

**TITLE 19 LABOR
DELAWARE ADMINISTRATIVE CODE**

1

**DEPARTMENT OF HUMAN RESOURCES
2000 EMPLOYEE BENEFITS**

State Employee Benefits Committee

**2007 Disability Insurance Program “DIP” Rules and Regulations
Effective ~~April 1, 2019~~ July 1, 2024**

1.0 Purpose

The purpose of the ~~proposed~~ Disability Insurance Program Rules and Regulations is to provide State employees and ~~administrative staff~~ DIP/RTW Representatives with access to policies currently in force and in practice with respect to the Disability Insurance Program. The ~~proposed~~ Rules and Regulations encompass and combine processes that have been developed since inception of the Disability Insurance Program.

**NOTE to “Qualified Individual with a Disability” and ~~Human Resources Professionals:~~
DIP/RTW Representatives:**

When medical restrictions ~~prohibit~~ forbid a “Qualified Individual with a Disability” from performing the essential functions of ~~his or her~~ the job, the Americans with Disabilities Act of 1990, as amended (~~ADA~~), “ADA”, requires an employer to communicate, in an interactive process or interactive dialogue, with the Qualified Individual with a Disability to identify possible reasonable accommodations that may allow the individual to perform the job. A reasonable accommodation is often a change or modification and can include special equipment that allows the Qualified Individual with a Disability to perform the job, scheduling changes, and changes to the way work assignments are chosen or communicated. However, the employer is not required to provide an accommodation that would involve undue hardship (significant difficulty or expense) and the Qualified Individual with a Disability who receives the accommodation must still perform the essential functions of the job and meet the normal performance requirements. The employing organization and the Qualified Individual with a Disability should have an interactive dialogue to determine the appropriate accommodation based on the request from the Qualified Individual with a Disability and available options. When appropriate, the accommodation discussion should involve various accommodations that are workable. Often times multiple accommodations will be discussed ~~prior to~~ before a decision being made by the employing organization. ~~Please see Refer to~~ Section 2.0 of this regulation for the definition of a “Qualified Individual with a Disability.”

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

“Appeal” ~~is means~~ means the action you can take ~~pursuant to~~ in accordance with 29 Del.C. §5258 if you disagree with a coverage decision ~~made by the DIP insurance carrier and/or or third party administrator (Administrator) selected to administer and/or insure the program by the SEBC pursuant to~~ pursuant to 29 Del.C. §5254 and/or ~~or the Appeals Administrator from the Statewide Benefits Office and/or or the Hearing Officer from the Department of Human Resources and/or or the SEBC.~~ decision.

**TITLE 19 LABOR
DELAWARE ADMINISTRATIVE CODE**

2

"Base Rate of Compensation" means the employee's usual rate of pay, including hazardous duty pay if applicable. Base Rate of Compensation does not include commissions, bonuses, shift differential pay, overtime pay or ~~any other~~ another fringe benefit or extra compensation.

"Claimant" means a person enrolled in the DIP who applies for STD ~~and/or or~~ LTD benefits ~~and/or or~~ an extension of STD ~~and/or or~~ LTD benefits or who is receiving or has received STD ~~and/or or~~ LTD benefits.

"Creditable Compensation" ~~means~~ as defined in 29 Del.C. §5251(c), ~~shall mean~~ the base rate of compensation that the employee received on the last day of employment before the employee developed a disability.

"DIP" means the Disability Insurance Program as defined in ~~29 Del.C. §5256 of the Delaware Code.~~ 29 Del.C. §5256.

"DIP Insurance Carrier ~~and/or or~~ Third-Party Administrator" means the State's selected ~~vendor~~ company for this service.

"DIP/RTW Representatives" means employing organizations Human Resource, Benefits, and Payroll Representatives with DIP or Return to Work "RTW" administrative or paying responsibilities.

"DOE" means Department of Education.

"Elimination Period" ~~is~~ means the period of time you must be disabled before disability benefits ~~commence.~~ begin. The elimination period in the Short Term Disability (STD) "STD" program is 30 calendar days. The elimination period in the Long Term Disability (LTD) "LTD" program is the last to be satisfied of the following:

- 1) ~~The first 182 consecutive calendar day(s) of any one~~ days of a period of disability; or
- 2) ~~The exhaustion of the STD benefit period.~~

"Employee" ~~shall mean~~ means an eligible "employee" as defined in 29 Del.C. §5501(f), (<http://delcode.delaware.gov/title29/e055/sc01/index.shtml>) who ~~elects~~ chooses to participate in the DIP as specified in 29 Del.C. §5519. ~~Under 29 Del.C. §5501(f), "Employee" shall mean an individual who:~~

- ~~(1) Is employed by:
 - ~~a. The State, including elected or appointed officials; or~~
 - ~~b. The State Department of Education, a school district which is part of the state school system, the University of Delaware, Delaware State University or Delaware Technical Community College; or~~
 - ~~c. A state agency that is supported wholly or in part by funds granted to the State by the federal government;~~~~
- ~~(2) Is employed on a full time or annual basis or on a regular part time basis, as the terms "full time or annual basis" and "regular part time basis" are defined in rules and regulations adopted by the Board, except that an individual whose initial appointment to a gubernatorial appointed board, council or commission occurs after June 30, 2013, shall not be considered employed on a regular part time basis;~~
- ~~(3) Receives compensation wholly or in part directly from the State Treasury or from the Treasury through an agency within the State that is wholly or in part supported by the State;~~
- ~~(4)~~

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

3

- ~~_____ a. Is not a member of any other state or municipal retirement system which is financed in whole or in part by the State unless the state pension plan provides for a unified state service pension and the member is not concurrently accruing or collecting benefits under that system; and~~
- ~~_____ b. Is not a member of a county pension plan with respect to which the employee is accruing credited service and to which the employee and/or or the State is making contributions on account of employment with the State;~~
- ~~_____ (5) A person who meets the requirements of this subsection shall be regarded as an "employee" during the period he or she is on an approved leave and, for school personnel who do not work on 12-month basis, during the period between the expiration of such leave and the beginning of the next regular school term.~~

~~—This shall include any an employee who is collecting benefits pursuant to 11 Del.C. §8352(4) (<http://delcode.delaware.gov/title11/c083/sc03/index.shtml>), in accordance with 11 Del.C. §8352(4).~~

"Employing Organization" ~~shall mean~~ means the agency, school district, charter school, institution of higher education, court system or Delaware Solid Waste Authority (DSWA) employing claimants in a position covered by the Delaware State Employees Pension Plan pursuant to 29 Del.C. Chapter 55 in accordance with 29 Del.C. Ch. 55 who are U.S. citizens or U.S. residents actively at work for one full day on or after January 1, 2006.

"Essential Duty" means a duty that is substantial, not incidental; is fundamental or inherent to the occupation; and cannot be reasonably omitted or changed. To be at work for the number of hours in the employee's regularly scheduled workweek is also an essential duty.

"Family and Medical Leave Act (FMLA)" is Act" or "FMLA" ~~is~~ means a labor law that entitles eligible employees to take up to twelve workweeks of unpaid, job-protected leave during a twelve month period for specified family and medical reasons with continuation of group health insurance plan coverage under the ~~same~~ terms and conditions as if the employee had not taken leave. ~~Qualified medical and family reasons include personal or family illness, family military leave, pregnancy, adoption, or the foster care placement of a child. FMLA also provides qualifying exigency and military caregiver leave for employees with family members who are covered military members.~~ leave as defined in 19 Del.C. §3702(a).

"Hazardous Duty Pay" means a payment to employees who are determined by the State of Delaware to be working in circumstances that involve an unusual risk of serious physical injury, impairment to health or death resulting from accidental, negligent, or intentional causes. Employees entitled to hazardous duty pay qualify under 29 Del.C. §5916(e), 29 Del.C. §5933(c) and (d), and 83 Del Laws c 325 section 30.

"Health Care Provider" means an individual who is trained and licensed and working within the scope of practice who is providing management, treatment, and ongoing care of a patient.

"Insurance Coverage Office (ICO)" is Office" or "ICO" means the State office responsible for providing quality support for the state government's insurance needs. The office is responsible for managing the insurance program for state ~~vehicles,~~ owned transportation, buildings and property and workers' compensation, as well as reviewing state facilities for safety issues and providing safety programs to state employees.

"Interactive Process" (ADA) ~~When~~ means when medical restrictions ~~prohibit~~ forbid an employee with a disability from doing ~~his or her~~ the job, the Americans with Disabilities Act

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

4

~~(ADA)~~ "ADA" requires an employer to communicate with the employee concerning an accommodation. This exchange has been described variously as the "core" or "proactive" process, "cooperative problem solving," "open and individualized exchange," a "search", and a "flexible give-and-take." Most frequently, it is called the "interactive process" or by the redundant term, "interactive dialogue." The purpose of this dialogue is to "identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations." 29 C.F.R. § 1630.2(o)(3).

"Less Than Twelve Month Educational Employees" ~~are~~ means those employed by School Districts, Charter Schools, the ~~Department of Education, DOE,~~ University of Delaware, Delaware State University and Delaware Technical Community College whose normal working period is a school year or semester which is less than 12 months in duration per calendar year. "Less Than Twelve Month Educational Employees" are not defined or categorized by ~~their~~ the employee's length of employment.

"LTD" means long term disability.

"Medical Care" ~~is received~~ means when a physician health care provider is consulted or medical advice is given or treatment is recommended, prescribed by, or received from a physician. ~~Treatment includes, but is not limited to, medical examinations, tests, attendance or observations and use of drugs, medicines, medical services or equipment.~~ health care provider.

"Member" means a person enrolled in or was previously enrolled in the DIP.

"Normal Working Periods" ~~are~~ means the scheduled working days for the employee.

"Parental Leave" ~~is~~ means a law that entitles ~~all~~ full-time employees in the employment of the State, a reorganized school district, charter school or vocational school district for at least one year, to twelve weeks of paid leave ~~upon~~ as of the birth or adoption of a child who is ~~6~~ six years of age or younger to care for or bond with the ~~child(ren)~~. ~~Parental Leave runs concurrently with any rights and benefits available under FMLA and STD pursuant to §5253 of Title 29 for the birth of a child. The University of Delaware, Delaware State University, Delaware Technical Community College and Delaware Solid Waste Authority are not subject to this law.~~ child in accordance with 29 Del.C. §5253 and 14 Del.C. §1333

"Personal Injury Protection (PIP)" ~~is~~ Protection" or **"PIP"** means insurance coverage that is statutorily mandated for Delaware registered ~~vehicles.~~ state owned transportation. 21 Del.C. §2118 requires minimum PIP limits of \$15,000 per person; \$30,000 per accident for reasonable and necessary medical expenses, net amount of loss earnings, funeral expenses, and substitute services incurred within ~~2~~ two years of an automobile accident.

"Pre-Disability Base Pay" aka ~~or~~ "Creditable Compensation" ~~shall mean~~ means the employee's usual rate of pay paid to the employee on the last day of employment before the employee developed a disability including hazardous duty pay, if applicable.

"Pre-Existing Condition" means ~~any~~ an accidental bodily injury, sickness, mental illness, pregnancy, or episode of substance abuse or ~~any~~ the manifestations, symptoms, findings, or aggravations related to or resulting from ~~such~~ the accidental bodily injury, sickness, mental condition, pregnancy or substance abuse for which the employee received medical care during the ~~3 month~~ three month period that ends the day before:

- a. The employee's effective date of coverage in DIP; or
- b. The effective date of a change in DIP coverage.

"Qualified Individual with a Disability" ~~(ADA)~~ is means an individual who ~~has~~ has satisfied the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds, and who, with or without reasonable

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

5

accommodation, can perform the essential functions of the position. A person with a disability according to the ADA is defined as someone who has:

- a) • a physical or mental impairment that substantially limits one or more of the major life activities of such the individual;
- b) • a record of such the impairment; or
- c) • being regarded as having such the impairment.

“Reasonable Accommodation” means a change in the work environment or in the way things are customarily done that would enable an individual with a disability to have equal employment opportunities, and includes, but is not limited to, the following:

- Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job;
- Modifications or adjustments that enable employees with disabilities to have equal benefits and privileges of employment.

