**Leadership Development Program**

***Alphabet Soup: FMLA/STD/WC/ADA***

Organizational Development and Training

Colorado Department of Labor and Employment

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Training Objectives

* Provide an overview of:
	+ Family and Medical Leave Act (FMLA)
	+ Short Term Disability (STD)
	+ Workers’ Compensation (WC)
	+ Americans with Disabilities Act (ADA)
* Understand your responsibilities as a supervisor.
* Be able to answer common employee questions.
* Know who to contact for help.

Alphabet Soup: QUIZ

**1. An employee must ask to have their Family Medical Leave (FML) rights offered to them.**

True False

**2. An employee must provide enough information about his/her leave for the employer to determine if Family Medical Leave applies.**

True False

**3. An employee can post her own FML in Kronos once she’s designated.**

True False

**4. Supervisors need to be familiar with their employees FML designation in order to prevent FML abuse.**

True False

**5. Whether or not a situation qualifies for FML depends on an employee’s balance of sick and annual leave.**

True False

**6. An employee can waive his/her rights to FML.**

True False

**7. Employee medical info must be kept in locked files separate from other employee info and with limited access.**

True False

**8. The state’s Short-Term Disability and PERA’s STD kick in once FML is exhausted.**

True False

**9. While utilizing the state’s STD benefit, employees can receive up to 60% of their usual pay.**

True False

**10. While utilizing the state’s STD, the employee pays their share of health insurance premiums and the state continues to pay its share.**

True False

**11. If an employee files too many Worker’s Comp claims, the supervisor can terminate their employment.**

True False

**12. It is not necessary to further investigate an employee report of injury, since we use the Employer’s First Report of Injury.**

True False

Family Medical Leave Act (FMLA)

The purpose of the FMLA is to balance work and family needs and promote family stability and economic security. It is based on federal law; the Family and Medical Leave Act of 1993. The Act provides job and health benefit protection during absences caused by serious medical conditions for employees, their child, parent, or spouse.

What Is FMLA?

* It entitles employees to take job-protected leave for qualified family and medical reasons.
* It provides *unpaid* job-protected leave on that runs concurrently with all forms of *paid* leave (sick/annual).

What FMLA is Not

* Not Family Sick Leave (FSL)
* Not Fair Labor Standards Act (FLSA)

Who Is Eligible For FMLA?

* Full-Time, Part-Time, and sometimes Temporary employees.
* Employee must have 12 months of cumulative state service.
* Temporary employees must also have worked at least 1,250 hours within the previous 12 months.

When Can An Employee Use FMLA?

* When an employee is unable to work because of their own serious health condition.
* When an employee must care for an immediate family member – Spouse, Child, or Parent – with a serious health condition.
	+ Child
	+ Parent
	+ Spouse
	+ Others (It Depends…)
* For the birth of a child, and to bond with the newborn within one year of birth.
* For the placement for adoption or foster care of a child.
* Due to qualifying exigencies for covered service members.

What Protections Are Provided During FMLA Leave?

* FMLA provides up to 13 work weeks (520 hours) of job protection during qualified absences.
* Health insurance coverage continues as if the employee had not taken leave.
	+ Employee must pay their portion of the premiums while on *unpaid* leave.
	+ The State will continue to pay the State portion.
* Job Restoration to same or equivalent position.
* No Retaliation Allowed

How Does FMLA Work?

* Things to look for:
	+ An employee mentions they will require ongoing treatments or appointments.
	+ An employee is calling in sick frequently.
	+ An employee mentions they are anticipating having surgery at some point.
	+ An employee mentions they need to leave to care for their spouse, parents, or children due to a medical condition.
	+ An employee has been out due to any medical condition for more than three consecutive days.
* Supervisor or employee notifies Human Resources, FMLA Coordinator
	+ Do not wait for the employee to do any of the following:
		- Exhaust paid leave.
		- To be ready to come back to work.
		- To say they want FML.
	+ If in doubt, call the FMLA Coordinator.
* FMLA forms are sent by the FMLA Coordinator to the employee.
* Employee must return completed medical certification form to the FMLA Coordinator within 15 days.
* FMLA Coordinator sends FMLA designation letter and notice.
* FMLA coverage is for a ”rolling-year”.
	+ Prior to 07/01/2014, the employee received protection at the beginning of each State fiscal year.
	+ Effective 07/01/2014, a “rolling year” is implemented so that the protection does not “start over” at the beginning of a new fiscal year.
* A Fitness-to-Return form must be submitted for absences more than 30 days. Form must be submitted before employee is allowed to return to work.
* All leave time is posted timely.
	+ Employee has responsibility to enter sick and annual leave in Kronos. Employees cannot post FMLA.
	+ Supervisor updates sick and annual leave in Kronos to show FMLA occurrences.
	+ Paid leave must be used prior to unpaid leave.
	+ LWOP must be posted ASAP in Kronos to avoid overpayment.
	+ Holidays may count towards FMLA total hours.

FMLA – Who Does What?

|  |  |  |
| --- | --- | --- |
| **Employee** | **Supervisor** | **FMLA Coordinator** |
| * Notifies supervisor and/or FML Coordinator of potential need
* Gives State of Colorado Medical Certification form to medical provider
* Returns completed medical certification form within 15 days of receipt to FML coordinator, not to supervisor
* Indicates FML on leave slips
* Follows normal call in procedures
* Has Fitness to return form completed and submitted to FML Coordinator on or before date medically released
* Adhere to established check in schedule usually every 7-10 days which is indicated on Notice of Rights and Responsibilities sent in initial FML packet
* Posts sick/annual leave in Kronos(employees cannot post FML)
 | * Notifies FML Coordinator of potential need
* Reviews FML designation letter and notice when approving and posting FML in Kronos (to ensure appropriate use)
* Posts leave in Kronos:
* All leave taken must be posted ASAP in Kronos **especially LWOP to avoid overpayment**
* FML leave posted in Kronos must not exceed FML designation
* Establish check in schedule with employee when possible
* Informs both FML coordinator and payroll when an employee returns to work
* Ensures employee turns in Fitness to return form when applicable to FML coordinator
 | * Sends initial FML paperwork/Starts FML clock
* Evaluates Medical Certification form. Seeks clarification if needed
* Sends 2nd notices to follow up on status of FML related documentation needed.
* Sends FML designation letter and notice
* Monitors compliance with FML designation and keeps track of FML hours used
* Keeps employee’s condition confidential
* Informs employee and supervisor when FML protected leave exhausts
* Is available to provide clarification and guidance whenever FML related questions arise
 |

Why Is a Medical Leave Form Required For Absences Of More Than 3 Days?

* Required per State Personnel Rule 5-5B, “*Employees must provide a State of Colorado Medical Leave Form (or other official document containing the same information) for an absence of more than three consecutive full working days for* ***any*** *health reason. Appointing authorities have the discretion to require a Medical Leave Form for absences of less than three days when the appointing authority has a reasonable basis for suspecting abuse. (7/1/13)*

*1. This form (or other official document containing the same information) must be completed by a health care provider. The completed form must be returned within 15 days from the appointing authority’s request. (7/1/13)*

*2. Failure to provide the form (or other official document containing the same information) shall result in denial of leave and possible corrective/disciplinary action. (7/1/13)*

* A supervisor cannot decide that an illness is serious enough (or not) for FML.

Information Confidentiality

* HIPAA – Health Insurance Portability and Accountability Act protects individually identifiable health information. It limits the use and disclosure to the minimum necessary.
* GINA – Genetic Information Non-discrimination Act limits employer access to medical information.
* Supervisors are permitted to know the amount and frequency of leave the employee has been designated.
* Supervisors can and should expect the employee to indicate FML on the leave slip along with clarifying information.
* Employees are not required to disclose medical information to any person besides the FMLA Coordinator, who must make a determination on FMLA qualification.
* Supervisors are never allowed to contact an employee’s doctor directly.

