



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAY 06 1998

The Honorable Antonio R. Unpingco
Speaker
Mina'Bente Kuattro na Liheslaturan Guåhan
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<i>Jani Humatao</i>
Time	<i>2:15 p.m.</i>
Date	<i>5-7-98</i>

**Refer to
Legislative Secretary**


Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 479 (COR), "AN ACT TO APPROVE THE DEPARTMENT OF EDUCATION'S ON-THE-JOB INJURY POLICY (BP911.72) NOTWITHSTANDING THE PROVISIONS OF TITLES 4 AND 5 OF THE GUAM CODE ANNOTATED.", which I have signed into law today as **Public Law No. 24-188**.

The changing status of the Department of Education has caused some confusion in the applicability of certain personnel rules and regulations within that Department, including the On-The-Job Injury Policy. This legislation will remove some of this confusion, at least for the time being, by allowing the Interim Board of Education to adopt an On-The-Job Injury Policy.

It is noted that the provisions of Bill No. 324, now Public Law No. 24-142, provides for different personnel rules and regulations for each of the new school districts. For consistency and fairness, it is desirable to adopt the Department of Administration's Personnel Rules and Regulations, recently promulgated, as these rules and regulations are the product of considerable study by various personnel experts in our government. Some changes may be necessary to accommodate the differences in teachers position descriptions and contract terms compared to the other positions in the government.

Very truly yours,


Carl T. C. Gutierrez
I Maga'lahaen Guåhan
Governor of Guam

00797

Office of the Speaker
ANTONIO R. UNPINGCO
Date: *5/7/98*
Time: *10:45 AM*
Rec'd by: *Jani*
Print Name: *Jani*

Attachment: copy attached for signed bill
original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
Legislative Secretary

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

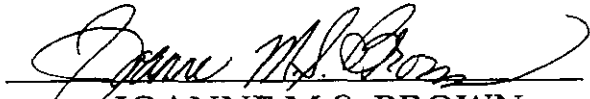
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 479 (COR), "AN ACT TO APPROVE THE DEPARTMENT OF EDUCATION'S ON-THE-JOB INJURY POLICY (BP911.72) NOTWITHSTANDING THE PROVISIONS OF TITLES 4 AND 5 OF THE GUAM CODE ANNOTATED," was on the 27th day of April, 1998, duly and regularly passed.



ANTONIO R. UNPINGCO
Speaker

Attested:

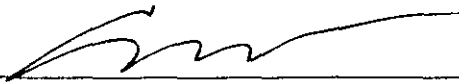

JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guahan* this 29th day of April, 1998,
at 12:15 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:


CARL T. C. GUTIERREZ
I Maga'lahaen Guahan

Date: 5-6-98

Public Law No. 24-188

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

Bill No. 479 (COR)

As substituted by the Committee on
Foreign Affairs and General Governmental
Services and amended on the Floor.

Introduced by:

L. F. Kasperbauer
A. L.G. Santos
J. Won Pat-Borja
J. C. Salas
E. J. Cruz
T. C. Ada
F. B. Aguon, Jr.
A. C. Blaz
J. M.S. Brown
Felix P. Camacho
Francisco P. Camacho
M. C. Charfauros
W. B.S.M. Flores
Mark Forbes
A. C. Lamorena, V
C. A. Leon Guerrero
L. Leon Guerrero
V. C. Pangelinan
F. E. Santos
A. R. Unpingco

**AN ACT TO APPROVE THE DEPARTMENT OF
EDUCATION'S ON-THE-JOB INJURY POLICY
(BP911.72) NOTWITHSTANDING THE
PROVISIONS OF TITLES 4 AND 5 OF THE GUAM
CODE ANNOTATED.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** The On-The-Job Injury policy (BP911.72), as adopted by the
3 Territorial Board of Education and approved by the Civil Service Commission
4 on June 6, 1995; is hereby, notwithstanding the provisions of Titles 4 and 5 of
5 the Guam Code Annotated, approved (**Exhibit A**).

6 **Section 2.** Without further action by *I Liheslaturan Guahan* or *I*
7 *Maga'lahaen Guahan*, the Interim Governing Board of the Department of
8 Education is hereby authorized to amend its On-The-Job Injury policy
9 (BP911.72) in order to provide Department of Education Guam Public School
10 System employees such rights consistent with the Work Injury Leave policy of
11 the Department of Administration.

911.72 ON-THE-JOB INJURY

I. PURPOSE: It is the policy of the Department of Education that employees are provided with safe working conditions. However, in the event that an employee incurs a job-related injury, the following procedures shall apply.

II. DEFINITIONS:

DAY - One (1) calendar day.

CONTINUATION OF PAY (COP) - means employees are entitled up to 45 calendar days of COP because of temporary total disability or temporary partial disability due to a job-related injury that is substantiated by medical report(s). A maximum of 45 calendar days per injury is allowed. The 45 calendar days begin the day following the injury.

COMPENSATION - This term means the money allowance payable to an employee or to his dependent as provided under the Government Code Title 33 (P.L. 1-80 as amended).

INJURY - This term means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidable results from such accidents or injury.

DEATH - This term when used as a basis for a right to compensation under this policy means only death resulting from an injury.

DISABILITY - This term means incapacity, due to a job-related injury, to earn the wages which the employee was receiving at the time of the injury.

PUBLIC EMPLOYMENT - The term means employment by the Government of Guam or any political subdivision thereof.

III. COVERAGE:

A. Compensation shall be payable pursuant to Government Code Title 33 (P.L. 1-80 as amended) in case of disability or death of an employee, but only if the disability or death results from an injury sustained while engaged in public employment.

- B. No compensation shall be payable if the injury was occasioned solely by the intoxication, substance abuse, or the reckless or intentional act of the employee to injure or kill himself/herself or others. (See Blacks Law Dictionary.)
- C. An employee may receive a pay increment upon meeting the criteria set forth in Board Policy 908 and 912.

