

**TITLE: 400 HUMAN RESOURCES ADMINISTRATION**

**CHAPTER 103 GENERAL WORKING CONDITIONS**

**PART 8 WORKERS' COMPENSATION**

**EFFECTIVE DATE: March 27, 2015**

**PURPOSE:** To provide guidelines for Workers' Compensation issues within the Law Offices of the Public Defender (LOPD)

**APPLICABILITY:** All LOPD employees

**AUTHORITY:** *Subsection 14 of 1.6.4 NMAC Job Related Injury or Illness Claims Management*

**RELATED FORMS:** *Employers First Report of Injury; Notice of Accident (NOA – 1); Authorization to Release Medical Information; Benefit Explanation Form; Claim Explanation Form; Doctor Visit/ Modified Work Assignment Form; Modified Duty Checklist*

## **1 Policy**

The Law Offices of the Public Defender (LOPD) will provide employees a safe and healthy workplace. Employees who sustain injuries or illness arising out of their employment with the LOPD are entitled to compensation under the provisions of the New Mexico Worker's Compensation Act, NMSA 1978, 52-1-1 et seq.

## **2 Definitions**

- a. **Family and Medical Leave (FML) Act:** A federal law that mandates up to 12 work weeks of unpaid, job protected leave to eligible employees for certain specified family and medical reasons.
- b. **Light or Modified Duty:** A temporary modification or adjustment to an employee's regular duties to facilitate healing and recovery.
- c. **Worker's Compensation Bureau:** A bureau within the Risk Management Division of the General Services Department that evaluates claims of injuries or illnesses during the course of an employees work including administering the benefits.
- d. **Workers' Compensation Act:** A State law that mandates payment of incurred medical costs and a partial reimbursement of lost wages to a state employee who sustains injury by accident or illness arising out of and in the course of employment.

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### 3. Procedure: Employee Responsibilities

- a. Report any work-related injury or illness or occupational disease exposure to their immediate supervisor, regardless of the severity of the injury or illness, within fifteen (15) days of the incident.
- b. Complete the *Notice of Accident Form (WCA Form NOA-1)*, within twenty-four (24) hours of reporting the incident.
- c. Complete additional documentation, as required by risk management including but not limited to the *Authorization to Release Medical Information*; the *Benefit Explanation Form*; the *Claim Explanation Form*; and the *Doctor Visit/ Modified Work Assignment Form*, if applicable.
- d. Employees are required to utilize their own medical provider for the first 60 days of medical treatment and will be reimbursed for the cost if the claim is accepted by risk management, workers compensation bureau.
- e. Forward any medical bills to the HR Bureau for processing with risk management.
- f. Employees must provide information to the LOPD as requested in order to obtain benefits.
- g. Employees must utilize their own sick leave or annual leave during the first seven (7) calendar days of absence.
- h. If approved by Worker's Compensation Bureau, the employee may utilize the Workers Compensation – Paid (WCP) time reporting code. This code must be entered by the HR Bureau.
- i. Employees may communicate directly with their assigned adjuster at the Worker's Compensation Bureau however, the supervisor and the HR Bureau must be kept informed to insure accurate pay and benefits.

### 4. Procedure: Immediate Supervisor Responsibilities

- a. Ensure that injured employees receive necessary medical attention and make arrangements for the injured employee to be transported to the nearest medical facility or the facility of the employee's choice.
- b. Ensure that all the appropriate forms are completed, including but not limited to the *Notice of Accident Form (WCA Form NOA-1)*, if not completed by the employee; and the *Employer's First Report of Accident Form (WCA E1.2)*, within twenty-four (24) hours of the report of the incident, describing all details related to the incident.

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- c. Supervisors must insure that the employee completes the *Authorization to Release Medical Information*; the *Benefit Explanation Form*; and the *Claim Explanation Form*. Supervisors may serve as witnesses to the employee's initials and signatures but may not complete the form for the employee.
- d. For illnesses or injuries that require on-going medical visits, the supervisor must insure that employees return a completed *Doctor Visit / Modified Work Assignment Form* after each visit.
- e. Forward all forms (*NOA-1 and E-1.2*) and other documentation (including medical billing information) to the LOPD HR Bureau who will communicate with the Worker's Compensation Bureau's designated claim adjuster regarding any additional information or documentation necessary for the employee to achieve early-return-to-work status.
- f. Supervisors must keep the LOPD HR Bureau informed regarding employees ability to work and the status of the illness or injury compensable under Worker's Compensation Act.

#### **5. Procedure: Human Resource Bureau Responsibilities**

- a. Conducts a quality check on all documents submitted to insure that all information and signatures are provided to facilitate processing of the claim packet.
- b. Forward all forms to the Worker's' Compensation Bureau of the General Services Department, Risk Management Division.
- c. Maintain the appropriate records in a file separate from the employees personnel file.
- d. Provides Workers Compensation Bureau with employee wage information for the purpose of determining benefits payments.
- e. Enters Worker's Compensation – Paid (WCP) time reporting code for employees upon approval by the Worker's Compensation Bureau.
- f. Assists supervisors with evaluation of modified or light duty requests.
- g. Determines eligibility for Family and Medical Leave (FML) and notifies employees and supervisors regarding FML eligibility and designation for use of FML time reporting codes.

#### **6. Procedures: Benefits Administration**

- 1. Upon decision by the Workers' Compensation Bureau that the injured employee is

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entitled to benefits, the illness or injury is deemed a serious medical condition for the purpose of Family and Medical Leave. If an employee is otherwise eligible for Family and Medical Leave (FML) then absences due to the illness or injury shall be coded as FML.