“Return to Work (RTW) Coordinator” or “RTWC” means the person selected by the Department of Human Resources to assist individuals enrolled or previously enrolled in the DIP who expect to be out of work with their transition back to work. Return To Work assistance may be requested by an employee, previously employed individual and/or by an employing organization. The RTW Coordinator may also consult with the individual's health care provider(s) to acquire and/or clarify a claimant's restrictions and/or or limitations if applicable, to facilitate a safe return to the workplace. in the Department of Human Resources, Statewide Benefits Office “SBO” who provides RTW and stay at work assistance to employees or former employees who are currently on an approved STD or LTD claim or were previously on an approved STD or LTD claim. The determination of an employee or former employee's ability to RTW by the State Employee Benefits Committee “SEBC” under 29 Del.C. §5257 has been delegated to the SBO. The SBO RTWC is responsible for evaluating DIP RTW cases, determining an employee or former employee's ability to RTW, and providing DIP RTW assistance to employees, former employees, and employing organizations for placement. Specific timeframes for eligible assistance apply and are noted in this regulation. RTW assistance may be requested by the employee, former employee, or by an employing organization.

“Salary Supplement” means pursuant to— in accordance with 29 Del.C. §5933 outlines that whenever an officer as defined in 29 Del.C. §5812(n)(1), (<http://delcode.delaware.gov/title29/c058/sc02/index.shtml>) or employee of the State including those exempt from the classified service, qualifies for workers' compensation disability benefits, the officer or ~~employee~~ employee, for a period not to exceed three months from the date the compensation begins, is not charged sick or annual leave and shall receive from the State the difference, if any, between the total of: (1) The amount of such the compensation, (2) any disability benefits received under the Federal Social Security Act, and (3) any other another employer supported disability program, and the amount of wages to which the officer or employee is entitled on the date such the compensation begins. begins, provided the injury or disease for which the compensation is paid is not the direct result of the officer or employee's misconduct and occurs during a period of employment for which the employee is entitled to receive wages. No more than 1 period of supplemental pay shall be made under this subsection for any a work injury, including any a recurrence or aggravation of that work injury. Temporary disability payments that are paid through the Workers' Compensation program and administered by the Insurance Coverage Office (ICO) are unrelated to disability benefits paid under the DIP. The three month limitation will not apply to any employee injured while performing a hazardous duty assignment and whose injury or injuries arose out of and in the

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

6

course of performing hazardous duty; providing, however, the employee will be entitled to the benefits of this section for not more than 12 months. Those positions are outlined in 29 Del.C. §5933 (c) and (d) and 29 Del.C. §5916(e).

“SBO” means Statewide Benefits Office. SBO is the “administrative arm” of the State Employee Benefits Committee “SEBC”, meaning SBO is responsible for the administration of all health and related benefit programs, including the DIP and RTW.

“SEBC” means the State Employee Benefits Committee. (As the “Committee” is the SEBC, we have incorporated the acronym “SEBC” in lieu of the term “Committee” in the definitions section of the rules. The definition of “Committee” in Section 2 will be deleted.) this regulation.)

“Stay at Work Assistance” means consultation, advisement, or other assistance provided to an employee in order to allow the employee to remain in the current job position and perform essential functions of that position.

“STD” means short term disability.

“Temporary” means not permanent; provisional and/or lasting only a short time.

“Workers' Compensation” (WC) is or “WC” means a system, established under Chapter 23 of Title 19 of the Delaware Code, 19 Del.C. Ch. 23, which provides compensation to workers who are injured or who contract an occupational disease while working. The benefits can include medical care, temporary disability payments and compensation for a resulting permanent impairment. In the event of the death of an injured worker, benefits are payable to the family of the worker. Benefits may be paid voluntarily or it may be necessary to petition the Office of Workers' Compensation for relief. Temporary disability payments that are paid through the Workers' Compensation program and administered by the Insurance Coverage Office (ICO) are unrelated to disability benefits paid under the DIP.

“Your Occupation” means your occupation as it is recognized in the general workplace. It does not mean the specific job you are performing or at a specific location.

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

21 DE Reg. 234 (09/01/17)

22 DE Reg. 861 (04/01/19)

3.0 Eligibility and Enrollment Rules

3.1 ~~Pursuant to~~ In accordance with the authority vested in the SEBC by 29 Del.C. §5210(4), §9602(b)(4) §9602(b)(4), and §5255, the SEBC adopts these eligibility and coverage rules for the State of Delaware’s Disability Insurance Program (DIP). DIP. In the event of conflict between these rules and the Delaware Code, the Delaware Code takes precedence over these rules. DIP is comprised of a Short Term Disability (STD) program and a Long Term Disability (LTD) program. The three parts to the DIP are STD, LTD, and RTW. The Rules and Regulations contained herein in this are to be used in conjunction with the Short Term Disability (STD) STD and Long Term Disability (LTD) LTD benefit booklets displayed on the Statewide Benefits Office SBO website at de.gov/statewidebenefits.

3.2 An employee must meet one of the following criteria to be eligible for enrollment in the DIP:

3.2.1 Hired on or after January 1, 2006 into a position covered by the Delaware State Employees Pension Plan ~~pursuant to~~ in accordance with 29 Del.C. Ch. 55.

3.2.2 As of January 1, 2006 had fewer than ~~5~~ five credited years of service.

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

7

- 3.2.3 As of January 1, 2006 had ~~5~~five or more years of credited service and ~~elect~~chose enrollment in the DIP.
- 3.2.4 Pursuant to ~~In accordance with~~ 29 Del.C. §5251(e), a retired Delaware State Police Trooper employed in a pension covered position in the Delaware State Employees' Pension Plan on or after July 1, 2008.
- 3.3 Enrollment in the DIP means that the employee is enrolled in the STD and LTD plans.
- ~~3.3~~ 3.4 Eligibility for participation in the DIP ~~shall terminate upon~~ will end on the earliest to occur of:
- ~~3.3.1~~ 3.4.1 The date in which the State of Delaware ceases to sponsor this program; or
- ~~3.3.2~~ 3.4.2 The date the employee is no longer covered by the Delaware State Employees' Pension Plan ~~pursuant to~~ in accordance with 29 Del.C. §5519; or
- ~~3.3.3~~ 3.4.3 ~~Normal service retirement at age 65; or~~ Service retirement; or
- ~~3.3.4~~ 3.4.4 The death of the employee.
- 3.4 3.5 Dependents are not eligible for enrollment in the DIP.
- ~~3.5~~ 3.6 Coverage is effective the first day the employee is actively at work ~~or the date the employee returns to active employment on a full-time basis if the employee was absent due to a disabling condition.~~ for one full day on or after January 1, 2006. There is no waiting period to be enrolled in the DIP.
- ~~3.6~~ 3.7 In accordance with 29 Del.C. §5252, the State ~~shall~~ will pay ~~all~~ premium or subscription charges for the full cost of providing coverage for the DIP.

19 DE Reg. 78 (07/01/15)

22 DE Reg. 861 (04/01/19)

4.0 ~~Short Term Disability (STD)~~ STD Elimination Period

- 4.1 ~~Participating employees shall~~ Employees will be eligible to utilize earned sick leave, annual leave, compensatory time or donated leave for absences due to accident, illness, or injury for periods before disability benefits ~~commence under this chapter, such begin, so that the participating employee receives 100% of creditable compensation for such periods, not to exceed the employee's sick and/or sick leave, annual leave, balances. Upon or these combined leave balances based on the rules that apply by the claimant's employing organization. As of the birth of a child(ren), child, employees entitled to parental leave shall Parental Leave may utilize parental leave~~ Parental Leave to satisfy the elimination period for periods before disability STD benefits commence. begin. Merit employees who are injured on the job and approved for ~~workers' compensation (WC)~~ WC should not be charged with sick leave for any portion of the day of the injury, ~~pursuant to~~ in accordance with Merit Rule 5.3.8. ~~Non-merit~~ Non-Merit employees must ~~comply with~~ follow the rules that apply to ~~you're the employee's~~ the employee's employing organization. ~~The date of the injury is the first day of the STD calendar day elimination period.~~
- 4.2 Pursuant to In accordance with 29 Del.C. §5253(b)(1), STD benefits ~~for participating employees shall commence upon~~ will begin after the exhaustion of the calendar day elimination period. Consistent with the provisions of 29 Del.C. §5255 that allow the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ to determine eligibility of a participating an employee to receive STD benefits, the elimination period ~~shall~~ will begin on the date of disability and STD benefits ~~shall commence~~ will begin on the 31st calendar day of disability. The calendar day elimination period does not have to be satisfied consecutively however, if an employee returns to work for one day or less during the calendar day elimination period, but cannot

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

8

continue to work thereafter, the period worked ~~shall~~ will not be considered to have interrupted the calendar day elimination period.

4.3 Pursuant to ~~In accordance with~~ 29 Del.C. §5253(b)(1), the calendar day elimination period must ~~commence~~ begin and conclude within normal working periods for employees who work less than 12 months per calendar year. "Normal working periods" are the scheduled working days of the ~~participating~~ employee. Disabilities that begin during a non-working period may not be claimed until the normal working period resumes at the start of the following school year for Less Than Twelve Month Educational Employees.

4.4 Pursuant to ~~In accordance with~~ 29 Del.C. §5253(b)(5), if a ~~participating~~ an employee returns to the employee's position on a full time basis for 15 consecutive calendar days or longer, ~~any the~~ succeeding period of disability for which the ~~participating~~ employee ~~shall~~ will become eligible ~~shall constitute~~ will be a new period of STD with a corresponding calendar day elimination period. A new period of STD ~~shall~~ will not be ~~constituted~~ granted if a ~~participating~~ an employee returns to work on a part-time basis.

~~4.5 There is no pre-existing conditions limitation in the STD program.~~

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

22 DE Reg. 861 (04/01/19)

5.0 STD Claim Filing Requirements for Employees & DIP/RTW Representatives

5.1 Employees

~~5.1~~ 5.1.1 Employees enrolled in the DIP are required to file ~~an a~~ a STD claim with the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ if the employee expects to be out of work for at least 30 calendar days even if the employee applied for ~~and/or or~~ is receiving lost wage benefits (i.e., Workers' Compensation) ~~and/or parental leave, upon or Parental Leave as of the birth of a child(ren).~~ child. Once an employee exhausts ~~their the~~ elimination period, the employee will be deemed to have applied for benefits under this ~~section subsection~~ and ~~shall~~ will not be eligible to utilize paid sick ~~and/or leave or~~ annual leave in lieu of application for STD. Employees not meeting the requirements noted in Section ~~9.0, 9.0 of this regulation,~~ will be deemed to have applied for benefits under this ~~section subsection~~ and ~~shall~~ will not be eligible to utilize paid sick ~~and/or leave or~~ annual leave in lieu of application for an extension of STD benefits.

