

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of Corrections

(agency name)

Administrative Order No. 89-05

(1) I, Chase Riveland

SECRETARY, director of

DEPARTMENT OF CORRECTIONS

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

Adopting Chapter 137-78 WAC, ASSAULT BENEFITS FOR EMPLOYEES OF THE DEPARTMENT OF CORRECTIONS

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 89-11-108 filed with the code reviser on MAY 24, 1989. These rules shall take effect: [X] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2). [] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

- (a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.
(b) This rule is promulgated pursuant to RCW which directs that the

has authority to implement the provisions of (agency) (name of act or RCW citation)

(c) This rule is promulgated under the general rule-making authority of the Department of Corrections (agency)

as authorized in RCW 72.13.170

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED June 30, 1989

FILED JUL 19 1989

By [Signature] Secretary

Title

CODE REVISER'S OFFICE 89-15-059 4:35 pm

NOTE:

RCW 34.04.026 provides:

"(1) In addition to the provisions of RCW 34.04.025(1)(a)(i), every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules:

(a) The most specific reference shall be to a section of law which the rule is implementing, and shall be quoted as follows: "This rule is promulgated pursuant to RCW _____ and is intended to administratively implement that statute."

(b) The next specific reference, and one which shall be used only if paragraph (a) of this subsection is not applicable, shall be to that portion of an act which directs an agency to adopt rules and regulations as necessary to implement the act, and shall be quoted as follows: "This rule is promulgated pursuant to RCW _____ which directs that the (agency) has authority to implement the provisions of (name of act or RCW citation)."

(c) The least specific reference, and one which shall be used only if paragraphs (a) and (b) of this subsection are not applicable, is one which indicates that the rule is promulgated under the agency's broad rule-making authority—either in the agency enabling legislation or chapter 34.04 RCW, and shall be quoted as follows: "This rule is promulgated under the general rule-making authority of the (agency) as authorized in RCW _____."

(2) The code reviser is directed to develop a format for placing such specific language in each rule, and agencies shall then comply with the code reviser's direction, and shall include the same in the final rule.

(3) During the promulgation hearings process the public may question whether such rule should have a more specific reference, and the agency shall, pursuant to RCW 34.04.025(1)(b), give consideration to such requests."

Chapter 137-78 WAC

EMPLOYEE ASSAULT BENEFITS

WAC

137-78-010	Definitions.
137-78-020	Eligibility.
137-78-030	Application process.
137-78-040	Conditions of reimbursement.
137-78-050	Medical reports.
137-78-060	Denial of application for assault benefits.
137-78-070	Appeal from denial of assault benefits/overpayments.

NEW SECTION

WAC 137-78-010 DEFINITIONS. For the purposes of this chapter the following words shall have the following meanings:

- (1) "Assault" means an intentional touching, striking, cutting, or shooting of a person or the body of another.
- (2) "Assault benefits" means reimbursement to employees of some of their costs attributable to being the victim of an offender assault.
- (3) "Chief, office of employee services" means the individual who is appointed by the secretary to head the office of employee services or his/her designee.
- (4) "Department" means the department of corrections.
- (5) "Employee" means any individual who is appointed by the secretary, and who serves under the supervision and authority of the department. The term "employee" shall not include an individual performing personal services under contract or offenders.
- (6) "Doctor" means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic; chiropractic; drugless therapeutics; podiatry; dentistry; optometry.
- (7) "Offender" means any person in the custody of or subject to the jurisdiction of the department of corrections.
- (8) "Secretary" means the secretary of the department of corrections or the secretary's designee.

NEW SECTION

WAC 137-78-020 ELIGIBILITY. Employees who apply to the department may be eligible for assault benefits if the secretary finds that each of the following has occurred:

- (1) An offender has assaulted the employee and as a result thereof the employee has sustained injuries which have required the employee to miss one or more days of work;
- (2) The assault is not attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment;
- (3) The assault occurred while the employee was in the performance of his/her official duties; and
- (4) The employee has made application for compensation under Title 51 RCW.

