

C S E A L E G A L D E P A R T M E N T

**The BASICS
of GENERAL
MUNICIPAL LAW**

Section 207-c



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INTRODUCTION

General Municipal Law § 207-c (“GML § 207-c”) provides for the payment of full salary or wages and the cost of all medical treatment and hospital care for an individual injured or taken ill as the result of the performance of his/her job duties. GML § 207-c covers police officers, deputy sheriffs and deputy sheriff county corrections officers among other law enforcement personnel.*

The material to follow is meant to give the reader a basic understanding of:

1. What benefits GML § 207-c provides;
2. What types of injuries or illnesses are covered;
3. How an employee may be brought back to work or retired;
4. What due process is required under GML § 207-c; and
5. How the union can better effectuate the rights and benefits provided under GML § 207-c.

** The statute should be consulted for the complete list of covered personnel.*

What benefits are provided by GML § 207-c?

Salary and Wages

GML § 207-c requires that an employer pay the affected employee a benefit in the form of the employee's full salary or wages while the employee is out of work on GML § 207-c leave. Salary and wages do not cover every aspect of an employee's compensation.

Employees receiving salary/wages pursuant to GML § 207-c:

- Do not accrue personal, vacation, or sick leave while on GML § 207-c.
- Do not receive holiday pay, absent any language to the contrary in a collective bargaining agreement.
- Are not entitled to shift differential.
- Are not entitled to uniform allowance.
- Are not entitled to employer paid health insurance, absent any language to the contrary in a collective bargaining agreement or an established past practice of providing health insurance to employees receiving GML § 207-c benefits.

However, an employee out pursuant to GML § 207-c is entitled to:

- Increments (raises) accrued during the period of disability until the employee either reaches the age of mandatory retirement or voluntarily retires.
- Longevity payments.
- Benefits where there is an established past practice of providing them to employees receiving GML § 207-c benefits.

Medical Treatment

GML § 207-c requires the municipality to pay for all medical treatment and hospital care necessitated by the injuries or illness of the employee. The liability of the municipality is extensive. The language “all medical treatment” requires the municipality to pay for all reasonable costs of necessary medical treatment. This liability is not limited to the “practice of medicine” as defined by the Educational Law § 6521. For example, it includes professional services rendered by licensed psychologists.

GML § 207-c prohibits a medical care provider from seeking payment for services directly from the employee. An injured employee receiving GML § 207-c benefits should tell the treating medical care provider that the treatment is for an injury covered by GML § 207-c (and Worker’s Compensation if applicable). The employee should inform the treating medical care provider that the treatment should not be submitted to his/her health insurance and the employee should not pay any co-pay or bill from the provider.

The responsibility of the municipality to pay medical bills for treatment due to the injury does not require the employee to have missed time from work, and, if the employee does miss work, the benefit does not cease when the employee returns to work. Any treatment attributable to the injury must be paid for by the municipality whether occurring immediately after the injury or years later.

Worker’s Compensation Law and GML § 207-c

The Worker’s Compensation Law will most likely also cover an employee injured during the performance of his or her duties pursuant to GML § 207-c. The municipality is entitled to a credit for money paid to the employee pursuant to Worker’s Compensation Law. If the Worker’s Compensation insurance carrier for the municipality pays the injured employee

compensation and pays for any medical bills, the municipality is liable for only the difference between the full salary and the amount of compensation paid. It is also required to pick up medical treatment expenses not covered by Worker's Compensation. It is common for the municipality to pay the employee his/her full salary through payroll and then keep the payment from Worker's Compensation insurance.

What type of Injury or Illness is Covered?

Employers often claim that the GML § 207 benefits are only awarded to injuries or illnesses which are the result of the heightened risk and duties related to law enforcement and corrections work. There was a period of time where some courts believed this to be the correct standard.

However, the New York Court of Appeals has ruled that an employee is eligible for the benefit as long as he/she incurs an injury while in the performance of, or takes ill as a result of, any duty within the full range of his/her duties. An eligible employee need only prove a direct casual relationship between job duties and the resulting illness or injury. This can be any duty that the employee performs as part of his/her position, no matter if it is shoveling snow or arresting a suspect.

