



North Carolina Office of State Human Resources State Workers' Compensation Program

Standard Operating Procedures

January 2016



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INTRODUCTION

NORTH CAROLINA WORKERS' COMPENSATION ACT

The North Carolina Workers' Compensation Act, NCGS Chapter 97 et al., provides protection and benefits to all employees incurring work related injuries and occupational diseases. The Act's primary goal is ensuring employers provide injured employees with necessary medical treatment and compensation for lost wages in exchange for limited and determinate liability for the employer.

NORTH CAROLINA INDUSTRIAL COMMISSION

The North Carolina Industrial Commission (NCIC) administers the provisions of the Workers' Compensation Act. Industrial Commission administrative rules and procedures must be followed to fully comply with the Workers' Compensation Act. The Industrial Commission adjudicates all disputes between claimants and employers regarding any issues arising under the Act. The Industrial Commission website, www.ic.nc.gov, is a comprehensive information resource about North Carolina workers' compensation law, administrative rules, and procedures.

The Industrial Commission is composed of six members who may serve no more than two, six year terms who are nominated by the Governor and confirmed by the General Assembly. The Industrial Commission is organized into the following divisions that carry out all provisions of the Workers' Compensation Act and other assigned functions: Claims Administration, Deputy Commissioners, Dockets, Executive Secretary, Fraud Investigations, Full Commission, IT, Medical Fees, Mediation, Medical Rehabilitation Nurses, and Safety Education and Training.

EMPLOYEE COVERAGE

All North Carolina state government employees including temporary workers, officers of the State including elected officials, members of the General Assembly, and persons appointed to serve on a per diem, part-time or fee basis are covered employees subject to the provisions of the Workers' Compensation Act for work-related injuries and illnesses.

STATE WORKERS' COMPENSATION PROGRAM

The mission of the State Workers' Compensation Program (SWCP) is to ensure ethical and equitable treatment of injured employees in a cost efficient manner. The State is self-insured and contracts with service providers for claims administration, medical compensation, pharmacy, medical nurse case/vocational rehabilitation management, bill review, surveillance, and other services necessary to properly administer workers' compensation claims for all covered employees statewide. All claims are administered in accordance with N.C.G.S. Chapter 97 (Workers' Compensation Act), N.C.G.S., Chapter 143, Article 12B (Salary Continuation Plan for Certain State Law Enforcement Officials) and other applicable laws and administrative rules.

INITIAL INJURY HANDLING AND REPORTING

Notice to Employer of Employee Accident/Injury

1. Purpose

To establish a workers' compensation claim reporting process for agencies and employees to follow when an injury occurs.

2. Scope

All state agencies.

3. Prerequisites

Must be a permanent or temporary state employee.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Electronically report claim to TPA as soon as possible upon occurrence.

Employee

Report incident/accident and injury(ies) to supervisor on duty immediately upon occurrence.

Supervisor

Report employee's injury to agency's workers' compensation administrator. Complete all incident investigation forms and provide a copy to the agency's workers' compensation administrator.

OSHR

None.

Third party administrator (TPA)

Begin claims handling process upon receipt of notice of injury.

5. Procedures

The employee must immediately notify their supervisor when they have incurred a work related injury. If the employee's supervisor is unavailable, the employee must report his injury to the next person in command. The employee must complete the NC Employee Incident Report form which is a description of the incident in the employee's own words.

Initial Referral to Medical Treatment

1. Purpose

Ensure injured employees receive immediate medical treatment from authorized medical providers.

2. Scope

All state agencies.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

If supervisor fails to do so, direct injured employee for initial medical treatment to an authorized treating provider on the SWCP preferred provider list.

Employee

Seek medical treatment immediately following a work related injury as directed by the supervisor or agency/human resources/Workers' Compensation Administrator (WCA).

Supervisor

Direct injured employee for initial medical treatment to authorized treating provider included on the SWCP preferred provider list.

OSHR

None.

Third Party Administrator (TPA)

None.

5. Procedures

Once an injury has occurred and the supervisor has been notified, the supervisor should direct the injured employee to a medical facility on the SWCP preferred provider list. (For emergency treatment, the supervisor should call "911"). The supervisor provides the injured employee with a Workers' Compensation Authorization form and blank Work Note to present at the medical facility. If the supervisor fails to do so, the agency/human resources/Workers' Compensation Administrator handles this responsibility.

Once the TPA has received the workers' compensation claim, the assigned claim adjuster will direct all future medical treatment for the employee. The SWCP will only pay for medical treatment with providers authorized by the TPA or ordered by the Industrial Commission.

Report an Incident/Injury

1. Purpose

To establish the workers' compensation claim so that medical treatment and compensation may be provided in a timely manner.

2. Scope

All state agencies.

3. Prerequisites

An injury must occur to an employee within the agency.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Complete the Report an Incident/Injury process utilizing the TPA's internet claims reporting system using the information from the Form 19 completed by the supervisor or designated agency staff.

Employee

None.

Supervisor

The injured employee's supervisor or designated agency staff must complete the Form 19 and submit to the agency workers' compensation administrator.

OSHR

None.

Third Party Administrator (TPA)

If the agency WCA is unavailable to Report an Incident/Injury utilizing the TPA's internet claims reporting system and no one else in the agency is trained to do so, the supervisor or designated agency staff may submit the Form 19 to the TPA for entry. This is for emergency situations ONLY.

5. Procedure

Once an injured employee has reported an injury to their supervisor, the supervisor or designated individual must complete the Form 19. The supervisor or designated individual will then forward the completed Form 19 to the WCA who will enter the information in the Report an Incident/Injury module in the TPA internet claims reporting system as soon as possible.

This process must be done whenever an employee reports an injury. All reported claims must be reported to the TPA no matter how timely or untimely they are entered into the TPA claims system.

If an employee fails to immediately notify their employer of an injury but later files a Form 18 with the Industrial Commission, once notified, the Form 19 must still be completed and entered into the TPA internet claims reporting system.

If an employee obtains medical treatment before reporting their injury to their supervisor and the employer had no notice of the injury, the employee is responsible for payment for that medical treatment unless otherwise ordered by the Industrial Commission. The supervisor must still complete the injury reporting process upon receiving notice of the employee's injury.

INCIDENT INVESTIGATIONS

1. Purpose

To determine the root cause of an employee's incident/injury and implement corrective actions to prevent future occurrences.

2. Scope

All state agencies.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Provides or directs supervisor to Incident Investigation Report form when incident/injury occurs.

Forwards complete Incident Investigation Report including all forms received from injured employee's supervisor to agency safety leader, Safety Committee, and TPA for review and inclusion in claim file.

Employee

If available, participates in the investigation process to help the identify root cause, existing safety hazards, and appropriate corrective actions.

Supervisor

Performs investigation of the incident/injury.

Determines root cause of incident/injury and corrective actions.

Forwards complete Employee Incident Report and Witness Statement Form(s) and Supervisor Incident Investigation Report to workers' compensation administrator and other designated agency officials.

OSHR

Assists in incident investigation process upon agency request.

Third Party Administrator (TPA)

TPA claim adjuster uses all information received regarding incident/injury to conduct investigation to determine claim compensability.

5. Procedures

Once an incident/accident has occurred, supervisor initiates investigation which involves injured employee, if available, witnesses, and the safety committee, if one is in place, within twenty-four (24) hours of incident/injury occurrence to determine the hazards, root cause of the incident/accident, and implement corrective actions to prevent future occurrences.

The investigating supervisor provides injured employee with the NC Employee Incident Report form and witnesses with the NC Witness Statement form. The employee and witnesses complete and return these forms to the investigating supervisor within twenty-four (24) hours of receipt. The investigating supervisor completes the Incident Investigation Report within seventy-two (72) hours after the injury occurs. The investigating supervisor sends all of these completed forms to the WCA and other designated personnel within twenty-four (24) hours of receipt. The agency Safety Director contacts OSHR if assistance is needed in the investigation process.

TPA claim adjuster conducts investigation to determine claim compensability by contacting necessary persons and reviewing the Incident Investigation Report and medical documentation.

CLAIM ACCEPTANCE AND DENIAL DECISIONS

Determining Compensability of Claims (Accept/Deny/Pay Without Prejudice)

1. Purpose

To determine whether reported workers' compensation claims should be accepted, denied, or paid without prejudice to later deny the claim.

2. Scope

All state agencies.

3. Prerequisites

Report an Incident/Injury process must be completed in the TPA internet claims reporting system.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Reviews TPA claim compensability recommendation. Makes final claim compensability decision.

