

**SECTION 18. SALARY CONTINUATION BENEFIT FOR WORKERS'
COMPENSATION DISABILITY LEAVE**

(As amended June 30, 2015)

18-1. Definitions.

- (a) **Salary Continuation Benefit:** Pay provided by the County instead of Workers' Compensation benefits paid to an employee during the period of Workers' Compensation Disability Leave.
- (b) **Workers' Compensation Disability Leave (Disability Leave):** The period of time the employee is:
 - (1) temporarily disabled by accidental injury or illness resulting directly from performance of the employee's County work; and
 - (2) (A) unable to perform normal duties, as determined by the Workers' Compensation Commission or by the County using Workers' Compensation Commission guidelines; or
 - (B) unable to perform alternative duties as determined by the Employee Medical Examiner.

18-2. Salary Continuation Benefit

- (a) The CAO must ensure that an employee's wage or salary is continued (salary continuation benefit) during the period of disability leave.
- (b) The County's payment of the employee's biweekly salary must:
 - (1) include special pay differentials but not shift pay differentials or overtime, and will be subject to all taxes and deductions and will be in the same amount and appear the same, and be paid in the same schedule as the normal wage or salary payment;
 - (2) continue for a maximum of 18 months if the employee uses the County-established network of physicians, Pharmacy Benefit Management (PBM) program, and participates in the Nurse Case Management (NCM) programs; or
 - (3) continue for a maximum of 12 months if the employee chooses to receive care from a physician who is not included in the County-established network of physicians or refuses participation in the PBM or NCM programs.

- (c) An employee who is medically able to perform an alternative or light duty work assignment is not eligible for the salary continuation benefit if the employee:
 - (1) performs an alternative or light duty work assignment offered by the County;
 - (2) refuses an alternative or light duty work assignment offered by the County; or
 - (3) elects to use FMLA leave instead of performing an alternative or light duty assignment.
- (d) After the employee's salary continuation benefit ends, the employee may use accrued sick leave, annual leave, PTO, or compensatory time to make up the difference between the Workers' Compensation benefit and the employee's gross pay (supplemental amount) as described in (b)(1) above. The supplemental amount is subject to all taxes and deductions. A priority of deductions, as determined by the Department of Finance, will apply if the supplemental amount is insufficient to cover all deductions. Deductions not taken from the supplemental amount will be billed to the employee as determined by the Department of Finance.
- (f) If the CAO denies an employee's application for disability retirement, the employee may file an appeal of the CAO's decision with the Disability Arbitration Board under Section 33-43(1) of the County Code. The CAO must not pay salary continuation benefit payments to the employee while the appeal is pending.

18-3. Disability leave as FMLA leave.

- (a) A supervisor must designate Disability Leave as FMLA leave, even if the employee did not request FMLA leave, if:
 - (1) the leave is taken for an FMLA-qualifying reason described in Section 19 of these Regulations;
 - (2) the employee is eligible for FMLA leave; and
 - (3) the employee has not already exhausted the FMLA leave entitlement for the leave year.
- (b) An employee on Disability Leave who is eligible to use FMLA leave and who is medically capable of performing an alternative or light duty work assignment may

choose to:

- (1) take an alternative or light duty work assignment offered by the County; or
- (2) use FMLA leave.

18-4. Managed care for job-related injury or illness. The County must provide an employee who has incurred a job-related injury or illness the opportunity, and communicate such opportunity and impact under Section 18-5, to obtain medical care through a County-provided managed care program in which:

- (a) network physicians provide initial medical care to an employee at no cost, even if the employee's claim is later denied;
- (b) the managed care provider must:
 - (1) coordinate benefits with group health providers; and
 - (2) review the employee's utilization of the treatment plan.

18-5. Selection and use of physician and impact on eligibility period for salary continuation benefit. An employee may select a physician to provide medical treatment for the employee's job-related illness or injury.

- (a) If the employee selects a physician from the network of physicians established under the County-provided managed care program and participates in the Pharmacy Benefit Management (PBM) and the Nurse Case Management (NCM) program, the employee may receive salary continuation benefits for a maximum of 18 months.
- (b) If the employee selects a physician who is not included in the County-established network of physicians, or refuses to participate in the PBM or NCM programs, the employee may receive salary continuation benefits for a maximum of 12 months.

18-6. Subrogation for reimbursement of salary continuation benefit payments.

- (a) If an employee receives salary continuation benefits as a result of a job-related injury or illness caused by a third party who is legally liable for the injury or illness, the County has the right of subrogation against the third party.
- (b) If the legally liable third party reimburses the employee in whole or part for the value of the salary continuation benefits, the employee must promptly reimburse the County for the salary continuation benefit, less the attorney's fees the employee incurred to obtain the reimbursement, according to current workers'

compensation regulations.

- (c) If the employee does not reimburse the County after receiving reimbursement from a third party, the County may initiate disciplinary action against the employee, up to and including dismissal.

18-7. Refund of salary continuation benefit overpayment.

- (a) An employee must promptly refund to the County a salary continuation benefit payment to which the employee was not entitled.
- (b) If the employee does not refund the payment to the County, the County may initiate disciplinary action against the employee, up to and including dismissal.
- (c) If the employee does not refund the salary continuation benefit payment to the County, the County may also consider the payment to be a debt owed to the County.

18-8. Appeal of salary continuation benefit decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County’s regulations and policies on salary continuation benefit may file a grievance under Section 34 of these Regulations.

Editor’s note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to disability leave
Firefighter/Rescuer	10, Disability Leave 11, Family Medical Leave 19, Wages 48, Job Sharing Program
OPT/SLT	17, Disability Leave 34, Safety and Health 45, Family and Medical Leave

Police	11, Chronic Incapacity 17, Disability Leave and Injury on the Job 18, Annual Leave 20, Leave Without Pay 27, Secondary Employment 35, Vehicles 55, Job Sharing Program 59, Family Medical Leave Act
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