CHAPTER 20

INJURY AND ILLNESS MEDICAL PROCEDURES AND BENEFITS

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CHAPTER 20

INJURY AND ILLNESS MEDICAL PROCEDURES AND BENEFITS

1. EMPLOYEE RIGHT TO PRIVACY. Employees are entitled to confidential handling of information on both their industrial (work related) and nonindustrial (non-work related) injury or illness. Except for official reports, correspondence, and Communications Network (Comm-Net) messages to "need to know" offices, dissemination of information on employees is prohibited under the California Confidentiality of Medical Information Act (Section 56 of the California Civil Code). If an employee desires to have others in the Department informed of their medical condition, a CHP 369, Authorization to Release Medical Information for Public Disclosure, shall be completed. It is not mandatory that an employee complete a CHP 369. It is an optional method for an employee to provide either a "blanket" instruction for any future medical disclosures or it can be used for a specific illness, injury, or operation. The completed CHP 369 is to be filed in the employee's field folder. In the absence of a CHP 369 or if the employee requests no disclosures outside of the "need to know" offices, only such information as would be released to the public by a hospital can be made public.

2. CONFIDENTIALITY OF MEDICAL RECORDS.

   a. Release of Medical Records. Medical records, doctor's reports, or any other medical information concerning an employee shall be kept strictly confidential by commanders and any authorized person with access to the files. These records, or any information concerning the employee, shall not be released. Questions concerning the release of medical information shall be directed to the Office of Legal Affairs.

   b. Providing Medical Information. All medical information in the possession of the Department shall be furnished to physicians examining an employee at the Department's request upon obtaining written authorization from the employee. When it is known an injury or illness file exists, State Compensation Insurance Fund (State Fund) shall be asked to provide all pertinent records to the examining physician.

   c. Retention of Medical Reports. Medical reports, or copies of medical reports, shall not be retained at the local level after all command action has been completed. As soon as it has been determined that the employee can return to full duty or must be placed off-duty pending disability retirement or medical separation, the medical reports concerning the employee shall be forwarded to Human Resources Section (HRS), Personnel Files Services. The medical report shall be maintained as part of the employee's medical file.

d. Retention of Diagnostic Studies. Any x-rays, original electrocardiogram tracings, or original electromyogram tracings received by the Department shall be returned to the doctor, diagnostic center, or facility that ordered the study. If this information has been solicited for a fitness-for-duty evaluation, the materials shall be forwarded to the physician examining the employee for the Department.

3. PAYMENT FOR MEDICAL EXAMINATIONS.

a. Payment for Medical Examination. No payment shall be authorized for a medical examination until the doctor's report of findings and recommendations has been received.

b. Authorization of Medical Treatment. The Department cannot authorize a physician to provide medical treatment, therapy, or physical rehabilitation, nor authorize payment for such services.

c. Billing Attachments. Original medical reports shall accompany billings for treatment of job-related injuries submitted to State Fund. Supervisors accompanying employees to a medical appointment shall advise the physician that State Fund is the adjusting agent.

4. AUTHORIZATION OF PAYMENT FOR MEDICAL EXAMINATIONS.

a. Personnel Management Division Approval. Personnel Management Division is authorized to approve medical billings for:

(1) All fitness-for-duty examinations.

(2) Pre-employment medical examinations.

b. Academy Commander Approval. The Academy commander is authorized to approve medical billings for medical examinations of applicants for motorcycle training.

c. Forwarding of Billings. All approved bills shall be submitted to Fiscal Management Section. Refer to Highway Patrol Manual (HPM) 11.1, Administrative Procedures Manual, Chapter 24, Payment of Invoices, for additional information.

d. Retention of Billings. One copy of each approved bill shall be retained by the approving office for a maximum of six months. Disposition shall be in accordance with procedures outlined in HPM 11.1, Chapter 11, Records Management.