Employee

None.

Supervisor

None.

OSHR

None.

Third Party Administrator (TPA)

Upon receipt of claim, TPA claim adjuster conducts investigation and makes recommendation to agency concerning compensability of claim.

5. Procedures

TPA claim adjuster reviews all claim documents and requests additional information, if needed, from WCA. The adjuster may request WCA approval to obtain a recorded statement from the employee. The TPA Claim Adjuster and agency workers' compensation administrator confer regarding whether a claim should be accepted, denied, or paid without prejudice.

If the claim is determined compensable, the TPA claim adjuster files a Form 60 accepting the claim with the Industrial Commission and sends a copy to the injured employee or their attorney.

If the claim is determined not compensable, the TPA claim adjuster files a Form 61 denying the claim with the Industrial Commission and sends a copy to the injured employee or their attorney.

If more time is needed to investigate the claim, the TPA claim adjuster files a Form 63 paying disability and/or medical compensation without prejudice to later deny the claim with the Industrial Commission and sends a copy to the injured employee or their attorney. The claim may then be investigated for up to an additional 120 days. Once the investigation is completed, the TPA claim adjuster files a Form 60 or 61 accepting or denying the claim.

All disability compensation due to the employee is paid in accordance with NCGS §97-18.

Death Claims

1. Purpose

To establish a procedure when a death occurs at an agency that is the result of an on-the-job incident.

2. Scope

All state agencies.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Notify OSHR Safety, Health and Workers' Compensation Director and OSHR Safety Manager immediately if a death occurs due to a work related incident/accident.

Complete the Report an Incident/Injury process utilizing the TPA's internet claims reporting system using the information from the Form 19 completed by the supervisor or designated agency staff.

Employee

None.

Supervisor

Complete the Form 19 and submit to the agency workers' compensation administrator.

Performs investigation of the incident/injury.

Determines root cause of incident/injury and corrective actions.

Forwards complete Employee Incident Report and Witness Statement Form(s) and Supervisor Incident Investigation Report to workers' compensation administrator and other designated agency officials.

OSHR

Follow up on the incident and death claim as deemed necessary by the Director and other staff members.

Third Party Administrator (TPA)

Investigate claim to determine compensability.

Process claim in accordance with legal requirements.

Timely make claim payments to eligible dependents.

5. Procedures

If an employee death occurs due to a work related incident/accident, the deceased employee's immediate supervisor must notify agency management immediately. The agency is responsible for notifying OSHR, the Safety, Health and Workers' Compensation Director, and the statewide Safety Manager of the fatality including all available details.

The deceased employee's supervisor provides the agency workers' compensation administrator with a completed Form 19 and completes the Incident Investigation process. TPA claim adjuster may request additional information from the employer, i.e. family information, death certificate, marriage certificate, birth certificates of children etc.

The deceased employee's eligible dependent(s) are entitled to receive 66 2/3% of the employee's average weekly wage for 500 weeks, 9.62 years, to be divided equally among the eligible dependents. All eligible dependents under 18 years of age as of the date of the employee's death will continue receiving death benefits until age eighteen (18) despite expiration of the 500 weeks benefit period.

Burial expenses up to a maximum of \$10,000.00 are paid directly to the funeral facility.

RETURN TO WORK PROGRAM

1. Purpose

To ensure all injured employees return to work following a work-related injury/illness once medically able to do so.

2. Scope

All State agencies.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Implement and maintain an agency wide Return to Work Program to ensure suitable employment is available to all employees that have been released to return to work pre or post maximum medical improvement.

Coordinate return to work efforts for injured employees with the TPA RTW Coordinator and claim adjuster in accordance with authorized treating physician's Work Notes.

Provide assigned TPA claim adjuster a copy of the injured employee's job description within three (3) days after the date an employee is removed from work due to a compensable injury.

Employee

Full participation and adherence to employing agency's Return To Work Program.

Provide a copy to supervisor within twenty-four (24) hours of receipt of all Work Notes issued by authorized treating physician detailing the employee's work restrictions or lack thereof.

Supervisor

Full participation and adherence to employing agency's Return to Work Program.

Continual in person or telephone contact with injured employee regarding Return To Work status.

Third Party Administrator (TPA)

Return To Work Coordinator and claim adjuster works with agency workers' compensation administrator and OSHR to facilitate the return to work process for injured employees.

5. Procedure

Each agency is responsible for establishing a Return to Work program to provide injured employees that have been released to return to work by the authorized treating physician before or after maximum medical improvement with appropriate “modified duty” work or permanent work in accordance with their assigned work restrictions and applicable law. The Return to Work Program should be specifically tailored to the individual agency’s needs. See “Return to Work Program Implementation Manual” for a detailed description of agency return to work program requirements available at <http://workerscomp.nc.gov>.

The authorized treating physician provides injured employees with Return To Work Notes detailing physical work restrictions based upon the injured employee’s current medical condition. These notes are reviewed to determine if an employee may return to “suitable employment” in accordance with the agency’s Return to Work Program that is:

- a. “Full duty” work i.e. their regular job; or
- b. “Modified duty” work also referred to as “light duty” or “restricted work” that meets temporarily assigned work restrictions; or
- c. Permanent work that meets assigned permanent work restrictions.

Full Duty - An injured employee may return to work “full duty” before or after reaching maximum medical improvement dependent upon the currently assigned work restrictions issued by the authorized treating physician.

Modified Duty – An injured employee may return to work “modified duty” on a temporary basis before reaching maximum medical improvement dependent upon the currently assigned work restrictions issued by the authorized treating physician. “Modified duty” is only available before an employee reaches maximum medical improvement.

The injured employee’s current job description is reviewed to determine if the employee may return to his pre-injury job with or without accommodations or needs to be assigned to other “modified duty” work in light of the current temporary or permanent work restrictions assigned by the authorized treating physician.

Suitable Employment - Whether a “full duty” or “modified duty” job is suitable for the injured employee at the time it is offered is governed by different legal requirements based on the date of injury.

For claims with date of injury on or before June 23, 2011:

The following "suitable employment" standard is used to determine if any proposed **POST maximum medical improvement** job is appropriate.

The proposed employment must be:

- a. Available in the employee's local labor market
- b. Reasonably attainable
- c. Offers an opportunity to restore the worker as soon as possible and as nearly as practicable to pre-injury wage
- d. Gives due consideration to the workers' qualifications (age, education, work experience, physical and mental capacities), impairment, vocational interests, and aptitudes.

No one factor is considered solely in determining suitable employment.

"Make work" is not allowed for pre or post MMI employment for these claims. The job must be a real job that exists and may not be specifically created to meet the employee's return to work needs.

For claims with date of injury on or after June 24, 2011:

The new statutory definition of "suitable employment" is as follows:

Suitable employment. – The term "suitable employment" means employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior to reaching maximum medical improvement is within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the employer of injury approved by the employee's authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor shall be considered exclusively in determining suitable employment.

For return to work occurring PRIOR to maximum medical improvement:

Employment offered to the employee must be within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the employer of injury approved by the employee's authorized health care provider.

"Make work" offered by the employer that is approved by the authorized health care provider **is permissible**.



For return to work occurring AFTER maximum medical improvement:

Employment offered to the employee must be work that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor is considered exclusively in determining suitable employment.

Wages, benefits, hours, age and vocational interests are not determinative of whether a job is suitable.

Refusal of Suitable Employment – An employee's refusal of "suitable employment" in the form of appropriate "full duty" or "modified duty" work assigned before or after the employee has reached maximum medical improvement for his compensable injury may result in the filing of a Form 24 application to suspend or terminate the employee's disability compensation with the Industrial Commission and implementation of dismissal procedures. The NCDOJ-Workers' Compensation section will represent the agency in all Industrial Commission proceedings related to this process.

BENEFITS, LEAVE, AND EFFECT ON OTHER BENEFITS

Benefits While on Workers' Compensation Leave

1. Purpose

To ensure an injured employee understands their benefits while on workers' compensation leave.

2. Scope

All workers compensation claims.

3. Prerequisites

None.

4. Responsibilities

Employee

Study documents received and make necessary inquiries of agency workers' compensation administrator and other Human Resources staff.

Agency/Human Resources/Workers' Compensation Administrator

Notify injured employee of benefits that are due when out of work and returning to work from workers' compensation leave.

Supervisor

Notify injured employee of benefits that are due when out of work and returning to work from workers' compensation leave.

OSHR

Update state policy as needed in accordance with law changes.

Third party administrator (TPA)

None.

