

COUNTY OF CHAUTAUQUA

Procedure for the Implementation Of General Municipal Law, Section 207-c Between the County of Chautauqua and the Chautauqua County Sheriff's Employees' Association

Section 1 - Intent

- (a) In order to insure that determinations arising by virtue of the administration of the provisions of §207-c of the General Municipal Law satisfy the interest of those potentially eligible for its benefit, the County of Chautauqua, and the public, the following procedure shall be utilized to make determinations in regard to benefits authorized by §207-c.
- (b) The parties hereto specifically recognize that this policy is not intended to, nor does it address or concern any rights or benefits occurring under Workers' Compensation Law. The parties recognize and acknowledge that any benefit available under Workers' Compensation is separate and distinct from benefits accruing pursuant to G.M.L. §207-c.
- (c) This procedure is intended to be a supplement to administer the express language of §207-c of the General Municipal Law, including any benefits yielded by the statute subsequent to the enactment of this policy.
- (d) This Agreement shall be considered part of the Collective Bargaining Agreement between the County of Chautauqua and the Chautauqua County Sheriff's Employees' Association.
- (e) The term "employee" as used herein, shall include any CCSEA member who is a correction officer or deputy sheriff of the Chautauqua County Sheriff's Department.

Section 2 - Notice of Disability or Need for Medical or Hospital Treatment.

- (a) An employee who claims a right to benefits under §207-c of the General Municipal Law, either because of a new illness or injury or the recurrence of a prior illness or injury, shall make, personally or through his/her representative, application in the form of "The County of Chautauqua Sheriff's Office General Municipal Law §207-c Application" for those benefits to the Sheriff, or his designee, within five (5) working days (Monday – Friday, excluding holidays) of when the employee reasonably should have known that the illness or injury would give rise to the claim on the form which is made a part of this procedure. Such application shall also include the following documents: (1) "Limited Medical Authorization", and (2) "New York State Retirement System Notice of Illness/Injury". The employee should retain copies of each of document filed for his or her own records. The employee shall report all new illnesses/injuries or recurrences of

illnesses/injuries even if (s)he suffers no lost work time or requires no medical treatment as a result thereof. The employee shall have the continuing right to supplement or amend his/her notice and application with any information obtained subsequent to the filing of such notice and application. Failure to file the application form within the five (5) working day period can be excused by the Sheriff for good cause shown. Any dispute arising over an alleged failure of the employee to file notice and application within the time limits set forth herein shall be subject to the dispute resolution procedure provided for in Section 7 of this Agreement.

(b) The employee shall provide authorization in the form of a medical release (per the attached form) for the County to obtain copies of his/her medical records for treatment from his/her treating physician or other health care provider and relating to the injury or illness giving rise to the disability and the body part involved, and the County will provide the employee, without cost, a copy of the records and reports produced by any physicians or other experts who examine the employee on behalf of the County.

(c) *Confidentiality*

Medical authorizations and/or medical records provided by the employee or the employee's treating and/or County's examining physician shall be used solely by the County to carry out its rights and obligations under GML §207-c, administering the contractual §207-c procedures, or where release is authorized or required by law. Such authorizations and/or medical records shall be kept and maintained strictly confidential and shall not be disclosed to or discussed with any persons other than the Sheriff and other persons involved in and responsible for making or assisting in the making, and/or litigating determinations of eligibility for GML §207-c benefits. Toward that end, such records and/or documentation shall be placed in a sealed envelope, delivered to the Sheriff and maintained in a medical file which is separate and distinct from the employee's personnel file and located in a separate locked cabinet. If necessary in order to make a determination as to eligibility for §207-c benefits or return to light or full duty, the County may examine the medical records and/or documentation received; however, such inspection shall be conducted in a confidential manner with only those having a need to know having access to the information. After the County's examination of the records and/or documentation is completed, the records and/or documentation shall be placed back and maintained in the medical file. If production/ disclosure of these medical records to others is required or authorized by law or legal process, the County will provide prior written notification to the employee listing the records to be released and to whom the records are to be released. Access without the employee's consent by any other individuals will be considered a breach of the County's contractual obligation to keep such records confidential. Any employee for whom such a §207-c file is maintained shall have access to his/her file upon his/her request. Access to the same shall not be unreasonably denied.

