Section 6 – Leave (MERIT EMPLOYEES ONLY)
Frequently Asked Questions (FAQs)

Important: For more information, visit the SBO website at de.gov/statewidebenefits
(Navigation: Select your group > Select "Disability Insurance")

Table of Contents

- **Leave Accrual**..... **Pages 1-4**
- **Elimination Period**..... **Page 4**
- **Annual, Sick, Donated Leave, Parental Leave, Holiday & Floating Pay**..... **Pages 5-8**
- **Family and Medical Leave Act (FMLA)**..... **Page 9**
- **Carry Over of Annual Leave**..... **Pages 9-10**
- **Return to Work or Rehire from LTD**..... **Page 10**

Leave Accrual

(1) How will employees awarded STD benefits and Other Income Benefits (defined in the STD benefits booklet) accrue leave?

As a rule, the accrual rate should be equivalent to the total combined benefit and wage salary, leave, parental leave, workers' compensation, donated leave, and PIP, not to exceed 100% of pre-disability base pay paid to the employee. Consider the examples below:

Example 1 (Personal Auto):
While traveling home from work, Lucy is seriously injured in an automobile accident. Through Lucy's personal automobile coverage, Lucy may be entitled to Personal Injury Protection (PIP) benefits; however, the automobile claim process will take several weeks.

- Lucy files a disability claim with The Hartford and is approved for 60 calendar days of STD benefits.
- As "no-fault" automobile insurance benefits are an offset in the STD program, The Hartford will process Lucy's STD claim and issue an

Advice To Pay with Calculation (ATP with Calc) report to Lucy's Human Resource/Benefits Office.

- The ATP with Calc report will reflect the full 75% STD benefit.
- If Lucy does not have or wishes to retain sick leave, annual leave, or compensatory time to supplement the 75% STD benefit, then Lucy will accrue sick and annual leave at a rate of 75%.
- Conversely, if Lucy uses sick leave, annual leave, compensatory time, and/or donated leave to supplement the 75% STD benefit up to 100% of Lucy's pre-disability base pay, then Lucy will accrue sick and annual leave at a 100% accrual rate, which is equivalent to the percentage paid from all sources.
- Four weeks later, Lucy is awarded 80% of salary in PIP benefits by Lucy's automobile carrier.

Example 2 (State Auto):
Using the example above, if Lucy was in an automobile accident while traveling to a meeting in a state FLEET vehicle, Lucy may be entitled to PIP and Workers' Compensation (WC) benefits in addition to the 3 or 12 month salary supplement. Refer to the Salary Supplement Application memo posted on the Insurance Coverage Office (ICO) website for information on the Salary Supplement benefit. As a rule, state PIP benefits are primary and are awarded at a level of approximately 80% of salary.

- The automobile accident will be reported to the Insurance Coverage Office (ICO) by Government Support Services (GSS) or the employing organization.
- Lucy files the disability claim with The Hartford and is approved for 60 calendar days of STD benefits.
- Compulsory state sponsored "no-fault" automobile insurance benefits are an offset in the STD plan.
- In this instance, Lucy would not be awarded STD monies (Net Benefit Amount on the ATP with Calc report would be "zero") because Lucy will be paid 80% PIP benefits by the ICO and 20% salary supplement by Lucy's employing organization.
- As Lucy is being paid 100% of pre-disability base pay, Lucy will accrue sick and annual leave at a 100% accrual level.

Example 3 (Workers' Compensation):
After 5 months of employment with the State of Delaware, Mark falls down a flight of steps at work and fractures his hip.

- Mark's HR/Benefits Office reports the accident to PMA and Mark is awarded a Workers' Compensation (WC) benefit and paid a salary supplement for the first 3 months that will bring Mark up to 100% of Mark's pre-disability base pay. As Mark had worked less than 26

weeks, but at least 13 weeks in the employment in which Mark was injured, Mark's average weekly wage will be calculated by taking Mark's total wages earned in Mark's 5 months of employment, divided by the total number of weeks actually worked, multiplied by 66-2/3%.

