

**WORKERS' COMPENSATION STUDY**

**HIGHER EDUCATION**

**JULY 1, 1994 - AUGUST 20, 1996**

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**EXIT CONFERENCE**

We held an exit conference on August , 1997 with and the Workers' Compensation Study was reviewed and discussed. The response and recommendations are included in the appendix of this report.

**The Joint Committee on Government and Finance:**

The purpose of this study was to determine the extent of compliance with Chapter 23, Article 4, Section 1 of the West Virginia Code as, amended. This Statute prohibits public employees who have incurred on-the-job injuries from being paid leave benefits and Workers' Compensation Temporary Total Disability (TTD) benefits for the same period of time. Public employees referred to in this study are employees of the State's higher education institutions which includes institutions under the control of the University of West Virginia System and the State College System of West Virginia. In making this determination, the following objectives were established:

1. To determine if there are or have been any employees of higher education institutions who have been paid leave benefits and TTD benefits for the same period of time.

2. To determine if employees, who have been paid both, reimbursed the institution and bought back their leave benefits.
3. To determine if the buy back calculations were correct based on the Statute or the rules and regulation governing higher education institutions in effect at the time.
4. To determine if there is an individual at each higher education institution in charge to follow through in seeing that the Statute or applicable rule is complied with.
5. To determine if there were any apparent circumstances as to why employees would use their leave benefits for on-the-job injuries.

We contacted the Bureau of Employment Program's Workers' Compensation Division and obtained a report by each employer of all State employees' occupational injury claims paid during the period July 1, 1994 through August 31, 1996. This report listed by higher education institution the claim number, claimant, beginning and ending dates of temporary total disability (TTD), and the transaction date of the first TTD benefit. The report contained 219 paid claims during the period. In the process of establishing a correspondence between the claims and our random numbering system, we noted West Virginia University and Marshall University had the greatest claims. Therefore, we "stratified" the sample into two groups and selected

a sample from each group to give us a more representative look at all higher education institutions. We randomly selected 39 paid claims from the universities and 29 paid claims from the various other higher education institutions. We contacted each of the institutions selected in the sample and obtained copies of the claimant records pertaining to their Workers' Compensation claim. Records we obtained included the WC123 Form - Report of Occupational Injury; WC774 Form - Employers Charge Statement (This form issued by the Workers' Compensation Division to employers details all payments made to a claimant.), leave records, and payroll information.

Sincerely yours,

Theford L. Shanklin, CPA, Director  
Legislative Post Audit Division

, 1997

Auditors: Nick Arvon, Supervisor  
Charles Lunsford, Auditor  
Ethelbert Scott, Auditor  
Noah Cochran, Auditor

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**SUMMARY**

The purpose of this study was to determine the extent that employees of the State's higher education institutions, who have received a job related injury, are being paid Workers' Compensation Temporary Total Disability (TTD) benefits and sick or annual leave

benefits for the same period of time. The State's higher education institutions include those institutions under the control of the governing boards of the University of West Virginia System and the State College System of West Virginia. Simultaneously receiving both benefits for the same period is prohibited by law, effective July 1, 1989, in Chapter 23, Article 4, Section 1 of the West Virginia Code, as amended.

The above governing Boards also adopted procedural rules concerning leave of its employees with specific rules dealing with on-the-job injuries. Both sets of rules allow for no leave to be charged to the employee for injuries that involve no more than three (3) days of disability. The State College System rules state that the three (3) days must be the consecutive days after the injury.

We noted during the study that some institutions have construed these rules to mean that the first three (3) days of any injury shall not be charged against the employee's leave no matter how long the disability period exists.

During the study, we noted the work days to process a claim ranged from a low of four (4) to a high of nine hundred and eighty-two (982) or an average of seventy-five (75) or approximately three and one-half (3 1/2) months from the date of injury to issuance of the first TTD benefit check. This wide range of time may be attributed to improper documentation of the claim form by the employee, employer or physician or employer's protest of the claim. By dropping those

claims with extremely high processing periods, the average work days for processing dropped to thirty-two (32) days or six (6) weeks. We believe this waiting period from the date of injury to receipt of the first TTD benefit check may be a contributing factor as why employees use their sick leave benefits while off work due to a job related injury.

