



# West Virginia Department of Transportation Policy: **Workers' Compensation**

*Issued by the Secretary of Transportation*

Policy No: DOT 3.1

Issue Date: 07/15/2006

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## 1.0 PURPOSE

The purpose of this policy is to convey relevant policy information and necessary procedures for properly filing workers' compensations claims. Complying with information gathering requirements, reporting injuries immediately, and investigating all claims will ensure that each employee has coverage for work related injuries and the West Virginia Department of Transportation (WVDOT) is protected from damages and losses. Additional goals of these guidelines are prompt workers' compensation benefit payments for qualifying employees and minimal administrative costs for the WVDOT.

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## 2.0 SCOPE

This policy applies to all West Virginia Department of Transportation employees, excluding the Parkways Authority.

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## 3.0 DEFINITIONS

- 3.1 **Agency:** Any authority, bureau, commission, or Division, or similar cabinet subpart of the Department of Transportation.
- 3.2 **Agency Head:** Chief executive officer of an agency.
- 3.3 **Employee:** A person who lawfully occupies a position in a DOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship.
- 3.4 **Inbox:** An Initial Inbox is used as a reporting tool when a work-related injury occurs. Inboxes are expected within 2 business days/48 hours of injury to comply with West Virginia law regarding reporting times as an employer. A Status Update Inbox must be updated as circumstances change with employee.
- 3.5 **Organization:** A hiring unit within the Department of Transportation. *(may be referred to as "ORG/s" in policy)*
- 3.6 **Temporary Total Disability (TTD) Benefits:** The wage replacement payments received by claimants.
- 3.7 **Work-Related Injury:** A personal injury or illness occurring in the course of employment and resulting from that employment. WVDOT's workers' compensation carrier, under the regulation of the West Virginia Insurance Commission, will determine compensability for any claim.

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## 4.0 GENERAL CRITERIA

- 4.1 Employees are warned that any type of deception such as erroneous claims to compensation, fraudulent intent to secure larger compensation, attempts to receive compensation for longer than entitled, or aiding in a deceptive

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compensation claim is considered a criminal offense. Conviction for these actions could result in fines up to \$10,000 or imprisonment up to 10 years. Additionally, any future compensation after conviction will be forfeited, and restitution must be made.

- 4.2 Each organization will designate a Workers' Compensation Reporter who will share information and forms with the injured worker, file an online Inbox reporting the injury to the Human Resources Division/Workers' Compensation, share subsequent claims documents with and otherwise communicate with the Human Resources Division/Workers' Compensation.
- 4.3 The Human Resources Division's Payroll Section has been delegated with the authority to maintain balances for monetary and sick leave owed between the agency and the employee including the computation of all approved payroll taxes. This office has the right to "tag and hold" accumulated leave until "buyback" is complete.
- 4.4 The Human Resources Division/Workers' Compensation has the responsibility of coordinating all workers' compensation claims and related functions among all organizations and applicable agencies of the Department of Transportation and the WVDOT's workers' compensation carrier. The Human Resources Division/Workers' Compensation will maintain a historical record of all DOT workers' compensation claims. This will include the maintenance of a workers' compensation claim file (App Extender) and history record (Spreadsheet).
- 4.5 The Human Resources Division/Workers' Compensation and the Human Resources Division's Payroll Section are the lead organizations responsible for educating and assisting WVDOT employees concerning WVDOT's workers' compensation carrier and the Insurance Commission.

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## 5.0 WORKERS' COMPENSATION / SICK LEAVE POLICIES

### 5.1 OVERVIEW

- A. The Workers' Compensation Law states that TTD Benefits are not paid for the first three days of disability unless the period of disability extends for more than seven consecutive calendar days. If the employee is absent from work for more than three but less than seven consecutive calendar days, sick leave may be used for the first three days and TTD Benefits will be received for the fourth (4th) through seventh (7th) days. If employee's absence exceeds seven consecutive calendar days, TTD Benefits are available for compensable claims for the entire period.
- B. The District's assigned Safety Specialist, if applicable in agency, shall investigate all injuries in order to determine the cause of accidents resulting in bodily injury and to establish a plan for prevention.
- C. Time periods for filing a claim are as follows:
  1. In the case of a non-fatal injury requiring medical treatment, other than an occupational disease, application should be made by the

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injured worker immediately after the injury. Injuries not requiring medical treatment must also be reported to the Human Resources Division. Claims not filed within six (6) months of the date of injury are considered not timely filed.

