


A Day in the Life of Risk Management and Claims

Understanding Post Employment Separation Anxiety



2010 TASB Risk Management Fund Members' Conference
Presented by: Stacy Hobbs, April Mabry, Paul Taylor, and Sarah Holguin

Workers' Compensation

TASB RISK MANAGEMENT FUND


Medical Benefits

- Resignation or termination *generally* do not affect eligibility
- Paid for lifetime pertaining to compensable injury
 - Texas Labor Code, Section 408.021
- Not payable when treatment is for unrelated, "ordinary diseases of life"

TASB RISK MANAGEMENT FUND


Income Benefits

- Temporary Income Benefits (TIBs)
 - Paid when claimant can demonstrate "Disability"
 - What stops TIBs?
 - Full duty release or Maximum Medical Improvement (MMI)
 - Modified duty job offer at full pay




Work Status at Time of Employment Separation

- Full or modified duty?
- Full duty = no disability and no TIBs
- Modified duty, TIBs may or may not be due
 - Resignation: Appeals Panel Decisions (APD) 041917 and 021818
 - Termination: APD 032971 and 032767




Modified Duty and Income Benefits

- What is a Bona Fide Offer of Employment?
 - A written offer with requirements stipulated by DWC Rule 129.6




What happens to TIBs after Retirement?

- Voluntary retirement is evidence that disability has ended. Therefore, no TIBs owed per APD 021818.
- However, if injured worker can prove compensable injury is still **a cause** of inability to earn pre-injury wages, disability exists and TIBs still owed APD 022499.




Other Types of Income Benefits

- Impairment Income Benefits (IIBs)
 - Paid regardless of employment status
 - Based on MMI and percentage of Whole Body Impairment rated by the treating or a designated doctor
 - Each % = 3 weeks owed
 - Can be disputed ... dispute goes to a Designated Doctor




Filing the DWC-6: Supplemental Report of Injury

- Must be filed **within ten days** after separation from employment (resignation or termination)
- Determines amount and duration of TIBs
- Prevent double-dipping
- If injured worker resigns on modified duty, goes to work for another employer and obeys restrictions, TIBs will be calculated on pre- vs. post-injury earnings.




Leaves and Absences




Leaves and Absences

- Workers' compensation is not a "leave" benefit.
- TIBs are not the same as paid leave benefits paid by the district as wages.




Benefits Associated with Leave

- Job protection or right to be reinstated to a same or equivalent position
- Payment of the district's contribution to health insurance premiums providing during:
 - Family and medical leave (FML)
 - Paid leave




Types of Leave

<p>Paid Leave</p> <ul style="list-style-type: none"> • Full-day <ul style="list-style-type: none"> – State and local sick/personal – Sick leave pools/banks • Partial-day <ul style="list-style-type: none"> – Extended leave – Assault leave 	<p>Unpaid Leave</p> <ul style="list-style-type: none"> • Family and Medical Leave (FML) • Temporary disability • Leave of absence (LOA)
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Employee Must Choose to Use Paid Leave

- Non-offset—Employee can choose to use paid leave and receive partial or no TIBs
- Offset—Employee can choose to receive paid leave in partial day increments and receive TIBs



Family and Medical Leave (FML)

- Workers' compensation absences may be designated as FML
- FML provides benefits not provided by WC
 - District continues it's contribution to health insurance premiums
 - Employee has job restoration rights to same or equivalent position



FML and Modified Duty

- Employee is permitted, but not required to accept a modified-duty assignment under the FMLA
- Time spent performing modified-duty assignment does not count toward employee's leave entitlement



Job Restoration and FML


- Employee retains right to restoration while in modified-duty assignment
 - Right to restoration expires at the end of the 12-month FML year
- If employee is not working, job restoration rights cease when 12 weeks of FML is exhausted

Best Practice: Establish and enforce time limits for modified-duty assignments.



Districts without Modified-Duty Program

- Employee released to return to work with restrictions:
 - Reinstatement under the FMLA or temporary disability leave is not required if the employee cannot perform the essential job functions
 - If disability exists, reasonable accommodation may be required
 - Additional unpaid leave
 - Other accommodation



FML—Part-Time or Reduced-Schedule Leave

- Reinstatement is required when employee can perform the essential job functions
- Intermittent or reduced-schedule leave must be granted if there is a medical necessity
- Time off counts toward 12 weeks of FML




Unemployment Compensation




The Basics of UC

- Costs up to \$10,556 per claim
- ISDs reimburse TWC \$ for \$
- Disqualifications
 - Quit without good cause
 - Fired for misconduct
- Two levels of appeal




A Conflict of Laws:
Education Code and TUCA

- Probationary contract employees
- Resignations in lieu of discharge
- Notice of proposed non-renewal
- Non-certified employees
- "At will" employees




Reasonable Assurance

- Summer and holiday claims
- Signed at hire and each Spring
- Not a guarantee of continued work
- Failure to sign = voluntary quit
- Will not stop sub claims during the school term



Backdoor Disqualifications

- Workers' Compensation payments
- Excessive earnings
 - Summer payments do not affect UC
- TRS payments
- Work refusal
- Able and available for work




Background Checks, Criminal Acts, and Poor Publicity

- Background check results
 - Falsification of application
- Criminal Acts
 - Prove misconduct
 - Related to work
- Poor publicity as misconduct
 - Show harm to district




Settlements and Non-Disclosure Agreements

- May not require or accept UC waiver
 - Criminal penalties
- Non-disclosure agreements exempt TWC responses



Liability

- References to TASB coverage are for illustrative purposes only
- Disclaimer – do not rely on any information in this presentation as legal advice



Lawsuits Filed by Employees

- Age Discrimination
- Labor Code Violations
- Sex Discrimination
- Fair Labor Standards Act
- 14th Amendment Violations
- ADA Violations
- Racial Discrimination
- Wrongful Termination
- Whistle Blowers Act




“Wrongful Termination”

- Americans With Disability Act
- Texas Labor Code
- Title VII
- Age Discrimination in Employment Act




Americans with Disabilities Act

- What is it?
- Who is protected?
- Prohibited employment practices



Retaliation: Texas Labor Codes

- Texas Labor Code, Section 451.001
 - Retaliation for filing a claim
- Texas Labor Code, Section 451.002
 - Retaliation for hiring an attorney to represent the injured worker




Discrimination

- Title VII
 - Hostile Environment
 - Retaliation
- Age Discrimination in Employment
 - Age disputes



Whistleblower Claims

- Chapter 554 of the Texas Government Code
 - Violation must be reported to someone in a position of authority



Summary

- Understand that income benefits may still be due after resignation or termination
- Determine if leave benefits apply to a workers' compensation absence
- Document performance issues to support any non-renewal or termination
- Develop policies and review with staff regularly
- Be aware and informed when making employment decisions (they can lead to claims or conflict)
- Be proactive
- React quickly