5. COVERAGE OF ABSENCES—GENERAL PROVISIONS.

a. Reporting. Absences due to an industrial injury or illness are reported in the same basic manner as regular sick leave. (Refer to Chapter 28, Attendance Reporting, of this manual, and the ATS 415 Users Guide.)

b. Attendance Reporting. If an employee is released for duty on a regularly scheduled day off, the time is to be reported as an "X" day unless the employee actually worked that day.

c. Questionable or Unusual Absences. The coverage of absences may be discussed with the Injury Case Management Section (ICMS). Full credits shall be utilized pending clarification of any absence. If malingering is suspected, ICMS and State Fund shall be informed.

d. Substantiation of Injury or Illness Absences. Workers' compensation benefits, including Section 4800.5 of the Labor Code (LC) and Industrial Disability Leave (IDL), are verified on the basis of medical confirmation obtained by State Fund. Failure to obtain proper substantiation from the treating physician may result in the nonverification/denial of benefits by State Fund.

e. Permanent and Stationary Status. An injury or illness condition is considered to be permanent and stationary when the condition has stabilized and no substantial change, either improvement or deterioration, is anticipated in the foreseeable future. This is also referred to as maximum medical improvement. Once the condition is determined to be permanent and stationary, temporary disability (TD) compensation benefits are discontinued. Entitlement to Section 4800.5 LC benefits, after a condition reaches permanent and stationary status, will be determined on a case-by-case basis.

f. State-Ordered Medical Examination.

(1) In accordance with state law, the employee may be required to undergo a medical examination. When the examination appointment is scheduled during an employee's regular work hours, the employee shall receive straight-time compensation for the time spent attending the appointment. If the examination is scheduled outside of an employee's regularly scheduled work hours, the employee shall attend on a leave of absence with pay. An equivalent amount of informal time off should be granted during that same pay period. (Refer to Chapter 28 of this manual.) In no event will an employee earn overtime compensation for this examination. The provision of this subsection shall also apply to appointments prescribed by the examining physician as part of the evaluation (e.g., laboratory work, x-rays, other diagnostic tests).

(2) Such leave of absence with pay shall not utilize Section 4800.5 LC or IDL benefits, sick leave, compensation time off (CTO), vacation/annual leave, or any other leave credits.

(3) A state-ordered examination is arranged by the Department, State Fund, Workers' Compensation Appeals Board (WCAB), or the California Public Employees' Retirement System (CalPERS). Appointments for treatment are not covered by this section.

(4) A letter from the arranging state authority informing the employee of the appointment proves that an examination qualifies for coverage under this section.

(5) Travel and per diem expenses shall be in accordance with HPM 11.1, Chapter 2, Travel Advances and Expense Claims.

6. COVERAGE OF ABSENCES—UNIFORMED EMPLOYEES.

a. Section 4800.5 of the Eligibility for Labor Code. Section 4800.5 LC provides that uniformed employees who are temporarily disabled due to an accepted work-related injury or illness are entitled to receive their full salary for a period of up to one year in lieu of disability payments made by State Fund.

(1) The employee must have been a uniformed employee both at the time of injury or illness and on the specific date(s) of absence for which Section 4800.5 LC benefits are requested.

(2) The injury or illness causing the disability must be accepted as work-related by State Fund or WCAB.

(3) The employee's inability to work on the date(s) involved is verified by State Fund and reported to HRS, Compensation Services. The State Fund decision is based on medical reports and other information available in the State Fund's file.

(4) The employee has not exhausted the benefit.

(5) The period being claimed remains within the statutorily eligible time frame.

b. Section 4800.5 of the Termination of Eligibility for Labor Code.
Section 4800.5 LC applies to a uniformed employee's absence caused by an accepted work-related injury or illness until:

(1) The employee returns to either limited or full duty. If the employee is capable of performing limited or full duty but declines to do so,

Section 4800.5 LC benefits may be terminated. Denial of benefits for a specific date or dates does not preclude payment of benefits for other dates. Each period of disability is viewed on its own merits for benefits.

