

DEPARTMENT OF HUMAN RESOURCES

DIVISION OF STATEWIDE BENEFITS

Statutory Authority: 29 Delaware Code, Section 5256 (29 Del.C. §5256)
19 DE Admin. Code 2007

FINAL

ORDER

2007 Disability Insurance Program Rules and Regulations

Pursuant to House Bill No. 4 amended by House Amendment No. 1 (149th General Assembly), the Department of Human Resources and the Division of Statewide Benefits of the Department of Human Resources was established effective July 1, 2017, having powers, duties and functions as follows:

“(1) With the exception of deferred compensation pursuant to Chapter 60A of this title and any other investment or retirement savings plan, the Director of Statewide Benefits shall be responsible for the management and administration of all currently existing and future state employee benefits programs, including but not limited to group health, group life, flexible benefits, dental, vision, prescription, long-term care, disability, supplemental benefits and the Blood Bank.”

Epilogue language referenced below from Section 30 of House Substitute No. 1 for House Bill No. 275 (149th General Assembly) allows the State Employee Benefits Committee (SEBC) to amend the Disability Insurance Program (DIP) Rules & Regulations.

“Section 30. Notwithstanding the provisions of the Administrative Procedures Act, 29 Del.C. Ch. 101 or any other laws to the contrary, the State Employee Benefits Committee is authorized to amend the rules for Employees Eligible to Participate in the Group Health Insurance Program and the State Disability Insurance Program by approving such amendments and causing the amendments to be published in the Register of Regulations with such amendments to be effective as of the date of such publication unless otherwise specified by the State Employee Benefits Committee.”

The attached version of the Disability Insurance Program (DIP) Rules & Regulations, effective April 1, 2019, reflect several amended sections to incorporate specific provisions of House Bill No. 3 as Amended by House Amendment No. 4 (149th General Assembly). Legislation and the SEBC mandate the effective date of this change to be April 1, 2019.

This order is effective March 15, 2019.

STATE OF DELAWARE DEPARTMENT OF HUMAN RESOURCES

By: Faith L. Rentz
Director, Statewide Benefits and Insurance Coverage Office

Date: March 15, 2019

2007 Disability Insurance Program Rules and Regulations Effective ~~September 1, 2017~~ April 1, 2019

1.0 Purpose

The purpose of the proposed Disability Insurance Program Rules and Regulations is to provide State employees and administrative staff with access to policies currently in force and in practice with respect to the

Disability Insurance Program. The proposed Rules and Regulations encompass and combine processes that have been developed since inception of the Disability Insurance Program.

NOTE to “Qualified Individual with a Disability” and Human Resources Professionals:

When medical restrictions prohibit a “Qualified Individual with a Disability” from performing the essential functions of his or her job, the *Americans with Disabilities Act of 1990*, as amended (ADA), requires an employer to communicate, in an interactive process or interactive dialogue, with the Qualified Individual with a Disability to identify possible reasonable accommodations that may allow the individual to perform the job. A reasonable accommodation is often a change or modification and can include special equipment that allows the Qualified Individual with a Disability to perform the job, scheduling changes, and changes to the way work assignments are chosen or communicated. However, the employer is not required to provide an accommodation that would involve undue hardship (significant difficulty or expense) and the Qualified Individual with a Disability who receives the accommodation must still perform the essential functions of the job and meet the normal performance requirements. The employing organization and the Qualified Individual with a Disability should have an interactive dialogue to determine the appropriate accommodation based on the request from the Qualified Individual with a Disability and available options. When appropriate, the accommodation discussion should involve various accommodations that are workable. Often times multiple accommodations will be discussed prior to a decision being made by the employing organization. Please see Section 2.0 for the definition of a “Qualified Individual with a Disability.

2.0 Definitions

“**Appeal**” is the action you can take pursuant to 29 **Del.C.** §5258 if you disagree with a coverage decision made by the DIP insurance carrier and/or third party administrator (Administrator) selected to administer and/or insure the program by the SEBC pursuant to 29 **Del.C.** §5254 and/or the Appeals Administrator from the Statewide Benefits Office and/or the Hearing Officer from the Department of Human Resources and/or the SEBC.

“**Base Rate of Compensation**” means the employee’s usual rate of pay, including hazardous duty pay if applicable. Base Rate of Compensation does not include commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation.

“**Claimant**” means a person enrolled in the DIP who applies for STD and/or LTD benefits and/or an extension of STD and/or LTD benefits or who is receiving or has received STD and/or LTD benefits.

“**Creditable Compensation**” as defined in 29 **Del.C.** §5251(c), shall mean the base rate of compensation that the employee received on the last day of employment before the employee developed a disability.

“**DIP**” means the Disability Insurance Program as defined in 29 **Del.C.** §5256 of the Delaware Code.

“**DIP Insurance Carrier and/or Administrator**” means the State’s selected vendor for this service.

“**Elimination Period**” is the period of time you must be disabled before disability benefits commence. The elimination period in the Short Term Disability (STD) program is 30 calendar days. The elimination period in the Long Term Disability (LTD) program is the last to be satisfied of the following:

- 1) The first 182 consecutive calendar day(s) of any one period of disability; or
- 2) The exhaustion of the STD benefit period.

“**Employee**” shall mean an eligible “employee” as defined in 29 **Del.C.** §5501(f), (<http://delcode.delaware.gov/title29/c055/sc01/index.shtml>) who elects to participate in the DIP as specified in 29 **Del.C.** §5519. Under 29 **Del.C.** §5501(f), “Employee” shall mean an individual who:

- (1) Is employed by:
 - a. The State, including elected or appointed officials; or
 - b. The State Department of Education, a school district which is part of the state school system, the University of Delaware, Delaware State University or Delaware Technical and Community College; or
 - c. A state agency that is supported wholly or in part by funds granted to the State by the federal government;

- (2) Is employed on a full-time or annual basis or on a regular part-time basis, as the terms "full-time or annual basis" and "regular part-time basis" are defined in rules and regulations adopted by the Board, except that an individual whose initial appointment to a gubernatorial appointed board, council or commission occurs after June 30, 2013, shall not be considered employed on a regular part-time basis;
- (3) Receives compensation wholly or in part directly from the State Treasury or from the Treasury through an agency within the State that is wholly or in part supported by the State;
- (4)
 - a. Is not a member of any other state or municipal retirement system which is financed in whole or in part by the State unless the state pension plan provides for a unified state service pension and the member is not concurrently accruing or collecting benefits under that system; and
 - b. Is not a member of a county pension plan with respect to which the employee is accruing credited service and to which the employee and/or the State is making contributions on account of employment with the State;
- (5) A person who meets the requirements of this subsection shall be regarded as an "employee" during the period he or she is on an approved leave and, for school personnel who do not work on 12-month basis, during the period between the expiration of such leave and the beginning of the next regular school term.

This shall include any employee who is collecting benefits pursuant to 11 **Del.C.** §8352(4) (<http://delcode.delaware.gov/title11/c083/sc03/index.shtml>).

"Employing Organization" shall mean the agency, school district, charter school, institution of higher education ~~education~~, or court system or Delaware Solid Waste Authority (DSWA) employing claimants in a position covered by the Delaware State Employees Pension Plan pursuant to 29 **Del.C.** Chapter 55 who are U.S. citizens or U.S. residents actively at work for one full day on or after January 1, 2006.

"Essential Duty" means a duty that is substantial, not incidental; is fundamental or inherent to the occupation; and cannot be reasonably omitted or changed. To be at work for the number of hours in the employee's regularly scheduled workweek is also an essential duty. Any occupation means an occupation for which the employee is qualified by education, training or experience.

"Family and Medical Leave Act (FMLA)" is a labor law that entitles eligible employees to take up to twelve workweeks of unpaid, job-protected leave during a twelve month period for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Qualified medical and family reasons include personal or family illness, family military leave, pregnancy, adoption, or the foster care placement of a child. FMLA also provides qualifying exigency and military caregiver leave for employees with family members who are covered military members.

"Insurance Coverage Office (ICO)" is the State office responsible for providing quality support for the state government's insurance needs. The office is responsible for managing the insurance program for state vehicles, buildings and property and workers' compensation, as well as reviewing state facilities for safety issues and providing safety programs to state employees.

"Interactive Process" (ADA) - When medical restrictions prohibit an employee with a disability from doing his or her job, the Americans with Disabilities Act (ADA) requires an employer to communicate with the employee concerning an accommodation. This exchange has been described variously as the "core" or "proactive" process, "cooperative problem solving," "open and individualized exchange," a "search", and a "flexible give-and-take." Most frequently, it is called the "interactive process" or by the redundant term, "interactive dialogue." The purpose of this dialogue is to "identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations." 29 C.F.R. § 1630.2(o)(3).