2. In all occupational disease cases, application must be made by the injured worker within three years after the date of the last injurious exposure, or the date the employee was informed by a physician of their condition or the date the employee should reasonably have known they had the condition, whichever occurs last.
  3. In all non-fatal cases, application and notice must be made by the injured employee or, if the injured employee is mentally or physically incapable, by an attorney, agent, committee, or member of their family.
  4. In all fatal cases, application and proof of dependency by a dependent must be made within one year after the date of death. However, their natural guardian may make such application on their behalf. As proof of dependency, WVDOT's workers' compensation carrier may require the filing of a certified copy of marriage, birth and death record, court decrees and other pertinent records.
  5. Any claim not timely filed within the parameters described above will likely be rejected by WVDOT's workers' compensation carrier. The decision of whether to file a claim under these circumstances is at the discretion of the injured employee.
- D. TTD Benefits amounts are as follows:
1. A maximum weekly benefit to be computed on the basis of sixty-six and two-thirds percent (66 2/3%) of the average weekly earnings, not to exceed the average weekly wage in West Virginia.
  2. Minimum weekly benefits will not be less than thirty-three and one-third percent (33 1/3%) of the average West Virginia weekly wage.
  3. The aggregate benefits for a single injury causing medical temporary total disability will not exceed 104 weeks.
- E. When an employee has an aggravation of a previous compensable injury that is not the result of a new incident, a new workers' compensation claim is **not** to be filed. The previous compensation claim is to be reopened using the appropriate workers compensation carrier's reopening form.
- F. Any member of the Public Employees Retirement System who sustains an injury or acquires a disease attributable to employment and received workers' compensation benefits, and is placed on a Leave of Absence, will receive credited service toward their retirement provided they return to employment with a participating employer upon recovery from their injury or disease.

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- G. Injured employees will be returned to their former positions within the agency following their medical release. If the employee's former position has been filled, the employee will be reinstated to a comparable position, provided such position is available, and the employee is qualified for and capable of performing the duties of the position.

Pursuant to the Return to Work/Accommodation Program (see Policy DOT 3.2 for details), the Department of Transportation will afford an employee the opportunity to return to work under modifications following specific guidelines recommended by the employee's medical physician/practitioner.

- H. In the event neither the former position nor a comparable position is available, the employee will have a right to preferential recall to any job, which the employee can perform that becomes open after the employee informs the employer reinstatement is desired. The right of preferential recall will be in effect for one year from the day the employee documents that reinstatement is desired. The employee must provide a current mailing address during the one-year period.
- I. According to West Virginia Code, an employee of the State and its political subdivisions may not simultaneously receive TTD payments and paid leave.

Therefore, an employee who has been injured on the job has a choice of three options:

1. Claim sick leave or annual leave for the entire period.
2. Claim leave until TTD Benefits begin [reimbursement by the employee to WVDOT will be required], or
3. Wait for TTD Benefits to begin while on medical leave of absence without pay.

### 5.2 **OPTION TO RECEIVE SICK LEAVE**

- A. If an employee elects to receive sick or annual leave during the period of absence from work due to a compensable work-related injury, Option 2 must be selected on the Election of Option form provided by the employer. Representatives of WVDOT shall not mark an option for the injured employee. If the employee wishes to receive TTD benefits, Option 1 must be chosen.
- B. Tenure, annual leave, and sick leave will accrue during the period of time an employee is absent from work and receiving sick leave benefits. Employees will be paid for holidays that occur during the period of absence if leave is paid the full day before or after the holiday.
- C. If an employee continues to be absent from work due to a compensable work-related injury and exhausts all accumulated sick leave, the employee

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may then receive TTD Benefits during the remaining period of absence from work as permitted by Statute. A written application for a Medical Leave of Absence must be completed upon exhaustion of leave in addition to appropriate leave forms. The DOT-129 form shall be completed, specifying the last day for which the injured worker will be paid sick leave and the date the medical leave of absence will begin; this form shall be forwarded to the Human Resources Division's Payroll Section.

