(rev. 07/01/03)

Human Resource Policy #340

**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**
PERSONNEL POLICIES AND PROCEDURES

Worker=s Compensation

**Policy: This policy is to be followed in the event that an employee sustains an occupational injury or disease. Supervisors and employees are to follow the outlined procedures. It is the intent of this department to establish a proactive approach to returning an injured worker to duty as quickly as circumstances will allow. An early return to work of an injured worker may include transitional light duty task assignments until a release to regular employment is medically appropriate. Some of the procedures such as record keeping may be done internally within the facilities and not according to this policy.**

**Procedure:**

Workers should be advised during orientation of this policy and given a ANew Employee Safety Packet@ that explains the safety program and the commitment to early return to work options. The new employee should sign the last page of the packet mentioned above and a copy returned to the Human Resources Office in Helena. Also, a separate copy of this policy will be given to each employee at the time of any absence due to an industrial accident or disease.

**A. Reporting Accident or Injury.**

1. Employee responsibilities: An employee will immediately report any accident or injury to the appropriate supervisor, and complete his/her portion of the *FIRST REPORT of occupational injury or occupational disease* form. The employee=s portion of the First Report form will be completed prior to the end of the shift on which the incident occurred. The supervisor may complete this form if the employee is unable to do so. The accident or injury may also be reported directly to State Fund by calling 1-800-243-9121.

2. Supervisor responsibilities: The supervisor will conduct an investigation of the incident and complete the supervisor=s portion of the First Report form, preferably during the shift on which the incident occurred but no later than three days following the incident. The supervisor will secure all necessary information and signatures, and then submit the form to the Human Resources Office. If the form is submitted to the facilities Human Resources Office, a copy will be forwarded to the Human Resources Office in Helena.

3. If there is a potential for lost work time, the supervisor must also complete the APotential Time Loss@ form and if the injury precludes the employee from returning to work, a ASubsequent Injury@ form must be completed. This form is available from Human Resources.

4. Human Resources responsibilities: Human Resources will complete the wages section of the First Report form, help the supervisor set up a tracking file for the injured employee and send the form to the State Fund.

**B. Workers Compensation Coverage:** Coverage is provided subject to the following limitations:

1. Coverage begins when an employee reports for work and enters the premises of the employing facility or program.

2. Coverage ends when an employee leaves the employer=s premises at the end of the employee=s work period.

3. Coverage is not extended while the employee is in transit to or from the employer=s premises, unless the employee is engaged in employer business as sanctioned by work assignment or by special assignment by an appropriate management official.

4. Coverage is only extended to an employee while in an authorized compensable status.

5. An employee whose meal period is within the employee=s eight hour work day, shall remain covered by the worker=s compensation, so long as the employee is determined to be in a paid status by the employer and /or is required by the employer to remain on the employer=s premises during the meal period.

Exception: An employee who remains on premises during the meal period, and engages in any non work activity such as using state-owned recreational facilities for personal use does so at his or her own risk as such activity will not be covered by worker=s compensation insurance.

6. State housing: An employee living on the employer=s premises will not be provided worker=s compensation coverage while in off-duty status.

7. On-call time will be covered during periods when an employee is required to actually provide service.

**C. Medical Intervention:**

1. If, in the opinion of the supervisor and/or employee, medical intervention is apparent or needed, the supervisor should release the employee from further duty and arrange for the appropriate medical attention. The injured employee should be encouraged to contact his/her preferred medical provider for treatment and sign the AMedical Information Release@ form. Supervisors, with the consent of the employee may accompany the injured employee to the medical treatment provider, when practical.

