

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 50 INSURANCE
PART 14 PARTICIPATING ENTITY WORKERS' COMPENSATION POLICY STATEMENT

6.50.14.1 ISSUING AGENCY: New Mexico Public School Insurance Authority.

[6.50.14.1 NMAC - Rp, 6 NMAC 50.14.1, 09/01/2014]

[The address of the New Mexico Public School Insurance Authority is 410 Old Taos Highway, Santa Fe, New Mexico 87501.]

6.50.14.2 SCOPE: This part applies to all school districts, charter schools and other educational entities authorized to participate in the authority's workers' compensation program.

[6.50.14.2 NMAC - Rp, 6 NMAC 50.14.2, 09/01/2014]

6.50.14.3 STATUTORY AUTHORITY: Subsection D of Section 22-29-7 NMSA 1978, directs the authority to promulgate necessary rules, regulations and procedures for the implementation of the New Mexico Public School Insurance Authority Act, Section 22-29-1 et seq. NMSA 1978.

[6.50.14.3 NMAC - Rp, 6 NMAC 50.14.3, 09/01/2014]

6.50.14.4 DURATION: Permanent.

[6.50.14.4 NMAC - Rp, 6 NMAC 50.14.4, 09/01/2014]

6.50.14.5 EFFECTIVE DATE: September 14, 2014 unless a later date is cited at the end of a section.

[6.50.14.5 NMAC - Rp, 6 NMAC 50.14.5, 09/01/2014]

6.50.14.6 OBJECTIVE: The objective of this part is to direct school districts, charter schools and other educational entities to adopt a policy in order to establish the particular entity's procedure for the selection of health care providers, for use of sick leave and for payment of insurance premiums when a worker has filed a workers' compensation claim.

[6.50.14.6 NMAC - Rp, 6 NMAC 50.14.6, 09/01/2014]

6.50.14.7 DEFINITIONS: [RESERVED]

6.50.14.8 WORKERS' COMPENSATION CLAIM POLICY: All school districts, charter schools, other educational entities and any other entities participating in the authority's workers' compensation coverages shall adopt a workers' compensation claim policy for its employees substantially in the form as set forth in Subsections A through I of 6.50.14.9 NMAC, selecting one of two options available for the selection of health care providers, for use of sick leave and for payment of insurance premiums while an employee is disabled from work. The form policy is also downloadable from the authority's website at: <https://nmmpsia.com> and will be updated from time to time.

[6.50.14.8 NMAC - Rp, 6 NMAC 50.14.8, 09/01/2014]

6.50.14.9 WORKERS' COMPENSATION FORM POLICY FOR SCHOOL DISTRICTS, CHARTER SCHOOLS, OTHER EDUCATIONAL ENTITIES AND OTHER ENTITIES PARTICIPATING IN AUTHORITY WORKERS' COMPENSATION INSURANCE PROGRAM: All entities participating in the authority workers' compensation coverage shall adopt a policy substantially in the following form, selecting one of two options available for the selection of health care providers, for use of sick leave and for payment of insurance premiums while an employee is disabled from work.

A. Workers' compensation eligibility. In accordance with applicable workers' compensation statutes, all employees of (*insert name of participating entity*) who have a work-related injury are eligible for coverage.

B. Reporting accidents. An injured worker must report all work-related accidents or injuries immediately to his immediate supervisor by completing and submitting the notice of accident form, whether or not medical care is needed. The worker's supervisor must then complete the supervisor's accident investigation report form. Both documents must be submitted to the employer's designated workers' compensation administrator within 24 hours from the time the supervisor is informed of the accident. The workers' compensation administrator then must complete the employer's first report of accident form and forward all three forms to the third party

administrator within 72 hours from the employer's first knowledge of the accident. The forms are available to download on the authority's website at: <https://nmopsia.com>.

