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IMPORTANT CHANGES TO YOUR WORKERS' COMPENSATION BENEFITS

Produced for CTA members by CTA's Risk Management and Member Benefits Department.

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Important legislative changes have been made to the California workers' compensation program over the past two years. These changes will improve some benefits for educators, while limiting other benefits. In this newsletter, you will find updated information about these changes and tips that can help you if you should become injured on the job.

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Common Injuries to Educators

Surprisingly, educators frequently sustain injuries from slips, trips and falls at school sites. Others frequently report injuries that result from being struck by a falling object; overexertion, such as back and neck strains from lifting, carrying, pulling/pushing; or repetitive motion. These injuries are reported by information from the Department of Workers' Compensation (DWC).

Cutbacks in the number of support staff have meant that educators are performing more clerical work, which has caused an increase in the number of repetitive strain injuries. Also, classroom mold issues have resulted in an increase in illness from toxins or noxiousness claims in the work place.

Portable classrooms have been thought to cause nerve and respiratory damage, cancer and other permanent injuries.

What Benefits Does Workers' Compensation Provide?

By law, all employers are required to provide workers' compensation insurance for employees. This insurance is a no-fault measure that protects employers from liability and compensates injured workers for benefits as set by California statutes and regulations. The basic components of the law include medical care, temporary disability, permanent disability, supplemental job displacement benefits (vouchers) and death benefits.

Medical Treatment

Treatment for workplace injuries are covered and paid for by your employer. The treatment includes physician and hospital visits, lab-testing fees, drugs, physical therapy and transportation costs. Injured employees do not need to prove the injury was someone else's fault in order to receive immediate workers' compensation benefits for an on-the-job injury.

Within one working day after a written claim is filed with your employer, you should be provided medical treatment up to a maximum of \$10,000. Unless you have pre-designated a doctor to treat you for your workers' compensation injuries, your employer has the right to choose your physician with certain exceptions. All treatment must now be authorized by your employer's workers' compensation adjusting agency or insurance carrier. The physician treating the worker can directly bill the employer's insurance company, but there are limits on the fees a doctor can charge.

Temporary Disability Benefits

If an employer and insurer agree the injury was work-related, an employee is paid temporary disability benefits during the time the claims adjuster authorizes a physician-recommended leave. If you disagree with the claims adjuster, you have the right to dispute the adjuster's opinions of your temporary disability claims. This benefit allows for limited payments for your lost wages during your recovery period from an injury on the job.

Education Code section 44984 provides that a certificated employee is entitled to 60 days of paid leave while school is in session, as long as you are on an authorized workers' compensation leave status. The workers' compensation temporary disability insurance (TDI) checks and the amount of paid leave shall not be more than your full salary within that time frame. Your local association may bargain additional days of paid leave. Check your local contract or contact your association representative for more information.

Permanent Disability Benefits

Permanent disability benefits are payments for injury or illness connected to your job that may be used for retraining if your injury prevents you from performing work at your current job. In addition, the injury or illness may have resulted in a reduction in your ability to compete in the open labor market for injuries that became permanent and stationary before January 1, 2005, or that result in an impairment defined by the American Medical Association for injuries after January 1, 2005. Payments are determined using a permanent disability rating schedule based on your medical condition, your date of injury, your age when injured and your occupation. For injuries on or after January 1, 2005, compensation should consider future earning capacity losses.

Supplemental Job Displacement Benefits (Vouchers)

A supplemental job displacement benefit is a voucher that promises to help pay for educational retraining or skill enhancement, or both, at state-approved or state-accredited schools. The voucher should be in the form of a letter to you from the claims administrator. You can use the voucher to pay for tuition, fees, books, or other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher money may be used for vocational or return-to-work counseling. The voucher cannot be used by other persons.

The dollar amounts of vouchers are as follows:

- Up to \$4,000 for permanent disability ratings less than 15%
- Up to \$6,000 for permanent disability ratings between 15% and 25%
- Up to \$8,000 for permanent disability ratings between 26% and 49%
- Up to \$10,000 for permanent disability ratings between 50% and 99%

Payments may not exceed \$16,000 for injuries on or after January 1, 1994. Before 1994 there was no limit. The statute mandating vocational rehabilitation was repealed for injuries on or after January 1, 2004, with the exception of modest vouchers in certain circumstances. For more information about the supplemental job displacement benefits (vouchers), please visit the Commission on Health and Safety and Workers' Compensation website at www.dir.ca.gov/chswc.

Death Benefit

As you probably realize, a death benefit is a payment to the surviving spouse, minor children or other dependents of an employee who has lost his or her life on the job, or if the death was caused or aggravated by work. Spouse, minor children or other dependents may be entitled to full death benefits even if the injury on the job was not the main cause of the death, but contributed to the cause of death.

