NYS Public Employees Federation
Article 13 Workers Compensation
for PEF Members

Q&A on Work- Related Injuries/Illnesses

1. What is the NYS Accident Reporting System (ARS)?

NYS has an electronic system for employees to report work-related injuries and illnesses. The first step is to call ARS, the Accident Reporting System, at the toll-free number:

1-888-800-0029

The ARS call center operator will give the employee an incident number. *Please note, this number is different from the carrier case number from NYSIF and the case number from the Workers Compensation Board.*

The criteria used by ARS to initiate a C-2 Employer's report of a work-related accident/illness are medical treatment beyond first aid OR one lost work-shift (1 full lost work day) or treatment beyond first aid or more than two first aid treatments.

2. Can the employer or State Insurance Fund determine if claims are compensable? (Article 13.1 (b))

The employer does not determine if claims are compensable. The NYS State Insurance Fund (SIF) makes an initial determination and can controvert a claim. The employer may ask the SIF to controvert a claim. However, the NYS Workers' Compensation Board (WCB) determines compensability of claims and its decisions are binding on all parties.

If a worker is injured on the job, they should complete the Worker's Compensation Board's form "Employee's Claim for Compensation" (C-3) as soon as possible to ensure benefits are not delayed or interrupted. More information on how to file a claim may be found on the WCB website: **www.wcb.ny.gov**, and at the SIF website: **http://ww3.nysif.com/**

Employers are also required to provide injured workers with a "Claimant Information Packet" that contains a C-3 and a C-3.3 "Limited Release of Health Information. It is very important that all injured members complete these forms and send them in to the Workers' Compensation Board. These forms can also be filled out electronically on the WCB website: **https://www.wcb.ny.gov/onlineforms/c3/C3Form.html**

3. What is the final attendance status for employees on workers compensation? (Article 13.2)

An employee who suffers a compensable occupational injury shall be placed on **leave of absence without pay** for all absences necessitated by such injury and shall receive the benefit provided by the Workers' Compensation Law.

4. Can injured workers use leave accruals? (Article 13.3 (f))

Injured workers who are absent for full days on Workers' Compensation may not charge leave credits **except** during the first seven calendar days of the initial waiting period. During the waiting period, employees have the option of using accruals or going on leave without pay. If the employee returns to work, and is absent for partial days that are related to their Workers' Compensation incident, the worker may use leave accruals to cover these absences.

5. Can accruals used during the waiting period be restored? (Article 13.3 (f))

When leave credits are charged and it is later determined that no waiting period was required, the employee shall be entitled to restoration of credits on a prorated basis.

6. Can an injured member use leave accruals if their case is controverted? (Article 13.3 (j))

If a case is controverted by the State Insurance Fund upon the grounds that the disability did not arise out of or in the course of employment, the employee may use leave credits (including sick leave at half-pay) pending a determination by the Workers' Compensation Board. If a case is controverted by SIF based on the grounds that a disability does not exist, leave credits cannot be used.

7. How is restoration of leave credits calculated? (Article 13.3 (k))

In cases where leave credits (and sick leave at half-pay eligibility) were charged during the waiting period or in the course of resolving a controverted claim decided in the employee's favor, they shall be restored proportional to the net monetary award credited to New York State by the Workers' Compensation Board or 60 percent of pre-disability gross wages as defined in 13.3(b) of Article 13, whichever is greater. In other words, individuals receive time back in proportion to the amount of money the state is reimbursed by the SIF for their absences.

8. What happens when restoration of vacation credits exceeds 40 days? (Article 13.3 (g))

When vacation credits are restored, causing the total vacation credits to exceed 40 days, injured workers are given a period of one year from the date of the return of the credits or the date of return to work, whichever is later, to reduce the total accumulation to 40 days.

9. Can injured members use leave accruals if their disability exceeds 12 Months? (Article 13.3 (I))

No

10. What happens if the work-related injury occurred during a previous collective bargaining agreement? (Article 13.4)

The benefits negotiated during that time period will be available to those affected.

