



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

MEMO

Date: April 6, 2016

To: State Agencies, School Districts, Department of Education, Delaware State University, Delaware Technical & Community College

From: Debra Lawhead, AIC, CPIW, Insurance Coverage Administrator

RE: Salary Supplement Application

There have been a number of questions on the application of the salary supplemental pay statute.

A review of the application of the supplemental pay statute, 29 *Del. C.* § 5933(d) in light of a recent amendment enacted as part of the 2005 general appropriation bill, 75 *Del. Laws c.* 89, § 30 has been completed.

Two questions were asked:

(1) Does the 2005 amendment limit an injured State employee to receipt of the state supplemental pay for one 3 month period from the date of qualification for Workers' Compensation benefits? The answer to this question is **YES** based on the limiting language in the new provision to the statute.

(2) A related question is whether a State employee can only receive the state supplemental benefit for consecutive days while receiving worker's compensation benefits? The answer to this question is **NO** based on the plain wording of the statute which contains no requirement that the state salary benefit be received during only one period of consecutive days.

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To further clarify these issues, I have included several scenarios based on the application of the code and legislative amendment.

First scenario: Date of loss: 4-1-16. Employee is out of work for 14 days. Returns back to work for 2 weeks and goes out again for 20 days. The first period of time (14 days) is covered by the salary supplement. The second period (20 days) is also covered because it is within the 3 month period established by the date compensation began. In other words, any lost time from work that is covered by Workers' Compensation within that 3 month period (April 1 to July 1) would qualify that employee to receive the salary supplement.

Second scenario: Date of loss: 4-1-16. Employee is out of work for 14 days and then returns to work. The employee then goes out for surgery on July 2. In this scenario the first period of time (14 days) is covered by the salary supplement. The second period of time which begins on July 2 would not be covered since it is beyond the 3 month period (April 1 to July 1) established by the first date compensation began.

Third scenario: Date of Loss: 4-1-16. Employee is out of work for 14 days. Returns to work for 2 weeks and goes out again for 20 days. Returns to work and then goes out again on June 15 and remains out until September 1. First period (14 days) covered by salary supplement. Second period (20 days) is also covered by salary supplement. Third period the salary supplement would end on July 1.

Fourth scenario: Date of Loss: 4-1-16. The employee did not initially miss time from work and does not go out for surgery until 7-15-2016. The 3 month salary supplement period is from July 15, 2016 to October 15, 2016.

Fifth scenario: Date of Loss: 4-1-16. Employee is out of work for 14 days. This period of time (14 days) is covered by the salary supplement. The employee returns to work but then claims a re-occurrence of the original injury a year later on & misses time from work. If the claim is handled by the WC carrier under the same claim, then the employee is **not** entitled to the 3 month salary supplement because they already received it prior.

- **Employees who sustain injuries while operating a state owned vehicle in the course & scope of their State employment are entitled to both Personal Injury Protection (PIP) and Workers' Compensation benefits. Therefore, the salary supplement will also apply to these employees.**
- **29 Del. C. § 5933(c) outlines which employees are entitled to a 12 month supplement period vs the 3 month supplement period.**