

# Operational Procedures for Leave Without Pay (LWOP) Program

## **AUTHORITY/BACKGROUND**

Chapter 1600 of the Maryland-National Capital Park and Planning Commission's (Commission) Merit System Rules and Regulations (MSR&R) provides guidance on the Commission's Leave Status Programs, including leave without pay (LWOP). LWOP is an approved absence from duty in a non-pay status. A merit system employee may be granted LWOP under certain specific conditions with prior approval of both the Department Head and Human Resources Director.

### **I. REFERENCES**

- A. Merit System Rules and Regulations, chapter 1600;
- B. Municipal and County Government Employees Organization (MCGEO) Collective Bargaining Agreement;
- C. Fraternal Order of Police (FOP) Collective Bargaining Agreement.

### **II. APPLICATION**

- A. These procedures are applicable to situations where:
  1. An employee's approved long term disability (LTD) claim ends because:
    - a. The employee no longer meets the definition of "Disabled";
    - b. The employee exhausts the maximum disability benefit period;
    - c. Proof of continuing disability is not received.
  2. An employee's LTD claim is denied;
  3. An employee on approved worker's compensation does not apply for LTD in a timely manner;
  4. An employee's claim for use of the Sick Leave Bank (SLB) is denied;
  5. An employee is out of sick leave and other leave, but is not a member of the SLB.
- B. These procedures are not applicable to situations where:
  1. An employee is on an approved LWOP not related to illness or injury;
  2. LWOP is reported on an employee's time card, but the employee is in an active status, i.e. not coded L7, L8 or L9.

### **III. PROCEDURES**

#### **A. An approved LTD claim ends:**

1. The employee notifies the Health & Benefits (H&B) office that he/she will be out of work for more than 120 days due to an illness or injury (work related or non-work related);
2. The H&B office gives the employee instructions on how to apply for LTD benefits;
3. The disability carrier notifies the employee and the H&B office of the approval of the claim;
4. The H&B office notifies the employee's Department to place the employee on LTD, by changing the employee's status code to L5 and to waive the employee's reinstatement rights to their current position (if applicable) if not already done; (Rights to reinstatement should be waived on the 61<sup>st</sup> day after 60 work days of being on LWOP. Check the collective bargaining agreements for MCGEO and FOP as the period for waiving reinstatement rights may differ from 60 days.)
5. The disability carrier notifies the Health & Benefits (H&B) office that an employee's approved LTD claim has ended;

6. The H&B office notifies the employee's Department to place the employee on LWOP, status code L8 if the employee has health benefits through the Commission or L9 if the employee has no benefits;
7. The employee has 180 days to appeal a denial of LTD benefits;
8. If the employee is appealing the denial, health and welfare benefits will continue up to the 180<sup>th</sup> day of LWOP. At the end of the 180<sup>th</sup> day (6 months) the H&B office will terminate the employee's health and welfare benefits and information on coverage continuation under the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be sent to the employee;
9. If the employee is not appealing the LTD denial, the H&B office sends a letter to the employee requesting updated medical information to determine if he/she is able to return to work. This information must be received within 30 days of receipt of the letter or the employee must contact the H&B office within 30 days if circumstance precludes receiving the information within the 30 day timeframe. In the same letter the employee is notified that benefits will end after being on a LWOP status for six months, or before, if they are not able to return to work;
10. If no medical information is returned from the employee, the H&B office sends a recommendation to the employee's Department to terminate the employee;
11. If information is received indicating that the employee is able to return to work, the H&B office sends the employee to the Commission's occupational health carrier for a Return to Work exam;
12. If they are cleared to return to work a job search within the Commission is conducted by Recruitment & Selection for a 90 day period, beginning no later than one week after the employee is cleared to return to work;
13. If no job is found at the end of 90 days, Recruitment and Selection makes the recommendation to the Department to terminate the employee. The H&B office is copied on the notification;
14. The Department sends a letter of intent to terminate within a week of receiving the recommendation to terminate.