(2) Eligibility for the benefit has been exhausted.

(3) The condition reaches a permanent and stationary status.

(4) The employee enters into a Compromise and Release settlement for the injury or illness causing the disability.

(5) A credit against the claim for further benefits due to a third-party settlement is approved by the WCAB.

(6) The employment is terminated by resignation, retirement, or dismissal. The employee's right to workers' compensation benefits other than Section 4800.5 LC is not affected by termination of employment.

(7) At the expiration of Section 4800.5 LC benefits, the employee may be eligible for TD benefits.

7. COVERAGE OF ABSENCES—NONUNIFORMED EMPLOYEES.

a. Eligibility for Industrial Disability Leave. When an accepted work-related injury or illness causes a loss of more than three days of work, a nonuniformed employee is eligible to receive Industrial Disability Leave (IDL) benefits for a period of up to one year.

(1) Only CalPERS members are eligible for this benefit. The IDL is not normally afforded to uniformed employees; however, IDL benefits may apply to a uniformed employee who sustained the disabling injury or illness during cadet training.

(2) The IDL benefits do not cover the initial three calendar days of disability unless the employee is hospitalized or the inability to work exceeds 14 calendar days.

(3) The IDL benefits provide the regular **net** salary (regular "take-home" pay) for the first 22 working days covered. For the next 11 months of disability, the benefit is two-thirds of **gross** salary.

(4) The IDL benefits are paid without charging accumulated sick leave, CTO, vacation/annual, or other leave credits (except for the credits that may be required to cover the initial three calendar days of disability).

(5) The IDL benefits may be supplemented by use of sick leave, CTO, vacation/annual leave, or any other specified leave credits.

(6) The period being claimed must be within the statutorily eligible time frame.

b. Termination of Eligibility for Industrial Disability Leave. The IDL applies to a nonuniformed employee's absence caused by an accepted work-related injury or illness until:

(1) The employee returns to either limited or full duty. If the employee is capable of performing limited or full duty and declines to do so, IDL benefits may be terminated. Denial of benefits for a specific date(s) does not preclude payment of benefits for other date(s). Each period of disability is viewed on its own merits for benefits.

(2) Eligibility for the benefit has been exhausted.

(3) The condition reaches a permanent and stationary status.

(4) The employee enters into a Compromise and Release settlement for the injury or illness causing the disability.

(5) A credit against the claim for further benefits due to a third-party settlement is approved by the WCAB.

(6) The employment is terminated by a retirement, resignation, or dismissal. The employee's rights to workers' compensation benefits other than IDL are not affected by termination of employment.

(7) At the expiration of IDL benefits, the employee may be eligible for Temporary Disability (TD) benefits.

8. TEMPORARY DISABILITY.

a. Eligibility for Temporary Disability. At the expiration of IDL benefits, the employee may be eligible for TD benefits as determined by State Fund. These payments are paid by State Fund directly to the employee. Currently, the rate is two-thirds of the employee's weekly salary at the time of injury, subject to a maximum per week as specified by statute.

b. Adjustment of Credits Under Temporary Disability. When TD benefits are due, the employee may use accumulated sick leave, CTO, vacation/annual leave, or any other specified leave credits to supplement the payment so that the employee

continues to receive their regular income amount. Credits will be used, to the extent available, to provide full salary. The following procedures apply:

(1) Sick leave, CTO, vacation/annual leave, or other leave credits will be used to supplement the TD payment unless the employee provides HRS, Compensation Services, with written notification denying the use of credits.

(2) All TD payments from State Fund are sent directly to the employee. If the employee prefers not to use credits to supplement the TD payment, a written notice to this effect must be signed and dated by the employee and submitted through their chain of command to HRS, Compensation Services. Until receipt of the notification not to use credits, HRS, Compensation Services, will proceed with the regular credit adjustment procedures.