IV. RESPONSIBILITIES:

EMPLOYEE

- A. An employee who incurs a job-related injury while on duty must immediately report the injury to his/her supervisor.
- B. In cases of serious injury, the employee shall immediately seek medical attention at the nearest clinic or hospital. If necessary, an ambulance should be called to transport the employee. Prompt notification of the employee's family must be made by the supervisor.
- C. Incapacitation for duty as a result of a job-related injury and related medical treatment of the injury.
 - I. An employee who suffers a job-related injury will be carried on full pay status (Continuation of regular pay - COP) without charge to his/her annual or sick leave, provided that:
 - a. Such pay status does not exceed forty-five calendar days following the date of injury, and
 - b. A certification from his/her physician that the employee is totally incapacitated to perform regular or light duty work.

After forty-five (45) calendar days and the employee is not fit for regular or light duty work, the employee may request sick leave, annual leave, compensatory time off, or request to be placed on leave of absence without pay status in accordance with Board Policy 911. An employee may file at any time a claim for Worker's Compensation or disability retirement. (Any portion of a day equals one COP day.)

2. If an employee is certified as totally incapacitated, he/she may return to work only upon a physician's certification that the employee is capable of returning to regular or light duty work.
3. If post injury treatment becomes necessary, the employee shall report to work however, the employee may be excused for treatment without charge to his/her annual or sick leave provided that:
 - a. Such pay status does not exceed forty-five (45) calendar days following the date of injury, and
 - b. Employee shall provide evidence signed by a physician stating the nature and time of visit.

Failure to provide such evidence will result in unauthorized leave. After the forty-five (45) calendar days following the injury, the employee may request to be placed on leave without pay (LWOP) pursuant to Board Policy 911, and file for Worker's Compensation claim for the exact hours of LWOP, or employee may file for disability retirement. This section may not be used in conjunction with section III (C) a. above.

4. The employee is responsible for the completion of the appropriate Worker's Compensation forms to include all proper documentation.
5. In any case where an employee is injured as a result of his/her own gross or wanton negligence, the employee shall controvert the claim using the appropriate form.

SUPERVISOR:

- A. Must complete supervisor's portion of the Worker's Compensation form.
 1. One copy of the completed form shall be kept at the worksite file.

- 2. One copy of the completed form shall be forwarded to the Safety Office.
- 3. Original and one copy of the completed form shall be forwarded to the Personnel Services Division for placement into the employee's personnel jacket.

B. Shall notify Personnel Service Division if the employee does not report to work after 45 calendar days following the injury. All absences due to job related injury must be supported by a medical report. Failure to submit proper documentation, including the submission of LWOP forms, may result in dismissal pursuant to Board Policy 914.

- 1. Upon receipt of such notice, Personnel Services Division shall place the employee on leave without pay status, pursuant to Board Policy 911, leave of absence without pay.
- 2. After the injured employee returns to work, a doctor's report will be required indicating that the employee is able to work along with any stipulated mental/physical restrictions, e.g. no lifting over 20 pounds, no prolonged walking, and no climbing of ladders.



THE TWENTY-FOURTH
GUAM LEGISLATURE

Senator Felix P. Camacho

Power, Foreign Affairs and General Government Services

472-3565-6
472-9747

RECEIVED

73 2 MA 03 07A 09'

April 20, 1998

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
155 Hesler Street
Agaña, Guam 96910

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Power, Foreign Affairs & General Government Services, to which was referred BILL NO. 479 (COR), "An Act to Approve the Department of Education's On-The-Job Injury Policy (BP911.72) Notwithstanding the Provisions of Titles 4 and 5 of the Guam Code Annotated.", does hereby report back, with the recommendation TO DO PASS AS SUBSTITUTED BY THE COMMITTEE.

Votes of Committee Members are as follows:

<u> 9 </u>	To Pass
<u> </u>	Not To Pass
<u> </u>	To The Inactive File
<u> </u>	Abstained
<u> </u>	Off-Island
<u> 6 </u>	Not Available

Sincerely,

SENATOR FELIX P. CAMACHO

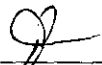
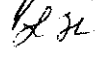
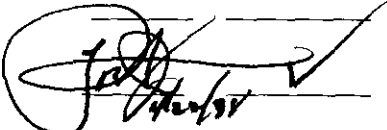



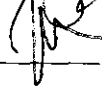

Attachments

**COMMITTEE ON POWER, FOREIGN AFFAIRS
& GENERAL GOVERNMENT SERVICES
TWENTY-FOURTH GUAM LEGISLATURE
155 Hesler Street, Agana, Guam 96910**

Chairman: Senator Felix P. Camacho Vice Chairman: Senator Lawrence F. Kasperbauer Ex-Officio Member: Speaker Antonio R. Unpingco
--

VOTING SHEET ON:

SUBSTITUTE BILL NO. 479 (COR), "An Act to Approve the Department of Education's On-The-Job Injury Policy (BP911.72) Notwithstanding the Provisions of Titles 4 and 5 of the Guam Code Annotated."

<u>COMMITTEE MEMBERS</u>	<u>INITIAL</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
Sen. Felix P. Camacho		<input checked="" type="checkbox"/>			
Sen. Lawrence F. Kasperbauer		<input checked="" type="checkbox"/>			
Sen. Thomas C. Ada					
Sen. Frank B. Aguon, Jr.		<input checked="" type="checkbox"/>			
Sen. Elizabeth Barrett-Anderson					
Sen. Francisco P. Camacho		<input checked="" type="checkbox"/>			
Sen. Mark C. Charfauros		<input checked="" type="checkbox"/>			
Sen. Eduardo J. Cruz, MD		<input checked="" type="checkbox"/>			
Sen. William B. S.M. Flores		<input checked="" type="checkbox"/>			
Sen. Carlotta A. Leon Guerrero					
Sen. Alberto A.C. Lamorena V					
Sen. Vicente C. Pangelinan		<input checked="" type="checkbox"/>			

Sen. Angel L.G. Santos

Sen. Francis E. Santos

Sen. Judith Won Pat-Borja

JW

✓

**COMMITTEE ON POWER, FOREIGN AFFAIRS
& GENERAL GOVERNMENT SERVICES
TWENTY-FOURTH GUAM LEGISLATURE
155 Hesler Street, Agaña, Guam 96910**

COMMITTEE REPORT

ON

BILL NO. 479 (COR)

“An Act to Approve The Department of Education’s On-The-Job Injury Policy (BP911.72) Notwithstanding the Provisions of Titles 4 and 5 of the Guam Code Annotated.”