"Less Than Twelve Month Educational Employees" are those employed by School Districts, Charter Schools, the Department of Education, University of Delaware, Delaware State University and Delaware Technical & Community College whose normal working period is a school year or semester which is less than 12 months in duration per calendar year. "Less Than Twelve Month Educational Employees" are not defined or categorized by their length of employment.

"Medical Care" is received when a physician is consulted or medical advice is given or treatment is recommended, prescribed by, or received from a physician. Treatment includes, but is not limited to, medical examinations, tests, attendance or observations and use of drugs, medicines, medical services or equipment.

"Member" means a person enrolled in or was previously enrolled in the DIP.

"Normal Working Periods" are the scheduled working days for the employee.

"Parental Leave" is a law that entitles all full-time employees in the employment of the State, a reorganized school district, charter school or vocational school district for at least one year, to twelve weeks of paid leave upon the birth or adoption of a child who is 6 years of age or younger to care for or bond with the child(ren). Parental Leave runs concurrently with any rights and benefits available under FMLA and STD pursuant to §5253 of Title 29 for the birth of a child. The University of Delaware, Delaware State University, Delaware Technical Community College and Delaware Solid Waste Authority are not subject to this law.

"Personal Injury Protection (PIP)" is insurance coverage that is statutorily mandated for Delaware registered vehicles. 21 Del.C. §2118 requires minimum PIP limits of \$15,000 per person; \$30,000 per accident for reasonable and necessary medical expenses, net amount of loss earnings, funeral expenses, and substitute services incurred within 2 years of an automobile accident. PIP benefits for vehicles registered to the State of Delaware for the needs of state government employees are administered by the ICO. PIP benefits for personally owned and/or rented vehicles are administered by the employee's personal automobile carrier.

"Pre-Disability Base Pay" aka **"Creditable Compensation"** shall mean the employee's usual rate of pay paid to the employee on the last day of employment before the employee developed a disability including hazardous duty pay, if applicable. Pre-disability earnings do not include commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation. For purposes of the DIP, Pre-Disability Base Pay is the employee's usual rate of pay prior to each date of disability.

"Pre-Existing Condition" means any accidental bodily injury, sickness, mental illness, pregnancy, or episode of substance abuse or any manifestations, symptoms, findings, or aggravations related to or resulting from such accidental bodily injury, sickness, mental condition, pregnancy or substance abuse for which the employee received medical care during the 3 month period that ends the day before:

- a. The employee's effective date of coverage in DIP; or
- b. The effective date of a change in DIP coverage.

"Qualified Individual with a Disability" (ADA) is an individual who has:

- a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- b) a record of such impairment; or
- c) being regarded as having such impairment.

"Return to Work (RTW) Coordinator" means the person selected by the Department of Human Resources to assist individuals enrolled or previously enrolled in the DIP who expect to be out of work with their transition back to work. Return To Work assistance may be requested by an employee, previously employed individual and/or by an employing organization. The RTW Coordinator may also consult with the individual's health care provider(s) to acquire and/or clarify a claimant's restrictions and/or limitations if applicable, to facilitate a safe return to the workplace.

"Salary Supplement" pursuant to 29 Del.C. §5933 outlines that whenever an officer as defined in 29 Del.C. §5812(n)(1), (<http://delcode.delaware.gov/title29/c058/sc02/index.shtml>) or employee of the State qualifies for workers' compensation disability benefits, the officer or employee is not charged sick or annual leave and shall receive from the State the difference, if any, between the total of: (1) The amount of such compensation, (2) any disability benefits received under the Federal Social Security Act, and (3) any other employer supported disability program, and the amount of wages to which the officer or employee is entitled on the date such compensation begins. No more than 1 period of supplemental pay shall be made under this subsection for any work injury, including any recurrence or aggravation of that work injury. Temporary disability payments that are paid through the Workers' Compensation program and administered by the Insurance Coverage Office (ICO) are unrelated to disability benefits paid under the DIP.

"SEBC" means the State Employee Benefits Committee. (As the "Committee" is the SEBC, we have incorporated the acronym "SEBC" in lieu of the term "Committee" in the definitions section of the rules. The definition of "Committee" in Section 2 will be deleted.)

"Temporary" means not permanent; provisional and/or lasting only a short time.

"Workers' Compensation" (WC) is a system, established under Chapter 23 of Title 19 of the Delaware Code, which provides compensation to workers who are injured or who contract an occupational disease while working. The benefits can include medical care, temporary disability payments and compensation for a resulting permanent impairment. In the event of the death of an injured worker, benefits are payable to the family of the worker. Benefits may be paid voluntarily or it may be necessary to petition the Office of Workers' Compensation for relief. Temporary disability payments that are paid through the Workers' Compensation program and administered by the Insurance Coverage Office (ICO) are unrelated to disability benefits paid under the DIP.

"**Your Occupation**" means your occupation as it is recognized in the general workplace. It does not mean the specific job you are performing or at a specific location.

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

21 DE Reg. 234 (09/01/17)

3.0 Eligibility and Enrollment Rules

- 3.1 Pursuant to the authority vested in the SEBC by 29 **Del.C.** §5210(4), §9602(b) (4) and §5255, the SEBC adopts these eligibility and coverage rules for the State of Delaware's Disability Insurance Program (DIP). In the event of conflict between these rules and the Delaware Code, the Delaware Code takes precedence over these rules. DIP is comprised of a Short Term Disability (STD) program and a Long Term Disability (LTD) program. The Rules and Regulations contained herein are to be used in conjunction with the Short Term Disability (STD) and Long Term Disability (LTD) benefit booklets displayed on the Statewide Benefits Office website at <http://www.ben.omb.delaware.gov/disability/index.shtml> [de.gov/statewidebenefits](http://www.ben.omb.delaware.gov/statewidebenefits).
- 3.2 An employee must meet one of the following criteria to be eligible for enrollment in the DIP:
 - 3.2.1 Hired on or after January 1, 2006 into a position covered by the Delaware State Employees Pension Plan pursuant to 29 **Del.C.** Ch. 55.
 - 3.2.2 As of January 1, 2006 had fewer than 5 credited years of service.
 - 3.2.3 As of January 1, 2006 had 5 or more years of credited service and elected enrollment in the DIP.
 - 3.2.4 Pursuant to 29 **Del.C.** §5251(e), a retired Delaware State Police Trooper employed in a pension covered position in the Delaware State Employees' Pension Plan on or after July 1, 2008.
- 3.3 Eligibility for participation in the DIP shall terminate upon the earliest to occur of:
 - 3.3.1 The date in which the State of Delaware ceases to sponsor this program; or
 - 3.3.2 The date the employee is no longer covered by the Delaware State Employees' Pension Plan pursuant to 29 **Del.C.** §5519; or
 - 3.3.3 Normal service retirement at age 65; or
 - 3.3.4 The death of the employee.
- 3.4 Dependents are not eligible for enrollment in the DIP.
- 3.5 Coverage is effective the first day the employee is actively at work or the date the employee returns to active employment on a full-time basis if the employee was absent due to a disabling condition. There is no waiting period to be enrolled in the DIP.
- 3.6 In accordance with 29 **Del.C.** §5252, the State shall pay all premium or subscription charges for the full cost of providing coverage for the DIP.

19 DE Reg. 78 (07/01/15)

4.0 Short Term Disability (STD) Elimination Period

- 4.1 Pursuant to 29 **Del.C.** §5253(a), Participating employees shall be eligible to utilize earned sick leave, annual leave, compensatory time or donated leave for absences due to accident, illness, or injury for periods before disability benefits commence under this chapter, such that the participating employee receives 100% of creditable compensation for such periods, not to exceed the employee's sick and/or annual leave balance balances. ~~Employees may also utilize earned annual leave, compensatory time or donated leave for absences due to accident, illness, pregnancy or injury for periods before disability benefits commence such that the employee receives 100% of creditable compensation for such periods, not to exceed the employee's sick leave balance. Upon the birth of a child(ren), employees entitled to parental leave shall utilize parental leave for periods before disability benefits commence.~~ Merit employees who are injured on the job and approved for workers' compensation (WC) should not be charged with sick leave for any portion of the day of the injury, pursuant to Merit Rule 5.3.8. Non-merit employees must comply with the rules that apply to your employing organization. The date of the injury is the first day of the STD calendar day elimination period.
- 4.2 Pursuant to 29 **Del.C.** §5253(b)(1), STD benefits for participating employees shall commence upon the exhaustion of the calendar day elimination period. Consistent with the provisions of 29 **Del.C.** §5255 that allow the DIP insurance carrier and/or Administrator to determine eligibility of a participating employee to receive STD benefits, the elimination period shall begin on the date of disability and STD benefits shall commence on the 31st calendar day of disability. The calendar day elimination period does not have to be satisfied consecutively however, if an employee returns to work for one day or less during the calendar day elimination

period, but cannot continue to work thereafter, the period worked shall not be considered to have interrupted the calendar day elimination period.