- a. The first five (5) work days of absence due to the work related injury are chargeable to sick leave, if the employee has sick leave available, or if sick leave has been exhausted, annual leave or any other paid time off may be used at the employee's option.
- b. After the first seven (7) consecutive calendar days that an employee is unable to work, Workers' Compensation Bureau will commence paying the employee 66 2/3% of the average gross weekly wage (or the maximum weekly payment specified by law, whichever is less).
- c. Upon commencement of payment of wage benefits, the employee shall be considered approved for Family and Medical Leave (FML) and FML time reporting codes shall be utilized, if the employee meets all other criteria to be designated as eligible for FML.
- d. Workers Compensation – Paid (WCP) time reporting code shall count against FML entitlement.
- e. Starting on the eighth (8<sup>th</sup>) consecutive calendar day, one third (1/3) of the employee's missed time or 2.7 hours per day is charged to sick leave until it has been exhausted and then to annual leave or any other paid time off selected by the employee. Part time employees will have the amounts of time pro-rated.
- f. When an employee has exhausted his or her available FML entitlement, the employee must request Leave Without Pay (LWO) in maximum increments of thirty (30) calendar days. A statement must accompany the request from the employee's physician indicating when the employee might be expected to return to duty. This option is only available if the treating health care provider indicated that the employee cannot return to work to a modified or temporary duty assignment or such duty is not available.
- g. The employee will be informed when leave without pay has been granted for thirty (30) calendar days (or less if so requested). If the employee is unable to return to work after thirty calendar days (or less, if less was requested and approved), the employee must submit a second request for Leave Without Pay (LWO) of a minimum of five (5) work days prior to the expiration of the approved leave or the employee will be charged Absence Without Leave (AWO). LWO cannot exceed thirty (30) calendar days for probationary employees or

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twelve (12) consecutive months for permanent employees, unless approved by the Chief Public Defender.

- h. Employees who report a false claim and/or falsify required documentation under this policy may be subject to disciplinary action up to and including dismissal.

#### 7. Procedure: Early Return to Work/Modified Duty Assignments

- a. The supervisor, management and human resources should make every effort possible to identify and offer modified duty/return to work opportunities to injured employees.
- b. The employee may be assigned to his/her current classification with modified duties or to a temporary assignment, at or below his/her current grade, comprised of a combination of duties from a variety of positions.
- c. Employees who have been unable to work because of a compensable injury under the Workers' Compensation Act may request to return to work in a modified duty assignment for up to six (6) months, through their supervisor and management. The supervisor shall consult with human resources to determine eligibility and proper completion of required documentation prior to approving or disapproving the request.
- d. Employees must provide a Doctor Visit / Modified Work Assignment Form to their supervisor or manager that addresses the medical restrictions or limitations due to the injury or illness and the anticipated duration of the restrictions after each doctor's visit.
- e. Supervisors or management shall utilize the *Evaluating Modified or Light Duty Checklist* to determine if modified or light duty would benefit the LOPD and the employee. The *Checklist* should be returned to the HR Bureau for maintenance in the employee's worker's compensation file.
- f. Employees may request an extension of modified duty for a period of up to six (6) additional months if substantial progress in recovery of a compensable injury under the *Workers' Compensation Act* has been demonstrated and it has been anticipated that the employee will be able to return to full duty within the timeframe of the considered extension.
- g. The supervisor or manager shall provide human resources with a copy of the request for a return to work in a modified duty assignment and/or an extension.
- h. Employees on a modified duty assignment to a temporary position shall maintain their salary and status for the duration of such temporary assignment.

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### **8. Procedure: Involuntary or Voluntary Separation**

- a. Employees who have suffered a job-related injury or illness which is compensable under the *Workers' Compensation Act* and are physically or mentally unable to perform the essential functions, of their pre-injury/pre-illness position shall be involuntarily or voluntarily separated from service without prejudice, provided:
  - i. The employee has been afforded modified duty in accordance with this policy.
  - ii. The employee has reached Maximum Medical Improvement (MMI) prior to the completion of up to twelve (12) months of modified duty, or, the employee has not reached MMI upon expiration of up twelve (12) months of modified duty;
  - iii. All efforts to reasonably accommodate the medical restrictions of the employee have been made and documented.
  - iv. The LOPD has exhausted efforts to find other suitable vacant positions for which the employee meets the job related qualification standards for the position, with or without reasonable accommodation.
- b. Employees may request modified duty during the separation process with the prior approval of the District Defender and the review of the HR Bureau.
- c. Employees involuntarily or voluntarily separated in accordance with this policy shall be provided written notice in accordance with LOPD policy.

### **9. Procedure: Reemployment of Injured Former Employees**

- a. A former employee who has been separated from service due to an injury and who has received or is due to receive benefits under the *Workers' Compensation Act* shall have reemployment rights to positions in the LOPD with the same classification as they held at the time of separation, a classification with the same grade, or a classification with a lower grade.
- b. The former employee must notify the HR Bureau, in writing, of their desire to be reemployed. The notification shall include the titles and locations of positions which the former employee is willing to accept and an appropriate application for employment.
- c. When the LOPD is planning to fill a vacant position which is the same title and location indicated by the former employee, the LOPD shall offer the job to the former employee provided he/she meets the established requirements and obtains

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certification from the treating health care provider that he/she is fit to carry out the requirements of the position without significant risk of injury.

- d. Former employees reemployed under this policy do not have to serve a probationary period if they were career status at the time of separation.
- e. The HR Bureau shall notify Risk Management about any injured former employee who applies for a position and subsequently declines a job offer.

**Authorized Signature**

APPROVED: 

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