We sampled sixty-seven (67) claims totaling \$138,066. in TTD benefits of sixty-eight (68) claimants from a total population of two hundred and nineteen (219) totaling \$530,472. in TTD benefits paid between July 1,1994 and August 20, 1996. The results of our study of these claims are presented in the table below:

<b>TOTAL CLAIMS</b>	<b>PERCENT</b>	<b>REMARKS</b>
25	37%	In Compliance with the law and rules and regulations.
2	3%	Employees worked all or part of the period and received TTD benefits for the same period.
40	60%	Employees used leave during all or part of the period they were paid TTD benefits.
67	100%	Total sample

The table below projects the results of our study over the total population.

<b>TOTAL CLAIMS</b>	<b>AMOUNTS</b>	<b>REMARKS</b>
81	\$196,275.	In Compliance with the law and rules and

		regulations.
7	\$ 15,914.	Employees worked all or part of the period and received TTD benefits for the same period.
131	\$318,283.	Employees used leave during all or part of the period they were paid TTD benefits.
219	\$530,472.	Total population.

In conclusion, we believe most of the higher education institutions were not aware their employees had received payment from both sources or that refunds had not been made until it was brought to their attention when the information was requested for our study. We noted in some instances employers or their employees with the responsibility of enforcing the law may not have been aware of the law or had not been fully educated in its application.

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**GENERAL REMARKS**

The Workers' Compensation statute was amended, effective July 7, 1989, to prohibit employees of the State and its political subdivisions from simultaneously drawing Workers' Compensation Temporary Total Disability (TTD) benefits and sick leave benefits for the same period of time. Included in employees of the State are employees of the State's higher education institutions. Chapter 23, Article 4, Section 1 of the West Virginia Code, as amended, addresses leave and on-the-job injuries and states in part:

"... Such state employees may only use sick leave for non-job related absences consistent with sick leave utilization, and may draw workers' compensation benefits only where there is a job related injury. This proviso shall not apply to permanent benefits: Provided, however, That such employees may collect sick leave benefits until receiving temporary total disability benefits. The division of personnel shall promulgate rules pursuant to chapter twenty-nine-a (§29A-1-1 et. seq.) of this code relating to use of sick leave benefits by employees receiving personal injuries in the course of and resulting from covered employment: Provided further, That in the event an employee is injured in the course of and resulting from covered employment and such injury results in the course of and resulting from covered employment and such injury results in lost time taken by him or her as a result of the compensable injury by paying to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received. Such employee shall be restored sick leave time on a day for day basis which corresponds to temporary total disability benefits paid to the employer: And provided further, That since the intent of this paragraph is to prevent an employee of the state or any of its political subdivisions from collecting both temporary total disability benefits and sick leave benefits for the same time period, nothing herein may be construed to prevent an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary

total benefits but not both....”

The State's higher education institutions include those institutions under the control of the governing boards of the University of West Virginia System and the State College System of West Virginia. Both of these governing Boards have adopted procedural rules concerning leave and on-the-job injuries.

The Board of Trustees of the University System of West Virginia utilizes the rules established by the previous governing Board of the State's higher education institutions, the Board of Regents which was abolished July 1, 1989. Series 35, Section 8.8 of Title 128, Procedural Rules addresses employee leave and on-the-job injuries. Section 8.8 states:

“On-the-job injuries or occupational illnesses which involve no more than three (3) days of disability leave or absence from work shall not be charged against the employee's accumulated sick leave. If on-the-job injuries or illnesses require a leave beyond the three (3) day period, the employee may have the option of either of the following: (1) Using earned and accumulated sick and annual leave until both may be exhausted and receiving any additional benefits adjudged to be due under the West Virginia Compensation Law; or (2) reserving for future use any earned and accumulated sick and annual leave and receiving only Workmen's Compensation benefits for which adjudged eligible.”

The Board of Directors of the State College System of West Virginia adopted a procedural rule effective November 19, 1992 concerning employee leave and on-the-job injuries which revised and replaced the procedural rules adopted by the West Virginia Board of Regents, effective June 20, 1987. Title 131, Series 35, Section 5.8 states:

“On-the-job injuries or occupational illnesses which involve no more than three (3) days of disability leave or absence from work shall not be charged against the employee’s accumulated sick leave as long as they are the next three (3) consecutive working days after injury or illness occurred. If on-the-job injuries or illnesses require a leave beyond the three-day period, it shall be the option of the employee either to use earned and accumulated sick and annual leave until both may be exhausted or to reserve for future use any earned and accumulated sick and annual leave and receive only Workers’ Compensation benefits for which adjudged eligible.”