~~5.2~~ 5.1.2 ~~All employees~~ Employees enrolled in DIP who expect to be out of work for the length of the calendar day elimination period are required to file a STD claim in a complete and timely manner, even if the employee applied for ~~and/or or~~ is receiving Workers' Compensation (WC) WC benefits, parental leave Parental Leave or Other Income Benefits defined in the STD benefits booklet per Delaware Code. defined in subsections 8.6 and 8.7 of this regulation. ~~Hazardous duty employees injured in the line of duty, who are employed by the Department of Corrections (or its successor agency), the Delaware Psychiatric Center (or its successor agency) who are assigned to programs for the criminally insane, the Department of Services for Children, Youth and Their Families who are assigned to work in the Division of Youth Rehabilitative Services facilities, state law enforcement officers in the performance of their duties including state employees serving in response to imminent danger of hazardous waste material, including but not limited to the SERT Team~~ Employees injured while performing a hazardous duty assignment, who qualify under 29 Del.C. §5916(e), 29 Del.C. §5933 (c) and (d), and 83 Del Laws c 325 section 30 are required to file ~~an a~~ a STD claim in a complete and timely manner if ~~they expect the employee expects~~ to be out of work for the length of the

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

9

- calendar day elimination period. Employing organizations are required to provide the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ with the names of ~~hazardous duty employees who are injured while performing a hazardous duty who are~~ employees injured while performing a hazardous duty assignment entitled to be paid the twelve month salary supplement pursuant to ~~29 Del.C. §5933(c)~~ supplement.
- 5.3 5.1.3 Employees are required to immediately report all absences from work to ~~their~~ the employee's supervisor and are required to stay in contact with ~~their~~ the employee's supervisor and Human Resource office ~~Benefits Office~~ during all absences from work. For specific reporting time frames, ~~merit~~ Merit employees should refer to the Merit Rules. ~~Non-merit~~ Non-Merit employees should refer to their the employing organization's leave policy. All ~~requested~~ Required documentation must be ~~provided.~~ provided when requested by the DIP insurance carrier or third-party administrator, the employee's Human Resource Benefits Office, the SBO RTWC, and other representatives from the SBO. ~~Supervisors are required to immediately report an employee's absence from work to their Human Resource office. The Human Resources office must send a letter to the employee no later than the fifth calendar day of absence from work to remind the employee of their STD claim filing requirement in the event the employee expects to be out of work for at least the length of the elimination period. It is the employee's responsibility to promptly acknowledge receipt of the STD Form Letter communication from their the employee's Human Resources office Resource Benefits Office by signing and returning an "Employee Acknowledgement" to their the Human Resources office Resource Benefits Office within 5 five business day days of receiving the letter from the Human Resources office. Resource Benefits Office.~~
- 5.4 5.1.4 Employees must contact ~~their physician(s) health care providers~~ to authorize the release of medical information required by the ~~Return to Work (RTW) Coordinator and/or SBO RTWC or the DIP insurance carrier and/or third party administrator (Administrator) selected to administer and/or or insure the program by the SEBC pursuant to 29 Del.C. §5254. or third-party administrator.~~ It is the employee's responsibility to be sure that ~~his or her~~ the medical documentation is submitted to the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ and the ~~RTW Coordinator~~ SBO RTWC in a complete and timely manner throughout the duration of the disability as requested. Employees are required to take ~~any and all action necessary~~ the action necessary in a timely manner to maintain ~~their~~ the claim in an approved status throughout the period of disability.
- 5.5 5.1.5 ~~Participating employees~~ Employees are responsible for the payment of fees requested by ~~their physician(s) health care providers~~ for the release of preliminary medical information ~~and/or or~~ subsequent attending physician statements (APs), "APS".
- 5.6 5.1.6 Medical documentation by the employee's ~~physician(s) health care providers~~ in the form and manner determined by the DIP insurance carrier ~~and/or third party or third-party administrator (Administrator)~~ must be submitted to determine benefit payment. A ~~physician's return to health care provider's out of work note~~ will not be sufficient. Medical documentation consists of, but is not limited to a conversation with the employee's ~~physician(s) or health care providers, nurse or other healthcare providers~~ identifying restrictions ~~and/or or~~ limitations and/or or the lack thereof, ~~of,~~ test results, lab records, etc.
- 5.2 DIP/RTW Representatives
- 5.2.1 Supervisors are required to immediately report an employee's absence from work to the Human Resource Benefits Office. The Human Resource Benefits Office must send the STD Form Letter to the employee no later than the fifth calendar day of absence from work to remind the employee of the STD claim filing requirement in the event the employee expects to be out of work for at least the length of the elimination period.

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

10

5.2.2 The Human Resource Benefits Office is responsible for following up with the employee to confirm the STD Claim has been filed in a timely manner. The Human Resource Benefits Office is also responsible for following up with the employee to be sure the employee is requesting an extension of benefits, if applicable and in a timely manner.

5.2.3 It is the responsibility of the Human Resource Benefits Office to follow up with the employee on all requests that have not been responded to.

16 DE Reg. 1004 (03/01/13)

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

22 DE Reg. 861 (04/01/19)

6.0 STD Coverage

6.1 For a disability caused by a covered sickness ~~and/or~~ or accident, STD benefits ~~commence~~ begin after completion of the calendar day elimination period for up to a maximum benefit period of 182 calendar days starting with the employee's date of disability per ~~Delaware Code~~ 29 Del.C. §5253(b). The 182 calendar day STD benefit period includes the calendar day elimination period. Each day an employee receives a total disability benefit or a residual (partial) disability benefit or the minimum disability benefit, counts toward exhaustion of the maximum 182 calendar day STD benefit period.

6.2 The employing organization is responsible for providing the DIP insurance carrier ~~and/or Administrator, or third-party administrator~~ with ~~the~~ information needed to process an employee's STD claim that is not shared on the electronic enrollment file to the DIP insurance carrier or third-party administrator because it is not stored in the State of Delaware's Human Resource Benefits & Payroll systems, such as last day worked and any worked, partial day(s) days worked information, if applicable, for each claimant, and whether the employee was awarded the three month or twelve month Salary Supplement. Organizations that ~~employ hazardous duty employees who are~~ with employees injured performing hazardous duty assignments entitled to the twelve month salary supplement ~~as a result of being injured while performing a hazardous duty~~ must notify the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ of the employees entitlement to the twelve month (versus ~~3-month~~) three month salary supplement. Organizations that ~~employ Less Than Twelve Month Educational Employees who have filed an STD claim with the DIP insurance carrier and/or or Administrator,~~ must also provide the DIP insurance carrier ~~and/or or Administrator~~ with confirmation of whether the employee is a "Less Than Twelve Month Educational Employee", the number of contractual days in the employee's school year and a list of all non-contractual days for the ~~twenty-six week period starting with the claimants date of disability.~~ This information must be provided by the employing organization to the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ within 48 hours of the date when the employee files ~~their~~ the STD claim or from the date the employing organization receives formal notification of an employee's STD claim filing from the DIP insurance carrier ~~and/or Administrator or third-party administrator.~~

6.3 "Total Disability" or "Totally Disabled" means the employee is prevented by accidental bodily injury, sickness, mental condition, substance abuse, pregnancy, or loss of license due to medical condition from performing the essential duties of ~~their~~ the employee's occupation,

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

11

and as a result, the employee is earning 20% or less of ~~his or her~~ the base rate of compensation received on the last day of employment before becoming disabled. IMPORTANT NOTE: Weekly earnings means the employee's usual base rate of pay including hazardous duty pay if applicable. Weekly earnings do not include commissions, bonuses, shift differential pay, overtime pay or another fringe benefit or extra compensation. If disabled, weekly earnings will be the rate on the last day as an active full-time employee before becoming totally disabled.

~~6.3.1~~ IMPORTANT NOTE: Weekly earnings means the employee's usual base rate of pay including hazardous duty pay if applicable. Weekly earnings do not include commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation. If disabled, weekly earnings will be the rate on the last day as an active full-time employee before becoming totally disabled.

6.4 The STD program does not cover:

6.4.1 Injury, sickness, mental condition, substance abuse, or pregnancy not being treated by a ~~physician or surgeon;~~ health care provider.

6.4.2 Disability caused by or contributed to by war or act of war, declared or not;

6.4.3 Disability caused by commission of or attempt to commit a felony, or to which a contributing cause was the ~~participating~~ employee being engaged in an illegal occupation ~~and/or~~ or activity;

6.4.4 Disability caused by or contributed to an intentionally self-inflicted injury, and;

6.4.5 Injury sustained as a result of doing work for pay or profit from another employer.

6.5 Bus drivers who are contractually required to remain symptom free from disabling illness ~~and/or~~ or injury for one year starting with the date of disability will be approved for STD benefits for up to the maximum 182 calendar day benefit period.

6.6 There is no pre-existing conditions limitation in the STD program.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

7.0 STD Coverage - Less Than Twelve Month Educational Employees Only (Institutions of Higher Education, School Districts, Charters Schools, ~~Dept. of Education~~ DOE)

7.1 Employees who develop a disability during ~~their~~ the normal working period are eligible to file ~~an~~ a STD claim and receive benefits through the end of the current school year assuming the employee is able to satisfy the calendar day elimination period before the last day of the school year. Should the disability continue through the employee's non-working period and into the next school year, the non-working time period counts toward satisfaction of the 182 calendar day STD benefit period.

7.2 Employees who are unable to satisfy the calendar day elimination period before the end of the current school year will resume completion of the elimination period as of the first day of the next school year.

7.3 Disabilities that begin during a non-working period may not be claimed until the normal working period resumes. The actual date of the employee's disability will remain unchanged and reflected in the DIP insurance carrier or third-party administrator's system however the elimination period begins the first working day of the new school year.

20 DE Reg. 70 (07/01/16)

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

12

8.0 STD Benefit Payment

- 8.1 STD benefit wage payments are paid by the employing organization to employees whose STD claims have been approved or extended.
- 8.2 The DIP insurance carrier ~~and/or Administrator shall~~ or third-party administrator will notify the employee and the employee's Human Resource Benefits Office of the initial determination of the employee's eligibility for STD benefits in writing by certified mail, return receipt requested within 10 days of the determination.
- 8.3 STD benefits ~~shall will~~ be payable at a rate of up to 75% of the ~~participating~~ employee's creditable compensation not to exceed the plan maximum during the period the employee has a disability.
- 8.4 ~~Pursuant to~~ In accordance with 29 Del.C. §5253(b)(3), creditable compensation during periods an employee receives STD benefits ~~shall will~~ include general salary increases awarded or reductions in salary instituted during the period of ~~Short Term disability~~ STD coverage.
- 8.5 Creditable compensation during the period an employee has a disability also includes hazardous duty pay if applicable. No other additional types of pay are included in the payment of STD benefits.
- 8.6 The amount of ~~any a~~ benefit for loss of income provided to an employee or to an employee's family as a result of a period of disability for which the employee is claiming STD benefits will be an offset to the employee's STD benefit payment. This includes ~~any such those~~ benefits for which the employee or the employee's family is eligible or is paid to the employee, the employee's family, or to a third party on behalf of the employee. This includes the amount of ~~any a~~ benefit for loss of income from:
- 8.6.1 The United States Social Security Act, the Civil Service Retirement System, the Railroad Retirement Act, the Jones Act, the Canada Pension Plan, the Quebec Pension Plan or similar plan or act that a claimant, a ~~claimants~~ claimant's spouse, or a claimant's ~~child(ren)~~ child are eligible to receive because of the employee's disability;
- 8.6.2 ~~Any A~~ plan or arrangement of coverage, whether insured or not, as a result of employment by or association with the State of Delaware, or as a result of membership in or association with ~~any a~~ group, association, union or other organization;
- 8.6.3 The Veteran's Administration or ~~any other~~ another foreign or domestic governmental agency for the ~~same~~ disability;
- 8.6.4 ~~Any A~~ governmental law or program that provides disability or unemployment benefits as a result of the employee's job with the State of Delaware;
- 8.6.5 An individual insurance policy where the premium is wholly or partially paid by the State of Delaware;
- 8.6.6 ~~Any A~~ temporary or permanent disability benefits under a Workers' Compensation law, occupational disease law, or similar law including the Salary Supplement;
- 8.6.7 Compulsory "no-fault" (or PIP) automobile insurance; or
- 8.6.8 The portion of a settlement or judgment of a lawsuit that represents or compensates for the ~~employees~~ employee's loss of earnings for the ~~same~~ disability.
- 8.6.9 Payment for Rehabilitative employment by the State of Delaware or other employer. ~~All income~~ Income received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier ~~and/or Administrator.~~ or third-party administrator.