- 4.3 Pursuant to 29 **Del.C.** §5253(b)(1), the calendar day elimination period must commence and conclude within normal working periods for employees who work less than 12 months per calendar year. "Normal working periods" are the scheduled working days of the participating employee.
- 4.4 Pursuant to 29 **Del.C.** §5253(b)(5), if a participating employee returns to the employee's position on a full time basis for 15 consecutive calendar days or longer, any succeeding period of disability for which the participating employee shall become eligible shall constitute a new period of STD with a corresponding calendar day elimination period. A new period of STD shall not be constituted if a participating employee returns to work on a part-time basis.
- 4.5 There is no pre-existing conditions limitation in the STD program.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

5.0 STD Claim Filing Requirements

- 5.1 Pursuant to 29 **Del.C.** §5253(b)(7), once Employees enrolled in the DIP are required to file an STD claim with the DIP insurance carrier and/or Administrator if the employee expects to be out of work for at least 30 calendar days even if the employee applied for and/or is receiving lost wage benefits (i.e., Workers' Compensation) and/or parental leave, upon the birth of a child(ren). Once an employee exhausts their elimination period, the employee will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid sick and/or annual leave in lieu of application for STD. Employees not meeting the requirements noted in Section 9.0, will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid sick and/or annual leave in lieu of application for an extension of STD benefits.
- 5.2 All employees enrolled in DIP who expect to be out of work for the length of the calendar day elimination period are required to file a STD claim in a complete and timely manner, even if the employee applied for and/or is receiving Workers' Compensation (WC) benefits, parental leave or Other Income Benefits defined in the STD benefits booklet per Delaware Code. Hazardous duty employees injured in the line of duty, who are employed by the Department of Corrections (or its successor agency), the Delaware Psychiatric Center (or its successor agency) who are assigned to programs for the criminally insane, the Department of Services for Children, Youth and Their Families who are assigned to work in the Division of Youth Rehabilitative Services facilities, state law-enforcement officers in the performance of their duties including state employees serving in response to imminent danger of hazardous waste material, including but not limited to the SERT Team are required to file an STD claim in a complete and timely manner if they expect to be out of work for the length of the calendar day elimination period. Employing organizations are required to provide the DIP insurance carrier and/or Administrator with the names of hazardous duty employees who are injured while performing a hazardous duty who are entitled to be paid the twelve month salary supplement pursuant to 29 **Del.C.** §5933(c).
- 5.3 Employees are required to immediately report all absences from work to their supervisor and are required to stay in contact with their supervisor and Human Resource office during all absences from work. For specific reporting time frames, merit employees should refer to the Merit Rules. Non-merit employees should refer to their employing organization's leave policy. All requested documentation must be provided. Supervisors are required to immediately report an employee's absence from work to their Human Resource office. The Human Resources office must send a letter to the employee no later than the fifth calendar day of absence from work to remind the employee of their STD claim filing requirement in the event the employee expects to be out of work for at least the length of the elimination period. It is the employee's responsibility to promptly acknowledge receipt of the communication from their Human Resources office by signing and returning an "Employee Acknowledgement" to their Human Resources office within 5 business day of receiving the letter from the Human Resources office.
- 5.4 Employees must contact their physician(s) to authorize the release of medical information required by the Return to Work (RTW) Coordinator and/or the DIP insurance carrier and/or third party administrator (Administrator) selected to administer and/or insure the program by the SEBC pursuant to 29 **Del.C.** §5254. It is the employee's responsibility to be sure that his or her medical documentation is submitted to the DIP insurance carrier and/or Administrator and the RTW Coordinator in a complete and timely manner throughout the duration of the disability as requested. Employees are required to take any and all action necessary in a timely manner to maintain their claim in an approved status throughout the period of disability.
- 5.5 Participating employees are responsible for the payment of fees requested by their physician(s) for the release of preliminary medical information and/or subsequent attending physician statements (APSSs).
- 5.6 Medical documentation by the employee's physician(s) in the form and manner determined by the DIP insurance carrier and/or third party administrator (Administrator) must be submitted to determine benefit

payment. A physician's return to work note will not be sufficient. Medical documentation consists of, but is not limited to a conversation with the employee's physician(s) or nurse identifying restrictions and/or limitations and/or the lack thereof, test results, lab records, etc.

16 DE Reg. 1004 (03/01/13)

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

6.0 STD Coverage

- 6.1 For a disability caused by a covered sickness and/or accident, STD benefits commence after completion of the calendar day elimination period for up to a maximum benefit period of 182 calendar days starting with the employee's date of disability per Delaware Code. The 182 calendar day STD benefit period includes the calendar day elimination period. Each day an employee receives a total disability benefit or a residual (partial) disability benefit or the minimum disability benefit, counts toward exhaustion of the maximum 182 calendar day STD benefit period.
- 6.2 The employing organization is responsible for providing the DIP insurance carrier and/or Administrator, with the last day worked and any partial day(s) worked information, if applicable, for each claimant. Organizations that employ hazardous duty employees who are entitled to the twelve month salary supplement as a result of being injured while performing a hazardous duty must notify the DIP insurance carrier and/or Administrator of the employees entitlement to the twelve month (versus 3 month) salary supplement. Organizations that employ Less Than Twelve Month Educational Employees who have filed an STD claim with the DIP insurance carrier and/or Administrator, must also provide the DIP insurance carrier and/or Administrator with confirmation of whether the employee is a "Less Than Twelve Month Educational Employee", the number of contractual days in the employee's school year and a list of all non-contractual days for the twenty-six week period starting with the claimants date of disability. This information must be provided by the employing organization to the DIP insurance carrier and/or Administrator within 48 hours of the date when the employee files their STD claim or from the date the employing organization receives formal notification of an employee's STD claim filing from the DIP insurance carrier and/or Administrator.
- 6.3 "Total Disability" or "Totally Disabled" means the employee is prevented by accidental bodily injury, sickness, mental condition, substance abuse, pregnancy, or loss of license due to medical condition from performing the essential duties of their occupation, and as a result, the employee is earning 20% or less of his or her base rate of compensation received on the last day of employment before becoming disabled.
 - 6.3.1 **IMPORTANT NOTE:** Weekly earnings means the employee's usual base rate of pay including hazardous duty pay if applicable. Weekly earnings do not include commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation. If disabled, weekly earnings will be the rate on the last day as an active full-time employee before becoming totally disabled.
- 6.4 The STD program does not cover:
 - 6.4.1 Injury, sickness, mental condition, substance abuse, or pregnancy not being treated by a physician or surgeon;
 - 6.4.2 Disability caused by or contributed to by war or act of war, declared or not;
 - 6.4.3 Disability caused by commission of or attempt to commit a felony, or to which a contributing cause was the participating employee being engaged in an illegal occupation and/or activity;
 - 6.4.4 Disability caused by or contributed to an intentionally self-inflicted injury, and;
 - 6.4.5 Injury sustained as a result of doing work for pay or profit from another employer.
- 6.5 Bus drivers who are contractually required to remain symptom free from disabling illness and/or injury for one year starting with the date of disability will be approved for STD benefits for up to the maximum 182 calendar day benefit period.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

7.0 STD - Less Than Twelve Month Educational Employees Only (Institutions of Higher Education, School Districts, Charters Schools, Dept. of Education)

- 7.1 Employees who develop a disability during their normal working period are eligible to file an STD claim and receive benefits through the end of the current school year assuming the employee is able to satisfy the calendar day elimination period before the last day of the school year. Should the disability continue through the employee's non-working period and into the next school year, the non-working time period counts toward satisfaction of the 182 calendar day STD benefit period.

- 7.2 Employees who are unable to satisfy the calendar day elimination period before the end of the current school year will resume completion of the elimination period as of the first day of the next school year.
- 7.3 Disabilities that begin during a non-working period may not be claimed until the normal working period resumes. The actual date of the employee's disability will remain unchanged however the elimination period begins the first working day of the new school year.