- D. An injured workers' absence from work must be supported by the DOT prescribed Physician's/Practitioner's Statement (DOT L13). Each DOT L13 must state when the employee may return to work or the date the employee will be re-evaluated. A DOT L13 form must be completed every time the employee is re-evaluated.
- E. If an employee chooses to be paid sick leave until the receipt of the initial TTD benefit check (Option 1), the employee must reimburse the employer for all the leave benefits that have been paid. Once complete restitution to the employer has been made, the employee will regain the amount of leave in question.
- F. Employees who refuse to reimburse the paid sick/annual leave to the employer, as required by State Law will be subject to disciplinary action. The employer can make deductions from a subsequent paycheck until the total amount of sick leave used is reimbursed. A one-pay period notice of deduction is required.

When it becomes necessary to deduct wage payments from an employee's paycheck, deductions will be made in accordance with the West Virginia Department of Labor regulation on wage payments and collections. The employee and the employing agency will complete the Attachment of Future Wages form designating the required wage deductions from the employee's wage payments. The minimum deduction is \$50.00 per pay period.

### 5.3 **OPTION TO RECEIVE TTD BENEFITS**

When electing to receive TTD Benefits (Option 1), the employee must submit request for a Medical Leave of Absence Without Pay with complete, appropriate forms in accordance with WVDOT Attendance, Leave and Overtime procedures. Leave may be used until TTD benefits are approved and initiated, at which point the employee will be required to reimburse WVDOT for any sick leave, annual leave, or holiday pay coinciding with dates TTD is received. Leave used will be restored when this reimbursement is complete.

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## **6.0 WORKERS' COMPENSATION / SICK LEAVE PROCESSES**

### **6.1 FILING A WORKERS' COMPENSATION CLAIM**

All DOT employees are directed to immediately report on-the-job injuries to their supervisor, seek guidance when necessary to properly submit obligatory paperwork, and to notify designated payroll/human resources personnel when

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initial workers' compensation benefits are received.

- A. Supervisors have the responsibility of reporting all injuries to the designated Workers' Compensation Reporter in their ORG and on the back of the Daily Work Report Form (DOT-12) or applicable agency form. Notations are to consist of the employee's name, time accident occurred, work location and witnesses to the accident. Signed statements are to be obtained from witnesses. Serious accidents are to be reported immediately to the Safety Specialist, if applicable to agency.
- B. The ORG's designated Workers' Compensation Reporter will complete the necessary Inbox and advise the employee how to proceed.
- C. The ORG's designated Workers' Compensation Reporter will provide the employee instructions and blank claim forms received from the Human Resources Division/Workers' Compensation.
- D. If received by the ORG's designated Workers' Compensation Reporter, the Employee's & Physician's Report of Occupational Injury is to be forwarded to the Human Resources Division/Workers' Compensation. Additionally, the Election of Option form, any medical notes and other claim forms are to be forwarded to the Human Resources Division/Workers' Compensation.
- E. Each ORG manager is accountable for all documentation assigned to subordinates (i.e., review all workers' compensation claim forms for completeness and accuracy).
- F. The Human Resources Division/Workers' Compensation Section will:
  - 1. Verify completion and accuracy of paperwork.
  - 2. Electronically file the Employer's Report of Injury with WVDOT's workers' compensation carrier.
  - 3. Send the claim number to the ORG with instructions and blank forms.
  - 4. Provide WVDOT's workers' compensation carrier a Wage Report.
  - 5. Send Employee's and Physician's Report of Injury, Election of Option and other pertinent documents/information to WVDOT's worker's compensation carrier when/if received.
  - 6. Enter data/documents into WVDOT historical databases.
  - 7. Correspond with WVDOT's workers' compensation carrier on all employer-related aspects of the claim, after the initial filing.