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

13

- 8.7 ~~Any~~ A general increase in benefits required by law that a claimant is entitled to receive under ~~any~~ the Federal Law will not reduce the STD Benefit payable for a period of Total Disability that began ~~prior to~~ before the date of ~~such~~ the increase. **IMPORTANT NOTE:** Other Income Benefits also mean payments that are made to the employee, the employee's family, or to a third party on behalf of the employee, in response to:
- IMPORTANT NOTE:** Other Income Benefits also mean any payments that are made to the employee, the employee's family, or to a third party on behalf of the employee, pursuant to any: in response to:
- 8.7.1 Disability benefit under the Employer's Retirement Plan;
- 8.7.2 Permanent disability or impairment benefits under a Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges of ~~such~~ the benefits;
- 8.7.3 Portion of a settlement or judgment, ~~minus associated costs~~, of a lawsuit that represents or compensates for the claimant's loss of earnings; retirement benefit from a Retirement Plan that is wholly or partially funded by employer contributions, unless:
- 8.7.3.1 the claimant was receiving it ~~prior to~~ before becoming Disabled;
- or
- 8.7.3.2 the claimant immediately transfers the payment to another plan qualified by the United States Internal Revenue Service for the funding of a future retirement.
- 8.8 Employees enrolled in and receiving STD compensation ~~shall~~ will receive up to a maximum of 100% of pre-disability base pay from ~~all~~ other sources, including ~~parental leave~~. Parental Leave. If the employee is otherwise eligible for holiday pay or a paid leave other than ~~annual, sick, compensatory sick leave, annual leave, compensatory time~~ or donated leave, the employee will be granted 100% pay on the day in question without a residual. ~~All leave~~ Leave supplements will be calculated on a per pay basis.
- 8.9 Calendar days used to satisfy the STD elimination period for employees who work alternate schedules are converted to a Monday through Friday schedule as ~~all~~ STD benefit payments are calculated using a ~~5-day~~ five day work week. Once the employee has satisfied the calendar day elimination period, the STD program will pay ~~4/5~~ 1/5 of the weekly amount for each weekday the employee is disabled during a pay period.
- 8.10 The minimum weekly STD benefit will be the greater of \$25.00 or 10% of the gross STD benefit before the deduction of other income benefits. If the employee is receiving 100% of ~~his or her~~ the pre-disability pay from ~~any other~~ another source which is an offset, a minimum STD benefit will not be paid.
- 8.11 If while covered under this program an employee develops a partial or residual disability and works on a part-time or limited duty basis, the employee will be entitled to a residual (partial) disability benefit. The employing organization is required to report hours worked by the employee to the DIP insurance carrier ~~and/or Administrator~~ or third-party administrator on a weekly basis. The DIP insurance carrier ~~and/or Administrator~~ or third-party administrator will calculate residual disability benefits for each claimant and promptly provide the results of the calculation to the employing organization. ~~All income and/or Income~~ or benefit received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier ~~and/or Administrator~~ or third-party administrator by the employee.
- 8.12 ~~If a participating~~ In accordance with 29 Del.C. §5253(b)(5), if an employee returns to the employee's position on a full-time ~~basis, as defined by the SEBC,~~ basis for 15 consecutive calendar days or longer, ~~any~~ the succeeding period of disability for which the employee ~~shall~~

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

14

~~will be approved for STD benefits shall constitute~~ will be a new period of ~~short term disability~~ STD with a new corresponding calendar day elimination period. A new period of ~~short term disability shall~~ STD will not be ~~constituted~~ granted if a participating ~~an~~ employee returns to work on a part-time basis. If recurrent periods of disability are due to the same or a related cause; and separated by less than 15 consecutive ~~day(s)~~ days of work as an active full-time employee, ~~they~~ this will be considered to be the same period of disability.

8.13 If while receiving STD benefits an employee should ~~experience a~~ have another disability due to a new ~~disability, cause,~~ cause, the 182nd calendar day associated with the first disability will not be extended and the plan's exclusions will apply to the new disability. The employee is immediately required to report the new disability to ~~their~~ the employee's supervisor, Human Resource ~~office~~ Benefits Office and to the DIP insurance carrier ~~and/or Administrator~~ or third-party administrator.

8.14 The DIP insurance carrier ~~and/or Administrator shall~~ or third-party administrator will provide ~~each the~~ each the employing organization with an ~~Explanation of Benefits (EOB) statement a~~ wage report on each claimant illustrating the following information:

- 8.14.1 approval dates;
- 8.14.2 payment amount, and;
- 8.14.3 ~~offset information~~ information.

8.15 It is the employing organization's responsibility to promptly pay STD benefits to ~~their~~ employees. Overpayment ~~and/or and~~ and underpayment amounts must be immediately reported to the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ and to the current or former employee by the employing organization. In the event of an overpayment or underpayment, the DIP insurance carrier ~~and/or Administrator shall or third-party administrator~~ will provide each the employing organization with a report listing each claimant who receives or has received Other Income Benefits awarded as defined in ~~the STD benefits booklet~~ subsections 8.6 and 8.7 of this regulation during the approved STD benefit period or who has been underpaid STD benefits as a result of a change in the member's claim. The report will also illustrate the additional following information:

- 8.15.1 Gross overpayment or underpayment amount;
- 8.15.2 Reason for the recalculation;
- 8.15.3 Recalculation period;
- 8.15.4 Amount of the claimant's Other Income Benefits award. Other Income Benefits are defined in subsections 8.6 and 8.7 of this regulation.

~~8.16~~ 8.16 All ~~overpayments~~ Overpayments must be immediately collected by the ~~current or former~~ current or former employing organization and returned to the ~~Pension Office~~ Office of Pensions via the State's payroll system (PHRST) or other accepted payroll process for tax reporting purposes. ~~For Human Resources and Payroll Representatives, detailed instructions on how to interpret data and information in the overpayment or underpayment report can be found on the Statewide Benefits Office secure benefits representative website under "Procedures". The document is titled "Interpretation of STD Initial Account Balance Reports/Sample Reports" and is numbered as DIP-003.~~

~~8.16-8.17~~ 8.17 It is the current or former employing organizations responsibility to promptly notify the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ of any and all retroactive awards from other programs awarded to STD claimants.

~~8.17-8.18~~ 8.18 It is the current or former employee's responsibility to promptly notify and repay the State of Delaware ~~and/or or~~ or the DIP insurance carrier ~~and/or Administrator or third-party~~

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

15

administrator for all overpayments including income paid as an offset during the STD and/or LTD benefit period.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

22 DE Reg. 861 (04/01/19)

9.0 Leaves

9.1 Merit & Non-Merit Executive Branch, Elected Offices, DOE, Courts and Legislative Organization Employees

9.1.1 Provided the employee files ~~their~~ the STD claim no later than the 15th calendar day from the date of disability and abides by the employing organization's policy and procedures regarding attendance and calling out absent, the employee may continue to use available ~~sick and/or annual leave~~ 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. ~~Parental leave shall~~ Leave is required be used to cover the elimination period ~~upon~~ as of the birth of a child for eligible employees in lieu of earned ~~sick or~~ sick leave, annual leave, compensatory time or donated leave until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period. ~~See subsection 5.4~~ Refer to Section 5.0 of this regulation for claim filing requirements.

9.1.1.1 If the 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, such as the employee is totally incapacitated or has been involuntarily confined, the employing organization ~~shall have~~ has discretion to pay the employee ~~accrued annual and/or sick leave~~ sick leave, annual leave, or a combination of these leaves until the employee's STD claim is approved. If the STD claim is approved, the employing organization must reconcile the employee's leave record.

9.1.1.2 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.

9.1.2 An employee may utilize ~~annual leave,~~ sick leave, annual leave, compensatory time, or donated leave to supplement STD benefits to equal 100% of pre-disability base pay for a maximum benefit period of 182 calendar days. ~~Parental leave shall~~ Leave is required to be used to supplement the STD benefit to equal 100% of pre-disability base pay for employees entitled to ~~parental leave upon~~ Parental Leave on the birth of a child. An employee may not use ~~accrued annual leave, sick leave~~ sick leave, annual leave or other leave in lieu of ~~parental leave~~ Parental Leave for the birth of a ~~child(ren)~~ child to supplement the STD benefit. The employee can ~~choose~~ choose from the following three options:

9.1.2.1 Except those entitled to ~~parental leave (See Rule 9.1.1),~~ Parental Leave (Refer to subsection 9.1.1 of this regulation), the employee may choose to

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

16

~~use their monthly annual and/or sick leave accrual available sick leave, annual leave, or other eligible leave consecutively starting on the first 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~~

9.1.2.2 Except those entitled to ~~parental leave (See Rule 9.1.1)~~, Parental Leave (Refer to subsection 9.1.1 of this regulation), the employee may choose to retain ~~their sick and/or annual leave accrual sick leave, annual leave, or a combination of these leaves~~ and save it for payout at the time the employee becomes a Long Term Disability (LTD) LTD beneficiary or retires on a service pension. ~~Parental leave shall Leave does not accrue or cannot be donated to the Donated Leave bank or be donated to another state employee. An employee who terminates ends employment prior to before the end of the 12 month parental leave Parental Leave period shall will not be eligible for payment of any unused parental leave; Parental Leave; or~~

9.1.2.3 Except those entitled to ~~parental leave (See Rule 9.1.1)~~, Parental Leave (Refer to subsection 9.1.1 of this regulation), the employee may choose to save ~~their sick and/or annual leave accrual sick leave, annual leave or a combination of these leaves~~ for use when ~~they return the employee returns to work from STD leave. Parental leave Leave must be used within twelve 12 months from the date of birth.~~

9.1.3 Employees applying for STD benefits must also apply for the ~~Family Medical and Leave Act (FMLA) and parental leave FMLA and Parental Leave~~ if eligible. Parental ~~leave Leave~~ runs concurrently with FMLA and STD, as applicable. While on FMLA, employees may retain one week of sick ~~leave and one week of annual leave. Sick leave and annual leave accruals that exceed the allowable one week of sick leave and one week of annual leave must be used as earned.~~

9.1.4 Except those entitled to ~~parental leave (See Rule 9.1.1)~~, Parental Leave (Refer to subsection 9.1.1 of this regulation), donated leave may be used to pay employees during the calendar day STD elimination period. However, regardless of whether a claim was filed with the DIP insurance carrier ~~and/or Administrator, or third-party administrator~~, 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. ~~Upon After approval of the employee's STD claim and while the employee remains in an approved STD status, the employing organization may apply donated leave retroactively to supplement the STD benefit payment.~~

9.1.5 Employees on ~~parental leave, Parental Leave, FMLA and/or or~~ donated leave must ~~comply with follow~~ the rules that apply to those programs.

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

9.1.7 Employees on approved STD may choose to use ~~accrued annual and sick sick leave and annual leave earned each month in its entirety or to save the annual and sick accrual sick leave and annual leave for payout upon the commencement at the end of employment, beginning of LTD or service pension. Upon As of the birth of a child, employees on approved STD are required to utilize parental leave. Parental Leave. Rules for parental leave, Parental Leave, FMLA and donated leave take precedence.~~

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

17

- 9.1.7.1 Employees who exhaust annual and sick leave ~~accrual~~ each month will accrue leave at 100% for the given month.
- 9.1.7.2 Employees who decide to save ~~their annual and sick leave accrual~~ sick leave and annual leave will accrue leave at 75% for the given month.
- 9.1.8 If the employee is in a "no pay" status during the STD elimination period, ~~annual and sick leave accrual~~ sick leave and annual leave stops. The employee should receive ~~annual and sick leave accrual~~ sick leave and annual leave prorated for the portion of the month last worked and a prorated amount of ~~annual and sick leave~~ sick leave and annual leave for the portion of the month in which STD benefits were received. Parental ~~leave shall~~ Leave will be used to cover the elimination period ~~upon~~ as of the birth of a child and is a paid leave.
- 9.1.9 ~~Employees~~ Merit employees remain subject to the provisions of Merit Rule 5.2.4 regarding annual leave carryover.
- 9.1.10 ~~Upon~~ As of the exhaustion of the maximum STD benefit period, ~~any an~~ employee, except those entitled to hazardous duty pay as defined in ~~29 Del.C. §5933(e), 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, ~~shall~~ will no longer be an employee of the State or ~~any of~~ its political subdivisions provided the employee has exhausted ~~their~~ the 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 ~~shall~~ 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,~~ 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. ~~Upon termination of employment,~~ When employment ends, the employee ~~shall~~ will not be eligible for payment of ~~any unused~~ parental leave. Parental Leave. The employee has two options with respect to remaining ~~accrued~~ sick leave and ~~annual leave only.~~ leave.
- 9.1.10.1 Escrow Sick Leave and Annual Leave. ~~Prior to the commencement of LTD benefits,~~ Leave: Before LTD benefits begin, the employee may make written request to the employing organization to escrow ~~accrued~~ sick leave and annual leave for a maximum period of six months. If the member returns to full-time State employment in a benefit eligible position for 30 calendar days within the ~~6 month~~ six month escrow period, the member's sick leave and annual leave balances will be restored. If the member does not return to State employment in a benefit eligible position, the escrowed sick leave and annual leave will be paid to the member based on the rules in place by the member's former employing organization.
- 9.1.10.2 Payout of Sick Leave and Annual Leave. ~~Upon the commencement of LTD benefits,~~ the Leave: The employee ~~shall~~ will be eligible to receive a payout of ~~accrued~~ sick leave and annual leave based on the rules in place by the employing organization. If the member is subsequently rehired or reinstated by the State of Delaware into a benefit eligible position, the member's sick leave and annual leave balance will be ~~zero~~ 0 on the date of rehire or reinstatement.
- 9.1.11 Employees who supplement the STD benefit payment with ~~annual, sick, sick leave, annual leave,~~ compensatory time, parental or donated leave may defer ~~any a~~ any a portion

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

18

of the supplement into the Deferred Compensation program. Employees may not defer ~~any~~ a portion of the STD benefit payment to the Deferred Compensation program.