Of course, the employee must be "on duty" to obtain the benefits of GML § 207-c. In one case, the Court stated that a police officer who injured his hand while breaking a window to free a child from a car was not eligible for GML § 207-c benefits because he was off duty. In another, the Court found that the officer was not entitled to GML § 207-c benefits because he was off duty and on his way home when he suffered injuries in a car accident.

The mere fact that a covered employee is eligible for worker's compensation benefits, does not create an automatic entitlement to GML § 207-c benefits. For example, if an employee

is injured in the employer's parking lot on the way into work before a shift, that employee could be eligible for worker's compensation, but not GML § 207-c benefits. In that case, the employee is not injured while in the performance of duties.

The municipality has the right to have the employee examined by a physician when making an initial determination of eligibility for benefits as well as throughout the period of receipt of benefits. The municipality can use such examinations to determine if the employee can perform light duty, return to full duty, or if there is a treatment that might return the employee to work. The employee must cooperate with the medical examinations. Failure to comply may result in the loss of GML § 207-c benefits.

Light Duty and Retirement

Disability Retirement

A municipality's liability for full wages and salary is limited by GML § 207-c(2). Payment of full wages is discontinued when the employee is granted a disability retirement. If the Retirement System determines that the employee is "permanently disabled" from the performance of his or her duties, the employee loses full pay under GML § 207-c and begins to receive a retirement allowance. The statute permits the employer to submit an application to the Retirement System. The employee must cooperate with the application process, including attending any medical examinations. Failure to comply may result in the loss of GML § 207-c benefits.

Light Duty

If an employee receiving GML § 207-c benefits is not eligible for or not granted a disability retirement, the employee can be returned to work on a light duty assignment. The assignment of light duty requires the employer to do two things: (1) obtain

an opinion from a medical professional which states that the employee is able to perform specified types of light duty, and (2) offer a light duty assignment to the employee.

If the employee refuses to perform the light duty assignment, wages/salary payment ceases. The only conditions to light duty are that the duty be consistent with the employee's status (police officer, corrections officer, etc.) and the employee receives normal salary and wages, including increments and fringe benefits. For the light duty assignment to be consistent with the status of the employee, the duties must be similar to those of the regular duty assignment.

If the employee's treating physician disagrees with the employer's assessment that the employee can perform the light duty assignment, the doctor can write a report stating the disagreement. Once the employer is presented with the report, the employee is entitled to a hearing prior to being required to perform the light duty assignment.

Procedural Due Process

Initially, a municipality may deny an application for GML § 207-c benefits absent any competent medical evidence of a casual relationship between the disability and the injury or illness sustained as a result of the performance of duties. The employee must present evidence from a personal physician that the injury or illness is casually connected to the performance of duties. The employee need only prove a direct casual relationship, not that the disability was substantially related to the performance of the job duties. Thus, a duty related re-injury to a prior non-work related injury is recoverable under GML § 207-c.

Once granted, GML § 207-c benefits become a property interest of the employee and give rise to procedural due process protection before these payments may be terminated. These protections include an administrative hearing which is required:

- After the initial determination of ineligibility for GML § 207-c benefits,
- After the municipality has ordered the employee to return to work for light or full duty and the employee has provided medical evidence of continuing disability,
- Prior to an attempt by the municipality to terminate benefits.

Hearing After an Initial Determination of Ineligibility

Once the municipality has denied GML § 207-c benefits, the employee is entitled to a hearing, if he/she requests one. The employee is entitled to counsel, to present witnesses, and to cross-examine the employer's witnesses. The employee has the burden of proving a direct causal relationship between the injury and the performance of duties. The person appointed to conduct the hearing need only be "fair and impartial." The hearing officer does not need to be independent, or, absent agreement of the parties, an arbitrator.

Hearing After an Order to Return to Work for Light Duty

Once the municipality has determined, based upon a medical opinion, that the employee can perform light duty, the employee may request a hearing to challenge his/her ability to perform light duty. However, the right is not absolute. The employee must submit "a report by a personal physician expressing a contrary opinion." Once evidence of a contrary medical opinion has been rendered, the order to report for light duty may not be enforced and GML § 207-c benefits may not be terminated until the resolution of the dispute through an administrative hearing, including any appeals via an Article 78 proceeding. But the personal physician's report must be presented to the municipality very quickly after receiving the order to report for light duty.