20 DE Reg. 70 (07/01/16)

8.0 STD Benefit Payment

- 8.1 STD benefit wage payments are paid by the employing organization to employees whose STD claims have been approved or extended.
- 8.2 The DIP insurance carrier and/or Administrator shall notify the employee of the initial determination of the employee's eligibility for STD benefits in writing by certified mail, return receipt requested within 10 days of the determination.
- 8.3 STD benefits shall be payable at a rate of up to 75% of the participating employee's creditable compensation not to exceed the plan maximum during the period the employee has a disability.
- 8.4 Pursuant to 29 **Del.C.** §5253(b)(3), creditable compensation during periods an employee receives STD benefits shall include general salary increases awarded or reductions in salary instituted during the period of Short Term disability coverage.
- 8.5 Creditable compensation during the period an employee has a disability also includes hazardous duty pay if applicable. No other additional types of pay are included in the payment of STD benefits.
- 8.6 The amount of any benefit for loss of income provided to an employee or to an employee's family as a result of a period of disability for which the employee is claiming STD benefits will be an offset to the employee's STD benefit payment. This includes any such benefits for which the employee or the employee's family is eligible or is paid to the employee, the employee's family, or to a third party on behalf of the employee. This includes the amount of any benefit for loss of income from:
 - 8.6.1 The United States Social Security Act, the Civil Service Retirement System, the Railroad Retirement Act, the Jones Act, the Canada Pension Plan, the Quebec Pension Plan or similar plan or act that a claimant, a claimant's spouse, or a claimant's child(ren) are eligible to receive because of the employee's disability;
 - 8.6.2 Any plan or arrangement of coverage, whether insured or not, as a result of employment by or association with the State of Delaware, or as a result of membership in or association with any group, association, union or other organization;
 - 8.6.3 The Veteran's Administration or any other foreign or domestic governmental agency for the same disability;
 - 8.6.4 Any governmental law or program that provides disability or unemployment benefits as a result of the employee's job with the State of Delaware;
 - 8.6.5 An individual insurance policy where the premium is wholly or partially paid by the State of Delaware;
 - 8.6.6 Any temporary or permanent disability benefits under a Workers' Compensation law, occupational disease law, or similar law including the Salary Supplement;
 - 8.6.7 Compulsory "no-fault" automobile insurance; or
 - 8.6.8 The portion of a settlement or judgment of a lawsuit that represents or compensates for the employee's loss of earnings for the same disability.
 - 8.6.9 Payment for Rehabilitative employment by the State of Delaware or other employer. All income received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator.
- 8.7 Any general increase in benefits required by law that a claimant is entitled to receive under any Federal Law will not reduce the STD Benefit payable for a period of Total Disability that began prior to the date of such increase.

IMPORTANT NOTE: Other Income Benefits also mean any payments that are made to the employee, the employee's family, or to a third party on behalf of the employee, pursuant to any:

 - 8.7.1 Disability benefit under the Employer's Retirement Plan;
 - 8.7.2 Permanent disability or impairment benefits under a Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges of such benefits;
 - 8.7.3 Portion of a settlement or judgment, minus associated costs, of a lawsuit that represents or compensates for the claimant's loss of earnings; retirement benefit from a Retirement Plan that is wholly or partially funded by employer contributions, unless:
 - 8.7.3.1 the claimant was receiving it prior to becoming Disabled; or

- 8.7.3.2 the claimant immediately transfers the payment to another plan qualified by the United States Internal Revenue Service for the funding of a future retirement.
- 8.8 Employees enrolled in and receiving STD compensation shall receive up to a maximum of 100% of pre-disability base pay from all sources, including parental leave. If the employee is otherwise eligible for holiday pay or a paid leave other than annual, sick, compensatory or donated leave, the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a per pay basis.
- 8.9 Calendar days used to satisfy the STD elimination period for employees who work alternate schedules are converted to a Monday through Friday schedule as all STD benefit payments are calculated using a 5 day work week. Once the employee has satisfied the calendar day elimination period, the STD program will pay 1/5 of the weekly amount for each weekday the employee is disabled during a pay period.
- 8.10 The minimum weekly STD benefit will be the greater of \$25.00 or 10% of the gross STD benefit before the deduction of other income benefits. If the employee is receiving 100% of his or her pre-disability pay from any other source which is an offset, a minimum STD benefit will not be paid.
- 8.11 If while covered under this program an employee develops a partial or residual disability and works on a part-time or limited duty basis, the employee will be entitled to a residual (partial) disability benefit. The employing organization is required to report hours worked by the employee to the DIP insurance carrier and/or Administrator on a weekly basis. The DIP insurance carrier and/or Administrator will calculate residual disability benefits for each claimant and promptly provide the results of the calculation to the employing organization. All income and/or benefit received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator by the employee.
- 8.12 If a participating employee returns to the employee's position on a full-time basis, as defined by the SEBC, for 15 consecutive calendar days or longer, any succeeding period of disability for which the employee shall be approved for STD benefits shall constitute a new period of short-term disability with a new corresponding calendar day elimination period. A new period of short term disability shall not be constituted if a participating employee returns to work on a part-time basis. If recurrent periods of disability are due to the same or a related cause; and separated by less than 15 consecutive day(s) of work as an active full-time employee, they will be considered to be the same period of disability.
- 8.13 If while receiving STD benefits an employee should experience a disability due to a new disability, the 182nd calendar day associated with the first disability will not be extended and the plan's exclusions will apply to the new disability. The employee is immediately required to report the new disability to their supervisor, Human Resource office and to the DIP insurance carrier and/or Administrator.
- 8.14 The DIP insurance carrier and/or Administrator shall provide each employing organization with an Explanation of Benefits (EOB) statement on each claimant illustrating the following information:
- 8.14.1 approval dates;
 - 8.14.2 payment amount, and;
 - 8.14.3 offset information
- 8.15 It is the employing organization's responsibility to promptly pay STD benefits to their employees. Overpayment and/or underpayment amounts must be immediately reported to the DIP insurance carrier and/or Administrator and to the current or former employee by the employing organization. In the event of an overpayment or underpayment, the DIP insurance carrier and/or Administrator shall provide each employing organization with a report listing each claimant who receives or has received Other Income Benefits awarded as defined in the STD benefits booklet during the approved STD benefit period or who has been underpaid STD benefits as a result of a change in the member's claim. The report will also illustrate the additional following information:
- 8.15.1 Gross overpayment or underpayment amount;
 - 8.15.2 Reason for the recalculation;
 - 8.15.3 Recalculation period;
 - 8.15.4 Amount of the claimant's Other Income Benefits award.
- All overpayments must be immediately collected by the employing organization and returned to the Pension Office via the State's payroll system (PHRST) or other accepted payroll process for tax reporting purposes. For Human Resources and Payroll Representatives, detailed instructions on how to interpret data and information in the overpayment or underpayment report can be found on the Statewide Benefits Office secure benefits representative website under "Procedures". The document is titled "Interpretation of STD Initial Account Balance Reports/Sample Reports" and is numbered as DIP-003.
- 8.16 It is the current or former employing organizations responsibility to promptly notify the DIP insurance carrier and/or Administrator of any and all retroactive awards from other programs awarded to STD claimants.

8.17 It is the current or former employee's responsibility to promptly notify and repay the State of Delaware and/or the DIP insurance carrier and/or Administrator for all overpayments including income paid as an offset during the STD and/or LTD benefit period.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

9.0 Leaves

9.1 ~~Merit Employees~~ Merit & Non-Merit Executive Branch, Elected Offices, Courts and Legislative Organization Employees

9.1.1 Provided the employee files their STD claim no later than the 15th calendar day from the date of disability and abides by the employing organization's policy and procedures regarding attendance and calling out absent, the employee may continue to use available sick and/or annual leave to be paid until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period. Parental leave shall be used to cover the elimination period upon the birth of a child for eligible employees in lieu of earned sick or annual leave, compensatory time or donated leave until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period. See subsection 5.1 for claim filing requirements.

9.1.1.1 If the claim is not in an approved status by the exhaustion of the calendar day elimination period due to reasons outside of the employee's control, the employing organization shall have discretion to pay the employee accrued annual and/or sick leave until the employee's STD claim is approved. If the STD claim is approved, the employing organization must reconcile the employee's leave record.

9.1.1.2 At the discretion of the employing organization, employees who are appealing an STD determination and have not returned to work or whose STD claim is still under review by the DIP insurance carrier and/or Administrator and/or the Appeals Administrator from the Statewide Benefits Office and/or the Hearing Officer appointed by the SEBC, may be paid accrued annual and/or sick leave until the STD claim is approved or extended. If the STD claim is approved or extended, the employing organization must reconcile the employee's leave record.