Both sets of rules allow for no leave to be charged to the employee for injuries that involve no more than three (3) days of disability. The State College System rules state that the three (3) days must be the consecutive days after the injury. We noted during the study that some institutions have construed these rules to mean that the first three (3) days of any injury shall not be charged against the employee’s leave no matter how long the disability period exists.

Our study for the period June 1, 1995 through August 18, 1996, consisted of sixty-seven (67) claims totaling \$138,066. in TTD benefits of sixty-eight (68) claimants from a population of two-hundred nineteen (219) claimants totaling \$530,472. in TTD benefits paid. The results of our study are presented in the table below:

<u>Employer/</u>	<u>Avg.</u> <u>Work</u> <u>Days</u> <u>To Pay</u>	<u>Amount</u> <u>Paid</u> <u>Workers’</u> <u>Comp.</u> <u>TTD</u>	<u>Amount</u> <u>Paid</u> <u>Leave</u>	<u>Amount</u> <u>Should Be</u>	<u>Amount</u>	
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<u>No. of Claims</u>	<u>Claim</u>	<u>Benefits</u>	<u>Time</u>	<u>Refunded</u>	<u>Refunded</u>	<u>Differ.</u>
WVU/ 32	86	\$ 79,141.	\$10,841.	\$11,087.	\$ 4,367.	\$ 6,719.
Marshall/ 7	61	\$ 6,829.	\$ 5,365.	\$ 4,615.	\$ 3,997.	\$ 618.
WV State/ 8	34	\$ 23,979.	\$ 2,584.	\$ 3,012.	\$ 1,192.	\$ 1,820.
Shepherd/ 6	60	\$ 2,455.	\$ 1,789.	\$ 1,990.	\$ 344.	\$ 1,646.
WVU Tech/ 3	177	\$ 2,959.	\$ 488.	\$ 414.	\$ 413.	\$ 1.
Fairmont/ 6	57	\$ 13,649.	\$ 3,291.	\$ 5,016.	\$ 1,320.	\$ 3,696.
Concord/ 3	16	\$ 6,804.	\$ 2,463.	\$ 2,566.	\$ 0.	\$ 2,566.
Southern/ 1	13	\$ 2,397.	\$ 142.	\$ 104.	\$ 0.	\$ 104.
West Lib./ 1	0	\$ (147.)	\$ 0.	\$ 0.	\$ 0.	\$ 0.
<b>Totals 67</b>	<b>75</b>	<b>\$138,066.</b>	<b>\$26,963.</b>	<b>\$28,803.</b>	<b>\$11,633.</b>	<b>\$17,170.</b>

Based on our sample of the Workers' Compensation documentation we were provided, we noted it took an average of seventy-five (75) work days or three and three-fourths (3 3/4) months before an employee would receive their first TTD benefit check. However, during our study, the time period ranged from four (4) days to nine hundred and eighty-two (982) days before the first payment of TTD was made. This wide range of time may be attributed to improper documentation by the employee, employer or physician or employer's protest of claims. By dropping those claims with extremely high processing periods, the average work days for processing dropped to thirty-five (35) days or seven (7) weeks. We believe this may be the reason employees utilize their sick or annual leave benefits while off work due to a job related injury. The employees were receiving their regular paycheck and Workers' Compensation Temporary Total Disability benefits for the same period of time, however, the payments usually were not made at the same time.

In conclusion, we believe most of the agencies were not

aware their employees had received payment from both sources or that refunds had not been made until it was brought to their attention when the information was requested for our study. We noted in some instances employers or their employees with the responsibility of enforcing the law may not have been aware of the law or had not been fully educated in its application.

**STATE OF WEST VIRGINIA**

**OFFICE OF LEGISLATIVE AUDITOR, TO WIT:**

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 1997.

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Thedford L. Shanklin, CPA, Director  
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Division of Personnel; Governor; Attorney General; and, State Auditor.