation Act.

II. DEFINITIONS

Accidental Injury – a work-related personal injury that would be compensable according to the Maryland Workers' Compensation Act.

Average Weekly Wage – the average of the employee's weekly wage for the 14 weeks immediately prior to the accident.

Temporary Total Benefits - monetary compensation for time lost from work due to work-related accidents or injuries for employees (a) not eligible for accident leave or (b) when eligibility for accident leave has expired. Temporary total benefits are paid by the State of Maryland's Workers Compensation insurer, not the University, and must be requested by the employee.

III. APPLICABILITY

- A. Only leave-eligible employees in Regular status who work 50% FTE or more shall be eligible for accident leave.
- B. Accident leave will be provided if:
 - 1. The accident is determined to be compensable according to the Maryland Workers' Compensation Act, and
 - 2. A physician examines the employee and certifies that the employee is disabled because of the injury.
- C. An employee receiving work-related accident leave shall continue to accrue leave and other benefits based on pay status and shall not be denied health care benefits with the subsidy allowed by the state solely because of the use of accident leave.

IV. ACCIDENT LEAVE BENEFITS

A. Accident Leave is leave paid at two-thirds (2/3) of the employee's regular salary, but is exempt from federal and state taxes.

B. Medical and Hospital Expenses

Medical and hospital expenses shall be paid on behalf of an injured employee according to the Workers' Compensation Act, if the accident is determined to be compensable by the Workers Compensation Commission or the WC Insurer.

V. ADMINISTRATION

A. Reporting of Injury

1. Employee's First Report of Injury

The injured employee or someone on the employee's behalf shall provide the following to the employee's supervisor or the institution's designated office:

- a. oral or written notice immediately after the injury occurs; and
- b. within three working days after the injury occurs, a physician's written certification that the employee is disabled by the injury.

2. Supervisor's Report

Upon having knowledge of an employee injury, the supervisor of the injured employee shall immediately notify the institution's designated office and forward to that office within 2 days following the injury a Supervisor's Report of Employee's Injury.

3. Institution Reports

The designated office, upon receipt of the supervisor's report, shall:

- a. file an Employer's First Report of Injury with the State of Maryland's Workers Compensation insurer (WC Insurer).
- b. inform the injured employee or someone on the employee's behalf of the employee's right to file a claim with the Workers' Compensation Commission; and

- c. determine if the injury would likely be compensable under the workers compensation statute.

B. Medical Evaluation

The WC Insurer or the institution, or both, may refer an injured employee to a physician(s) for periodic examination to determine the nature and extent of the injury, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work. An institution referring an employee to a physician shall file with the WC Insurer a report stating the circumstances of referral and the physician's prognosis.

C. Use of Leave Other Than Accident Leave

Prior to receipt of a determination of compensability from the WC Insurer, an employee must be placed on accident leave and the institution may not approve use of other leave unless there is a reasonable basis for believing that the injury is non-compensable. Only if the injury is believed to be non-compensable, may the institution place the employee on sick, annual or other available leave prior to receipt of a determination by the WC Insurer. If an employee exhausts all available accident leave and the medical certification specifies that the employee is unable to return to work because of the work-related injury, an institution may require an employee to seek temporary total disability payments under the workers' compensation act.

VI. DURATION OF LEAVE

A. Period of Accident Leave

Having made the determination that the injury would likely be compensable under the Workers' Compensation statute, the institution shall grant Accident Leave to an employee beginning on the first day of absence from work because of the disability. Accident Leave shall be terminated on the earlier of (1) the date that the employee is able to return to his/her official duties, or modified duties designated by the institution, as certified in writing by a physician; or (2) six months from the original date of disability.

B. Leave for Continuing Treatment

If the employee returns to his/her official duties, or modified duties designated by the institution, prior to six months following the date of the disability, Accident Leave may be granted for continuing treatment of the original injury, as certified in writing by a physician selected or accepted by the institution, for a period up to six months from the original date of disability.