Compliance with FMLA – Rights and Responsibilities

**Employee Rights**

* Right to request and use FMLA.
* Right to take job-protected leave for qualifying events without interference or restraint from the employer.
* Right to not to be discriminated against for requesting or using FMLA.
* Right to have health insurance maintained while covered under FMLA.
* Right to be restored to the same or equivalent position at the end of the FMLA leave.

**Supervisor Responsibilities**

* We must comply with federal law – serious legal penalties for non-compliance.
* Personal liability! Anyone involved in FMLA can be sued separately from the State.
* Do not use FMLA related leave in making any employment decisions including evaluations, promotions, performance improvement plans, corrective actions, or disciplinary actions.
* Do not interfere with, restrain, or deny the exercise of FMLA rights by an employee.
* Do not retaliate against an employee for requesting or using FMLA.
* Do not allow employees to waive their FMLA rights.
* Do not allow employees to change their work schedule or make up absence to avoid using leave time or FMLA hours. Even if it’s at the request of the employee, it can later be viewed as a “coerced” or “forced” schedule change.

**Supervisor: Managing Performance**

* Expect employee to perform while at work.
* Apply performance and production standards based on hours worked.
* FMLA does not supersede other policies. Require appropriate conduct at work (dress code, professional conduct, non-impairment from medications, etc.).
* Call-In procedures must still be followed, even if the employee is on FMLA leave.
* Issue Corrective Action to employees who fail to provide medical documentation as required. Undocumented leave is not protected.

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| --- |
| * + Personnel rule:
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| * + Helps to :
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| * + Sick leave:
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| * + If documentation not returned:
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| * + Disciplinary action:
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Questions on FMLA

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FMLA – Resources and Contact Information

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| **Karen Herrera**FML CoordinatorHuman Resources, Risk Management(303) 318-8210Fax (303) 318-8201Karen.Herrera@state.co.us |

SPP-0081 Family Medical Leave

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

STANDARD POLICY AND PROCEDURE

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| --- | --- | --- | --- | --- |
| **Donald J. Mares****Executive Director** | **SUPERCEDES:** | **SPP-0035** | **SPP NUMBER:** | **SPP-0081** |
| **DATE:** | **06/05/06** | **DATE:**  | **04/01/10** |
| **EXECUTIVE DIRECOR’S APPROVAL:**  | **Donald J. Mares** |
| SUBJECT TITLE: Family Medical Leave (FML) |
| CATEGORY/UNIT:SUB-CATEGORY: Human Resources | AUTHOR:DISTRIBUTION: JoAnna Miller |

**PURPOSE:**

To provide information to employees regarding their rights and responsibilities under provisions of the Family/Medical Leave Act (FMLA).

**DISCUSSION:**

Family/Medical Leave may be used for any of the following purposes: (1) the birth and care of your child, and must be completed within one year of birth; (2) placement and care of an adopted or foster child and leave must be completed within one year of the placement; (3) the serious health condition of an employee’s parent, child, or spouse for physical care or psychological comfort: or (4) an employee’s own serious health condition. A serious health condition is an illness, injury, impairment, physical or mental condition requiring inpatient care or continuing treatment by a health care provider. The appointing authority may require documentation confirming the family relationship.

The FMLA allows eligible employees (those employed by the State for at least 1 year) up to 520 hours of leave (prorated for part-time employees) in a fiscal year. The Act provides job and health benefit protection during absences caused by serious medical conditions for employees, their child, parent, or spouse. Upon returning from leave, employees must be restored to the position they occupied before going on leave, or to an equivalent position. An equivalent position is one with the same pay grade, benefits, work schedule, approximate geographic location, and other terms and conditions of employment.

Note that Family/Medical Leave (FML) and Family Sick Leave are not the same programs. The FML definition of "immediate family member" includes only the Child, Parent, or Spouse of the employee. Family Sick Leave program adds to these other legal dependents and persons living in the employee's household for whom the employee is the primary care giver.

FML is an ***unpaid*** leave program; however, employees must use accrued sick leave (as permitted by sick leave procedures) and annual leave before being placed on leave without pay for any remaining portion of FML. Other absences, such as injury leave, holiday leave, and short-term disability, which occur during the FML period, will be counted toward the FML entitlement. In other words, all paid leave and absences run concurrently with, and do not extend, FML entitlement.

**REQUEST:**

Employees should use the State of Colorado Leave Request and Authorization form whenever requesting FML. Except in emergency situations, you must give at least 30 days advance written notice before leave starts. If 30 days notice is not possible, at least verbal notice is expected within two business days after learning of the need for leave, followed by written confirmation. It is your responsibility to provide sufficient information for the Risk Management Manager to determine if the leave qualifies as family/medical leave.

When medically necessary, you may request FML on an intermittent basis, or a reduced work schedule. If you are on unpaid FML, the appointing authority may affect a temporary transfer to another position which better accommodates your needs, or she/he may temporarily reduce your work schedule. If/when your work schedule is reduced; your salary will be reduced proportionately. Employees must consult with the appointing authority to establish a mutually satisfactory treatment schedule that does not unduly disrupt business and meets the patient's medical needs. Failure to consult with the appointing authority may require that medical appointments be rescheduled.

**MEDICAL CERTIFICATIONS:**

Employees on FML must supply a medical certificate from the health care provider for any absences of more than three consecutive, full working days. The appointing authority has the right to select a health care provider for a second opinion. If the first and second medical opinions conflict, the appointing authority has the right to require a third opinion by a health care provider selected by both parties. The third opinion is final and binding. The agency is responsible for the expenses connected with a second and third opinion, including any reasonable "out of pocket" expenses you incur. Failure to provide the required medical certificate(s) may result in a delay or denial of FML. All medical information will be maintained in confidence as required by the State and Federal Laws.

**FITNESS-TO-RETURN:**

A Fitness-to-Return Certificate is required for any employee who is absent for more than 30 days. The appointing authority may also require it for an absence of 30 days or less, depending on the nature of your health condition in relation to your job assignment.

**HEALTH INSURANCE COVERAGE:**

Health insurance coverage continues while employees are on approved, ***paid*** FML (using accrued sick and/or annual leave); the employee’s share of the premium is paid through normal payroll deductions. If FML is ***unpaid***, and the employee elects to continue coverage, he/she must pay the employee's share of the premium. If the employee elects not to continue coverage, health benefits will be reinstated without qualifying criteria, when he/she returns to work.

This SP is effective immediately. Any questions regarding the Family/Medical Leave program should be directed to the Office of Human Resources/Risk Management Unit.

SP-200 Supervisor’s Guide – Family/Medical Leave

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| **STANDARD****OPERATING****PROCEDURES** | **COLORADO DEPARTMENT OF****LABOR AND EMPLOYMENT**1515 Arapahoe StreetDenver, Colorado 80202-2117**SUBJECT: Supervisor’s Guide – Family/Medical leave** | **Number:**  | **SP-200** |
| **Date:** | **02/16/00** |
| **Supersedes:** | **SP-137** |
| **Date:** | **11/17/95** |
| **Executive Director’s Approval** |

**PURPOSE**

To provide information to supervisors regarding procedures to comply with provisions of the federal Family/Medical Leave Act (FMLA) of 1993. Also, to designate the Personnel Administrator as the principal person responsible for notifying employees whether the requested leave is designated as Family/Medical Leave (FML).