9.1.2 ~~Pursuant to 29 Del.C. §5253(b)(4), an~~ An employee may utilize annual leave, sick leave, compensatory time, or donated leave to supplement STD benefits to equal 100% of pre-disability base pay for a maximum benefit period of 182 calendar days. Parental leave shall be used to supplement the STD benefit to equal 100% of pre-disability base pay for employees entitled to parental leave upon the birth of a child. An employee may not use accrued annual leave, sick leave or other leave in lieu of parental leave for the birth of a child(ren) to supplement the STD benefit. The employee can chose from the following three options:

9.1.2.1 ~~The~~ Except those entitled to parental leave (See Rule 9.1.1), the employee may choose to use their monthly annual and/or sick leave accrual consecutively starting on the first workday of the month to supplement the STD benefit with available leave until the leave is exhausted. The leave must be utilized consecutively rather than on specific dates of the employee's choosing in the month; or

9.1.2.2 ~~The~~ Except those entitled to parental leave (See Rule 9.1.1), the employee may choose to retain their sick and/or annual leave accrual and save it for payout at the time the employee becomes a Long Term Disability (LTD) beneficiary or retires on a service pension; Parental leave shall not accrue or be donated to the Donated Leave bank or be donated to another state employee. An employee who terminates employment prior to the end of the 12 month parental leave period shall not be eligible for payment of any unused parental leave; or

9.1.2.3 ~~The~~ Except those entitled to parental leave (See Rule 9.1.1), the employee may choose to save their sick and/or annual leave accrual for use when they return to work from STD leave. Parental leave must be used within twelve months from the date of birth.

9.1.3 Employees applying for STD benefits must also apply for the Family Medical and Leave Act (FMLA) and parental leave if eligible. Parental leave runs concurrently with FMLA and STD, as applicable. While on FMLA, employees may retain one week of sick and one week of annual leave. ~~Accruals~~ Sick and annual leave accruals that exceed the allowable one week of sick leave and one week of annual leave must be used as earned.

9.1.4 ~~Donated~~ Except those entitled to parental leave (See Rule 9.1.1), donated leave may be used to pay employees during the calendar day STD elimination period. However, regardless of whether a claim was filed with the DIP insurance carrier and/or Administrator, donated leave is not to continue following the

- calendar day elimination period until the employee's STD claim has been approved and the employee continues to be in an STD approved status. Upon approval of the employee's STD claim and while the employee remains in an approved STD status, the employing organization may apply donated leave retroactively to supplement the STD benefit payment.
- 9.1.5 Employees on parental leave, FMLA and/or donated leave must comply with the rules that apply to those programs.
- 9.1.6 If an employee is otherwise eligible for holiday pay or a paid leave other than identified in 29 **Del.C.** §5253(b)(4), the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a per pay basis.
- 9.1.7 Employees on approved STD may choose to use accrued annual and sick leave earned each month in its entirety or to save the annual and sick accrual for payout upon the commencement of LTD or service pension. Upon the birth of a child, employees on approved STD are required to utilize parental leave. Leave rules Rules for parental leave, FMLA and donated leave take precedence.
- 9.1.7.1 Employees who exhaust annual and sick leave accrual each month will accrue leave at 100% for the given month.
- 9.1.7.2 Employees who decide to save their annual and sick leave accrual will accrue leave at 75% for the given month.
- 9.1.8 If the employee is in a "no pay" status during the STD elimination period, annual and sick leave accrual stops. The employee should receive annual and sick leave accrual prorated for the portion of the month last worked and a prorated amount of annual and sick leave for the portion of the month in which STD benefits were received. Parental leave shall be used to cover the elimination period upon the birth of a child and is a paid leave.
- 9.1.9 Employees remain subject to the provisions of Merit Rule 5.2.4 regarding annual leave carryover.
- 9.1.10 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c), and those working on a temporary reduced, alternate, light duty and/or part-time basis, shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay or parental leave, provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible and is not working on a temporary reduced, alternate, light duty and/or part-time basis. Upon termination of employment, the employee shall not be eligible for payment of any unused parental leave. The employee has two options with respect to remaining accrued sick and annual leave only.
- 9.1.10.1 Escrow Sick and Annual Leave. Prior to the commencement of LTD benefits, the employee may make written request to the employing organization to escrow accrued sick and annual ~~sick~~ leave for a maximum period of six months. If the member returns to full-time State employment in a benefit eligible position for 30 calendar days within the 6 month escrow period, the member's sick and annual leave balances will be restored. If the member does not return to State employment in a benefit eligible position, the escrowed sick and annual leave will be paid to the member based on the rules in place by the member's former employing organization.
- 9.1.10.2 Payout of Sick and Annual Leave. Upon the commencement of LTD benefits, the employee shall be eligible to receive a payout of accrued sick and annual leave based on the rules in place by the employing organization. If the member is subsequently rehired or reinstated by the State of Delaware into a benefit eligible position, the member's sick and annual leave balance will be zero on the date of rehire or reinstatement.
- 9.1.11 Employees who supplement the STD benefit payment with annual, sick, compensatory time, parental or donated leave may defer any portion of the supplement into the Deferred Compensation program. Employees may not defer any portion of the STD benefit payment to the Deferred Compensation program.
- 9.1.12 Pursuant to Merit Rule 5.3.8, employees who are injured on the job and approved for Workers' Compensation will not be charged with sick leave for any portion of the day of injury.
- 9.1.13 If an employee is in a no pay status during the STD elimination period, sick and annual leave accrual stops. The employee should receive sick and annual leave accrual prorated for the portion of the month they last worked and a prorated amount of annual and sick leave for the portion of the month in which the employee receives STD benefits. Please see DIP FAQ's, Section 6 for more information.

9.1.14 Merit employees accrue sick and annual leave equivalent to the total combined benefit and wage (STD, sick, parental or annual leave, WC, donated leave and PIP, not to exceed 100% of pre-disability earnings) paid to the employee. Please see DIP FAQ's, Section 6 for specific examples.

9.2 ~~Non-Merit Employees~~ DOE, School District, Charter School and Higher Education Employees

9.2.1 Provided the employee files their STD claim no later than the 15th calendar day from the date of disability and abides by the employing organization's policy and procedures regarding attendance and calling out absent, the employee may continue to use available sick and/or annual leave to be paid until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period. Pursuant to 14 Del.C. §1333 (d), parental leave runs concurrently with any rights and benefits available under FMLA and STD pursuant to §5253 of Title 29 for the birth of a child. Parental leave shall be paid to eligible employees to cover the STD calendar day elimination period upon the birth of a child(ren) and to supplement the STD benefit.

9.2.1.1 If the STD claim is not in an approved status by the exhaustion of the calendar day elimination period due to reasons outside of the employee's control, the employing organization shall have discretion to pay the employee accrued annual and/or sick leave until the employee's STD claim is approved. If the STD claim is approved, the employing organization must reconcile the employee's leave record.

9.2.1.2 At the discretion of the employing organization, employees who are appealing an STD determination and have not returned to work or whose STD claim is still under review by the DIP insurance carrier and/or Administrator and/or the Appeals Administrator from the Statewide Benefits Office and/or the Hearing Officer appointed by the State Employee Benefits Committee, may be paid accrued annual and/or sick leave until the STD claim is approved or extended. If the STD claim is approved or extended, the employing organization must reconcile the employee's leave record.

9.2.2 ~~Pursuant to 29 Del.C. §5253(b)(4), an~~ An employee may utilize annual leave, sick leave, compensatory time, or donated leave (if applicable) to supplement STD benefits to equal 100% of pre-disability base pay for a maximum benefit period of 182 calendar days. Parental leave shall be used to supplement the STD benefit to equal 100% of pre-disability base pay for employees entitled to parental leave upon the birth of a child. An employee may not use annual leave, sick leave or other leave in lieu of parental leave for the birth of a child(ren) to supplement the STD benefit.

9.2.3 Employees on parental leave, FMLA and/or donated leave must comply with the rules that apply to those programs.

9.2.4 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c), and those working on a temporary reduced, alternate, light duty and/or part-time basis, shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay or parental leave, provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible and is not working on a temporary reduced, alternate, light duty and/or part-time basis. Upon termination of employment, the employee shall not be eligible for payment of any unused parental leave. The employee has two options with respect to outstanding accrued remaining unused sick and annual leave.

9.2.4.1 Escrowed Sick and Annual Leave. Prior to the commencement of LTD benefits, the employee may make a written request to the employing organization to escrow ~~accrued~~ unused annual and sick leave for a maximum period of six months. If the member returns to full-time State employment in a benefit eligible position for 30 calendar days within the 6 month escrow period, the member's sick and annual leave balances will be restored. If the member does not return to State employment in a benefit eligible position, the escrowed leave will be paid to the member based on the rules of the member's former employing organization.

