

Chapter Pers 28

WORKER'S COMPENSATION AND HAZARDOUS
DUTY PAY

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Pers 28.01 Statutory authority. Subject to the provisions of chapter 102, Wis. Stats., an employe suffering an injury while performing service growing out of and incidental to his employment, is entitled to worker's compensation. Certain employes injured while performing hazardous duties and who are unable to work may continue to receive their full pay, as provided under section 16.31, Wis. Stats., while unable to-work as a result of the injury or until termination of their employment.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, December, 1976, No. 252, eff. 1-1-77.

Pers 28.02 Effect of worker's compensation. (1) During the period an employe is absent from work due to injury from state employment and is awaiting a determination under chapter 102, Wis. Stats., the employe personally or through his or her representative may elect to:

(a) Use accrued paid leave credits, e.g., sick leave, vacation, holiday, compensatory time, to cover their absence from work and consequent loss of earnings, or

(b) Request leave without pay and await payment of worker's compensation.

(2) The employe shall give written notification to the employing department of the elected manner of coverage for such absence before the end of the pay period in which the absence occurs. If the employe fails to specify how the absence should be covered, the absence shall be charged against the available leave options as determined by the agency, which may be later amended upon the employe's request.

(3) In instances where accrued leave with pay credits have been used to cover an absence which is later found compensable, the appointing officer shall if requested by the employe, provide leave without pay on a day for day basis, with such leave to be taken in accordance with Wis. Adm. Code section Pers 18.02 (7).

(4) If the employe elects to await worker's compensation and the claim is later found non-compensable, accrued leave with pay credits may be used for the absence.

(5) An employe may elect to use accrued sick leave to supplement worker's compensation benefits provided pursuant to chapter 102, Wis. Stats., to the extent that the employe shall receive the equivalent of his regular base pay as defined under Wis. Adm. Code section Pers

5.01. Notice of such election by the employe shall be reported in the same manner provided for in subsection (2).

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1) (b), (4) and (5), Register, December, 1976, No. 252, eff. 1-1-77.

Pers 28.03 Concurrent benefits. An employe may be entitled to concurrent benefits, i.e. worker's compensation for medical treatment expenses and benefits for time lost from work provided under section 16.31, Wis. Stats., in which case the appropriate provisions of this chapter apply.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, December, 1976, No. 252, eff. 1-1-77.

Pers. 28.04 Injury while on hazardous duty. (1) Application for benefits under section 16.31, Wis. Stats., shall be made by the employe or his or her representative to their appointing authority within 30 calendar days from date of injury on forms prescribed by the director. In extenuating circumstances, at the discretion of the director, the time limit for application for benefits may be waived. The application shall contain sufficient and factual information to indicate the nature and extent of the injury or illness, the circumstances surrounding its occurrence and the qualifying duties on which the application is based.

(2) Within 30 days after receipt of the claim the appointing authority shall notify the employe of his decision to authorize or deny the claim and file a copy of the notice of action with the director.

(3) Upon approval of an employe's claim, he or she shall receive his full pay from the date of their inability to work until they either return to work or their employment is terminated by the appointing authority. Periodic reports on the status of the employe's disability and anticipated date of return to work shall be required by the appointing authority.

(4) An employe on leave with pay under this section shall be entitled to applicable pay adjustments applied to the pay schedule and range his or her class is assigned to, consideration for performance awards if eligible, and personal holidays. However, personal holidays shall lapse if the employe does not return to full work status by the end of the calendar year.

(5) Benefits denied an employe while in non-work status include earning of vacation during the period of leave with pay (vacation credits earned prior to the date of injury may be carried over pursuant to Wis. Adm. Code section Pers 18.02(7), time off for legal holidays which occur during the period of approved leave with pay and accrual of sick leave.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (4), Register, September, 1975, No. 237, eff. 10-1-75; am. (4), Register, December, 1976, No. 252, eff. 1-1-77.

Pers 28.05 Medical examinations. (1) Employes on leave with pay shall submit to such physical and/or medical examinations as may be required by the appointing authority to determine the extent of or continuation of disability and inability to work. Such examination(s) shall be at the expense of the agency and performed by physicians selected by the agency. A complete report indicating the

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nature and extent of disability and prognosis for a reasonable return to duty and date of such return shall be submitted to the agency.

(2) Refusal by the employe to submit to examinations ordered by the appointing authority or medical treatment ordered by the examining physician shall constitute grounds for disciplinary action.

(3) Based upon the information provided by the medical reports the appointing authority shall determine the extent to which leave with pay shall be granted or take action to terminate employment.

(4) Upon return to full work status, an employe's benefits under this section shall cease, providing his or her attending physician has released them from further medical treatment. In the event that the employe is able to return to full work status but further medical treatment is required for the sustained injury, benefits shall continue to be granted to cover the treatment time providing the attending physician has made a prior determination that such treatment is necessary for full recovery.

(5) When an employe suffers further aggravation of an injury for which benefits have ended, he or she may, upon recommendation of their attending physician, have such benefit resume for the period of treatment recommended, provided such aggravation meets the qualifying provisions of section 16.31, Wis. Stats.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Pers 28.06 Appeal rights. If an employe's claim for leave with pay due to hazardous duty injury is denied by the appointing authority, the employe may appeal the action to the director by filing a written request within 15 days after being notified of such decision or within 15 days from the effective date of the decision, whichever is later. The employe may appeal the director's decision to the personnel board by filing a written request within 15 days after being notified of such decision or within 15 days from the effective date of the decision, whichever is later. Failure to file the appeal within the specified time limit shall bar the employe from any future claims to section 16.31, Wis. Stats., benefits related to the particular injury incurred.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Pers 28.07 Subrogation rights. See section 16.31 (5), Wis. Stats.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77.