**DISCUSSION**

Colorado's Family/Medical Leave Act allows "eligible" employees up to 520 hours ( the equivalent of 13 weeks) of unpaid FML in a fiscal year. The Act provides job and health benefits protection during absences caused by: (1) the birth or placement for adoption or foster care of their child within one year of the event; (2) a serious health condition of the employee's "immediate family member " for either physical care or psychological comfort; or (3) the employee's own serious health condition.

Although FML is not a paid leave program, employees are required to use all accrued paid leave (i.e. Sick Leave as permitted under State Personnel Director's administrative procedures, annual leave, short term disability, etc.) prior to being placed on leave without pay for any remaining portion of the FML period. Any of the various other types of paid leave (e.g. funeral leave, jury leave, military leave, holidays, etc.) that occur during FML do not extend FML entitlement. In other words, FML runs concurrently with other types of paid leave and absences.

The Family/Medical Leave Act requires that employees be notified within two business days whether or not their requested leave is subject to the FMLA. Consequently, supervisors and appointing authorities must contact the Office of Human Resources/ Personnel, immediately after receiving notice that an employee is requesting leave which has the potential of qualifying for FML. FML provisions are not necessarily generated only at the employee's request. FML should be designated whenever the supervisor is aware of the need for leave due to a serious health condition of the employee, his/her spouse, child, or parent. At the employee's request, in the case of a serious health condition, and when medically necessary, the appointing authority shall allow FML to be used intermittently. To better accommodate such a request, an appointing authority may temporarily transfer an employee to another position with equivalent pay and benefits, or place an employee without accrued leave on a reduced work schedule. If the employee is temporarily transferred to a part-time position, pay and benefits are pro-rated. FLSA exempt employees do not lose their exempt status while on unpaid FML. For family leave which is not a serious health condition, the appointing authority has sole discretion whether to grant the employee's request for a reduced schedule.

In conformance with the State Personnel Director's administrative procedures additional paid or unpaid leave may be granted once FML is exhausted. However, this leave is not FML, and normal leave and employment provisions apply.

All leave without pay provisions apply to any unpaid portion of FML, except that the employee may elect to continue Health Benefits coverage. If this is the case, the agency shall continue to pay the state's contribution of th e insurance premiums in accordance with State Personnel Director's administrative procedures. It is the intent of the procedure that FML shall not be counted as a break in service for purposes of vesting and eligibility, except that retirement service credit and final average salary must be determined in accordance with PERA rules and regulations.

Note: Employees with a serious health condition that also qualifies for short-term disability benefits or workers' compensation must comply with the requirements of those plans. Absences from work for these reasons do not extend the FML period.

**DEFINITIONS**

An **"eligible"** employee is one who has:

(1) twelve months of total state service as of the date leave will begin. State service is time on the payroll regardless of employee status (e.g. permanent full time or part time, temporary, non-classified employment); and

(2) has worked at least 1250 hours in the past twelve month period from when leave will begin, or has worked less than 1250 hours, but is a permanent employee with at least 12 months of total state service.

The 520 hours of FML is prorated for eligible part-time employees based on the hours worked in the 12 month period immediately preceding the date leave will begin.

**"Immediate Family Member"** means the employee's: (1) child including a foster, adopted, or step child, a legal ward, or an adult child incapable of self care; (2) parent, including an individual who filled the role of a parent; or (3) spouse. Note that this definition is different from that used in the sick leave program in that it does not include other legal dependents and/or other persons living in the employee's household for whom the employee is the primary care giver. The appointing authority may request documentation of the familial relationship.

A **"Serious Health Condition"** is an illness, injury, impairment, physical or mental condition that requires:

(1) Inpatient care in a hospital, hospice, or residential medical care facility including any period of incapacity in connection with such inpatient care; or

(2) continuing treatment by a health care provider, i.e. incapacity of more than three consecutive calendar days and subsequent treatment and incapacity where the patient cannot perform regular daily or work activities; or pregnancy including prenatal care and delivery; delivery; a chronic serious health condition; or a permanent or long-term incapacity; or multiple treatments for restorative surgery, or a condition that would likely result in a period of incapacity of more than three consecutive calendar days.

**"Treatment"** includes the examination to determine if a serious health condition exists, subsequent examinations to evaluate the serious health condition, and a course of prescriptive medication or therapy requiring special equipment. It does not include routine examinations or a course of treatment that does not require the intervention or continuing supervision by a health care provider (e.g. over-the-counter medications, a course of bed rest and fluids, or an exercise regimen).

**"Health Care Provider"** includes a doctor of medicine or osteopathy, dentist, podiatrist, clinical psychologist, optometrist, nurse practitioner, nurse mid-wife, clinical social worker, Christian Science practitioner listed with First Church of Christ Scientist in Boston, and under limited circumstances, a chiropractor. Health Care Providers must be authorized to practice, and be performing within the scope of their practice.

Management Responsibilities

It is imperative that supervisors and/or appointing authorities contact the Office of Human Resources/Personnel immediately upon learning that an employee is requesting leave which may qualify as FML. When an employee requests leave that may qualify for FML, the Personnel Administrator must notify the employee, in writing, of the employee's rights and responsibilities for taking FML. This notice requirement is accomplished when the Personnel Administrator provides the employee with a copy of the State of Colorado Employer Notification memo. A copy of this memo is attached and must be maintained in the official personnel medical file.

It is the Personnel Administrator's responsibility, in consultation with the Executive Director and the Associate Director for Administrative Services, to designate and notify an employee whether the requested leave qualifies as FML based on the information provided by the employee. The supervisor and/or the appointing authority is/are responsible for obtaining the information necessary to determine if the leave qualifies for FML. The designation must be made before the leave starts, or within two business days, absent extenuating circumstances, after the supervisor or appointing authority is aware of the reason for the leave.

If necessary, the Personnel Administrator may provide a verbal designation to the employee, but this must be confirmed, in writing, within one week. Approval of FML may be conditional, pending receipt of additional required documentation (e.g. medical certification, proof of familial relationship, information concerning the need for the leave, etc.). The Personnel Administrator must keep documentation of any dispute over the designation of leave as FML, which must be placed in the official personnel medical file.

When the supervisor and/or appointing authority is/are aware of the reason for FML, either before or during the leave, and the Personnel Administrator fails to designate the leave in a timely manner, any leave used prior to the notice shall not be designated as FML. The employee receives all of the protection of FML, but any absence preceding the designation may not be counted against the FML entitlement.

Family/Medical Leave cannot be designated retroactively once the employee returns to work, unless: (a) neither the supervisor nor the appointing authority were aware of the reason for the leave until the employee returned to work; or (b) the leave was conditionally designated as FML pending receipt of certification. Upon receipt of the information, the Personnel Administrator shall promptly designate and notify the employee whether the leave qualifies as FML.

The appointing authority shall require a physician's statement (Medical Certification) from any employee who is absent for four or more consecutive, regularly scheduled, full working days. The employee has 15 calendar days from the date of the appointing authority's request to produce the required medical certification, unless it is not practical under the circumstances. If the required certification is not provided, the leave is not Family/Medical Leave, and the employee may be subject to corrective/ disciplinary action.

Neither the supervisor, nor the appointing authority can have direct contact with the employee’s health care provider, unless it involves Workers’ Compensation, even with the employee’s written permission. If an employee on workers' compensation is concurrently using Family/Medical Leave, the appointing authority may have direct contact with the employee's health care provider, as allowed by workers' compensation provisions.