9.2.4.2 Payout of Sick and Annual Leave. Upon the commencement of LTD benefits, the employee shall be eligible to receive a payout of ~~accrued~~ unused leave based on the rules of the employing organization

9.2.5 Employees who supplement the STD benefit payment with annual, sick, compensatory time, parental or donated leave may defer any portion of the supplement into the Deferred Compensation program. Employees may not defer any portion of the STD benefit payment to the Deferred Compensation program.

10.0 Termination Of STD Benefits

- 10.1 An employee's STD benefits will terminate upon the earliest of:
 - 10.1.1 The date the program terminates;
 - 10.1.2 The date the employee no longer meets the definition of eligibility;
 - 10.1.3 The last day of the period for which the employee fails to pay contributions, if required by the program; or
 - 10.1.4 The date in which the State of Delaware ceases to offer an STD program; or
 - 10.1.5 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c), shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 **Del.C.** §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay or parental leave, provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible.
 - 10.1.6 The date the employee is no longer covered by the Delaware State Employees' Pension Plan pursuant to 29 **Del.C.** §5519.
 - 10.1.7 The date the employee is discharged for cause.

20 DE Reg. 70 (07/01/16)

11.0 Appeals - STD Claim Determinations

- 11.1 Claimants whose STD claims are not in an approved status and have not returned to work are entitled to file an appeal with the DIP insurance carrier and/or Administrator. Claimants who file an appeal are required to immediately advise their supervisor and Human Resource office of the status of their appeal for benefits.
- 11.2 Pursuant to 29 **Del.C.** §5258, within 90 days of the postmark date of the carrier's written notice of its determination regarding STD benefits, a claimant may appeal any determination of disability benefits by filing a written petition setting forth with particularity the grounds for appeal with the DIP insurance carrier and/or Administrator. The DIP insurance carrier and/or Administrator has the authority to reverse all or any part of its initial STD benefit determination and shall notify the claimant, the employing organization and the Statewide Benefits Office in writing by certified mail, return receipt requested within 10 days of the determination. The claimant's written appeal should be addressed and mailed to:

Benefit Management Services
Maitland Claim Office
RE: DISABILITY APPEAL
The Hartford
P.O. Box 14306
Lexington, KY 40512-4306
Tel: (800) 549-6514/ Fax: (866) 411-5613

- 11.3 Pursuant to 29 **Del.C.** §5258, within 20 days of the postmark date of the DIP insurance carrier and/or Administrator's determination of benefits being appealed, a claimant may file a second level appeal by filing a written petition setting forth with particularity the grounds for second appeal to the Appeals Administrator at the Statewide Benefits Office, who shall conduct an informal review, and who shall have the authority to reverse all or any part of the decision of the DIP insurance carrier and/or Administrator to deny benefits. The claimant's written appeal should be addressed and mailed to:

Appeals Administrator
RE: DISABILITY APPEAL
Statewide Benefits Office
97 Commerce Way, Suite 201
Dover, DE 19904
Tel: ~~(302) 739-8334~~ (800) 489-8933
Fax: (302) 739-8339

The Appeals Administrator or designee, shall issue a final written decision and shall mail it to the claimant by certified mail, return receipt requested, within 30 days of speaking with the claimant.

- 11.4 Pursuant to 29 **Del.C.** §5258, if the Appeals Administrator affirms the DIP insurance carrier and/or Administrator's decision to deny disability benefits or any part thereof, a claimant may file an appeal to the SEBC within 20 days of the postmark date of the notice of the determination from the Appeals Administrator by

filing a written petition with the SEBC setting forth with particularity the grounds for the appeal. The claimant's written appeal should be addressed and mailed to:

Co-Chair, State Employee Benefits Committee (SEBC)
RE: DISABILITY APPEAL
Department of Human Resources
Haslet Armory, Second Floor
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901
Tel: (302) 739-4195
Fax: (302) 739-3000

The SEBC may designate an appropriate representative from the Department of Human Resources as a hearing officer to hear evidence presented by the employee or, in its sole discretion, it may decide to hear the appeal directly. The SEBC or the hearing officer, as the case may be, shall determine whether the determination to deny benefits complies with the applicable disability plan adopted by the SEBC. The Hearing officer and/or SEBC shall have all of the following powers in respect to the conduct at the hearing:

- 11.4.1 To issue subpoenas and administer oaths in any proceeding. Any subpoena process order or any notice or paper requiring service shall be sent by certified mail, return receipt requested;
- 11.4.2 To examine persons as witnesses, take evidence, require the production of documents, and do all other things pursuant to law which are necessary to determine the appeal. In proceedings before the SEBC or its hearing officer, if any person neglects to produce any pertinent document, neglects or refuses to appear after having been subpoenaed, refuses to testify or be examined, disobeys or resists any lawful order or process, or intentionally obstructs the hearing, the SEBC shall certify facts under the signature of its chairperson or the hearing officer to any judge of the Superior Court, which judge shall there upon hear evidence as to the acts complained of. The judge shall, if the judge deems the evidence so warrants, issue an order requiring such persons to testify or produce documents or otherwise comply with the requirements of the SEBC, as the case may require. Refusal to comply with the order of the Court shall constitute contempt of Court;
- 11.4.3 Where the SEBC assigns the matter to the hearing officer, the hearing officer shall decide the matter and prepare a report containing the findings of fact, and conclusions of law, within 60 days of the hearing, and shall transmit the report, with the full record of the hearing, to the SEBC. The SEBC may accept or modify the hearing officer's final report, and shall notify the parties of its action by certified mail, return receipt requested within 60 days.
- 11.4.4 If the SEBC elects to hear the matter directly and not to assign it to the hearing officer, it shall issue its final decision containing findings of fact and conclusions of law, within 60 days of the hearing, and shall notify the parties of its action by certified mail, return receipt requested.
- 11.5 Pursuant to 29 **Del.C.** §5258, within 30 days of the postmark date of the SEBC's determination to deny benefits on appeal, a claimant may file a final action to Superior Court. The appeal shall be on the record.

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

20 DE Reg. 660 (02/01/17)

21 DE Reg. 234 (09/01/17)

12.0 Employee Termination

- 12.1 The employing organization is required to fully complete a Vested LTD Pension Application prior to the exhaustion of the STD benefit period. The completed form must be submitted to the Office of Pensions for processing.
- 12.2 Employees leaving State service whose application for LTD benefits has not been approved, are eligible for continuation of their health care coverage(s) under COBRA. Employees should contact their Benefits Representative or Human Resource Office for details of this continuation option. Please refer to the Group Health Insurance Eligibility and Enrollment Rules for full details.
- 12.3 Six weeks prior to the commencement of LTD benefits, the employing organization will provide the employee with Transitioning to LTD documents for the purpose of escrowing sick and annual leave accruals for a 6 month period and for benefit elections for while on approved LTD. See subsection 9.1.11.1 for complete description of escrowing leave.
- 12.4 Pursuant to 29 **Del.C.**, §5933(c), hazardous duty employees injured while performing a hazardous duty assignment and whose injuries arose out of and in the course of performing hazardous duty are entitled to a 12 month salary supplement. Employees entitled to hazardous duty pay as defined in 29 **Del.C.**, §5933(c) who

exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay or parental leave, provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible and the employee is not working on a temporary reduced, alternate, light duty and/or part-time basis. Upon termination of employment, the employee shall not be eligible for payment of any unused parental leave. See subsection 9.1.10 and 9.2.4 for a complete description.

16 DE Reg. 1004 (03/01/13)

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

13.0 Long Term Disability (LTD)

13.1 For employees hired on or after January 1, 2006, no LTD benefit will be payable for any disability that is due to, contributed to, by, or results from a pre-existing condition unless such disability begins:

13.1.1 After the last day of 12 consecutive month(s) while insured in DIP during which the employee received no medical care for the pre-existing condition; or

13.1.2 After the last day of 12 consecutive month(s) during which the employee has been continuously insured under this plan.

13.2 Claimants may not receive LTD benefits and a service pension at the same time.

14.0 LTD Elimination Period

14.1 The elimination period is the period of time the employee has a disability before benefits can be paid. It is the last to be satisfied of the following:

14.1.1 The first 182 consecutive calendar days of any one period of disability; or

14.1.2 The exhaustion of the 182 calendar day STD benefit period.

14.2 The elimination period shall commence on the date of disability and LTD benefits will commence on the 183rd calendar day.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

15.0 LTD Coverage

15.1 LTD benefits are paid by the DIP insurance carrier and/or Administrator on a monthly basis directly to the claimant.

15.2 "Disability" or "disabled" during the first 24 months following the elimination period means the claimant is prevented by accidental bodily injury, sickness, mental condition, substance abuse or pregnancy from performing one or more of the essential duties of the claimant's occupation and, as a result, the claimant's current monthly earnings are less than 80% of pre-disability earnings. After the exhaustion of the first 24 months of disability, the claimant is prevented from performing one or more of the essential duties of any occupation. The claimant's failure to pass a physical examination required to maintain a license to perform the duties of the claimant's occupation alone, does not mean that the claimant has a disability.