C. Emergency medical treatment. When an injury or illness is life threatening in nature, the injured worker shall seek emergency treatment at the nearest emergency facility or by calling 911. After the emergency has abated, the injured worker will notify the employer in writing of the work related injury and present any disability or return to work notices.

D. Selection of health care provider policy options.

(1) Each employer shall determine as a matter of policy whether it elects to initially select the health care provider or whether the injured worker is permitted to make the initial selection. Each employer shall also provide at the time of hiring or during employee orientation the following information in writing:

(a) Option 1 for selection of health care provider: (name of participating entity) elects to have injured workers treated at (insert name and location of facility); or

(b) Option 2 for selection of health care provider: (name of participating entity) permits the injured worker to initially select the health care provided as provided by Subsection B of Section 52-1-49 NMSA 1978.

(2) Upon notice of an accident or injury, the employer shall notify the injured worker in writing whether the employer's policy directs that medical care shall be provided by health care provider selected by the employer or whether the policy permits the worker to initially select the health care provider. The party who did not select the initial health care provider has the right to change to a different health care provider 60 days from the date the worker receives treatment from the selected provider.

E. Workers' compensation benefits.

(1) Medical benefits include all medical, surgical, and drug expenses that are reasonable, necessary and related to the work injury.

(2) Lost wage benefits are payments to a worker who is disabled from work in the opinion of an authorized health care provider and cannot earn wages. Lost wage benefits are based on a portion of his average weekly wage up to a maximum limit set by the Workers' Compensation Act, Sections 52-1-1 et seq. NMSA 1978. The first 7 days (consecutive or non-consecutive) is the statutory waiting period when no disability benefits are paid.

F. Sick leave and insurance premium payment options. Each employer shall determine as a matter of policy whether it elects to allow an injured worker to use paid time off during the initial 7 days of the statutory waiting period and how his insurance premiums will be paid while he is disabled. There are only two options as follows:

(1) Employer Option #1:

(a) Use of sick leave: The initial 7 day period that a worker is absent due to a work related occurrence is the statutory waiting period in which no lost wage benefits are paid under the workers' compensation claim. The initial 7 day period can be consecutive or non-consecutive days and must be charged to paid time off. If the worker continues to be disabled after the 7 day waiting period, he will be entitled to lost wage benefits equal to 66 2/3% of his average weekly wage up to the statutory maximum allowed at the time of his injury. The worker is not permitted to use paid time off leave after the 7 day waiting period. If the disability persists past 28 days, the worker will then be paid the lost wage benefits for the initial 7 day waiting period and the worker is required to reimburse their paid time off bank;

(b) Payment of Insurance premiums: When an absence is due to a work related occurrence, the worker does not receive wages from the employer. During the period of disability, the worker shall pay his portion of any insurance premiums for employer provided insurance directly to the employer. The employer will continue payment of its matching portion of the insurance premiums until the employee returns to work from the qualifying disability, through the end of the current fiscal year or for as long as the worker continues to pay his portion of the premiums, whichever occurs first.

(2) Employer Option #2:

(a) Use of sick leave: The initial 7 day period that a worker is absent due to a work related occurrence is the statutory waiting period in which no lost wage benefits are paid under the workers' compensation claim. The initial 7 day period can be consecutive or non-consecutive days and must be charged to paid time off. If the worker continues to be disabled after the 7 day waiting period, he will be entitled to lost wage benefits equal to 66 2/3% of his average weekly wage up to the statutory maximum allowed at the time of his injury. In order to allow the worker to maintain other employment benefits such as 401(k) contributions and health insurance premiums for family members and dependents, the worker is permitted to use paid time off leave in addition to workers' compensation benefits to equate to 100% of the worker's gross wage. The worker will not be paid in excess of 100% of his gross wages when both paid time off leave and compensation benefits are combined. The worker will not be entitled to any advancement of additional paid time off that the worker might potentially accrue during the balance of the fiscal

year. If the disability persists past 28 days, the worker will then be paid the lost wage benefits for the initial 7 day waiting period and the worker is required notify the employer in writing for proper reimbursement their paid time off bank;

