



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION, INFORMATION OR DISCUSSION

TOPIC: USM Policy on Accident Leave for Faculty

COMMITTEE: Education Policy and Student Life

DATE OF COMMITTEE MEETING: June 5, 2013

SUMMARY: The Maryland Worker's Compensation Act governs leave and compensation requirements for employees who experience a work-related injury that is compensable under the law. Provisions of the current USM Policy on Accident Leave and Creditable and Non-Creditable Sick Leave for Faculty Members (No. II-2.30) related to accident leave are intended to implement those state law requirements for USM faculty members.

However, the state workers' compensation law has been amended substantially since the USM policy was approved in 1989. The purpose of the attached proposal is to bring USM policy into compliance with existing state law requirements and align the injury reporting and other procedures with established general procedures for the administration of accident leave in the USM. The attached policy would replace the outdated section of Policy No. II-2.30 that addresses accident leave.

The USM Presidents and the Council of University System Faculty have reviewed and approved these changes.

ALTERNATIVE (S): The Committee may choose not to approve the proposed policy or may recommend edits to the proposed policy.

FISCAL IMPACT: There is no fiscal impact associated with these amendments.

CHANCELLOR'S RECOMMENDATION: That the Committee on Education Policy and Student Life recommend that the Board of Regents approve the USM Policy on Accident Leave for Faculty.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Joann Boughman

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II – x.xx - USM POLICY ON ACCIDENT LEAVE FOR FACULTY

(Approved by the Board of Regents, xx/xx/2013)

I. PURPOSE AND SCOPE

This policy governs Accident Leave for Faculty in compliance with state workers compensation law (Ann. Code of Maryland § 9-701 – 9-705). It applies to all Regular status faculty 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 likely 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 Disability (TTD) Benefits - monetary compensation for time lost from work due to work-related accidents for employees (a) not eligible for accident leave or (b) when eligibility for accident leave has expired. TTD is paid by the Workers Compensation insurer (IWIF (Chesapeake)), not the University, and must be requested by the employee.

III. APPLICABILITY

- A. Only leave-eligible faculty 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 faculty member and certifies that the faculty member is disabled because of the injury.
- C. A faculty member 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 faculty member's regular salary, but is exempt from federal and state taxes.

B. Medical and Hospital Expenses

Medical and hospital expenses may be paid on behalf of an injured employee according to the Workers' Compensation Act.

V. ADMINISTRATION

A. Reporting of Injury

1. Employee's First Report of Injury

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

- a) oral or written notice immediately after the injury occurs; and
- b) within 3 working days after the injury occurs, a physician's written certification that the faculty member is disabled by the injury.

2. Supervisor's Report

Upon having knowledge of a faculty member's injury, the supervisor of the injured faculty member 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 Injured Workers' Insurance Fund (IWIF) (changing to Chesapeake Employers Insurance Company (Chesapeake) eff. 10/1/2013);
- b) inform the injured faculty member or someone on the faculty member'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 worker's compensation statute.

B. Medical Evaluation

The IWIF (Chesapeake) or the institution, or both, may refer an injured faculty member to a physician for periodic examination to determine the nature and extent of the injury, the faculty member's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work. An institution referring a faculty member to a physician shall file with IWIF (Chesapeake) 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 IWIF (Chesapeake), a faculty member 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. If the injury is believed to be non-compensable, the institution may place the faculty member on sick, annual or other available leave prior to receipt of a determination by IWIF (or Chesapeake).

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 a faculty member 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 faculty member 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 faculty member 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 Six-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 a faculty member 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 NONCOMPENSATIBILITY

A. Notice of Noncompensability

Notwithstanding the above provisions VI A through 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 (Chesapeake).

B. Reimbursement by Faculty Member to Institution

If the institution receives notice of noncompensability as specified under paragraph A above, the institution shall correct the faculty member'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 faculty member does not have accrued leave with pay, to leave without pay. If the faculty member is placed on leave without pay, the faculty member 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 DISABILITY BENEFITS (TTD)

- A. An injured faculty member will only be entitled to TTD for loss of wages according to the Workers' Compensation Act after all available accident leave has been used.
- B. TTD is paid at the rate of two-thirds (2/3) of the employee's average weekly wage and provides compensation to the temporarily disabled employee until the physician states the he/she may return to work. TTD is paid by IWIF (Chesapeake) and is exempt from Federal and State tax, including Social Security Tax.
- C. A faculty member on TTD 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 faculty member was enrolled at the time of the accident, and the employee will be responsible for his/her regular premiums.
- D. The institution shall approve the faculty member's use of other available leave with pay, including sick leave, annual leave, personal leave, and holiday leave, only after the

faculty member has exhausted all available accident leave and received all temporary total (or partial) benefits for which he/she is eligible.

- E. In the event a faculty member uses sick leave for the time period for which he/she 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 faculty member has used all available accident leave, temporary total benefits and accrued leave, the faculty member will be placed on a Leave Of Absence Without Pay. This leave without pay shall expire once the faculty member has used a total of two years of leave, both paid and unpaid.

IX. SUBROGATION

If someone other than the faculty member or the institution causes an injury for which work-related accident leave is taken, the institution, after notice to the injured faculty member, shall be subrogated to the rights of the faculty member to the extent of any compensation paid or owed. If (1) within 90 days after the faculty member receives such notice from the institution, the faculty member 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 faculty member 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.

X. 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.

REPLACEMENT FOR:

BOR II – 2.30 USM Policy on Accident Leave and Creditable and Non-Creditable Sick Leave for Faculty Members, Section V. Accident Leave.