



PERSONNEL CABINET

Ernie Fletcher
Governor

200 Fair Oaks Lane, 5th Floor
Frankfort, Kentucky 40601
Phone (502) 564-7430
Fax (502) 564-7603
<http://personnel.ky.gov>

Brian J. Crall
Secretary

MEMORANDUM

PERSONNEL MEMO 07-04

TO: Constitutional Officers
Cabinet Secretaries
Agency Heads
Personnel Executives

FROM: Brian J. Crall, Secretary 

DATE: March 2, 2007

SUBJECT: Workers' Compensation

Pursuant to 101 KAR 2:140 Section 4, state employees who are injured on the job are permitted to assign their workers' compensation benefits back to the state so that they may be paid their sick leave and maintain their full salary while off work. A form ("Workers' Compensation Sick Leave Form"), which is available on the Personnel Cabinet's website, has been generated for use by all state agencies which reduces to writing an employee's agreement to utilize their sick leave and to assign their workers' compensation benefits back to the state. As part of this benefit, pursuant to KRS 342.730, employees may not receive temporary total disability benefits in excess of 100% of the state average weekly wage.

It has come to the attention of the Personnel Cabinet that the above-referenced form is not uniformly utilized and that, in some instances, employees are being "double paid" i.e., the employee is cashing the workers' compensation benefits check(s) and also being paid their sick leave by the employing agency. Furthermore, upon learning that an employee is being double paid, some agencies are attempting to either (1) deduct monies from the affected employee's paycheck(s) or (2) withdrawing compensatory leave time earned by the employee to recoup the improperly paid funds.

To alleviate any confusion that may exist with regard to this employee benefit, the Personnel Cabinet recommends that the following steps be taken to ensure that employees do not receive payments in excess of 100% of their salary:

1. Upon receipt of the employee's workers' compensation benefits check from the Personnel Cabinet, please meet with the employee and discuss the option of assigning the check to the state as provided by 101 KAR 2:140 Section 4;
2. Should the employee refuse to assign their workers' compensation benefits back to the state and/or refuse to execute the Workers' Compensation Sick Leave Form, please promptly return the check to the Personnel Cabinet's Workers' Compensation Branch with a note advising the Branch that the employee's salary has been continued. Please also contact your agency's payroll office and advise them to continue paying the employee's salary utilizing whatever leave balance is available; and

3. The Personnel Cabinet will continue to forward the employee's workers' compensation benefits checks to the agency. Once an employee has exhausted their leave balances, rather than returning the check to the Personnel Cabinet, release the workers' compensation benefits check to the employee so that there is no delay in payment of benefits and immediately advise the Personnel Cabinet Workers' Compensation Branch of this action in writing.

In the event that an employee is double paid, agencies have the following options to recoup the overpayment:

1. If the employee agrees, the agency may deduct an agreed upon amount from the employee's salary until the entire amount of the overpayment is recouped;
2. If the employee refuses to agree to a voluntary salary reduction, the agency may seek a court ordered garnishment in the county where the employee works or lives pursuant to state law; or
3. If the employee resigns or is terminated, the agency may deduct the entire amount of the overpayment from an employee's annual leave pay-out. Under no circumstance may an agency withdraw funds from an employees compensatory time balance without the explicit permission of the employee in writing.

NOTE: The Personnel Cabinet may not authorize an agency to deduct monies from an employee's salary without the employee's express written consent. Thank you for your cooperation.