5. Procedures

A. Supplemental Pay

An employee may choose to use sick or vacation leave earned prior to the injury in order to supplement the weekly benefit while on workers' compensation leave. This is found on the Leave Option form. The schedule showing the amount of leave that

may be used per week and blank form is found on the OSHR Workers' Compensation website, <http://workerscomp.nc.gov>.

B. Vacation and Sick Leave

An employee continues to accumulate vacation and sick leave while on workers' compensation. The leave is credited to the employee's account for use upon return to permanent duty. If the employee does not return to permanent duty from workers' compensation leave, the vacation and sick leave accumulated only for up to twelve (12) months of workers' compensation leave is exhausted by a lump sum payment along with other unused vacation, or bonus leave that was on hand at the time of the injury, as well as any bonus leave granted subsequently.

C. Health Insurance

While on workers' compensation leave, an employee continues to be covered under the State's health insurance program. Monthly premiums for the employee are paid by the State. Premiums for any dependent coverage or other elected insurance policies must be paid directly by the employee.

D. Longevity Pay

An employee who is eligible for longevity pay receives their annual longevity payments while out on workers' compensation leave.

E. Reinstatement Salary

Upon reinstatement, an employee's salary is computed based on the last salary plus any legislative increase and any performance increase that the employee is entitled to receive.

F. Total State Service Credit

An employee continues to receive total state service credit while on workers' compensation leave.

G. Retirement Service Credit

An employee receives no retirement credit while on workers' compensation leave. The employee, as a member of the State Retirement System, may purchase credits for the period of time they were on workers' compensation leave. Upon request by the employee, the State Retirement System provides a statement of the cost and a date by which purchase must be made. If the employee does not purchase the credits by that date, the cost must be recomputed.

H. Disability Income Plan of North Carolina

Eligible employees who become temporarily or permanently disabled and are unable to perform their regular work duties may receive partial replacement income through the Disability Income Plan of North Carolina (the Plan).

Employees are eligible if they:

- (1) are permanent and work at least 30 hours per week for nine months of the year; and
- (2) participate as a member of the Teachers' and State Employees' Retirement System for at least one year during the 36 months preceding the disability.

There is a 60-day waiting period before benefits to become payable by the Plan. During this period, the employee may use accumulated sick or vacation leave.

Short-Term Disability

Eligible employees may receive a monthly short-term benefit equal to:

- (1) fifty percent (50%) of their monthly salary, plus
- (2) fifty percent (50%) of their annual longevity.

Monthly benefits during the short-term period cannot exceed \$3,000. This monthly benefit is reduced by any workers' compensation benefit received. Short-term benefits are available for up to one year and may be extended for up to one additional year if the disability is temporary and is likely to end within that additional year.

Long-Term Disability

Long-term benefits are payable after the conclusion of the short-term disability period or after salary continuation payments cease, whichever is later. In order to qualify for long-term disability benefits, an employee must have at least five years of membership service with the Retirement System during the 96 months preceding the conclusion of the short-term disability period.

During the first three years of long-term disability, eligible employees may receive a monthly long-term benefit equal to:

- (1) 65% of monthly salary, plus
- (2) 65% of annual longevity pay.

Monthly benefits during the long-term period cannot exceed \$3,900. This amount is reduced by any Workers' Compensation benefit (excluding permanent partial Workers' Compensation awards); any primary Social Security benefits, regardless of whether the employee elects to receive such benefits; and further reduced by any monthly payments from the federal Veteran's Administration, any other federal agency, or payments made under the provisions of General Statute 127A-108 to which the employee may be entitled if these payments are based on the same

disability for which the employee is receiving plan benefits. However, the benefit will be no less than \$10 a month.

After the first 36 months of the long-term disability period, the benefit is reduced by an amount equal to the primary Social Security benefit the member would be entitled had he or she been awarded Social Security disability benefits. Long-term benefits are payable to eligible employees until they become eligible to receive an unreduced service retirement under the North Carolina Teachers' and State Employees' Retirement System.

Leave Policy

1. Purpose

To ensure correct leave is properly documented when an injured employee is absent from work due to a work related injury.

2. Scope

All workers compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Document personnel action in BEACON when employee is absent from work due to a work related injury.

Forwards employee absence information to TPA claim adjuster.

Employee

Provide Work Notes from authorized treating physician to supervisor immediately upon receipt.

Supervisor

Forward authorized treating physician's Work Notes received from employee to WCA and other designated agency personnel to facilitate recording of employee absence from work due to a work related injury.

OSHR

None.

Third party administrator (TPA)

TPA claim adjuster maintains documentation of employee absences from work due to work related injury to calculate seven (7) day waiting period.

5. Procedures

Injured employee must provide all Work Notes received from the authorized treating physician to supervisor immediately upon receipt.

No leave is charged on the date of injury if the employee leaves work for treatment and the authorized treating physician instructs employee not to return to work that day and provides a Work Note.

If the authorized treating provider removes the employee from work, the employee must use their own leave (sick, vacation, bonus, etc.) or go on leave without pay during the seven (7) days waiting period for workers' compensation disability benefits to begin. The seven (7) days waiting period may be either seven (7) consecutive days or may be spread out over time.

Time spent attending authorized medical visits while the employee is still working during work hours does not count towards the employee's seven (7) days waiting period for disability compensation because the employee is still being paid for this time away from work. Only full days for which the employee is completely removed from work by the authorized treating physician counts towards the seven (7) days waiting period to receive disability compensation.

The employee must complete the Leave Options form available at <http://workerscomp.nc.gov> when the injury occurs to document the following:

- a. If the employee wants to use their sick or vacation leave during the seven (7) day waiting period; and
- b. If the employee wants to use their sick or vacation leave for supplemental pay while receiving workers' compensation benefits if out of work beyond the seven (7) day waiting period. The Supplemental Leave Schedule which provides the amount of vacation leave that an employee may use per week of workers' compensation leave is published at <http://workerscomp.nc.gov>.

After the 7-day waiting period is met, no additional leave is to be used from the employee's personal leave.

If the employee is on workers' compensation leave for at least twenty-one (21) days, the employee is entitled to workers' compensation benefits for the seven (7) days waiting period. The employee is not entitled to reinstatement of vacation or sick leave used during the seven (7) days waiting period if he remains out of work for more than twenty-one (21) days. This is the only instance in which an employee receives compensation twice for the same time period i.e. vacation/sick leave payment and workers' compensation benefits.

Authorized medical visits during working hours should not be charged against employee's leave for time lost from work. If you use the BEACON system, process the



time under the 9680 code. Time away from work for authorized medical visits due to a workers' compensation claim is limited to reasonable time and any excess time is to be charged as vacation, sick leave, or leave without pay.

Salary Continuation for Eligible Employees

1. Purpose

To establish a process for agencies and employees to follow when an employee eligible for salary continuation benefits per NCGS Chapter 143, Article 12B incurs a work-related injury.

2. Scope

All state agencies.

3. Prerequisites

Must be an eligible employee as defined in NCGS §143-166.13.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Report employee eligibility for salary continuation benefits to TPA.

Determine whether employee's injury is eligible for salary continuation benefits pursuant to NCGS §143-166.14.

Forwards complete salary continuation eligibility letter to Industrial Commission stating whether the agency has determined the eligible employee entitled to salary continuation benefits for an individual claim.

Employee

None.

Supervisor

None.

OSHR

Review TPA opinion regarding employee eligibility for salary continuation benefits.

Third party administrator (TPA)

Claim adjuster participates in process to determine if employee's injury is eligible for salary continuation benefits pursuant to NCGS §143-166.14.

Claim adjuster prepares letter providing notice of eligibility or ineligibility for agency.

5. Procedures

Agency/human resources/workers' compensation administrator notifies the TPA that an injured employee may be eligible for salary continuation benefits when the claim is entered in TPA internet claims reporting system.

TPA claim adjuster investigates the claim to determine if the injury *"is the result of an injury or injuries resulting from or arising out of an episode of violence, resistance, or due to other special hazards that occur while the eligible person is performing official duties."*

TPA claim adjuster sends OSHR and the agency/human resources/workers' compensation administrator written notice of its opinion regarding the employee's salary continuation eligibility. OSHR sends written notice to the TPA claim adjuster and agency regarding its agreement or non-agreement with the TPA's opinion. TPA claim adjuster prepares appropriate letter stating employee's claim is or is not eligible for salary continuation benefits and forwards to agency/human resources/workers' compensation administrator for signature and forwarding to Industrial Commission.