11. What is the medical evaluation network program (MENP)? (Article 13.3)

The appointing authority will assume that all eligible employees have elected to participate in the MENP. Employees who do not want to participate must submit a written statement declining participation in the program, as soon after the accident as possible.

12. What are the options on choosing a medical provider under the MENP? (Article 13.3)

The MENP consists of consulting physicians employed by the State Insurance Fund. These doctors perform Independent Medical Examinations (IME) for SIF. An injured member must attend all scheduled medical exams or their benefits may be terminated. Medical evaluation network physicians make determinations on behalf of the SIF on an employee's degree of disability, prognosis for full recovery, or whether an injury is related to work. Eligible employees who participate in the MENP shall be placed on leave without pay and will receive the benefits provided by the Workers' Compensation Law and the added benefits provided by this Article. Such employees are also eligible for a mandatory alternate duty assignment.

13. Are employees required to go to a specified clinic?

No. Under the Workers Compensation Law, employees see any provider of their own choosing so long as they are a Worker's Compensation Board Certified Provider.

14. What happens if an injured member opts out of the MENP? (Article 13.3 (a), (c))

Employees who submit a written request to their personnel department to opt out of the MENP will receive only the workers' compensation statutory benefits. They <u>will not</u> receive any employer-enhanced benefits, supplement, or be eligible for the mandatory alternate duty program. Furthermore, they still must submit to independent medical examinations ordered by the State Insurance Fund or Workers' Compensation Board. **There is no benefit to opting out!**

15. What is the mandatory alternate duty (MAD) program? (Article 13.5)

New York State and the Public Employees' Federation (PEF) negotiated a MAD Program that allows employees receiving Workers' Compensation benefits to return to work in an assignment that meets the needs of the agency and the medical limitations of employees. This program was negotiated by PEF and the State as part of the changes in the Workers' Compensation benefit in the 1991-1995 agreement. Employees benefit from this program by receiving their regular

salaries during the alternate duty assignment. Agencies benefit by being able to use the capabilities of these employees who would otherwise be unable to return to work.

The term "mandatory" as used in this program means that if workers meet the eligibility criteria and request a MAD assignment, they must be offered an assignment or receive a Workers' Compensation benefit supplement. Alternately, if injured members meet the eligibility criteria, their agency may require them to return to work in a mandatory alternate duty assignment even if they do not request it. Once a determination is made that a worker is 50% or less disabled their supplemental payments ceases. The only way to receive compensation other than the statutory wage replacement benefit is to request a MAD assignment. Note: the terms used to describe degree of disability are as follows:

Total = 100%

Marked = 75%

Moderate = 50%

Mild = 25%

NOTE: If an IME determines that you are moderate or mildly disabled, the SIF can cut your benefits unless your benefit rate has been established at a Workers' Compensation Board hearing by an Administrative Law Judge.

16. Eligibility requirements

Injured members are able to participate in the MAD Program if they meet the following criteria:

1. The worker must be determined to be partially disabled at 50% or less by the State Insurance Fund;

- AND -

2. The worker must have a prognosis of full recovery within 60 calendar days. Full recovery is defined as the ability to perform the full duties of the job held when injured. These medical findings may occur as a result of an examination by a State Insurance Fund consulting physician, by the treating physician, or in connection with a management-ordered medical evaluation. The employing agency determines what documentation will be acceptable to establish eligibility and determine physical limitations.

17. Mandatory alternate duty (MAD) assignments

A MAD assignment is a short-term assignment (not to exceed 60 days) that reflects physical limitations as described in the medical documentation accepted by management. It may involve performing some duties of a worker's regular position, some duties of another position, or a combination of tasks from several positions. The assignment may involve performing the same duties for the entire period or may consist of a series of different assignments, each performed for a specific period of time.

