

Chapter 137-78 WAC
EMPLOYEE ASSAULT BENEFITS

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

(1) "Assault" means an unauthorized touching, including spitting and/or throwing a substance/object, striking, cutting, or shooting by an offender resulting in physical injury to an employee.

(2) "Assault benefits" means reimbursement to employees of some of their costs attributable to being the victim of an offender assault.

(3) "Assistant secretary" means the executive head of one of the department's organizational divisions.

(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) "Deputy secretary" is the deputy secretary for the department or his/her designee.

(7) "Doctor" means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic; chiropractic; drugless therapeutics; podiatry; dentistry; optometry.

(8) "Offender" means any person in the custody of or subject to the jurisdiction of the department of corrections.

(9) "Secretary" means the secretary of the department of corrections or the secretary's designee.

[Statutory Authority: RCW 72.01.090. WSR 09-15-198, § 137-78-010, filed 7/22/09, effective 8/22/09; WSR 03-21-088, § 137-78-010, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.13.170. WSR 89-15-059 (Order 89-05), § 137-78-010, filed 7/19/89, effective 8/19/89.]

WAC 137-78-020 Eligibility. Employees who apply to the department may be eligible for assault benefits if the department 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 and the claim has been approved for an injury related to the assault.

[Statutory Authority: RCW 72.01.090. WSR 09-15-198, § 137-78-020, filed 7/22/09, effective 8/22/09. Statutory Authority: RCW 72.13.170. WSR 89-15-059 (Order 89-05), § 137-78-020, filed 7/19/89, effective 8/19/89.]

WAC 137-78-030 Application process. Employees who meet the eligibility requirements of WAC 137-78-020 and elect to apply for assault benefits shall submit a signed application for assault benefits, a properly completed report of accident/injury and a copy of his or her L&I Report of Industrial Injury or Occupational Disease form (F242-130-000), to his or her locally designated representative or human resource office within sixty working days of the occurrence of the assault or, if the application could not be reasonably submitted within that period, within sixty working days of the time when application could reasonably have been made. Applications shall be reviewed through the employee's chain of command. The department shall grant or deny the request for assault benefits within thirty working days after receipt of the completed application, but may extend that time to gather additional information. A completed application shall include information that the department of labor and industries has approved the employee's claim for benefits related to the assault.

[Statutory Authority: RCW 72.01.090. WSR 09-15-198, § 137-78-030, filed 7/22/09, effective 8/22/09; WSR 03-21-088, § 137-78-030, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.13.170. WSR 89-15-059 (Order 89-05), § 137-78-030, filed 7/19/89, effective 8/19/89.]

WAC 137-78-040 Conditions of reimbursement. (1) Assault benefits authorized by the department 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 annual 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 department finds 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 that the department 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.

[Statutory Authority: RCW 72.01.090. WSR 09-15-198, § 137-78-040, filed 7/22/09, effective 8/22/09. Statutory Authority: RCW 72.13.170. WSR 89-15-059 (Order 89-05), § 137-78-040, filed 7/19/89, effective 8/19/89.]

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.

[Statutory Authority: RCW 72.13.170. WSR 89-15-059 (Order 89-05), § 137-78-050, filed 7/19/89, effective 8/19/89.]

WAC 137-78-060 Denial of application for assault benefits. If the employee's request for assault benefits is denied by the department, the employee may, within ten working days from the date of denial, file a petition for reconsideration, stating the specific grounds upon which the application should be granted. The department shall respond within twenty working days from the date the petition was received; provided that the time may be extended to gather additional information.

[Statutory Authority: RCW 72.01.090. WSR 09-15-198, § 137-78-060, filed 7/22/09, effective 8/22/09; WSR 03-21-088, § 137-78-060, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.13.170. WSR

89-15-059 (Order 89-05), § 137-78-060, filed 7/19/89, effective 8/19/89.]

WAC 137-78-070 Overpayment disputes. 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 Deputy Secretary at P.O. Box 41101, Olympia, Washington 98504-1101, within thirty days after the dispute arises.

[Statutory Authority: RCW 72.01.090. WSR 09-15-198, § 137-78-070, filed 7/22/09, effective 8/22/09; WSR 03-21-088, § 137-78-070, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 72.13.170. WSR 89-15-059 (Order 89-05), § 137-78-070, filed 7/19/89, effective 8/19/89.]