

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT	Number 63.00	Issue 5	Page 1 of 12
INDUSTRIAL LEAVE	Effective Date August 31, 2015		

1. PURPOSE

To establish regulations and guidelines regarding the City of San Diego's Industrial Leave Program.

2. SCOPE

2.1. This regulation applies to all City of San Diego employees.

2.2. If a conflict occurs between this regulation and an existing Memorandum of Understanding for employees represented by a bargaining unit, the Memorandum of Understanding shall prevail.

2.3. This regulation does not apply to City Police Officers, Fire Fighters or Lifeguards for certain dates of injury when Risk Management determines they are covered by wage continuation benefits as defined by Labor Code Section 4850. In general, the following dates of injury apply:

2.3.1. City Police Officers and Fire Fighters who are employed on a regular, full-time basis, who sustain injuries on or after January 1, 2010 are eligible for Labor Code Section 4850 benefits.

2.3.2. Lifeguards who are Boating Safety Unit members and designated as Harbor Police under Municipal Code section 63.20.6, who are employed on a regular, full-time basis, and sustain injuries during the period of January 1, 2010 through December 31, 2013 are eligible for Labor Code Section 4850 benefits.

2.3.3. Lifeguards who are employed on a regular, full-time basis, who sustain injuries on or after January 1, 2014 are eligible for Labor Code Section 4850 benefits.

(Supersedes Administrative Regulation 63.00, Issue 4, effective July 1, 2010)

Authorized

(Signature on File)

CHIEF OPERATING OFFICER

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3. DEFINITIONS

- 3.1. Disability – The inability to perform the essential functions of one's classification.
- 3.2. Emergency – A sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; a pressing necessity.
- 3.3. Gross Negligence – The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of oneself or another; such a gross want of care and regard for one's own well-being or the rights of others as to justify the presumption of willfulness and wantonness.
- 3.4. Hospitalization – The status of being admitted to a hospital institution on an inpatient basis.
- 3.5. Light Duty – Work status with medical limitations.
- 3.6. Physician - As defined under Labor Code Sections 3209.3, 3209.4, 3209.5, 3209.6, 3209.7, 3209.8.,3209.9, and 3209.10.

4. POLICY

4.1. General

- 4.1.1. A Citywide safety program exists to prevent accidents and resulting injuries involving employees. Continuing efforts are made to eliminate, guard against, or protect employees from physical hazards in the work environment. Several types of benefits are available to employees who sustain disabilities arising out of their employment. Eligibility for benefits under a specific program does not determine an employee's eligibility for benefits under another program. The specific benefits available depend on the circumstances in each case.
- 4.1.2. This A.R. sets forth only the eligibility requirements and benefits for industrial leave. Procedures are set forth for industrial leave and in part for other programs available for injured employees. Employees may be eligible for benefits under the Workers' Compensation Act or the City's Annual Leave or Sick Leave Programs. Eligibility and benefits under the City's Annual Leave or Sick Leave Programs are set forth in the Personnel Regulations, Index Code 1-2 and 1-3.

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4.1.3. Nothing herein contained shall be deemed to affect the employee's entitlement to medical, surgical or hospital treatment as provided in Division 4 of the California Labor Code nor be deemed to affect the employee's entitlement to receive such temporary *Disability* payments as also provided in Division 4. These rules define the granting of industrial leave only. Industrial leave is not within the jurisdiction of the California Labor Code nor the adjudication of the Workers' Compensation Appeals Board.

4.1.4. If an employee is not eligible for temporary *Disability* benefits, industrial leave will not be authorized. Eligibility for temporary *Disability* benefits is determined by Risk Management in accordance with California law.

4.2. Eligibility for Industrial Leave

Employees shall be eligible for industrial leave benefits subject to the following provisions:

4.2.1. The employee is disabled due to job related injury or illness and is entitled to Workers' Compensation Temporary *Disability* under the provisions of Division 4 of the California Labor Code.

4.2.2. The employee reported the injury or illness to his or her supervisor within 24 hours of the incident, except under extenuating circumstances. Extenuating circumstances under which an employee may report an injury beyond the 24 hour limit shall include but not be limited to a report at the time the employee realized the injury is disabling and the medical evidence is consistent with the claim.

4.2.3. Medical treatment is provided and maintained by a licensed *Physician* acceptable to the City's Workers' Compensation Administration.

4.2.4. The employee is medically incapacitated from the performance of *Light Duty*, or *Light Duty* is not available.

4.2.5. Except in circumstances of obvious *Emergency*, the *Disability* did not result from the failure to:

- a. Wear prescribed safeguards or safety equipment.
- b. Use provided safeguards or safety equipment.
- c. Follow safety rules and regulations, or other departmental work rules.