***B. An LTD claim is denied:***

1. The disability carrier notifies the Health & Benefits (H&B) office that an employee's LTD claim has been denied;
2. The H&B office notifies the employee's Department to place the employee on LWOP, status code L8 if the employee has health benefits through the Commission or L9 if the employee has no benefits and to waive the employee's reinstatement rights to their current position (if applicable) if not already done; (Rights to reinstatement should be waived on the 61<sup>st</sup> day after 60 work days of being on LWOP. Check the collective bargaining agreements for MCGEO and FOP as the period for waiving reinstatement rights may differ from 60 days.);
3. The employee has 180 days to appeal a denial of LTD benefits;
4. If the employee is appealing the denial, health and welfare benefits will continue up to the 180<sup>th</sup> day of LWOP. At the end of the 180<sup>th</sup> day (6 months) the H&B office will terminate the employee's health and welfare benefits and information on coverage continuation under the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be sent to the employee;
5. If the denial is reversed the employee is placed back on LTD, status code L5;
6. If the denial is upheld, the employee may appeal a second time within the 180 days;
7. If the employee is not appealing the LTD denial, the H&B office sends a letter to the employee requesting updated medical information to determine if he/she is able to return to work. This information must be received within 30 days of receipt of the letter or the employee must contact the H&B office within 30 days if circumstance precludes receiving the information within

- the 30 day timeframe. In the same letter the employee is notified that benefits will end after being on a LWOP status for six months, or before, if they are not able to return to work;
8. If no medical information is returned from the employee, the H&B office sends a recommendation to the employee's Department to terminate the employee;
  9. If information is received indicating that the employee is able to return to work, the H&B office sends the employee to the Commission's occupational health carrier for a Return to Work exam. If they are cleared to return to work a job search within the Commission is conducted by Recruitment & Selection for a 90 day period, beginning no later than one week after the employee is cleared to return to work;
  10. If no job is found at the end of 90 days, Recruitment and Selection makes the recommendation to the Department to terminate the employee. The H&B office is copied on the notification;
  11. The Department drafts a letter of intent to terminate within a week of receiving the recommendation to terminate and sends to the H&B office to confirm dates of disability;
  12. The Department sends the finalized letter of intent to terminate to the employee.

**C. An employee on approved worker's compensation does not apply for LTD within 60 days of disability:**

1. The Risk Management office notifies the employee on approved worker's compensation disability leave (100% of salary paid by Commission) that he/she must apply for LTD within 60 days of disability or disability leave benefits will end (H&B office is copied);
2. The Risk Management office notifies the H&B office that the employee did not apply for LTD within the 60 day period and notifies the Department to place the employee on LWOP, status code L8 if the employee has health benefits through the Commission or L9 if the employee has no benefits and to waive the employee's reinstatement rights to their current position (if applicable) if not already done; (Rights to reinstatement should be waived on the 61<sup>st</sup> day after 60 work days of being on LWOP. Check the collective bargaining agreements for MCGEO and FOP as the period for waiving reinstatement rights may differ from 60 days.);
3. The employee is then paid directly by the worker's compensation carrier;
4. Health and welfare benefits will continue up to the 180<sup>th</sup> day of LWOP. At the end of the 180<sup>th</sup> day (6 months) the H&B office will terminate the employee's health and welfare benefits and information on coverage continuation under the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be sent to the employee;
5. If information is received indicating that the employee is able to return to work, the H&B office sends the employee to the Commission's occupational health carrier for a Return to Work exam. If they are cleared to return to work a job search within the Commission is conducted by Recruitment & Selection for a 90 day period, beginning no later than one week after the employee is cleared to return to work;
6. If no medical information is returned from the employee, the H&B office sends a recommendation to the employee's Department to terminate the employee;
7. If no job is found at the end of 90 days, Recruitment and Selection makes the recommendation to the Department to terminate the employee. The H&B office is copied on the notification;
8. The Department drafts a letter of intent to terminate within a week of receiving the recommendation to terminate and sends to the H&B office to confirm dates of disability;
9. The Department sends the finalized letter of intent to terminate to the employee.