Injured members should receive the following information when offered a mandatory alternate duty assignment by their agency:

a. description of the proposed alternate duties

b. location of the assignment

c. work hours and workweek

d. name of the supervisor

e. starting and ending dates

The agency is expected to make every effort to tailor the assignment to employee's specific limitations and to discuss the assignment prior to its start.. The assignment may not necessarily fall within the regular title, grade, or job duties. The agency is not required to provide injured members with their regular work location, schedule, or workweek. However, once a mandatory alternate duty assignment is established for a fixed period of time, the provisions of Article 32 (Workday/Workweek) cover injured members during that same period. While performing a mandatory alternate duty assignment, the worker receives regular salary and is treated like any other employee in full pay status for attendance and leave and benefit purposes. It is the policy of the State to attempt to place employees in MAD assignments that are as close to their regular title and duties as possible based on the needs of the agency.

18. Can mandatory alternate duty assignments be appealed? (Article 13.5(f))

The MAD assignment will be based on the medical documentation accepted by management. If a member believes that some part of the proposed assignment constitutes a personal hardship, the member may express the concern to the appropriate agency official. The agency will respond in writing, with a copy to PEF, prior to the proposed start of the assignment or as soon thereafter as possible. Injured members may not grieve their agency's determination.

19. How do you apply for a mandatory alternate duty assignment?

Contact the employing agency to request a mandatory alternate duty assignment. A request can be made for a MAD assignment 65 days before an injured member's full recovery date. However, workers are not entitled to receive an assignment until 60 days before their full recovery date.

Once eligibility requirements are met, and a request for a MAD assignment has been made, the agency must do one of the following:

1. Offer a mandatory alternate duty assignment for up to 60 calendar days which takes into account physical limitations.

- OR -

2. If a MAD assignment cannot be provided, arrange for the effected worker to receive a supplemental payment that will provide 60% of their gross income when added to the workers' compensation law payment. The supplement will not be paid beyond the point the MAD assignment would have expired.

Injured members are not required to apply for a mandatory alternate duty assignment, but their agency may direct them to return to work on a MAD duty basis if they meet the eligibility

criteria. If the worker declines a MAD assignment, the worker will be referred to the State Insurance Fund for a benefit determination.

If injured members meet the eligibility requirements and do not request a MAD assignment, or their agency does not direct them to return to work, the worker will continue to receive wage replacement benefits from the State Insurance Fund in accordance with the Workers' Compensation Law until fully recovered. However, the worker will not receive the supplement.

20. What is CareComp Network of CVS Caremark?

NOTE: The Prescription benefit program is currently out for bid. If the provider changes injured workers will be provided with the new information.

Eligible employees will be sent information on the CareComp Network of CVS Caremark workers' compensation prescription card program by the New York State Insurance Fund (NYSIF). Contact your health benefits administrator or your agency personnel office for more information. NYSIF's pharmacy benefits management program offers the option for a claimant to obtain medication for a work-related injury or illness through the CareComp Network of CVS Caremark. This does not change a claimant's right to use any pharmacy to obtain medication necessary to treat such an injury or illness.

Use the CVS Caremark Pharmacy Locator or call CVS Caremark at (866) 493-1640 to find a local network pharmacy. Call CVS Caremark for information about mail-order service.

Note: CVS Caremark network pharmacies bill NYSIF directly, so claimants do not have to pay out-of-pocket for medication. Claimants who have not received a CVS Caremark card, should call the NYSIF case manager handling their claim.

If you are injured at work or have a work-related illness:

- Call ARS, the Accident Reporting System, at the toll-free number, 1-888-800-0029. The ARS operator will give you an incident number. You may use the incident number for your prescription drug benefit.

21. When will injured members receive wage replacement payments?

If the State Insurance Fund, as New York State's workers' compensation insurance administrator, accepts responsibility for a claim, the first payment must be made within 18 calendar days after the disability begins or ten calendar days after the injured member notifies the employer, whichever is later. In order for the SIF to pay wage replacement benefits, they need to have an accident report from the employer (the C-2) and a medical report from the treating physician (C-4) indicating the disability is due to a job-related injury. It is also critical that treating providers fill out the sections of the C-4 that address whether or not an injured worker is disabled from work and also the degree of disability. If those sections are not completed, the SIF will not make payments. The employer also must complete a C-1, "Employer's Report of Injured Employee's Change Status In Employment Resulting From Injury". Payments are then due every two weeks for the period of the disability. If an injured

member receives notice from the SIF that a claim is being disputed, call the SIF or employing agency to determine what the issues are.