- Mark also files a disability claim with The Hartford and is awarded STD benefits for a period of 4 months.
- For the first 3 months of Mark's disability, Mark will receive 100% of Mark's pre-disability base pay from Mark's WC and salary supplement awards and as such, will accrue sick and vacation leave at a 100% accrual level.
- As of the 3rd month and 1 day of Mark's disability, the salary supplement benefit exhausts and Mark is entitled to an STD benefit payment of up to 75% (Mark will be paid the difference between the 75% STD amount and the WC amount or the minimum STD amount, whichever is greater. STD benefit minus the Workers' Compensation amount).

(2) How is annual and sick leave accrued during the 30 calendar day elimination period?

Annual leave and sick leave will accrue during periods of paid leave of absence, or unpaid leave up to thirty (30) days, but will not accrue during leaves without pay greater than thirty (30) days, per Merit Rules 5.2 and 5.3. The employee shall accrue annual and sick leave prorated for the portion of the month they last worked and a prorated amount of leave for the portion of the month in which they receive STD benefits. For guidance on how to prorate leave accrual, see the HR Procedures Manual on the Department of Human Resources (DHR) Policy and Procedure website.

Examples:

- An employee goes into a no pay status from October 1st through October 31st. Effective November 1st, the employee who is granted total disability benefits will receive a 75% STD benefit. The employee would not receive leave accrual for the month of October, but for each subsequent month the employee receives an STD benefit, the employee would receive a 75% accrual of leave.
- An employee goes into a no pay status from September 16th through October 15th. Effective October 16th, the employee receives a 75% total disability STD payment and supplement with 25% available leave. The employee would receive a prorated leave accrual for September 1st through September 15th, inclusive and prorated leave from October 16th through October 31st.

(3) Will an employee accrue annual and sick leave while receiving STD benefits?

Yes. Employees will accrue annual and sick leave based on the level of STD and/or Workers' Compensation (WC) and/or automobile Personal Injury Protection (PIP) benefit being paid to the employee.

An employee receiving a 75% total disability STD benefit will accrue annual and sick leave at a 75% accrual rate if the employee is not supplementing the STD benefit. Employees receiving a 75% total disability benefit who are supplementing with available annual and sick leave, compensatory time and/or if eligible, donated leave, to receive 100% of pre-disability base pay, will accrue annual and sick leave at a 100% accrual rate.

Elimination Period

(4) Can an employee use accrued leave to stay in a paid status during the 30 calendar day elimination period before STD benefits begin?

Yes. Employees enrolled in the DIP may utilize earned sick or annual leave, compensatory time or if eligible, donated leave, for absences due to accident, illness, pregnancy* or injury for periods before disability benefits commence such that the employee receives 100% of pre-disability base pay for such periods, not to exceed the employee's sick leave balance. Family and Medical Leave Act (FMLA) rules on leave usage shall apply when the two leaves are running concurrently. For more information, visit the Department of Human Resources (DHR) Policy and Procedure website.

*In accordance with the Statewide Paid Parental Leave Policy, parental leave shall be used to cover the elimination period upon the birth of a child(ren) for eligible employees in lieu of earned sick or annual leave, compensatory time or donated leave, if eligible. Please visit the Department of Human Resources (DHR) Policy and Procedure website for parental leave eligibility requirements and policy information for Executive Branch agencies.

(5) Can employees use donated leave to stay in a paid status during the 30 calendar day elimination period before STD benefits begin?

Except for employees eligible for parental leave, employees who meet the eligibility criteria of the Donated Leave Program may submit a request for donated leave to remain in a paid status during the 30-calendar day elimination period. Please visit the Department of Human Resources (DHR) Policy and Procedure website for donated leave eligibility requirements. Parental leave shall be used to cover the elimination period for eligible employees.

Annual & Sick Leave, Donated Leave, Parental Leave, Holiday & Floating Pay

(6) If an employee's STD claim is in a pending status, should the employing organization pay annual and/or sick leave accruals or is the employee to be docked pay until the STD claim is approved?

Provided the employee files their STD claim no later than the 15th calendar day of disability and abides by the employing organization's policy and procedures regarding attendance and calling in absent, the employee who is *not* eligible for parental leave may continue to use sick leave, annual leave, or a combination of these leaves to be paid until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period. If the STD claim is approved, the employing organization must reconcile the employee's leave record. Refer to Rule 9.1.1 of the Disability Insurance Program (DIP) Rules and Regulations posted on SBO's website.

