

**[6.50.14.9 NMAC - Form Policy]**

"WHEREAS, the district (other educational entity) wishes to provide its employees with workers' compensation benefits as provided by law; and

WHEREAS, the district (other educational entity), as a member of the New Mexico Public Schools Insurance Authority (the "Authority") wishes to provide workers' compensation benefits at the least possible expense; and

WHEREAS, the district (other educational entity) wishes to provide the safest possible working conditions for its employees, and to achieve this objective wishes to implement an effective and pro-active loss prevention program; and

WHEREAS, the district (other educational entity) wishes to provide its employees with the proper methods and procedures to follow whenever an injury arises in the scope and course of their employment with the district (other educational entity); and

WHEREAS, the district (other educational entity) desires to save on future rates by shifting costs of pre-existing injury care to the subsequent injury fund; and

WHEREAS, the district (other educational entity) in administering its workers' compensation policy desires to assure that it does not violate employee or prospective employee rights under the Americans with Disabilities Act.

**NOTICES.**

The district (other educational entity) shall post, and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted, a notice that advises workers of the requirement of reporting an accident within fifteen days after the worker knew, or should have known, of its occurrence. The notice required shall include as an attachment to it a pre-printed form, which shall be approved by the director of Workers' Compensation Administration, that allows the worker to note and briefly describe the accident and sign his name. The district (other educational entity), any administrative supervisor, or any agent of the district (other educational entity) in charge of the work where the accident occurred shall also sign the pre-printed form that describes the accident. Pre-printed forms are provided by the Worker's Compensation Administration (WCA) and are available through the Authority third party administrator (TPA).

**REPORTING OF INJURY.**

A First Report of Accident must be filed with the WCA on all worker's compensation claims for disablement. This form must be filed with the WCA office within ten (10) days after the district (other educational entity) has received notice from the employee of the disablement. The penalty for late filings consist of a fine of not less than \$25.00 and not more than \$1,000.00, subject to the WCA Director's discretion. It is the responsibility of the district (other educational entity) to be sure these reports are received by the Authority TPA in sufficient time to be sent to the WCA. A copy of the First Report of Accident must be given to the employee by the district (other educational entity). The employee will properly execute a Medical Authorization which will be provided to the TPA with the district's (other educational entity) First Report copy. Payments for workers' compensation benefits must be paid within 14 days of the date of disability.

**MEDICAL SERVICES FOR INJURED EMPLOYEES.**

The district (other educational entity) must decide whether or not it will be directing the initial treatment for a work related injury. It is in the best interest of all parties to direct the medical care. The first 60 days are vitally important to a prompt return to work. Whether the district (other educational entity) chooses to direct or not, notice of this decision must be posted upon its premises where notices to employees and applicants for employment are customarily posted. When the district (other educational entity) has arranged for medical services to be provided it must ensure all employees are given appropriate instructions to follow and the names, addresses and telephone numbers of selected provider(s).

## **WORKERS' COMPENSATION BENEFITS.**

There is a seven (7) day waiting period where no compensation benefits are paid under workers' compensation. (An employee may elect to draw sick leave benefits during this seven (7) day waiting period, if the employee has to his or her credit, earned sick leave). Workers' Compensation benefits are paid from the eighth (8) day of disability on compensable claims. If an employee continues to be disabled and covered under workers' compensation for more than twenty eight (28) days the first seven (7) day waiting period is paid. If the employee has utilized sick leave benefits, payment for the seven (7) day waiting period shall be to the district (other educational entity) and employee. Workers' Compensation benefits are based on an average weekly wage, meaning the weekly wage earned by the worker at the time of the worker's disability. Compensation shall be paid at the rate of 66-2/3% of the worker's average weekly wage, not to exceed 85% of the state's average weekly wage. The minimum weekly wage is \$36.00.

The employee will not be paid in excess of 100% of gross wage when both sick leave and compensation benefits are combined. The district (other educational entity) may allow employees to draw sick leave benefits in addition to compensation benefits, but such sick leave benefits will be limited to that amount, which when added to the compensation benefits, totals not more than 100% of the employee's gross weekly wage. It is required by law that Workers' Compensation benefits are primary and shall be paid to the employee without regard to other available benefits unless such benefits are solely employer funded.

## **EMPLOYEES WITH A PRE-EXISTING INJURY.**

District (other educational entities) workers' compensation premiums escalate rapidly and this impairs the districts (other educational entities) ability to pay for other services. One way to fight the rising costs is to shift the costs of caring for pre-existing worker injuries. The state has established the subsequent injury fund (SIF). The purpose of the fund is to spread the risk of workers' compensation payments paid to previously impaired workers' on account of a prior injury to all employers (the SIF pool). The aim is to eliminate the natural inducement of employers not to hire the previously impaired for insurance reasons. (For example - hurt back before employment likely to hurt it again and file a compensation claim). Our district (other educational entity), as are most employers, is assessed a percentage of paid claims which goes to the fund. If such an employee has a subsequent disability which is materially greater than that which would have resulted from the subsequent injury alone, the district (other educational entity) may receive reimbursement from the SIF if the Certificate of Pre-Existing Impairment form has been filed with the Superintendent of Insurance. Whether or not this existing impairment was job related does not matter.

By following the provisions of the Act, the district (other educational entity) can cut costs of workers' compensation insurance in the future. The district (other educational entity) shall:

at the time employment is offered inquire as to any impairment whether as a result of a job related accident or not and whether congenital or accidental in origin.

review all past workers compensation claims or past claims for disability (duty and non-duty) benefits on current employees.

during personnel evaluations inquire of all employees as to pre-existing physical impairments.

The above inquiries and review are exclusively for the purpose of allowing the district (other educational entity) to shift workers' compensation costs to the subsequent injury fund. It is a violation of the Americans with Disabilities Act to even unknowingly use standards, tests or employment procedures that screen out the disabled unless the standard, test or procedure is shown to be job-related for the position in question and its use is necessary to the effective or safe operation of the district.

With regard to all pre-existing physical impairments, a Certificate of Pre-Existing Impairment shall be executed as a condition of employment or continued employment. The Certificate must be provided by a physician licensed to practice medicine in New Mexico or any bordering state. If such physician cannot give a Certificate, then an

independent medical examination is required. For an application for new hire, he or she must pay for the IME, but for a current employee, the district will pay for the IME. All certificates must be filed with the:  
Superintendent of Insurance  
Post Office Drawer 1269  
Santa Fe, New Mexico 87504-1269

If a work related injury is reported, any/all certificates on file for that employee must be forwarded to the Authority TPA for SIF involvement.

The foregoing workers' compensation policy was adopted this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

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School District  
or Other Educational Entity

By: \_\_\_\_\_

Its: \_\_\_\_\_