

SECTION 4.2.3: INJURY LEAVE.

- (a) Definition. Injury leave is paid leave granted to a biweekly employee while disabled and unable to perform his or her job duties because of a job-related injury, entitled to Workers' Compensation temporary total disability benefits, and is not ineligible under one or more conditions listed in subsection (b) herein. Injury leave compensation shall equal the difference between seventy-five percent (75%) of employee's wage rate and employee's Workers' Compensation temporary total disability indemnity.
- (b) Ineligibility. An employee shall not be entitled to injury leave under the following conditions:
- (1) Failure to use or wear prescribed safety or personal protective equipment;
 - (2) Failure to follow safety rules and regulations;
 - (3) Where the employee's gross negligence or willful misconduct is a proximate cause of the injury;
 - (4) Any time the appointing authority, upon investigation, certifies that suitable light-duty employment is available, and employee refused to accept it.

Eligible Classes:

Classes designated AE, AM, AS, CC, CE, CEM, CL, CM, CR, CS, DA, EM, FS, HS, MA, MM, NM, NS, PD, PM, PR, PS, RN, SS, SW and UM.

(Amended 07/03/98, Ord. No. 8932)
(Amended 12/18/98, Ord. No. 8987)
(Amended 12/04/01, Ord. No. 9405)
(Amended 06/23/06, Ord. No. 9786)
(Amended 10/26/07, Ord. No. 9891)

- (5) Injury leave shall not be granted for aggravation, recurrence or sequelae of a pre-existing non-service connected physical disability or any physical condition existing prior to employment by the County, nor for recurrences, aggravation or sequelae of disabilities for which employee has received a permanent disability award or a compromise and release settlement under Workers' Compensation. To the extent employee is otherwise eligible, sick leave may be granted.

(c) Definitions.

- (1) Director: The Director of the Department of Human Resources.
- (2) Risk Management Division: The Division within the Department of Human Resources which administers the provision of workers' compensation benefits as mandated by the State of California.
- (3) Safety Rules and Regulations: Any and all County or Departmental rules, policies, and procedures, and California Occupational Safety and Health Act (CAL-OSHA) regulations, which relate to prevention of injury in the County work environment.
- (4) Wage Rate: The eligible employee's biweekly rate of pay, plus those specific premiums and/or bonuses, which are paid on paid leave. Overtime, and any compensation identified as paid for time worked only and not applicable on paid leave, are excluded.
- (5) Workers' Compensation: Benefits provided pursuant to Division IV of the California Labor Code.
- (6) Treating Physician: Any physician listed in Labor Code Section 3209.3 who is authorized by the County and is currently treating the employee for the job-related injury which forms the basis for injury leave eligibility.
- (7) Light Duty: Any restriction of hours worked and/or duties performed as a result of a job-related injury where such hours and/or duties are different than the employee's established work schedule and/or regular assigned duties prior to the injury.

(Amended 10/26/07, Ord. No. 9891)

- (d) Request. Each request for injury leave shall be submitted to the employee's appointing authority within 48 hours after medical treatment is obtained or as soon as practicable thereafter accompanied by verification of the treating physician authorized by the County. It shall set forth the reasons for the request and any further information as may be required by the Director.

(Amended 10/26/07, Ord. No. 9891)

(e) Investigation.

- (1) The appointing authority shall make such investigation as is necessary to determine whether or not facts exist which support the

request. Upon concluding the investigation, the appointing authority shall provide a summary of the findings to the Department of Human Resources, Risk Management Division.

- (2) The Director shall review the findings of the appointing authority and make any further investigation as is appropriate.
- (3) The Director may grant the request in whole or in part and determine the duration of the injury leave, or may deny the request. The Director shall notify the employee and the appointing authority of the decision in writing.

(f) Appeal.

- (1) The Director's decision shall be final unless appealed by the employee. Within ten (10) County business days of postmark or confirmed delivery of the Director's decision, the employee may appeal the decision by requesting arbitration. Written notice requesting arbitration must be presented to the Risk Management Division of the Department of Human Resources within the ten (10) days specified herein. The request for arbitration shall specify the basis for the appeal.
- (2) Selection of Arbitrator. The Risk Management Division will maintain a list of qualified neutral arbitrators from the Superior Court Arbitrator Personal Injury Panel. These arbitrators shall have workers' compensation experience. For employees in classes designated AM, AS, CE, CEM, CC, CS, DA, EM, MA, NA, NE, NM, PD, PM, SW and UM the Risk Management Division will assign an arbitrator in rotation from the Superior Court Panel to hear the appeal. The arbitrator shall be determined by assigning names from the Panel in alphabetical rotation. For all other employees, the arbitrator shall be determined by the parties alternately striking names from the Superior Court Injury Panel until only one remains.

(Amended 10/26/07, Ord. No. 9891)

(Amended 03/28/08, Ord. No. 9928)

- (3) Authority of the Arbitrator. The arbitrator shall hear the appeal and determine whether or not injury leave should be granted and, if so, its duration by applying only this Injury Leave provision. However, the arbitrator shall have no authority to add to, delete from, or modify this Injury Leave provision. The arbitrator shall submit findings and a decision in writing. The decision of the arbitrator shall be final.