In accordance with the Statewide Paid Parental Leave Policy, parental leave shall be used to cover the elimination period and STD approval period upon the birth of child for eligible employees in lieu of earned sick or annual leave, compensatory time or donated leave. Please visit the Department of Human Resources (DHR) Policy and Procedure website for parental leave eligibility requirements and policy information for Executive Branch agencies.

Donated leave is not to continue following the calendar day elimination period until the employee's STD claim has been approved and the employee continues to be in an STD approved status.

(7) Can an employee whose STD claim has been approved utilize accrued annual and /or sick leave to supplement the STD benefit payment?

Yes. An employee who is not eligible for parental leave may utilize accrued annual, sick, compensatory, or donated leave if eligible, to supplement STD benefit payments up to 100% of pre-disability base pay. The employee can choose from the following two options:

1. The employee may choose to use their monthly leave accrual consecutively starting on the 1st workday of the month to supplement the STD benefit with available leave until the leave is exhausted. The leave must be utilized consecutively rather than on specific dates of the employee's choosing in the month; or
2. The employee may choose to retain their leave accrual and save it for payout at the time the employee becomes a Long Term Disability (LTD) beneficiary, retires on a service pension, or returns to work from STD leave. Please refer to Section 7 of the FAQ's for detailed information on Return To Work (RTW).

If the employee chooses Option 1 and they have accrued leave available, they will continue to accrue 100% of leave and receive all holidays that occur during the month at 100%.

If the employee chooses Option 2, they will accrue leave (and receive holiday pay) at the same level the STD benefit was paid. An employee receiving a 75% total disability benefit will accrue leave at 75% and receive holiday pay at a level of 75%. (If on FMLA and/or donated leave, the employee must comply with the rules that apply to those programs.)

Parental leave shall be used to supplement the STD benefit to equal 100% of pre-disability base pay for employees eligible for parental leave upon the birth of a child. An employee eligible for parental leave may not use accrued annual leave, sick leave or other leave in lieu of parental leave for the birth of a child(ren) to supplement the STD benefit in connection with the birth of a child(ren).

(8) Can annual and/or sick leave be paid to an employee whose STD claim has not been approved?

If the employees claim is not in an approved status by the exhaustion of the calendar day elimination period due to reasons outside of the employee's control, the employing organization has discretion to pay the employee accrued annual and/or sick leave until the employee's STD claim is approved. If the STD claim is then approved retroactively, the employing organization must reconcile the employee's leave record. Refer to Rule 9.1.1 of the DIP Rules and Regulations posted on SBO's website.

(9) Can annual and/or sick leave be paid to an employee who is appealing an STD benefit determination?

At the discretion of the employing organization, employees who are appealing an STD determination and have not returned to work or whose STD claim is still under review by the DIP insurance carrier and/or Administrator and/or or the third-party administrator or the Appeals Administrator from the Statewide Benefits Office and/or SBO or the Hearing Officer appointed by the SEBC, may be paid accrued annual and/or sick leave sick leave, annual leave, or a combination of these leaves until the STD claim is approved or extended. If the STD claim is approved or extended, the employing organization must reconcile the employee's leave record. Refer to Rule 9.1.1 of the Disability Insurance Program (DIP) Rules and Regulations posted on SBO's website.

(10) Can eligible employees use donated leave to supplement STD benefit payments?

Yes, except for employees who are eligible for parental leave, however regardless of whether a claim was filed with The Hartford in a timely manner, donated leave shall not continue following the 30-calendar day elimination period until the employee's STD claim has been approved and continues in an approved status. Upon approval of the

employee's STD claim, the employing organization may apply donated leave retroactively so the employee may receive up to 100% of pre-disability base pay.

Parental leave shall be used to supplement the STD benefit to equal 100% of pre-disability base pay for employees eligible for parental leave upon the birth of a child. An employee eligible for parental leave may not use accrued annual leave, sick leave or other leave in lieu of parental leave for the birth of a child(ren) to supplement the STD benefit in connection with the birth of a child(ren). Please visit the Department of Human Resources (DHR) Policy and Procedure website for parental leave eligibility requirements and policy information for Executive Branch agencies.

