6.13 SUPPLEMENTAL WORKERS' COMPENSATION BENEFITS

Purpose

The purpose of this Administrative Rule is to provide additional benefits to eligible employees with accepted workers' compensation claims. These are benefits that the City has chosen to provide in addition to those provided in accordance with Oregon Workers' Compensation Laws.

Employees Not Covered By this Rule

Sworn members of the Police Bureau and the Bureau of Fire & Rescue covered under the disability provisions of the Fire and Police Disability and Retirement Fund, consultants not on the City's payroll and any temporary employees employed through a temporary agency are not covered under this rule.

Definitions

Authorized Health Care Provider: A health care professional who meets the definition of attending physician, as provided in Oregon Workers' Compensation laws.

Industrial Accident Leave: Also known as "Workers' Compensation Supplement".

Industrial Accident Leave Credits/Supplemental Leave Credits: The amount of workers' compensation supplement the employee is entitled to use on an accepted claim.

Medically Stationary: ***As defined in Oregon Workers' Compensation Law, medically stationary means*** no further material improvement would reasonably be expected from medical treatment or the passage of time. A City employee's entitlement to Workers' Compensation Supplemental Benefits under this Rule ends upon his/her reaching the status of medically stationary.

Risk Management: The City's Office or Division responsible for the administration and payment of Workers' Compensation benefits required by Oregon Law.

Sick Leave: The equivalent to a City employee's full wages that are payable to City employees in accordance with Section 6.04 of these Rules or the applicable labor agreement, for injuries and illnesses that are not covered by the City's workers' compensation insurance.

Temporary Disability Benefits: Workers' compensation benefits paid by Risk Management for lost wages pursuant Chapter 656 of the Oregon Revised Statutes.

Workers' Compensation Related Leave: Retroactive payments or payroll adjustments made by an injured worker's bureau at injury **after** a claim has been accepted, for the following authorized absences:

1. The first three days following an injury or illness claimed as a Workers' Compensation claim; and

2. Periods of up to four (4) hours of absence to attend any one medical appointment for a medical condition accepted under a Workers' Compensation claim that has been verified by the health care provider.

These payments are not charged against the employee's Workers' Compensation Supplement credits.

Workers' Compensation Supplement: Bureau paid income supplement payable to eligible City employees for injuries or diseases that are accepted under the provisions of Oregon Workers' Compensation Law. The supplement is paid in addition to temporary disability benefits for those days an employee is authorized by the employee's attending physician as defined by Oregon Law to be off work as a result of an accepted Workers' Compensation claim. The benefit is also known as Industrial Accident Leave.

Employee Responsibility

Responsibility for claiming compensation is on the injured employee. The employee or the employee's representative shall give notice of an accident and provide an incident report to the employee's bureau as soon as possible and file a claim with Risk Management. A claim is considered filed upon the employer's or Risk Management's, receipt of a completed form 801 (State of Oregon Workers' and Employer's Report of Occupational Injury or Disease) or form 827 (First Medical Report), which includes the employee's signature and the date.

Injured Worker Return to Work

The City of Portland Early Return To Work Program is governed by the Administrative Rule on Injured Workers Return to Work.

Exhaustion of Accrued Leave

An employee shall exhaust all forms of accrued paid leave, except for accrued compensatory time, before electing leave without pay during any period of time for which workers' compensation benefits are not paid by Risk Management due to a work-related injury or illness. This includes the first three days following an injury or illness claimed as a Workers' Compensation claim.

Payment of the Workers' Compensation Supplement

1. If a Workers' Compensation claim is accepted by the first payroll ending date after the claim is filed, the bureau will pay workers' compensation supplement for all days of time lost for which the employee is entitled.

2. If the claim is denied by the first payroll ending date after the claim is filed, the employee shall use sick leave for any time lost from work. If no sick leave is available in the employee's sick leave bank, the employee may use vacation leave or such other leave to which the employee may be entitled but such other leave shall not be reimbursed under this section.

3. If the claim is deferred by the first payroll ending date after the claim is filed;

a. The employee will receive time-loss pay from Risk Management, if authorized by the employee's attending physician;

b. The employee will not be paid supplemental pay while a claim is deferred. In no event shall supplemental pay be paid to employee before a claim is accepted.

The Rate of Payment of Workers' Compensation Supplement

1. The employee's base hourly rate will be multiplied by the number of regular hours in a pay period to determine the regular gross pay. From this amount the mandatory deductions of FICA and State and Federal withholdings based on the reported exemptions prior to the time of the accident are taken. The result is the regular net pay amount that will be met with any combination of time loss pay, regular hours pay, and Workers' Compensation supplement.

2. The total mandatory deductions in Step one (1) above will be divided by the regular gross pay as calculated in Step one (1) above. The result is the employee's standard mandatory deduction percent.

3. The amount of net Workers' Compensation Supplement will be determined by taking the regular net pay from Step (1) above, subtracting Workers' Compensation time loss payments, then subtracting the product of earned gross pay from regular hours worked (including pay for approved time off) times one minus the employee's mandatory deduction percentage determined in Step (2) above.

