

ARTICLE 38 WORK-INCURRED INJURY AND ILLNESS

A. GENERAL PROVISIONS

This Article defines the application of sick leave and vacation for employees who are unable to work due to a work-incurred injury or illness compensable under the California Workers' Compensation Act, and provides extended sick leave benefits for such employees when sick leave is exhausted and employees are still unable to work because of such injury or illness.

1. An employee unable to perform the normal duties of their job even after reasonable accommodations due to a work-incurred illness or injury compensable under the California Workers' Compensation Act may be granted leave for the duration of a verified disability but not to exceed twelve (12) months or a predetermined date of separation, whichever comes earlier, unless additional leave is otherwise required by law.
2. Work-Incurred Injury or Illness Leave runs concurrently with Family Medical Leave (FML) for a qualified work incurred injury or illness.
3. An approved leave of absence for work-incurred illnesses or injuries shall not be considered a break in service.
4. Employees who are unable to work due to a work-incurred injury or illness compensable under the California Workers' Compensation Act are eligible to use accrued sick leave and vacation as provided below. When sick leave is exhausted and when employees are still unable to work because of such illness or injury, employees may use extended sick leave or leave without pay as provided below.
5. An employee shall notify their supervisor of the need for leave for a work-incurred injury or illness, or any extension of such leave, as soon as practicable after the need for such leave or extension is known. This notification shall include written medical certification of the need for such leave or extension, and the anticipated return to work date.

B. EXTENSIONS OF WORK-INCURRED INJURY OR ILLNESS LEAVE

In the event an employee requires an extension to their work-incurred injury or illness leave, they shall provide the University with a statement from their Primary Treating Physician or licensed health care practitioner of the need for the extension and the anticipated return to work date. The employee will provide such a statement as soon as practicable prior to the date the employee was previously scheduled to return to work.

C. RETURN FROM WORK-INCURRED INJURY OR ILLNESS LEAVE

1. Prior to returning to work, an employee granted a work-incurred injury or illness leave must provide the University with a statement from their Primary Treating Physician or licensed health care practitioner of the employee's ability to return to work. The employee will provide such a statement as soon as practicable prior to the date the employee was previously scheduled to return to work. If the health care practitioner's return to work statement specifies restrictions, the University will implement accommodations in accordance with Article 23 – Reasonable Accommodation.

2. If the University eliminates the position during the leave, the employee shall be afforded the same considerations which would have been afforded had that employee been actively working when the position was eliminated.

D. SUPPLEMENTAL SICK LEAVE AND VACATION

1. Employees shall be permitted to use sick leave and vacation to supplement temporary disability payments received under the California Workers' Compensation Act.
2. Sick leave and vacation payments shall be the difference between the amount payable to the employee under the Workers' Compensation Act and the employee's regular salary. The additional payment made to an employee to provide the employee with full salary prior to receipt of disability payments shall be deemed an advance temporary disability payment within the Workers' Compensation Act.
3. The University shall provide advance temporary disability payment in accordance with California law. This additional payment made to an employee to provide the employee with full salary prior to receipt of disability payments shall be deemed an advance temporary disability payment within the Workers' Compensation Act. An employee who receives advance temporary disability payment shall reimburse the University for such payment. The reimbursement is used to restore proportionate sick leave and vacation credit as appropriate.

E. EXTENDED SICK LEAVE

1. An employee who is receiving temporary disability payments and who has exhausted all accrued sick leave shall receive extended sick leave payments from the University in an amount equal to the difference between the payments from Workers' Compensation and eighty percent (80%) of the employee's basic salary plus any shift differential which the employee would have received.
2. If such an employee returns to part-time University duties, the earnings plus any temporary disability payments, if less than eighty percent (80%) of the employee's basic salary plus shift differential, shall be supplemented to eighty percent (80%) of the employee's basic salary by extended sick leave payments, provided the employee continues to be medically authorized for Workers' Compensation temporary disability.
3. Total extended sick leave payments shall not exceed twenty-six (26) weeks for any one injury or illness or one hundred percent (100%) of original pay plus shift differentials.
4. An eligible employee who does not have sufficient accrued sick leave to cover the three (3) calendar days waiting period for receiving Workers' Compensation payments shall receive extended sick leave payment to cover any part of the waiting period not covered by sick leave. Payment shall be made only after determination that the injury or illness is compensable under Workers' Compensation.

F. EFFECT ON PAY STATUS

1. An employee who is receiving temporary disability payments and supplemental sick leave, extended sick leave, vacation leave as described in Section D above, or leave without pay

is considered on regular pay status for purposes of application of provisions of this Agreement, except the completion of the employee's probationary period.

2. Sick leave and vacation accrued during Extended Sick Leave in Section E above is credited to the employee only upon return to work. However, if an employee separates without returning to work, the employee shall be paid for vacation accrued during the period the employee received extended sick leave payment.
3. An employee on leave without pay and receiving temporary disability payments accrues sick leave and vacation on the same basis as if regularly employed, but such accrual is credited to the employee only upon return to work. If an employee separates without returning to work, no payment shall be made for such vacation credit.

G. SEPARATION

An employee shall not use vacation, sick leave, or extended sick leave to supplement Workers' Compensation payments beyond a predetermined date of separation or leave without pay. Any vacation credit remaining on the date of separation shall be paid on a lump-sum basis.

H. LIGHT DUTY

The University shall modify duties consistent with documented medical restrictions for employees who have experienced work-related injuries. Employees whose work-related injuries cause them to become qualified employees with permanent disabilities may also be eligible for reasonable accommodation in accordance with Article 23 – Reasonable Accommodation. Nothing in this provision waives the employer's duties and/or the employee's rights to reasonable accommodations under the California Fair Employment and Housing Act (FEHA), the Americans with Disabilities Act of 1990, or Article 23 – Reasonable Accommodation.