(11) Are employees eligible for Holiday Pay during the STD benefit Period?

Yes. If an employee is otherwise eligible for holiday pay in accordance with the Merit Rules or a paid leave other than identified in 29 **Del.C**. §5253 (b) (4) of the Delaware Code, the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a per pay period basis.

Examples:

- An employee awarded **total disability** benefits on July 4th who has chosen to supplement the STD benefit with approved leave accruals is entitled to 75% base wages and the 25% balance of the day would be paid as "holiday"; no other leave would be charged for the day. No additional hours would be paid or banked for the day.
- An employee working part-time who has been awarded **residual (partial) disability** benefits on July 4th and has chosen to supplement the STD benefit with approved leave accruals is entitled to supplement the residual disability benefit with holiday pay up to 100% of pre-disability base pay.
- An employee involved in an auto accident awarded the **minimum disability benefit** by The Hartford on July 4th and has chosen to supplement the STD benefit with approved leave accruals is entitled to supplement the minimum disability benefit with paid holiday pay up to 100% of pre-disability base pay.

An employee who chooses not to supplement the STD benefit with available leave would receive the STD payment for the day with no additional pay.

(12) Is an employee eligible for Floating Holiday pay during the STD benefit Period?

If an employee is otherwise eligible for floating holiday pay or a paid leave other than identified in 29 **Del.C.** §5253 (b) (4) of the Delaware Code, the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a pay period basis.

Example:

An employee awarded total disability benefits who is receiving a 75% STD payment can supplement the 25% balance of the day as a floating holiday. No other leave would be charged for the day. **No additional float holiday hours would be paid or banked for the day.**

(13) What happens when the STD benefit period ends?

As of the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c), 29 **Del.C.** §5916(e), 29 **Del.C.** §5933(c) and (d), and 83 Del Laws c 325 section 30, and those working on a temporary reduced, alternate, light duty and/or or part-time basis, will no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FMLA entitlement and/or or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 **Del.C.** §5916(e), 29 **Del.C.** §5933(c) and (d), and 83 Del Laws c 325 section 30 who exhaust the maximum short term disability STD benefit period will no longer be an employee of the State or any of its political subdivisions at the end of their the entitlement to hazardous duty pay or parental leave, provided the employee has exhausted their the FMLA entitlement and/or or is not FMLA eligible and is not working on a temporary reduced, alternate, light duty and/or or part-time basis. When employment ends, the employee will not be eligible for payment of any unused parental leave. The employee has two options with respect to remaining accrued sick leave and annual leave only.

1. Escrow Leave. Prior to the commencement of LTD benefits, employees may make a written request to escrow accrued annual and sick leave for a period of 6 months.
2. Payout of Leave. Upon commencement of LTD benefits, employees are eligible to receive a payoff of accrued unused annual and sick leave based on the rules in place by the employing organization.

If option 1 is chosen, the leave will be escrowed for a maximum period of 6 months. Once the former employee has returned to full-time state employment in a benefit eligible position for 30 calendar days within the 6 month escrow period, the leave balances will be returned to the employee. If the employee does not return to work in a benefit eligible position for 30 calendar days, the leave will be paid out based on the rules in place by the employing organization.

If option 2 is chosen, the leave will be paid in accordance with the Merit Rules. Should the employee subsequently return to full-time employment with the State in a benefit eligible position, the leave balance will be zero.

Note: Hazardous duty employees injured while performing a hazardous duty at work who are receiving Workers' Compensation (WC) and a one year salary supplement and employees who are still under FMLA protection will not have their employment terminated until the exhaustion of the salary supplement and/or FMLA.

Family and Medical Leave Act (FMLA)

(14) Is an employee required to apply for FMLA when they apply for STD benefits?

Yes. The Family and Medical Leave Act (FMLA) allows employees who meet the eligibility requirements, unpaid job and medical benefits protection for a period of up to twelve (12) weeks or leave year weeks. The law permits the State of Delaware to run the FMLA benefit period concurrent with other paid leaves such as Short Term Disability. For more information, visit the Department of Human Resources (DHR) Policy and Procedure website. Per 29 **Del.C.** §5120, STD, parental leave and any rights and benefits available under the FMLA shall run concurrently.

