

**ARIZONA STATE PERSONNEL SYSTEM
STATEWIDE POLICIES AND PROCEDURES**

Policy Section: Human Resources	Effective: 08/02/2012
Subject: Public Safety Employees' Supplemental Benefit Plan	Revised: 5/23/2014
Responsible Divisions: Human Resources, Risk Management	Supersedes: N/A
Responsible HRD Section: Benefit Services Responsible RMD Section: Workers' Compensation	Next Review Date: 04/30/2015

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

Scope:

This policy applies to state Public Safety Employees who are active members of the Public Safety Personnel Retirement System (PSPRS) or the Corrections Officer Retirement Plan (CORP) at the following agencies, in accordance with A.R.S. § 38-961:

- Department of Corrections
- Department of Public Safety
- Department of Juvenile Corrections
- Game and Fish Department
- State Parks Board
- Department of Liquor Licenses and Control
- Attorney General, Department of Law
- Department of Emergency and Military Affairs

Authority:

- A.R.S. § 38-961

Definitions:

"Compensable workers' compensation claim" means a claim that is filed under the Arizona Workers' Compensation Act, A.R.S § 23-901 et seq., and accepted by a final notice, award, or decision.

"Employing agency" means a listed agency that is responsible for paying the Public Safety Employee's salary at the time of injury.

"Gross Negligence" means an act that is determined by the agency to demonstrate knowing or reckless indifference to the Public Safety Employee's own health or safety beyond the scope of the Public Safety Employee's duty. Gross negligence does not include acts where a Public Safety Employee knowingly puts the Public Safety Employee's health or safety at risk to protect the health or safety of others.

"ICD Codes" means the version of the International Classification of Disease Codes published by the World Health Organization being used by ADOA Risk Management.

"Misconduct" means an act that: 1. occurs while the Public Safety Employee engages in an activity determined by a court of competent jurisdiction to be illegal, 2. is contrary to the Public Safety Employee's department's policies or code of conduct, or 3. is otherwise determined in writing by the agency to be misconduct.

"Physical Condition" means all conditions except emotional, mental or other non-physical conditions as listed in ICD codes categorized as "Mental and Behavioral Disorders."

"Public Safety Employee" means an individual employed at one of the following state agencies who is an active member of PSPRS or CORP:

- Department of Corrections
- Department of Public Safety
- Department of Juvenile Corrections
- Game and Fish Department
- State Parks Board
- Department of Liquor Licenses and Control
- Attorney General, Department of Law
- Department of Emergency and Military Affairs

"Severe Injury" means the physical damage, harm or loss giving rise to the compensable workers' compensation claim; that compromises the safety of the Public Safety Employee, the public, other Public Safety Employees or state employees, or inmates or youth confined to a correctional facility thereby precluding return to full duty status, temporary light duty assignment, or other restricted duty, in accordance with risk management decisions and the Public Safety Employee's employing agency policies and procedures; and that meets the Eligibility Criteria set forth herein.

Policy:

A Supplemental Benefits Plan ("Plan") is established to provide an eligible severely injured Public Safety Employee with the difference between the Public Safety Employee's workers' compensation temporary disability benefits and the Public Safety Employee's base salary, continued contributions for Public Safety Employee benefits and retirement in effect at the time of the qualifying severe injury by the employing agency, and payment of the Public Safety Employee's portion of required retirement contributions to PSPRS or CORP, consistent with A.R.S. § 38-961. Proxy retirement payments are limited to the standard retirement

contributions and do not include any service purchase or other agreements. Plan benefits are paid by the employing agency.

The salary benefit combined with the worker's compensation temporary disability benefit and any salary received for light-duty employment provides 100% of the Public Safety Employee's gross base pay, but no more. Public Safety Employee pay cannot be increased by use of paid leave or other state disability benefits to be more than 100% of the Public Safety Employee's regular gross base pay. Public Safety Employee take home pay may be different from their pre-injury take home pay due to the employer paying the employee share of retirement benefits, differences in the taxability of income and inability to earn overtime pay while on the Plan.

A Public Safety Employee begins to accrue benefits under this Plan on the later of:

1. The date the official application is submitted to the employing agency, or
2. The date the Public Safety Employee meets all Eligibility Criteria.