A Fitness-to-Return Certificate, prepared and signed by the Health Care Provider, shall be required of any employee who is absent from work for more than 30 days due to the employee's own health condition. A Fitness-to-Return Certificate may be required for absences of less than 30 days when it is determined that the nature of the health condition in relation to the employee's assignment makes such certification consistent with business necessity. Appointing authorities shall ensure that this policy is applied consistently to all similarly situated employees. The certification shall only address the particular health condition that caused the employee's need for leave and the employee's ability to perform the essential tasks of his/her position. Supervisor's who require a Fitness-to-Return Certificate for absences of less than 30 days should contact the Office of Human Resources/ Personnel for assistance. In all other cases, where it is determined that a Fitness-to- Return Certificate is necessary, the Personnel Administrator will include the certificate in the original notification letter. The Personnel Administrator will attach a task statement from the official Position Description Questionnaire (PDQ) to assist the Health Care Provider in preparing the certificate.

The appointing authority may delay the return to work until the required certification is furnished. If the employee fails to provide the fitness-to-return certification, the appointing authority may require a new medical certificate subject to any applicable Americans with Disabilities Act (ADA). A Fitness-to-Return Certificate cannot be required of employees taking intermittent FML.

Employee Responsibilities

The employee shall provide 30 days advanced written notice requesting FML to the appointing authority, or as soon as practical. "As soon as practical" means within two business days after the employee requests leave, if feasible. Advanced notice may be verbal, however, it must be followed by written confirmation. The employee's failure to provide timely notice, when the need for leave is foreseeable and the employee does not have a reasonable excuse, may delay the start of FML for up to 30 days after notice is received; provided, that the leave was designated as FML in a timely manner. Advance notice is not required in the case of a medical emergency. Notice may be given by any means and by an adult family member or another responsible party if the employee is unable to do so personally.

The employee is expected to consult with the appointing authority to establish a mutually satisfactory schedule for intermittent treatments, periodic check-in, notification of any change in circumstances, return to work arrangements, etc.

The employee shall complete the new State of Colorado Leave Request and Authorization form (copy attached). Note that this form has been revised as a result of the Family/Medical Leave Act.

As appropriate, the employee must provide proper Medical and Fitness-to-Return Certificates (copies attached) as required in P-5-6. Failure to provide the certificates on a timely basis may result in a delay in the beginning or continuation of FML. If the required certificates are not provided, the leave is not FML and the employee may be subject to corrective/disciplinary action.

Restoration Rights

Upon return from FML, the employee shall be restored to the same or equivalent position, including the same pay, benefits, location, work schedule, and other working conditions.

(A) If the employee is no longer qualified to perform the job (e.g. unable to renew an expired license), the employee must be given an opportunity to fulfill job requirements.

(B) If the employee is no longer able to perform the essential functions of the job due to a continuing or new serious health condition, the employee does not have restoration rights under FML and the appointing authority may use P-5-10 (i.e. short-term disability, leave without pay, requested resignation, or termination) subject to any applicable Americans with Disabilities Act (ADA).

(C) The employee does not have restoration rights if the employment would not have otherwise continued had the FML not been taken, such as discharge based on performance, layoff, or the end of the appointment.

(D) In cases where the employee performance evaluation plan includes an attendance factor, any time the employee was on FML cannot be considered in the evaluation.

Recordkeeping

Federal law requires that specific records be kept for all employees taking FML. These records must be kept for three years. The Office of Human Resources/Personnel, in conjunction with the Payroll Office will be responsible for maintaining the following FML records for all employees:

(1) Basic payroll and employee identifying information: the employee's name, address, occupation, rate of pay, hours worked in a pay period, payroll additions and deductions, and total compensation paid; and

(2) The dates FML was taken, including the number of hours if such leave was taken for less than a full day; and

(3) Copies of leave requests and authorization/designation forms; and

(4) Copies of the individual specific notice given to the employee; and

(5) A record of premium payments of employee benefits; and

(6) Documentation of any dispute over the designation of leave as FML.

Any medical information must be maintained in a separate confidential medical file in accordance with ADA requirements and with limited access in accordance with law.

Benefits

Benefits coverage (medical, dental, life, long-term disability, short-term disability) continues during FML. If the employee is on paid FML, premiums will be paid through normal payroll deduction. During unpaid FML, the employee may elect to continue insurance coverage. If continuation of coverage is elected, the employee is expected to pay the employee share of the premiums on a monthly basis to the payroll administrator. Payments for the flexible spending accounts must be made through the calendar year in which the participant is enrolled.

If the employee elects to continue coverage, and fails to pay the employee share, the state will pay this share (except for Flexible spending accounts) and will recover the payments as soon as possible after the employee returns to work for at least 30 days. If the employee fails to return to work after FML, the state will still recover these payments, except in some circumstances beyond the employee's control.

Penalties

If the employer has violated one or more provisions of FMLA, an employee may receive one or more of the following: wages, employment benefits, or other compensation denied or lost by reason of the violation. Where no such tangible loss has occurred, such as when FMLA leave was unlawfully denied, the employee may receive actual monetary loss, such as the cost of providing care, up to a sum equal to his/her wages for the duration of the FMLA statutory period. In addition, the employee may be entitled to interest on such sum (calculated at the prevailing rate), liquidated damages, reasonable attorney's fees, expert witness fees, and other costs of the action in addition to any judgment awarded by the court. When appropriate, the employee may also obtain appropriate equitable relief, such as employment, reinstatement and promotion.

Posting

Appointing authorities are responsible for insuring that each of their offices have the required FMLA poster posted in a conspicuous place where it can be seen by employees and individuals who apply for employment with the Department. Copies of the poster may be obtained from the Office of Human Resources/Personnel.

This SP is effective immediately.

**DEFINITIONS FOR MEDICAL CERTIFICATION**

**"Serious Health Condition"** is an illness, injury, impairment, or physical or medical condition that involves one of the following.

1. Inpatient Care.

Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment and recovery in connection with or consequent to such inpatient care.

2. Absence plus Treatment.

A period of incapacity of **more than three consecutive calendar** days (including any subsequent treatment or period of incapacity relating to the same condition) than also involves:

(1) **Treatment two or more times** by a health care provider, by a nurse or physician's assistant under the direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under order of, or on referral by, a health care provider;

or

(2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment** under the supervision of a health care provider.

3. Pregnancy.

Any period of incapacity due to **pregnancy**, including prenatal care.

4. Chronic Conditions Requiring Treatments.

A **chronic condition** which:

1. Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under the direct supervision of a health care provider; **AND**

(2) Continues over an **extended period** of tune (including recurring episodes of a single underlying condition);**AND**

(3) May cause **episodic** rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-Term Conditions Requiring Supervision.

A period of **incapacity** which is **permanent or long-term** due to a condition for which treatment may not be effective. The patient must be **under continuing supervision of, but need not be receiving active treatment by, a health care provider** (e.g., Alzheimer's, severe stroke, terminal stages of a disease).

6 Multiple Treatments (Non-Chronic Condition).

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc. ), severe arthritis (physical therapy), kidney disease (dialysis).

"**Treatment**" includes examinations to determine if a serious health condition exists and evaluations of the condition. It does not include routine examinations.

"**Regimen of Continuing Treatment**" includes, for example, a course of prescription medication (e.g., antibiotics) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

"**Incapacity**" is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

Family/Medical Leave Memorandum – Employee’s Own Condition

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| --- | --- |
| JOHN HICKENLOOERGovernorELLEN GOLOMBEKExecutive DirectorKRISTIN CORASHDeputy Executive Director | **DEPARTMENT OF LABOR AND EMPLOYMENT****OFFICE OF HUMAN RESOURCES/PERSONNEL** **633 17th Street, Suite 1200****Denver, CO 802023660****303/318-8200 Fax 303/318-8201** |

**M E M O R A N D U M**

DATE:

Employee Name

Employee Address

Employee City, State, ZIP

Dear Employee,

The Risk Management Office has learned that you may need coverage under the Family Medical Leave Act for your own serious health condition. As you may know, Family Medical Leave is to provide job protection in situations where you may need to be absent due to a serious medical conditions for one of your immediate family members or yourself.