**D. Subsequent Injury Fund:**

1. This fund is utilized if an employee is injured resulting in a permanent impairment documented by a physician and that impairment is a substantial obstacle to returning to work. The following steps will be taken:

2. a. During the period of a permanent disability and prior to a return to work, the supervisor will assist the employee, with his or her approval, in completing the AApplication Form for Certification as Vocational Impaired Subsequent Injury Fund.@ Completion will include obtaining the portion of the form dealing with medical certification.

   b. The supervisor will forward the completed form to the Human Resources Office.

   c. Human Resources will submit the completed form, including the medical portion, to the Department of Labor Employment Relations Division prior to the employee returning to work or if that is not possible, prior to the 60th day of employment after the employee returns to work.

   d. The Employment Relations Division will analyze the application and respond to the employee with a copy to the agency whether or not the employee is certified.

   e. If the employee is certified, and the employee has returned or later returns to work, the employer must, prior to the 60th day after the date the employee returns to work and before an injury occurs, submit a ACertificate of Employment Form@ to the Employment Relations Division.

   f. If subsequently, the certified employee receives another compensable injury, the

employer must notify State Fund of the Subsequent Injury Fund certification.

**E. Compensation for Lost Time**

1. Less than four days or 32.0 hours: An employee is not eligible for worker=s compensation for lost wage benefits. With employer approval, an employee may use any accrued paid leave time.

2. More than Four days or 32.0 hours: From day five or from the 33rd hour of wage loss, the employee may be eligible for worker=s compensation wage benefits. Disability wage benefits are not retroactive to the date of injury--the four-day/32 hour period is a qualifying period.

3. Accrued sick leave and worker=s compensation wage benefits cannot be paid concurrently, unless the practice is established through a collective bargaining agreement.

4. Accrued annual leave may be used concurrently with worker=s compensation wage benefits, providing the request is submitted by the employee, at the time of injury.

5. When an employee becomes eligible for worker=s compensation wage benefits, the supervisor will have the employee fill out the necessary forms for family medical leave if the employee is eligible for FMLA. FMLA and worker=s compensation leave will run concurrently.

**F. Requesting a Leave of Absence**

1. An employee may request a leave of absence without pay due to an accident covered by worker=s compensation. The employee must:

a. Submit the request through the appropriate supervisor in writing prior to the beginning of such leave, if possible;

b. Where medical treatment is required, the employee must additionally submit a statement from the treating medical

practitioner, stating the nature of the injury and estimated period of disability; and

c. Failure to request a leave of absence without pay as indicated, will result in the employee being placed in unauthorized leave status, and may subject the employee to disciplinary action up to and including termination. A period of one or more calendar days of unauthorized leave, may result in a determination that the employee have voluntarily terminated, and has forfeited all rights to reinstatement.

**G. Required Physician Visits:**

1. All injured workers receiving worker=s compensation benefits must see a physician once a month or until maximum medical improvement is reached. With employee consent, the supervisor or other employer designee may attend physician exams with the employee as deemed appropriate and necessary. The purpose of the supervisor or designee being in attendance is to provide information to the physician about the essential functions of the position and any reasonable accommodations needed to return the employee to work. It is expected that this will facilitate an early return to work.

2. The employee must obtain a APhysician=s Report of Injury@ form, which must be completed by the physician at the time of each visit and returned to the supervisor.

3. If the supervisor does not accompany the employee to the physician visit, the employee is required to have a personal conference with the supervisor after each visit, at which time the physician=s report form will be turned in. At this conference, the status of the employee and potential for return to work will be reviewed.

4. Failure to attend physician visits and maintain the required contact with the supervisor can result in disciplinary action up to and including termination. Such failure will also be reported to the claims examiner. Telephone calls or visits from family members do not fulfill this obligation unless the injury is so severe that the employee is unable to maintain contact.

**H. Early Return to Work**

1. It is the intent of the department to work closely with injured workers and their health care providers to provide for a return to regular work as soon as possible.

2. The ADPHHS Time Loss/Potential Time Loss Injury@ form must be completed with the employee who is injured and has potential for time loss as soon as possible after the injury.

3. The supervisor will refer the injured employee to a Managed Care Organization or physician of the employee=s choice. The employee will take a APhysicians Report of Injury@ form to this appointment for the physician to complete stating the type of restriction, prognosis and length of time the restriction will be in effect. This report will be given to the appropriate supervisor.

4. If a release does not occur on the first visit, the supervisor should maintain contact with the injured employee and the State Fund claim adjuster on a weekly basis to establish an anticipated return-to-work date.