Please refer to the Workers' Compensation Benefits chart for all minimum/maximum weekly temporary and permanent disability benefits, and for all maximum death benefits.

In addition, be sure to talk with your CTA representative about death and dismemberment benefits provided by CTA.

What Are My Basic Rights under Workers' Compensation?

Here are some facts to keep in mind if you are hurt on the job.

Selecting your Own Physician

- If you are an employee covered by a group health plan, you can pre-designate your personal physician by completing a designation form provided by your employer or by using the enclosed form. Your personal physician can treat you in case of an injury on the job if you pre-designate him/her in writing before the injury occurs. It is a good idea to keep a copy of your dated form for your records.
- Only employees covered by a group health plan are allowed to pre-designate a treating physician (medical doctor only). The doctor must have previously been your primary care physician and have a history of treating you, and must agree to be pre-designated. A worker can begin treatment immediately after the injury with a pre-designated doctor. This provision is limited to 7% of the workforce and the employee's right to pre-designate a physician terminates in three years.
- On January 1, 2004, the treating physician's presumption of correctness was repealed for all dates of injury. Treatment must now be in accordance with American College of Occupational and Environmental Medicine (ACOEM) Guidelines for the acute phase of your injury or illness. The criteria for treatment must be based upon nationally recognized, peer-reviewed scientific evidence. In the past, the primary treating physician's opinion on your medical condition determined your eligibility for compensation and benefits. Now there are several time limits and restrictions on your ability to exercise your right to obtain these benefits, so you need to act promptly and seek immediate advice if you have any questions about what is available to you.
- When pre-designating your primary physician, keep the following in mind. The treating physician must:
 - 1) Be a medical doctor licensed pursuant to Chapter 5 of Division 2 of the Business and Professions Code
 - 2) Have a history of treating you
 - 3) Have possession of your medical records
 - 4) Be willing to treat industrial injuries
- Employers are able to contract with a Medical Provider Network (MPN), a closed network of doctors. If an employee has not pre-designated a doctor, the injured employee's medical care will, with certain exceptions, be provided by the employer's network for the life of the claim. Previously, the employer could only direct medical care for the first 30 days for employees who did not pre-designate a doctor.

Under the new workers' compensation law, if an employer sets up a MPN to treat injured employees, workers must seek treatment with the MPN doctor, and may not have a free choice of a treating physician unless they pre-designate a doctor. Employees are eligible to seek the opinions of a second and third doctor within the employer's network if they disagree with the doctor's diagnosis or treatment plan. If the employee still disagrees with the three doctors' diagnosis and treatment plan, the employee may request an Independent Medical Review (IMR). If the IMR sides with the injured worker, the employee can receive medical care outside of the employer's network. If the IMR disagrees with the injured worker, then the employee must obtain that doctor's recommended treatment within the medical network. If no network is set up, an employee can change treating doctors 30 days from giving notice of an injury.

Free Advice from State Agency Workers' Compensation Advice

- You have the right to seek assistance from the state's Department of Workers' Compensation (DWC) Information & Assistance Officer. The DWC Information and Assistance Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning workers rights, benefits and obligations under California's workers' compensation laws. You may contact an Information & Assistance Officer from the district offices listed on the last page of this brochure for assistance. You may also go to the DWC website at www.dir.ca.gov/dwc for more information or call the DWC at (800) 736-7401.

Retaining an Attorney

- You have the right to obtain a workers' compensation attorney at any time. If you believe you have not been treated fairly or do not understand how to protect your rights, you have the right to seek the assistance of an attorney. The law does not require you to have an attorney to file an appeal. However, be aware that there are several filing deadlines and rights you must exercise in a timely manner, or they will be lost to you forever. An attorney can assist you in protecting those rights. To obtain a workers' compensation attorney, contact your CTA primary contact staff or local CTA office. Generally, applicant's attorney fees are 9-15% of any denied benefits or permanent disability settlement amounts and must always be approved by a workers' compensation judge. Defense attorneys' fees are not regulated.

Protection from Employer Retaliation

- You have the right to file a claim for retaliation against your employer under Labor Code Section 132(a) if you believe your employer has taken unfavorable action against you for filing a workers' compensation claim, or has discriminated against you because of your disability or injury status.

Important Legislative Changes

Benefit Increases

Legislation that went into effect as of January 1, 2003, was originally scheduled to increase temporary and permanent disability benefits. However, subsequent legislation signed into law on April 19, 2004 provided limits on the time they are payable and the manner in which they are determined. Some of the benefits are outlined in the chart below. Benefits are generally determined by the date or dates of injury.