The State of Colorado Medical Certification Form included with this letter must be completed by your health care provider and returned to our office by XX/XX/XXXX. The completed form may be scanned to Karen.Herrrera@state.co.us or faxed to (303)318-8201, a confidential fax. If you cannot return the completed form by the due date, please contact me.

Please be aware that due to changes to the Family Medical Leave Act, we can no longer conditionally designate your absences as Family Medical Leave until we receive the completed Medical Certification Form.

As a reminder while on leave you will be required to periodically report your status and intent to return to work at least every 7-10 days to your supervisor. Also please keep in mind that while out on medical leave you are not permitted to make up FML related leave or work without medical release to do so. Need for medical release to work is determined on a case by case basis.

Please contact me with any FML related questions, concerns or updates.

Sincerely,

Karen Herrera

Karen.Herrrera@state.co.us

CDLE FMLA Coordinator

303-318-8210

Copy: Supervisor & FMLA File

Short Term Disability (STD)

What is STD?

Short Term Disability provides income replacement when an employee cannot perform their regular essential duties due to illness or injury. There are two Short Term Disability Plans – State STD and PERA STD.

STD Plan Comparisons

|  |  |  |
| --- | --- | --- |
|  | **State STD** | **PERA STD** |
| Administered By | Standard Insurance | Unum Insurance |
| Premium Paid By | 100% State Paid | 100% State Paid by Monthly PERA Contributions |
| Who is Eligible | State-benefits eligible employees | PERA-vested DB Plan employees |
| When Are They Eligible | Cannot perform essential duties | Cannot perform essential duties |
| Income Reduction Eligibility | When income is reduced by 20% | When income is reduced by 75% |
| Effective Date | 1st day of month following date of hire | 1st day of month following date of PERA vesting |
| Benefit Amounts | 60% of the first $3,850 of the weekly pre-disability earnings | 60% of the weekly pre-disability earnings |
| Maximum Benefit Amount | $2,310 per week | No maximum |
| Waiting Period | 30 daysOr Exhaust Sick Leave | 60 days OrExhaust Sick Leave |
| Maximum Benefit Period | 150 days during any rolling 12 month period | 22 months from date of disability |
| Job Protection | Job protection for up to 150 days, even if FML is exhausted. | No job protection. |
| Who To Notify | CDLE Benefits Coordinator | PERA |

State STD Plan

Overview & Features

* Income replacement benefit plan.
* Administered by Standard Insurance.
* Premium is paid 100% by the State.

Who Is Eligible For State STD?

* Employees who are State-benefits eligible employees.
* Total disability is never required. Non-permanent, non-total, partial disabilities are covered.

When Can An Employee Use State STD?

* When an employee cannot perform essential duties due to illness or injury.
* Once an employee’s income is reduced by at least 20% because of illness or injury.
* Coverage is effective the first day of the month following the date of hire.
* Eligibility is verified at the point of a claim.

What Are The Benefits Paid On State STD?

* Sick leave is paid at 100%
* STD is paid at 60%
* STD benefit percentage is 60% of the first $3,850 of the weekly pre-disability earnings.
* Maximum paid is $2,310 per week.
* Waiting period is the *greater* of:
	+ 30 days of disability

Or

* + The exhaustion of sick leave
* Maximum benefit period cannot exceed 150 days during any 12 month period; “rolling year”.

What is the State STD Claim Process?

* An employee is disabled from work and will be expected to be out for at least 30 days.
* Supervisor or employee notifies Human Resources, Benefits Coordinator
* STD forms are sent by the Benefits Coordinator to the employee.
	+ Part 1: Employee Statement
	+ Part 2: Employer Statement
	+ Part 3: Attending Physician Statement
* Employee must return completed forms ASAP.
* Benefits Coordinator will submit to Standard Insurance.
	+ Typically takes 5-6 days to make a decision after all the paperwork is received.

PERA STD Plan

Overview & Features

* Income replacement benefit plan.
* Administered by Unum Insurance.
* Premium is paid 100% by the State through monthly PERA contributions.

Who Is Eligible For PERA STD?

* Employees who are PERA-vested (earned 5 years of PERA service credit in the PERA Defined Benefit (DB) Pension Plan).
	+ Employees who chose the PERA Defined Contribution (DC) Pension Plan are not eligible.
* PERA STD is the primary STD plan.
	+ If an employee is on the DB plan, they must use the PERA STD, not State STD.
* Total disability is never required. Non-permanent, non-total, partial disabilities are covered.

When Can An Employee Use PERA STD?

* When an employee cannot perform essential duties due to illness or injury.
* Once an employee’s income is reduced by at least 75% because of illness or injury.
* Coverage is effective the first day of the month following the date of PERA vesting.
* Eligibility is verified at the point of a claim.

What Are The Benefits Paid On PERA STD?

* STD benefit percentage is 60% of the weekly pre-disability earnings.
* No maximum benefit payment.
* Waiting period is the greater of:
	+ 60 calendar days of disability

Or

* + The exhaustion of sick leave
* Maximum benefit period cannot exceed 22 months from the date of disability

What is the PERA STD Claim Process?

* An employee is disabled from work and will be expected to be out for at least 60 days.
* Employee contacts PERA for the PERA Disability Application Claim form.
* Employee must return completed forms ASAP directly to PERA.

FMLA and STD

* FML coverage and STD coverage run concurrently.

Questions on STD

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STD – Resources and Contact Information

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| **Lloydine Cordova**Benefits AdministratorHuman Resources, Risk ManagementPhone (303) 318-8104Fax (303) 318-8201Lloydine.Cordova@state.co.us |

WORKERS COMP – WC

Workers' Compensation (WC) insurance covers injuries and diseases that result from activities within the course and scope of employment. Benefits include: Medical bills paid with no copay or deductible; Replacement wages for time off work due to the injury; If applicable, death benefits to the dependent family of the employee**.**



**What Is A Work Injury?**

* “My neck seems to be hurting a lot these days.”
* “I fell and hurt my knee.”
* “My back is killing me.”

**How Should I Respond?**

* File a report if the injury is *possibly* work-related.
* True emergency – **Call 911**
* Express concern
* Ask questions
* Complete the forms
* Send employee to an authorized medical provider. Providers are located on the CDLE intranet: Human Resources; Risk Management; Work Injuries

**What Forms Are Needed? Where Do I Find Them?**

* Employee completes the Employee Statement.
* Supervisor completes the First Report of Injury.
* Supervisor sends both forms to the WC Coordinator.
* Forms are located on the CDLE intranet: Human Resources; Risk Management; Work Injuries

What Happens Next?

* The WC Coordinator will send an email message with the pertinent information to the injured employee and their supervisor. This contains all the information either party needs to know.
* If a medical provider requires authorization before seeing the employee, call WC Coordinator.
* Medical provider will give employee a form documenting the appointment. Employee should give this form to the supervisor.
* Review the form, attach it to leave slip(s), and share it with the WC Coordinator.