If a hearing is convened for the purpose of determining light duty, the hearing is limited to this issue and cannot be

expanded to include eligibility for benefits under GML § 207-c.

Hearing Prior to the Termination of GML § 207-c Benefits

The requirement that a hearing be held prior to the termination of GML § 207-c benefits is not limited to a case where the municipality has made a formal determination that an employee was entitled to GML § 207-c benefits. The duty to hold a hearing applies to any de facto award of GML § 207-c benefits. A de facto award was held to occur where the employer had paid the full salary of an employee who was injured for a period of four and one-half months.

Once the employee has been receiving GML § 207-c benefits, the municipality must provide a due process hearing prior to terminating the benefits. This is true even where the employer is attempting to place the employee on suspension pursuant to Civil Service Law § 75 or where the municipality separates the employee from service under Civil Service Law §§ 71 or 72.

Negotiating GML § 207-c Procedures

GML § 207-c does not provide guidance on how to appeal a determination regarding benefits. The procedures for contesting a municipality's initial determination under § 207-c are a mandatory subject of bargaining. Labor and management should negotiate a procedure governing all aspects of the administration of GML § 207-c benefits. Ultimately, the negotiation of GML § 207-c procedures clarifies areas that are not detailed by statute.

From a labor perspective, final and binding arbitration of disputes relating to § 207-c benefits is the most important component to be negotiated. It creates a feeling that the process is fair. However, the municipality does not need to negotiate over its ability to make an initial determination or that the arbitrator make a new determination instead of reviewing the municipality's.

Section 207-c procedures should protect the injured individual from suffering severe economic injury while the municipality is making its initial determination. Perhaps nothing is more disheartening than an injured employee having to wait a long time for the municipality to determine eligibility for § 207-c benefits. It is best to negotiate a relatively short turn around time from application to initial determination. Additionally, specific forms should be drawn up so that all parties know what information is required to make it easier for the municipality to make an informed determination in as little amount of time as possible.

To resolve disputes over benefits, it is best to have a mechanism for the exchange of all relevant medical documentation. This will allow for a better assessment of medical issues in every dispute and may help resolve disputes prior to arbitration.

A separate light duty procedure setting forth (1) jobs that are light duty positions, (2) work schedules for those jobs, (3) the amount of time an employee has to present a physician's report contesting his/her ability to perform the light duty and, (4) a procedure for returning to full duty after recovery, is recommended. The most contentious area under GML § 207-c involves questions of what constitutes a "light duty" job. To avoid extensive litigation of whether a job is a light duty position in accordance with a medical opinion, it is best to negotiate specific light duty assignments prior to trying to place an employee on light duty. It will save both the Union and the municipality from extensive disputes in the future. Additionally, the municipality should provide the employee with a description of the job duties included in the light duty assignment and any restrictions on the work to be performed. The employee should be entitled to request a reasonable clarification of the stated duties.

Other issues to consider are:

- How will claims of reoccurring injury be addressed? Does

the applicant have to file a new claim or an addendum to the initial claim?

- What fringe benefits will be continued? As discussed earlier, certain fringe benefits may be continued for employees receiving GML § 207-c benefits. A detailed discussion of what fringe benefits will be continued will clarify potential issues regarding past practice of the parties. Additionally, the employee will know exactly what he/she is entitled to receive.
- What happens if the employer files an application for disability retirement pursuant to GML § 207-c(2)? Does the employee have to cooperate with the employer's efforts? Ultimately, if retired, the employee will lose his/her salary and receive a substantially lower amount in the form of a pension. This question is not easy to answer. But "in case," the Union negotiator needs to be aware of the consequences and the fact that management may bring up this topic.

Conclusion

The caselaw on GML § 207-c is extensive. This writing is meant only to provide an introductory education into the workings of GML § 207-c and what the Union can do to better protect its members who are entitled to its protections.



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