Workers' Compensation Benefits

Class of Benefits	2003	2004	2005	2006
Temporary Disability (weekly)				
Minimum	\$126	\$126	\$126	\$126 *
Maximum	\$602	\$728	\$840	\$840 *
Permanent Disability Minimums (weekly)				
<15%	\$100	\$105	\$105	\$130
15-24.75	\$100	\$105	\$105	\$130
25-69.75	\$100	\$105	\$105	\$130
70-99.75	\$100	\$105	\$105	\$130
Permanent Disability Maximums (weekly)				
<15%	\$185	\$200	\$220	\$230
15-24.75	\$185	\$200	\$220	\$230
25-69.75	\$185	\$200	\$220	\$230
70-99.75	\$230	\$250	\$270	\$270
Death Benefit Maximums				
Single total dependent	\$125,000	\$125,000	\$125,000	\$250,000
No total dependents and one or more partial dependents	\$125,000	\$125,000	\$125,000	\$250,000
Single total dependent and one or more partial dependents	\$145,000	\$145,000	\$145,000	\$290,000
Two total dependents	\$145,000	\$145,000	\$145,000	\$290,000
Three or more total dependents	\$160,000	\$160,000	\$160,000	\$320,000
Life Pension				
Weekly Wage to determine maximum life pension benefits	\$257.69	\$257.69	\$257.69	\$515.38

Source: Department of Industrial Relations - www.dir.ca.gov

* Increased thereafter by the percentage increase in the State Average Weekly Wage [LC 4453(a)(10)]

Benefit Reductions

You should be aware of other legislative changes that effect claims occurring on or after January 1, 2004.

- Chiropractic, occupational and physical therapy treatments will be limited to 24 visits each for the life of the claim. Before 2004, the number of these treatments was unlimited.
- A requirement has been set in pharmacies, hospitals and clinics to offer generic drugs when available, unless the treating physician specifically prescribes a brand name. Prescriptions will be tied to the Medi-Cal reimbursement rate, which could result in fewer pharmacies filling prescriptions for workers' compensation injuries.
- For injuries before January 1, 2004, the \$16,000 vocational rehabilitation benefit will continue until January 2009 for retraining expenses. However, the weekly disability payment during retraining has been eliminated. Rehabilitation benefits were abolished for injuries after January 1, 2004, with the exception of payment of modest "supplemental job displacement benefits" (vouchers) for education-related retraining or skill enhancement at state-approved or state-accredited schools.
- The maximum fine for workers' compensation fraud increased from \$50,000 to \$150,000.
- The legislation that went into effect on April 19, 2004, has changed the method used to determine permanent disability. It is now based upon medical impairments and loss of earning capacity. Permanent disability benefits decrease 15% for injured workers who are offered a return-to-work program for 12 months and permanent disability benefits decreased one less week per percentage of disability for those rated below 15%. For employers with more than 50 employees, permanent disability payments are increased by 15% for injured workers not able to return to their employers.

What Should You Do if You Are Injured on the Job?

- Report all work related injuries or illnesses immediately to your employer.
- Seek emergency medical treatment if needed and inform the health care provider who treats you that your injury or illness is job related.
- Request a workers' compensation claim form from your employer. By law, an employer is required to provide a claim form within one working day after learning about your injury or illness. Your claim generally must be submitted in writing.
- Your employer is required to fill out and sign the "employer" portion of the claim form before providing the form to you.
- Upon completion you should return the form to the employer to have the completed form sent to its insurance carrier or claims administrator if self-funded. Self-funded means that the district has created a workers' compensation fund to provide payments for benefits.
- Your employer must give you a copy of the completed form within one working day after you file the claim.
- The insurance carrier or claim administrator is required to accept or deny your claim within 90 days of receiving your claim form. The 90 days can involve depositions, investigations and medical examinations from the insurance carrier or claim administrator.

What if You Disagree with the Handling of Your Claim?

Disputes may arise in connection with the benefits you believe you are entitled to within the laws of workers' compensation. You should understand that the law mandates that your claims are to be construed liberally in an impartial manner regardless of a given set of circumstances.

There are various procedures available to injured workers who want to dispute a doctor's medical recommendations. They differ depending on whether or not you are represented by an attorney. An unrepresented employee can only dispute those recommendations through a state appointed panel of doctors and there are very short-time deadlines to communicate your dispute and participate in the selection of the panel doctor. If you are represented, an agreement can be made to refer you to an Agreed Medical Examiner (AME). The AME will make the determination, but your attorney can cross examine the AME if there are disagreements about his or her conclusions. If the employer and employee cannot agree on an AME, the Administrative Director (AD) will provide a panel of three Qualified Medical Examiners (QME). Each side may strike one panelist, and the remaining doctor will make the determination. If an employee does not choose a doctor from the panel within 10 days, the employer may pick the doctor.

