

## **CHAPTER 16**

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### **WORKERS' COMPENSATION**

#### **16.1 Virginia Workers' Compensation Act**

The County provides Workers' Compensation insurance coverage at no cost to all regular, temporary, and seasonal employees, both full and part time, as required by the Virginia Workers' Compensation Act (VWCA) as administered by the Virginia Workers' Compensation Commission (VWCC).

#### **16.2 Workers' Compensation Benefits**

Eligibility for benefits will be determined as provided by the VWCA. Employees who experience an occupational injury or illness arising out of and in the course of their employment with the County and who require medical, surgical, or hospital treatment for the condition, may be eligible for benefits. Benefits generally include but are not limited to paid medical expenses, time-lost benefits after the first 7 calendar days of incapacity (need not be consecutive) for temporary or permanent partial disability, rehabilitation services, and/or death benefits.

#### **16.3 Payment of Medical Expenses**

Payment of authorized medical expenses associated with a compensable occupational injury or illness, as prescribed by the Act, shall be made by the County's Workers' Compensation Administrator. Neither employees nor the employee's group health insurance should be billed for these expenses. Employees are encouraged to seek the Department of Human Resources assistance with processing such medical expenses.

#### **16.4 Payment for Time Out of Work**

- A. Eligibility for compensation for time lost from work shall be determined in accordance with the Act by the County's Workers' Compensation Administrator.
- B. The Act provides compensation during incapacity at 66 2/3 percent of the employee's gross average weekly salary, including overtime, as determined by VWCC, beginning the 8th calendar day of incapacity (need not be consecutive).

Under the Act, initially an employee is not entitled to Workers' Compensation for the first 7 calendar days of incapacity (need not be consecutive) resulting from an occupational injury or illness. This is referred to as a waiting period. County policy does permit, if selected by the employee, the use of accumulated Sick, Annual and or Compensatory Leave to maintain his average weekly salary for the first 7 calendar day waiting period of incapacity. Should incapacity exceed the first 7 calendar day waiting period, policy permits an employee to offset the potential loss of wages. However, total wages received through Workers'

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Compensation and payment of accumulated leave shall not exceed an employee's pre-injury net base salary prior to all deductions. Paid leave shall not be advanced. Employees are advised to maintain a sufficient leave balance to avoid Leave Without Pay during the first 7 calendar day waiting period of incapacity.

Should the incapacity continue for more than 21 calendar days (need not be consecutive), the Workers' Compensation Administrator generally authorizes issuance of compensation for the first 7 calendar days waiting period at 66 2/3 percent of the employee's gross average weekly salary, to include overtime.

## **16.5 Employees' Responsibility**

- A. The employee shall report every occupational injury or illness, regardless of severity, to his department director or his designee. If an occupational injury or illness is sustained after regular business hours (emergency situations or other), the department director or his designee is to be notified at the beginning of the next business day following the occupational injury or illness. Failure to report an occupational injury or illness promptly may result in loss of compensation, payment of medical expenses, and/or other benefits.
- B. The injured or ill employee shall be responsible for reporting the incident to his department director or his designee within 24 hours using the appropriate forms provided for this purpose by the Department of Human Resources. Under extraordinary circumstances if incapacity interferes with the completion of appropriate forms by the employee (life-threatening or serious emergency), the department director or his designee becomes responsible for the processing of forms and obtaining an employee statement at a more convenient time. Appropriate forms may be obtained from the department director, immediate supervisor, or the Department of Human Resources.
- C. If medical treatment is deemed necessary, the employee must select a physician from the County's authorized "Panel of Physicians". In the event of a life-threatening or serious emergency, an employee may seek treatment at the nearest medical facility. However, any continued medical treatment must be received by a County authorized panel physician.
- D. The employee shall advise the medical care provider that all medical expenses, including prescriptions, are to be submitted under Workers' Compensation and are not to be billed to the employee's group health insurance or to the employee personally. The injured or ill employee shall contact the Department of Human Resources should any medical expenses resulting from a compensable occupational injury or illness be improperly billed or processed.
- E. The employee is encouraged to cooperate with the County's Workers' Compensation Administrator during the continued handling of the claim including supplying additional information as necessary. The injured or ill employee shall

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keep all medical appointments, medical evaluations, physical therapy or other related treatments resulting from an occupational injury or illness and accept treatment from the attending physician. Failure to do so may result in denial of compensation, medical expenses and/or other benefits.