(15) If an employee is on approved FMLA and receiving STD benefits, is the employee required to submit an FMLA application?

Yes; however, while on FMLA, employees may retain one week of sick and one week of annual leave per Merit Rules. Accruals that exceed the allowable one week of sick leave and one week of annual leave must be used as earned. For more information, visit the Merit Rules posted on the Department of Human Resources (DHR) website.

(16) Is an employee returning to State employment from LTD eligible for FMLA?

Employees returning to state service from LTD are eligible for FMLA upon meeting the standard FMLA eligibility requirements of:

- 12 months aggregate employment;
- Have worked 1,250 hours in the 12 months immediately preceding the absence;
- Has not exhausted their 12-week entitlement within the most recent leave year

Carry Over of Annual Leave

(17) Will an employee lose annual leave if the employee has excess annual leave to "carry over" into the new calendar year due to being out on STD and unable to use enough annual leave before the end of the calendar year?

The provisions in Merit Rule 5.2.4 continue to apply. Agencies may request approval from the Secretary of the Department of Human Resources to carry over annual leave in excess of the maximum amount. Employees on approved STD leave are *not* automatically eligible to carry over excess leave into the new calendar year.

(18) Does an employee lose annual leave if the employee has excess annual leave to "carry over" into the new calendar year while leave is being escrowed due to being out on LTD and ineligible to use any leave?

The provisions in Merit Rule 5.2.4 continue to apply. Agencies may request approval from the Secretary of the Department of Human Resources to carry over annual leave in excess of the maximum amount. Employees becoming LTD beneficiaries are not automatically eligible to carry over excess leave into the new calendar year.

Return to Work or Rehire from LTD

(19) When is an individual who is returning to work from LTD eligible for donated leave?

Eligibility for donated leave is based on aggregate state service. Employees who have at least 6 months aggregate service with the State of Delaware position are eligible for donated leave and if they meet all eligibility criteria of the Donated Leave Program, upon reinstatement. The absence itself must meet the criteria of an absence due to a catastrophic illness of the employee or covered family member of greater than 5 weeks (or equivalent) and the employee has exhausted accrued sick leave and half of their annual leave (or all of annual leave if the absence is to care for a covered family member). For more information, visit the Department of Human Resources (DHR) Policy and Procedure website.

(20) When is an individual who is returning to work from LTD eligible for parental leave?

Any full-time employee who has been employed with the State full time for at least 12 continuous months as of the date of the birth of his/her child or as of the date of the adoption of a child six (6) years of age or younger.

(21) If an employee is rehired from LTD into a Merit position on a reduced work schedule, is the employee entitled to paid holidays and leave accruals?

If the reduced work schedule is expected or exceeds 30 calendar days, the employee should be considered permanent part-time for the purposes of holiday pay and annual and sick accruals which shall be pro-rated based on scheduled hours. The status of permanent part-time would continue until such time as the employee is released to work a normal work week of 37.5 or 40.0 hours

Disclaimer

If there is any conflict in interpretation between the FAQ's and the Short Term Disability (STD) and Long Term Disability (LTD) plan contract provisions and existing law, the contract provisions, and/or law govern. Additional information regarding leave for Merit employees can be obtained from the Department of Human Resources (DHR) Policy and Procedure website.

Questions regarding the Disability Insurance Program?

Please contact the Statewide Benefits Office Customer Service Team by telephone at 1-800-489-8933 or by email at benefits@delaware.gov.

Questions regarding Parental Leave?

Please contact your Human Resource/Benefits Representative. Executive Branch agency employees can refer to the Paid Parental Leave policy and procedure on the Department of Human Resources (DHR) Policy and Procedure website. Non-Executive Branch Agencies, including elected offices, school districts, and charter schools should contact their Human Resource/Benefits Office.

Please contact the Department of Human Resources (DHR) Talent Management/Employee Engagement at 1-302-672-5195 or 1-866-462-8411 for leave accrual and usage questions not relating to the Disability Insurance Program (DIP).