COMMITTEE MEMBERS

Chairman: Felix P. Camacho

Vice Chairman: Senator Lawrence F. Kasperbauer

Ex-Officio Member: Antonio R. Unpingco

Thomas C. Ada
Francisco P. Camacho
Edwardo J. Cruz, MD
Alberto A.C. Lamorena V
Vicente C. Pangelinan
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Frank B. Aguon, Jr.

Elizabeth Barrett-Anderson
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Angel L.G. Santos
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**COMMITTEE REPORT
POWER, FOREIGN AFFAIRS AND
GENERAL GOVERNMENT SERVICES**

BILL NO. 479 (COR)

“An Act to Approve The Department of Education’s On-The-Job Injury Policy (BP911.72) Notwithstanding the Provisions of Titles 4 and 5 of the Guam Code Annotated.”

I. PUBLIC HEARING

The Committee on Power, Foreign Affairs & General Government Services called a public hearing to order at 9:00 a.m., Wednesday, March 18, 1998 to hear testimony on Bill No. 479 (COR). The hearing was held in the Public Hearing Room, of the Temporary Building, of the Guam Legislature, Agaña. Notices were placed in the Pacific Daily News on 04/11/ and 04/12/98.

The hearing was called to order by Senator Felix P. Camacho, Chairman of the Committee on Power, Foreign Affairs and General Government Services. Members present included Vice-Chairman, Senator Lawrence F. Kasperbauer and Senator Francisco P. Camacho.

Present to testify were Mr. Christian Delfin, Administrator, Worker’s Compensation Commission, Department of Labor and Mr. Eloy Hara, Executive Director, Civil Service Commission. Written testimonies were submitted by Mr. Juan Taijito, Director, Department of Labor, Mr. Michael J. Reidy, Director, Department of Administration, and Mr. Roland L. G. Taimanglo, Director, Department of Education.

II. BACKGROUND & TESTIMONY

Mr. Christian L. Delfin, Administrator, Worker’s Compensation Commission was present to represent the Director of the Department of Labor, Mr. Juan Taijito. Mr. Taijito’s testimony stated that his department has always advocated the concept of fair and equal implementation of law and its by-

product rules and regulations to the residents of Guam regardless of their employment status (public/private). He further added that BP911.72 purports to achieve this concept and that the department is in full support of its implementation. He stated, however, that such a policy is a bit premature in its implementation because according to the provisions of Titles 4 and 5 of the Guam Code Annotated, the policy is still lacking the issuance of an Executive Order. (See attached written testimony)

Mr. Eloy Hara, Executive Director, Civil Service Commission, was present to offer written and oral testimony that opposed Bill 479. According to Mr. Hara, the Civil Service Commission does not support the bill because the policy has already been addressed administratively, and is in effect. He further added that the Department of Education's On-The-Job Injury Policy has been under scrutiny by the Civil Service Commission, and has been approved for implementation since June 6, 1995. Mr. Hara cited Public Law 22-42, which addresses the department's responsibility of periodically reviewing the personnel policies and making the appropriate changes, which should then be transmitted to the CSC. He emphasized that should this policy become a statute, that it then becomes inflexible in terms of addressing changes that may be warranted. He concluded his testimony by stating that if the Legislature decides to codify the policy, then it should consider doing so for the entire government of Guam, for the sake of uniformity. (See attached written testimony)

Written testimony was submitted by Mr. Michael J. Reidy, Director of the Department of Administration. The written testimony listed the major provisions of the department's Work Injury Policy that were not included in Bill 479. Mr. Reidy emphasized, that for reasons of consistency and clarification, of government of Guam benefits, these provisions should be included for Department of Education employees. Mr. Reidy emphasized that the provisions are only recommend to provide uniformity of employee benefits and rights in government employment. (See attached written testimony)

Written testimony was also submitted by Mr. Roland L. G. Taimanglo, Director, Department of Education. Mr. Taimanglo's testimony stated the department's full support for the implementation of Bill 479. He further added that the department has made every effort to abide by the Administrative Adjudication Act and to implement the policy since it was initially approved by the Civil Service Commission. Mr. Taimanglo concluded his testimony by encouraging the approval of Bill 479, so that the department's policy will be clearly established and recognized by the Worker's

Compensation Commission of the Department of Labor. (See attached written testimony)

Senator Felix P. Camacho, along with Vice-Chairman, Senator Lawrence F. Kasperbauer stated their concerns over the issue that Department of Education employees not being covered under worker's compensation. Included in the discussion was whether the Department of Education falls under the Executive Branch, and whether the Governor has the authority to issue an Executive Order that will officially implement the policy. Also discussed were the conflicting provisions of BP911.72, and Executive Order 9731, which implements the Department of Administration's new rules and regulations.

III. FINDINGS & RECOMMENDATIONS

The Committee finds that the intent of Bill 479 is to approve, by statute, the Department of Education's On-The-Job Injury Policy (BP911.72), which has been pending for over a year. The Committee further finds that according to the provisions of Titles 4 and 5 of the Guam Code Annotated, the one process lacking to officially implement BP911.72, is the issuance of an Executive Order. According to a letter dated November 14, 1997 by Governor Carl T. C. Gutierrez, it was indicated that the Governor is unsure as to whether he has the authority to implement an Executive Order for the policy.

The Committee on Power Foreign Affairs & General Government Services hereby reports out Bill No. 479, with the recommendation TO DO PASS.

911.72 ON-THE-JOB INJURY

I. PURPOSE: It is the policy of the Department of Education that employees are provided with safe working conditions. However, in the event that an employee incurs a job-related injury, the following procedures shall apply.