***D. Claim for Use of Sick Leave Bank (SLB) is denied:***

1. The employee notifies the Health & Benefits office of the need to apply for use of the Sick Leave Bank;
2. The H&B office gives the employee instructions on how to apply for SLB benefits;
3. The disability carrier notifies the employee and the H&B office of the approval or denial of the SLB claim;
4. If the claim is approved, the H&B office notifies the employee's Department and Payroll of the approval and to begin coding time cards with SLB hours only after the employee has exhausted all leave;
5. If the claim is denied, the H&B office notifies the employee's Department to place the employee on LWOP, by changing the employee's status code to L8 if they are enrolled in health benefits or L9 if they are not enrolled in benefits and to waive the employee's reinstatement rights to their current position (if applicable) if not already done;
6. The employee has 180 days to appeal a denial of LTD benefits;
7. If the employee is appealing the denial, health and welfare benefits will continue up to the 180<sup>th</sup> day of LWOP. At the end of the 180<sup>th</sup> day (6 months) the H&B office will terminate the employee's health and welfare benefits and information on coverage continuation under the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be sent to the employee;
8. If the denial is reversed the employee is paid from the SLB;
9. If the denial is upheld, the employee may appeal a second time within the 180 days;
10. If the employee is not appealing the SLB denial, the H&B office sends a letter to the employee requesting updated medical information to determine if he/she is able to return to work. This information must be received within 30 days of receipt of the letter or the employee must contact the H&B office within 30 days if circumstance precludes receiving the information within the 30 day timeframe. In the same letter the employee is notified that benefits will end after being on a LWOP status for six months, or before, if they are not able to return to work;
11. If no medical information is returned from the employee, the H&B office sends a recommendation to the employee's Department to terminate the employee;
12. If information is received indicating that the employee is able to return to work, the H&B office sends the employee to the Commission's occupational health carrier for a Return to Work exam. If they are cleared to return to work a job search within the Commission is conducted by Recruitment & Selection for a 90 day period, beginning no later than one week after the employee is cleared to return to work;
13. If no job is found at the end of 90 days, Recruitment and Selection makes the recommendation to the Department to terminate the employee. The H&B office is copied on the notification;
14. The Department drafts a letter of intent to terminate within a week of receiving the recommendation to terminate and sends to the H&B office to confirm dates of disability;
15. The Department sends the finalized letter of intent to terminate to the employee.

***E. Employee exhausts all leave and is not a member of the SLB:***

1. The employee notifies the Department of the continuing need to be out from work due to illness or injury, but has exhausted all leave;
2. The Department requests an estimated return to work date and requests periodic updated information from employee to substantiate continued absence from work;
3. The employee's Department places the employee on LWOP, by changing the employee's status code to L8 if they are enrolled in health benefits or L9 if they are not enrolled in benefits;

4. The Department waives the employee's reinstatement rights to their current position after being on LWOP for 60 work days (Rights to reinstatement should be waived on the 61<sup>st</sup> day after 60 work days of being on LWOP. Check the collective bargaining agreements for MCGEO and FOP as the period for waiving reinstatement rights may differ from 60 days);
5. If no medical information is received from the employee, the Department should proceed with letter of intent to terminate (this is considered Absence With Out Leave (AWOL));
6. If information is received indicating that the employee is able to return to work and it has been less than 30 days absence, the employee is returned to work and placed back in an active status;
7. If the absence is 30 days or longer, the H&B office sends the employee to the Commission's occupational health carrier for a Return to Work exam;
8. If the employee is cleared to return to work a job and his/her position is not waived the employee is reinstated to an active status and to current position;
9. If the position is waived a job search within the Commission is conducted by Recruitment & Selection for a 90 day period, beginning no later than one week after the employee is cleared to return to work;
10. If no job is found at the end of 90 days, Recruitment and Selection makes the recommendation to the Department to terminate the employee. The H&B office is copied on the notification;
11. The Department drafts a letter of intent to terminate within a week of receiving the recommendation to terminate and sends to the H&B office to confirm dates of disability;
12. The Department sends the finalized letter of intent to terminate to the employee.

## **ROLES AND RESPONSIBILITIES**

### ***1. The employee is responsible for:***

- a) Notifying the Health & Benefits (H&B) office of the need to apply for SLB and/or LTD due to an illness or injury (work related or non-work related). This can be done via email or telephone call;
- b) Request use of sick or other leave from supervisor for illness/injury, prior to SLB or LTD;
- c) Applying directly to the disability carrier for SLB and/or LTD benefits;
- d) Sending medical information to the disability carrier to determine eligibility for SLB and/or LTD benefits;
- e) Paying the employee share of the cost of health and welfare benefits through the Commission's direct pay program;
- f) Notifying the H&B office of the intent to appeal a denial of an SLB and/or LTD claim;
- g) Sending updated medical information to the H&B office or supervisor to determine ability to return or not return to work during use of leave and after SLB/LTD benefits have ended;
- h) Undergoing a return to work exam at the Commission's occupational health services provider;
- i) Cooperating with the Recruitment & Selection office in the 90 days job search.

