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OAC Ann. 123:1-33-01

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*** THIS DOCUMENT IS CURRENT THROUGH OHIO REGISTER FOR THE WEEK OF August 9, 2010 through August 13, 2010 ***

123:1 Division of Human Resources.
Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-01 (2010)

123:1-33-01. Eligibility for disability leave benefits.

(A) Eligibility. Any full-time permanent employee with a disabling illness, injury, or condition that will last more than fourteen consecutive calendar days who has completed one year of continuous state service immediately prior to the date of the disability and whose salary or wage is paid directly by warrant of the director of the office of budget and management is eligible for disability leave benefits granted under the provisions of [section 124.385 of the Revised Code](#) and [Chapter 123:1-33 of the Administrative Code](#). To be eligible for disability leave benefits, an employee must be disability separated pursuant to rule [123:1-30-01 of the Administrative Code](#) or rule [123:1-30-02 of the Administrative Code](#); or in active pay status or approved sick leave; or on approved disability leave; or approved leave of absence pursuant to rule [123:1-34-01 of the Administrative Code](#) or the appropriate collective bargaining agreement for the employee's personal medical reasons.

(B) Recovery period. An employee eligible pursuant to paragraph (A) of this rule shall only receive disability leave benefits if the employee is medically incapable of performing the duties of their position. Such an employee, with the approval of the director of administrative services, may receive disability leave benefits up to the standard recovery period as defined in the department of administrative services' recovery period guidelines.

The director of administrative services may delegate to any agency the authority to approve benefits for up to a standard recovery period for a select list of disabilities from the department of administrative services' recovery period guidelines. Only the department of administrative services shall have the authority to deny an application for disability benefits.

If the employee does not return to work following a standard recovery period, and submits additional information, the employee's claim will be reviewed to determine if the employee is capable of:

- (1) Performing the duties of the employee's position; or
- (2) Performing duties of a similar position or work activities under a transitional work program.

(C) Return to work. If it is determined that the employee is capable of performing the duties of a similar position or other duties within a transitional work program, then the appointing authority may provide such work for the employee. An employee will continue to receive disability leave benefits for the hours the employee is unable to return to work while the employee participates in an authorized transitional work program in accordance with paragraph (B) of rule [123:1-33-07 of the Administrative Code](#). If the appointing authority is unable to provide the employee with a transitional work program, the employee may receive disability leave benefits until the employee is capable of performing the duties of the employee's position or until the appointing authority is able to provide the employee with a transitional work program, whichever is earlier.

(D) Obligation to consult a licensed practitioner. An employee is obligated to consult a state licensed practitioner to receive necessary medical care prior to receiving disability benefits. In the case of an alcohol or drug addiction diagnoses, an employee shall consult the state's alcohol or other drug addiction program, the state of Ohio employee assistance program, or another certified alcohol and other drug addiction treatment professional to confirm that the employee's condition prevents the employee from performing the duties of the employee's position, a similar position, or other duties within a transitional work program. In the case of a mental health diagnoses, an employee shall consult with a licensed mental health provider to confirm that the employee's condition prevents the employee from performing the duties of the employee's position, a similar position, or other duties within a transitional work program. In all cases, an employee is obligated to follow prescribed treatment for the disabling condition to receive disability benefits.

History:Effective: 11/01/2009.

[R.C. 119.032](#) review dates: 10/29/2011.

Promulgated Under: 119.03.

Statutory Authority: 124.09.

Rule Amplifies: 124.385.

Prior Effective Dates: 3/29/82, 1/7/83, 10/24/83, 4/5/84 (Emer.), 7/18/84 (Emer.), 9/1/84, 10/29/95, 11/10/96, 7/1/97 (Emer.), 9/28/97, 6/18/00, 10/29/06, 7/1/07, 1/18/09.

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OAC Ann. 123:1-33-02

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123:1 Division of Human Resources.
Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-02 (2010)

123:1-33-02. Application for disability leave benefits.

(A) Filing an application. The employee, a member of the employee's family, or a representative of the employee, may file an application for disability leave benefits with the employee's appointing authority. The application shall be filed on a form designated by the director and shall be filed, completed in its entirety, with the appointing authority within twenty days of the last day the employee worked. An application is not completed in its entirety until the disabling illness, injury, or condition for which the employee is requesting disability leave benefits occurs. Where extenuating circumstances prevent an employee from filing an application for disability leave benefits within the required time frame, a written statement explaining such extenuating circumstances must be filed within a reasonable time after the twenty-day time period has expired. Appropriate extenuating circumstances shall be accepted as an extension of the time limit to file an application for disability benefits. The appointing authority shall, within five days of receipt of the application, forward the application and the recommendation of the appointing authority to the director.

