

Chapter ER-Pers 28

WORKER'S COMPENSATION AND HAZARDOUS DUTY INJURY PAY

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Note: Chapter Pers 28 was renumbered Chapter ER-Pers 28, effective March 1, 1983.

ER-Pers 28.01 Statutory authority. Subject to the provisions of ch. 102, Stats., an employe suffering an injury while performing service growing out of and incidental to his or her 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 s. 230.36, 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; am., Register, February, 1981, No. 302, eff. 3-1-81.

ER-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 ch. 102, 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 the 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 agency 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 authority 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 s. ER-Pers 18.05 (1) (a).

(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 paid leave credits to supplement worker's compensation benefits under ch. 102, Stats., to the extent that the employe shall receive the equivalent of the employe's base pay

as defined under s. ER-Pers 29.01. Notice of such election by the employe shall be reported in the same manner provided for in sub. (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; am. (1) (intro.) and (a), (2), (3) and (5), Register, February, 1981, No. 302, eff. 3-1-81.

ER-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 s. 230.36, 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; am. Register, February, 1981, No. 302, eff. 3-1-81.

ER-Pers 28.04 Injury while on hazardous duty. (1) Application for benefits under s. 230.36, Stats., shall be made by the employe or the employe's representative to the appointing authority within 30 calendar days from the day of injury, on forms prescribed by the administrator. In extenuating circumstances, at the discretion of the administrator, 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 the decision to authorize or deny the claim and file a copy of the notice of action with the administrator.

(3) Upon approval of the employe's claim, the employe shall receive full pay from the date of inability to work until a physician certifies that he or she is able to return to work or the employe 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 the employe's class is assigned to, consideration for within range pay progression 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) Employes on approved leave with pay under this section shall earn vacation and sick leave credits for the duration of such leave. Employes shall be denied legal holiday credits for holidays which occur during the period of absence from work while on an approved leave with pay under this section. Vacation credits earned prior to the date of injury may be carried over pursuant to s. ER-Pers 18.02 (7).

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; am. (1) to (4) and r. and recr. (5), Register, February, 1981, No. 302, eff. 3-1-81.

ER-Pers 28.05 Medical examinations. (1) Employes on leave with pay shall submit to such physical 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 examinations shall be at the expense of the agency and performed by physicians selected by the agency. A complete report indicating the nature and extent of disa-

bility 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 the employe's attending physician has released the employe 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, the employe may, upon recommendation of the attending physician, have such benefit resume for the period of treatment recommended, provided such aggravation meets the qualifying provisions of s. 230.36, Stats.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1), (4) and (5), Register, February, 1981, No. 302, eff. 3-1-81.

ER-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 commission by filing a written request within 30 calendar days after being notified of such decision or within 30 calendar 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 s. 230.36, Stats., benefits related to the particular injury incurred.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am., Register, February, 1981, No. 302, eff. 3-1-81.

ER-Pers 28.07 Subrogation rights. See s. 230.36 (5), Stats.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77; am., Register, February, 1981, No. 302, eff. 3-1-81.