9.1.12 Pursuant to ~~In accordance with~~ Merit Rule 5.3.8, Merit employees who are injured on the job and approved for ~~Workers' Compensation~~ WC will not be charged with sick leave for any portion of the day of injury.

9.1.13 If an employee is in a no pay status during the STD elimination period, sick ~~leave~~ and annual leave accrual stops. The employee should receive sick ~~leave~~ and annual leave accrual prorated for the portion of the month ~~they~~ the employee last worked and a prorated amount of ~~annual and sick leave and annual leave~~ for the portion of the month in which the employee receives STD benefits. ~~Please see DIP FAQ's, Section 6 for more information.~~ Refer to DIP FAQ's, for specific examples found on the SBO Website.

9.1.14 Merit employees accrue sick ~~leave~~ and annual leave equivalent to the total combined benefit and wage (STD, ~~sick, parental or sick leave, annual leave or parental leave~~, WC, donated leave and PIP, not to exceed 100% of pre-disability earnings) paid to the employee. ~~Please see DIP FAQ's, Section 6 for specific examples.~~ Refer to DIP FAQ's, for specific examples found on the SBO Website.

9.2 DOE, School District, Charter School and Higher Education Employees

9.2.1 Provided the employee files ~~their~~ the STD claim no later than the 15th calendar day from the date of disability and abides by the employing organization's policy and procedures regarding attendance and calling out absent, the employee may continue to use available ~~sick and/or annual leave~~ 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. In accordance with 14 Del.C. §1333 (d), Parental Leave runs concurrently with the rights and benefits available under FMLA and STD in accordance with 29 Del.C. §5253 for the birth of a child. Parental Leave will be paid to eligible employees to cover the STD calendar day elimination period on the birth of a child and to supplement the STD benefit.

~~Pursuant to 14 Del.C. §1333 (d), parental leave runs concurrently with any rights and benefits available under FMLA and STD pursuant to §5253 of Title 29 for the birth of a child. Parental leave shall be paid to eligible employees to cover the STD calendar day elimination period upon on the birth of a child(ren) and to supplement the STD benefit.~~

9.2.1.1 If the STD 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 ~~shall~~ will have discretion to pay the employee ~~accrued annual and/or sick leave~~ sick leave, annual leave, or a combination of these leaves until the employee's STD claim is approved. If the STD claim is approved, the employing organization must reconcile the employee's leave record.

9.2.1.2 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 third party administrator~~ or the Appeals Administrator from the Statewide Benefits Office and/or SBO or the Hearing Officer appointed by the State Employee Benefits Committee, 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.

9.2.2 An employee may utilize ~~annual leave~~, sick leave, annual leave, compensatory time, or donated leave (if applicable) to supplement STD benefits to equal 100% of pre-

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

19

disability base pay for a maximum benefit period of 182 calendar days. Parental Leave will be used to supplement the STD benefit to equal 100% of pre-disability base pay for employees entitled to Parental Leave on the birth of a child. An employee may not use sick leave, annual leave or other leave in lieu of Parental Leave for the birth of a child to supplement the STD benefit.

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

9.2.3 Employees on ~~parental leave~~, Parental Leave, FMLA ~~and/or~~ or donated leave must ~~comply~~ follow with the rules that apply to those programs.

9.2.4 ~~Upon~~ After the exhaustion of the maximum STD benefit period, ~~any an~~ employee, except those entitled to hazardous duty pay as defined in 29 Del.C. §5916(e), 29 Del.C. §5933(c), 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, ~~shall will~~ no longer be an employee of the State or ~~any~~ of its political subdivisions provided the employee has exhausted ~~their the~~ 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 ~~shall 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, 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. ~~Upon termination of employment, When employment ends,~~ the employee ~~shall will~~ not be eligible for payment of ~~any unused parental leave. Parental Leave.~~ The employee has two options with respect to remaining unused sick leave and annual leave.

9.2.4.1 Escrowed Sick Leave and Annual Leave. ~~Prior to the commencement of LTD benefits, Leave:~~ Before LTD benefits begin, the employee may make a written request to the employing organization to escrow unused ~~annual and sick leave and annual leave~~ for a maximum period of six months. If the member returns to full-time State employment in a benefit eligible position for 30 calendar days within the ~~6 month~~ six month escrow period, the member's sick leave and annual leave balances will be restored. If the member does not return to State employment in a benefit eligible position, the escrowed leave will be paid to the member based on the rules of the member's former employing organization.

9.2.4.2 Payout of Sick Leave and Annual Leave. ~~Upon the commencement of LTD benefits, the Leave:~~ The employee ~~shall will~~ be eligible to receive a payout of unused leave based on the rules of the employing organization

9.2.5 Employees who supplement the STD benefit payment with ~~annual, sick, sick leave, annual leave,~~ compensatory time, parental or donated leave may defer ~~any a~~ portion of the supplement into the Deferred Compensation program. Employees may not defer ~~any the~~ portion of the STD benefit payment to the Deferred Compensation program.

16 DE Reg. 1004 (03/01/13)

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

20

22 DE Reg. 861 (04/01/19)

10.0 Termination ~~Of~~ End of STD Benefits

- 10.1 An employee's STD benefits will ~~terminate upon~~ end on the earliest of:
- 10.1.1 The date the program ~~terminates~~; ends;
 - 10.1.2 The date the employee no longer meets the definition of eligibility;
 - 10.1.3 The last day of the period for which the employee fails to pay contributions, if required by the program; ~~or~~
 - 10.1.4 The date in which the State of Delaware ceases to offer an STD program; ~~or~~
 - 10.1.5 ~~Upon~~ As of the exhaustion of the maximum STD benefit period, ~~any an~~ employee, except those entitled to hazardous duty pay as defined in 29 Del.C. §5916(e), 29 Del.C. §5933(c), shall 29 Del.C. §5933(c) and (d), and 83 Del Laws c 325 section 30, ~~will~~ no longer be an employee of the State or ~~any of~~ its political subdivisions provided the employee has exhausted ~~their the~~ 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 ~~shall 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, Parental Leave,~~ provided the employee has exhausted ~~their the~~ FMLA entitlement ~~and/or or~~ is not FMLA eligible. ~~eligible; or~~
 - 10.1.6 The date the employee is no longer covered by the Delaware State Employees' Pension Plan ~~pursuant to~~ in accordance with 29 Del.C. §5519.
 - 10.1.7 The date the employee is discharged for ~~cause~~ or resigns from employment with the State of Delaware.

20 DE Reg. 70 (07/01/16)

22 DE Reg. 861 (04/01/19)

11.0 Appeals - STD Claim Determinations

- 11.1 Claimants whose STD claims are not in an approved status ~~and have not returned to work~~ are entitled to file an appeal with the DIP insurance carrier ~~and/or Administrator, or third-party administrator.~~ Claimants who file an appeal are required to immediately advise their the employee's supervisor and Human Resource office Benefits Office of the status of their the appeal for benefits. The DIP insurance carrier or third-party administrator will provide notice that an appeal has been received to the claimant, Human Resource Benefits Office, and to the SBO.
- 11.2 ~~Pursuant to~~ In accordance with 29 Del.C. §5258, within 90 days of the postmark date of the carrier's written notice of its determination regarding STD benefits, a claimant may appeal ~~any a~~ determination of disability benefits by filing a written petition setting forth with particularity the grounds for appeal with the DIP insurance carrier ~~and/or Administrator, or third-party administrator.~~ The DIP insurance carrier ~~and/or Administrator or third-party administrator~~ has the authority to reverse ~~all or any part of~~ or amend its initial STD benefit determination and ~~shall will~~ notify the claimant, the employing organization and the ~~Statewide Benefits Office SBO~~ in writing by certified mail, return receipt requested within 10 days of the determination. ~~The claimant's written appeal should be addressed and mailed to:~~

Benefit Management Services
Maitland Claim Office

TITLE 19 LABOR
DELAWARE ADMINISTRATIVE CODE

21

~~RE: DISABILITY APPEAL
The Hartford
P.O. Box 14306
Lexington, KY 40512-4306
Tel: (800) 549-6514/ Fax: (866) 411-5613~~

- 11.3 ~~Pursuant to~~ In accordance with 29 Del.C. §5258, within 20 days of the postmark date of the DIP insurance carrier ~~and/or Administrator's or third-party administrator's~~ determination of benefits being appealed, a claimant may file a second level appeal by filing a written petition setting forth with particularity the grounds for second appeal to the Appeals Administrator at the ~~Statewide Benefits Office, SBO~~, who ~~shall~~ will conduct an informal review, and who ~~shall have~~ has the authority to reverse ~~all or any part of or amend~~ the decision of the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ to deny benefits. ~~The claimant's written appeal should be addressed and mailed to:~~

~~Appeals Administrator
RE: DISABILITY APPEAL
Statewide Benefits Office
97 Commerce Way, Suite 204
Dover, DE 19904
Tel: (800) 489-8933
Fax: (302) 739-8339~~

~~The~~ Once the review is finished, the Appeals Administrator or designee, ~~shall~~ will issue a final written decision and ~~shall~~ will mail it to the claimant by certified mail, return receipt requested, within 30 days of speaking with the claimant.

- 11.4 ~~Pursuant to~~ In accordance with 29 Del.C. §5258, if the Appeals Administrator affirms the DIP insurance carrier ~~and/or Administrator's or third-party administrator's~~ decision to deny or amend disability benefits or any part thereof, benefits, a claimant may file an appeal to the SEBC within 20 days of the postmark date of the notice of the determination from the Appeals Administrator by filing a written petition with the SEBC setting forth with particularity the grounds for the appeal. ~~The claimant's written appeal should be addressed and mailed to:~~

~~Co-Chair, State Employee Benefits Committee (SEBC)
RE: DISABILITY APPEAL
Department of Human Resources
Haslet Armory, Second Floor
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901
Tel: (302) 739-4195
Fax: (302) 739-3000~~

The SEBC may designate an appropriate representative from the Department of Human Resources as a ~~hearing officer~~ Hearing Officer to hear evidence presented by the employee or, in its sole discretion, it may decide to hear the appeal directly. The SEBC or the ~~hearing officer, Hearing Officer~~, Hearing Officer, as the case may be, ~~shall~~ will determine whether the determination to deny benefits complies with the applicable disability plan adopted by the SEBC. The ~~Hearing officer and/or Officer and~~ SEBC ~~shall~~ have all of the following powers in respect to the conduct at the hearing:

- 11.4.1 To issue subpoenas and administer oaths in ~~any a~~ a proceeding. ~~Any A~~ subpoena process order or ~~any~~ notice or paper requiring service ~~shall~~ will be sent by certified mail, return receipt requested;
- 11.4.2 To examine persons as witnesses, take evidence, require the production of documents, and do ~~all~~ other things ~~pursuant to~~ in accordance with law which are

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

22

necessary to determine the appeal. In proceedings before the SEBC or its ~~hearing officer,~~ Hearing Officer, if ~~any a~~ any a person neglects to produce ~~any a~~ any a pertinent document, neglects or refuses to appear after having been subpoenaed, refuses to testify or be examined, disobeys or resists ~~any a~~ any a lawful order or process, or intentionally obstructs the hearing, the SEBC ~~shall will~~ certify facts under the signature of its chairperson or the ~~hearing officer~~ Hearing Officer to ~~any a~~ any a judge of the Superior Court, which judge ~~shall there-upon will then~~ hear evidence as to the acts complained of. The judge ~~shall, will,~~ if the judge deems the evidence so warrants, issue an order requiring such the persons to testify or produce documents or otherwise comply with follow the requirements of the SEBC, as the case may require. Refusal to ~~comply with follow~~ comply with follow the order of the Court ~~shall constitute will be~~ will be contempt of Court;

11.4.3 Where the SEBC assigns the matter to the ~~hearing officer, the hearing officer~~ Hearing Officer, the Hearing Officer shall will decide the matter and prepare a report containing the findings of fact, and conclusions of law, within 60 days of the hearing, and ~~shall will~~ transmit the report, with the full record of the hearing, to the SEBC. The SEBC may accept or modify the ~~hearing officer's~~ Hearing Officer's final report, and ~~shall will~~ notify the parties of its action by certified mail, return receipt requested within 60 days.