Any employee who is given a disability separation under the provisions of rule 123:1-30-01 or rule 123:1-30-02 or rule of the Administrative Code and who is eligible to receive disability leave benefits under the provisions of [Chapter 123:1-33 of the Administrative Code](#) may apply for disability leave benefits within twenty calendar days after the date the employee is given a disability separation. The approval of a claim for disability leave benefits shall be governed by the provisions of [Chapter 123:1-33 of the Administrative Code](#).

(B) Documentation. In addition to the application, it shall be the employee's responsibility to provide written documentation to substantiate the cause, nature, and extent of the disabling illness, injury, or condition for which the employee is requesting disability leave benefits. A medical examination report shall be required prior to the granting of disability leave benefits and the employee shall be responsible for the cost of obtaining such report. If deemed necessary, the director or designee may order a medical examination conducted by a physician. The employee may request that the physician be mutually agreed to by the state and the employee's attending physician to resolve conflicting issues. The specialty of the physician conducting the examination will be based upon the employee's diagnosed condition, but for an application for disability benefits based on a diagnosis of a mental disorder, including but not limited to, psychosis, mood disorders,

and anxiety, must be confirmed by a licensed mental health provider. The cost of such examination shall be paid from the disability fund.

(C) Notification of initial disability decision by the director. The employee shall be notified in writing of the disability determination within forty-five days of receipt of the application by the director or designee and shall also be advised of the right of appeal pursuant to rule 123:1-33-04 of the Administrative Code.

If a determination can not be made within forty-five days of receipt of the application, then the director or designee shall notify the employee of the delay.

(D) Notification of requirement to file for disability retirement benefits. An employee eligible to apply for disability retirement benefits shall be notified by the director or designee in writing of the requirement to file for disability retirement benefits in order to receive continued disability leave benefits. Upon notification, the employee shall submit an application to a state employees' retirement system, comply with all retirement system requirements, and submit all information required by the retirement system for disability retirement benefits.

(E) Submission of additional information. If the employee disagrees with the determination regarding the employee's request for disability leave benefits, the employee may submit additional information to the appointing authority.

Such information must be submitted within twenty days from the date of notification of the determination or within twenty days from the ending date of approved disability benefits, whichever is later. The appointing authority shall, within five days of receipt of such additional information, forward it to the director. Where extenuating circumstances prevent an employee from providing additional information within the required time frame, a written statement explaining such extenuating circumstances must be filed within a reasonable time after the twenty-day time period has expired. Appropriate extenuating circumstances shall be accepted as an extension of the time limit to provide additional information. By exercising the right to submit additional information, the employee does not waive his or her right to appeal the determination pursuant to rule 123:1-33-04 of the Administrative Code. The appeal must still be filed within thirty days of the original notification of the denial.

(F) Address change. An employee receiving disability leave benefits shall be responsible for keeping a current address on file with the appointing authority.

History:Replaces: 123:1-33-13.

Effective: 11/01/2009.

R.C. 119.032 review dates: 10/29/2011.

Promulgated Under: 119.03.

Statutory Authority: 124.09.

Rule Amplifies: 124.385.

Prior Effective Dates: 3/17/82, 9/5/93, 1/23/94, 11/10/96, 2/13/00, 10/29/06.

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OAC Ann. 123:1-33-03

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123:1 Division of Human Resources.
Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-03 (2010)

123:1-33-03. Conditions precluding receipt of disability leave benefits.

(A) Disability leave benefits are not payable for any disability caused by or resulting from:

(1) Any injury or illness received in the course of and arising out of any employment covered by any workers' compensation, federal compensation plan, or during any period in which the employee is receiving occupational injury leave or lost time wages from the bureau of workers' compensation except as outlined in paragraph (A)(1)(a) or (A)(1)(b) of this rule.

(a) In the case of any injury or illness which may be covered by the bureau of workers' compensation, an employee may file an application for disability leave benefits if the employee has been denied an initial claim for workers' compensation lost time wages, by the bureau of workers' compensation.