- F. Should permanent disability result, the employee may be eligible to apply for disability retirement under the Virginia Retirement System and/or Social Security.

#### **16.6 Directors'/Constitutional Officers'/Supervisors' Responsibility**

- A. For safety purposes and to prevent future occurrences, the department director or his designee shall determine the causes of all occupational injuries and illnesses and take any necessary corrective action.
- B. The department director or his designee shall provide transportation to appropriate medical treatment for the injured or ill employees. If practical, the department director or his designee shall accompany the employee. Should the occupational injury or illness be life threatening or severe, emergency medical personnel shall be called immediately.
- C. The department director or his designee shall provide the employee with the appropriate forms issued for this purpose by the Department of Human Resources.
- D. The department director or his designee shall coordinate issuance of Family Medical Leave Act (FMLA), concurrent with worker's compensation, policy guidelines and required paperwork in instances when loss of time or intermittent leave is initiated. Notification of issuance should be forwarded to the Department of Human Resources for regulatory purposes.
- E. The department director or his designee shall forward, within 48 hours, all appropriate forms for an occupational injury or illness to the Department of Human Resources. The Director of Human Resources shall be notified immediately (at home if after hours) in the event of a fatality.
- F. The department director or his designee shall review the appropriate forms for completeness and provide all required information. If the seriousness of the occupational injury or illness prevents the employee from doing so, the department director or his designee shall complete the report and obtain a written statement from the employee at a more convenient time.
- G. The department director or his designee is encouraged to maintain contact with the injured or ill employee during his incapacity. This will provide the department director or his designee information regarding the employee's progress and will also serve to reassure the employee that he is valued.

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- H. The department director or his designee is encouraged to cooperate with the County's Workers' Compensation Administrator during continued handling of claims and consult with the Department of Human Resources in implementing modified or light duty (if applicable) when recommended by the attending physician. Although modified or light duty may not readily be available within the employee's department/division, opportunities may exist within other departments. The department directors shall advise the Department of Human Resources immediately of an employee's return to work or significant change in work status.
  - I. A department director or his designee should ensure the payroll timekeeper properly records leave used for absences, medical appointments, medical evaluations, physical therapy or other related treatments associated with an occupational injury or illness appropriately on timesheets.

### **16.7 Department of Human Resources Responsibility**

- A. Develop and manage the County's Workers' Compensation Program.
- B. It shall be the Department of Human Resources responsibility to provide appropriate forms, policies and procedures to facilitate timely and accurate reporting of all occupational injuries or illnesses.
- C. The Department of Human Resources shall review all medical expenses and reports and submit them to the Workers' Compensation Administrator for payment. Whether or not medical expenses are compensable under VWCA is determined by the County's Workers' Compensation Administrator.
- D. The Department of Human Resources is responsible for monitoring the progress and investigation of all Workers' Compensation claims and, where necessary, provide status reports to County agencies.
- E. The Department of Human Resources shall monitor the employee's medical status by maintaining contact with the County's Workers' Compensation Administrator, the attending physician and the employee.
- F. The Department of Human Resources shall answer questions, act as liaison between County agencies, employees and the County's Workers' Compensation Administrator and provide other services as may be deemed necessary.
- G. It is the responsibility of the Department of Human Resources to achieve program communication by training agencies and employees, initiating safety orientation and the distribution and posting of program literature.