Retroactivity

Benefits may be paid retroactively in the following circumstances:

- If ADOA Risk Management determines that worker's compensation temporary disability benefits should be paid retroactively to a date that would change the eligibility date of a Public Safety Employee for this Plan, benefits may be paid retroactively to the date that the Public Safety Employee would have first been eligible, as long as an official application is received within 14 days of ADOA Risk Management's determination.

Eligibility Criteria

A severely injured Public Safety Employee may apply for the Plan if the Public Safety Employee has a compensable workers' compensation claim that meets all of the following criteria and that precludes the Public Safety Employee's return to full-time status, temporary light-duty or other restricted duty in accordance with risk management decisions and the Public Safety Employee's employing agency policies and procedures:

- The severe injury occurred on or after August 2, 2012;
- The severe injury occurs in the line of duty, as determined by the employing agency;
- The severe injury occurs as a result of any of the following:
 - an attack by an inmate, offender or arrestee, or animal;
 - a duty-related accident involving any modes of transportation authorized by the employing agency for performance of the Public Safety Employee's duties, and does not include
 - accidents occurring during the normal commute to or from the Public Safety Employee's worksite and/or duty post, or
 - accidents occurring in the performance of a non-essential work function,

- except when the Public Safety Employee is injured while appropriately responding to an duty-related emergent situation that is coincidental to a normal commute or in the performance of a non-essential work function;
 - attempting to affect an arrest, detention or control of a suspect, alleged offender or inmate;
 - actively responding to or fighting a fire; or
 - actively providing first-responder, paramedic-level or equivalent assistance to a victim in an accident or incident.
- The initial diagnosis for the claim is a physical condition as defined in this policy. The initial diagnosis is determined by the primary ICD code used by ADOA Risk Management at the time the claim is found compensable;
- The severe injury meets one or more of the following criteria that precludes the Public Safety Employee's return to full-time status, temporary light-duty or other restricted duty in accordance with risk management decisions and the Public Safety Employee's employing agency policies and procedures:
 - presents a reasonable risk of death;
 - inflicts permanent disfigurement;
 - results in the loss or protracted loss of the functions of any bodily organ or limb; or
 - is related to the compensable workers' compensation claim that was a substantial contributing cause of a mental injury, illness or condition, in accordance with A.R.S. § 23-1043.01(B); and
- The severe injury sustained is not a result of the Public Safety Employee's gross negligence or the Public Safety Employee's misconduct, as determined by the Public Safety Employee's employing agency.

After a period of 30 consecutive calendar days has passed during which time the severely injured Public Safety Employee was precluded from returning to full-time status, temporary light-duty or other restricted duty in accordance with risk management decisions and the Public Safety Employee's employing agency policies and procedures, and has received temporary total or temporary partial disability benefits due to the severe injury, the severely injured Public Safety Employee meeting the foregoing Eligibility Criteria will be admitted to the Plan retroactive to the date of the severe injury, upon certification of the Public Safety Employee's application by the employing agency. A Public Safety Employee may be enrolled in the Plan for a maximum of one year, which consists of an initial 6 month period and a 6 month extension subject to the following:

- The Public Safety Employee continues to receive temporary total or temporary partial disability benefits related to the compensable claim.
- A change in the primary diagnosis to a mental injury, illness or condition does not affect continued eligibility under the Plan.

Termination of Plan Benefits

Plan benefits terminate immediately upon any of the following:

- The Public Safety Employee's workers' compensation temporary disability benefits are terminated or suspended;
- ADOA Risk Management informs the employing agency that the Public Safety Employee has not complied with any Risk Management requirements, including evaluation for light duty and rehabilitation programs;
- The Public Safety Employee obtains Plan benefits for the relevant period:
 - The Public Safety Employee receives 6 months of Plan benefits (for a full-time employee working 40 hours per week, when workers' compensation temporary disability benefits and Plan benefits are combined, a total of 1,040 hours) and the Public Safety Employee does not reapply to extend the Plan benefits;
 - The Public Safety Employee who has applied and received approval for an extension, receives one year of Plan benefits (for a full-time employee working 40 hours per week, when workers' compensation temporary disability benefits and Plan benefits are combined, a total of 2,080 hours);
- The Public Safety Employee is no longer employed by the employing agency; or
- The Public Safety Employee returns to full-time status at the officer's same position.