(b) If an employee appeals the order of the bureau of workers' compensation. The employee may receive, as an advancement, disability leave benefits. To be eligible for such advancement, an employee must file an application for disability leave benefits and a copy of the bureau of workers' compensation order with the appointing authority within twenty days of the notification by the bureau of workers' compensation of the denial of an initial claim for workers' compensation benefits. The appointing authority within five days of receipt forward the application to the director. Disability leave benefits may then be advanced for a period of twelve weeks or until the employee had been awarded benefits by the bureau of workers' compensation, whichever is earlier. Advancements may be made only on initial workers' compensation claims. All disability leave benefits received by the employee as an advancement, must be reimbursed by the employee to the disability leave benefits program if the employee has been awarded weekly wage payments by the bureau of workers' compensation for the same time period for which the advancement was made or the employee has been paid a lost time wage settlement. Within twenty days of notification of a final order from the industrial commission or notification of a final order from the court of common pleas denying the claim for workers' compensation lost time wages, an employee may request that the initial application be reviewed for extension of disability leave benefits.

(c) If an employee does not appeal the order of the bureau of workers' compensation on an

initial claim for workers' compensation lost time wages, the employee may file an initial application for disability leave benefits including a copy of the bureau of workers' compensation order within twenty calendar days of the order.

(d) Employees who receive injury pay pursuant to section 124.381 or 5503.08 of the Revised Code may be eligible for disability leave benefits when injury pay expires if they have received a final notice denying workers' compensation benefits and have applied for disability leave benefits within twenty days of such notice.

(2) Attempted suicide, or self-inflicted injury with the intent to do bodily harm unless there is a medical history of treatment for a psychiatric illness in which case the director reserves the right to review the claim for consideration of a benefit award; or

(3) Any act of war, declared or undeclared, whether or not the employee is in the armed forces; except in the case of an employee who is a veteran of the United States armed forces, disability benefits will not be denied because the employee contracted the illness or received the injury in the course of or as a result of military service and the illness or injury is or may be covered by a compensation plan administered by the United States department of veterans' affairs; or

(4) Participating in a riot or insurrection; or

(5) Drug addiction or alcoholism; however, alcohol or other drug addiction diagnoses may only be covered if the employee is receiving ongoing treatment pursuant to paragraph (D) of rule 123:1-33-01 of the Administrative Code and it is determined that such treatment program prevents the employee from working as documented by the treatment provider; or

(6) Any injury committed in the act of committing a felony.

(B) Disability leave benefits may be held in abeyance if an employee submits an application for disability leave benefits after either the employee has received notice of an investigation for possible disciplinary action or where an investigation regarding the employee is actively underway. Such action is subject to the following procedure:

(1) The appointing authority shall send to the department of administrative services a copy of the employee's disability leave application, all accompanying documentation, and a notice containing the following information:

(a) Notification that an investigation of the employee is underway,

(b) The date the investigation was initiated,

(c) The basis of the investigation, and

(d) A rationale for why access to the employee is necessary for completion of the investigation.

(2) Upon receipt of the notification, the director shall approve or deny the decision to hold disability payments in abeyance. If the director approves the decision to hold disability payments in abeyance, the department shall notify the employee by regular and certified mail, that the disability payments will not be processed until the completion of the investigation.

(3) An investigatory interview shall be scheduled to occur within thirty days after the appointing authority files notice of the investigation with the department of administrative services. If the appointing authority fails to complete the investigatory interview within thirty days through no fault of the employee under investigation, an employee who is eligible in accordance with rule 123:1-33-01 of the Administrative Code may receive disability leave benefits. If the investigatory interview cannot be completed as a result of the employee's absence, the investigatory interview shall be

cancelled and the employee's disability leave application shall be denied.

(4) Paragraph (B) of this rule shall not be applicable where the absence, and subsequent disability, is the result of hospitalization for more than five days for a serious medical condition.

(5) If an application for disability benefits is pending or has been approved prior to the initiation of the investigation, paragraph (B) of this rule shall not be applicable.

History: Eff 11-10-96, 10-26-06.

Replaces: 123:1-33-14.

Rule promulgated under: RC Chapter 119.03.

Rule authorized by: RC 124.09(A).

Rule amplifies: 124.385. RC 119.032 Review Dates: 4-12-02, 4-12-07, 10-29-11.

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OAC Ann. 123:1-33-04

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123:1 Division of Human Resources.
 Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-04 (2010)

123:1-33-04. Appeal of a denial.