II. DEFINITIONS:

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*Copy sent w/ Dept. of Education
that this is the
substant A 4/29/98 8:30AM*

- B. No compensation shall be payable if the injury was occasioned solely by the intoxication, substance abuse, or the reckless or intentional act of the employee to injure or kill himself/herself or others. (See Blacks Law Dictionary.)
- C. An employee may receive a pay increment upon meeting the criteria set forth in Board Policy 908 and 912.

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SUPERVISOR:

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1. Upon receipt of such notice, Personnel Services Division shall place the employee on leave without pay status, pursuant to Board Policy 911, leave of absence without pay.
 2. After the injured employee returns to work, a doctor's report will be required indicating that the employee is able to work along with any stipulated mental/physical restrictions, e.g. no lifting over 20 pounds, no prolonged walking, and no climbing of ladders.

SIGN UP SHEET

BILL NO. 479 (COR)

NAME DEPT./CO. IN FAVOR AGAINST

1.) CHRISTIAN L. DOLFIM DOL NEUTRAL

2.) ELOY HARRA CSC



3.)

4.)

5.)

6.)

7.)

8.)

9.)

10.)

Commissioner

Juan M. Taijito
Director of Labor

Rolando P. Zabala
Deputy Director of Labor

Members

Isabel S. Haggard
Mayors Council

Florencio T. Lizama, MD
Guam Medical Society

Benjamin C. Sison, Jr., Esq.
Guam Bar Association

Robert J. Steffy, Sr., CPA
Guam Society of Certified
Public Accountants

Evelyn C. Ybarra
Government of Guam

Dorothy C. Pocaligue
Labor Union

Legal Counsel

Diane Corbett, Esq.
Assistant Attorney General

WORKER'S COMPENSATION COMMISSION
Kumision Konprumeson Hutnaleru

108 "E" Street

Tiyan, Guam 96913

Tel: (671) 475-0151/2 * Fax: (671) 475-0153

16 March, 1998

FELIX P. CAMACHO, Chairman

MEMBERS

**Committee on Power, Foreign Affairs and
General Government Services**

Twenty-Fourth Guam Legislature

155 Hesler Street

Agana, Guam 96910

Re: **Bill 479 (COR)**

"An Act to Approve the Department of Education's
On-The-Job Injury (BP911.72) Notwithstanding the
Provisions of Title 4 and 5 of the Guam Code Annotated."

Buenas yan Saluda Honorable Senator Camacho and Committee Members,

The concept of limiting industrial incapacity due to occupational injuries is the product of a responsible mind. This office has always advocated the concept of fair and equal implementation of laws and its by-product rules and regulations to the residents of Guam regardless of their employment status (public/private).

BP911.72 purports to approach this equilibrium and has the full support of this office. HOWEVER, implementation of BP911.42 is premature as this office opines it has not complied with 4 GCA 4105 which in part reads "Rules concerning the Executive Branch shall take effect upon their approval by the Civil Service Commission, by Executive Order of the Governor and filing with the Legislative Secretary ..." BP911.72 has complied with two of the three requirements except with the issuance of an Executive Order.

The issue therefore is not whether BP911.72 is conceptually defective but rather whether the Guam Legislature could and should intrude into the Organic domain of the Executive Branch.

Administrator

Christian L. Delfin

Secretary

Lelanie B. Valencia

FELIX P. CAMACHO, Chairman
MEMBERS
Committee on Power, Foreign Affairs and
General Government Services

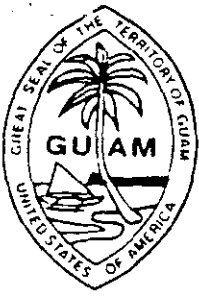
Re: **Bill 479 (COR)**

This Organic issue aside, there are more intrinsic issues that need to be addressed, e.g. the funding for the Government of Guam Special Fund which was not adequately appropriated sufficient funding to address the disability compensation for DOE employees, the increased staffing requirements to cope with this administrative overflow, and the ancillary need to update the EDP/MIS capability.

Thank you for this opportunity to testify.

Senseramente,


JUAN M. TAJITO



GOVERNMENT OF GUAM

CIVIL SERVICE COMMISSION KUMISION I SETBISION SIBIT

490 Chalan Palasyo, Agana Heights
P.O. Box 3156 Agana, Guam 96910
Tel: 475-1300/01 Fax: 477-3301



CSC NO. 98-213

16 MARCH 1998

Senator Felix P. Camacho
Chairman
Committee on Power, Foreign Affairs
and General Government Services
24th Guam Legislature
Agana, Guam 96910

Dear Senator Camacho:

Thank you for allowing us to comment on Bill No. 479: An act to approve the Department of Education's on-the-job injury policy (BP911.72) notwithstanding the provisions of Title 4 and 5 of the Guam Code Annotated."

The intent of the measure is commendable, however, the Commission **does not** support Bill No. 479 since it has been addressed administratively and is in effect. Public Law 22-42 addresses the department's responsibility of reviewing periodically the personnel policies and making appropriate changes which shall then be transmitted to the Civil Service Commission. The Department of Education's Board Policy governing On-The-Job Injury has already undergone scrutiny by the Commission and has been approved for implementation since June 06, 1995. *(See below)

Please note that should this policy become a statute, the policy becomes inflexible in terms of addressing changes that may be warranted. If the Legislature decides to codify the work-injury policy, it should consider doing so for the entire government of Guam for the sake of consistency and uniformity.



Commonwealth Now!

CSC NO. 98-213
16 MARCH 1998
PAGE 2 OF 2

In addition, as an alternative to codifying the Department of Education policy, the Legislature should consider amending Public Law 22-42, the Department of Education enabling law to ensure that all DOE personnel rules and regulations approved by Civil Service Commission per Public Law 22-42 are final and with the force and effect of law. *The Commission advises that the promulgation does not have to comply with the Administrative Adjudication Act.

For the above reasons, the Commission reiterates its non-support of Bill No. 479.

Thank you and Si Yuus Maase!


ELOY P. HARA
Executive Director

cc: Board of Directors, CSC



Commonwealth Now!