### ***2. The Health & Benefits Office of DHRM is responsible for:***

- a) Instructing the employee on how to apply for SLB/LTD benefits;
- b) Notifying the HR Coordinator at the employee's location to initiate a Personnel Action (PA) to place the employee on LTD, status code L5, if the claim was approved by the disability carrier. A copy to the Department's HR Manager, Payroll, HR Records and the Employees' Retirement System (ERS));
- c) Notifying the HR Coordinator of the employee's Department to initiate a PA to place the employee on LWOP if the claim was denied, using status code L8, if the employee has health benefits through

the Commission or L9 if the employee has no benefits. A copy is sent to the Department's HR Manager, Payroll, HR Records and ERS;

- d) Reminding the HR Coordinator to waive the employee's right to reinstatement if not already done at the time the employee is placed on LTD or after 60 work days on LWOP;
- e) Sending a letter to the employee acknowledging approval or denial of the LTD claim, providing information about benefits while on LTD or LWOP, including payment for those benefits through direct pay and the subsequent termination of those benefits after being on LWOP for six (6) months;
- f) Notifying Recruitment and Selection, the day after the employee's return to work exam, to reach out to the employee who is able to return to work, in order to conduct a job search;
- g) Sending a letter to the employee at the beginning of the 5<sup>th</sup> month of LWOP advising that benefits will end the last day of the following month;
- h) Terminating the employee's benefits at the end of the 6 month period;
- i) Producing a monthly report of employees on LWOP for review and sending it to Department HR managers for follow up for waiver of reinstatement rights or separation;
- j) Scheduling quarterly meetings to discuss employees on LWOP.

**3. The HR Coordinator at field location is responsible for:**

- a) Preparing a PA to change the employee's status to L5, L8 or L9, as directed by the H&B office;
- b) Preparing the PA to waive the employee's rights to reinstatement;
- c) Changing the employee's status to active status upon return to work;
- d) Preparing a PA to terminate employment.

**4. The HR Records of DHRM is responsible for:**

- a) Changing employee's status to L5, L8 or L9 in the HRIS system per the PA received from the field HR coordinator;
- b) Waiving the employee's rights to reinstatement in the HRIS system per PA received from the field HR coordinator;
- c) Returning an employee back to active status in the HRIS system per PA received from HR coordinator;
- d) Terminating the employee's employment in the HRIS system per the PA received from the field HR coordinator.

**5. The Risk Management office is responsible for:**

- a) Coordinating worker's compensation claims with third party administrator;
- b) Notifying HR coordinator to place an employee on disability leave, status code L7 following approval of worker's compensation claim;
- c) Notifying the HR coordinator to place an employee on LWOP effective the 61<sup>st</sup> day of disability if the employee did not apply for LTD with the 60 days of disability (H&B office copied);
- d) Scheduling return to work exams for employees on worker's compensation;
- e) Notifying the HR coordinator to return an employee to an active status work.

**6. The Recruitment and Selection Office of DHRM is responsible for:**

- a) Conducting a job search within the Commission for 90 days, within a week after the employee is released by occupational health provider to return to work;
- b) Notifying the Department of the results of the job search (copy to H&B);
- c) Recommending to the Department termination of employee if no job is found.

**7. The Payroll Office is responsible for:**

- a) Running a bi-weekly report of employees with LWOP hours on their time cards;
- b) Sending the report to the Health & Benefits and Employee and Labor Relations offices of DHRM on a bi-weekly basis.

**8. The Employee and Labor Relations Office of DHRM is responsible for:**

- a) Reviewing the LWOP reports for employees who have a certain amount of LWOP hours (TBD) per pay period or a continuing pattern of intermittent LWOP hours (TBD), but not in a LWOP status code L8 or L9;
- b) Referring cases to the HR Director for consultation with Department Heads on approval of LWOP.

**9. The HR Director and Department Head, in consultation with each other, are responsible for:**

- a) Deciding on whether to waive an employee's rights to reinstatement after being on LWOP for 60 work days;
- b) Approving requests for LWOP that exceed a certain threshold (Threshold TBD);
- c) Consulting with each other on recommendations for terminations with extenuating circumstances.