If a request for disability leave benefits is denied the employee shall be informed of the denial in writing. The employee may file, in writing and within thirty days of the notice of the denial, a request for an appeal of the denial with the director or designee. Information regarding the denial of the employee's application may be submitted with the employee's request for an appeal and such information will be considered during the appeal process. If an appeal is not filed within thirty days of the original notification of the denial, the director or designee shall enter the determination as a final decision.

Where a medical question is at issue, the director or designee shall, upon receiving a written request for an appeal, obtain a medical opinion from an independent third party. The director may consult with the employee's attending physician to select the independent third party. The selection of a third party shall be made within fifteen days of the appeal request unless an extension is agreed to by the parties. The third party shall render a medical opinion within thirty days of the selection and the decision of the third party shall be binding. If the third party review results in a denial of benefits, a hearing will be scheduled pursuant to Chapter 119. of the Revised Code.

Where a medical question is not at issue, the director or designee will schedule a hearing pursuant to Chapter 119. of the Revised Code.

History:Effective: 08/19/2007.R.C. 119.032 Review Dates: 10/29/2011.

Promulgated Under: 119.03.

Statutory Authority: 124.09.

Rule Amplifies: 124.385.

Prior Effective Dates: 01/07/83, 04/29/94, 11/10/96, 07/01/97, 06/18/00, 10/29/06.

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OAC Ann. 123:1-33-05

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123:1 Division of Human Resources.
Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-05 (2010)

123:1-33-05. Payment of disability leave benefits.

Except as provided in paragraph (E) of rule [123:1-33-12 of the Administrative Code](#), the payment of claims filed before October 29, 2006 is governed by rule [123:1-33-12 of the Administrative Code](#).

(A) Waiting period. Disability leave benefits shall commence with the employee's first scheduled workday following a waiting period of fourteen consecutive calendar days. The waiting period shall commence the day the disabling illness, injury, or condition prevents the employee from performing the duties of the employee's position. During the waiting period, an employee may use accrued paid leave, but is not permitted to work or be placed on administrative leave, unless the employee is placed on administrative leave pursuant to paragraph (A) or rule [123:1-33-09 of the Administrative Code](#).

(B) Payment of disability leave benefits. For disability claims filed on or after October 29, 2006 but before July 1, 2009, disability leave benefits will be paid at seventy per cent of the employee's base rate of pay for the first three months, and at fifty per cent for the next nine months. After an employee has exhausted three months of disability leave benefits, the employee shall be paid at fifty per cent of the employee's base rate of pay for up to an additional nine months on the original, subsequent related, or subsequent unrelated claim.

For new disability claims filed on or after July 1, 2009, disability leave benefits shall be paid at sixty seven per cent of the employee's base rate of pay up to a lifetime maximum of twelve months.

In no circumstances shall the total length of benefit exceed the maximum set forth in rule [123:1-33-06 of the Administrative Code](#).

For purposes of determining disability leave benefits, an employee's base rate of pay shall be determined as of the date the employee becomes disabled. Disability leave benefits shall be paid at this rate throughout the disability claim. Disability leave benefits are payable based on the employee's regular payroll cycle.

(C) Accrual of service credit. An employee receiving disability leave benefits pursuant to [Chapter](#)

123:1-33 of the Administrative Code shall continue to accrue service credit for purposes of determination of vacation benefits, annual step increases, longevity and retirement benefits. Vacation leave benefits shall not accrue while an employee is receiving disability leave benefits. The period during which an employee is receiving disability benefits shall not count toward an employee's probationary period.

(D) Payment of disability retirement benefits. If an employee is approved to receive disability retirement benefits, the employee shall receive the retirement benefit and a supplement payment that equals a percentage of the employee's base rate of pay and that, when added to the retirement benefit, equals no more than fifty per cent of the employee's base rate of pay for the remaining nine months of the disability leave benefit period. In order to receive the supplement payment the employee will be required to submit proof of the amount of the approved disability retirement benefit to the employee's appointing authority.

(E) Payment of retirement system contributions. The employee shall be responsible for paying the employee's share of retirement contributions. These contributions shall be made in the amounts set pursuant to sections 145.296, 3307.511, 3309.471, and 5505.151 of the Revised Code for members granted disability leave benefits based on the employee's base rate of pay in effect at the time the employee becomes disabled.