Appeal of Decision To Terminate Benefits

A Public Safety Employee who is terminated from the Plan may request reconsideration of the termination by notifying the employing agency and providing clarifying or additional information. If reconsideration is denied, the Public Safety Employee may appeal the employing agency's denial to the Industrial Commission of Arizona for binding arbitration (See Appendix A).

Reinstatement of Plan Benefits

If a Public Safety Employee has not exhausted the maximum number of hours available under the Plan at the time Plan benefits are terminated, the Public Safety Employee may apply to receive the remaining number of hours available under the Plan subject to the following:

- The workers' compensation claim upon which Plan benefits were previously approved is successfully reopened;
- The Public Safety Employee receives temporary total or temporary partial disability benefits related to the workers compensation claim upon which Plan benefits were previously approved; and
- Plan benefits are subject to termination as provided in the policy.

Responsibilities:

Public Safety Employee Responsibilities

- To read and understand the eligibility guidelines for this Plan in A.R.S. § 38-961 and this Plan.
- To apply for the Plan with the Public Safety Employee's Human Resources Office or as otherwise directed by the employing agency using the attached form.
- To report any changes to the Public Safety Employee's eligibility status for this Plan to the employing agency.
- To comply with any requests for information pertaining to this Plan from ADOA Risk Management and/or Human Resources – Benefit Services.
- To authorize the employing agency, and ADOA Risk Management and Human Resources – Benefit Services to discuss any pertinent information, including HIPAA protected information, relative to the Public Safety Employee's eligibility for this Plan.
- To continue paying the employee portion of the health care benefit costs for which the Public Safety Employee was responsible on the date of the severe injury.
- To comply with all Risk Management requirements, including evaluation for light duty options and rehabilitation programs. Should the Public Safety Employee fail to comply with Risk Management decisions, the Public Safety Employee's participation in the Plan will be terminated.
- To continue paying for or appropriately terminate any elective health care plan deductions, health related optional deductions or optional life insurance deductions for which the Public Safety Employee was responsible at the time of severe injury.
- To understand that under this Plan, the Public Safety Employee's pay shall only equal their regular base salary plus the effect of not having to pay their applicable retirement contribution and shall not include any other leave or non-worker's compensation disability benefit from the State.
- To understand that under this Plan a Public Safety Employee:
 - Shall not use any paid leave,
 - Shall not accrue any additional paid leave, and
 - Shall not have any accrued leave decreased, unless the Public Safety Employee voluntarily chooses to donate leave to another employee under a state authorized donated leave program.
- To understand that an Public Safety Employee who is accepted into the Plan is not precluded from disciplinary action, including termination of employment, pursuant to Title 38, chapter 8 or any agreements that supplant, revise or otherwise alter the provisions of Title 38, including preexisting agreements between the employing agency and the Public Safety Employee's lawful representative association.

Employing Agency's Responsibilities

- To verify that the Public Safety Employee was employed by the employing agency at the time of the severe injury.
- To verify that the claimed injury meets the definitions and Eligibility Criteria to be considered a compensable severe injury under this Plan.
- To verify the Public Safety Employee's on-duty status on the date of the severe injury and determine if the injury occurred in the line of duty.
- To verify with ADOA Risk Management that the Public Safety Employee suffered a compensable workers' compensation claim that meets the Eligibility Criteria of this Plan.
- If the employing agency determines the Public Safety Employee is eligible, to approve the application for the Plan.

- To forward a copy of the approved application to both ADOA Risk Management and Human Resources – Benefit Services.
- Upon the Public Safety Employee's acceptance into the Plan, to continue to pay the employer portion of the health care benefits that the employing agency was paying for the Public Safety Employee on the date of the Public Safety Employee's injury.
- Upon the Public Safety Employee's acceptance into the Plan, to pay both the employing agency and the Public Safety Employee contributions to the PSPRS or CORP, as applicable.
- To not allow this Plan to supersede any other plan or policy that provides a greater benefit being offered by this state or a political subdivision of this state to a Public Safety Employee who is injured while on duty.
- After an initial 6 month period, upon application by the Public Safety Employee to determine if the Plan shall be extended, on an individual basis, an additional 6 months, for a maximum of one year (2080 hours for a full-time Public Safety Employee).
- In the case of an appeal, to defend the employing agency's decision to deny, suspend or terminate a Public Safety Employee's participation in the Plan.