An injured employee's two year eligibility period for salary continuation benefits begins on the first day after the date of injury that the employee misses a partial or full day from work due to his injury other than for attendance of injury related medical appointments.

An injured employee's two year period of salary continuation benefits is deducted from the total eligibility for disability compensation benefits pursuant to NCGS §97-29 (temporary total disability) or NCGS §97-30 (temporary partial disability).

An injured employee's salary continuation benefit for the two year eligibility period is the total base pay reflected on the employee's salary statement and does not include overtime pay, shift differential pay, holiday pay, or other additional earnings to which the person may have been entitled prior to such incapacity.

Temporary Total Disability (TTD) Benefits

1. Purpose

To establish a process for payment of temporary total disability (TTD) benefits to injured employees that are completely unable to work due to a work-related injury.

2. Scope

All workers' compensation claims.

3. Prerequisites

Employee must be removed entirely from work by the authorized treating physician. Or, employer does not have "suitable employment" available within the employee's assigned work restrictions before or after reaching maximum medical improvement (MMI).

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Notifies TPA claim adjuster of injured employee's work status and wages.

Supervisor

Notifies agency/human resources/workers' compensation administrator of injured employee's work status and wages.

Third party administrator (TPA)

TPA claim adjuster prepares and files required Industrial Commission forms documenting period(s) of total disability.

TPA claim adjuster timely issues payment checks to employee.

Employee

Notifies agency/human resources/workers' compensation administrator of work status and wages.

5. Procedure

If an injured employee is removed from work entirely or no work is available within the employee's assigned work restrictions prior to or after reaching maximum medical improvement, TTD benefits begin from the first date of disability including any applicable waiting period.

To start receiving TTD benefits, the agency/human resources/workers' compensation administrator completes the Form 22 Statement of Average Weekly Wages to determine the employee's weekly compensation rate. The agency/human

resources/workers' compensation administrator authorizes the TPA claim adjuster to begin paying TTD benefits to the employee. The TPA claim adjuster timely issues such payments so long as the employee's disability continues up to a maximum of five hundred (500) weeks from the first date of disability.

Temporary Partial Disability (TPD) Benefits

1. Purpose

To establish a process for payment of temporary partial disability (TPD) benefits to injured employees that are unable to earn the same or greater than their pre-injury average weekly wage due to a work-related injury.

2. Scope

All workers' compensation claims.

3. Prerequisites

Employee must be working for less than pre-injury average weekly wage for the same or another employer prior to or after reaching maximum medical improvement.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Notifies TPA claim adjuster of employee's work status and wages.

Supervisor

Notifies agency/human resources/workers' compensation administrator of employee's work status and wages.

Third party administrator (TPA)

TPA claim adjuster prepares and files required Industrial Commission forms documenting period(s) of partial disability.

TPA claim adjuster timely issues payment checks to employee.

Employee

Notifies agency/human resources/workers' compensation administrator of work status and wages.

5. Procedure

If an injured employee returns to work prior to reaching maximum medical improvement (MMI) but is receiving pay less than his pre-injury average weekly wage, the employee is entitled to receive temporary disability (TPD) benefits.

If an injured employee reaches maximum medical improvement (MMI) and has been released to return to work with permanent restrictions that cannot be accommodated in his pre-injury job and the employee begins work in a new position for less than his pre-injury average weekly wage, the employee is eligible to receive temporary partial disability (TPD) benefits.

An employee may receive temporary partial disability (TPD) benefits for a maximum of 500 weeks. The number of weeks an employee receives temporary total disability (TTD) benefits pursuant to the same claim is deducted from the 500 weeks eligibility period.

To start receiving TPD benefits, the employee provides documentation of his new job and average weekly wage to the agency/human resources/workers' compensation administrator. The agency/human resources/workers' compensation administrator authorizes the TPA claim adjuster to begin paying TPD benefits to the employee. The TPA claim adjuster timely issues such payments to the employee so long as his post-injury average weekly wages are less than his pre-injury average weekly wages or he reaches the 500 weeks benefit limit, whichever comes first.

Permanent Partial Disability Benefits

1. Purpose

To establish a process for payment of permanent partial disability (PPD) benefits to injured employees that have incurred a permanent physical impairment to a specific body part(s) due to a work-related injury.

2. Scope

All workers' compensation claims.

3. Prerequisites

Employee must have reached maximum medical improvement (MMI), the end of the healing period, for his work related injury.

4. Responsibilities

Authorized treating physician/Second opinion physician

After determining injured employee has reached maximum medical improvement (MMI), completes Industrial Commission Form 25R Evaluation for Permanent Impairment or issues medical note with assigned rating to specific body part(s).

Third party administrator (TPA)

TPA claim adjuster authorizes second opinion rating visit to physician of employee's choice.

TPA claim adjuster prepares Industrial Commission Form 26A Employer's Admission of Employee's Right to Permanent Partial Disability with agreed upon rating(s).

TPA claim adjuster sends signed Form 26A and Form 25R or medical notes with physician assigned rating(s) to Industrial Commission for approval.

TPA claim adjuster begins permanent partial disability payments to injured employee within five (5) days of receipt of Industrial Commission Order approving Form 26A.

TPA claim adjuster sends checks for approved payments to injured employee.

TPA claim adjuster submits completed Industrial Commission Form 28B within 16 days of last payment of medical or disability compensation related to claim.

Employee

Obtains second opinion on permanent partial disability rating (if desired).

Signs completed Industrial Commission Form 26A when forwarded by employer or third party administrator.

5. Procedure

After an injured employee reaches maximum medical improvement (MMI), the authorized treating physician assigns a percentage rating for permanent damage to a specific body part(s) in accordance with the NC Industrial Commission rating guide that is a result of the compensable injury. The injured employee has the option to obtain a second opinion on the rating with the physician of their choice that is paid for by the SWCP.

If the injured employee has returned to work, the permanent partial disability rating agreed upon by the injured employee and agency will be paid by the agency upon Industrial Commission approval of a completed IC Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability Compensation. If the injured employee has not returned to work, the agreed upon permanent partial disability rating will not be paid except in conjunction with permanent settlement of the claim.

The Third Party Administrator completes the IC Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability Compensation. The Third Party Administrator forwards the completed IC Form 26A to the employee or agency for the employee's signature. The employee may return the signed IC Form 26A to their agency or the Third Party Administrator. The agency then signs the agreement and returns to the Third Party Administrator. The Third Party Administrator then forwards the completed IC Form 26A and required records to the Industrial Commission for approval. Once the IC Form 26A is approved, the Third Party Administrator sends weekly payments until the award is satisfied unless the IC approves lump sum payment.

Permanent Partial Disability Benefits are paid in accordance with the following schedule of injury:

Body Part	Maximum Weeks of Compensation
Thumb	75
Finger – 1st	45
Finger – 2nd	40
Finger – 3rd	25
Finger – 4th	20
Toe – Great	35
Toe – Other	10
Hand	200
Arm	240
Foot	144
Leg	200

Body Part	Maximum Weeks of Compensation
Eye	120
Back	300

The schedule also applies to the loss of hearing, vision, and teeth.

Permanent Partial Disability Payments are calculated as follows:

Assigned percentage (%) of disability X Maximum weeks for body part = Number weeks compensation due

Number weeks compensation due X weekly compensation rate = Dollar amount of benefit

Example

An injured employee receives a 20% rating to the leg. The injured employee is entitled to receive permanent partial disability compensation in the amount of:

$20\% \times 200$ (maximum weeks of compensation for leg) = 40 weeks of compensation i.e. weekly compensation rate or $\frac{2}{3}$ of average weekly wage as of the date of injury.

$40 \text{ weeks} \times \$500 \text{ weekly compensation rate} = \$20,000$ permanent partial disability compensation due.

CLAIMS MONITORING

Communication with Injured Employee and Injured Employee's Attorney

1. Purpose

Ensure all persons handling a workers' compensation claim abide by all laws and rules addressing communication with the injured employee and his attorney.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Communicate with injured employee regarding all matters until employee is represented by an attorney. Once injured employee hires attorney, communicate with injured employee directly only regarding return to work status unless otherwise specified by attorney.

Employee

None.

Supervisor

Communicate with injured employee regarding all matters until employee is represented by an attorney. Once injured employee hires attorney, communicate with injured employee directly only regarding return to work status unless otherwise specified by attorney.

OSHR

Communicate with injured employee regarding all matters until employee is represented by an attorney. If injured employee calls OSHR after hiring attorney, answer general questions and refer injured employee to their attorney, agency/human

resources/workers' compensation administrator, or TPA claim adjuster for all claim specific questions.

