Compensating Employees on Workers’ Comp Leave

By Laura Kushner and Tracie Chamberlin

Issues surrounding the payment of wages and benefits for an employee on leave due to a work-related injury can be complex and confusing. This article addresses some of the legal requirements, practical concerns, and typical city practices when compensating an employee on workers’ compensation leave.

Payment of wages. Minnesota workers’ comp law stipulates that a city can provide payment of additional benefits to employees receiving workers’ comp benefits. The payment can be made from accumulated sick leave, vacation or compensatory time or not charged to any leave category at all, just simply paid by the city. However, the total of workers’ comp and any additional payment cannot be greater than the employee’s gross weekly wage at the time of the injury.

Workers’ comp “lost wages” benefits are paid at two-thirds the employee’s regular gross wages on the date of injury. Since the benefits are not taxable to the employee, the employee should be close to his or her regular take-home pay even without any effort by the city to make up the difference.

Many cities make up the difference between a workers’ comp lost-wage payment to an employee and the employee’s normal gross weekly wages by allowing the use of accrued vacation or sick leave. While cities are not required to follow this practice, once the city agrees to it in a personnel policy or union contract, the city should follow the practice until the policy or contract is changed. Some cities choose not to follow this practice because it provides a disincentive for employees to return to work.

Another typical practice, especially while waiting for workers’ comp benefits to begin, is to charge the employee’s entire weekly wage to accrued vacation or sick leave. The advantage to the employee is that he or she is never “out of pocket” while waiting for workers’ comp benefits to be processed and checks to be issued. The city then requires the employee to give the workers’ comp check to the city or to write a personal check for the same amount. The better practice is to have the employee write the city a personal check for the same amount, which ensures there is a clear record of the employee receiving and cashing the check, as well as a clear record of the employee repaying the city.

If the city engages in any practice of paying out benefits while an employee is on workers’ comp leave, the city should make any necessary adjustments so the workers’ comp payment is not treated as taxable income for the employee. Adjustments must be made to the employee’s compensation—either on a pay-period basis or at year-end. If adjustments are not made, the city may end up paying employer taxes like Medicare/Social Security and making inappropriate Public Employees Retirement Association (PERA) contributions. The employee, too, could end up with payroll deductions for taxes and PERA that are not required and not appropriate. The PERA employer handbook states that workers’ comp payments are not eligible for PERA contributions.

When the city pays the employee his or her full wages through paid leave, and the employee later receives workers’ comp benefits and repays the city, the city must credit the employee’s vacation or sick leave. The city must make the necessary adjustments in the employee’s wages to ensure the workers’ comp payments are not taxable or subject to PERA contributions, but that the paid leave is subject to all appropriate withholdings and deductions.

Some cities have a union contract or personnel policy provision requiring the city to make up the difference between a workers’ comp payment and the employee’s normal take-home pay by paying it (i.e., there is no deduction from accrued vacation or sick leave). Often this is referred to in the union contract as “Injury on Duty Pay.” In this case, the city needs to ensure the Injury on Duty Pay, taken together with the workers’ comp payment, does not exceed the employee’s normal gross weekly wages and that the workers’ comp payment is not treated as taxable income or subject to PERA contributions.

Payment of benefits. The workers’ comp law does not require cities to continue their contribution toward insurance (health, dental, life, etc.) while an employee is on workers’ comp leave. If the workers’ comp injury qualifies under the Family and Medical Leave Act (FMLA), however, the city must continue its contribution toward group health benefits during the time covered by FMLA (up to 12 weeks).

If the city’s policy is to continue the city’s insurance contributions for employees out on other types of unpaid leave, it should do so for employees out on workers’ comp leave. Otherwise, the city could be open to discrimination or retaliation claims under the workers’ comp law.

For more information. For assistance with this or other HR and benefits issues, call the League’s HR & Benefits staff at (800-925-1122) or (651) 281-1200.

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