4. The net supplemental pay determined in Step (3) above will be divided by one minus the employee's mandatory deduction rate as determined in Step (2) above to determine the amount of gross supplement pay required to yield the target net pay.

5. If the above calculations determine a negative net supplemental pay amount, the Workers' Compensation Supplement amount will be zero.

Gross Workers' Compensation Supplement

$$\frac{[\text{Base Rate} * \text{Regular Hours}] - \text{Deductions} - \text{W.C. } \textbf{Temporary Disability} - [\text{Earned Gross Pay} * 1 - [\frac{\text{Deductions}}{\text{Regular Gross Pay}}]}{1 - \frac{\text{Deductions}}{\text{Regular Gross Pay}}}$$

For the purpose of this section, base hourly rate is defined as the rate at which the employee would be paid sick leave or vacation time loss.

6. This method of computing Workers' Compensation Supplement will begin for all injuries reported after passage of this provision by the City Council and for existing claims on the first day of the pay period following the passage of this provision by City Council. Workers' Compensation Supplement shall be made only after verification by the employee's timekeeper as to the daily rate of the temporary disability benefit paid to the employee under Oregon Law. The amount of supplemental pay is designed to provide no more net compensation while on time loss than the employee would have received working their regular hours.

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7. Supplemental payments made by the City under this section shall not be charged to accrued sick leave.

Reimbursement of Overpaid Employee Benefits

If an employee is paid by the City more than one of the benefits defined in this administrative rule for the same day, and as a result the employee is paid more than their regular wage, the amount of overpayment shall be recovered by the City under the provisions of ORS 652.610 as a credit against future salary payments to the employee.

No employee should receive full wages in paid sick leave while also receiving time loss payments and/or supplemental pay on a Workers' Compensation claim. Where a dual payment results from Risk Management being required to pay time loss to the employee for an injury or disease that employee has already received sick leave, the City may recoup the sick leave deductions from gross wages per pay period in an amount not exceeding 20% gross wages until the total overpayment is recovered. The City and the employee may provide for some other means for repayment by mutual agreement. Upon repayment of the total amount of the excess, the employee's sick leave account shall be credited with the sick leave used. For claims that were originally denied and then later accepted, the bureau will re-credit any sick leave used in lieu of time loss benefit from Risk Management or supplemental pay from the bureau. The employee will be required to reimburse the City for such funds.

If an employee is paid sick leave benefits for any period of time that Risk Management has also paid time loss benefits, the employee must pay the sick leave back to the bureau that paid the sick leave.

If any sick leave benefits paid for any period of time are converted by the employee’s bureau to paid time off that is not deducted from the employee’s sick leave or vacation benefits, Risk Management is not required to pay time loss benefits for that period of time. Time loss paid for such periods may be recovered by Risk Management as an overpayment of time loss benefits.

Damages From a Third Party

If an employee collects damages from a third party for an on-the-job injury or disease for which the City has paid any benefits under its Workers’ Compensation Program or other benefits outlined in this Administrative Rule, the City shall have a lien on any recovery of damages as provided under Chapter 656 of the Oregon Revised Statutes. Any supplemental pay made on the claim shall be included in the City's lien.

Vacation and Sick Leave Credits Continue

Vacation and Sick Leave credits shall be allowed to accrue to an employee during the first 12 months of continuous absence because of a claim accepted by Risk Management.

Leave in Excess of Maximum Accrual Hours

An employee may carry over unused vacation to the next calendar year if due to an accepted claim they were unable to take vacation leave during a year.

The excess may be used after returning to work or carried on the leave account until the end of the calendar year, at which time any excess vacation shall be forfeited.

However, in the event that an on-the job injury or disease results in a disability retirement, resignation or medical layoff, the employee will only be paid for such accrued vacation up to the one-year maximum accrual.

Health Benefits

Unless otherwise specified in a labor agreement, full or part-time employees eligible for benefits who file a Workers' Compensation claim under chapter 656 of the Oregon Revised Statutes, shall, upon acceptance of the claim, be entitled to medical, dental, vision and life insurance benefits for a maximum of 12 months, on the same terms and conditions, if any, that existed for the employee immediately prior to the filing of the claim. The 12-month period shall begin to run from the first day of temporary total disability paid by Risk Management, and shall continue to run continuously thereafter, regardless of whether the employee is working during all or any part of the 12-month period. Each employee with an accepted claim shall be entitled to only one 12 month period per claim regardless of the length of treatment, the necessity for time loss, or the occurrence of aggravations during the life of the claim.

The provisions of an employee's labor agreement can be found at the following link: Labor Agreements.

Automatic Leave of Absence while Receiving Time Loss Benefits

Barring resignation or dismissal from City service, an employee shall be considered on automatic leave of absence during any period for which the employee is receiving time loss benefits from the City. Leave of absence upon termination of time loss benefits is governed by the Administrative Rules on General Leaves of Absence.

Seniority Accrual

An employee will continue to receive seniority credit when on time loss for an accepted claim.

Administrative Rule History

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