Third party administrator (TPA)

Communicate with injured employee regarding all matters until employee is represented by an attorney. Once injured employee hires attorney, communicate with injured employee directly only regarding return to work status unless otherwise specified by attorney.

5. Procedures

Once receive actual or written notice that the employee is represented by an attorney, agency/human resources/workers' compensation administrator, OSHR, and TPA should only communicate with the injured employee regarding return to work unless otherwise specified by attorney.

If employee or employee's attorney consents to communication regarding certain topics, agency/human resources/workers' compensation administrator, OSHR, and TPA may communicate with the employee regarding those topics.

Communication with Medical Providers

1. Purpose

Ensure all entities involved in a workers' compensation claim abide by all laws pertaining to communication with medical providers.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Abide by requirements of NCGS §97-25.6.

Employee

None.

Supervisor

Abide by requirements of NCGS §97-25.6.

OSHR

Abide by requirements of NCGS §97-25.6.

Third party administrator

Abide by requirements of NCGS §97-25.6.

5. Procedures

Written Communications

Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or TPA may communicate with employee's authorized health care providers in writing, without the express authorization of the employee, to obtain relevant medical

information not available in the employee's medical records. The employer must provide the employee with contemporaneous written notice of the written communication. Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator may request the following additional information:

- a. The diagnosis of the employee's condition;
- b. The appropriate course of treatment;
- c. The anticipated time that the employee will be out of work;
- d. The relationship, if any, of the employee's condition to the employment;
- e. Work restrictions resulting from the condition, including whether the employee is able to return to the employee's employment with the employer of injury as provided in an attached job description;
- f. The kind of work for which the employee may be eligible;
- g. The anticipated time the employee will be restricted;
- h. Any permanent impairment as a result of the condition.

Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator must send a copy of the health care provider's response to any request for information to the employee within ten (10) business days of its receipt by the requesting party.

Oral Communications

Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:

- a. Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.
- b. Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator must provide the employee with a summary of the communication with the health care provider within ten (10) business days of any oral communication in which the employee did not participate.

Additional Information submitted by the Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator.

Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized

health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

- (1) Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator must first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice must include the employer's proposed written communication to the health care provider and the additional information to be submitted.
- (2) The employee has ten (10) business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.
- (3) Upon consent of the employee or in the absence of the employee's timely objection, the employer may submit the additional information directly to the health care provider.
- (4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer must refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. If the employee does not file with the Industrial Commission a request for a protective order within the time period set forth in subdivision (2) of subsection (d) of this section, the Agency/Human Resources/Workers' Compensation Administrator, supervisor, OSHR, or third party administrator may submit the additional information directly to the health care provider. In deciding whether to allow the submission of additional information to the health care provider, in part or in whole, the Commission must determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

Medical/Nurse Case Management

1. Purpose

Ensure field and telephonic medical/nurse case management services are provided in accordance with OSHR protocols in compliance with vendor contracts.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Select SWCP contracted vendor for desired medical/nurse case management services.

Employee

Cooperate fully with field or telephonic medical/nurse case management services.

Supervisor

None.

OSHR

Review field and telephonic medical/nurse case management services requests for individual claims in accordance with OSHR protocols.

Provide notice of approval of field and telephonic medical/nurse case management services to TPA claim adjuster.

Monitor contracted vendors for compliance with performance measures and contract provisions.

Third party administrator (TPA)

TPA claim adjuster complies with OSHR protocols when requesting employing agency to approve field or telephonic medical/nurse case management services.

TPA claim adjuster coordinates medical/nurse case management services with vendor.

5. Procedures

After approval is received in accordance with OSHR protocols for field or telephonic medical/nurse case management services, the agency/human resources/workers' compensation administrator selects a medical/nurse case management services vendor (field medical/nurse case management only) from the list of SWCP currently contracted vendors and notifies the TPA of their selection.

The selected vendor provides services in compliance with their contract. The selected vendor remits monthly billing invoices to the third party administrator which are included with each agency's individual monthly bill for workers' compensation services.

Any issues of concern regarding the medical/nurse case management vendor's services are relayed by any party to OSHR.

Vocational Rehabilitation Management

1. Purpose

Ensure vocational rehabilitation services are provided in accordance with OSHR protocols in compliance with vendor contracts.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Select SWCP contracted vendor for desired vocational rehabilitation services.

Employee

Cooperate fully with vocational rehabilitation services.

Supervisor

Request agency/human resources/workers' compensation administrator seek approval for vocational rehabilitation services for a specific claim.

OSHR

Review vocational rehabilitation services requests for individual claims in accordance with OSHR protocols.

Provide notice of approval of vocational rehabilitation services to TPA claim adjuster.

Monitor contracted vendors for compliance with performance measures and contract provisions.

Third Party Administrator (TPA)

TPA claim adjuster complies with OSHR protocols when requesting employing agency to approve vocational rehabilitation services.

TPA claim adjuster coordinates vocational rehabilitation services with agency's selected vendor.

5. Procedures

After approval is received from OSHR for vocational rehabilitation services, the agency/human resources/workers' compensation administrator selects a vocational rehabilitation services vendor from the list of SWCP currently contracted vendors and notifies the TPA of their selection.

The selected vendor provides services in compliance with their contract. The selected vendor remits monthly billing invoices to the third party administrator which are included with each agency's individual monthly bill for workers' compensation services.

Any issues of concern regarding the vocational rehabilitation services vendor's services are relayed to OSHR.

Medical Motions Handling

1. Purpose

Establish process by which agencies will respond when motions filed by injured employees or agencies concern solely medical compensation related disputes.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

OSHR

None.

Agency/Human Resources/Workers' Compensation Administrator

Promptly respond to any request for information received from the TPA claim adjuster, OSHR, or NCDOJ-Workers' Compensation Section related to any employee or employer filed medical motion.

Inform TPA claim adjuster when determined that employer filing of a medical motion may be appropriate in light of claim circumstances.

Consult with TPA claim adjuster and NCDOJ-Workers' Compensation Section to direct litigation related to medical motions filed by an injured employee or agency.

Third Party Administrator (TPA)

TPA claim adjuster notifies NCDOJ-Workers' Compensation Section immediately upon receipt of a medical motion from an injured employee.

TPA claim adjuster promptly responds to any request for information related to a medical motion from NCDOJ-Workers' Compensation Section.

NCDOJ-Workers' Compensation Section

Provide legal counsel on behalf of all agencies and handle litigation in accordance with direction from OSHR related to medical motions filed by injured employees or agencies.

5. Procedures

Injured employees or agencies may file medical motions with the Industrial Commission concerning disputed issues regarding medical compensation. Injured employees commonly file medical motions requesting authorization for a change in treating

physician or authorization or payment for past or future medical treatment. Agencies commonly file medical motions to compel the injured employee's participation in independent medical examinations or compliance with certain medical treatment.

Medical motions are classified into two categories: a. Medical motions; and b. Emergency medical motions.

Medical Motion

Medical motions for non-emergency medical related issues are filed with the Executive Secretary. Medical Motions are determined administratively (without telephonic or evidentiary hearing) within 30 days of receipt. Parties may request reconsideration or appeal such orders for expedited formal, evidentiary hearing by a Deputy Commissioner. Following an evidentiary hearing, the assigned Deputy Commissioner will enter an opinion and award within fifteen (15) days which may be appealed to the Full Commission. Stays of such Orders during pendency of any reconsideration request or appeal are available.

Emergency Medical Motion

Emergency medical motions for medical treatment that require emergency attention are filed with the Office of the Chief Deputy Commissioner. If deemed an emergency situation, a ruling on the motion will be issued within five (5) days. Parties may appeal such orders for expedited formal, evidentiary hearing by a Deputy Commissioner. Following an evidentiary hearing, the assigned Deputy Commissioner will enter an opinion and award within fifteen (15) days which may be appealed to the Full Commission. Stays of such Orders during pendency of any reconsideration request or appeal are available.

If not deemed an emergency situation, the Office of the Chief Deputy Commissioner will refer the motion to the Executive Secretary for ruling in accordance with medical motion requirements.

Preauthorization/Utilization Review

1. Purpose

Ensure preauthorization/utilization review services are provided in accordance with OSHR protocols.

2. Scope

All state agencies.

3. Prerequisites

None.

4. Responsibilities

Employee

Fully submit to required examinations and comply with all medical treatment prescribed by authorized treating medical providers in accordance with OSHR protocols.

Third party administrator (TPA)

TPA claim adjuster complies with OSHR protocols when requesting employing agency to approve preauthorization/utilization review services.