(F) Payment of insurance premiums. During the time an employee is in a no pay status while the claim for disability leave benefits is being processed by the director and during the period that the employee is receiving disability leave benefits, the employer's and employee's share of the health, life and other insurance benefits will be paid by the employer. If an employee has exhausted disability benefits, the employee is not entitled to have health, life, or any other insurance benefit paid by the employer. Only those insurance benefits paid in whole or in part by the state shall be subject to the provisions of this rule. If an employee's claim for disability leave benefits is subsequently denied by the director and the employee had been in a no pay status while the employee's claim was being processed, it is the employee's responsibility to reimburse the employer the insurance premiums paid on the employee's behalf. An employee receiving disability leave benefits may participate in an open enrollment period. Any change in the employee's health insurance benefits will be effective at the beginning of the benefit year.

(G) Supplementation of benefits. An employee receiving disability leave benefits may indicate to the employer a desire to supplement the disability leave benefits by utilizing accumulated sick leave, personal leave, vacation leave balances as well as compensatory time. Such supplementation shall have an effective date as of the date the employee requests the supplementation. The sick leave, personal leave, vacation leave balances and compensatory time shall be paid at a rate equal to the employee's base rate of pay in effect at the time the employee became disabled.

The total amount received by an employee while receiving disability leave benefits supplemented by sick leave credit, personal leave credit, vacation leave balances, and compensatory time, plus any amount contributed by the state on behalf of the employee pursuant to paragraphs (F) and (G) of this rule, shall be an amount sufficient to give the employee up to one hundred per cent of pay for time on disability leave.

(H) Payment of costs. All of the cost, premium or charges for the benefits provided by the state employee disability leave benefits program shall be paid by the state. The director may establish a premium contribution rate pursuant to rule 125-2-03 of the Administrative Code.

(I) Recovery of improperly paid benefits. The director shall initiate all necessary steps to recover disability leave benefits or insurance premiums paid in error or paid as a result of fraud, or to make any needed adjustments to ensure that proper payment of benefits and insurance premiums has been made. When necessary, the director shall request the attorney general to take appropriate action to recover improperly paid benefits or insurance premiums.

History:Replaces: part 123:1-33-12, 123:1-33-16.

Effective: 07/01/2009.

Promulgated Under: 119.03.

Statutory Authority: 124.09.

Rule Amplifies: 124.32, 124.385.

Prior Effective Dates: 9/5/93, 10/29/06.

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OAC Ann. 123:1-33-06

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Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-06 (2010)

123:1-33-06. Length of eligibility.

Except as provided in paragraph (E) of rule [123:1-33-12 of the Administrative Code](#), the length of eligibility for claims filed before October 29, 2006 is governed by rule [123:1-33-12 of the Administrative Code](#).

(A) An employee remains eligible for disability leave benefits until it is determined that the employee is not longer disabled, the effective date of retirement from a state employees' retirement system, or the employee has utilized a lifetime maximum of twelve months of paid disability leave.

(B) The length of a disability shall be calculated and prorated on a daily basis when the employee is participating in a transitional work program pursuant to paragraph (B) of rule [123:1-33-07 of the Administrative Code](#) or in a temporary part-time position pursuant to paragraph (A) of rule [123:1-33-07 of the Administrative Code](#). All hours worked during an authorized transitional work program or in a temporary part-time position shall not be counted toward the employee's lifetime maximum up to a limit of ninety days total. All hours paid pursuant to an authorized transitional work program of a part-time position shall count toward the employee's lifetime maximum.

(C) All disability leave benefits that were granted for claims file on or after October 29, 2006 shall be counted toward the lifetime maximum limitation established in paragraph (A) of this rule.

History:Effective: 10/29/2006.

Rule promulgated under: [RC 119.03](#)

Rule authorized by: [RC 124.09\(A\)](#).

Rule amplifies: [RC 124.385](#). [R.C. 119.032](#) Review Dates: 10/29/2011.

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OAC Ann. 123:1-33-07

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Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-07 (2010)

123:1-33-07. Transitional or partial return to work.

(A) With the approval of the employee's appointing authority, an employee who serves a fourteen consecutive day waiting period may return on a part-time basis or may participate in a rehabilitation work training program and may receive disability benefits. The employee may be reinstated on a part-time basis to the employee's position for up to ninety days. The employee's participation may be extended if the employee is undergoing a rehabilitation treatment plan prescribed by the employee's attending physician. An employee who returns to work part-time, including but not limited to a return to work program, rehabilitation work training program, or pursuant to a physician's statement during a disability leave benefit period shall receive any pay increases, for any hours in active work status, to which the employee would have otherwise been entitled if he or she were not receiving disability leave benefits. Before a return to work on a part-time basis, the employee shall provide to the appointing authority a physician's statement indicating the number of hours the employee could work and any restrictions placed on the employee's activities. The employee will continue to receive disability leave benefits for the hours that the employee is unable to work.

