

Workers' Compensation Information & Guidelines

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1. Purpose

To provide information to supervisors and managers regarding workers' compensation, and provide guidelines for dealing with the process when an employee becomes ill or injured as well as ensure that proper procedures are followed and state compliance is maintained.

2. Summary

Workers' Compensation is a state-mandated benefit for employees with work-related injuries or illnesses. The County is required to provide benefits in cases of injury, illness, death or aggravation of a pre-existing condition resulting from work.

3 Coverage

The County is self-insured for workers' compensation up to \$2,000,000 per occurrence. If a claim exceeds \$2,000,000 the excess is paid through an insurance policy issued by the County State Association of Counties – Excess Insurance Authority (CSAC-EIA).

Claims are handled in-house by the Workers' Compensation Office of the Department of Personnel Services.

4. Eligibility

All employees working for the County and receiving compensation (salary or any other compensation with a monetary value) are covered for workers' compensation.

4.1 Specifically Covered

All County permanent and temporary (including seasonal and intermittent) employees are covered.

Poll workers are covered during elections.

Recipients of public assistance benefits injured while

performing required work duties may be covered.

Jail and work project inmates injured during the course of their assigned work duties are covered.

4.2 Specifically Excluded

The County does not cover independent contractors, contract employees, volunteers and temporary agency employees.

County employees on Officer/Union Release Time are not covered.

5. Injury Defined

Injury as defined under state workers' compensation law may cover any injury or illness (including psychiatric) arising out of employment and occurring in the course of employment (AOE/COE) which causes lost time or need for medical treatment beyond first aid. There are various types of injuries that may be covered:

5.1 Specific Injury

Injury or illness to one or more body parts occurring at a specific time and place.

5.2 Cumulative Injury

Injury or illness to one or more body parts occurring as a result of repetitive activities over a period of time.

5.3 Aggravation

A pre-existing medical condition aggravated by an occupational injury or illness.

6. Benefits Available

Once it is determined that an employee has a compensable workers' compensation injury s/he is entitled to medical benefits, lost time benefits (temporary disability), compensation for permanent impairments (permanent disability), vocational rehabilitation or a supplemental job displacement voucher (see 6.3) dependent on date of injury, and/or death benefits if applicable.

6.1 Temporary Disability

If an employee is injured after April 17, 2004, s/he is entitled, in most cases, to a maximum of two years of temporary disability if s/he loses wages as a result of their injury.

6.1.1 Temporary Total Disability (TTD)

If an employee is unable to work at all, s/he is entitled to receive TTD in the amount of two-thirds of their gross average weekly wage up to the maximum allowed by law. The maximum amount is adjusted yearly.

6.1.2 Temporary Partial Disability (TPD)

If an employee is unable to work part of their normal work hours s/he is entitled to receive TPD in the amount of two-thirds of the difference between their normal gross average weekly wage and what s/he is earning by working a reduced work schedule.

6.1.3 LC 4850 Benefits

Certain job classes performing public safety duties are entitled to up to one year of full salary in lieu of temporary disability.

6.2 Permanent Disability (PD)

If an employee has a legally definable permanent impairment as a result of their injury s/he is entitled to a monetary compensation for that impairment.

6.2.1 Permanent Total Disability (PTD)

If an employee is totally incapable of working in any job, either with the County or anywhere else, s/he is entitled to a finding of 100% permanent disability payable at the TTD rate applicable on the date of injury for the remainder of their life.

6.2.2 Permanent Partial Disability (PPD)

If an employee has a permanent impairment as defined by the American Medical Association (AMA) Guidelines for Permanent Impairment s/he is entitled

to a pre-determined monetary settlement for each percentage of disability determined by a physician.

6.2.3 Permanent Disability Adjustment

If the County provides an employee who cannot return to their usual & customary job with a modified/alternative position their PD rate is decreased by 15%

If the County cannot provide modified/alternative work to the employee, their PD rate is increased by 15%.

