**Section 420.760 Non-service Connected and Service Connected Disability Leave**

a) Employees who are unable to perform a substantial portion of their regularly assigned duties due to temporary physical or mental disability shall, upon request, or approval of a claim under the Workers' Compensation Act [820 ILCS 305] or Workers' Occupational Diseases Act [820 ILCS 310], be granted a non-service or service-connected disability leave for the duration of the disability. A substantial portion of regularly assigned duties shall be those duties or responsibilities normally performed by the employee that constitute a significant portion of the employee's time or that constitute the factors differentiating that particular position from other positions, provided the balance of the duties can be reassigned by the department.

b) In granting the leave, the Director of Personnel shall apply the following standards:

1) As soon as the employee becomes aware of an impending period of disability, the employee shall notify the appropriate supervisor and provide a written statement by the attending physician or other authority of the approximate length of time the employee will be unable to perform regularly assigned duties;

2) A request for disability leave shall be in writing, except when the department is advised by other appropriate means of the employee's disability. In this event, the employee's signature is not required;

3) Except for service-connected disability as provided in subsection (g), the employee shall have exhausted available sick leave provided under Section 420.610 prior to being granted a disability leave; an employee may use other accrued paid time for this purpose, but is not required to do so;

4) During a disability leave, the disabled employee shall provide written verification by a person licensed under the Medical Practice Act of 1987 [225 ILCS 60] or under similar laws of Illinois or of other states or countries, or by an individual authorized by a recognized religious denomination to treat by prayer or spiritual means. The verification shall show the diagnosis, prognosis and expected duration of the disability and shall be made no less often than every 30 days during a period of disability, unless the nature of the disability precludes the need for such frequency of verification;

c) Termination of Leave:

1) Failure of an employee to provide verification of continued disability upon reasonable request shall, on due notice, cause termination of the leave.

2) An employee's disability leave shall terminate when the employee is no longer temporarily disabled and is capable of performing regularly assigned duties.

A) An employee is no longer temporarily disabled when he/she is able to perform regularly assigned duties upon advice of the appropriate authority (i.e., attending physician, an impartial physician, or other authority).

B) An employee is no longer temporarily disabled when he/she is found to be permanently disabled and unable to perform a substantial or significant portion of his/her regularly assigned duties by the appropriate authority, or in the absence of that authority, by the attending physician.

C) If the department has reason to believe that an employee is able or unable to perform a substantial portion of the regularly assigned duties, it may seek and rely upon the decision of an impartial physician or other specialist licensed pursuant to the Medical Practice Act [225 ILCS 60] in the field of the alleged disability chosen by agreement of the parties or, in the absence of an agreement, upon the decision of an impartial physician or other specialist licensed pursuant to the Medical Practice Act who is selected by the Director of Personnel or SERS TRISTAR.

D) In determining whether to approve a requested discharge of an employee for failure to return from a disability leave or for physical inability to perform the duties of a position, the Director of Personnel may seek and rely upon the advice of the State Employees Retirement System or other appropriate authority, including an impartial physician selected in accordance with subsection (c)(2)(C).

d) An employee who returns from a disability leave shall have the rights set forth in Section 420.680 or subsection (g)(6), whichever applies.

e) An employee who is on disability leave while in temporary or emergency status, except if that status results from a leave of absence to accept a temporary or emergency position, shall be eligible for disability leave for the balance of the appointment and shall earn or accrue no other benefit arising from this Part.

f) Up to 12 weeks of leave time out of any 12 month period may be designated as leave time under the Family and Medical Leave Act (FMLA) (29 USC 2601 et seq.). Designated FMLA leave time will run concurrently with the disability leave or workers' compensation grace time, provided the absence is due to a qualifying serious injury or illness.

g) An employee who suffers an on-the-job injury or illness and is unable to perform a substantial portion of the regularly assigned duties in accordance with subsection (a) shall also be subject to the following:

1) Upon request, an employee will be allowed full pay for 3 working days of absence without utilization of any accumulated sick leave or other benefits if a workers' compensation claim is filed and approved pursuant to the Workers' Compensation or Workers' Occupational Diseases Act.

2) Starting with the 4th working day of absence, the employee shall be permitted, but not required, to utilize accumulated sick leave or other benefit leave time, or may be granted a non-service disability leave of absence pending outcome of the employee's workers' compensation claim. During the leave granted under this subsection (g)(2), the employee may not apply for disability benefits with the Illinois State Employees Retirement System. The employee shall not be required to exhaust available sick time accumulated in accordance with Section 420.610 to be granted this leave.

3) If the employee's workers' compensation claim is deemed subject to benefits provided in the Workers' Compensation or Workers' Occupational Diseases Act, the employee will be placed on a service-connected disability leave of absence. The employee shall not be required to exhaust available sick time accumulated in accordance with Section 420.610 to be granted this leave.

4) In the event the injury or illness is not deemed subject to benefits under the Acts, the employee will be placed on a non-service disability leave of absence or may use accumulated benefit time to cover any absences related to the incident.

5) In the event the injury or illness becomes the subject of an award by the Illinois Workers' Compensation Commission or a settlement contract is approved by the Illinois Workers' Compensation Commission that provides for payment of temporary total disability (TTD) to cover non-work time, the employee shall restore to the State the payment received as sick leave or other benefit leave time and the employee's leave account shall be credited with leave time equivalents.

6) An employee who returns from a service-connected disability leave of absence shall be returned to the same or similar position in the same class in which the employee was incumbent at the time the leave commenced.

(Source: Amended at 39 Ill. Reg. 14182, effective October 19, 2015)