



Ohio Administrative Code

Rule 123:1-33-17 Occupational injury leave and salary continuation benefits.

Effective: July 30, 2020

(A) For purposes of this rule:

(1) "Allowed physical condition" - means a physical condition diagnosed by an approved physician that arises from an injury inflicted by a ward. It is also a physical condition resulting from substantial aggravation of a pre-existing condition, if such aggravation arises from an injury inflicted by a ward.

(2) "Approved physician" - means a psychologist, psychiatrist, or physician from the approved physician list. In the event an injury requires emergency room treatment, the emergency room physician will be considered an approved physician for purposes of the initial diagnosis and evaluation of the allowed physical or psychological condition.

(3) "Allowed psychological condition" - means a psychological condition, diagnosed by an approved psychiatrist or psychologist from the approved physician list that develops after, and is related to, the allowed physical condition.

(4) "Date of injury" - means the date the event triggering the claim occurred.

(5) "Disabled" - means the employee is unable to perform the essential functions of their job due to an injury while on-duty.

(6) "Inflicted by a ward" - means injured by a ward of the state in one or more of the following ways: (a) an attempt to subdue, control or restrain a ward's inappropriate behavior; (b) as the result of being physically harmed in the course of the employee's duty, as long as the injury was not accidental in nature or caused by the employee's own misconduct or negligence; or (c) during the pursuit of a ward in such circumstances where a ward attempts to flee following the inappropriate behavior listed in this paragraph.

(7) "Ward" - Means an inmate, patient, resident, client, youth or student.



(B) Eligibility.

(1) Occupational injury leave benefits (OIL). Each permanent employee employed by an agency listed in section 124.381 of the Revised Code who sustains an allowed physical condition or an allowed psychological condition filed on or after February 1, 2010 shall, pursuant to this rule and with the approval of the director of the department of administrative services (DAS), receive OIL. Any subsequent injury that is determined to be an aggravation of a previous injury for which OIL was approved shall not be considered an independent injury. It is the employee's responsibility to prove that the allowed physical condition or an allowed psychological condition was inflicted by a ward.

(2) Salary continuation benefits. All permanent employees, including employees not eligible for OIL as described in paragraph (B)(1) of this rule, who sustain physical injuries or other disabilities in the performance of and arising out of state employment on or after February 1, 2010 may apply for salary continuation benefits for each independent injury sustained.

(3) If the employee's OIL claim is denied and the workers' compensation claim is still pending, the employee may apply for salary continuation benefits.

(C) Application. In order to receive OIL or salary continuation benefits, the injured employee shall, within twenty days from the date of the injury, complete and submit the employee's portion of the claim application to the employee's appointing authority. If the employee is physically unable to complete the application, someone acting on the employee's behalf may complete and submit the application.

(D) Amount and length of benefit.

(1) OIL benefits. In no case shall the payment of OIL exceed nine hundred sixty hours per independent injury. A part-time employee's OIL benefits shall be based on the average number of hours worked during the six weeks immediately preceding the related injury, up to forty hours per week.



(2) Salary continuation benefits. In no case shall the payment of salary continuation benefits exceed four hundred eighty hours per independent injury. Any leave provisionally granted under OIL shall count towards the four hundred eighty hour maximum for salary continuation benefits.

(3) Payment. Payment of OIL or salary continuation benefits will begin immediately upon the employee's filing of an application, retroactive to the date the employee became disabled, and will be paid at the employee's total rate of pay.

(E) Other benefits. OIL and salary continuation benefits are in lieu of any other employer-paid leave or workers' compensation benefits. Employees receiving OIL or salary continuation benefits are in active pay status and shall continue to accrue sick leave and personal leave. During the time an employee is receiving OIL or salary continuation benefits under this rule, the employee shall be exempt from receiving vacation leave. OIL and salary continuation benefits shall not be charged against the employee's accumulated sick leave balance.