GOVERNMENT OF GUAM

AGANA, GUAM 96932

DEPARTMENT OF ADMINISTRATION

(DIPATTAMENTON ATMENESTRACION)

DIRECTOR'S OFFICE

(UFISINAN DIREKTOT)

Post Office Box 884 • Agana, Guam 96932

Tel.: (671) 475-1101/1250 • Fax: (671) 477-6788

Carl T.C. Gutierrez
Governor

Madeleine Z. Bordallo
Lieutenant Governor

MAR 17 1998

Senator Felix P. Camacho
Chairman, Committee on Power, Foreign
Affairs and General Government Services
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Re: **Bill No. 479 (COR), DOE Work Injury
Leave**

Dear Senator Camacho:

Hafa Adai Yan Si Yu'os Ma'ase for the opportunity to comment on Bill No. 479 relative to the Department of Education's Work Injury Leave Policy.

A review of the proposed policy reveals that some major provisions of the Department of Administration Work Injury Leave Policy were not included in Bill 479. For consistency and clarification of government of Guam employee benefits, it is recommended that the following provisions be included for DOE employees:

1. Coverage to include all employees, classified and unclassified.
2. For uniformity of procedures, work injury leave be authorized for a maximum of sixty (60) days in lieu of 45 days authorized in the DOE procedures.
3. Performance evaluation of the employee may be conducted while the employee is on work injury leave, if the employee has completed a minimum of fifty percent (50%) of the performance period. If performance is rated "satisfactory", the employee will be entitled to a salary increment.
4. Employee on work injury leave will continue to accrue annual and sick leave as provided in 4 GCA 4108 and 4109.




COMMONWEALTH NOW!

Senator Felix P. Camacho
Bill No. 479 (COR), DOE Work Injury Leave
Page Two

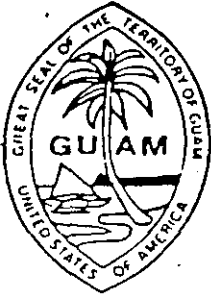
5. To prevent dual compensation, work injury leave will not be allowed if the employee is receiving worker's compensation.
6. Add provisions for employees' rights to return to their positions, comparable positions or to a lower position which the employee is qualified and able to perform; or to be allowed disability retirement, when eligible.
7. Employees who are not provided continuing employment after a work injury because of lack of qualifications, unable to perform essential functions of an available position, or is not eligible for disability retirement, should also be provided appeal rights to the Civil Service Commission if they feel they are unfairly terminated from their employment.

Again, the above provisions are recommended only to provide uniformity of employee benefits and rights in government employment. Enclosed is a copy of the Department of Administration Work Injury Leave Policy, approved by the Civil Service Commission, for your information and use. Si Yu'os Ma'ase for your consideration of the above recommendation.



MICHAEL J. REIDY

Attachment



GOVERNMENT OF GUAM

**CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT**

490 Chalan Palasyo, Agana Heights
P.O. Box 3156 Agana, Guam 96910
Tel: 475-1300/01 Fax: 477-3301



CSC NO. 98-041

24 OCTOBER 1997

THE HONORABLE CARL T. C. GUTIERREZ
Governor of Guam

SUBJECT: Rule 8.300 On-the-Job-Injury
DOA Personnel Rules & Regulations

Buenas yan Saluda Governor Gutierrez

Transmitted herewith is CSC Resolution 97-03 Relative to Rule 8.300 of the Department of Administration's Personnel Rules and Regulations Regarding On-the-Job-Injury which was passed by the Civil Service Commission at its meeting on October 23, 1997. Also enclosed is a draft executive order for your review.

Senseramente,


ELOY P. HARA
Executive Director



Commonwealth Now!



GOVERNMENT OF UAM



CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT

490 Chalan Pilsayo, Agaña Heights
P.O. Box 3156 Agaña, Guam 96910
Tel: 475-1300/01 Fax: 477-3301

CSC RESOLUTION NO. 97-03

**RELATIVE TO RULE 8.300 OF
THE DEPARTMENT OF ADMINISTRATION'S PERSONNEL
RULES AND REGULATIONS REGARDING ON-THE-JOB-INJURY**

WHEREAS, 54105 of Title 4, Guam Code Annotated, provides that the Director of Administration shall adopt personnel rules and regulations for line departments and agencies, to be approved by the Civil Service Commission and promulgated by Executive Order of the Governor and

WHEREAS, the new Department of Administration's Rules and Regulations, which was signed and promulgated on October 1, 1996, and made effective on April 2, 1997, included Rule 8.300, On-the-Job-Injury policy; and

WHEREAS, the Department of Administration has requested that Rule 8.300 be revised for clarity, uniformity, consistency, and fairness.

NOW, THEREFORE, BE IT RESOLVED:

1. The Civil Service Commission hereby approves the revised Rule 8.300 ON-THE-JOB-INJURY of the Department of Administration's Personnel Rules and Regulations (Attachment A) effective to April 2, 1997.
2. This Resolution be transmitted to the Governor together with Attachment A (DOA Amended Rule 8.300) for promulgation through Executive Order.

WE, THE UNDERSIGNED, REPRESENTING ALL OF THE CIVIL SERVICE COMMISSION, HEREBY ADOPT THIS RESOLUTION THIS 23rd DAY OF OCTOBER, 1997.

RICHARD J. UNTALAN
Chairman

JOAQUIN T. ANGOCO
Vice-Chairman

ZENON J. BELANGER, JR.
Commissioner

JULIA R. CRUZ
Commissioner

JOHN V. GERBER
Commissioner

MANUEL R. PINAUIIN
Commissioner

PRISCILLA T. TUNCAP
Commissioner





-DOPM-
ASO
[Signature]

TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U. S. A.
EXECUTIVE ORDER NO. 97-31

RELATIVE TO ADOPTING THE POLICY GRANTING ON-THE-JOB INJURY FOR UNCLASSIFIED EMPLOYEES.