NEW SECTION

WAC 137-78-030 APPLICATION PROCESS. Employees who meet the requirements of WAC 137-78-020 and elect to apply for assault benefits shall submit a signed application for assault benefits and a properly completed report of personal injury form (DOC 3 133 (x)), together with the certificate of the doctor that attended him or her, to his or her supervisor within ten working days of the occurrence of the assault or, if the application could not be reasonably submitted within that period, within ten working days of the time when application could reasonably have been made. Applications shall be reviewed through the appropriate division command. The division director shall forward the application, with appropriate recommendations, to the office of employee services. The chief of the office of employee services shall grant or deny the request for assault benefits within ten working days after written notification from the employee or the department of labor and industries that the employee's application for compensation under Title 51 RCW has been approved, but may extend that time to gather additional information.

NEW SECTION

WAC 137-78-040 CONDITIONS OF REIMBURSEMENT. (1) Assault benefits authorized the employee by the secretary under this chapter shall not continue longer than the date of termination of time-loss benefits by the department of labor and industries or three hundred sixty-five consecutive days from the date of the injury, whichever date is earlier, and shall be limited to the following:

(a) For each workday missed due to assault for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay pursuant to RCW 72.09.240 and this chapter; and

(b) In respect to workdays missed due to assault for which the employee shall be reimbursed compensation under chapter 51.32 RCW, the employee shall receive full pay, less any industrial insurance payments for time loss during the period in which assault benefits are received.

(2) As the intent of this chapter is to reimburse the employee the difference of salary compensation paid by the department of labor and industries and the full pay the employee would have received but for the time loss from the injury sustained as a result of an inmate assault, the employee shall not be entitled to receive greater than one hundred percent of his or her base salary as a result of payments by the department of labor and industries and the department unless such overpayment is the result of the employee's election to use accumulated vacation leave, holiday leave, compensatory time off, or exchange time.

(3) Employees granted assault benefits shall accrue full annual leave, sick leave, and insurance benefits during the time period they are approved to receive assault benefits.

(4) (a) Employees applying to the department for assault benefits may elect to use accrued sick leave until such application is approved or denied, provided that the employee shall return any subsequent overpayment to the department.

(b) The employee's accumulated sick leave hours shall not be reduced for the workdays missed due to the assault, provided that the employee has returned any overpayments to the department.

(c) If the employee fails to return any overpayments to the department, sick leave hours charged to an employee who receives worker's compensation as a result of the time loss and assault benefits shall be proportionate to the overpayment by the department during the claim period.

(5) The employee shall not be entitled to assault benefits provided in this section for any workday for which the secretary finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) While the employee is receiving assault benefits authorized under this chapter, the employee shall continue to be classified as a state employee and receive full service credit.

(7) The employee shall be entitled to assault benefits only for absences which the chief of the office of employee services believes are justified.

(8) No employee eligible to receive or receiving benefits under this chapter shall be entitled to continue to receive benefits should the legislature revoke the reimbursement authorized under this chapter.

NEW SECTION

WAC 137-78-050 MEDICAL REPORTS. The employee shall, at the request and sole expense of the department, submit to an independent medical examination by a licensed physician or other licensed health care provider designated by the department to determine whether the employee may continue to receive assault benefits.

NEW SECTION

WAC 137-78-060 DENIAL OF APPLICATION FOR ASSAULT BENEFITS. If the employee's request for assault benefits is denied by the office of employee services, the employee may, within ten working days from the date of denial, file a petition with the office of employee services for reconsideration, stating the specific grounds upon which the application should be granted. The petition shall be in the format specified by the office of employee services. The petition shall be deemed to have been denied if not disposed of within twenty working days from the date the petition is filed.

NEW SECTION

WAC 137-78-070 APPEAL FROM DENIAL OF ASSAULT BENEFITS/OVERPAYMENTS. (1) If the employee's petition for assault benefits to the chief of the office of employee services is denied, the employee may appeal that decision to the secretary in accordance with chapter 34.05 RCW and this section. The employee shall file a written petition with the Office of the Secretary at 410 W. 5th, P.O. Box 9699, Olympia, Washington 98504, within thirty days after the denial of assault benefits or within ten days after disposition of the petition for reconsideration.

(2) If a dispute exists between the employee and department concerning the amount of any overpayment to be repaid the department, the employee may request a hearing in accordance with chapter 34.05 RCW and this section. The employee shall file a written petition with the Office of the Secretary at 410 W. 5th, P.O. Box 9699, Olympia, Washington 98504, within thirty days after the dispute arises.