- (4) Each party to the appeal before an arbitrator shall bear his/her own expenses in connection therewith. All fees and expenses of the arbitrator shall be borne one-half by the County and one-half by the appellant.
- (5) For the period of June 23, 2006 through June 18, 2009 the appellant's share shall not exceed one hundred fifty dollars (\$150) per hearing.

Eligible Classes:

Classes Designated AE, CL, CM, CR, FS, HS, MM, PR, PS, RN and SS.

(Amended 10/26/07, Ord. No. 9891)

(g) Duration of Injury Leave.

- (1) No injury leave may be granted during the first three (3) full calendar days after the employee leaves work as a result of the injury, except where the injury causes disability of more than fourteen (14) full calendar days or necessitates hospitalization within the three (3) calendar day waiting period. In such cases, injury leave may commence the first day the injured employee leaves work or is hospitalized as a result of the injury.
- (2) The duration of injury leave shall be that determined by the Director, after an investigation. An injury shall be deemed to continue through a recurrence, aggravation, or sequelae of the initial injury for which the leave may be granted. Injury leave shall not total more than seven hundred and twenty (720) aggregate hours for employees in classes designated AM, AS, CC, CS, DA, PD, PM or ninety (90) aggregate calendar days for employees in classes designated CC and CS or one thousand four hundred and forty (1,440) aggregate hours for all other employees, for the particular injury.

(Amended 09/27/96, Ord. No. 8720)

(Amended 07/03/98, Ord. No. 8932)

(Amended 12/18/98, Ord. No. 8987)

(Amended 12/04/01, Ord. No. 9405)

(Amended 10/26/07, Ord. No. 9891)

- (3) If, subsequent to the granting of injury leave for a period of less than seven hundred and twenty (720) aggregate hours or ninety (90) aggregate calendar days or one thousand four hundred and forty (1,440) aggregate hours, as provided in subsection 2 above, it

appears that leave should be granted for an additional period of time, the employee may request additional injury leave. This request shall be submitted and determined in the same manner as an original request for injury leave, provided that the total duration of the original and additional injury leave shall not exceed seven hundred and twenty (720) aggregate hours or ninety (90) aggregate calendar days or one thousand four hundred and forty (1,440) aggregate hours, as provided in subsection 2 above.

(Amended 07/03/98, Ord. No. 8932)
(Amended 12/18/98, Ord. No. 8987)
(Amended 10/26/07, Ord. No. 9891)

- (4) In no event shall any injury leave exceed a total of seven hundred and twenty (720) aggregate hours or ninety (90) aggregate calendar days or one thousand four hundred and forty (1,440) aggregate hours as provided in subsection 2 above, extend beyond five (5) years from the date of the initial injury, nor extend beyond the period in which the employee is employed.

(Amended 07/03/98, Ord. No. 8932)
(Amended 12/18/98, Ord. No. 8987)
(Amended 10/26/07, Ord. No. 9891)

(h) Holidays Falling During Injury Leave.

- (1) A County holiday (Section 5.9.1(c)) falling during the period of injury leave shall be charged as injury leave and not paid as a holiday.
- (2) Injury Leave time shall be considered paid leave for the purpose of determining eligibility for accruing floating holiday credits.

(Amended 06/07/96, Ord. No. 8686)
(Amended 03/30/07, Ord. No. 9838)

- (i) Absence Pending Injury Leave. When a claim for workers' compensation benefits and/or a final determination of entitlement to injury leave is pending, an employee may take paid leave or compensatory time off. If the employee becomes eligible for injury leave, it shall commence on the date determined by the Director after an investigation. Any sick leave, compensatory time, or other paid leave used in lieu of injury leave after such date of commencement, shall be restored to the employee's balance(s), except that if the difference between the paid leave used and the injury leave for the same time period requires that employee reimburse County, the difference shall be deducted from the balances restored, to the extent available.

(j) Workers' Compensation and Leave.

- (1) An employee shall not, through a combination of temporary disability indemnity payments and paid sick leave, injury leave or paid leave pursuant to Section 4850 of the Labor Code, receive payment in excess of his or her wage rate. The amount paid for such leaves shall be decreased by the amount of any temporary disability for the same period to which the employee is or may be entitled under Workers' Compensation.
- (2) If an employee has received his or her wage rate as paid sick leave, and temporary disability back payments covering the same period are made to the employee, then the employee shall be liable to the County for the amount that the combination of such back payments and sick leave exceeds the employee's wage rate. The County may deduct from any future payments it makes to such employee an amount equal to the total of such excess payment. Insofar as practical, such deduction shall be done by a method that will not cause undue hardship to the employee. To the extent that such deductions represent compensation for sick leave used, the employee's sick leave balance shall be restored.
- (3) Nothing herein contained shall be deemed to affect the employee's entitlement to medical, surgical and hospital treatment or temporary disability indemnity benefits under Workers' Compensation.

- (k) Light Duty. Where the injured employee's treating physician authorized by the County recommends light-duty assignment, it will be the responsibility of the appointing authority to arrange suitable light duty. Department of Human Resources may provide staff technical assistance to find a suitable light-duty assignment, one which accommodates the particular restrictions provided by the treating physician.

(Added 03/15/96, Ord. No. 8650)
(Renumbered and Amended 10/26/07, Ord. No. 9891)
(Amended 12/21/07, Ord. No. 9910)

SECTION 4.2.3 (B)

(Added 03/15/96, Ord. No. 8650)
(Repealed 09/27/96, Ord. No. 8720)

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