9. DOCUMENTING INJURY OR ILLNESS ABSENCES.

a. Documenting Employee Absences. The following procedures apply for documenting absences due to accepted industrial injury or illness:

(1) Absences on the shift of injury or illness shall be treated as work time up to the end of the scheduled shift. Enter the phrase “injury this shift” in the “Remarks” column.

(2) For absences subsequent to the shift of the injury or illness, the employee shall indicate the applicable leave or benefit type used. If applicable, the appropriate detail code shall also be selected.

b. On a monthly basis, update the workdays lost entry, as appropriate, on Cal/OSHA Form 300, Log of Work-Related Injuries and Illnesses. The entry should be made in pencil to allow for future updating. At the end of the calendar year in which the injury or illness occurred, if the employee continues to be disabled, estimate the number of future workdays the employee will be disabled and include in the log entry. The log for the next year shall not reflect the prior year’s injuries or the resulting lost workdays. (Refer to HPM 10.7, Injury and Illness Case Management Manual, Chapter 4, California Occupational Safety and Health Act Log.)

NOTE: Refer to Chapter 28 of this manual and the ATS 415 Users Guide for additional information regarding absence documentation.

10. INJURY- AND ILLNESS-RELATED EXPENSES.

a. Medical Expenses. Payment of medical expenses, including drugs, physical therapy, and other related authorized items is one of the benefits to be provided by

workers' compensation. Medical expenses incurred by the employee are eligible for reimbursement upon submission of appropriate receipts to the designated State Fund office adjusting the employee's case. The date of injury or illness and case number, if known, should be included with the request for reimbursement.

b. Travel Expenses. On request, State Fund will reimburse the injured employee for reasonable claim-related travel expenses for State Fund- or WCAB-authorized or requested examinations, treatment, or related services. State transportation shall not be used, nor shall a CHP 262, Travel Expense Claim, be submitted.

11. THIRD-PARTY CLAIMS. When an industrial injury is caused by a person not employed by the Department or by faulty equipment, the injured employee may file a claim against that person or the manufacturer of the faulty equipment. Since the injured employee may also collect benefits from State Fund, the claim against the responsible party is frequently called a "third-party claim."

a. Lien Rights of the State. State Fund, as adjusting agent for the Department, has lien rights against any recovery made by the injured person from the responsible party. The lien is for the value of the medical and compensation benefits (including payments made by the Department) resulting from the injury. Section 3859 LC provides: "No release or settlement of any claim… as to either the employee or employer is valid without the written consent of both." State Fund executes the release or settlement; normally, action by the Department is not necessary.

b. Credit Against Future Benefits. Pursuant to Section 3858 LC, when an employee makes a financial recovery from a third party, State Fund and/or the Department may be entitled to a credit against future medical and/or disability payments. Section 4800.5 LC and IDL benefits are subject to this credit.

c. Property Damage. Property damage claims are processed by the Fiscal Management Section (FMS) independent of injury claims. Questions concerning property damage should be directed to FMS.

d. Procedure. The employee shall keep ICMS informed of:

(1) The name and contact information of any attorney representing the injured employee in the third-party matter.

(2) The date and case number of any civil action filed.

(3) The name and contact information of any person contacting the injured employee on behalf of the responsible party.

(4) The date and manner in which the third-party matter is terminated. It is not necessary that the amount of the recovery be indicated.

e. Settlement of Claims. When the employee is approached regarding settlement of the third-party claim:

(1) The person representing the third party shall be informed that the state has lien rights and should contact the subrogation attorney representing State Fund.

(2) As a protection to the employee, the amount of the state's lien should be determined prior to agreeing on a settlement amount or signing a release or settlement papers. It is further recommended that the employee defer signing the agreement until State Fund has approved.

(3) In the event an employee settles a claim against the third party without the consent of State Fund, the state, including State Fund and the Department, may recover from the employee all funds expended for injury benefits.