(F) Employee's responsibilities. In order to receive OIL or salary continuation benefits, the injured employee must also:

(1) Follow the agency's accident or injury reporting guidelines;

(2) Be evaluated by an approved physician to determine if the injury will keep the employee from performing the essential functions of the employee's position. If the employee is unable to schedule an appointment with an approved physician within forty-eight hours of the date of the injury, the employee must contact the agency's workers' compensation coordinator. The employee must continue to seek treatment from an approved physician for the duration of the benefit;

(3) Ensure that an approved physician completes and returns the DAS designated medical form;

(4) Demonstrate that any transitional work program offered by the agency is not appropriate based upon an approved physician's restrictions;

(5) Apply for workers' compensation benefits at the time that OIL or salary continuation is being requested; and.



(6) Receive approval from the bureau of workers' compensation for an additional injury allowance, in the case where, after an initial diagnosis, the injury is determined to more extensive and the employee requests an extension of benefits.

(G) Failure to be evaluated. If the employee refuses to be evaluated by an approved physician, the application for OIL or salary continuation benefits will be denied and will be reviewed by the bureau of workers' compensation as a normal request for workers' compensation benefits. If the employee has been paid any OIL or salary continuation benefits, the employee shall substitute sick leave, vacation leave, personal leave, compensatory time, or reimburse the employer for any benefits received.

(H) Appointing authority's responsibilities. The employee's appointing authority or designee must promptly review the employee's claim and forward the employee's paperwork to the director or authorized designee within five days of receiving the employee's application. In the case of OIL, the appointing authority or designee should also forward any documentation certifying or disputing that the injury was sustained in the line of duty and was inflicted by a ward. In the case of salary continuation benefits, the appointing authority should also forward any documentation certifying or disputing that the injury was sustained in the line of duty, as well as any witness statements.

(I) Medical treatment and return to work. It shall be the responsibility of the employee to receive necessary medical treatment and to return to active work status at the earliest time permitted by the approved physician.

(J) Termination of benefits. OIL and salary continuation benefits shall terminate when:

(1) The employee engages in any activity that adversely affects the employee's recovery;

(2) The employee engages in any outside activity for wage or profit if the outside activity is inconsistent with the employee's medical or psychological restrictions;

(3) The employee knowingly makes a false or misleading statement, or alters, falsifies, destroys or conceals any document in order to receive the benefit;



- (4) The approved physician releases the employee back to work;
- (5) The employee is incarcerated and the incarceration prevents the employee from coming to work;
- (6) The employee's workers' compensation claim is denied by the bureau of workers' compensation;
- (7) The industrial commission determines the employee has reached maximum medical improvement;
- (8) The employee is disqualified from receiving workers' compensation benefits or if the employee accepts workers' compensation temporary total disability benefits; or
- (9) The employee is no longer employed by the state.

(K) Denied claims.

(1) If an agency denies an employee's application for OIL on the basis that the injury was not inflicted by a ward, OIL shall cease. The employee may appeal the decision to DAS within twenty days of the postmark on the letter of denial and the decision of DAS shall be binding. If the employee's claim is approved by DAS, the agency shall render OIL benefits to the employee back to the time of the initial agency denial. If the employee's OIL claim is denied by DAS, the employee may be eligible for salary continuation benefits.

(2) If the bureau of workers' compensation denies the claim on the basis that the injury was not an allowed physical or psychological condition, OIL or salary continuation benefits shall cease. The employee may appeal the decision to the industrial commission. If the employee's claim is approved by the industrial commission, the agency shall render OIL or salary continuation benefits on the employee back to the time of the initial denial by the bureau of workers' compensation. If the employee's claim is denied by the industrial commission, the employee shall substitute sick leave, vacation leave, personal leave, compensatory time, or reimburse the employer for any benefits received.



(L) Insurance. An employee who receives OIL or salary continuation benefits is responsible for the employee's share of health insurance premiums.

(M) Transitional work program. An employee receiving OIL or salary continuation benefits may participate in a transitional work program pursuant to rule 123:1-33-07 of the Administrative Code. If a permanent employee is given a transitional work assignment with less than the employee's regularly scheduled hours, the employee may use OIL or salary continuation hours to supplement up to the amount of the employee's regularly scheduled hours. If an employee does not successfully complete a transitional work program, the employee may resume OIL or salary continuation benefits up to the number of hours that remain for the injury.