6.3 If the injured worker is found to be a Qualified Injured Worker (QIW) as a result of his/her injury vocational rehabilitation services are offered. QIW means an employee who, as the result of his/her injury, whether or not combined with the effects of any other medical condition, cannot return to his/her usual & customary occupation or job at time of injury.

Once an employee is identified as QIW, the department should initiate the reasonable accommodation process under the Americans with Disabilities Act/Fair Employment and Housing Act (ADA/FEHA).

6.3.1. Injuries Before January 1, 2004 - Vocational Rehabilitation (VR)

If the injured worker is found to be a Qualified Injured Worker (QIW) as a result of his/her injury vocational rehabilitation services are offered. QIW means an employee who, as the result of his/her injury, whether or not combined with the effects of any other medical condition, cannot return to his/her usual & customary occupation or job at time of injury.

If an employee is determined to be QIW, s/he will be entitled to a modified/alternative job search within the County. If s/he cannot be accommodated, s/he may be entitled to vocational counseling and possible retraining.

6.3.2 Injuries After January 1, 2004 – Supplemental Job Displacement Voucher

If an employee is unable to return to work s/he will be entitled

to a modified/alternative job search. If s/he cannot be accommodated a supplemental job displacement voucher may be paid to assist him/her in finding other work.

6.4 Medical Benefits

The injured worker is entitled to all medical treatment needed to treat the effects of the industrial injury at the County's expense. Medical benefits include but are not limited to doctor visits, diagnostic studies, medications, hospital costs, surgical costs, and medical mileage.

6.5 Death Benefits

If the employee dies as a result of a work-related illness or injury, death benefits and burial expenses are provided to qualified dependents.

7. Discrimination/Retaliation

The County is prohibited from discriminating or retaliating against any employee based on the employee filing or their intent to file a workers' compensation claim.

8. Group Health Insurance Benefits

Group Health insurance benefits continue while an employee has leave balances, and/or while s/he is on workers' compensation temporary disability. If the employee remains off work once temporary disability ends, group health insurance benefits are payable by the employee unless the leave is covered under any other leave laws.

9. Coordination of Leaves

9.1 Family Medical Leave Act/California Family Rights Act (FMLA/CFRA)

FMLA/CFRA and workers' compensation may run concurrently if the workers' compensation injury meets the FMLA/CFRA criteria for a serious health condition. Exhaustion of FMLA/CFRA leave entitlement does not impact an employee's right to workers' compensation benefits.

9.2 Pregnancy Disability Leave (PDL)

PDL and workers' compensation can run concurrently

9.21 Example – Temporary Total Disability

If an employee is on temporary total disability and becomes disabled because of pregnancy, the employee remains entitled to workers' compensation benefits as long as the health care provider certifies continuing workers' compensation disability.

9.22 Example – Temporary Partial Disability

If an employee is on temporary partial disability (i.e. working 4 hours per day) and becomes disabled because of pregnancy, the employee is entitled to PDL for the four hours the employee was working and remains entitled to temporary partial disability benefits for the remaining hours.

8.3 State Disability Insurance (SDI)

SDI and SDI Integration have separate eligibility criteria. An employee may be entitled to SDI benefits pending determination of the workers' compensation claim. Those benefits may be integrated with the employee's leave balances. If the workers' compensation claim is accepted any SDI benefits and integration would cease and workers' compensation benefits would begin. Workers' compensation temporary disability benefits may also be integrated.

