



## Ohio Administrative Code

### Rule 123:1-33-03 Conditions precluding receipt of disability leave benefits.

Effective: July 30, 2020

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(A) Disability leave benefits are not payable for any disability caused by or resulting from:

(1) Any injury or illness received in the course of and arising out of any employment covered by any workers' compensation, federal compensation plan, or during any period in which the employee is receiving, or has been approved for occupational injury leave, salary continuation, or lost time wages from the bureau of workers' compensation except as outlined in paragraph (A)(1)(a) or (A)(1)(b) of this rule.

(a) In the case of any injury or illness which may be covered by the bureau of workers' compensation, an employee may file an application for disability leave benefits within twenty calendar days of the receipt of the denial order from the bureau of workers' compensation. The employee must be denied the initial claim for workers' compensation by the bureau of workers' compensation and the employee affirms that no appeal of the bureau of workers' compensation denial order will be filed by the employee.

(b) If an employee appeals the order of the bureau of workers' compensation. The employee may receive, as an advancement, disability leave benefits. To be eligible for such advancement, an employee must file an application for disability leave benefits and a copy of the bureau of workers' compensation order with the appointing authority within twenty days of the notification by the bureau of workers' compensation of the denial of an initial claim for workers' compensation benefits. The appointing authority within five days of receipt forward the application to the director or designee. Disability leave benefits may then be advanced for a period of twelve weeks or until the employee had been awarded benefits by the bureau of workers' compensation, whichever is earlier. Advancements may be made only on initial workers' compensation claims. All disability leave benefits received by the employee as an advancement, must be reimbursed by the employee to the disability leave benefits program if the employee has been awarded weekly wage payments by the bureau of workers' compensation for the same time period for which the advancement was made or the employee has been paid a lost time wage settlement. Within twenty days of notification of a final



order from the industrial commission or notification of a final order from the court of common pleas denying the claim for workers' compensation lost time wages, an employee may request that the initial application be reviewed for extension of disability leave benefits.

(c) If an employee files an appeal of the order of denial by the bureau of workers' compensation on an initial claim for workers' compensation, the employee may file an initial application for disability within twenty calendar days of notification of a final order from the industrial commission or notification of a final order from a court of common pleas denying a claim for workers' compensation benefits.

(d) An employee who receives injury pay pursuant to section 124.381 or section 5503.08 of the Revised Code may be eligible for disability leave benefits when injury pay expires if the employee has received a final notice denying workers' compensation benefits and has applied for disability leave benefits within twenty calendar days of such notice.

(2) Attempted suicide, or self-inflicted injury with the intent to do bodily harm unless there is a medical history of treatment within five years from the current date of disability for a psychiatric illness in which case the director or designee reserves the right to review the claim for consideration of a benefit award; or

(3) Any act of war, declared or undeclared, whether or not the employee is in the armed forces; except in the case of an employee who is a veteran of the United States armed forces, disability benefits will not be denied because the employee contracted the illness or received the injury in the course of or as a result of military service and the illness or injury is or may be covered by a compensation plan administered by the United States department of veterans' affairs; or

(4) Participating in a riot or insurrection; or

(5) Drug addiction or alcoholism; however, alcohol or other drug addiction diagnoses may only be covered if the employee is receiving and complying with ongoing treatment pursuant to paragraph (D) of rule 123:1-33-01 of the Administrative Code and it is determined that such treatment program prevents the employee from working as documented by the treatment provider; or



(6) Any injury received in the act of committing a felony.

(B) Disability leave benefits may be held in abeyance if an employee submits an application for disability leave benefits after either the employee has received notice of an investigation for possible disciplinary action or where an investigation regarding the employee is actively underway. Such action is subject to the following procedure:

(1) The appointing authority shall send to the department of administrative services a copy of the employee's disability leave application, all accompanying documentation, and a notice containing the following information:

(a) Notification that an investigation of the employee is underway,

(b) The date the investigation was initiated,

(c) The basis of the investigation, and

(d) A rationale for why access to the employee is necessary for completion of the investigation.

(2) Upon receipt of the notification, the director or designee shall approve or deny the decision to hold disability payments in abeyance. If the director or designee approves the decision to hold disability payments in abeyance, the director or designee shall notify the employee by regular and certified mail, that the disability payments will not be processed until the completion of the investigation.

(3) An investigatory interview shall be scheduled to occur within thirty days after the appointing authority files notice of the investigation with the department of administrative services. If the appointing authority fails to complete the investigatory interview within thirty days through no fault of the employee under investigation, an employee who is eligible in accordance with rule 123:1-33-01 of the Administrative Code may receive disability leave benefits. If the investigatory interview cannot be completed as a result of the employee's absence, or failure to participate, the investigatory interview shall be cancelled and the employee's disability leave application shall be denied.



(4) Paragraph (B) of this rule shall not be applicable where the absence, and subsequent disability, is the result of hospitalization for more than five days for a serious medical condition.

(5) If an application for disability benefits is pending or has been approved prior to the initiation of the investigation, paragraph (B) of this rule shall not be applicable.