

**CITY OF CHESAPEAKE, VIRGINIA**

**NUMBER: 2.19**

**ADMINISTRATIVE REGULATION 2.19**

**EFFECTIVE DATE: 10/30/2019**

**SUBJECT: DEPARTMENT OF FINANCE**

**SUPERSEDES: 01/28/2004**

**WORKERS' COMPENSATION  
SUPPLEMENTAL BENEFITS FOR  
CERTAIN DISABLED EMPLOYEES**

**I. PURPOSE**

To establish a method of supplementing basic Workers' Compensation benefits to allow work related disabled employees to receive the equivalent of 100% of their regular Net Pay deductions while on Workers' Compensation status or a specified amount of Gross Base Pay for the purposes of paying pre-tax benefits.

**II. DEFINITIONS**

1. **Workers' Compensation status** – The leave status in which an employee is placed if his/her absence exceeds seven (7) cumulative calendar days and such absence is caused by an injury or other disabling condition which is found to be compensable under the Virginia Workers' Compensation Act. An employee shall not be placed in such a status until either an Award Agreement form is signed by the City, represented by a Third Party Administrator (TPA), and it is established that he/she is eligible for such compensation, or a final order is entered by the Virginia Workers' Compensation Commission establishing that the employee is eligible for such compensation.
2. **Injury on the job** – An injury or other disabling condition which: (1) is compensable under the Virginia Workers' Compensation Act, and (2) occurs or manifests itself in a specific incident occurring while the employee is engaged in work-related activities typically referred to as being on the job, or which can be directly linked to a specific event occurring while the employee was on the job, with that event being found by the city to be the cause of the injury or other disabling condition.
3. **Gross Base Pay** – The employee's annual salary plus any stipends.
4. **Net Pay** – For an employee who has sustained an injury on the job, Net Pay is defined as the employee's Gross Base Pay on the date of the injury plus any cost-of-living increases granted by the City during the period of absence, less Federal, State, and FICA taxes.
5. **Indemnity Payments** – Workers' Compensation payments made in lieu of lost wages due to total or partial disability from work as defined by the Virginia Workers' Compensation Act.

### III. POLICY

It is the desire of the City that an employee receiving Workers' Compensation Indemnity Payments will not experience a decrease in Net Pay as defined in Section II. 4., above. Therefore, such employees will be eligible to supplement the basic Workers' Compensation Indemnity Payments with their accrued sick leave, annual leave, or Paid Time Off (PTO) balances up to the level of their Net Pay.

### IV. PROCEDURE

- A. An eligible employee will be placed on Workers' Compensation indemnity status if the disability results in an absence which exceeds seven (7) cumulative calendar days. If the disability results in an absence of seven (7) cumulative calendar days or less, sick leave must be used by the disabled employee. If the sick leave balance is exhausted, the employee may use annual leave if available. Hybrid employees may use PTO leave. All approved medical bills relative to the work-related disability will be paid by the City.
- B. Beginning on the eighth (8<sup>th</sup>) cumulative calendar day of the absence, if a qualified employee is totally disabled for work, the employee will be placed on Workers' Compensation Indemnity Payments and compensated as follows:
  1. The employee will receive 66 2/3 % of the calculated Average Weekly Wage as determined under the Virginia Workers' Compensation Act as currently defined at the time of the injury. The Workers' Compensation Indemnity Payment is made "when the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total incapacity, a weekly compensation equal to 66 2/3 percent of his average weekly wages, with a minimum not less than 25 percent and a maximum of not more than 100 percent of the average weekly wage of the Commonwealth as defined herein. In any event, income benefits shall not exceed the average weekly wage of the injured employee." (Code of Virginia § 65.2-500. A.) The average weekly wage is based on the 52 weeks of pay prior to injury.
  2. If the employee's disability is due to a qualifying injury on the job, they will receive the following additional benefits, while on Workers' Compensation status:
    - (a) Continued accrual of annual leave and sick leave or PTO; and
    - (b) Cost-of-living increases granted by the City.

