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OPINION 25-0006

173-A – WORKMEN'S COMPENSATION

Mr. Keith R. Credo
Jefferson Parish Fire Civil Service Board
One Galleria Blvd. Suite 1900
Metairie, LA 70006

La. R.S. 23:1020.1	La. R.S. 33:1995
La. R.S. 23:1032	La. R.S. 33:1995.1
La. R.S. 23:1208	La. R.S. 33:2184

Civil service fire employees may decline weekly workers' compensation benefits and instead receive 52-week leave benefits under La. R.S. 33:1995 along with workers' compensation medical benefits; however, their leave pay will be reduced by the amount of workers' compensation actually received, and they must complete all required forms to receive workers' compensation benefits.

Dear Mr. Credo:

You have asked for an opinion to answer multiple questions regarding workers' compensation. Each question will be addressed and answered separately below:

Question 1: Does a Civil Service Fire Employee have the right to decline weekly Worker's Compensation benefits and use his 52-week leave benefits instead?

Answer: Yes. However, an employee's voluntary rejection of the workers' compensation benefits would also act as a waiver of the employee's legal rights to file suit against the employer regarding the injury.

Pursuant to La. R.S. 33:1995, every fireman in the employ of a municipality, parish or fire protection district, shall be entitled to full pay during sickness or incapacity not brought about by his own negligence or culpable indiscretion for a period of not less than 52 weeks. According to your request, some employees choose not to make a workers' compensation claim initially because they work second jobs that are not as strenuous as their firefighting jobs, and they do not want to be prohibited from working the second job by the workers' compensation restrictions.

There is currently no statute or jurisprudence that declares that workers' compensation properly offered by an employer must be accepted by an employee. Furthermore, there is nothing to determine whether an employee may refuse to accept workers' compensation. However, given the nature of workers' compensation, it is reasonable to conclude that employees are not required to accept it.

What is clear is that Louisiana's workers' compensation laws are intended to mandate action from employers. Louisiana Revised Statute 23:1020.1(C)(1) reinforces this by stating, "[T]he Louisiana Workers' Compensation Law is to be interpreted so as to assure the delivery of benefits to an injured employee" Accordingly, workers' compensation law mandates the delivery of benefits to workers injured in the course and scope of their employment, but it does not mandate the acceptance of those benefits by the employee.

However, an employee's voluntary rejection of the workers' compensation benefits would also act as a waiver of the employee's legal rights to file suit against the employer regarding the injury. Louisiana Revised Statute 23:1032(A)(1)(a) provides:

Except for intentional acts provided for in Subsection B, the rights and remedies herein granted to an employee or his dependent on account of an injury, or compensable sickness or disease for which he is entitled to compensation under this Chapter, shall be exclusive of all other rights, remedies, and claims for damages, including but not limited to punitive or exemplary damages, unless such rights, remedies, and damages are created by a statute, whether now existing or created in the future, ...

As such, workers' compensation is the exclusive legal remedy granted to employees injured in the course and scope of employment. This means that if the benefits are refused by the employee, he or she still cannot seek another remedy.

Question 2: Does an employee who elects to receive 52-week leave benefits for a work related injury have the right to seek worker's compensation medical benefits to pay his work related injury medical expenses?

Answer: Yes.

In your request, you indicate that an employee who has declined to seek weekly workers' compensation benefits may still wish to collect medical benefits in accordance with La. R.S. 23:1203.1. Again, there is currently no statute or jurisprudence which declares that workers' compensation properly offered by an employer must be accepted in full by an employee, nor is there any authority which explicitly allows a refusal of all or part of workers' compensation.

The Third Circuit Court of Appeal in *Young v. Hercules, Inc.*, 451 So.2d 109, 112 (La. App. 3 Cir. 1984) determined that "the right to medical expenses is separate and distinct from the right to compensation. Therefore[,] an employee may recover medical expenses even though there is no recovery for compensation."

Although the courts have not directly addressed this issue, we note that the Supreme Court has determined that La. R.S. 33:1995.1 is a set-off provision that reduces a firefighter's sick leave pay by any workers' compensation payment he might be receiving. *Johnson v. Marrero-Estelle Volunteer Fire Co. No. 1*, 2004-2124 (La. 4/12/05), 898 So.2d 351, 356. Section 1995.1 was enacted to prevent double recovery as sick leave pay and worker's compensation for work missed due to the same injury. *Id.*

Therefore, a fireman may reject workers' compensation indemnity payments in favor of the sick leave granted by La. R.S. 33:1995 while accepting workers' compensation medical payments and not have his sick pay reduced.

Question 3: Is a Civil Service Fire Employee who is only receiving “Worker’s Comp medical benefits” and not receiving “weekly benefits” required to sign Worker’s Compensation forms that subject him to criminal prosecution for working his second job while receiving benefits?

Answer: No

In your request, you specifically referenced the “Employee Certificate of Compliance Form” (Otherwise known as LDOL-WC-1025). That form simply requires the employee to acknowledge that it is unlawful to receive indemnity benefits and work and/or receive indemnity benefits and receive unemployment benefits and to certify that they will abide by these rules by signing the form. If the employee is only receiving medical benefits, not indemnity benefits, it would be lawful for him to work while receiving those benefits. Accordingly, the employee would not face any disciplinary action or consequences for signing the form as required.

The Employee’s Monthly Report of Earnings Form (also known as LDOL-WC-1020) is not required for employees who have only received medical benefits, as stated in LAC 40:1.105(2). Because these employees are only receiving medical benefits and not indemnity benefits, they are permitted to work without violating any workers’ compensation statutes or regulations.

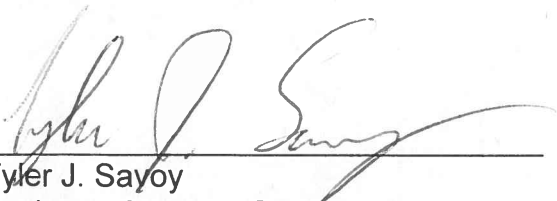
Lastly, La. R.S. 33:2184 is irrelevant as it applies explicitly to the disclosure of financial information “for the purposes of promotion or assignment.” An application for workers’ compensation is not an application for promotion or assignment.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,

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BY:


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LM: TJS