**NOTES:**

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WC Absences and Leave

* Time away from work for a WC appointment is not work time; it is an absence.
* Except for the date of injury, the absence must be posted or made up.
* The first 24 hours of lost time must be covered by the employee’s accrued leave and is coded as WC Sick, WC Annual, or WC LWOP.
* If the absence is made up, it is not an absence and it does not count toward the first 24 hours of lost time.
* After the first 24 hours of absence, Injury Leave is provided for up to 90 occurrences.
	+ FML is often designated at the point. FML absences cannot be made up.
* After 80 hours of absence, the initial 24 hours are converted to Injury Leave and the employee’s leave is restored.
* After Injury Leave is exhausted, Make-Whole goes into effect.

WC Benefits

* Medical expenses are covered
* Wage Replacement benefits for lost wages (Injury Leave and Make Whole)
* Injury Leave
	+ A permanent employee who suffers an injury or illness that is compensable under the Workers’ Compensation Act shall be granted injury leave up to 90 occurrences (whole day increments regardless of the actual hours absent during a day) with full pay (100%).
	+ If a holiday occurs while an employee is on injury leave, the employee receives the holiday and the day is not counted as an injury leave occurrence.
* Make Whole
	+ Applies when Injury leave expires.
	+ Continues as long as the employee has accrued sick and annual leave.
	+ When an employee is receiving workers’ compensation disability payments, accrued paid leave (sick or annual) is used to make up the difference between the temporary compensation payment and the employee’s gross base pay.

Common Questions from Employees About Workers’ Compensation

Why can’t I see my own doctor?

* Colorado law permits the employer to designate medical providers. Employers must give the injured worker a choice between at least 2 providers who are unaffiliated with each other. Occupational medicine is a specialized field of practice, and most family and general practitioners are not trained in accordance with the workers’ compensation statute and DOWC regulations. Workers’ Compensation will not cover treatment with an unauthorized provider.

Can I make up my absences for WC appointments?

* Only if the work injury has not been designated as an FML condition AND the supervisor agrees the employee may make up the time. Kronos must reflect actual work hours.

When does travel time kick in and what kind of leave do I use for it?

* Travel time is not a different type of leave; it is part of an absence for a work injury appointment, just as it is for any other appointment. Travel time for work injury appointments is limited to discourage abuse. No one should take an hour to travel from work to the clinic when the clinic is 20 minutes away. Additionally, people who pick a medical provider close to their home aren’t given more leave to get to and from the appointments than people who pick a medical provider 15 minutes from work.
	+ Example 1: If the employee left work at 3:30 and missed an hour of work, the absence is an hour.
	+ Example2: If the employee attends an appointment before work and arrives 30 minutes after their regular start time, the absence is 30 minutes.
	+ Example 3: The employee leaves work at 2:00 for a 2:30 appointment that ends at 3:30. He or she could get back to work by 4:00 but decides to go home instead since it’s so close to the end of the work day. If the work day ends at 4:30, this is a 2 ½ hour absences – but only 2 hours will be counted as WC time or Injury Leave time because of the travel time limitation. An absence like this would be 2 hours WC Sick or Injury Leave and 30 minutes regular sick leave (unless the employee decides to use annual leave).

My appointment lasted an hour beyond my work day. How much leave do I put in?

* The absence ends when the work day ends. Please see the examples above.

Why would FMLA apply to a work injury?

* The Family Medical Leave Act specifically provides that leave under the act runs concurrently with other forms of legally protected absences from work. It does not exclude Workers’ Compensation leave. The employer has an affirmative duty to extend FMLA rights in accordance with the law. Additionally, running the FML leave concurrently with the Workers’ Compensation leave eliminates the potential that an employee returning from Workers’ Compensation leave may use another 13 weeks of FMLA leave entitlement for an unrelated absence.

What If?

* You hear through the grapevine that the injured worker got hurt at home before reporting the claim?
* You see inconsistent pain behaviors?
* You suspect the employee is abusing leave relative to the claim?
* You suspect the timing of the injury report relative to performance concerns?
* You’re not sure whether the employee should work because of the work restrictions?
* The employee claims to be unable to keep up with work because of the work restrictions?
* The employee says working within assigned work restrictions is making the injury worse?
* You want to take the next step in progressive discipline but are concerned because of the active claim?

Questions on Workers Comp

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Workers Compensation – Resources and Contact Information

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| **Sara Wood**Workers’ Compensation CoordinatorHuman Resources, Risk ManagementPhone (303) 318-8205Fax (303) 318-8201Sara.Wood@state.co.us |

SPP-0015 Workers’ Compensation Claims and Injury Leave Policy

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

STANDARD POLICY AND PROCEDURE

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **JEFFREY M. WELLS****Executive Director** | **SUPERCEDES:** | **SP-165** | **SPP NUMBER:** | **SPP-0015** |
| **DATE:** | **02/12/97** | **DATE:**  | **02/08/05** |
| **EXECUTIVE DIRECOR’S APPROVAL:**  |  |
| SUBJECT TITLE: Workers’ Compensation Claims and Injury Leave Policy |
| CATEGORY/UNIT: Office of Human ResourcesSUB-CATEGORY: Risk Management | AUTHOR: JoAnna MillerDISTRIBUTION:  |

**PURPOSE:**

The purpose of this Standard Policy and Procedure is to set forth the Colorado Department of Labor & Employment’s (CDLE’s) policy on Workers' Compensation claims, to inform supervisors of changes in procedures for processing required reports of injury, and to instruct supervisors regarding Injury Leave Responsibilities.

**DISCUSSION:**

CDLE accepts responsibility to maintain, within its power, safe and healthy working conditions for all employees. Supervisors are responsible for the safety of their employees while at work. It is the responsibility of all supervisors to continually be alert to unsafe work practices of their employees. Supervisors should require employees to practice good work habits, safe lifting techniques, good housekeeping in their work environment, and good ergonomic work postures at all times. If unsafe work practices are observed, these practices should be addressed immediately in order to prevent accidents and eliminate injuries. All unsafe equipment or hazardous conditions should be reported to the appropriate authority for immediate correction.

In the event of a work related accident, injury or illness, there is the additional responsibility to ensure that the employee receives the benefits of the State’s Injury Leave Policy (State Personnel Director’s Procedure P-5-39).

The Injury Leave Policy allows employees to receive up to 90 occurrences of absences per claim for treatment of a work related injury. This policy covers all employees except temporary employees. Temporary employees are covered under Workers’ Compensation.

**ACTION:**

To ensure that the employee receives reasonable and necessary medical care, the supervisor must inform the employee at the time the injury is reported that Concentra is the designated provider for State Workers Compensation Claims.

Supervisors should be mindful of the costs of workers' compensation coverage. Supervisors, therefore, should exercise diligence in identifying questionable claims and in maintaining a hazard-free work environment for employees. The coordination point for the management of workers' compensation coverage for employees is the CDLE Human Resources/Risk Management unit (HR/Risk Management).

**HR/Risk Management is charged with the following responsibilities**:

• Maintain the official log for all reported accidents and disposition.

• Coordinating the process of the First Report of Injury form.

• Review all First Report of Injury forms to initially investigate the cause of the injury, and to help flag any questionable claims.

• Assist supervisors in submitting the First Report of Injury form.

• Establish clear procedures to be utilized in the processing of the First Report of Injury form.

• Provide management assistance in dealing with extended lost time cases.

• Coordinate training on the maintenance of safe working conditions and the reduction of costs.

• Assist and provide training for supervisors on how to recognize safe/unsafe work practices.

• Refer supervisors to the Workers’ Compensation Supervisor’s checklist located on page 5 of this document.