Section 3 - Status Pending Determination of Eligibility for Benefits

- (a) The employee shall be placed on sick leave pending determination of his/her eligibility for §207-c benefits. The determination shall be made within thirty (30) calendar days of the submission of the §207-c application pursuant to Section 4. If the employee has no available sick leave he/she may use vacation, personal leave, or compensatory time to remain on the payroll during the thirty (30) day period. If the Sheriff's written determination is not made on or before day thirty, the employee will be placed on interim §207-c status pending the determination. Time spent on the payroll beyond the initial date for making a determination shall not be charged to the employee if it is determined that he/she is ineligible for the §207-c benefit.
- (b) In the event that it is determined that the employee is entitled to §207-c benefits, the County shall credit back to him/her all leave which he/she expended prior to the determination, within two (2) weeks of the determination.
- (c) In the event that it is determined that the employee is not entitled to §207-c benefits, he/she will be permitted to use sick leave, vacation, personal leave, and compensatory time provided he/she remains medically unable to perform the duties of his/her position.
- (d) In the event the injury or illness is deemed to be covered under the Workers Compensation Law, an employee can elect to receive Workers Compensation benefits in lieu of sick leave, personal leave, vacation, or compensatory time.

Section 4 - Benefit Determinations

- (a) The County shall promptly review an employee's application for §207-c benefits and shall make an initial determination of his/her eligibility within thirty (30) calendar days after the submission of the application. "Submission" shall be deemed complete upon delivery of "The County of Chautauqua Sheriff's Office General Municipal Law §207-c Application" to the office of the Sheriff.
- (b) In determining the application the County may require a more detailed statement from the employee than that contained on the application. The County may take statements from witnesses and may send the employee to a physician or physicians of its choice for examination at the County's expense.
- (c) The determination of the Sheriff will be made in writing to the employee, setting forth the basis for the determination. In the event that the application is denied, the County will simultaneously provide the employee, without cost, a copy of all medical information produced or acquired by it, in connection with the employee's application and determination for §207-c benefits. The County will continue to provide the employee with additional medical information subsequently produced or required.

- (d) All §207-c status determinations shall be copied to the Chautauqua County Sheriff's Employees' Association, Inc., the County Finance Department- Payroll Division, Insurance Department, and Law Department, with the express understanding that no confidential medical or other documentation shall be transmitted therewith.

Section 5 - Assignment to Light Duty

- (a) As authorized by the provisions of Subdivision 3 of §207-c, the County, acting through the Sheriff, or the Sheriff's designee, may assign a disabled employee specified light duties, consistent with his/her status as an employee. In the event that the employee is scheduled for an IME to evaluate his/her ability to perform light duty, (s)he will be provided with a copy of the proposed light duty statement and be given reasonable opportunity to be evaluated by his/her treating physician regarding the ability to perform light duty prior to being directed to perform light duty.
- (b) Such an employee may submit to the Sheriff, or the Sheriff's designee, any document or other evidence in regard to the extent of his/her disability. The Sheriff, or the Sheriff's designee, may cause a medical examination or examinations of the employee to be made at the expense of the County. The physician selected shall be provided with a list of types of duties and activities associated with a proposed light duty assignment and shall make an evaluation as to the ability of the disabled employee to perform certain duties or activities, given the nature and extent of the disability. A copy of the proposed light duty description shall be simultaneously delivered to the employee.
- (c) Upon review of the medical assessment of the employee's ability to perform a proposed light duty assignment and other pertinent information, the Sheriff, or the Sheriff's designee may make a light duty assignment consistent with medical opinion and such other information as he or she may possess. A employee ordered to light duty shall be provided with a copy of the detailed light duty statement and the medical report supporting the order to light duty.
- (d) Further, if an employee is ordered to light duty and refuses to comply with said order and he/she fails to provide medical documentation contesting said light duty, his/her benefits will cease until a determination is made pursuant to Section 7 of this procedure with regard to the employee's physical ability to perform the light duty assignment. The employee will be placed on sick or other approved leave status during this time period.
- (e) In the event the employee provides medical documentation to contest the light duty order, the benefits of §207-c will continue until a hearing, pursuant to Section 7 of this procedure is held. It is understood that assignment to light duty is in the nature of a "make work" assignment and that an employee so assigned does not have any entitlement to a continued light duty assignment for an indefinite duration of time. Light duty assignments will not extend beyond ninety days, except in exceptional circumstances. In no case shall the light duty assignment of an employee extend beyond one year and eleven months in duration.