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- 4.2.6. Industrial leave payments will not be granted for any injury which occurs as a result of a motor vehicle accident where the injured employee did not have available lap and shoulder restraints in use, with the exception of Police Officers if such failure is consistent with prudent police practices, training and departmental policies. Effective for all injuries occurring on or after 7/1/94.
- 4.2.7. The *Disability* did not result from an aggravation nor recurrence of:
- a. A pre-employment, and/or non service-connected medical condition or *Disability* (either physical and/or mental), even if such condition is aggravated by on-the-job experience. It is the intent that industrial leave will not be approved when competent medical authority determines the *Disability* to be a result of an aggravation of, or caused by, a pre-employment or non-industrial medical condition.
 - b. A medical condition for which the employee has received a Compromise and Release Settlement pursuant to Division 4 of the Labor Code.
 - c. An injury or illness previously denied industrial leave.
- 4.2.8. The employee's *Gross Negligence* or willful misconduct was not the proximate cause of the *Disability*.
- 4.2.9. The request for industrial leave is submitted in form and detail as prescribed by Risk Management, is recommended for approval by the appointing authority and is approved by the City's Workers' Compensation Administration.
- 4.2.10. The employee fulfills his or her responsibilities as outlined in this Administrative Regulation.
- 4.3. Industrial Leave Benefits
- 4.3.1. The Industrial Leave Benefit shall be the employee's normal compensation. The injured employee shall be prohibited from amending his or her claim of deductions from the date of injury until after they have returned to work and industrial leave benefits have discontinued.
- a. The term "normal compensation" includes extra compensation for night or unusual schedule work shifts, motorcycle pay, *Emergency* ordinance disposal pay, and educational incentive pay and other special pay which the employee was receiving at the time of the injury, but does not include overtime, standby, or out-of-class pay.

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- b. Employees may receive normal merit increases while on industrial leave if they are otherwise eligible as provided in Personnel Manual Index Code H-8.

4.3.2. Industrial leave is granted in lieu of Workers' Compensation Temporary *Disability*.

4.3.3. An employee cannot supplement industrial leave payments with accrued sick leave, annual leave, or compensatory time off to exceed full salary.

4.3.4. Employees shall earn annual leave credits while on industrial leave as if they were working. Employees shall be eligible to accrue and utilize annual and sick leave in accordance with the rules governing the accrual and usage of annual and sick leave respectively while on industrial leave. (See Personnel Manual I-2 and I-3).

4.3.5. The City shall continue to make the contribution towards the employee's health and life insurance coverage as if the employee was working.

4.3.6. Duration of Industrial Leave:

- a. An employee's maximum industrial leave benefit shall be the number of hours equivalent to the employee's scheduled work-year.
- b. Industrial leave shall commence on the first workday following the injury or illness for which the employee is medically disabled from working.
- c. An injury shall be deemed to continue through any recurrence or aggravation to the original injury. Claimed recurrences, aggravations, or sequelae of any injury approved for industrial leave shall be charged to the balance, if any, of the maximum allowance of such leave for the original injury.
- d. Industrial leave will terminate when one of the following occurs:
 - i. The employee fails to follow the advice of the treating *Physician* and pursue a course of treatment which will lead to recovery in as short a period of time as possible.
 - ii. The employee's condition becomes medically permanent and stationary.
 - iii. It is medically determined that the employee will never be capable of performing the duties of his or her classification.
 - iv. The employee no longer qualifies for industrial leave.
 - v. The employee is engaged in outside employment which would medically impede recovery and prolong his/her return to work.
 - vi. The employee uses the maximum benefits available.

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- vii. The employee, without an acceptable excuse, fails to appear at a medical examination scheduled by the Workers' Compensation Division of Risk Management to determine the employee's ability to return to work.

- e. If industrial leave is terminated upon the basis of medical evidence and at a later date, the City relies on further medical evidence, the employee shall receive industrial leave benefits which are consistent with the subsequent report relied on by the City.

- f. Industrial leave provides only the benefits enumerated herein.