If the combined value of items in Section IV. B. 1. and 2.(a) above equal less than the Net Pay as defined in Section II. 4., the injured employee can elect to supplement his/her payment with PTO, accrued sick leave, or annual leave, if sick leave balance is depleted. The supplement will be allowed on an hour-per-hour basis until the total equals but does not exceed 100% of Net Pay, unless IV.F. or IV. G. applies below. This supplement will cease if employment with the City is terminated. It will also cease if Workers' Compensation payments are terminated for any reason.

- C. If the disability results in an absence of more than twenty-one (21) cumulative calendar days, Workers' Compensation Indemnity Payments will revert to the first day of absence, and the employee will receive the benefits outlined in Section IV. B. above for each work day missed. PTO, sick or annual leave previously charged to the employee's balance during the first seven (7) cumulative calendar days will be fully reinstated, to allow the City to retain a Workers' Compensation indemnity credit.
- D. In addition, if the City and/or the TPA require additional time to determine whether a claim is covered under the Virginia Workers' Compensation Act and it is eventually accepted as compensable, the City will reimburse the employee for any leave utilized after the seven (7) cumulative day qualifying period at 100% up to when Indemnity Payments were instituted. By reimbursing the employee 100% of their leave, the City will take a Workers' Compensation credit for that period that full leave was used. If the waiting period exceeded twenty-one (21) calendar days, the first week will be reimbursed as well.
- E. The benefits outlined in Section IV. B. 1., 2., and 3. will continue, contingent upon the availability of the employee's PTO, or sick and annual leave balances for so long as the physician specifically approved by the City to treat the employee determines that the employee is not fit to return to modified or full duty as a result of the employee's work-related condition. Such benefits will cease on the day the employee is fit, in the judgment of said physician, to return to modified or full duty, regardless of the opinion of any other unauthorized physician and regardless of the status of any claims, proceedings, or determinations regarding the employee's right to continued Workers' Compensation payments.
- F. Overtime: If an employee works in a position that earned and was paid overtime in the 52 weeks prior to the injury, this is included in the Virginia Workers' Compensation Act description of an employee's average weekly wage calculation. As a result of this calculation, it is possible that the employee's Workers' Compensation rate will exceed the employee's Net Pay defined in Section II. A. 4. while the employee is totally disabled from work. Because the Workers' Compensation rate exceeds the normal Net Pay, the employee may not need to subsidize their Workers' Compensation rate with a leave supplement in order to meet the standard of Net Pay as defined in Section II. A. 4. However, in order to receive Virginia Retirement System (VRS) service credit, and the tax advantages from other pre-tax benefits, an employee must be receiving pay from the City. To resolve this limitation and to avoid injured employees losing retirement service credits or other pre-tax benefits while on work-related disability, the City will allow the injured worker to use their PTO, sick leave, or annual leave, if sick leave is not available, in an amount up to 33.33% of their annual Gross Base Pay to supplement their Workers' Compensation payments specifically to pay the employee's required contribution of the 5% of base salary to VRS, other pre-tax benefits, and to cover the related taxes for each benefit. If an employee does not have adequate PTO, sick leave, or annual leave in the amount required to produce the 5% payment to VRS and the necessary taxes, the City is required to report the employee as on Leave Without Pay for the VRS report as stated in the VRS reporting procedures manual.

- G. In instances where an employee does not earn significant overtime but the ability to supplement using Net Pay as identified in Section IV. B. 3. above does not provide adequate wages to pay for a specific pre-tax benefit for which the employee is already enrolled, the employee may use the calculation in Section IV. F. above to supplement wages for the purposes of paying those pre-tax benefits only to the extent the employee has adequate PTO, sick leave, or annual leave balances available. In the cases where this option outlined in Section IV. G. is invoked, these supplemental wages must be used to pay for the pre-tax benefits and the related taxes.

**V. DUTIES AND RESPONSIBILITIES**

The Department of Finance will administer the Workers' Compensation Program in coordination with the City's Workers' Compensation TPA and distribute all relevant instructions and forms. They, along with the department heads, are responsible to insure that the provisions of this regulation are implemented.

APPROVED AS TO FORM AND CONTENT:

*Melissa A. Hamann*  
Melissa A Hamann, Assistant City Attorney

10/30/2019  
Date

APPROVED AND ADOPTED:

*James E. Baker*  
James E. Baker, City Manager

10/30/2019  
Date