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### 6.2 TTD BENEFITS

- A. WVDOT's workers' compensation carrier will notify the employee via letter of decision whether the injury/illness is considered to be compensable or not. The Human Resources Division/Workers' Compensation Section will receive a copy of this notification.
- B. WVDOT's worker's compensation carrier will notify The Human Resources Division/Workers' Compensation via an e-mail alert about initiation of TTD benefits.
- C. The Human Resources Division/Workers Compensation will notify the Human Resources Division's Payroll Section, Employment & Benefits, and the ORG Workers' Compensation Reporter or appropriate Human Resources contact of the initiation of TTD benefits.

### 6.3 SICK LEAVE BUYBACK

- A. The Human Resources Division's Payroll Section develops a report indicating the monetary amount for the sick leave time to be repaid to WVDOT (if applicable) and notifies the employee's ORG.
- B. The report remains "Open" until the employee makes full restitution. No sick leave is returned to the employee until full restitution is paid.

### 6.4 RETURN TO WORK

Upon being released by the physician/practitioner to return to work, the following steps must be taken:

- A. The employee returning to work will submit the written medical practitioner's release to the ORG payroll/human resources personnel.
- B. The payroll/human resources personnel will email the document to the Human Resources Division/Workers' Compensation. The document will be kept in the employee's personnel file.
- C. The ORG's Workers' Compensation Reporter will file a Status Update Inbox when the employee returns to work.
- D. The Human Resources Division/Workers' Compensation will email WVDOT's Workers' Compensation carrier regarding return to work.
- E. The Human Resources Division/Workers' Compensation will email Payroll, the ORG and District if applicable, and Employment & Benefits about return to work and full duration of TTD paid. If TTD is suspended for a reason other than return to work, a similar email will be sent along with a copy of the suspension notice.

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## 7.0 RELEVANT MATERIALS/REFERENCES

- 7.1 DOT-12 Daily Work Report Form



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- 7.2 DOT L13 Physician's/Practitioner's Statement
- 7.3 DOT 129 Payroll Benefits Transaction Form
- 7.4 W. Va. Code 61-3-24f
- 7.5 W. Va. Code 33-41-12(a)(1)
- 7.6 DOT Admin Rule (217 C.S.R. 17)
- 7.7 Workers' Compensation Act, W. Va. Code § 23-1-1 et seq. (General Admin Provisions) and §23-4-1 et seq. (Disability & Death Benefits) and §61-3-24f-24h (criminal provisions for workers comp).

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### 8.0 APPENDICES

#### 8.1 TABLE OF BENEFITS FOR EMPLOYEES ON LEAVES OF ABSENCE AND RECEIVING TTD BENEFITS

| <b>Merit System Benefit</b> | <b>Previous Entitlement</b> | <b>Present Entitlement<br/><i>Effective 7/6/2005</i></b> |
|-----------------------------|-----------------------------|--|
| Annual Leave Accrual        | No                          | Yes  |
| Service for Accrual Rate    | No                          | Yes  |
| Sick Leave Accrual          | No                          | No   |
| Holiday Pay                 | No                          | No   |
| Annual Increment Pay        | Yes                         | Yes  |
| Annual Increment Seniority  | No                          | Yes  |
| Lay Off Years of Service    | No                          | Yes  |
| Retirement Years of Service | Yes                         | Yes  |

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### 9.0 CHANGE LOG

April 8, 2019

- Policy reviewed and revised by DOH Human Resources Division, Workers' Compensation Section.
- Policy formatted per policy and procedure work group.

November 1, 2021

- Updated language to provide clarity of personnel and the Human Resources Division.
- Added definitions.
- Updated Section 4.1 regarding criminal penalties.