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- H. In consultation with departments, it shall be the responsibility of the Department of Human Resources to assist in the implementation of modified or light duty (if applicable) when recommended by the attending physician.
  - I. The Department of Human Resources shall work in conjunction with the Department of Finance in cases of Workers' Compensation claims specifically pertaining to lost time or intermittent leave for payroll purposes.
  - J. The Department of Human Resources shall file all necessary reports required by law for occupational injuries and illnesses.
  - K. The Department of Human Resources shall maintain files and reports for occupational injuries or illnesses separate from the personal County files.

### **16.8 Workers' Compensation Claim Denied**

Except in certain cases, Virginia Workers' Compensation law states that in order to be eligible for Workers' Compensation benefits, an employee must prove that the occupational injury or illness was caused by his employment.

- A. If a Workers' Compensation claim is denied there are other courses of action that may be pursued.

An employee may forward the denial letter along with the proper forms to his group health insurance carrier. In most situations, group health insurers will pay medical expenses denied by Workers' Compensation Administrators. Alternatively, the employee may file a request for a hearing with the Virginia Workers' Compensation Commission.

### **16.9 Appeal**

An employee has the right to appeal denial of his claim to the Virginia Workers' Compensation Commission. If, upon final appeal, the claim is deemed compensable, under the County's policy an employee may choose to reestablish leave balances for 33 1/3 of time used during that period, and repayment of compensation paid at 66 2/3 will be reimbursed by the employee, in full, to the County. The Act requires that employees obtain appeal forms only from Virginia Workers' Compensation Commission office in Richmond. For detailed information, please contact the Department of Human Resources or the Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, (804) 367- 8600, (877) 664-2566 (Toll Free).

### **16.10 False Claims**

Any employee who falsifies an occupational injury or illness or collaborates in making a false claim of an occupational injury or illness is committing a crime. The employee will be subject to the full penalties provided by the law, as well as disciplinary action to include possible termination from employment. If convicted, the employee may also be subject to civil penalties

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including recovery by the County's Workers' Compensation Administrator of any amount paid in compensation, medical expenses, indemnity and/or other benefits.

### **16.11 Failure to Report**

Failure of an employee to report an occupational injury or illness within 48 hours to the Department Director may result in a denial. Failure to file a written report of occupational injury or illness within 30 days, as required by the law, may jeopardize eligibility for Workers' Compensation benefits. Department Directors or their designee should ensure that all employee occupational injuries or illnesses are reported as soon as possible after being notified of the incident. Department Directors or their designee should not attempt to decide if an occupational injury or illness is covered by the Workers' Compensation Act. This responsibility rests with the County's Workers' Compensation Administrator.

### **16.12 Medical Treatment**

#### **A. "Panel of Physicians"**

To ensure physician availability and optimum medical care for injured or ill employees, the County has chosen to authorize a "Panel of Physicians". If an employer selected panel physician is no longer available to take new patients due to retirement, or is unavailable to the employee for any other reason, the employee may select a physician of his choice.

If medical treatment is necessary, the employee shall notify the department director or his designee as soon as practical. Once notified a list of the authorized "Panel of Physicians" shall be promptly provided for the employee to select treatment.

In the event of a life-threatening emergency, employees may seek treatment at the nearest medical facility. Any continued treatment must be received by a County authorized panel physician.

Once a panel physician has been selected, the employee is obligated to keep all medical appointments, medical evaluations, physical therapy or other related treatments, to include referrals recommended by the attending physician.

Failure to seek treatment from an authorized panel physician, to accept medical treatment, or to keep appointments may result in loss of payment of medical expenses, suspension of compensation payments and/or other benefits as long as refusal continues.

All authorized medical expenses deemed to be related to a compensable occupational injury or illness shall be paid by the County's Workers' Compensation Administrator unless otherwise provided by law. All medical expenses, including reimbursement to the employee for out-of-pocket costs incurred, shall be submitted to the Department of Human Resources for forwarding to the County's Workers' Compensation Administrator.