OSHR

Review preauthorization/utilization review services requests for individual claims in accordance with OSHR protocols.

5. Procedure

Injured employees are entitled to ongoing medical treatment with providers authorized by the SWCP. The TPA claim adjuster manages and approves all routine medical treatment necessary to effect a cure or give relief for the injured employee's work related medical condition(s).

The employing agency of the injured employee or TPA claims adjuster may request preauthorization or utilization review to assess the medical necessity, relatedness to the compensable injury, or efficacy of proposed medical treatment. In addition, injured employees may request approval of alternate medical providers or medical treatment wherein similar questions may arise.

Preauthorization and utilization review services must be authorized in accordance with OSHR protocols.

If following Utilization Review any treatment is not authorized, the injured employee may file a medical motion with the Industrial Commission to obtain an Order requiring the SWCP to provide the treatment.

Form 33 Request for Hearing and Form 33R Response to Request for Hearing

1. Purpose

Establish process by which agencies will handle filing of requests for hearing concerning any disputed issue in a workers' compensation claim.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Promptly respond to any request for information related to a request for hearing from the TPA claim adjuster or NCDOJ-Workers' Compensation Section.

Third Party Administrator (TPA)

TPA claim adjuster notifies NCDOJ-Workers' Compensation Section immediately upon receipt of a request for hearing from any party.

TPA claim adjuster promptly responds to any request for information related to a request for hearing from agency or NCDOJ-Workers' Compensation Section.

OSHR

Promptly respond to any request for information related to any request for hearing from the NCDOJ-Workers' Compensation Section.

NCDOJ-Workers' Compensation Section

Provides legal counsel on behalf of all agencies and handle litigation in accordance with direction from OSHR related to requests for hearing filed by injured employees or agencies.

5. Procedures

Either party may file a Form 33 Request for Hearing concerning any disputed issue related to a workers' compensation claim. The opposing party is required to file a Form 33R Response to Request for Hearing within forty-five (45) days of receipt of the Form 33.

Except in the case of injured employees with no legal counsel or extenuating circumstances, all cases are referred to mediation to achieve resolution of disputed issues.

If the parties cannot agree on a mediator, the Industrial Commission appoints a mediator to conduct a mediated settlement conference. If the parties fail to reach an agreement on all disputed issues at mediation, a Deputy Commissioner hearing is scheduled.

The assigned Deputy Commissioner conducts a formal, evidentiary hearing and issues an opinion and award within one-hundred eighty (180) days of the close of the hearing record unless time is extended for good cause. A Deputy Commissioner's ruling may be appealed within fifteen (15) days of receipt to the Full Commission.

The Full Commission, sitting in three Commissioner panels, may reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the prior Order's findings of fact and/or conclusions of law. The Full Commission's ruling may be appealed within thirty (30) days of receipt to the Court of Appeals.

The Court of Appeals may only review the Full Commission's Order for errors of law and may not review the findings of fact. The Court of Appeals opinion may be appealed to the Supreme Court as of right if there is a dissenting opinion issued with their ruling or by petition for discretionary review, if not.

Form 24 Application to Suspend or Terminate Compensation

1. Purpose

To suspend or terminate disability compensation of persons ineligible to continue receiving such benefits i.e. refusal of suitable employment, refusal to comply with medical treatment.

2. Scope

All workers' compensation claims.

3. Prerequisites

None

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Comply with all agency Return To Work Program requirements in all claims.

Maintain proper documentation demonstrating full compliance with agency's Return To Work Program for all claims.

Notify OSHR and assigned claim adjuster when an injured employee refuses suitable employment or medical treatment.

Promptly respond to all requests for information from NCDOJ-Workers' Compensation Section.

Supervisor

Comply with all agency Return To Work Program requirements in all claims.

Maintain proper documentation demonstrating full compliance with agency's Return To Work Program for all claims.

Notify Workers' Compensation Administrator when employee refuses suitable employment or medical treatment.

Promptly respond to all requests for information from NCDOJ-Workers' Compensation Section.

Third Party Administrator (TPA)

TPA claim adjuster assists agency as necessary with full implementation of Return To Work Program requirements for all claims.

TPA claim adjuster reviews incidents of injured employee refusal of suitable employment or medical treatment and makes recommendation to agency whether benefits should be suspended, terminated, or not affected.

TPA claim adjuster refers claims to NCDOJ-Workers' Compensation Section for review and/or filing of Form 24 Application to Suspend or Terminate Compensation, if appropriate.

TPA claim adjuster promptly responds to all requests for information from NCDOJ-Workers' Compensation Section.

NCDOJ-Workers' Compensation Section

Directs litigation related to Form 24 Application filing as needed.

5. Procedures

An agency may request authorization from the Industrial Commission to suspend or terminate an injured employee's disability compensation when an employee has refused suitable employment or, for example, refuses to comply with an independent medical examination or vocational rehabilitation.

The NCDOJ Workers' Compensation Section on behalf of an agency files a written application to suspend or terminate an injured employee's disability compensation with the Executive Secretary and sends a copy to the injured employee.

Injured employees have fourteen (14) days to file notice that they are contesting the application.

Within twenty-five (25) days of receipt of the application, a Special Deputy Commissioner conducts an informal hearing and issues a written decision within five (5) days either: i. approving the application; ii. disapproving the application; or iii. stating that the Commission is unable to reach a decision on the application in an informal hearing in which event a formal, evidentiary hearing will be scheduled with a Deputy Commissioner.

The employer may only terminate or suspend the injured employee's disability compensation if the application is approved; otherwise, the injured employee's disability compensation continues.

Either party may appeal this decision to a Deputy Commissioner for formal, evidentiary hearing. The Deputy Commissioner's decision may then be appealed to the Full Commission.

The agency MAY NOT suspend or terminate the injured employee's disability compensation except in accordance with statutory requirements.

Employee Completion of IC Form 90 – Report of Earnings

1. Purpose

To prevent benefit overpayments and workers' compensation fraud/abuse by ensuring injured employees promptly verify on a regular basis that they are not receiving any other wages while receiving temporary total disability (TTD) compensation benefits in accordance with 04 NCAC 10A .0903.

2. Scope

All workers compensation claims.

3. Prerequisites

Receipt of ongoing temporary total disability (TTD) compensation benefits.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Review pending claim files to ensure all employees receiving temporary total disability (TTD) compensation are submitting a complete Form 90 every six (6) months.

Employee

Timely return Form 90 upon receipt when sent every six (6) months.

Third Party Administrator (TPA)

TPA claim adjuster sends Form 90 for completion to all employees receiving temporary total disability (TTD) compensation benefits every six (6) months and follows up in accordance with OSHR protocol.

TPA claim adjuster informs agency if Form 90s are not timely returned.

TPA claim adjuster informs NCDOJ-Workers' Compensation when Form 90s are not timely returned in accordance with OSHR protocol.

OSHR

Ensure TPA complies with OSHR protocol.

NCDOJ-Workers' Compensation Section

File motion to suspend TTD benefits when Form 90 is not timely returned in accordance with OSHR protocol.

5. Procedures

TPA claim adjuster sends a blank Form 90 *Report of Earnings* to all employees receiving temporary total disability (TTD) benefits by certified mail, return receipt requested, and

include a self-addressed stamped envelope for the return of the form to the TPA. If the injured employee is represented by an attorney, the Form 90 *Report of Earnings* is sent to the attorney for the employee and not to the employee.

The employee completes and returns the Form 90 *Report of Earnings* within 15 days after receipt of a Form 90 *Report of Earnings*. If the TPA has not received the completed Form 90 within 15 days, the TPA claim adjuster will call the employee or his attorney, if represented, and request the form be submitted immediately.

If the employee fails to complete and return the Form 90 *Report of Earnings* within 30 days of receipt of the form, the TPA informs the agency workers' compensation administrator and OSHR. OSHR confers with the agency and may refer the matter to the NCDOJ-Workers' Compensation Section for filing of a motion with the Industrial Commission Executive Secretary requesting suspension of benefits. If the Industrial Commission Executive Secretary issues an Order suspend the employee's benefits for failure to complete and return a Form 90 *Report of Earnings*, benefits must be reinstated to the employee including back payment as soon as the completed Form 90 *Report of Earnings* is submitted by the employee.

If the employee's completed Form 90 earnings report does not indicate continuing eligibility for partial or total disability compensation, TPA claim adjuster immediately notifies the agency and NCDOJ-Workers' Compensation Section for filing of a Form 24 *Application to Terminate or Suspend Payment of Compensation* or Form 33 *Request that Claim be Assigned for Hearing* with the Industrial Commission.