**CDLE PROCEDURES**

1. **First Report Preparation**

Supervisors are the designated responsible persons charged with completing all workers' compensation First Report of Injury

Forms. The injured employee does not fill out the First Report of Injury Form. The original completed First Report of Injury

Form must be submitted to the HR/RM office within twenty-four (24) hours of the injury/illness or notification of such. This

requirement is necessary even if the employee initially does not request it. The HR/Risk Management office shall then forward the information to the state’s insurance carrier, Pinnacol Assurance.

**The Department requires that**:

- All employees are referred to Concentra for medical treatment of a workers’ compensation claim.

- The First Report of Injury Form shall be submitted even in cases when an employee reports an injury, but management is unsure if the claim is work related. In such cases, the manager must attach a Questionable Claim Notice (Exhibit C) to the First Report of Injury Form.

**If there is any question that the accident/incident/or injury occurred because the employee is impaired, it should be reported to the medical provider when the employee is referred for treatment. The supervisor should request that a drug/alcohol screen be run.**

An Employee Statement (Exhibit B) must be submitted to the HR/Risk Management office within twenty-four (24) hours.

- When an employee is missing work due to the workers’ compensation injury, IT IS THE RESPONSIBILITY OF THE SUPERVISORS to post the leave to Kronos daily. The supervisors must require employees taking intermittent leave to turn leave slips into the supervisor daily. These leave slips must be forwarded to the HR/Risk Management office weekly. This ensures accurate record keeping and proper processing so that lost time wages can be timely paid to the employee from Pinnacol Assurance.

**2. Injury Leave and Compensation**

Lost time should be identified as discussed below:

Except for temporary employees, all employees who suffer a work related injury or illness that is compensable under the Workers’ Compensation Act, shall be granted injury leave up to 90 occurrences of absences related to the injury/illness. The Injury leave is with full pay.

Holidays do not count as injury leave. The employee is paid Holiday Leave for the holiday.

Injury leave is expired after 90 occurrences of absence. Leave is then calculated using the “make whole” computation (see page 6) after exhausting 90 days of Injury Leave.

* In accordance with the State Workers’ Compensation Statute, injured employees are paid by Pinnacol Assurance. Employees will be paid approximately 1/3 by CDLE using their sick and annual leave, and the balance will be paid to the employee by Pinnacol Assurance, provided their lost time is reported to the HR/RM office. In these situations, leave should be coded as follows:

1. Workers Compensation Sick Leave (WCSIC), then,

2. Workers Compensation Annual Leave (WCVAC), then,

3. Workers Compensation Leave Without Pay (WCLWOP).

(**Kronos must be posted with leave without pay for all time to be paid by Pinnacol Assurance) per the worksheet on page 6**. **Once an employee exhausts all Sick and Annual leave, contact Human Resources for further instructions regarding employment**.**)**

**The HR/RISK MANAGEMENT UNIT SHALL HANDLE ALL QUESTIONS AND FOLLOW-UP WITH THE INSURER**. Do not make direct contact with the insurer, they will only redirect your call to the HR/Risk Management Unit.

**Accident Investigation (Exhibit C)**

An accident investigation process was developed to assist management in its role in maintaining safe working conditions, as well as to minimize preventable accidents from occurring in the work place. This process is designed to facilitate the identification of problem conditions and the initiation of action to remedy those conditions. The HR/Risk Management unit will review all First Report of Injury forms to make sure that causes of the injury are identified and that remedial action is taken to remove, replace, repair, all faulty equipment and conditions. Unsafe work practices will be identified and referred to the supervisors for correction.

If, upon reviewing the First Report of Injury form, HR/Risk Management notices that a formal Accident Investigation is warranted, it will be conducted by the HR/Risk Management unit, and the appropriate form will be completed to ensure that preventive measures to maintain safety and the abatement of hazards is documented.

The HR/Risk Management unit will forward a copy of the completed document to the Appointing Authority for necessary action. Such action may include replacement of faulty equipment, or possibly initiating corrective actions according to the State Personnel regulations if warranted.

The HR/Risk Management unit will maintain the official log for all reported accidents and disposition.

**SUPERVISOR’S CHECKLIST**

**\_\_\_\_ Supervisor** is responsible for referring the employee to the doctors at Concentra to receive reasonable and necessary treatment for the injury.

\_\_\_\_ **Supervisor** sends First Report of Injury Form to the Risk Management unit.

\_\_\_\_ **HR/Risk Management** notifies Supervisor if the claim is approved, denied or reopened. This usually takes up to 30 days.

**\_\_\_\_ Supervisor** counts first 24 actual hours of leave and posts IOJ leave to the Kronos timesheet. If the claim is denied, **HR/Risk Management** will notify payroll tech support and all IOJ leave will be changed to accrued sick or annual leave. The supervisor and the claimant will be notified.

**\_\_\_\_ Supervisor** notifies **HR/Risk Management** when the 24 hours of leave is reached. (All Workers Compensation medical appointments including physical therapy counts toward the 90-occurrences of injury leave.)

**\_\_\_\_ HR/Risk Management** will notify Pinnacol Assurance Insurance of the lost time when the first 24 hours of leave is

reached.

**\_\_\_\_ Supervisor** tracks 90 absences per claim. Any part of a day is considered an absence and multiple appointments in one (1) day shall count as one (1) absence. All medical or physical therapy appointments count as IOJ leave.

**\_\_\_\_ HR/Risk Management** will keep a log of monthly totals from Kronos and verify 90 absences with the supervisors. HR/RM will then notify Pinnacol Assurance that it is time to implement the “make whole” policy. At this time, **Supervisors** will begin to post from accrued leave and Leave Without Pay as appropriate from the Make Whole Computation Worksheet.

**\_\_\_\_ Supervisor** will notify **HR/Risk Management** of the extended absence via E-mail to **HR/Risk Management** E-mail box.

\_\_\_\_ If applicable, **HR/Risk Management** will confer with supervisor regarding doctor’s orders on extended absences and employee’s ability to return to work.

\_\_\_\_ If a claim is reopened and the employee returns to treatment, the 90-day injury leave should be continued from

the last accrued time on the claim. The **Supervisor** must keep a total of all time used on the claim and verify the absences with **HR/Risk Management**.

**Failure to follow these guidelines may result in corrective and/or disciplinary action**.

**Make Whole Computation for Worker's Compensation After 90 Occurrences**

Employee Monthly Salary = \_\_\_\_\_\_\_\_\_\_\_ \* 12 divided by 52. (This gives you the average weekly wage)

Average Weekly Wage \* 66.67% = Amt to be received from Pinnacol Insurance

Pinnacol amount \* 52 divided by 12 = \_\_\_\_\_\_\_\_\_\_\_\_Pinnacol monthly amount,

Employee monthly salary \_\_\_\_\_\_\_\_\_ - Pinnacol monthly amount = \_\_\_\_\_\_\_\_ Amt due from CDLE

Calculate Hourly wage for computing salary back to hours:

Employee monthly salary \_\_\_\_\_\_\_\_ \* 12 divided by 2080 = \_\_\_\_\_\_\_\_\_\_\_ = hourly rate

Amount owed by CDLE \_\_\_\_\_ divided by hourly rate = hours to be charged to sick or annual leave – WC

Post balance of monthly hours to WC-LWOP.