C. Additional 6 Month leave

Accident leave may be granted for up to an additional six months if a physician selected or accepted by the institution certifies that the employee continues to be disabled and no decision has been reached by the Workers' compensation commission on the employee's claim.. When an employee continues to use accident leave beyond a six month period, the timekeeper shall record the accident leave as Accident Leave With Pay on the first day immediately following the end of the initial six month period from the original date of disability. Accident leave with pay beyond six months is additionally exempt, by federal law, from Social Security taxes.

VII. DETERMINATION OF NONCOMPENSABILITY

A. Notice of Compensability

Notwithstanding the above provisions Sections VI.A, B and C, Accident Leave shall terminate on the date the institution receives notice that the injury has been determined to be noncompensable from (1) the Workers' Compensation Commission; or (2) in the absence of a determination from the Workers' Compensation Commission, from the Injured Workers' Insurance Fund.

B. Reimbursement by Employee to Institution

If the institution receives notice of noncompensability as specified under paragraph A above, the institution shall correct the employee's leave record to reflect a conversion of any Accident Leave that was granted in advance of the notice to leave with pay or, if the employee does not have accrued leave with pay, to leave without pay. The employee shall be obligated to reimburse the institution for any Accident Leave advanced under this policy for an injury that is subsequently determined to be noncompensable.

VIII. TEMPORARY TOTAL BENEFITS

- A. An injured employee will only be entitled to temporary total benefits for loss of wages according to the Workers' Compensation Act (herein referred to as "temporary total benefits"), after all available accident leave has been used.
- B. Temporary total benefits are paid at the rate of two-thirds (2/3) of the employee's average weekly wage and provide compensation to the temporarily disabled employee until the medical provider states that he/she may return to work. Temporary total benefits are paid by the WC Insurer and are exempt from Federal and State tax, including Social Security Tax.
- C. An employee on temporary total benefits is placed on a Leave Without Pay because of an On-The-Job Injury. The institution will continue to pay the employer subsidy for the plans in which the employee was enrolled at the time of the accident, and the employee will be responsible for his/her regular premiums.

USM Bylaws, Policies and Procedures of the Board of Regents

- D. The institution shall approve the employee's use of other available leave with pay, including sick leave, annual leave, personal leave, compensatory leave and holiday leave, only after the employee has exhausted all available accident leave and received all temporary total (or partial) benefits for which he is eligible.

- E. In the event an employee uses sick leave for the time period for which he subsequently is awarded benefits pursuant to the Workers' Compensation Act, the institution authorizes use of the sick leave with the understanding and agreement that:
 - 1. It constitutes an advance payment of temporary total or temporary partial disability benefits due under the Maryland Workers' Compensation Act; and
 - 2. The State's obligation to pay temporary total (or partial) disability benefits under the Workers' Compensation Act shall be offset on a dollar for dollar basis by the gross amount of payments received by the employee while on sick leave for the same period of time.

- F. After the injured employee has used all available accident leave, temporary total benefits and accrued leave, the employee will be placed on a Leave Of Absence Without Pay. This leave without pay shall expire once the employee has used a total of two years of leave, both paid and unpaid.

IX. SUBROGATION

If someone other than the employee or the institution causes an injury for which work-related accident leave is taken, the institution, after notice to the injured employee, shall be subrogated to the rights of the employee to the extent of any compensation paid or owed. If (1) within 90 days after the employee receives such notice from the institution, the employee fails to enforce a claim against the third person, or (2) within a reasonable time after giving the institution notice of an intent to enforce the claim against such third person the employee fails to take action to enforce the claim, the institution, in its own name and for its own benefit may bring or join in an action against such third person.

IMPLEMENTATION PROCEDURES:

Each President shall identify his/her designee(s) as appropriate for this policy, develop procedures as necessary to implement this policy, communicate this policy and applicable procedures to his/her institutional community, and post it on its institutional website.

REFERENCES:

State Personnel and Pensions Article, §9-701 and §9-702.