Risk Management – Workers' Compensation

- ADOA Risk Management tracks Public Safety Employees participating in the Plan as part of the workers' compensation process.
- Workers' compensation changes that affect a Public Safety Employee's Plan eligibility are reported to the employing agency and Human Resources - Benefit Services.

Human Resources – Benefit Services

- ADOA Benefit Services reviews information from employing agencies and from Risk Management to monitor Plan cost and compliance.

Procedure:

- The Public Safety Employee begins receiving workers' compensation temporary total or temporary partial disability payments.
- The Public Safety Employee requests and receives a copy of the Plan application which includes this document.
- The Public Safety Employee submits the application for participation in the Plan to the Public Safety Employee's employing agency's Human Resource Department. The Plan application may be submitted for consideration prior to meeting the 30 consecutive calendar day requirement if all other Eligibility Criteria are met.
- The employing agency reviews the application and verifies the Public Safety Employee qualifies for the Plan, including verification of applicable criteria with ADOA Risk Management. If the application was submitted prior to meeting the 30 consecutive calendar day requirement, the employing agency may verify the other criteria, but cannot approve the Plan application until the 30 consecutive calendar days are reached.
- The employing agency forwards the approved Plan application to ADOA Benefit Services and Risk Management Division for tracking. If an application is denied, the Public Safety Employee is notified in writing of the decision and basis for the denial.

- If the Public Safety Employee believes that the application was denied in error, the Public Safety Employee may request reconsideration of the denial by resubmitting the Plan application with clarifying or additional information. If the application continues to be denied, the Public Safety Employee may appeal the employing agency's denial to the Industrial Commission of Arizona for binding arbitration
- The employing agency pays the benefit as part of the normal payroll process using HRIS for up to 6 months, depending on continued eligibility.
- Up to 3 weeks prior to the expiration of the initial 6 months of benefits (23 weeks from the effective date of benefits), a Public Safety Employee may submit an application to extend benefits by an additional 6 months, for a maximum of one year (2080 hours for a full-time Public Safety Employee) from the initial approval.
- Up to 3 weeks prior to the expiration of the initial 6 months of benefits (23 weeks from the effective date of benefits), the employing agency reconfirms the Public Safety Employee meets all Eligibility Criteria, as in the initial Plan application. If approved, the employing agency continues to pay the benefit for up to an additional 6 months, depending on continued eligibility.
- When the employing agency becomes aware that any of the criteria for terminating the Plan are met, as listed above, the agency ceases to provide benefits under the Plan. The employing agency provides written notification to the Public Safety Employee that benefits have ceased and includes the reason for termination. The effective date of termination is the day following the last day the Public Safety Employee met the Eligibility Criteria.
- The employing agency notifies ADOA Human Resources – Benefit Services and Risk Management when benefits are terminated.

Dispute Resolution:

Disputes regarding Plan eligibility, extension or termination shall be referred to the Industrial Commission of Arizona for binding arbitration after the Public Safety Employee has requested reconsideration of the denial to the employing agency and the employing agency has affirmed its determination.

Other:

The portion of benefits paid under the Plan as the difference between the Public Safety Employee's workers' compensation temporary disability benefit and the Public Safety Employee's base salary is taxable as income.

Related Forms/Attachments:

Application for the Public Safety Employee Supplemental Benefit Plan

Request for Appeal and Arbitration Agreement Form

Corresponding Policies:

Not Applicable

Contact:

If you have any questions related to this policy, please contact your agency Human Resources Department or ADOA Human Resources – Benefit Services.

Appendix A

Procedures For Appeal of Disputes Regarding the Public Safety Employees' Supplemental Benefits Plan under A.R.S. § 38-961.

Finality of Employing Agency Determination

In accordance with the Plan's Appeal of Decision To Terminate Benefits provisions, an appeal will be granted only if the Public Safety Employee requested reconsideration of the employing agency's determination to deny, suspend or terminate the Plan and the employing agency's determination was affirmed.

A determination of the employing agency affirming a denial of benefits is final unless within 10 business days after the date of the determination, the Public Safety Employee files a Request for Appeal and Agreement for Binding Arbitration on the form provided with the employing agency, which will forward it to the Industrial Commission of Arizona.

Request for Binding Arbitration

The Public Safety Employee shall file a Request for Appeal and Agreement for Binding Arbitration on the form provided which acknowledges that the award of the arbitrator is final and binding on the Public Safety Employee. The Public Safety Employee's signature on the Request for Appeal and Agreement for Binding Arbitration constitutes an acknowledgement that the arbitration award is final and binding.