WORKERS' COMPENSATION GUIDELINES

What to do when an injury occurs:	
Supervisor Responsibilities	Employee Responsibilities
	Immediately report any work related injury/illness to your supervisor. If your supervisor is not available, the injury should be reported to another supervisor, manager or human resources personnel.
Determine the employee's immediate medical needs and arrange for treatment.	
Administer first aid if required, or in cases which are life-threatening dial 911 to dispatch emergency personnel, and immediately contact the Workers' Compensation Office at 876-5251.	
If the employee is hospitalized for anything other than observation or is killed in the line of duty, the County Safety Office should be notified immediately at 876-5026. The County is legally required to report these types of injuries to Cal-OSHA within 24 hours.	
Refer the employee to the closest Kaiser or Med Clinic Occupational Clinic for treatment if the injury is not life-threatening and there is no "Workers' Compensation Designated Physician Form" on file.	Advise your supervisor if you have pre-designated a physician to treat you in case of an injury.
Determine the employee's ability to transport him/herself to the medical clinic. Even if the injury is not life-threatening he/she may need to be driven to the medical clinic/physician.	
If the injury is after clinic hours and requires immediate medical care, the employee should be transported to the closest Kaiser or Mercy hospital emergency room. (See Attachment *)	

Identify the cause of the injury or illness and take the necessary steps (clean up spills, request ergonomic evaluation, block access to broken machinery, etc.) to prevent further injuries.	Provide documentation from your physician as to whether you are released to return to full duty, released to modified duty, or taken off work.
If equipment was involved in the injury (broken chair, ladder, machinery etc) take necessary steps to secure and preserve the equipment. The equipment may need to be provided to workers' compensation office.	

Required Documentation	
Supervisor Responsibilities	Employee Responsibilities
Within ONE working day of your knowledge of an injury the employee must be provided with a Workers' Compensation Claim Form (DWC-1) (see Attachment *). The bottom section should be completed with the exception of line 13.	Completion of the remainder of the claim form is the responsibility of and at the discretion of the employee.
The supervisor must submit the golden rod copy to the Workers' Compensation Office or the department Human Resources Office within 24 hours from the date the claim form was given to the employee.	
Complete the Supervisor's report of Injury/Illness Form (WC 9) (see Attachment *).	
Provide the worker with the Authorization to Release Records form (see Attachment *).	Complete and return the authorization to release medical records.
Provide the worker with the Benefit Election form (see Attachment *).	Complete and return the Benefit Election form.
Follow Department procedures to ensure completion of the Employer's Report of Injury Form (Form 5020) (see Attachment *).	
Once the claim form is completed and returned, provide the employee with the Claim Form Acknowledgement (see Attachment *).	

Supervisor/Dept HR Responsibilities	Employee Responsibilities
	Advise your supervisor immediately once your physician takes you off work.
Record the date of injury as time worked regardless of the time of the accident.	
Unless the employee is represented by an attorney, contact should be made with the employee a few days after the injury to answer questions and determine any special needs or problems.	
Maintain contact with the injured worker, the Dept HR staff and the workers' compensation examiner regarding the status of the claim.	
Provide light duty and/or reasonable job accommodations to the injured worker.	

The Claims Process

Once a claim is reported to the workers' compensation office, it will be assigned to an examiner based on the type of claim and the department in which the employee was injured.

The examiner will review the information, then contact both the supervisor and the employee to obtain any additional information necessary.

The examiner will make an initial determination if the claim will be accepted, delayed, or denied. A decision to accept or deny the claim must be made within 90 days of the date the employee completes the claim form.

- If the claim is accepted, benefits will be provided and the examiner will monitor the claim until the employee's condition reaches maximum medical improvement. At that time the examiner will address any permanent disability or vocational rehabilitation issues.
- If the claim is delayed, the examiner may: (a) obtain the employee's prior medical records, (b) obtain formal statements from the employee, the supervisor, and any witnesses, and (c) have the employee evaluated by a Qualified Medical Evaluator (QME).
- If the claim is denied, it is an administrative denial that is subject to appeal at the Workers' Compensation Appeals Board (WCAB), and could be over-turned either through the provision of additional facts/evidence, or by a Workers' Compensation Judges decision.
 - The employee has one year from the date of the denial to file the appeal.

FAQs – Supervisor

Compensability

Does workers' compensation apply even if the injury occurred while the employee was on a break or lunch?