It can be to your advantage to dispute or appeal a decision before the Workers' Compensation Appeals Board (WCAB). The WCAB is a judicial body of seven Workers' Compensation Judges (WCJs) appointed by the Governor and confirmed by the Senate. WCJs appointed after 2002 must be attorneys who have been licensed to practice law in California for five or more years prior to appointment and have experience in workers' compensation law. All WCJs are made subject to the jurisdiction of the Commission on Judicial Performance. The Commission on Judicial Performance is the independent state agency in California responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. WCAB exercises all judicial powers vested in it by the state Labor Code. Its major functions include review of petitions for reconsideration of decisions by workers' compensation administrative law judges of the Division of Workers' Compensation and regulation of the adjudication process by adopting rules of practice and procedure. Because of budget cuts, you need to be prepared for delays in obtaining WCAB hearing and decisions. Disputes can be resolved without a decision being rendered by a workers' compensation judge, but any settlement must be approved by a workers' compensation judge.

Information & Assistance Unit
District Offices

Anaheim, 92801 1661 No. Raymond Ave., Suite 200 (714) 738-4038	Bakersfield, 93301 1800 30th St., Suite 100 (661) 395-2514	Eureka, 95501-0421 100 "H" Street, Room 201 (707) 441-5723
Fresno, 93721-2280 2550 Mariposa Street, Room 2035 (559) 445-5355	Grover Beach, 93433-2261 1562 Grand Avenue (805) 481-3296	Goleta, 93117 6755 Hollister Avenue (805) 968-4158
Long Beach, 90802-4460 300 Oceangate Street, 3rd Floor (562) 590-5240	Los Angeles, 90013 320 W. 4th St., 9th Floor (213) 576-7389	Oakland, 94612 1515 Clay Street. 6th Floor (510) 622-2861
Oxnard 93030 2220 E. Gonzales Rd., Ste 100 (805) 485-3528	Pomona, 91768 435 W. Mission Blvd. #300 (909) 623-8568	Redding, 96001-2796 2115 Akard, Room 21 (530) 225-2047
Riverside, 92501 3737 Main Street, Room 300 (909) 782-4347	Sacramento, 95825 2424 Arden Way, Suite 230 (916) 263-2741	Salinas, 93906-3487 1880 North Main Street, Suite 100 (831) 443-3058
San Bernardino, 92401 464 W. Fourth Street, Suite 239 (909) 383-4522	San Diego, 92102-4402 7575 Metropolitan Road, Suite 202 (619) 767-2082	San Francisco, 94102 455 Golden Gate Ave., 2nd Floor (415) 703-5020
San Jose, 95113 100 Paseo de San Antonio, Room 240 (408) 277-1292	Santa Ana, 92701-4701 28 Civic Center Plaza, Room 451 (714) 558-4597	Santa Monica, 90405 2701 Ocean Park Blvd., Suite 222 (310) 452-1188
Santa Rosa, 95404 50 "D" Street, Room 430 (707) 576-2452	Stockton, 95202-2314 31 East Channel Street, Room 450 (209) 948-7980	Van Nuys, 91401-3373 6150 Van Nuys Blvd., Room 105 (818) 901-5367

Source: Department of Industrial Relations - www.dir.ca.gov

Disclaimer

This is a brief, general summary of some of the benefits provided under the California workers' compensation system. Be aware that the California workers' compensation system is subject to continuous changes and modifications. The information in this newsletter is not a substitute for legal advice. For more information, please call your local information and assistance officer or seek a referral to a CTA workers' compensation attorney.

Workers' Compensation Primary Treating Physician Pre-designation Form

Physician should:

1. Report in accordance with Labor Code section 9785.
2. Accept and follow the applicable medical treatment guidelines required under California law and regulations. The American College of Occupational and Environmental Medicine (ACOEM) treatment guidelines, supplemented by other evidence-based medical treatment guidelines when the ACOEM guidelines do not address the particular condition, are the applicable treatment guidelines. Further information can be obtained from www.acoem.org.
3. Abide by the California Official Medical Fee Schedule for Workers' Compensation. Additional information can be obtained from www.dir.ca.gov/dwc/medical.html.
4. Be the employee's current primary care physician under his/her health insurance.
5. Have previously directed the medical treatment of the employee and retain the medical records of the employee.
6. Be a California licensed physician or surgeon.
7. Agree to be the employee's selected primary treating physician.

I, _____ pre-designate Dr. _____
(hereinafter "doctor") to be my primary treating physician in connection with my workers' compensation claim(s).

The doctor has been my regular physician and surgeon. The doctor has previously directed my medical treatment and possesses my previous medical history and records.

Physician's Name: _____

Address: _____

Phone: _____

Employee's Name (Print): _____

Employee's Signature: _____

Dated: _____