22. Why are checks delayed or late?

Please Note: injured members who are entitled to wage replacement benefits from the SIF will receive two checks at approximately the same time at the beginning of a disability: a check from the agency for the two weeks worked prior to the accident (lag pay check) and a wage replacement check from the SIF for the initial period of disability. As a result of receiving these two checks at approximately the same time, injured members are now no longer on a two-week lag payroll cycle. Consequently, when workers recover, return to work and are restored to an agency's payroll, they will be required to make up this two week lag period. The result is that workers will not receive their first agency pay check after a return to work for approximately four weeks, while the SIF disability payments will stop close to the return to work date.

Another common cause for workers' compensation payment delays is that healthcare providers do not send in timely or complete medical reports every six weeks. The initial report is the C-4 and the follow up reports are the C-4.2. Injured members should discuss the importance of these reports being filed properly and on a timely basis with their providers.

23. How are wage replacement rates determined?

If injured members are disabled and are eligible for wage replacement benefits, they will receive two-thirds of their average weekly wage, but no more than the maximum benefit per week as listed below. The average weekly wage is determined by the State Insurance Fund based on payroll records for the year prior to the date of disability or accident. The formula used to calculate benefits is: **2/3 x average weekly wage x % of disability = weekly benefit** (but no more than the NYSAWW – see below).

Under the Workers' Compensation Law, disabilities are classified as total or partial. When a disability is classified as total, workers receive the maximum benefit based on their average weekly wage. When a disability is classified as partial, workers receive a percentage of their maximum benefit based on their average weekly wage. Note: if your average weekly wage (AWW) is high enough, you can still get the maximum benefit allowed under the law, even if you are 50% or less disabled. The weekly benefit is based on the date of accident and cannot exceed the maximums set for that year.

The New York State Average Weekly Wage (NYSAWW) is the average weekly wage of the state of New York for the previous calendar year as reported by the Commissioner of Labor to the Superintendent of Insurance on March 31 of each year.

Effective in 2010, the weekly maximum is updated on July 1st of each year. A full listing of the Schedule of Benefits, including the current benefit maximum and those dating back to 1985, may be found at **http://www.wcb.ny.gov/content/main/Workers/ScheduleMaxWeeklyBenefit.jsp**

Date of Accident	**Weekly Maximum**
• July 1, 2018 – June 30, 2019	$904.74
• July 1, 2019 – June 30, 2020	$934.11

- July 1, 2020 – June 30, 2021 $966.78
- July 1, 2021 – June 30, 2022 $1,063.05

24. What supplemental payments are available?

During the first nine months (39 weeks) of a disability*, if injured employees are determined to be **more than 50% disabled**, they may be eligible for the union negotiated supplemental payment in addition to the workers' compensation law wage replacement **** The 39 weeks run consecutively in the first 39 weeks of a continuous absence, or for 39 cumulative weeks for intermittent absences***. The supplement is designed to bring biweekly income (SIF payment and supplement combined) up to 60% of pre-disability gross salary, which is defined as an employee's annual salary plus geographic differential, shift differential, inconvenience pay and location pay. The SIF will notify OSC of wage replacement payment amounts when injured members are more than 50% disabled. OSC then will calculate the supplement and issue a check on the employing agency's regular payroll cycle to provide any supplement that an employee may qualify for. Please note that this supplement will be issued approximately 4 - 6 weeks after receipt of the workers' compensation law wage replacement payment, not concurrently. Once an injured worker has been determined to be 50% or less disabled, supplemental wage benefits will end and the injured member may request or may be required to return to work under the Mandatory Alternate Duty Program.

25. Are taxes taken from supplemental wages? (Article 13.3 (e))

Yes. Supplemental wages are taxable income. The wage replacement benefits paid by SIF are NOT taxable.