(b) **Payment of Insurance premiums:** When an absence is due to a work related occurrence, the worker does not receive wages from the employer. During the period of disability, the worker shall pay his portion of any insurance premiums for employer provided insurance directly to the employer or if the worker uses paid time off leave, the worker's portion of the insurance premiums will continue to be deducted from the checks issued by the employer. The employer will continue payment of its matching portion of the insurance premiums until the employer returns to work from the qualifying disability, through the end of the current fiscal year or for as long as the worker continues to pay his portion of the premiums, whichever occurs first.

G. Family medical leave act. Family medical leave act benefits will run concurrently with the worker's time off for a work related injury.

H. Returning to work. Employees returning to work from a work related disability shall:

(1) submit a written medical statement from the treating physician to the workers' compensation administrator that they are physically able to return to perform the essential job functions of the original position; and

(2) if physically unable to return to performance of the essential job functions of the original position, the worker shall submit a written medical statement from the treating physician for review by his supervisor, human resources and the workers' compensation administrator detailing which specific functions of the original position that he is physically able to perform and which he cannot; such written medical statement shall specify the employee's physical capacity in the terms outlined in Section 52-1-26.4, NMSA 1978; within five days of receiving this written notification, the employer shall advise the worker in writing of the availability of accommodating work and the start date on which the employee is expected to fill the accommodating position.

(3) If physically unable to perform even marginal job duties, the worker shall submit a written medical statement from the treating physician to the workers' compensation administrator to that effect for review by his supervisor, human resources and the workers' compensation administrator; and

(4) present himself for work within 1 working day after being released to return to work by his treating physician or of being notified of accommodating work by the employer.

I. Workers' compensation assessment fee. Workers covered by workers' compensation under the New Mexico Workers' Compensation Act, Sections 52-1-1 et seq., NMSA 1978 are required to pay a quarterly fee. The worker's contribution is taken as a quarterly payroll deduction.
[6.50.14.9 NMAC - Rp, 6 NMAC 50.14.9, 09/01/2014]

6.50.14.10 CONFLICT WITH STATUTE: In the event of a conflict between this part and the Workers' Compensation Act, Sections 52-1-1 et seq. NMSA 1978, the provisions of the act shall prevail.
[6.50.14.10 NMAC - Rp, 6 NMAC 50.14.10, 09/01/2014]

6.50.14.11 CLAIMS DETERMINATION: No school district, charter school or educational entity has the authority to accept or acknowledge liability for any workers' compensation claim. There is no liability for a workers' compensation claim until liability is acknowledged in writing by an authorized employee of the authority's third party administrator.

[6.50.14.11 NMAC - Rp, 6 NMAC 50.14.11, 09/01/2014]

6.50.14.12 WORKERS' COMPENSATION IS THE EXCLUSIVE REMEDY: In any case where an insured under the authority's workers' compensation program is eligible to receive workers' compensation benefits for an injury, the exclusive remedy for such injury is workers' compensation benefits. Such injured insured shall have no claim for additional benefits under either the authority benefits or risk programs, including but not limited to underinsured, uninsured and unknown motorist coverages. Provided, however, this does not prohibit an insured from claiming benefits (in addition to workers' compensation) if provided under a short or long-term disability policy, life insurance policy or medical benefits policy (so long as an insured is limited to one recovery for medical expenses).
[6.50.14.2 NMAC - Rp, 6 NMAC 50.14.12, 09/01/2014]

HISTORY OF 6.50.14 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMPSIA Rule 93-17, Participating Entity Workers' Compensation Policy, filed 3/22/93.

NMPSIA Rule 93-18, Workers' Compensation is the Exclusive Remedy, filed 3/22/93.

History of Repealed Material:

6 NMAC 50.14, Participating Entity Workers Compensation Policy, filed 10/1/97 - Repealed effective 09/01/2014.