12. COORDINATION WITH FEDERAL BENEFITS.

a. There are two federal benefit programs which may provide benefits to uniformed employees for industrial injuries or deaths. When it appears that a qualifying injury may have occurred, ICMS shall inform the appropriate federal agency. Other persons may also report the occurrence to the appropriate federal agency or may discuss reporting it with ICMS.

b. Federal benefits may be payable if the member is killed or injured under circumstances which involve a crime against the United States. Under this program, credit is taken for any state workers' compensation benefits. Qualifying injuries include those sustained while:

(1) Apprehending persons sought for violation of a federal statute or as a material witness in a proceeding instituted by the United States.

(2) Protecting or guarding a person held under such circumstances.

(3) Engaged in the lawful prevention of a violation of a federal statute.

c. A federal death benefit may be paid to eligible survivors of members who die as a result of an injury sustained in the line of duty. Starting in 1988, this payment is adjusted annually for inflation. Excluded are deaths resulting from intentional misconduct, voluntary intoxication, or from occupational illness or chronic disease. Credit is taken for the federal benefits described in paragraph 12.b. above, but credit is not taken for any state benefits.

d. The procedure used by the federal government permits a claim to be filed by the uniformed employee, their survivors, or someone acting on their behalf. Regardless of who files the claim, the commander must certify certain requested information.

13. EDUCATIONAL BENEFITS.

a. Alan Pattee Scholarship Act.

(1) Overview. Under Sections 68120 of the California Education Code (EDC), no fees or tuition of any kind shall be required or collected by the University of California Regents or the Trustees of California State University from any surviving child, natural or adopted, of a public safety official who was killed in the line of duty in the State of California.

(2) Application. Section 68120 EDC may apply to other colleges or universities under written agreement. When applying, the student must make the university or college aware of the fact that they are a surviving child of a law enforcement officer killed in the line of duty and may qualify for tuition-free education under Section 68120 EDC.

b. California Student Aid Commission.

(1) Overview. The California Law Enforcement Personnel Dependents Grant Program provides need-based educational grants to dependents and spouses of peace officers who have been killed or totally disabled in the line of duty. Scholarship awards match the amount of any Cal Grant "B" award for up to four years. This amount is adjusted each year in accordance with the budget.

(2) Application. All inquiries related to application and eligibility requirements shall be directed to the California Student Aid Commission (CSAC), Specialized Programs, via phone at (888) 224-7268, e-mail at specialized@csac.ca.gov, or mail at P.O. Box 419029, Rancho Cordova, CA 95741-9029.

14. LEAVE FOR PENDING INJURY STATUS. When an injury claim has not been accepted and accumulated credits have been exhausted, the Department may place the employee on an informal leave status ("Pending Injury" leave) without the employee or the commander making the specific request. (Refer to Chapter 8, Leave of Absence, of this manual.)

15. SECTION 4800.5 OF THE INCOME TAX STATUS OF LABOR CODE. Revenue Ruling 68-10, issued by the Internal Revenue Service, held that Section 4800.5 LC benefits are excludable from income taxation. Eligibility for Section 4800.5 LC payments is not usually determined until after the close of a pay period. Since the employee should be paid on regular state pay days, income taxes are withheld from pay. The amount of the Section 4800.5 LC benefit pay will not be included in the amount shown on the Form W-2, Wage and Tax Statement, for that year, and the employee will receive a refund from the State Controller's Office (SCO), Payroll Operations, covering the amount that was withheld for income taxes. Tax refunds cannot be issued after the tax year is closed; therefore, Section 4800.5 LC payment requests must be received by SCO no later than December 15th of that calendar year. If the refund cannot be processed, the employee will receive a Form W-2 correction reducing the amount of taxable gross income. Section 4800.5 LC time corrections can only be processed one year prior to the current tax year; a written certification may be used to exclude the specific Section 4800.5 LC involved from the income reported for any tax year prior.

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