The form shall be filed with the employing agency within 10 business days after the date of the employing agency's determination on reconsideration.

Employing Agency's Agreement to Arbitrate

The employing agency shall file a copy of the Request for Appeal and Agreement for Binding Arbitration, and copies of its determinations, with the Industrial Commission of Arizona within 5 business days of receipt of the Public Safety Employee's request for binding arbitration and shall copy the Public Safety Employee or the Public Safety Employee's representative. The agreement to arbitrate shall be on a form provided which acknowledges that the award of the arbitrator is final and binding on the employing agency. The signature of an authorized representative of the employing agency on the Agreement for Binding Arbitration constitutes an acknowledgement that the arbitration award is final and binding.

Representation

A party has the right to be represented by an attorney at any stage of the arbitration process.

A Public Safety Employee may be represented by an individual selected by the Public Safety Employee. Said individual shall file a notice of appearance on behalf of the Public Safety Employee, signed by the Public Safety Employee, and acknowledging that the individual has

reviewed the ADOA Public Safety Employees' Supplemental Benefit Plan Policies and Procedures.

The employing agency may be represented by an individual authorized by the agency to appear on its behalf in the arbitration proceedings.

Appointment of an Arbitrator

The Chief Administrative Law Judge (ALJ) of the Industrial Commission of Arizona shall appoint an ALJ to act as arbitrator within 3 business days of receipt of the Request for Appeal and Agreement for Binding Arbitration. Unless otherwise provided by the agreement of the parties, the arbitration shall be scheduled within 21 calendar days of referral to the Industrial Commission of Arizona.

Ex Parte Communications and Exchange of Correspondence

No party shall have any unauthorized ex parte communications with the arbitrator. A party submitting correspondence, including documents, to the arbitrator at any time during the arbitration process, shall contemporaneously serve a copy of the correspondence upon all parties, or if represented, the party's representative.

A party who intends to introduce documentary evidence at the arbitration must bring a copy for the arbitrator and a copy for the other party. Failure to bring copies may result in the evidence not being considered by the arbitrator.

Notice of Arbitration

The arbitrator shall set the date, time, and place for the arbitration and notify the parties by mail at least 20 business days before the arbitration. All evidence shall be exchanged between the parties no less than 10 business days before the arbitration. The notice of arbitration shall inform the parties of their right to present witnesses and documentary evidence, to be represented, and of the duty to exchange evidence. Appearance at the arbitration constitutes waiver of notice.

Change of Arbitrator

Within 5 business days following service of the notice of arbitration, a party may file an objection to the arbitrator. Upon notice of objection, the Chief ALJ shall transfer the matter to another ALJ to act as arbitrator. No more than one change of arbitrator shall be granted to any one party.

Arbitration Procedures

The arbitrator shall preside at the arbitration and exercise all powers relating to the conduct of the arbitration. The arbitrator is not bound by common law or statutory rules of evidence or technical or formal rules of procedure. The parties are entitled to be heard, to present evidence material to the dispute, and to cross-examine witnesses appearing at the hearing. The arbitrator shall administer oaths to witnesses.

Presentation of evidence is limited to the documents provided to the Public Safety Employee's agency at the time the decision was made, together with information used by the Public Safety Employee's agency in making the decision, except that newly discovered material evidence of eligibility that could not with reasonable diligence have been discovered and produced prior to the

employing agency's final decision is admissible. The parties are permitted up to five interrogatories. No other discovery, including depositions or additional interrogatories, is permitted.

The arbitrator's authority is limited to determining issues agreed to be in dispute by the parties and to those issues set forth for dispute resolution in the ADOA Public Safety Employees' Supplemental Benefit Plan Policy.

Settlement Discussions

At any time during the arbitration process, the arbitrator may advise the parties of the option to engage in settlement discussions. The arbitrator, with the consent of the parties, may facilitate the settlement discussions. If a settlement is reached, the arbitrator shall prepare an award setting forth the terms of the parties' agreement.

Confidentiality

The Industrial Commission of Arizona will not release records of the arbitration process to any person that is not a party to the arbitration unless all parties agree or unless such release is required by law.

Amendment of Arbitration Procedures

The ADOA Benefit Services may amend these procedures from time to time with at least 10 business days' notice to affected agencies.