

## Chapter ER 28

### WORKER'S COMPENSATION AND HAZARDOUS DUTY INJURY PAY

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**Note:** Chapter Pers 28 was renumbered Chapter ER-Pers 28, effective March 1, 1983.

**ER 28.01 Statutory authority.** Subject to the provisions of ch. 102, Stats., an employe suffering an injury while performing service growing out of and incidental to his or her employment, is entitled to worker's compensation. Certain employes injured while performing hazardous duties and who are unable to work may continue to receive their full pay, as provided under s. 230.36, Stats., while unable to work as a result of the injury or until termination of their employment.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, December, 1976, No. 252, eff. 1-1-77; am., Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 28.01, Register, May, 1988, No. 389, eff. 6-1-88.

**ER 28.015 Definition of employe.** For purposes of hazardous duty injury pay under s. 230.36, Stats., "employe" has the meaning set forth in s. ER 1.02 (10), but excludes any limited term employe under s. 230.26, Stats.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466.

**ER 28.02 Effect of worker's compensation. (1)** During the period an employe is absent from work due to injury from state employment and is awaiting a determination under ch. 102, Stats., the employe personally or through his or her representative may elect to:

- (a) Use accrued paid leave credits, e.g., sick leave, vacation, holiday, compensatory time, to cover the absence from work and consequent loss of earnings, or
- (b) Request leave without pay and await payment of worker's compensation.

**(2)** The employe shall give written notification to the employing agency of the elected manner of coverage for such absence before the end of the pay period in which the absence occurs. If the employe fails to specify how the absence should be covered, the absence shall be charged against the available leave options as determined by the agency, which may be later amended upon the employe's request.

**(3)** In instances where accrued leave with pay credits have been used to cover an absence which is later found compensable, the appointing authority shall, if requested by the employe, provide leave without pay on a day for day basis, with such leave to be taken in accordance with s. ER 18.14 (2) (a).

**(4)** If the employe elects to await worker's compensation and the claim is later found non-compensable, accrued leave with pay credits may be used for the absence.

**(5)** An employe may elect to use accrued paid leave credits to supplement worker's compensation benefits under ch. 102, Stats., to the extent that the employe shall receive the equivalent of the employe's base pay as defined under s. ER 1.02 (5). Notice of such election by the employe shall be reported in the same manner provided for in sub. (2).

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1) (b), (4) and (5), Register, December, 1976, No. 252, eff. 1-1-77; am. (1) (intro.) and (a), (2), (3) and (5), Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 28.02 and am. (2) and (5); correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466.

**ER 28.03 Concurrent benefits.** An employe may be entitled to concurrent benefits, i.e. worker's compensation for medical treatment expenses and benefits for time lost from work provided under s. 230.36, Stats., in which case the appropriate provisions of this chapter apply. Under no circumstances shall an employe receive more than his or her basic rate of pay for the job in which the employe was performing at the time of injury, exclusive of reimbursable medical expenses.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, December, 1976, No. 252, eff. 1-1-77; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 28.03 and am. Register, May, 1988, No. 389, eff. 6-1-88.

**ER 28.04 Injury while on hazardous duty. (1)** Application for benefits under s. 230.36, Stats., shall be made by the employe or the employe's representative to the appointing authority within 14 calendar days from the day of injury, on forms prescribed by the secretary. In extenuating circumstances, at the discretion of the secretary, the time limit for application for benefits may be waived. When medical verification is required for final approval of the claim, failure by a physician to provide verification within the 14 days shall not be the basis for denial. The application shall contain sufficient and factual information to indicate the nature and extent of the injury or illness, the circumstances surrounding its occurrence and the qualifying duties on which the application is based.

**(2)** Within 14 days after receipt of the claim the appointing authority shall notify the employe of the decision to authorize or deny the claim and file a copy of the notice of action with the secretary.

**(3)** Upon approval of the employe's claim, the employe shall be paid from the date of inability to work until: a physician certifies the employe is able to return to work; the employe's status is changed due to worker's compensation, disability, retirement, or new work assignments; the employe is terminated; or other appropriate status change occurs. Periodic reports on the status of the employe's disability and anticipated date of return to work shall be required by the appointing authority.

**(4)** An employe on leave with pay under this section shall be entitled to applicable pay adjustments applied to the pay schedule and range the employe's class is assigned to, consideration for within range pay progression if eligible and personal holidays. However, personal holidays shall lapse if the employe does not return to full work status by the end of the calendar year.

**(5)** Employes on approved leave with pay under this section shall earn annual leave and sick leave credits for the duration of such leave. Employes shall be denied legal holiday credits for holidays which occur during the period of absence from work while on an approved leave with pay under this section. Annual leave credits earned prior to the date of injury may be carried over pursuant to s. ER 18.02 (6).

**(6)** An employe may elect to use accrued paid leave credits to supplement payments under s. 230.36, Stats., to the extent that the employe shall receive the equivalent of the employe's base pay as defined under s. ER 1.02 (6). Notice of such election by the employe shall be reported as provided in sub. (2).

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (4), Register, September, 1975, No. 237, eff. 10-1-75; am. (4), Register, December, 1976, No. 252,

eff. 1-1-77; am. (1) to (4) and r. and recr. (5), Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 28.04 and am. (1) to (3) and (5), cr. (6), Register, May, 1988, No. 389, eff. 6-1-88.

**ER 28.05 Medical examinations.** (1) Employees on leave with pay shall submit to such physical or medical examinations as may be required by the appointing authority to determine the extent of or continuation of disability and inability to work. Such examinations shall be at the expense of the agency and performed by physicians selected by the agency. A complete report indicating the nature and extent of disability and prognosis for a reasonable return to duty and date of such return shall be submitted to the agency.

(2) Refusal by the employe to submit to examinations ordered by the appointing authority or medical treatment ordered by the examining physician shall constitute grounds for disciplinary action.

(3) Based upon the information provided by the medical reports the appointing authority shall determine the extent to which leave with pay shall be granted or take action to terminate employment.

(4) Upon return to full work status, an employe's benefits under this section shall cease, providing the employe's attending physician has released the employe from further medical treatment. In the event that the employe is able to return to full work status but further medical treatment is required for the sustained injury, benefits shall continue to be granted to cover the treatment

time providing the attending physician has made a prior determination that such treatment is necessary for full recovery.

(5) When an employe suffers further aggravation of an injury for which benefits have ended, the employe may, upon recommendation of the attending physician, have such benefit resume for the period of treatment recommended, provided such aggravation meets the qualifying provisions of s. 230.36, Stats.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1), (4) and (5), Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 28.05, Register, May, 1988, No. 389, eff. 6-1-88.

**ER 28.06 Appeal rights.** If an employe's claim for leave with pay due to hazardous duty injury is denied by the appointing authority, the employe may appeal the action to the commission by filing a written request within 30 calendar days after being notified of such decision or within 30 calendar days from the effective date of the decision, whichever is later. Failure to file the appeal within the specified time limit shall bar the employe from any future claims to s. 230.36, Stats., benefits related to the particular injury incurred.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am., Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 28.06, Register, May, 1988, No. 389, eff. 6-1-88.

**ER 28.07 Subrogation rights.** See s. 230.36 (5), Stats.

**History:** Cr. Register, December, 1976, No. 252, eff. 1-1-77; am., Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 28.07, Register, May, 1988, No. 389, eff. 6-1-88.