WHEREAS, §4105 of Title 4, Guam Code Annotated, provides that the Director of Administration shall adopt personnel rules and regulations for line departments and agencies, to be approved by the Civil Service Commission and promulgated by Executive Order of the Governor; and

WHEREAS, the new rules and regulations, which were signed and promulgated on October 1, 1996 and took effect on April 2, 1997; and

WHEREAS, the Department of Administration has requested that Rule 8.300, On-the-Job Injury policy, be revised for clarity, uniformity, consistency, and fairness; and

WHEREAS, the Civil Service Commission approved the revised policy (Attachment A) on October 23, 1997;

NOW, THEREFORE, I, CARL T. C. GUTIERREZ, Governor of Guam, by virtue of the authority vested in me by the Organic Act do order:

1. The Revised Rule 8.300 "ON-THE-JOB-INJURY" (Attachment A) is hereby approved and adopted as part of the Department of Administration's Personnel Rules and Regulations effective April 2, 1997.
2. All autonomous departments and agencies are required to conform their personnel rules and regulations regarding on-the-job injury to DOA Rule 8.300, through the rulemaking process set forth in §4105 of Title 4, Guam Code Annotated.

SIGNED AND PROMULGATED at Agaña, Guam this 24th day of October, 1997.

CARL T. C. GUTIERREZ
Governor of Guam

COUNTERSIGNED:

MADELEINE Z. BORDALLO
Lieutenant Governor of Guam

DA DIR. OFF-

OCT 97 2:24

ATTACHMENT A

8.300 ON-THE-JOB INJURY

8.301 Policy

It is the policy of the government of Guam that all government employees be provided with safe working conditions. This On-the-Job-Injury policy is intended as an employee benefit separate and apart from worker's compensation law (22 GCA §§9101, et seq.). Unless otherwise provided by statute or the Civil Service Commission, the On-the-Job-Injury policy shall control in the event of conflict with other rules or policies.

8.302 Definitions

- A. **Classified employee** - a probationary or permanent status employee occupying a classified position.
- B. **Day** - a calendar day unless otherwise specified.
- C. **Death** - death resulting from an on-the-job injury.
- D. **Disability** - physical or mental incapacity due to an on-the-job injury which prevents the employee from performing the essential functions of the employee's regular position or other temporary duties.
- E. **Essential functions** - those that an employee must be able to perform in the employee's regular position, with or without reasonable accommodation.
- F. **Lateral position** - a position with substantially comparable minimum qualifications or equivalent pay grade as the employee's regular position.
- G. **Management official** - official with supervisory or management responsibilities.
- H. **On-the-job injury** - injury or death arising out of and in the course of employment, including an accidental

injury or injury caused by the willful act of a third person directed against an employee because of his or her employment, and such occupational disease or infection as arises naturally out of such employment, or, as naturally or unavoidably results from such accidental injury.

- I. **Personal leave** - annual or sick leave or compensatory time off.
- J. **Physician** - a person licensed to practice medicine in the United States or its territories or in other medical licensing jurisdictions recognized by the American Medical Association and other practitioners of the healing arts recognized by the Worker's Compensation Commission.
- K. **Public Employment** - employment by a department, agency, or instrumentality of the government of Guam.
- L. **Reasonable accommodation** - a modification or adjustment to the employee's regular position, the work environment, or the way things are usually done that enables the employee to perform the essential functions of his or her regular position.
- M. **Regular position** - the position for which the employee was hired.
- N. **Temporary duties** - specific duties of limited duration assigned to the employee during the work-injury period in lieu of the regular duties of the employee.
- O. **Unclassified employee** - an employee occupying an unclassified position or one employed on a temporary or limited term status.
- P. **Work-Injury Leave** - leave with pay granted by the appointing authority under the provisions of Rule 8.300.

8.303 Coverage

- A. A classified or an unclassified employee who suffers an on-the-job injury will be eligible for work-injury leave for up to Sixty (60) days without charge to personal leave, beginning the day of the injury, provided:
1. The employee is unable to perform the essential functions of the employee's regular position, or temporary duties, during the Sixty (60) day period, or portions thereof, as certified to by the employee's physician. If the appointing authority disputes in good faith the certification from the employee's physician, the appointing authority, shall refer the case to the Worker's Compensation Commission for further medical evaluation to include any necessary tests or testing such as laboratory tests or radiological, sonographic, and computerized axial tomography, and magnetic resonance imagery evaluation. The decision of the Worker's Compensation Commission shall be final. The Department of Administration with the approval of the Civil Service Commission, shall identify the essential functions of the employee's position for the purpose of this section.
 2. The injury results in the death of the employee. In this event, the employee's designated beneficiary or beneficiaries, or if there are none, the estate of the employee, shall be entitled to a lump sum payment for the entire Sixty (60) day work-injury period, or, that portion of the work-injury period that the employee would have been entitled to had the employee survived.
- B. If an employee is able to perform at least the essential functions of his or her position or undertake temporary assignments as provided in Rule 8.303A(1), but requires follow-up medical treatment for injuries, the employee

shall be allowed work-injury leave for this purpose. The administration of this provision shall be closely coordinated with the Worker's Compensation Commission.

- C. An employee who is absent from work due to a work-injury and has completed a minimum of Fifty Percent (50%) of the performance rating period will be evaluated on his performance for that period. The employee will be entitled to a salary increment upon receiving a satisfactory rating.
- D. The employee on work-injury leave will continue to accrue annual and sick leave as provided in 4 GCA §4108 and §4109.
- E. Employment insurance benefits will continue pursuant to contract provisions in effect for the group life and health insurance program.
- F. Work-injury leave will not be allowed if the death or injury of the employee was self inflicted or the result of the employee's use of illegal drugs, intoxication, recklessness, gross negligence, criminal conduct, or the result of disciplinary action against the employee.
- G. To prevent dual compensation, work-injury leave will not be allowed if the employee is receiving worker's compensation.

8.304 Responsibilities

- A. An employee's responsibilities include:
 - 1. Immediately reporting the injury to the employee's supervisor. If the supervisor is not available, the employee shall report the injury to any available management official within the department or agency.
 - 2. Pursuing a worker's compensation claim in an expedient and timely fashion prior to the expiration

of the approved work-injury leave period or converting to other leave status at the end of the leave period.

3. Acting in good faith in pursuing work-injury claims. Any employee who engages in fraud, misrepresentation, or abuse, shall be subject to discipline, prosecution, and be required to provide restitution for all monies and benefits received under Rule 8.300.