|  |  |
| --- | --- |
| Example of Employee under the monthly statute amount: | Employee over the monthly statute amount |
| Employee Monthly Salary = $3000.00 | Employee Monthly Salary = $ 4900.00 |
| 3000 \* 12 / 52 = $ 692.30 (average weekly wage)  | 4900 \* 12 / 52 = $ 1.130.76 (average weekly wage) |
|  | 1130.76 \* 66.67% = 753.87 this amt is over allowableMaximum |
| 692.30 \* 66.67% = 461.55 (amount from Pinnacol) | 674.59 is the max weekly amt from Pinnacol |
| 461.55 \* 52 / 12 = 2000.05 (per month Pinnacol amount) | 674.59 \* 52 / 12 = $ 2,923.22 max amt from Pinnacol |
| 3000 - 2000.05 = 999.95 (per month from CDLE) | 4900 - 2923.22 = 1976.78 (per month from CDLE) |
| 3000 / 12 \* 2080 = 17.307 (average hourly wage) | 4900 / 12 \* 2080 = 28.269 (average hourly wage) |
| 999.95 / 17.307 = 57.77 hours to be paid by CDLE | 1976.78 / 28.269 = 69.93 hours of leave to be paid byCDLE |
| Post these hours to Kronos using WC - SIC or WC – Vac | Post the remaining hours in the month to WCLWOP |

**EXHIBIT B**

**EMPLOYEE STATEMENT**

(Must be completed by employee)

Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Job Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Years Employed @ CDLE \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Department: Labor & Employment Division/Section: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Supervisor’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Description of Accident:

Date of Accident: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Time of Accident: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place where accident occurred: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

What activity were you doing when accident occurred?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Exactly what happened to cause the injury? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Specify your injury(ies): (Be specific: left, right, etc.)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Your signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit C**

**Questionable Claim Form**

**QUESTIONABLE CLAIM NOTICE**

"WE ARE FILING THIS REPORT IN COMPLIANCE WITH THE STATE OF COLORADO WORKMEN'S COMPENSATION ACT, AT THE REQUEST OF THE EMPLOYEE WHO ALLEGES HE OR SHE WAS INJURED IN AN ACCIDENT ARISING OUT OF AND IN THE COURSE OF HIS OR HER EMPLOYMENT. WE HAVE NO KNOWLEDGE THAT SUCH IS THE CASE, AND DO NOT VOUCH FOR THE TRUTH OF ANY STATEMENTS MADE BY THE EMPLOYEE. WE SERIOUSLY DOUBT HE OR SHE WAS INJURED AS ALLEGED, AND REQUESTS AN INVESTIGATION OF THE CIRCUMSTANCES, OR A HEARING IF WARRANTED."

This notice is to be attached to the First Report of Injury and made a permanent part of the insurance carrier's claim file. The adjuster is requested to file a temporary denial of liability (D1B) until such investigation can be made by Pinnacol to ascertain whether the injury or occupational disease occurred as alleged.

Employee’s Statement of Work Injury

EMPLOYEE STATEMENT

(Must be completed by employee)

Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Job Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Years Employed @ CDLE \_\_\_\_\_\_\_

Department: Department of Labor & Employment Division: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Supervisor’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Description of Accident:

Date of Accident: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Time of Accident: \_\_\_\_\_\_\_\_\_\_\_\_

Place where accident occurred: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

What activity were you doing when accident occurred?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exactly what happened to cause the injury? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Specify your injury(ies): (Be specific: left, right, etc.)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Your signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First Report of Injury



Americans with Disabilities Act (ADA)



The Americans with Disabilities Act is an important piece of Civil Rights legislation intended to eliminate disability-based discrimination.

Making assumptions based on a person’s disability is no more acceptable than making assumptions based on a person’s race, color, gender, national origin, or other external factors.

ADA and Employment

* ADA covers any person who has a physical or mental condition that substantially limits one or more major life activities OR one or more major bodily functions.
* An employee with such a condition can request accommodation(s) to help him or her perform those functions.
* Accommodation must be related to the disability and to the job task(s) and must be reasonable.

What Is An Accommodation?

* Any change in the work environment or the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

Possible Accommodations

* Making existing facilities accessible
* Job restructuring
* Part-time or modified work schedules
* Acquiring or modifying equipment
* Changing tests, training materials, or policies
* Providing qualified readers or interpreters
* Reassignment to a vacant position

Accommodations and Services Available to All Employees

* Worksite evaluations
* Flexible scheduling
* Headsets

Recognizing a Request for Accommodation

* Any means of communication
* No special language or legal terminology required
* Adjustment or change at work for a reason related to a medical condition
* Employee indicates a medical condition is causing a problem
* When in doubt, treat it as a request for accommodation

What If? – Employee Scenarios



1. Sally asks you if it’s OK for her to get up and walk around for 5 minutes every hour because of low back problems. What should you do?
2. Margaret asks you if she can change her morning and afternoon breaks to a different time because she is diabetic and the proposed times are better for checking her blood sugar. How will you respond?
3. Your new employee, Al, says he needs extra time to complete some of his work tasks, and HR already knows about it because they accommodated him during the hiring process. How will you respond?

ADA Committee Must Decide

* Is the requestor a “person with a disability” as defined by the ADA?
* Do the functional limitations of the disability affect the requestor’s ability to perform the essential functions of his/her job?
* Will the accommodation requested – or an alternative accommodation – help the requestor successfully perform the essential functions?
* Is the accommodation reasonable?

What Is Reasonable?

* Removes workplace barriers for person with disability
* Related to the disability
* Enables the individual to perform the essential functions of the position
* Multiple accommodations for same employee may be reasonable
* Does not cause undue hardship

What Is Not Reasonable?

* Eliminating essential functions
* Lowering uniformly applied production standards, whether qualitative or quantitative
* Providing personal use items to be used in all settings (i.e. prosthetic limb, wheelchair, eyeglasses, hearing aids)
* Permitting or excusing misconduct
* Providing personal use amenities not provided to non-disabled employees (hot pot, refrigerator) unless designed to meet job-related needs
* Accommodations that cause “undue hardship” to employer

What is Undue Hardship?

* Significant difficulty or expense
* Based on resources and circumstances of the particular employer
* Unduly extensive, substantial, or disruptive
* Would fundamentally alter the nature or operation of the business
* Case-by-case assessment

Implementation

* Who orders the supplies?
* Who submits the RFS or BSR?
* Who pays?

Communication

* Please keep the employee informed about what is going on.
* Please keep the ADA Coordinator informed about what is going on.
* The ADA Coordinator must document the cost of accommodations.

Monitor and Follow Up

* Is the accommodation working?
* Are other problems or difficulties coming to light that need to be addressed?
* Does the equipment or software need to be maintained? Updated?
* The interactive process can be resumed as needed.
* Keep the ADA Coordinator in the loop.

Documentation

* ADA Coordinator must document all accommodations granted throughout CDLE.
* Medical documentation must be kept in strict confidence.
* You get to delegate these responsibilities to the ADA Coordinator!

Confidentiality

* It is up to the employee to disclose or not disclose his or her own disability to you or to anyone else.
* Part of your responsibility is to protect the confidential information you’ve received.
* Who really needs to be aware of the accommodation?

Managing Curiosity – How to Handle Inquiries

* Jennifer expresses frustration that Marty seems to take a break whenever he feels like it, while she is limited to one break at a specific time. You know that it may appear that way because of the accommodation that has been approved for Marty. How would you respond?
* Several employees voice frustrations with Mandy. They complain of rudeness, moody behavior, frequent personal phone calls, and excessive absenteeism. You know that Mandy has an approved accommodation permitting her to call her counselor for support when her mental disorder is making it difficult to deal with workplace stresses. She also has FML for her frequent medical appointments. What will you say to the other employees?

Questions on ADA

![MC900441428[1]]()

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ADA – Resources and Contact Information

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| --- |
| **Sara Wood**ADA CoordinatorHuman Resources, Risk ManagementPhone (303) 318-8205Fax (303) 318-8201Sara.Wood@state.co.us |

Policy: SPP 0080 Procedure for Processing Requests for Accommodation Under ADA