(B) Transitional work program. A transitional work program may be provided by the appointing authority for thirty days. Participation in the program shall be based upon the recommendation of the employee's attending physician. The program may be extended beyond thirty days to a maximum of ninety days based upon the recommendation of the employee's attending physician. An employee will continue to receive disability leave benefits for the hours the employee is unable to work while in an authorized transitional work program.

During the time an employee is in a transitional work program, the employee will be assigned duties which the employee is capable of performing based upon the recommendation of the employee's attending physician. An employee must participate in a transitional work program unless precluded from participation by the employee's attending physician. The employee will be paid at the same regular rate of pay as prior to receiving disability leave benefits except that the employee will receive any pay increases to which the employee is entitled for any hours in active work status.

The appointing authority shall reinstate the employee on a full-time basis to the employee's position,

provided the director has determined that the employee is no longer disabled and the employee's physician has released the employee to perform the duties of the position.

History: Eff 1-7-83; 4-29-94; 11-10-96; 7-1-97; 6-18-00, 10-29-06.

Rule promulgated under: RC Chapter 119.03.

Rule authorized by: [RC 124.09\(A\)](#).

Rule amplifies: [RC 124.385](#). [RC 119.032](#) Review Dates: 3-31-00, 6-18-05, 10-29-11.

Case Notes And OAG

(1997) Where denial of continued disability leave benefits is based on a medical determination, the decision of a third-party physician is binding: *Gross v. Ohio Dep't of Admin. Servs.*, (10th Dist.), No. 96APE05-646, 1997 Ohio App. LEXIS 586

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OAC Ann. 123:1-33-09

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123:1 Division of Human Resources.
Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-09 (2010)

123:1-33-09. Discipline of an employee receiving disability leave benefits.

(A) An employee receiving disability leave benefits may be disciplined pursuant to the provision of [section 124.34 of the Revised Code](#) or an applicable collective bargaining agreement. If the appointing authority conducts a pre-disciplinary investigatory interview that requires the participation of the employee, the employee may be granted administrative leave with pay for the duration of the interview. The employee shall not receive payment of disability leave benefits for those hours spent on administrative leave with pay, nor shall the hours count towards the employee's lifetime maximum benefit.

(B) If an employee is removed from service, disability leave benefits shall be discontinued as of the date the employee is removed from service. The appointing authority shall be responsible for notifying the director of any employee removed from service who is receiving disability benefits.

History: Eff 7-29-82; 7-26-02, 10-29-06.

Replaces: 123:1-33-10.

Rule promulgated under: [RC 119.03](#).

Rule authorized by: [RC 124.09\(A\)](#).

Rule amplifies: [RC 124.34](#), [124.385](#). [R.C. 119.032](#) Review Dates: 4-12-02, 04-26-07, 10-29-11.

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OAC Ann. 123:1-33-11

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123:1 Division of Human Resources.
Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-11 (2010)

123:1-33-11. Notice of disqualification from receipt of disability leave benefits.

(A) An employee's benefits will be terminated if the employee:

(1) Is removed from state service or certified against except as provided under rules [123:1-33-10](#) and [123:1-41-21](#) of the Administrative Code;

(2) Engages in any occupation for wage or profit except as provided in rule [123:1-33-07](#) of the Administrative Code;

(3) Engages in any act of fraud or misrepresentation involving the disability claim;

(4) Does not consult a state licensed practitioner for necessary medical care pursuant to paragraph (D) of rule [123:1-33-01](#) of the Administrative Code;

(5) Does not notify the appointing authority of a change of address pursuant to paragraph (F) of rule [123:1-33-02](#) of the Administrative Code;

(6) Is convicted of the commission of a felony; or

(7) Does not comply in a timely manner with state employees' retirement system pursuant to paragraph (D) of rule [123:1-33-02](#) of the Administrative Code.

(B) If any employee engages in any of the acts listed in paragraph (A) of this rule, the director will notify the employee of the intention to disqualify the employee from receiving disability leave benefits as of the date the employee first engaged in any of the prohibited acts. Such notice will contain the reason for the proposed termination of benefits. If the employee disagrees with the proposed termination, he or she may file an appeal in accordance with rule [123:1-33-04](#) of the Administrative Code.