DETECTING FRAUD AND ABUSE

Reports of Workers' Compensation Fraud or Abuse

1. Purpose

To ensure proper investigation and follow-up of all reports of workers' compensation fraud or abuse.

2. Scope

All workers compensation claims.

3. Prerequisites

Verbal or written report or suspicion of workers' compensation fraud or abuse based on information obtained from any source.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Provide information concerning alleged workers' compensation fraud/abuse to agency, TPA claim adjuster, and OSHR.

Consult with TPA claim adjuster and selected surveillance vendor on an ongoing basis to develop and revise surveillance plan.

Employee

Provide information concerning alleged workers' compensation fraud or abuse to human resources/agency workers' compensation administrator.

Supervisor

Provide information concerning alleged workers' compensation fraud or abuse to human resources/agency workers' compensation administrator.

Third Party Administrator (TPA)

TPA claim adjuster refers verbal or written reports of workers' compensation fraud/abuse received to agency and OSHR.

OSHR

Review and refer verbal or written reports received to agency and TPA claim adjuster.

Review TPA surveillance requests for individual claims in accordance with OSHR protocols.

Surveillance Vendor

Formulate and continually revise surveillance plan for individual claims based on information obtained and consultation with agency, TPA claim adjuster, OSHR, etc.

5. Procedures

OSHR 's "Suspicious Activity Referral Form" available at <http://workerscomp.nc.gov> may be used by all state agencies to document reports of workers' compensation fraud or abuse. This form may be completed by any state employee and submitted via fax or email to any agency, OSHR, or TPA.

Agencies, TPA, and OSHR will review submitted information and take appropriate action based upon its content. Such action may include consultation with OSHR staff, agency staff, TPA claim adjuster, medical treatment providers, medical nurse case manager, vocational rehabilitation consultant, or other third parties as appropriate.

Agency may elect to obtain surveillance services. TPA claim adjuster may request surveillance services in accordance with OSHR protocols.

Surveillance

1. Purpose

Establish protocol for referral of a case for surveillance and ensure services are provided in compliance with vendor contracts.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Inform TPA claim adjuster of selected vendor when surveillance services are desired.

Third Party Administrator (TPA)

TPA claim adjuster applies for approval of surveillance services in accordance with OSHR protocols.

TPA claim adjuster consults with agency and selected vendor on an ongoing basis to develop and revise surveillance plan.

OSHR

Review TPA surveillance requests for individual claims in accordance with OSHR protocols.

May consult with agency, TPA claim adjuster, and selected vendor on an ongoing basis to develop and revise surveillance plan.

Monitor contracted vendors for compliance with performance measures and contract provisions.

Surveillance Vendor

Formulate and continually revise surveillance plan for individual claims based on information obtained and consultation with agency, TPA claim adjuster, OSHR, etc.

5. Procedures

After approval is received for surveillance services in accordance with OSHR protocol, the agency/human resources/workers' compensation administrator selects a contracted vendor and notify TPA claim adjuster of their selection.

The selected vendor provide services in accordance with a plan developed in consultation with the agency, TPA claim adjuster, and OSHR. The selected vendor remits monthly billing invoices to TPA which are included with each agency's individual monthly bill for workers' compensation services.

Any issues or concerns regarding surveillance vendor services are relayed to OSHR.

CLOSE CLAIMS TIMELY AND FAIRLY

Medicare Set Aside Arrangements (MSA)

1. Purpose

Establish process by which agencies will handle assessing need for and obtaining Medicare Set Aside Arrangements necessary for claims settlement/compromise settlement agreement (CSA).

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Select vendor for MSA in accordance with OSHR protocols.

Promptly respond to any request for information related to any MSA from the TPA claim adjuster, MSA vendor, or NCDOJ-Workers' Compensation Section.

OSHR

Review MSA requests for individual claims in accordance with OSHR protocols.

Third party administrator (TPA)

TPA claim adjuster complies with OSHR protocols when requesting employing agency to approve obtaining an MSA.

TPA claim adjuster promptly responds to any request for information related to any proposed or agreed upon Medicare Set Aside amount.

NCDOJ-Workers' Compensation Section

Requests agencies authorize obtaining an MSA when they deem appropriate.

5. Procedure

All parties in a workers' compensation case have significant responsibilities under the Medicare Secondary Payer (MSP) laws to protect Medicare's interests when resolving cases that include future medical expenses. Failure to do so may result in substantial financial penalties.

When a workers' compensation claimant is currently eligible or will likely be eligible due to age or disability status to begin receiving Medicare benefits at the time of or following settlement of a claim as specified in federal law, the parties must protect Medicare's interests when resolving cases that include future medical expenses. More specifically, a Medicare Set Aside arrangement (MSA) is required:

1. When the employee is Medicare eligible at the time of claim settlement and the settlement amount is \$25,000 or greater; or
2. When the employee has a reasonable expectation that he will be Medicare eligible within thirty (30) months of claim settlement and the settlement amount is \$250,000 or greater.

Medicare's interests may be protected by including a Medicare Set Aside arrangement (MSA) in the CSA. These agreements allocate a portion of a workers' compensation settlement to pay for future medical services related to the workers' compensation injury, illness, or disease. These funds must be depleted before Medicare will pay for treatment related to the claimant's workers' compensation injury, illness, or disease.

The appropriate dollar amount of the MSA is individually calculated for each claim. There are multiple MSA vendors that use a claimant's medical records to project the cost of necessary future treatment including drugs and supplies to estimate such costs.

Settlement/Compromise Settlement Agreement (CSA)/Clincher Agreements

1. Purpose

Establish process by which agencies will handle final settlements/CSAs/clincher for workers' compensation claims.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Promptly respond to any request for information related to any proposed or agreed upon settlement/CSA/clincher from the assigned claim adjuster, OSHR, or NCDOJ-Workers' Compensation Section.

Third Party Administrator (TPA)

TPA claim adjuster notifies agency and NCDOJ-Workers' Compensation Section as appropriate immediately upon receipt of any settlement demand or information related to proposed or agreed upon settlement/CSA/clincher from any party.

TPA claim adjuster promptly responds to any request for information related to any proposed or agreed upon settlement/CSA/clincher from agency, OSHR, or NCDOJ-Workers' Compensation Section.

OSHR

Promptly respond to any request for information related to any proposed or agreed upon settlement from agency, TPA claim adjuster, or NCDOJ-Workers' Compensation Section.

NCDOJ-Workers' Compensation Section

Provides legal counsel on behalf of all agencies, handles settlement negotiations, and settlement/CSA/clincher drafting and approval process.

5. Procedures

Settlement of all issues pertaining to an accepted or denied workers' compensation claim is finalized via the parties' agreement to and Industrial Commission approval of a written agreement. There are specific requirements as to what information must be included in this agreement.

Settlement agreements for accepted claims may include specific provisions with regards to the amounts being paid to settle claims for future lost wages and medical expenses. Settlement agreements may also include the injured employee's resignation from their current position and ban from future employment with the same agency.

Settlement of all disputed issues related to a workers' compensation claim may occur before or after filing of a Form 33 Request for Hearing. The parties may engage in informal verbal or written negotiations exchanging proposed settlement terms. The parties may reach an agreement at a formal mediated settlement conference with a licensed mediator selected by the parties or appointed by the Industrial Commission.

Third Party Settlement or Subrogation

1. Purpose

Establish process by which agency will handle assessment of third party liability and collection of liens in reimbursement of workers' compensation claims costs.

2. Scope

All workers' compensation claims.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Provide requested information such as an accident report, time sheets, payroll documents, etc. regarding potential third party liability for workers' compensation claims to TPA.

Promptly respond to any request for information such as an accident report, time sheets, payroll documents, etc. related to any proposed or agreed upon third party settlement from the TPA or NCDOJ-Workers' Compensation Section.

Third Party Administrator (TPA)

Establish third party claims on behalf of the SWCP for any workers' compensation claim where such liability may exist.

Negotiate and collect proceeds from third parties responsible for workers' compensation claims.

Promptly respond to any request for information related to any proposed or agreed upon third party settlement from the agency, OSHR, or NCDOJ-Workers' Compensation Section.

OSHR

Provide information regarding potential third party liability for workers' compensation claims to TPA.

Promptly respond to any request for information related to any proposed or agreed upon third party settlement from the agency, TPA, or NCDOJ-Workers' Compensation Section.

NCDOJ-Workers' Compensation Section

Provide legal counsel on behalf of all agencies regarding any third party settlement matters.