5. If the employee is released to work Alight duty@ with restrictions, focus on modifying the employee=s existing job, if possible. Inform the injured employee in writing that this is considered only a temporary job with a beginning and ending date. This may include reducing the number of hours worked in a shift, assisting the injured employee, and allowing time to visit the health care provider. Light duty involving

transitional work assignments as approved by the medical provider, will be used for up to three weeks from the date of the physicians notice. At the end of three weeks, the situation will be reviewed to see how the employee is progressing and to decide if adjustments need to be made in the transitional duty. The supervisor should contact the claims examiner for further information regarding the disability. The claims examiner will contact the medical provider to see if the disability is temporary or permanent. A number of people should be involved in this process including but not limited to the immediate supervisor, injured employee, medical care provider, safety and health person, department heads, union representatives(if applicable) and the Human Resources Office.

6. Light duty work may be extended if the injured employee continues to show improvement each week. Traditional light duty assignment will not ordinarily last longer than 35 days but be adaptable enough to change weekly as the worker=s condition improves and may be continued up to 90 days. However, if the transition period is extended, it must be in writing with a copy sent to the Human Resources Office in Helena.

7. The rate of pay for workers involved in light duty should be the same as their regular rate or as close as possible. If it is not possible to keep the injured worker=s regular wage, State Fund will supplement the difference.

**I. Reinstatement into Time of Injury Position:**

1. Labor agreements: Where a labor agreement exists having specific language, reinstatement shall be in compliance with the agreement.

2. Employees not covered by a labor agreement will be given reinstatement rights back into the position held at the time of injury in accordance with the following:

a. Probationary employees---have no reinstatement right.

b. After achieving permanent status, an employee has a right to reinstatement back into his or her time of injury position for a protection period of twelve weeks in accordance with FMLA explained in section K of this policy.

c. After the period of protection as provided above, the employee will be given extended preference for available positions in accordance with the law, MCA 39-71-317, which reads: AWhen an injured worker is capable of returning to work within two years from the date of the injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant, if the position is consistent with the worker=s physical condition and vocational abilities.@ (MCA 39-71-317)

3. Brief returns of less than 30 calendar days, from which arises subsequent need for the employee to again leave work due to reoccurrence of symptoms from the initial injury will not negate prior protection already used.

4. Time spent in light duty assignments will not effect the protection period, but will be considered as non-work time for such purpose.

5. Prior to returning to regular duty, the employee must provide a signed release from a physician stating that there are no restrictions which will disable the employee from providing full service in the position into which he or she is returning. If reasonable accommodations are required for the employee to perform all essential functions, this should also be included in the statement.

6. The Americans with Disabilities Act and the Family Medical Leave Act should be referenced when reviewing this section.

**J. Americans with Disabilities Act:**

1. It is the intent of the department to return medically stable, injured, or ill employees back to work in compliance with the act. The department will reasonably accommodate workers with disabilities except where the accommodation would create an undue hardship or a direct threat to the department, it=s employees, or clients.

**K. Family Medical Leave Act**

1. The Family Medical Leave Act authorizes an eligible employee up to 12 work weeks of leave during any 12 month period when an employee is unable to work because of a serious health condition. To be eligible for FMLA benefits, an employee must have worked for the state at least 12 months. (does not have to be consecutive) and have worked at least 1,040 hours over the previous 12 months.

2. Physician=s certificate: For those employees eligible for a leave under FMLA, and who are injured on the job, the employer will use the physicians certificate for the resultant leave of absence, and concurrently credit such leave toward the 12 weeks of FMLA leave due the employee.

3. The employer is required to maintain group health insurance coverage for an employee on FMLA leave, when such insurance was provided before the leave was taken. Health insurance must be provided on the same terms as if the employee continued to work. Employees are responsible for their share of health insurance premiums and must make arrangements with the employer to pay their share of the premium while on leave.

4. The employee should be aware that retirement benefits and any other elected deductions (i.e., credit union payments, union dues, etc.) do not

come out of the wage compensation from a work related accident. These payments are the responsibility of the injured employee for continuing coverage.

This policy shall be followed unless it conflicts with negotiated labor contracts, which shall take precedence to the applicable extent.