26. Which deductions are taken from supplemental payments?

All deductions previously taken from regular paychecks will be taken from supplemental checks if the amount of the supplement is sufficient to cover them. If the supplement is insufficient to cover all fixed deductions, the state will cancel them. Injured members are responsible for arranging to make payments directly for all payroll deductions not taken. If the supplement has been exhausted or has insufficient funds for health insurance premium deductions, the employee may pay those premiums directly or make arrangements for them to be deferred and taken retroactively when the employee returns to the payroll.

27. What happens to seniority, accruals, health insurance, and retirement credits? (Article 13.3 (h))

Injured members will be treated as though they are on the payroll for the length of their disability for up to a maximum of one year (52 weeks). While they are receiving Workers' Compensation payments directly from the State Insurance Fund, they will be treated as though they are on the payroll in full pay status for this one-year period. This means they will be entitled to accrue seniority and continuous service credit and will earn vacation, sick leave and personal leave.

Injured members' health insurance will continue and they will be responsible for payment of the bi-weekly employee share of the premium. They will be treated as though they are on the payroll for retirement service credit. If they contribute to the Retirement System, they will continue to be responsible for these payments based on their normal salary. If they are a member of the Employees' Retirement System, they may be eligible for accidental or ordinary disability retirement benefits. For further information advise them to contact the Employees' Retirement System.

Members injured due to an assault will be treated as on the payroll for up to an additional one year (52 weeks) for the sole purpose of health insurance.

28. What Social Security benefits are available?

If a member is seriously and permanently disabled they may be entitled to monthly Social Security benefits, provided they are covered by the federal Social Security Act. For additional information about these federal Disability Insurance Benefits, write or call the nearest field office of the Social Security Administration.

29. What happens in the event of death?

If a member should die as a result of a compensable injury, their surviving spouse and dependents may be entitled to weekly cash benefits pursuant to the Workers' Compensation Law. Further information is available from your local Workers' Compensation Office. Additionally, Article 11 of the Contract provides for a $50,000 accidental death benefit to be paid to an employee's spouse and children or estate when a workers' compensation death benefit is awarded.

Children of members who receive the accidental death benefit, described above, are entitled to a payment by the State for tuition for each semester in which they enroll and attend any SUNY college or unit. Children attending an accredited private college or university within New York State are entitled to payment equal to the amount of SUNY tuition.

The PEF OccupationalHealth & Safety Department provides training and technical assistance on workplace health and safety concerns, and state and federal standards and regulations. Factsheets on a variety of topics and many other resources are also available. Contact us at 518-785-1900, ext. 254 or 800-342-4306, ext 254. e-mail - healthandsafety@pef.org

Sources for information in this fact sheet: the NYS/PEF Collective Bargaining Agreement Article 13, NYS Workers' Compensation Law and NYS Civil Service Attendance and Leave Manual.

STEPS TO TAKE IN A WORKERS' COMPENSATION CASE

AFTER ACCIDENT OR INJURY:

1 **NOTIFY** your employer as soon as possible.

- the law gives you 30 days, but sooner is better

2 **CALL** the Accident Reporting System (ARS)

- 1-888-800-0029

3 **FILE** a C-3 form with the Workers' Compensation Board.

- you must also sign and file a C-3.3 form if you have a previous injury or medical treatment to the same part of your body you are claiming in your case.

4 **GO** to a workers' compensation doctor who will file a C-4 form and treatment reports with the Workers' Compensation Board and the insurance company.

- get a copy of the C-4 form and treatment reports for your records.

5 **ASK** your Union steward or representative for information on Workers' Compensation and your contractual benefits.

- PEF is NOT notified if a member has a workers compensation claim or is out on workers compensation leave. Please contact the Union for important information on your rights and additional benefits for workers compensation.
- PEF Health & Safety staff are also available to answer questions, and can send you a Workers' Compensation information packet. Call 800-342-4306, ext. 254 or email HealthAndSafety@pef.org.

THE NEXT STEPS:

1 **YOUR EMPLOYER** must notify their insurance company. For New York State that is the New York State Insurance Fund (NYSIF).