- g. Return to Duty:
 - i. The employee shall return to duty when ordered by the department head, based upon medical reports and other reliable information.
 - ii. Determination of the proper time for the employee's return to duty will be based on reliable medical advice.
 - iii. In cases of suspected malingering, when it appears that the employee and/or the employee's personal *Physician* are not cooperating toward return to limited or full duty, within a reasonable period of recovery, the department head or the Workers' Compensation Administration will order an investigation and take proper action.
 - iv. If further remedial action is indicated, the employee must follow a course of treatment which will enable return to full employment at the earliest possible time. This does not mean that the employee should be carried on industrial leave until completely able to perform every duty of the position. All reasonable efforts shall be made to return the employee to work even in a light -duty status, as soon as possible, based upon authoritative medical advice, it is safe to do so.
 - v. Prior to soliciting information from an employee's treating *Physician* concerning that employee's ability to return from industrial leave to a selective placement position, the treating *Physician* shall be furnished with a written statement describing the duties of such selective placement position. The City will allow the treating *Physician* five (5) days to respond in writing. If the treating *Physician* fails to respond in writing within five (5) days, the City may receive information from the treating *Physician* orally. The City may extend the time for response for good and sufficient reason.

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5. PROCEDURE

Responsibilities

Action

Employee

- 5.1. Each employee is responsible for reporting the job related injury or illness to his or her supervisor within 24 hours of the incident, except under extenuating circumstances. The initial report should be made to the employee's immediate supervisor, or if unavailable, to the next supervisor in the chain of command. The initial report may be made verbally, but must be followed by completion as soon as possible of the necessary forms outlined below.
- 5.2. For injuries which result in absence from work at any time following the day of the injury, the employee must complete Form RM-1634, Medical Status Report for Occupational Injury or Illness, within 24 hours of the *Disability* and have the attending *Physician* complete the appropriate portion of the form. If, because of injuries, the employee is physically unable to comply with this requirement, it shall be the supervisor's responsibility to complete and submit the form for the employee.
- 5.3. The employee must complete Form RM-1642, Employee Claim for Workers' Compensation Benefits.
- 5.4. The employee and others concerned, shall provide the department head, Mayor or their designee with any additional evidence, with the exception of medical information, necessary to elaborate on or substantiate injury.
- 5.5. When necessary, the employee must report as soon as possible to a licensed *Physician* within the City's Medical Provider Network or the employee's predesignated *Physician*.
- 5.6. The employee must obtain medical information for *Light Duty* with all applicable work restrictions, since industrial leave cannot be granted if *Light Duty* is available and can be performed.
- 5.7. The employee must follow a course of treatment which will lead to recovery in as short a period of time as possible.

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5.8. If requested during prolonged *Disability*, a fully completed set of Form RM-1634, including the *Physician's* certification, shall be provided by the employee for each pay period in order to obtain up to-date medical information.

5.9. Each employee is responsible to cooperate with Risk Management in their function of determining eligibility and returning the employee to work.

Operating Department

5.10. Each supervisor concerned must thoroughly investigate each accident within 24 hours after it is reported and report the injury to the Risk Management Department using the City's Injury Call-In Center by dialing 1-800-427-7980. The Supervisor must provide the employee with a Workers' Compensation Claim Form (RM-1642) and the Medical Status Report of Occupational Injury or Illness (RM-1634) and ensure the employee completes the employee portion of both forms. All required forms must be promptly forwarded to the appointing authority for processing.

Operating Department
Appointing Authority

5.11. To ensure that the injury is promptly and thoroughly investigated, the appointing authority shall recommend whether or not industrial leave should be granted, determine the availability of *Light Duty*, and forward all required forms to Workers' Compensation Administration within one workday of receipt from the supervisor.

5.12. To promptly notify the Workers' Compensation Administration of any potentially controversial case, and all instances of suspected malingering, or where the cause of injury is doubtful, or where the employee is requesting industrial leave to cover partial day or full day absences not related to the temporary *Disability*.

5.13. In cases of temporary partial *Disability* (part-time work), supervisors should be flexible with hours worked during the day to ensure employees work the full amount of time prescribed by their medical providers.

5.14. To cooperate with Risk Management in determining eligibility and returning the employee to duty.

Operating Department
- Payroll

5.15. The day of injury is to be reported on labor cards as a full day of regular work. For additional medically required absence

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due to the injury, Industrial Leave shall start with the first scheduled workday after the day of injury.