11.4.4 If the SEBC ~~elects~~ chooses to hear the matter directly and not to assign it to the ~~hearing officer,~~ Hearing Officer, it ~~shall will~~ issue its final decision containing findings of fact and conclusions of law, within 60 days of the hearing, and ~~shall will~~ notify the parties of its action by certified mail, return receipt requested.

11.5 Pursuant to ~~In accordance with~~ 29 Del.C. §5258, within 30 days of the postmark date of the SEBC's determination to deny benefits on appeal, a claimant may file a final action to Superior Court. The appeal ~~shall will~~ be on the record.

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

20 DE Reg. 660 (02/01/17)

21 DE Reg. 234 (09/01/17)

22 DE Reg. 861 (04/01/19)

12.0 ~~Employee Termination-End of Employment~~

12.1 The employing organization is required to ~~fully complete~~ fill out a Vested LTD-Pension Application ~~prior to at~~ at the exhaustion of the STD benefit period. The ~~completed~~ filled out form must be submitted to the Office of Pensions for processing.

12.2 Employees leaving State service whose application for LTD benefits has not been approved, are eligible for continuation of ~~their~~ their health care ~~coverage(s)~~ coverage under COBRA. Employees should contact ~~their Benefits Representative or the employee's~~ the employee's Human Resource Benefits Office for details of this continuation option. Please refer to the Group Health Insurance Plan Eligibility and Enrollment Rules for full details.

12.3 Six weeks ~~prior to the commencement of LTD benefits, before the exhaustion of the~~ STD benefit period, regardless of whether the employee's claim is in an approved status or has had the STD claim extended through the 182nd calendar day of disability, the employing organization will provide the employee with Transitioning to LTD documents Exhaustion of STD Benefit communications for the purpose of obtaining the employee's intentions of returning to work, retiring, or becoming an LTD beneficiary and for escrowing sick leave and annual leave

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

23

~~accruals for a 6 month~~ six month period and for benefit elections for while on approved LTD. ~~See subsection 9.1.11.1 Refer to subsections 9.1.10 and 9.2.4 of this regulation for complete a description of escrowing leave.~~

- 12.4 Pursuant to ~~29 Del.C., §5933(c), hazardous duty~~ In accordance with 29 Del. C. §5933 (c) and (d) and 83 Del Laws c 325 section 30, employees injured while performing a hazardous duty assignment and whose injuries arose out of and in the course of performing hazardous duty are entitled to a 12 month salary supplement. Employees entitled to hazardous duty pay as defined in 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 ~~shall~~ will no longer be an employee of the State or ~~any~~ of its political subdivisions at the end of ~~their~~ the employee's entitlement to hazardous duty pay or ~~parental leave,~~ Parental Leave, provided the employee has exhausted ~~their~~ the FMLA entitlement ~~and/or~~ or is not FMLA eligible and the employee is not working on a temporary reduced, alternate, light duty ~~and/or~~ or part-time basis. ~~Upon termination of employment,~~ When employment ends, the employee ~~shall~~ will not be eligible for payment of any unused ~~parental leave.~~ parental leave. ~~See subsection Parental Leave. Refer to subsections 9.1.10 and 9.2.4 of this regulation for a complete description.~~

16 DE Reg. 1004 (03/01/13)

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

22 DE Reg. 861 (04/01/19)

13.0 Long Term Disability (LTD)

- 13.1 For employees hired on or after January 1, 2006, no LTD benefit will be payable for ~~any~~ a disability that is due to, contributed to, by, or results from a pre-existing condition unless ~~such~~ the disability begins:
- 13.1.1 After the last day of 12 consecutive ~~month(s)~~ months while insured in DIP during which the employee received no medical care for the pre-existing condition; or
- 13.1.2 After the last day of 12 consecutive ~~month(s)~~ months during which the employee has been continuously insured under this plan.
- 13.2 Claimants may not receive LTD benefits and a service pension at the same time.
- 13.3 LTD benefits can be awarded and paid by the DIP insurance carrier and/or third-party administrator to individuals who remain actively employed and to individuals whose employment with the State of Delaware or any of its political subdivisions has been terminated.

14.0 LTD Elimination Period

- 14.1 The elimination period is the period of time the employee has a disability before benefits can be paid. It is the last to be satisfied of the following:
- 14.1.1 The first 182 consecutive calendar days of ~~any one~~ a period of disability; or
- 14.1.2 The exhaustion of the 182 calendar day STD benefit period.
- 14.2 The elimination period ~~shall commence~~ will begin on the date of disability and LTD benefits will ~~commence~~ begin on the 183rd calendar day.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

15.0 LTD Coverage

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

24

15.1 LTD benefits are paid by the DIP insurance carrier ~~and/or Administrator~~ or third-party administrator on a monthly basis directly to the claimant.

15.2 "Disability" or "disabled" during the first 24 months following the elimination period means the claimant is prevented by accidental bodily injury, sickness, mental condition, substance abuse or pregnancy from performing one or more of the essential duties of the claimant's occupation and, as a result, the claimant's current monthly earnings are less than 80% of pre-disability earnings. After the exhaustion of the first 24 months of disability, the claimant is prevented from performing one or more of the essential duties of ~~any~~ an occupation. The claimant's failure to pass a physical examination required to maintain a license to perform the duties of the claimant's occupation alone, does not mean that the claimant has a disability.

15.3 The LTD program does not cover:

15.3.1 Disabilities not under the regular care of a ~~physician~~; health care provider;

15.3.2 Disability that is caused or contributed to by war or an act of war (declared or not);

15.3.3 Disability caused by commission of or attempt to commit a felony, or to which a contributing cause was the ~~participating~~ claimant's being engaged in an illegal occupation;

15.3.4 Disability caused by or contributed to by an intentionally self-inflicted injury, and;

15.3.5 Injury sustained as a result of doing work for pay or profit from another employer.

15.4 The maximum duration of LTD benefits is as follows:

Age When Disabled	Benefit
Duration (Months)	
Prior to age 60	To age 65
60	60
61	48
62	42
63	36
64	30
65	24
66	21
67	18
68	15
69+	12

Age When Disabled
Before age 60

Benefit Duration in Months
To age 65

60
61
62
63
64
65
66

60
48
42
36
30
24
21

**TITLE 19 LABOR
DELAWARE ADMINISTRATIVE CODE**

25

<u>67</u>	<u>18</u>
<u>68</u>	<u>15</u>
<u>69</u>	<u>12</u>

- 15.5 ~~_____~~ If an individual has a disability because of:
- 15.5.1 ~~_____~~ mental condition that results from any cause;
 - 15.5.2 ~~_____~~ any condition that may result from mental condition;
 - 15.5.3 ~~_____~~ alcoholism; or
 - 15.5.4 ~~_____~~ the non-medical use of narcotics, sedatives, stimulants, hallucinogens, or any other such substance, then, subject to all other policy provisions, LTD benefits will be payable:
 - 15.5.4.1 ~~_____~~ only for so long as the claimant is confined in a hospital or other place licensed to provide medical care for the disabling condition; or
 - 15.5.4.2 ~~_____~~ when the claimant is not so confined, a total of 24 months for all such disabilities during the individual's lifetime.
- 15.6 ~~_____~~ Pursuant to 29 ~~Del.C. §5524(d)~~, DIP participants vested in the Delaware State Employees' Pension Plan as of December 31, 2005 may be enrolled in the disability pension plan upon the exhaustion of LTD benefits due to mental condition and/or substance abuse. Members will be mailed an authorization form to complete and return to the DIP insurance carrier and/or Administrator. Upon receipt, the DIP insurance carrier and/or Administrator will send a copy of the member's disability file to the Pension Office for processing.

20 DE Reg. 70 (07/01/16)

16.0 LTD Benefit Payment

- 16.1 LTD benefits ~~shall~~ will be paid in an amount up to 60% of the claimant's creditable compensation ~~as of the day prior to~~ before the onset of the disability.
- 16.2 ~~_____~~ In no event shall a claimant utilize earned leave to supplement LTD benefit payments, unless the claimant has been rehired and is working on a part-time basis.
- 16.3-16.2 As defined in 29 ~~Del.C. §5253(c)(3)~~, LTD benefits ~~shall~~ will not include general salary increases during the period of long-term disability. LTD. LTD benefits may be increased annually by an amount approved by the SEBC.
- 16.4-16.3 Any A claimant who applies for LTD benefits must apply to the Social Security Administration for disability benefits. LTD benefits ~~shall~~ will be reduced by ~~any the~~ disability benefits ~~received from~~ awarded to all family members by the Social Security Administration.
- 16.5-16.4 The amount of ~~any a~~ benefit for loss of income provided to a claimant or to a claimant's family as a result of a period of disability for which the claimant is requesting LTD benefits will be an offset to the claimant's LTD benefit payment. This includes ~~any such~~ benefits for which the claimant or the claimant's family is eligible or is paid to the claimant, the claimant's family, or to a third party on behalf of the claimant. This includes the amount of ~~any a~~ benefit for loss of income from:
- 16.5.1-16.4.1 temporary disability benefits under Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges for ~~such the~~ benefits;
 - 16.5.2-16.4.2 governmental law or program that provides disability or unemployment benefits as a result of the employees job with the State;

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

26

- ~~16.5.3~~ 16.4.3 plan or arrangement of coverage, whether insured or not, or as a result of employment by or association with the employer or as a result of membership in or association with ~~any a~~ group, association, union or other organization;
- ~~16.5.4~~ 16.4.4 mandatory "no-fault" automobile insurance plan;
- ~~16.5.5~~ 16.4.5 disability benefits under:
- ~~16.5.5.1~~ 16.4.5.1 the United States Social Security Act or alternative plan offered by a state or municipal government;
 - ~~16.5.5.2~~ 16.4.5.2 the Railroad Retirement Act;
 - ~~16.5.5.3~~ 16.4.5.3 the Canada Pension Plan, the Canada Old Age Security Act, the Quebec Pension Plan or ~~any a~~ provincial pension or disability plan; or
 - ~~16.5.5.4~~ 16.4.5.4 similar plan or act, that the claimant, the claimant's spouse and children are eligible to receive because of the claimant's disability;
- ~~16.5.6~~ 16.4.6 Disability benefit from the Veteran's Administration, or ~~any other~~ another foreign or domestic governmental agency:
- ~~16.5.6.1~~ 16.4.6.1 that begins after the claimant developed a disability; or
 - ~~16.5.6.2~~ 16.4.6.2 if the claimant were receiving the benefit before becoming Disabled, the amount of ~~any the~~ increase in the benefit that is attributed to the claimant's disability.
- ~~16.5.7~~ 16.4.7 Payment for Rehabilitative employment by the State of Delaware or other employer. ~~All income~~ Income received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier ~~and/or Administrator.~~ or third-party administrator.