2 **NYSIF** (the insurance company for New York State public employers) may accept your case and file a First Report of Injury (FROI) form number FROI-00, or contest your case and file a FROI-04 or SROI-04 form that notifies the Workers' Comp. Board (WCB) of NYSIF's specific reasons for controverting a claim, or it may wait until the case is indexed by the Workers' Compensation Board.

3 **THE WORKERS' COMPENSATION BOARD** will "assemble" a case when it receives your C-3 form or your employer's FROI-00 form, but it will not "index" your case until it also receives the C-4 form from the doctor.

IF THE CASE IS CONTESTED (CONTROVERTED):

1 **THE NYSIF -** If NYSIF determines the claim is questionable, they must file FROI-04 on or before the 18th day of disability, within 10 days after the employer learns of the alleged accident, or within 25 days after notice of indexing by the WCB.

2 **THE WORKERS' COMPENSATION BOARD** will schedule a pre-hearing conference, which (if necessary) will be followed by a trial.

- The Board will not schedule a pre-hearing conference unless it has both a C-3 form from you and a C-4 form from your doctor.
- You may benefit from legal representation if your case is contested. Contact a Workers Compensation Attorney for more information.

IF THE CASE IS ACCEPTED:

1 **PAYMENTS:** If you miss more than one week from work and you have medical reports stating that you are disabled, the insurance company should begin voluntary payments to you. Voluntary payments usually begin about four weeks after the accident.

- you should file a workers' compensation claim even if you do not miss time from work. Medical bills are payable even in "no lost time" cases and there may be awards for permanent injury.
- the amount of the payments depends on your average weekly wage, your degree of disability, and the date of your accident.
- as long as you are out of work you must see the doctor at least once every 45 days and the doctor must file C-4 forms and treatment reports.

NOTICES FROM THE WORKERS' COMPENSATION BOARD:

1 **ADMINISTRATIVE AND PROPOSED DECISIONS** – If you receive an administrative or a proposed decision, it will make legal findings in your case and will probably say that "no further action" is planned by the Board. You should have any administrative or proposed decision reviewed by your legal representative to make sure that they are correct and so that you do not lose out on additional benefits you are owed.

2 **NOTICE OF HEARING** – if a hearing is scheduled in your case, you should bring these with you:

- your most recent medical report
- your out-of-pocket expenses
- proof of your earnings if you are working
- proof of your job search if you are looking for work
- a few paystubs from before your accident.

3 **NOTICE OF DECISION** – after each hearing the Board will send you a Notice of Decision showing the findings and money awards that were made. Be sure to review these notices and contact your attorney or NYSIF case manager if you have any questions.

PERMANENT INJURY:

1 **SCHEDULE LOSS OF USE:** If you hurt an arm, leg, hand, foot, finger or toe, if you have vision loss or hearing loss, or if you have a facial scar, you may be entitled to an award even if you did not miss any time from work. You will need to get a specific report from your doctor to get the award, and you will probably benefit from legal representation. Remember, these payments are for loss of future earnings, so if you are out of work in the future this award is what pays your salary during that time out.

2 **PERMANENT PARTIAL DISABILITY:** If you injured your neck, back or other body part that is not eligible for a schedule loss, and if you cannot return to the job you were doing before you got hurt, you may be permanently partially disabled and entitled to weekly benefits for a period of time.

3 **PERMANENT TOTAL DISABILITY:** If you cannot do any work of any kind, you may be permanently totally disabled and entitled to weekly payments for life.

SECTION 32 SETTLEMENTS:

1 **NYSIF** (The insurance company) may offer you a Section 32 settlement as a final payment to end your case.

- Before agreeing to accept a Section 32 settlement you should discuss your case with your doctor and your legal representative.
- You should consider the benefits that may be available in your case, whether you have a use for the settlement money (such as starting a business or going back to school), whether you are likely to go back to work, your other sources of income, and your need for future medical treatment.
- A Section 32 settlement may have to be approved by Medicare and must be approved by the Workers' Compensation Board.

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