- 5.16. Necessary leave for medical treatment or granted because of recurrence, aggravation, or sequela of an injury previously approved for industrial leave shall be charged to the balance, if any, of the one-year maximum allowance of such leave for said original injury.
- 5.17. Any holiday falling during a period of industrial leave shall be charged as industrial leave and not be paid as a holiday. Industrial leave will be charged rather than a holiday if industrial leave is paid the scheduled workday before and after the holiday. If an employee is scheduled to work on a holiday and is injured, the holiday credit will be granted.
- 5.18. In those cases where the appointing authority recommends industrial leave, the employee's absence will be charged to industrial leave pending a determination of eligibility by the Workers' Compensation Administration. If the employee is later determined to be ineligible for industrial leave by the Workers' Compensation Administration, the employee will be required to reimburse the City for the number of industrial leave hours used. Reimbursement will be made by charging the employee's accumulated sick leave, annual leave and/or compensatory time credits. If sufficient leave credits are unavailable, the employee will be required to make a direct monetary reimbursement to the City.
- 5.19. In those cases where the appointing authority does not recommend industrial leave, the employee's absence shall be deemed sick leave to the extent the employee has sick leave credits, pending determination of eligibility by the Workers' Compensation Administration. However, the employee may decline to use sick leave and with the approval of the appointing authority, may instead take other leave or compensatory time off to which the employee may be entitled. In the event paid leave is not utilized, the employee may receive Workers' Compensation temporary *Disability* to the extent he or she may be entitled under Division 4 of the California Labor Code.

If it is subsequently determined that the employee is eligible for industrial leave, the industrial leave shall be deemed to commence pursuant to Section 4.3.6 (b) of this Regulation, and any sick leave, compensatory time off or other leave credits expended shall be restored to the employee's balance. In the event temporary *Disability* has been paid, the employee shall be

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paid the difference between the temporary *Disability* amount and the industrial leave amount.

- 5.20. The use of sick leave or annual leave credits may be requested if the requirements for industrial leave are not met, or in cases where the employee has exhausted the maximum industrial leave credits. The employee's sick leave or annual leave credits will not be charged for the amount of temporary *Disability* payments made under Workers' Compensation Act provisions.

An employee shall not receive payment in excess of full salary through a combination of Workers' Compensation temporary *Disability* payments and paid sick leave or annual leave or compensatory time off.

- 5.21. When sick leave is used for an on-the-job injury, the employee's sick leave account will be reimbursed in hours, by equivalent amount due from temporary *Disability* payments.
- 5.22. If a disabled employee is receiving Worker's Compensation temporary *Disability* benefits, but is not receiving payment for industrial leave, sick leave, or annual leave, the appropriate payroll SAP Absence Code is 2080. It is unnecessary for an employee in this status to request a leave of absence from the Civil Service Commission since the City has the legal obligation under Workers' Compensation laws to return the employee to gainful employment.
- 5.23. Leave without pay (SAP Absence Code 2000) may be used if the employee is not receiving Workers' Compensation benefits, annual leave, sick leave, industrial leave, or compensatory time credits. Employees in this status must request a leave of absence from the Civil Commission if their absence extends for more than 30 calendar days.
- 5.24. When sick leave, annual leave or leave without pay is used under these circumstances, RM-1634 shall be completed, routed and processed in the same manner as for industrial leave.
- 5.25. All requests for industrial leave will be reviewed by the Workers' Compensation Administration for a decision on whether the circumstances qualify the employee for industrial leave, under the requirements of the Administrative Regulation.
- 5.26. Worker's Compensation Administration shall inform the employee and the department as to the employee's eligibility for industrial leave.

Workers' Compensation
Administration

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5.27. Denial of industrial leave shall be in writing, shall contain information as to the specific reason for the denial, and shall clearly indicate the appeal procedure.

5.28. Workers' Compensation Administration shall inform each applicant for industrial leave of his/her responsibilities under the Industrial Leave Program and of the right to appeal the denial of industrial leave.

6. APPEAL PROCEDURE

Responsibility

Action

Employee

6.1. An employee may appeal the denial of industrial leave by the Workers' Compensation Administration. The appeal shall be in writing, submitted to the Mayor or their designee within ten (10) working days of receipt of the notice of denial and shall state the specific reasons for the employee's appeal and the issue upon which the appeal is based.

Mayor or Designee

6.2. The Mayor or their designee shall review the entire case and announce an intended decision indicating their rationale. In the event of an intended denial, the Mayor or their designee shall arrange a meeting in which the affected employee may present his or her appeal. The employee shall have the opportunity to confront the information relied on by the Mayor or their designee and submit additional information as desired for consideration by the Mayor or their designee. Such meeting shall be as informal as is compatible with justice.

6.3. The Mayor or their designee shall render a decision which shall be final and shall include the reasons for the direction.

6.4. The Mayor or their designee may grant the employee an extension of time beyond the appropriate appeal period if it is determined that the employee is to be disabled as to be physically unable to appeal within the allocated time.

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APPENDIX

Legal Reference

San Diego Municipal Code Chapter II, Article 2, Division 10, Section 19 (Industrial Leave)
Memorandums of Understanding

Forms

RM-1634, Medical Status Report for Occupational Injury and Illness
RM-1642, Employee's Claim for Workers' Compensation Benefits

Subject Index

Industrial Leave

Administering Department

Risk Management