15.3 The LTD program does not cover:

15.3.1 Disabilities not under the regular care of a physician;

15.3.2 Disability that is caused or contributed to by war or an act of war (declared or not);

15.3.3 Disability caused by commission of or attempt to commit a felony, or to which a contributing cause was the participating claimant's being engaged in an illegal occupation;

15.3.4 Disability caused by or contributed to by an intentionally self-inflicted injury, and;

15.3.5 Injury sustained as a result of doing work for pay or profit from another employer.

15.4 The maximum duration of LTD benefits is as follows:

Age When Disabled	Benefit Duration (Months)
Prior to age 60	To age 65
60	60
61	48
62	42
63	36
64	30

65	24
66	21
67	18
68	15
69+	12

- 15.5 If an individual has a disability because of:
- 15.5.1 mental condition that results from any cause;
 - 15.5.2 any condition that may result from mental condition;
 - 15.5.3 alcoholism; or
 - 15.5.4 the non-medical use of narcotics, sedatives, stimulants, hallucinogens, or any other such substance, then, subject to all other policy provisions, LTD benefits will be payable:
 - 15.5.4.1 only for so long as the claimant is confined in a hospital or other place licensed to provide medical care for the disabling condition; or
 - 15.5.4.2 when the claimant is not so confined, a total of 24 months for all such disabilities during the individual's lifetime.
- 15.6 Pursuant to 29 **Del.C.** §5524(d), DIP participants vested in the Delaware State Employees' Pension Plan as of December 31, 2005 may be enrolled in the disability pension plan upon the exhaustion of LTD benefits due to mental condition and/or substance abuse. Members will be mailed an authorization form to complete and return to the DIP insurance carrier and/or Administrator. Upon receipt, the DIP insurance carrier and/or Administrator will send a copy of the member's disability file to the Pension Office for processing.

20 DE Reg. 70 (07/01/16)

16.0 LTD Benefit Payment

- 16.1 LTD benefits shall be paid in an amount up to 60% of the claimant's creditable compensation the day prior to the onset of the disability.
- 16.2 In no event shall a claimant utilize earned leave to supplement LTD benefit payments, unless the claimant has been rehired and is working on a part-time basis.
- 16.3 As defined in 29 **Del.C.** §5253(c)(3), LTD benefits shall not include general salary increases during the period of long term disability. LTD benefits may be increased annually by an amount approved by the SEBC.
- 16.4 Any claimant who applies for LTD benefits must apply to the Social Security Administration for disability benefits. LTD benefits shall be reduced by any disability benefits received from the Social Security Administration.
- 16.5 The amount of any benefit for loss of income provided to a claimant or to a claimant's family as a result of a period of disability for which the claimant is requesting LTD benefits will be an offset to the claimant's LTD benefit payment. This includes any such benefits for which the claimant or the claimant's family is eligible or is paid to the claimant, the claimant's family, or to a third party on behalf of the claimant. This includes the amount of any benefit for loss of income from:
 - 16.5.1 temporary disability benefits under Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges for such benefits;
 - 16.5.2 governmental law or program that provides disability or unemployment benefits as a result of the employees job with the State;
 - 16.5.3 plan or arrangement of coverage, whether insured or not, or as a result of employment by or association with the employer or as a result of membership in or association with any group, association, union or other organization;
 - 16.5.4 mandatory "no-fault" automobile insurance plan;
 - 16.5.5 disability benefits under:
 - 16.5.5.1 the United States Social Security Act or alternative plan offered by a state or municipal government;
 - 16.5.5.2 the Railroad Retirement Act;
 - 16.5.5.3 the Canada Pension Plan, the Canada Old Age Security Act, the Quebec Pension Plan or any provincial pension or disability plan; or
 - 16.5.5.4 similar plan or act, that the claimant, the claimant's spouse and children are eligible to receive because of the claimant's disability;
 - 16.5.6 Disability benefit from the Veteran's Administration, or any other foreign or domestic governmental agency:
 - 16.5.6.1 that begins after the claimant developed a disability; or

16.5.6.2 if the claimant were receiving the benefit before becoming Disabled, the amount of any increase in the benefit that is attributed to the claimant's disability.

16.5.7 Payment for Rehabilitative employment by the State of Delaware or other employer. All income received from the State of Delaware or other employer must immediately be reported to the DIP insurance carrier and/or Administrator.

IMPORTANT NOTE: Other Income Benefits also means any payments that are made to the claimant, the claimant's family, or to a third party on behalf of the claimant, pursuant to any:

16.5.7.1 disability benefit under the Employer's Retirement Plan;

16.5.7.2 permanent disability or impairment benefits under a Workers' Compensation Law, the Jones Act, occupational disease law, similar law or substitutes or exchanges of such benefits;

16.5.7.3 portion of a settlement or judgment of a lawsuit that represents or compensates for the claimant's loss of earnings;

16.5.7.4 retirement benefit from a Retirement Plan that is wholly or partially funded by employer contributions, unless:

16.5.7.4.1 the claimant was receiving it prior to becoming Disabled; or

16.5.7.4.2 the claimant immediately transfers the payment to another plan qualified by the United States Internal Revenue Service for the funding of a future retirement.

16.6 Claimants receiving LTD benefits are responsible for the accurate and timely payment of all health care premiums. Please refer to the Group Health Insurance Eligibility and Enrollment Rules for full details.

16.7 If the State of Delaware notifies the DIP insurance carrier and/or administrator that a claimant receiving LTD benefits has been overpaid STD benefits, the DIP insurance carrier and/or administrator shall make any LTD payments that it would otherwise pay to the claimant directly to the State of Delaware until the State of Delaware has been paid in full for the claimant's overpaid STD benefits.

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

21 DE Reg. 234 (09/01/17)

17.0 LTD Termination of Benefits

17.1 A claimant's LTD benefit will terminate upon the earliest of:

17.1.1 The date the claimant is no longer disabled as determined by the DIP insurance carrier and/or Administrator;

17.1.2 The date the Group Insurance Policy terminates;

17.1.3 The date premium payment is due but not paid, if applicable;

17.1.4 The date the claimant is no longer a member of the Delaware State Employees' Pension Plan, or;

17.1.5 The date the claimant elects service retirement from the State of Delaware.

20 DE Reg. 70 (07/01/16)

18.0 Appeals - LTD Claim Determinations

18.1 The claimant or the claimant's representative may appeal to the DIP insurance carrier and/or Administrator for a full and fair review of any LTD benefit determination. The claimant may:

18.1.1 Request a review upon written application to the DIP insurance carrier and/or Administrator within 180 days of the claim denial;

18.1.2 Request copies of all documents, records, and other information relevant to the claim; and

18.1.3 Submit written comments, documents, records and other information relating to the claim.

18.2 The DIP insurance carrier and/or Administrator will make a decision no more than 45 days after receiving the claimant's appeal unless the DIP insurance carrier and/or Administrator determines special circumstances that require an extension of time to process the appeal. If the appeal requires an extension, the DIP insurance carrier and/or Administrator will make a decision no more than 90 days after receiving the claimant's appeal. The written decision will include specific references to policy provisions on which the decision is based.

19 DE Reg. 78 (07/01/15)

19.0 Other Benefits During Disability

19.1 Short Term Disability (STD)

19.1.1 Employees receiving STD benefits accrue pension creditable service for each month the employee's STD claim is in an approved status.

19.1.2 Employees receiving STD benefits under 29 **Del.C.** §5253(b) will be treated as “regular officers and employees” under these regulations and are eligible for enrollment in the Group Health Insurance Program with State Share contributions, as applicable. STD beneficiaries are subject to the Group Health Insurance Program Eligibility and Enrollment Rules.

19.2 Long Term Disability (LTD)

19.2.1 Claimants on approved LTD continue to accrue pension creditable service for each month the LTD claim is in an approved status.

19.2.2 The State of Delaware’s pension benefit and the DIP are separate programs. At the point an individual begins receiving LTD benefits, the individual can terminate their membership in the Delaware State Employees Pension Plan (SEPP) by withdrawing contributions. Should this occur, the individual forfeits their right to a service pension and all accompanying fringe benefits such as health care after LTD ceases.