~~**IMPORTANT NOTE:** Other Income Benefits also means any payments that are made to the claimant, the claimant's family, or to a third party on behalf of the claimant, pursuant to any:-~~

- ~~16.5.7.1~~ 16.4.7.1 disability benefit under the Employer's Retirement Plan;
 - ~~16.5.7.2~~ 16.4.7.2 permanent disability or impairment benefits under a Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges of ~~such the~~ benefits;
 - ~~16.5.7.3~~ 16.4.7.3 portion of a settlement or judgment of a lawsuit that represents or compensates for the claimant's loss of earnings;
 - ~~16.5.7.4~~ 16.4.7.4 retirement benefit from a Retirement Plan that is wholly or partially funded by employer contributions, unless:
 - ~~16.5.7.4.1~~ 16.4.7.4.1 the claimant was receiving it ~~prior to~~ before becoming Disabled; or
 - ~~16.5.7.4.2~~ 16.4.7.4.2 the claimant immediately transfers the payment to another plan qualified by the United States Internal Revenue Service for the funding of a future retirement.
- ~~16.6~~ 16.5 Claimants receiving LTD benefits are responsible for the accurate and timely payment of ~~all~~ health care premiums. Please refer to the Group Health Insurance Plan Eligibility and Enrollment Rules for full details.
- ~~16.7~~ 16.6 If the State of Delaware notifies the DIP insurance carrier ~~and/or administrator or third-party administrator~~ that a claimant receiving LTD benefits has been overpaid ~~STD benefits, LTD benefits for any reason,~~ the DIP insurance carrier ~~and/or administrator or third-party administrator~~ shall make any LTD payments that it would otherwise pay to the claimant

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

27

~~directly to the State of Delaware until the State of Delaware has been paid in full for the claimant's overpaid STD benefits.~~ will recoup all overpaid LTD payments directly from the LTD beneficiary.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

21 DE Reg. 234 (09/01/17)

17.0 ~~LTD Termination~~ End of LTD Benefits

17.1 A claimant's LTD benefit will ~~terminate upon~~ end on the earliest of:

17.1.1 The date the claimant is no longer disabled as determined by the DIP insurance carrier ~~and/or Administrator; or third-party administrator;~~

17.1.2 The date the Group Insurance Policy ~~terminates;~~ ends;

17.1.3 The date premium payment is due but not paid, if applicable;

17.1.4 The date the claimant is no longer a member of the Delaware State Employees' Pension Plan, or;

17.1.5 The date the claimant ~~elects~~ chooses service retirement from the State of Delaware.

20 DE Reg. 70 (07/01/16)

18.0 Appeals - LTD Claim Determinations

18.1 The claimant or the claimant's representative may appeal to the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ for a full and fair review of ~~any~~ the LTD benefit determination. The claimant may:

18.1.1 Request a review ~~upon~~ by submitting a written application to the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ within 180 days of the claim denial;

18.1.2 Request copies of ~~all~~ documents, records, and other information relevant to the claim; and

18.1.3 Submit written comments, documents, records and other information relating to the claim.

18.2 The DIP insurance carrier ~~and/or Administrator or third-party administrator~~ will make a decision no more than 45 days after receiving the claimant's appeal unless the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ determines special circumstances that require an extension of time to process the appeal. If the appeal requires an extension, the DIP insurance carrier ~~and/or Administrator or third-party administrator~~ will make a decision no more than 90 days after receiving the claimant's appeal. The written decision will include specific references to policy provisions on which the decision is based.

19 DE Reg. 78 (07/01/15)

19.0 Other Benefits During Disability

19.1 ~~Short Term Disability (STD)~~ STD

19.1.1 Employees receiving STD benefits accrue pension creditable service for each month the employee's STD claim is in an approved status.

19.1.2 Employees receiving STD benefits under 29 **Del.C.** §5253(b) will be treated as "regular officers and employees" under these regulations and are eligible for enrollment

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

28

in the Group Health Insurance ~~Program-Plan~~ with State Share contributions, as applicable. STD beneficiaries are subject to the Group Health Insurance ~~Program-Plan~~ Eligibility and Enrollment Rules.

19.2 ~~Long Term Disability (LTD)~~ LTD

19.2.1 Claimants on approved LTD continue to accrue pension creditable service for each month the LTD claim is in an approved status.

19.2.2 The State of Delaware's pension benefit and the DIP are separate programs. At the point an individual begins receiving LTD benefits, the individual can ~~terminate their end~~ membership in the Delaware State Employees Pension Plan (SEPP) by withdrawing contributions. Should this occur, the individual forfeits ~~their the~~ right to a service pension and all accompanying fringe benefits such as health care after LTD ceases.

19.2.3 LTD claimants receiving benefits under 29 **Del.C.** §5253(c) will be treated as "eligible pensioners" and are eligible for enrollment in the Group Health Insurance ~~Program Plan~~ with State Share contributions, as applicable. LTD beneficiaries, who have returned to work as provided in ~~DIP Rule 22.0 prior to~~ Section 22.0 of this regulation before the exhaustion of the STD benefit period or who have been rehired into a benefit eligible active position, will be treated as "regular officers and employees" as provided by 29 **Del.C.** §5202 and are to receive State Share contributions by ~~their the employee's~~ employing organization. LTD beneficiaries are subject to the Group Health Insurance Plan Eligibility and Enrollment Rules. LTD beneficiaries who are not actively working in a benefit eligible position will have ~~their~~ health care benefits administered by the Office of Pensions. LTD beneficiaries who remain employed in a benefit eligible position or are rehired into a benefit eligible position will have health care benefits administered by the employing organization.

20 DE Reg. 70 (07/01/16)

20.0 ~~Return To Work (RTW)~~ RTW from STD

20.1 Pursuant to ~~In accordance with~~ 29 **Del.C.**, §5256(5), a contract exists between the SEBC and the ~~Statewide Benefits Office~~ SBO for the purpose of the administration of the DIP, including but not limited to determination of an individual's ability to return to work by the ~~RTW Coordinator pursuant to 29 Del.C. §5257(b).~~ SBO RTWC in accordance with 29 Del.C. §5257(a).

20.1.1 ~~Short Term Disability~~ Return To Work (RTW) ~~STD - RTW for Merit~~
Employees

20.1.1.1 Pursuant to ~~29 Del.C. §5257(a), once~~ Once an employee has been ~~determined to have the ability to return to employment by the SEBC,~~ released to return to work from STD, the employee will receive the following ~~assistance:~~ assistance: Merit employees may be placed in a vacant Merit position, for which the Merit employee qualifies, by the SBO, Department of Human Resources.

~~20.1.1.1.1~~ Merit employees may be placed in any a vacant merit position, for which they qualify, by the Department of Human Resources.

~~20.1.1.1.2~~ Nonmerit state employees, and employees from nonstate employers will be placed by that employer into a vacant position within their respective employing organization for which the employee qualifies.

20.1.1.2 The employee must have a RTW Authorization ~~from his/her~~ attending physician signed from the employee's health care provider to be

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

29

permitted to return to work. Authorization forms may be obtained from the ~~RTW Coordinator~~ SBO RTWC in the Statewide Benefits Office or from the employing organization if a specific form is required. ~~A RTW Authorization is required Prior to the employee's first day back to work.~~

20.1.1.2.1 RTW Authorizations must be submitted to the employing organization's Human Resource Benefits Office as soon as possible and before reporting to work if the employee is returning to work full time at full duty.

20.1.1.2.2 If an employee is returning to work with restrictions, or is requesting modified, alternate, or part-time work schedule, the employee must submit the documentation to the SBO RTWC and the employing organization's Human Resource Benefits Office as soon as possible and before reporting to work. Accommodations, including a part-time or modified work schedule, must be approved by the employing organization's Human Resource Benefits Office before the employee returns to work.

20.1.1.3 Return to work assistance for employees enrolled in DIP who expect to be out of work for less than the STD calendar day elimination period are eligible to utilize the services of the RTW Coordinator from the Statewide Benefits Office. As part of the State of Delaware's DIP, the SBO RTWC provides return to work assistance to employees who are currently on an approved STD claim, or were previously on an approved STD claim within the past 36 months. The SBO RTWC will work with an employee's Human Resource Benefits Office, supervisor (if applicable), the employing organization's ADA coordinator (or designee), and the DIP insurance carrier or third-party administrator, to return the employee to work.

20.1.1.4 There is a Return to Work process that shall will be followed to assess and plan for keeping or returning an employee to work. The return to work process for all employing organizations shall will be as follows:

20.1.1.4.1 Same job, same employer

20.1.1.4.2 Same job with modifications, same employer

20.1.1.4.3 Same job, different employer

20.1.1.4.4 Same job with modifications, different employer

20.1.1.4.5 Different job, same employer

20.1.1.4.6 Different job, different employer

20.1.1.4.7 Retraining and Education

20.1.1.5 The employing organization organization's Human Resource Benefits Office is required to engage in a an interactive dialogue with an employee who may be covered by the ADA and can perform the essential functions of the position with or without reasonable accommodation.

20.1.1.6 The employee is eligible to receive assistance from the RTW Coordinator SBO RTWC and the employing organization if temporary restrictions and limitations prevent an employee from performing his/her the employee's job at full capacity capacity. The employee will return to full duty work as soon as

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

30

approved to do so by ~~a medical provider~~ the employee's health care provider as well as with the approval of the employing organization and within the ~~merit rule~~ Merit Rule time frames. In accordance with Merit Rule 10.10, agencies will make temporary accommodations that will allow an employee to return to work.

- 20.1.1.7 If the employing organization is unable to accommodate the employee with temporary restrictions or limitations, the employing organization must notify the ~~RTW Coordinator~~ SBO RTWC stating the reason the accommodation cannot be granted. Employees should work closely with the ~~RTW Coordinator~~ SBO RTWC and the employing organization if modified duty is being requested.
- 20.1.1.8 When looking for options beyond the employee's own job, the ~~RTW Coordinator~~ SBO RTWC and employing organization ~~shall~~ will consider the employee's abilities, anticipated absence duration, training and experience. If placement cannot be accommodated, the employing organization must provide a written explanation to the ~~RTW Coordinator~~ SBO RTWC. If an employee's disability, illness, or injury prevents the employee from returning to the employee's previous position, the SBO RTWC can assist in finding a State of Delaware position that is within the qualifications and restrictions of the employee.
- 20.1.1.9 If the employing organization is unable to accommodate the employee's restrictions so that ~~he/she~~ the employee may return to work, the employee may be eligible for a continuation of STD benefits up to 182 calendar days provided the employee is still unable to perform the essential duties of ~~their own~~ the employee's occupation.
- 20.1.1.10 If the employing organization agrees to accommodate the temporary restrictions or limitations recommended by the employee's ~~medical provider~~ health care provider while recovering from disability and the employee refuses to return to work, ~~benefits may be discontinued.~~ work, STD benefits and SBO RTWC assistance may be suspended, discontinued, or denied.
- 20.1.1.11 When appropriate, the ~~RTW Coordinator~~ SBO RTWC may refer employees to the Division of Vocational Rehabilitation when it has been determined by ~~a medical professional~~ the employee's health care provider that ~~an~~ the employee will no longer have the ability to perform the essential functions of the position on a permanent basis.
- 20.1.1.12 When assigned to a rehabilitation program, the employee is required to maintain a treatment schedule corresponding to medical restrictions ~~and/or~~ and normal working hours as designed by the location.
- 20.1.1.13 Employing organizations may not permanently fill an employee's position while the STD claim is in an approved status. ~~However, throughout the approved STD benefit period employing organizations retain the right to impose disciplinary measures up to and including dismissal for just cause.~~
- ~~20.1.1.14~~ Throughout the approved STD benefit period, employing organizations retain the right to impose disciplinary measures up to and including dismissal for just cause.
- 20.1.2 STD – Return to Work "RTW" for Non-Merit Employees
- ~~20.1.2.1~~ Once an employee has been released to return to work from STD, the employee will receive the following assistance: Non-Merit State employees, and employees from non-State employers will be placed by that employer into a vacant

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

31

position within the employee's respective employing organization for which the employee qualifies.

20.1.2.2 The employee must have a RTW Authorization signed by the employee's health care provider to be permitted to return to work. Authorization forms may be obtained from the SBO RTWC or from the employing organization if a specific form is required.

20.1.2.2.1 RTW Authorizations must be submitted to the employing organization's Human Resource Benefits Office as soon as possible and before reporting to work if the employee is returning to work full time at full duty.

20.1.2.2.2 If an employee is returning to work with restrictions or is requesting modified, alternate, or a part-time work schedule, the employee must submit the documentation to the SBO RTWC and the employing organization's Human Resource Benefits Office as soon as possible and before reporting to work. Accommodations, including a part-time or modified work schedule, must be approved by the employing organization's Human Resource Benefits Office before the employee returns to work.

20.1.2.3 As part of the State of Delaware's DIP, the SBO RTWC provides return to work assistance to employees who are currently on an approved STD claim or were previously on an approved STD claim within the past 36 months. The SBO RTWC will work with an employee's Human Resource Benefits Office, supervisor (if applicable), the employing organization's ADA coordinator (or designee), and the DIP insurance carrier or third-party administrator, to return the employee to work.