Generally an employee is covered at all times they are at the worksite, even while on lunch or breaks. If the employee leaves the premises for lunch they will probably not be covered. Example: an employee works at the administration building, during lunch they walk to the mall and are shopping at Macys. If the employee is injured while at the mall they will probably not be covered under workers' compensation.

If my employee is injured in the parking lot are they covered under workers' compensation?

Yes, the employee is covered from the time they enter the parking lot, until they exit the parking lot at the end of their shift.

What do I do when I think an employee's workers' compensation claim is not valid?

You should discuss your concerns with the claims examiner, advising them of the basis for your opinion, and tell them of all the witnesses you may be aware of, and the people they should talk to related to the claim.

Disability Benefits/Integration

What is the first day an employee is entitled to temporary disability?

There is a three day waiting period for temporary disability, unless an employee is admitted to the hospital. Temporary disability begins on the fourth day of lost time. The employee uses leave balances for those three days. If an employee is off for more than 14 days, leave balances used would be reimbursed or restored subject to the temporary disability benefit rate maximum.

Can an employee integrate their leave balances with their workers' compensation benefits?

Yes, an employee can choose to integrate their temporary disability with their leave balances, or they can choose to use full leave balances in addition to their temporary disability.

Once an employee has chosen an integration option can they go back and change that option?

It is mandatory that the employee make an election prior to receiving their first temporary disability benefit check. Once their election is made and the first temporary disability check has been issued, the election cannot be changed.

Why is temporary disability integrated, but other benefits (Vocational Rehabilitation Maintenance Allowance [VRMA] etc) are not?

Temporary disability is a wage loss benefit, and ends when an employee reaches maximum medical improvement. Other benefits, such as VRMA are not wage loss benefits and are therefore are not available for integration. Leave balances will be exhausted prior to being placed on a leave of absence.

Can an employee change their integration option after benefits have started?

No.

Does time off need to be certified by a health care provider?

Yes, a health care providers note is required for time off as well as when the employee returns to work.

How long can an employee integrate their workers' compensation?

As long as s/he has leave balances and is receiving temporary disability.

Health Insurance Benefits

Will my employee's benefits continue while they are on workers' compensation?

As long as the employee is on temporary disability, s/he will receive the same level and type of County paid benefits as while actively at work. Once the employee has reached maximum medical improvement, County paid benefits will no longer be provided, and COBRA benefits may be available.

General

What is a delayed claim?

A delayed claim is one in which a notice is sent to the employee by the examiner when there is additional information necessary to make a determination on the claim.

What is a stress claim?

A psychiatric injury filed by the employee as a result of their perceived stress in the work environment. In order for the employee's claim to be accepted there must be medical documentation that actual events of employment were predominant (more than 50%) as to all contributory causes in leading to the psychiatric diagnosis.

Can an employee file a claim as a result of a disciplinary action?

Yes, the claim should still be reported to workers' compensation. However, if the disciplinary action was a good faith, lawful, non-discriminatory action then their claim may be denied.

Light Duty

Can an employee refuse to take a light duty assignment?

Yes, however if they refuse to take an appropriate light duty assignment they will not be entitled to temporary disability benefits.

Can they refuse a light duty assignment because it is on a different shift, or in a different location?

Light duty must be offered with shift and location taken into consideration. If the employee is normally subject to shift changes then they cannot turn down light duty because it is a different shift from the one they were working at the time of injury. If they are permanently assigned to the day shift then you can not make them work another shift. If the light duty is at a different location it must be within a reasonable distance to the location worked at the time of injury, or you must give them appropriate notice of a location change.

Does an employee retain their differentials while on light duty even if it's a different assignment?

Yes

Medical Treatment

If an employee is injured, can they go to their own doctor?

If an employee has pre-designated a physician to treat them if they are injured, they can treat with that physician. If an employee has not pre-

designated a physician they should be referred to one of the County's contracted occupational medicine clinics. Once 30 calendar days have expired from the date of injury, an employee can treat with any appropriate physician.