B. Management's responsibilities include:

1. Completing all work-injury reports, including the supervisor's portion of the worker's compensation form, to be distributed as follows:
 - (a) The original to the Worker's Compensation Commission.
 - (b) One copy to the employee, the employee's department or agency, the Guam Occupational Safety and Health Administration, and to the Department of Administration, Division of Personnel Management, (DOA DOPM) for placement in the employee's personnel jacket.
2. The supervisor or management official who receives the employee's report must take immediate and expedient action to provide necessary medical treatment and prepare and submit an injury report to the appointing authority and other parties specified in Rule 8.304B1.
3. In cases requiring immediate treatment, medical assistance shall be sought for the employee at the nearest available medical facility. If the employee is not ambulatory, or otherwise should not be moved without medical intervention, an ambulance shall be called to transport the employee. The supervisor, or designee, or if unavailable, any

management official, shall accompany the injured employee to the medical facility for medical treatment as may be determined by the treating physician. Prompt notification of the employee's immediate family shall be made by the supervisor, division head, deputy, or appointing authority.

4. Notifying DOA DOPM if the employee is absent from work without authorization after the expiration of the approved work-injury leave period.
5. Immediately notifying the Worker's Compensation Commission that an employee is on work-injury leave status for the approved period.
6. Placing the employee on personal leave status pursuant to the provisions of these rules after the expiration of the approved work-injury leave period. The type of personal leave to be taken is at the employee's option.
7. Obtaining from the employee per Rule 8.303A1, a doctor's certification of the employee's capacity to perform the essential functions of the employee's regular position, along with any specified mental/physical restrictions (e.g., no lifting over 20 pounds, no prolonged walking, standing, bending, stooping, no climbing of ladders, etc.), and recommendations of the physician as to other temporary duties which may be assigned without aggravating the existing condition.
8. Acting in good faith.
9. Complying with all applicable rules and regulations.

8.305 Employment Status

- A. A classified employee, who as a result of an on-the-job injury becomes disabled and is unable to perform the essential functions of his or her regular position within

Six (6) months after the date of injury may, if eligible, retire from the government of Guam.

- B. If the classified employee is ineligible or declines to retire, the appointing authority may allow the employee to exhaust personal leave; otherwise, the employee shall be placed in lateral or lower vacant position to which the employee qualifies, or be downgraded to a position needed by the department or agency for which the employee qualifies, at the discretion of the appointing authority. If the employee assumes the lateral position, the employee shall maintain his or her current salary. If the employee is downgraded or placed in a lower position, the employee shall maintain the current salary for One (1) year. If there is no vacant position to which the employee qualifies, or the appointing authority determines that a downgrade is not proper, the appointing authority shall exercise expedient and good faith efforts to place the employee in a position in which he or she qualifies in another department or agency. If placement is unsuccessful, the appointing authority shall immediately notify the employee in writing that the employee will be terminated within Sixty (60) days from the receipt of the notice by the employee. The notice shall include the employee's right to appeal under Rule 8.306. If the employee is unavailable for personal service, service may be made by certified mail to the last known address, provided management has made reasonable good faith efforts to personally serve the employee. In cases of service by mail, the Sixty (60) days begin to run on the date of the mailing.

8.306 Appeal

- A. A classified employee who is terminated in accordance with Rule 8.305B may appeal the termination to the Civil Service Commission (CSC) within Twenty (20) days from the effective date of the termination in accordance with CSC appeals procedures. The Commission may uphold the termination or take whatever action or remedies it deems appropriate. The Commission's decision is final, but

subject to judicial review within Thirty (30) days after the losing party receives the Commission's written decision.



DEPARTMENT OF EDUCATION

P.O. Box DE
Agana, Guam 96932
Tel: (671) 475-0457
Fax: (671) 472-5003



ROLAND L.G. TAIMANGLO
Director of Education

LUIS S.N. REYES
Administrator, Personnel Services Division

ALINE A. YAMASHITA, PH.D.
Deputy Director

March 14, 1998

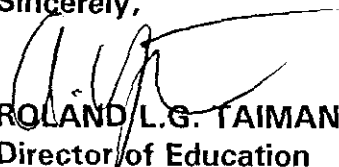
Honorable Senator Felix P. Camacho
Chairman, Committee on Power,
Foreign Affairs and General Government Services
Twenty-Fourth Guam Legislature
#155 Hessler Street
Agana, Guam 96910

Dear Honorable Senator Camacho:

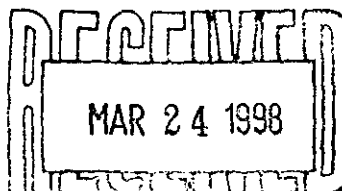
The Department of Education would like to express its appreciation for the invitation to submit testimony on Bill No. 479 (COR), An Act to approve the Department of Education's On-The-Job Injury Policy (BP911.72).

The Department of Education supports this bill. The Department has made every effort to abide by the Administrative Adjudication Act and to implement the policy since it was initially approved by the Civil Service Commission. Approval of this bill is very important so that once and for all the Department of Education's On-The-Job Injury Policy will be clearly established and be recognized by the Worker's Compensation Commission, the Department of Labor.

Sincerely,


ROLAND L.G. TAIMANGLO
Director of Education

cc: Chairperson, Interim Board of Education
Deputy Director of Education
Administrator, Personnel Services Division



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COMMONWEALTH NOW!



FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

BBMR-F7

Bill Number: 479 Date Received: January 27, 1998
Amendatory Bill: Yes Date Reviewed: January 28, 1998
Department/Agency Affected: Education
Department/Agency Head: Roland L.G. Taimanglo
Total FY Appropriation to Date: 88% of CRT pursuant to P.L. 24-17

Bill Title (preamble): *An act to approve the Department of Education's On-The-Job Injury Policy (BP911.72) notwithstanding the provisions of Titles 4 and 5 of the Guam Code Annotated.*

Change in Law: N/A

Bill's Impact on Present Program Funding:

Increase _____ Decrease _____ Reallocation _____ No Change X

Bill is for:

Operations _____ Capital Improvement _____ Other X

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Education		1/	

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL						
OTHER	1/					
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? N/A - IF NO, ADD'L AMOUNT REQUIRED \$ _____
AGENCY/PERSON/DATE CONTACTED: _____

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND						
OTHER	1/					
TOTAL						

ANALYST Dina P. Chock DATE 2/3/98 DIRECTOR Joseph E. Rivera, Acting FEB 06 1998
DATE _____

FOOTNOTE(S): *Bill No 479 is an act to approve the Department of Education's (DOE) On-The-Job Injury Policy. It should be noted that the Department of Education now operates under its School Operations Fund (88% of Gross Receipts Tax), therefore, all salaries of its employees are covered under this fund. As such, if an employee of the DOE becomes a victim of an on the job injury, the salary and benefits still due to that employee (see item IV, C of the Policy) will be covered under this fund. However, the employee may file a claim against the Workers Compensation Fund or request for disability retirement.*

PAYROLL Jan 7/90

Descriptor Term:	Descriptor Code:	Issued Date:
ON-THE-JOB-INJURY	911.72	04/24/98
	Revises:	Issued:

BOARD POLICY

911.72 ON-THE-JOB-INJURY

I. PURPOSE: It is the policy of the Department of Education that employees are provided with safe working conditions. However, in the event that an employee incurs a job-related injury, the following procedures shall apply.

II. DEFINITIONS:

✓ DAY - One (1) calendar day.

✓ CONTINUATION OF PAY (COP) - means employees are entitled up to 45 calendar days of COP because of temporary total disability or temporary partial disability due to a job-related injury that is substantiated by medical report(s). A maximum of 45 calendar days per injury is allowed. The 45 calendar day begins the day following the injury.

✓ COMPENSATION - This term means the money allowance payable to an employee or to his dependent as provided under the Government Code Title 33 (P.L. 1-80)

✓ INJURY - This term means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidable results from such accidents or injury.

✓ DEATH - This term when used as a basis for a right to compensation under this policy means only death resulting from an injury.

✓ DISABILITY - This term means incapacity, due to a job related injury, to earn the wages which the employee was receiving at the time of the injury.

✓ PUBLIC EMPLOYMENT - The term means employment by the government of Guam or any political subdivision thereof.

III. COVERAGE:

A. ✓ Compensation shall be payable pursuant to Government Code Title 33 (P.L. 180) in case of disability or death of an employee, but only if the disability or

PAGE 2 - 911.72 - ON-THE-JOB INJURY

death results from an injury sustained while engaged in public employment.

- B. ✓ No compensation shall be payable if the injury was occasioned solely by the intoxication, substance abuse, or the reckless or intentional act of the employee to injure or kill him/herself or others. (See Blacks Law Dictionary)
- C. ✓ An employee may receive a pay increment upon meeting the criteria set forth in Board Policy 908 and 912.

IV. RESPONSIBILITIES:**EMPLOYEE**

- A. ✓ An employee who incurs a job-related injury while on duty must immediately report the injury to his/her supervisor.
- B. ✓ In cases of serious injury, the employee shall immediately seek medical attention at the nearest clinic or hospital. If necessary, an ambulance should be called to transport the employee. Prompt notification of the employee's family must be made by the supervisor.
- C. Incapacitation for duty as a result of a job-related injury and related medical treatment of the injury.
1. ✓ An employee who suffers a job-related injury will be carried on full pay status (Continuation of regular pay - COP) without charge to his/her annual or sick leave, provided, that:
 - ✓(1) Such pay status does not exceed forty-five calendar days following the date of injury and;
 - ✓(2) a certification from his/her physician that the employee is totally incapacitated to perform regular or light duty work.
 - ✓ After forty-five calendar days and the employee is not fit for regular or light duty work, the employee may request sick leave or annual leave or request to be placed on leave of absence without pay status in accordance with Board Policy 911. An employee may file at any time a claim for Worker's Compensation or disability retirement. (Any portion of a day equals one COP day).
 2. ✓ If an employee is certified as totally incapacitated, he/she may return to work only upon a physician's certification that the employee is capable of returning to regular or light duty work.
 3. ✓ If post injury treatment becomes necessary, the employee shall report to work however, the employee may be excused for treatment without charge to his/her annual or sick leave provided that:
 - (1) Such pay status shall not exceed 45 Calendar Days and;
 - (2) Employee shall provide evidence signed by a physician stating the nature and time of visit.

PAGE 3 - 911.72 - ON-THE-JOB INJURY

✓ Failure to provide such evidence will result in unauthorized leave. After the forty-five calendar days following the injury, the employee may request to be placed on leave without pay (LWOP) pursuant to Board Policy 911 and file for Worker's Compensation claim for the exact hours of LWOP or employee may file for disability retirement. This section may not be used in conjunction with section II.(C)(1) above.

4. ✓ The employee is responsible for the completion of the appropriate Worker's Compensation forms to include all proper documentation.
5. ✓ In any case where an employee is injured as a result of his/her own gross or wanton negligence, the employer shall controvert the claim using the appropriate form.

SUPERVISOR

A. Must complete supervisor's portion of the Worker's Compensation form.

1. One copy of the completed form shall be kept at the worksite file.
2. One copy of the completed form shall be forwarded to the Safety Office.
3. Original and one copy of the completed form, shall be forwarded to the Personnel Services Division for placement into the employee's personnel jacket.

B. Shall notify Personnel Services Division if the employee does not report to work after 45 calendar days following the injury. All absences due to job related injury must be supported by a medical report. Failure to submit proper documentation, including the submission of LWOP forms, may result dismissal pursuant to Board Policy 914.

1. Upon receipt of such notice Personnel Services Division shall place the employee on leave without pay status, pursuant to Board Policy 911 leave of absence without pay.
2. After the injured employee returns to work, a doctor's report will be required indicating that the employee is able to work along with any stipulated mental/physical restrictions e.g. no lifting over 20 pounds, no prolonged walking and no climbing of ladders.

ADOPTED: Board of Education
AMENDED: 04/21/95