20.1.2.4 The employing organization's Human Resource Benefits Office is required to engage in an interactive dialogue with an employee who may be covered by the ADA and can perform the essential functions of the position with or without reasonable accommodation.

20.1.2.5 Employing organizations should make every effort, based on organizational needs, to place temporarily disabled employees in alternate duty assignments, subject to medical restrictions.

20.1.2.6 If the employing organization is unable to accommodate the employee with temporary restrictions or limitations, the employing organization must notify the SBO RTWC stating the reason the accommodation cannot be granted. Employees should work closely with the SBO RTWC and the employing organization if modified duty is being requested.

20.1.2.7 When looking for options beyond the employee's own job, the SBO RTWC and employing organization will consider the employee's abilities, anticipated absence duration, training and experience. If placement cannot be accommodated, the employing organization must provide a written explanation to the SBO RTWC. If an employee's disability, illness, or injury prevents them from returning to the employee's previous position, the SBO RTWC can assist in finding another position within the employee's employing organization, based on the employee's qualifications and restrictions.

20.1.2.8 If the employing organization is unable to accommodate the employee's restrictions so that the employee may return to work, the employee may be eligible for a continuation of STD benefits up to 182 calendar days provided

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

32

the employee is still unable to perform the essential duties of the employee's occupation.

20.1.2.9 If the employing organization agrees to accommodate the temporary restrictions or limitations recommended by the employee's health care provider while recovering from disability and the employee refuses to return to work, STD benefits and SBO RTWC assistance may be suspended, discontinued, or denied.

20.1.2.10 When appropriate, the SBO RTWC may refer employees to the Division of Vocational Rehabilitation when it has been determined by the employee's health care provider that the employee will no longer have the ability to perform the essential functions of the position on a permanent basis.

20.1.2.11 When assigned to a rehabilitation program, the employee is required to maintain a treatment schedule corresponding to medical restrictions and normal working hours as designed by the location.

20.1.2.12 Employing organizations may not permanently fill an employee's position while the STD claim is in an approved status.

20.1.2.13 Throughout the approved STD benefit period, employing organizations retain the right to impose disciplinary measures up to and including dismissal for just cause.

16 DE Reg. 1004 (03/01/13)

19 DE Reg. 78 (07/01/15)

21 DE Reg. 234 (09/01/17)

21.0 ~~Long Term Disability (RTW)~~ RTW (Rehire) from LTD

21.1 ~~Pursuant to 29 Del.C. §5257(b), once an individual has been determined to have the ability to return to employment by the SEBC, the individual will receive the following assistance: In accordance with 29 Del.C. §5256(5), a contract exists between the SEBC and the SBO for the purpose of the administration of the DIP, including but not limited to determination of an individual's ability to return to work by the SBO RTWC pursuant to 29 Del.C. §5257(b).~~

21.1.1 LTD – RTW (Rehire) for Merit Employees

21.1.1.1 Once an employee has been released to return to work from LTD, the employee will receive the following assistance: Former Merit employees enrolled in and previously deemed eligible for the LTD Program may, when available and appropriate, be placed by the SBO, Department of Human Resources in any Merit position, for which the former employee qualifies without a certification list, as long as the paygrade does not exceed the employee's paygrade at the time of the acceptance into and eligibility for the STD Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.

21.1.1.2 As part of the State of Delaware's DIP, the SBO RTWC provides return to work assistance to former employees who are currently on an approved STD or LTD claim or were previously on an approved STD or LTD claim within the past 36 months. The SBO RTWC will evaluate any current restrictions and assist the former employee in returning to active State of Delaware employment. They may be able to return to the previous position, or the SBO RTWC may identify another available position. When a former employee returns to work from LTD,

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

33

they are considered a rehire with the State of Delaware. In order to be eligible for return to work services from LTD, the former employee must be eligible for rehire.

- 21.1.1.3 Former Merit employees with documented performance or conduct issues before the disability may be determined ineligible for placement or RTW assistance. Refer to subsection 20.1.1.4 of this regulation for the RTW process.
- 21.1.1.4 Former Merit employees who are returning to State employment from an approved LTD claim are subject to Merit Rule 9.5.
- 21.1.1.5 When returning to work from LTD, former Merit employees will be considered a new hire. Once rehired, the employee will accrue leave (sick leave and annual leave) at the rate as when the previous employment ended.
- 21.1.1.6 When an individual is rehired from LTD into a Merit position on a reduced work schedule and 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 leave accruals which will be pro-rated based on scheduled hours. The status of permanent part-time will continue until the time as the employee is released to work for a normal work week of 37.5 or 40 hours.
- 21.1.1.7 If an LTD beneficiary is offered a position for which the employee is qualified and the employee declines the position, LTD benefits and SBO RTWC assistance may be suspended, discontinued, or denied.
- 21.1.1.8 Employees returning to active state employment from LTD are eligible for FMLA after meeting the standard FMLA eligibility requirements.
- ~~21.1.1 Former merit employees enrolled in and previously deemed eligible for the Long Term Disability Program may, when available and appropriate, be placed by the Department of Human Resources in any merit position, for which they qualify without a certification list, as long as the paygrade does not exceed their paygrade at the time of their acceptance into and eligibility for the Short Term Disability Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.~~
- ~~21.1.2 Former non-merit employees enrolled in and previously deemed eligible for the Long Term Disability Program will be placed by their previous employer into a vacant position within their respective agency for which they qualify.~~
- ~~21.2 Individuals previously employed in a Merit position, should contact the RTW Coordinator at the Statewide Benefits Office prior to before the beginning of LTD to discuss the RTW processes.~~
- ~~21.3 Former Merit employees with documented performance/conduct issues prior to their disability may be determined ineligible for placement or RTW assistance. Refer to subsection 20.1.1.4 for the return to work process.~~
- ~~21.4 Former Merit employees who are returning to State employment from an approved LTD claim are subject to Merit Rule 9.5 which states "Upon reinstatement, employees who left the Merit System shall be required to serve an initial probation period."~~
- ~~21.5 When an individual is rehired from LTD into a Merit position on a reduced work schedule and the reduced work schedule is expected and/or exceeds 30 calendar days, the employee should be considered permanent part-time for the purposes of holiday pay and leave accruals which shall be pro-rated based on scheduled hours. The status of permanent part-time will continue until such time as the employee is released to work for a normal work week of 37.5 or 40 hours.~~

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

34

~~21.6 Individuals formerly employed by a school district, charter school, institution of higher education or other nonmerit employing organization, may utilize the services of the RTW Coordinator and/or or former employing organization for placement assistance.~~

~~21.7 When returning to work from LTD, former merit employees will be considered a new hire. Once rehired, the employee will accrue leave (vacation/sick) at the same rate as when the previous employment terminated. ended.~~

~~21.8 If an LTD beneficiary is offered a position for which the employee is qualified and the employee declines the position, RTW assistance will terminate. end.~~

~~21.9 Individuals are not required to have been approved or be approved for LTD to receive RTW services from the Statewide Benefits Office.~~

~~21.10 Employees returning to active state employment from LTD are eligible for FMLA upon on meeting the standard FMLA eligibility requirement of:~~

~~21.10.1 Twelve (12) months aggregate employment;~~

~~21.10.2 Have worked 1,250 hours in the 12 months immediately preceding the absence;~~

~~21.10.3 Has not exhausted their 12 week entitlement within the most recent rolling 12 month period.~~

21.2.1 LTD – RTW (Rehire) for Non-Merit Employees

21.2.1.1 Once an employee has been released to return to work from LTD, the employee will receive the following assistance: Former non-Merit employees enrolled in and previously deemed eligible for the LTD Program will be placed by the previous employer into a vacant position within that respective agency for which the employee qualifies.

21.2.1.2 Individuals formerly employed by a school district, charter school, institution of higher education or other non-Merit employing organization, may utilize the services of the SBO RTWC or former employing organization for placement assistance. As part of the State of Delaware's DIP, the SBO RTWC provides RTW assistance to former employees who are currently on an approved STD or LTD claim or were previously on an approved STD or LTD claim within the past 36 months. The SBO RTWC will evaluate any current restrictions and assist the former employee in returning to active State of Delaware employment. The employee may be able to return to the previous position, or the SBO RTWC may work with the Human Resource Benefits Office to identify another position within the former employing organization. When a former employee returns to work from LTD, the employee is considered a rehire with the State of Delaware. In order to be eligible for RTW services from LTD, the former employee must be eligible for rehire.

21.2.1.3 If an LTD beneficiary is offered a position for which the employee is qualified and the employee declines the position, LTD benefits and SBO RTWC assistance may be suspended, discontinued, or denied.

21.2.1.4 Employees returning to active state employment from LTD are eligible for FMLA after meeting the standard FMLA eligibility requirements.

20 DE Reg. 70 (07/01/16)

21 DE Reg. 234 (09/01/17)

22.0 Working while transitioning to LTD or after the exhaustion of the STD benefit period

TITLE 19 LABOR

DELAWARE ADMINISTRATIVE CODE

35

- 22.1 Employees working on a temporary reduced, alternate, light duty ~~and/or~~ or part-time basis ~~upon as of~~ the exhaustion of the maximum STD benefit period should be permitted to continue working while transitioning to LTD. ~~All employing~~ Employing organizations are responsible for engaging in the ADA interactive process (<https://dhr.delaware.gov/personnel/policies/>) with their employees when appropriate.
- 22.2 Employees who are working on a temporary reduced, alternate, light duty ~~and/or~~ or part-time basis while transitioning to LTD or ~~upon as of~~ the exhaustion of the STD benefit period will:
- 22.2.1 Provide written notification to ~~their HR Department~~ the employee's Human Resource Benefits Office indicating ~~their the employee's~~ intent to work while transitioning to LTD or ~~upon as of~~ the exhaustion of the STD benefit period.
- 22.2.2 Be paid for the hours worked in ~~their the~~ regular paycheck.
- 22.2.3 Maintain ~~current~~ benefits with the employing ~~organization.~~ organization, as applicable.
- 22.2.4 For Merit employees, accrue ~~annual and~~ sick leave and annual leave on a pro-rated basis. ~~Non-merit~~ Non-Merit employees must ~~comply with~~ follow the rules that apply to ~~your the~~ employing organization.
- 22.2.5 Receive holiday pay in accordance with the employing organizations rules.
- 22.2.6 If approved for LTD, the employee will receive the LTD benefit once the DIP insurance carrier ~~and/or Administrator~~ or third-party administrator has been provided verification for ~~all~~ income received for the month in which the employee has worked.

15 DE Reg. 1367 (03/01/12)

16 DE Reg. 1004 (03/01/13)

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

20 DE Reg. 660 (02/01/17)

21 DE Reg. 234 (09/01/17)

22 DE Reg. 861 (04/01/19)

23.0 Stay at Work Assistance

- 23.1 Employees should request stay at work assistance from the employee's supervisor, the employing organization's Human Resource Benefits Office, or the employing organization's ADA Coordinator (or designee) when employees experience an illness or injury that has impacted the ability to perform the essential functions of the job. If an employee requests stay at work assistance from the supervisor, the supervisor must communicate that request to the employing organization's Human Resource Benefits Office and the employing organization's ADA Coordinator (or designee). For assistance in identifying the employing organization's ADA Coordinator (or designee), reach out to the employing organization's Human Resource Benefits Office.
- 23.2 It is the responsibility of every employing organization's Human Resource Benefits Office to work with the employee, the supervisor, and other applicable contacts (i.e., SBO RTWC and ADA coordinator (or designee)) to identify possible reasonable accommodations that would allow the employee to remain in the employee's current position.

TITLE 19 LABOR
DELAWARE ADMINISTRATIVE CODE

36

23.3 As part of the State of Delaware's DIP, the SBO RTWC provides stay at work assistance to employees and former employees who:

23.3.1 Are currently on an approved STD or LTD claim or were previously on an approved STD or LTD claim within the past 12 months, and

23.3.2 Have returned to work and are having a relapse or exacerbation of the disability, illness, or injury and having difficulty performing the essential functions of the position.

23.4 The SBO RTWC works with the employee's Human Resource Benefits Office and organization's ADA coordinator (or designee) to identify possible reasonable accommodations that would allow the employee to remain in the employee's current position performing the essential functions.