19.2.3 LTD claimants receiving benefits under 29 **Del.C.** §5253(c) will be treated as “eligible pensioners” and are eligible for enrollment in the Group Health Insurance Program with State Share contributions, as applicable. LTD beneficiaries, who have returned to work as provided in DIP Rule 22.0 prior to the exhaustion of the STD benefit period or who have been rehired into a benefit eligible active position, will be treated as “regular officers and employees” as provided by 29 **Del.C.** §5202 and are to receive State Share contributions by their employing organization. LTD beneficiaries are subject to the Group Health Insurance Plan Eligibility and Enrollment Rules. LTD beneficiaries who are not actively working in a benefit eligible position will have their health care benefits administered by the Office of Pensions.

20 DE Reg. 70 (07/01/16)

20.0 Return To Work (RTW)

20.1 Pursuant to 29 **Del.C.**, §5256(5), a contract exists between the SEBC and the Statewide Benefits Office for the purpose of the administration of the DIP, including but not limited to determination of an individual’s ability to return to work by the RTW Coordinator pursuant to 29 **Del.C.** §5257(b).

20.1.1 Short Term Disability – Return To Work (RTW)

20.1.1.1 Pursuant to 29 **Del.C.** §5257(a), once an employee has been determined to have the ability to return to employment by the SEBC, the employee will receive the following assistance:

20.1.1.1.1 Merit employees may be placed in any vacant merit position, for which they qualify, by the Department of Human Resources.

20.1.1.1.2 Nonmerit state employees, and employees from nonstate employers will be placed by that employer into a vacant position within their respective employing organization for which the employee qualifies.

20.1.1.2 The employee must have a RTW Authorization from his/her attending physician to be permitted to return to work. Authorization forms may be obtained from the RTW Coordinator in the Statewide Benefits Office or from the employing organization if a specific form is required. A RTW Authorization is required PRIOR to the employee’s first day back to work.

20.1.1.3 Return to work assistance for employees enrolled in DIP who expect to be out of work for less than the STD calendar day elimination period are eligible to utilize the services of the RTW Coordinator from the Statewide Benefits Office.

20.1.1.4 There is a Return to Work process that shall be followed to assess and plan for keeping or returning an employee to work. The return to work process for all employing organizations shall be as follows:

20.1.1.4.1 Same job, same employer

20.1.1.4.2 Same job with modifications, same employer

20.1.1.4.3 Same job, different employer

20.1.1.4.4 Same job with modifications, different employer

20.1.1.4.5 Different job, same employer

20.1.1.4.6 Different job, different employer

20.1.1.4.7 Retraining and Education

20.1.1.5 The employing organization is required to engage in a dialogue with an employee who may be covered by the ADA and can perform the essential functions of the position with or without reasonable accommodation.

20.1.1.6 The employee is eligible to receive assistance from the RTW Coordinator and the employing organization if temporary restrictions and limitations prevent an employee from performing his/her

job at full capacity full duty work as soon as approved to do so by a medical provider as well as with the approval of the employing organization and within the merit rule time frames.

- 20.1.1.7 If the employing organization is unable to accommodate the employee with temporary restrictions or limitations, the employing organization must notify the RTW Coordinator stating the reason the accommodation cannot be granted. Employees should work closely with the RTW Coordinator and the employing organization if modified duty is being requested.
- 20.1.1.8 When looking for options beyond the employee's own job, the RTW Coordinator and employing organization shall consider the employee's abilities, anticipated absence duration, training and experience. If placement cannot be accommodated, the employing organization must provide a written explanation to the RTW Coordinator.
- 20.1.1.9 If the employing organization is unable to accommodate the employee's restrictions so that he/she may return to work, the employee may be eligible for a continuation of STD benefits provided the employee is still unable to perform the essential duties of their own occupation.
- 20.1.1.10 If the employing organization agrees to accommodate the temporary restrictions or limitations recommended by the employee's medical provider while recovering from disability and the employee refuses to return to work, benefits may be discontinued.
- 20.1.1.11 When appropriate, the RTW Coordinator may refer employees to the Division of Vocational Rehabilitation when it has been determined by a medical professional that an employee will no longer have the ability to perform the essential functions of the position on a permanent basis.
- 20.1.1.12 When assigned to a rehabilitation program, the employee is required to maintain a treatment schedule corresponding to medical restrictions and/or normal working hours as designed by the location.
- 20.1.1.13 Employing organizations may not permanently fill an employee's position while the STD claim is in an approved status. However, throughout the approved STD benefit period employing organizations retain the right to impose disciplinary measures up to and including dismissal for just cause.

16 DE Reg. 1004 (03/01/13)

19 DE Reg. 78 (07/01/15)

21 DE Reg. 234 (09/01/17)

21.0 Long Term Disability (RTW)

- 21.1 Pursuant to 29 **Del.C.** §5257(b), once an individual has been determined to have the ability to return to employment by the SEBC, the individual will receive the following assistance:
 - 21.1.1 Former merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program may, when available and appropriate, be placed by the Department of Human Resources in any merit position, for which they qualify without a certification list, as long as the paygrade does not exceed their paygrade at the time of their acceptance into and eligibility for the Short-Term Disability Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.
 - 21.1.2 Former non-merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program will be placed by their previous employer into a vacant position within their respective agency for which they qualify.
- 21.2 Individuals previously employed in a Merit position, should contact the RTW Coordinator at the Statewide Benefits Office prior to the beginning of LTD to discuss the RTW processes.
- 21.3 Former Merit employees with documented performance/conduct issues prior to their disability may be determined ineligible for placement or RTW assistance. Refer to subsection 20.1.1.4 for the return to work process.
- 21.4 Former Merit employees who are returning to State employment from an approved LTD claim are subject to Merit Rule 9.5 which states "Upon reinstatement, employees who left the Merit System shall be required to serve an initial probation period."
- 21.5 When an individual is rehired from LTD into a Merit position on a reduced work schedule and the reduced work schedule is expected and/or exceeds 30 calendar days, the employee should be considered permanent part-time for the purposes of holiday pay and leave accruals which shall be pro-rated based on scheduled hours. The status of permanent part-time will continue until such time as the employee is released to work for a normal work week of 37.5 or 40 hours.

- 21.6 Individuals formerly employed by a school district, charter school, institution of higher education or other nonmerit employing organization, may utilize the services of the RTW Coordinator and/or former employing organization for placement assistance.
- 21.7 When returning to work from LTD, former merit employees will be considered a new hire. Once rehired, the employee will accrue leave (vacation/sick) at the same rate as when the previous employment terminated.
- 21.8 If an LTD beneficiary is offered a position for which the employee is qualified and the employee declines the position, RTW assistance will terminate.
- 21.9 Individuals are not required to have been approved or be approved for LTD to receive RTW services from the Statewide Benefits Office.
- 21.10 Employees returning to active state employment from LTD are eligible for FMLA upon meeting the standard FMLA eligibility requirement of:
 - 21.10.1 Twelve (12) months aggregate employment;
 - 21.10.2 Have worked 1,250 hours in the 12 months immediately preceding the absence;
 - 21.10.3 Has not exhausted their 12 week entitlement within the most recent rolling 12 month period.

20 DE Reg. 70 (07/01/16)

21 DE Reg. 234 (09/01/17)

22.0 Working while transitioning to LTD or after the exhaustion of the STD benefit period

- 22.1 Employees working on a temporary reduced, alternate, light duty and/or part-time basis upon the exhaustion of the maximum STD benefit period should be permitted to continue working while transitioning to LTD. All employing organizations are responsible for engaging in the ADA interactive process (<http://hrm.omb.delaware.gov/policies/index.shtml> <https://dhr.delaware.gov/personnel/policies/>) with their employees when appropriate.
- 22.2 Employees who are working on a temporary reduced, alternate, light duty and/or part-time basis while transitioning to LTD or upon the exhaustion of the STD benefit period will:
 - 22.2.1 Provide written notification to their HR Department indicating their intent to work while transitioning to LTD or upon the exhaustion of the STD benefit period.
 - 22.2.2 Be paid for the hours worked in their regular paycheck.
 - 22.2.3 Maintain current benefits with the employing organization.
 - 22.2.4 For Merit employees, accrue annual and sick leave on a pro-rated basis. Non-merit employees must comply with the rules that apply to your employing organization.
 - 22.2.5 Receive holiday pay in accordance with the employing organizations rules.
 - 22.2.6 If approved for LTD, the employee will receive the LTD benefit once the DIP insurance carrier and/or Administrator has been provided verification for all income received for the month in which the employee has worked.

15 DE Reg. 1367 (03/01/12)

16 DE Reg. 1004 (03/01/13)

18 DE Reg. 79 (07/01/14)

19 DE Reg. 78 (07/01/15)

20 DE Reg. 70 (07/01/16)

20 DE Reg. 660 (02/01/17)

21 DE Reg. 234 (09/01/17)

22 DE Reg. 861 (04/01/19) (Final)