How does the employee pre-designate a physician?

At the time of employee orientation, and once a year in a payroll mailer, the employee receives a form which gives them the option to pre-designate a physician to treatment them if they are injured. The form should be completed, signed by the physician, and returned to the Workers' Compensation Office for inclusion in our pre-designation database.

How do I find out if my employee has pre-designated a physician if they do not remember?

You can contact the Workers' Compensation Office. If a correctly completed form was received it will be recorded in our database.

If the employee has not pre-designated a physician, where should I send the employee for treatment?

Mercy Medical Group or Kaiser Permanente Medical Group-Occupational Medical Clinic

Can the employee pre-designate the physician on the same date of injury?

No.

Personnel Issues

Should I provide FMLA/CFRA notification for a workers' compensation injury?

Yes, if they are eligible for FMLA/CFRA and his/her condition meets the definition of a serious health condition.

Can I discipline someone while they're on workers' compensation?

It is illegal to discharge, threaten, or discriminate in any way against an employee because s/he has received an award from, has filed or even intends to file a workers' compensation claim. You may discipline someone for unrelated conduct or behavior. However, if you plan on disciplining someone who's on workers' compensation contact your HR representative.

Can I release someone on probation if they have had a workers' compensation injury?

Yes, if the release is for reasons other than the industrial injury.

How can I replace an employee who is out on Workers' Compensation?

You can temporarily replace an employee at your appointing authority's discretion. An injured worker remains on active status until s/he separates their employment with the County.

Reporting

If the employee says they are suffering from stress arising from disciplinary action should I provide them with the workers' compensation paperwork?

Yes, the paperwork should be provided. The claim may or may not be compensable based on the specific facts of the situation.

If my employee is working at home and is injured while working, should I provide them with a claim form?

Yes.

What if the employee just says s/he has "back problems"?

Ask the employee what happened. If the employee states there is a work relationship (i.e. 'I was lifting files') then the form should be given to the employee.

Why are the forms so important?

The Employer's Report (Form 5020) is required by the State. It is also the basis for the Cal-Osha log. The Employee's Claim Form (DWC-1) is required by law for any occupational injury. Failure to provide the form can lead to financial penalties for the County.

What if I don't have all the information for completing the forms?

Provide the information that is available to you at the time. The examiner will contact you to complete the form, or obtain the information from a different source.

What if an employee tells me an injury is job-related but does not wish to file a claim for injury?

It is the employee's right not to file. State law requires, however that the Employer's First Report (Form 5020) be filed whenever a supervisor has knowledge of an injury or illness. State law still requires that a DWC-1 be given to the employee.

If the employee is transported by ambulance or is hospitalized how do I get the claim form to them?

It should be mailed to their home address, if you do not follow them to the hospital.

Is an employee working at home covered by workers' compensation?

Injuries occurring while working at home may be covered and should be reported to the Workers' Compensation Office.

Time Off

How is time off for doctor appointments, physical therapy appointments, etc. recorded?

If the employee attends a Qualified Medical Examination (QME), Agreed Medical Evaluation (AME) or a medical evaluation scheduled by the Workers' Compensation division, the employee's time should be recorded as work time. If the employee is attending ongoing treatment appointments, there is no coverage under workers' compensation and their time should be recorded as sick time.

As a supervisor do I have to let an employee have time off for their deposition or Workers' Compensation Appeals Board (WCAB) appearance if it impacts the business operations?

Yes, with the appropriate documentation. The employee should provide you with a copy of the letter scheduling their deposition, or notice of hearing from the WCAB.

How do we document time off for depositions on the employee's timesheet?

The employee has the right to a reasonable amount of regular time to attend the deposition, travel to and from the deposition, and to meet with their attorney prior to the deposition. Appearances at the WCAB are on the employee's time, utilizing appropriate leave balances.