History:Replaces: 123:1-33-15.

R.C. 119.032 review dates: 8/12/2005 and 08/12/2010.

Promulgated Under: Chapter 119.03.

Statutory Authority: 124.09(A).

Rule Amplifies: 124.385.

Prior Effective Dates: 7-29-82; 2-4-96; 11-10-96; 6-18-00, 10-29-06.

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OAC Ann. 123:1-33-12

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123:1 Division of Human Resources.
Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-12 (2010)

123:1-33-12. Claims filed before October 29, 2006.

This rule governs only claims for disability leave benefits that were filed before October 29, 2006. Claims for a subsequent related disability that occurs within six months of an employee's return to active work status and following a previously requested disability leave benefit that were filed before October 29, 2006 are not governed by this rule.

(A) Payment of disability leave benefits. Disability leave benefits shall be paid at seventy per cent of the employee's base rate of pay for the first six months, and fifty per cent of the employee's base rate of pay for up to an additional eighteen months.

For the purposes of determining disability leave benefits, an employee's base rate of pay shall be determined as of the date the employee becomes disabled. Disability leave benefits shall be paid at this rate throughout the disability claim. Disability leave benefits are payable based on the employee's regular payroll cycle.

(B) Payment of disability retirement benefits. If an employee is approved to receive disability retirement benefits, the employee shall receive the retirement benefit and a supplement payment that equals a percentage of the employee's base rate of pay and that, when added to the retirement benefit, equals no more than fifty per cent of the employee's base rate of pay for the remaining eighteen months of the disability leave benefit period. In order to receive the supplement payment the employee will be required to submit proof of the amount of the approved disability retirement benefit to the employee's appointing authority.

(C) Length of eligibility. An eligible employee shall be eligible to receive disability leave benefits until it is determined that the employee is no longer disabled, the effective date of retirement from a state employees' retirement system, or the employee has utilized a lifetime maximum as follows:

(1) Employees with less than eight years of service shall be eligible to receive disability leave benefits for a maximum of twenty-four months.

(2) Employees with eight years of service but less than sixteen years of service shall be eligible to

receive disability leave benefits for up to twenty-four months per disability not to exceed a total of thirty-six months.

(3) Employees with sixteen or more years of service shall be eligible to receive disability leave benefits for up to twenty-four months per disability not to exceed a total of forty-eight months.

(4) In no case shall an employee's disability leave benefits for a single claim exceed two years (seven hundred and thirty calendar days, seven hundred and thirty-one calendar days when a leap year is included) from the date the disability leave benefits commence.

(D) The utilization of disability leave before October 29, 2006 and the continuation of any disability leave on or after October 29, 2006 shall be counted toward the lifetime maximum limitation established in paragraph (C) of this rule.

(E) Unless otherwise specifically provided for in this rule, claims for disability leave benefits that were filed before October 29, 2006 shall be governed by rules [123:1-33-01](#) through [123:1-33-11](#) of the [Administrative Code](#).

History:R.C. 119.032 review dates: 8/12/2005 and 08/12/2010.

Promulgated Under: Chapter 119.03.

Statutory Authority: 124.09(A).

Rule Amplifies: 124.385.

Prior Effective Dates: 3-29-82; 1-7-83; 10-24-83; 4-5-84 (Emer.); 7-18-84 (Emer.); 9-10-84; 10-29-95; 11-10-96; 7-1-97 (Emer.); 9-28-97; 6-18-00, 10-29-06.

Case Notes And OAG

(1997) Where denial of continued disability leave benefits is based on a medical determination, the decision of a third-party physician is binding: *Gross v. Ohio Dep't of Admin. Servs.*, (10th Dist.), No. 96APE05-646, 1997 Ohio App. LEXIS 586.

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OAC Ann. 123:1-33-17

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123:1 Division of Human Resources.
Chapter 123:1-33 Disability Leave.

OAC Ann. 123:1-33-17 (2010)

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

(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 above-mentioned inappropriate behavior.

(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.

History:Replaces: 123:1-33-17.

Effective: 02/01/2010.

[R.C. 119.032](#) review dates: 02/01/2015.

Promulgated Under: 119.03.

Statutory Authority: 124.09.

Rule Amplifies: 124.381.

Prior Effective Dates: 2/4/96, 5/24/98, 11/14/00.

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