5. Procedures

When a workers' compensation claim occurs due to the fault of a negligent third party (i.e. automobile accident, faulty equipment, etc.), the State will seek reimbursement from the negligent third party to pay for lost wages and medical costs associated with the workers' compensation claim. The TPA or an outside vendor may assist with this process by filing notices of lien and/or negotiating settlement amounts up to \$74,999.00. The NCDOJ-Workers' Compensation Section must approve lien settlements in the amount of \$75,000.00 or greater. The Industrial Commission approves settlements of workers' compensation claims that include third party liability.

Records Retention

1. Purpose

Ensure agencies retain all records pertaining to employee incidents/injuries in accordance with state law and administrative rules.

2. Scope

All state agencies.

3. Prerequisites

None.

4. Responsibilities

Agency/Human Resources/Workers' Compensation Administrator

Comply with NC General Schedule for State Agency Records which includes statewide records retention requirements.

Comply with additional agency specific records retention requirements.

OSHR

Promptly respond to agency requests for information regarding employee incident/injury records retention requirements.

5. Procedures

Comply with NC General Schedule for State Agency Records which may be found at: http://archives.ncdcr.gov/Portals/26/PDF/schedules/GeneralSchedule_StateAgencies.pdf

The Schedule includes the following provisions related to employee injury/incident records:

ITEM G2. Accident Reports File. Records concerning accidents involving agency employees or equipment.

DISPOSITION INSTRUCTIONS: Transfer records resulting in workers' compensation claims to Workers' Compensation Litigation and Claims File (Item G50). Destroy in office remaining records after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

ITEM G21. Incident Reports File. Records concerning incidents at agency facilities.
DISPOSITION INSTRUCTIONS: Transfer records resulting in workers' compensation claims or litigation to Workers' Compensation Litigation and Claims File (Item G50). Destroy in office remaining records after 3 years if no litigation, claim, audit or other

official action has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

ITEM G50. Workers' Compensation Litigation and Claims File. *Records concerning workers' compensation claims filed by employees' supervisors concerning accidental injuries or illnesses suffered on the job. File includes Employer's Report of Employee's Injury (Form 19), accident investigation reports, medical reports, Notice of Accident to Employer and Cause of Employee (Form 18), reference copies of medical invoices, and other related records. File also includes reference copies. (Records concerning claims filed for injuries which occurred prior to July 6, 1994 are considered permanent records in compliance with Hyler v. GTE Prods. Co., 333 N.C. 258 S.E.2d 698 (1993).) (Comply with applicable provisions of G.S. 8-53, G.S. 97-92(b), and G.S. 126 Article 7 regarding the confidentiality records.)*

DISPOSITION INSTRUCTIONS: *Retain in office records concerning claims filed for injuries which occurred prior to July 6, 1994 permanently. Transfer official copy of claim records to the Industrial Commission in compliance with G.S. 97-92(a), and in accordance with Office of State Personnel procedures. Retain in office records concerning claims filed for injuries which occurred on or after July 6, 1994, where the Industrial Commission form "Employee's Application for Additional Medical Compensation Pursuant to N.C. Gen. Stat. § 97-25.1" (Form 18M) has been filed, permanently. Destroy remaining records in office after 5 years, in accordance with G.S. 97-24(c), if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.*

ITEM G200. Medical Records File. *Records concerning medical and health status which can include asbestos, toxic substances, and blood-borne pathogen exposure, medical examinations of agency employees. File includes medical leave permit forms, reference copies of workers compensation injury reports, treatment reports, and other related records. (Comply with applicable provisions of G.S. 126-22, 126-23, and 126-24 regarding confidentiality of records and G.S. 130A-374 regarding confidentiality of medical records.)*

DISPOSITION INSTRUCTIONS: *Destroy in office 5 years after employee terminates service. Destroy in office exposure records 40 years from date of exposure or 30 years from date of separation.*

ITEM G225. Workers' Compensation Program Administrative File. *Records concerning the administration of workers' compensation programs and policies.*

DISPOSITION INSTRUCTIONS: *Destroy in office when administrative value ends.*

Adhere to any additional agency specific employee incident/injury records retention requirements.

GLOSSARY

Authorized treating physician: Physician selected by the SWCP's TPA to provide and coordinate medical treatment for an injured worker.

Average Weekly Wages: NCGS §97-2(5): generally, the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury.

Disability: §97-2(9): incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

Health care provider: NCGS §97-2(20): Physician, hospital, pharmacy, chiropractor, nurse, dentist, podiatrist, physical therapist, rehabilitation specialist, psychologist, and any other person providing medical care pursuant to the Workers' Compensation Act.

Industrial Commission Rules: North Carolina Administrative Code Title 04 Commerce, Chapter 10, Industrial Commission. Includes all rules related to Chapter 97, the Workers' Compensation Act including workers' compensation, utilization of rehabilitation professionals, managed care organizations, administrative, electronic billing, mediation, and medical compensation. The Industrial Commission Rules may be accessed at:

<http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2004%20-%20Commerce\Chapter%2010%20-%20Industrial%20Commission>

Injury: NCGS §97-2(6): "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident. With respect to back injuries, however, where injury to the back arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, "injury by accident" shall be construed to include any disabling physical injury to the back arising out of and causally related to such incident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for unless injury to them is incidental to a compensable injury.

Light duty: Same as "modified duty". Job duties performed by an injured worker who has been assigned work restrictions by his authorized treating physician prior to reaching maximum medical improvement.

Maximum Medical Improvement (MMI): Date on which an employee reaches the end of the healing period due to their work-related injury or illness. An employee may reach MMI on different dates for different body parts injured at the same time.

Medical compensation: NCGS §97-2(19): Medical, surgical, hospital, nursing, and rehabilitative services, including, but not limited to, attendant care services prescribed by a health care provider authorized by the employer or subsequently by the Commission, surveillance, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances.

Medicare Set Aside Arrangement (MSA): For persons currently eligible or likely to be eligible due to age or disability status to begin receiving Medicare benefits, the amount of funds allocated in a compromise settlement agreement for future medical services related to workers' compensation illness, injury, or disease that would otherwise be covered by Medicare.

Modified duty: Same as "light duty". Job duties performed by an injured worker who has been assigned work restrictions by his authorized treating physician prior to reaching maximum medical improvement.

North Carolina Industrial Commission (NCIC) or Commission: Statutorily created body that administers the Workers' Compensation Act.

Office of State Human Resources (OSHR): State agency responsible for administering the SWCP and managing contracts with all vendors providing workers' compensation related services to injured state employees.

Permanent Partial Disability (PPD): permanent incapacity to a specific body part due to work-related injury or illness; may or may not affect ability to earn wages.

Permanent Total Disability (PTD): permanent incapacity to earn wages in any employment.

Salary Continuation: Disability compensation benefit available to eligible employees pursuant to NCGS Chapter 143 Article 12B.

State Workers' Compensation Program (SWCP): Workers' compensation program for all state employees excluding school employees as described in NCGS §115C-337.

Subrogation: Legal right that allows the SWCP to make payments for a workers' compensation claim that are actually owed by a liable third party and then collect the money from the party that owes the debt after the fact.

Suitable Employment: NCGS §97-2(22): employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior to reaching maximum medical improvement is within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the

employer of injury approved by the employee's authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor is considered exclusively in determining suitable employment.

State Workers' Compensation Program (SWCP): The name of the workers' compensation program covering all North Carolina state employees including the University of North Carolina System except school employees covered by the Workers' Compensation Program as specified in NCGS §115C-337.

Temporary Partial Disability (TPD): partial incapacity to earn wages due to work-related injury/illness. Persons entitled to TPD benefits receive 66 2/3% of the difference between their average weekly wage as of the date of injury and wages earned after reaching maximum medical improvement.

Temporary Total Disability (TTD): total incapacity to earn wages due to work-related injury/illness. Persons entitled to TTD benefits receive 66 2/3% of the average weekly wage as of the date of injury.

Third Party Administrator (TPA): Vendor hired by SWCP to handle workers' compensation claims.

Weekly Compensation Rate: 66 2/3 % of the injured employee's average weekly wage as of the date of injury. Industrial Commission calculates yearly rate in accordance with NCGS §97-5.

Workers' Compensation Act: North Carolina General Statutes Chapter 97 and accompanying administrative rules

Workers' Compensation Administrator (WCA): Employee responsible for coordination of an agency's workers' compensation claims including working with human resources, TPA, OSHR, NCDOJ-Workers' Compensation Section, and all vendors.