Section 6 - Termination of Benefits

- (a) Salary or wages provided by §207-c of the General Municipal Law shall terminate upon the employee being retired pursuant to a service retirement, an accidental disability retirement, or a performance of duty disability retirement, as set forth in the Retirement and Social Security Law, upon the effective date of the retirement.
- (b) Any other termination or claim of waiver of benefits will be subject to review pursuant to Section 7 of this Procedure.

Section 7 - Dispute Resolution Procedure

In the event that the County denies an application for §207-c benefits, seeks to discontinue §207-c benefits for any reason, or there is a dispute about whether an employee is capable of performing a specific light duty assignment, the matter will be submitted directly to an arbitrator mutually selected by the parties from a panel of ten (10) predetermined arbitrators. In the event the parties cannot agree, the parties will utilize PERB or AAA to select an arbitrator. The party seeking to utilize this Dispute Resolution Procedure shall forward to the other a written demand for arbitration. The determination of the arbitrator shall be consistent with New York State law, and shall be final and binding on the County and the employee, but shall not preclude further review at a subsequent date based upon new or supplemental medical or other information. In the event that the arbitrator determines that the employee is entitled to §207-c benefits, the County shall credit back to him/her all leave time accruals which he/she expended prior to said determination.

The County and the employee will divide the cost of the arbitration equally. Any transcript or medical testimony will be paid for by the party requesting such transcript or calling such medical witness. The parties will provide for exchange of all necessary and relevant medical information prior to hearing.

Section 8 - Disability Retirement

Consistent with §207-c, the County, the employee, or both, may file an application on the employee's behalf for retirement under Sections 363 or 363-c of the New York State Retirement and Social Security Law. The party who submits the application to the Retirement System shall notify the other party that such an application is being made and shall provide to the other party a copy of all documents forwarded to the Retirement System.

Section 9 - Continuation of Contract Benefits


- (a) While on leave pursuant to §207-c for a period of six (6) months or less, an employee shall continue to accrue all economic fringe benefits (*i.e.*, holiday pay, clothing allowance, leave accruals, etc.) provided by the Collective Bargaining Agreement.

- (b) After six (6) months in any calendar year or continuous period of time, the employee receiving §207-c benefits shall be entitled only to the payment of salary (including any increases), longevity, medical expenses associated with the line-of-duty illness/injury, and health insurance in accordance with the Collective Bargaining Agreement and the Plan Document and Summary Plan Description for the Chautauqua County Health Plan. The six (6) month time period shall commence to run from the date that payment of § 207-c benefits is approved.
- (c) In the event that the employee is assigned to light duty, the employee shall be entitled to all contractually negotiated fringe benefits as if (s)he were in a full duty capacity.

Section 10 -Third Party Reimbursement of Benefits


- (a) In the event that a claim is made or a lawsuit is filed against a third party who has allegedly caused the illness or injury for which an employee receives §207-c benefits, the Sheriff or his designee shall immediately be notified of such claim.
- (b) In the event the employee makes a claim or commences a lawsuit such as hereinbefore described, the §207-c benefits wages paid in excess of Workers' Compensation, or in excess of \$2,000.00 per month when no fault applies, shall be included as money damages.
- (c) In the event an employee fails to provide notice of such claim and settles with the third party, prejudicing the right of Chautauqua County to seek reimbursement, a credit against such third party recovery shall accrue to Chautauqua County for any §207-c benefits paid as hereinbefore described.

FOR THE COUNTY OF CHAUTAUQUA:



Joseph A. Gerace, Sheriff

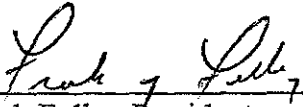
Dated: 10/27/03



Mark W. Thomas, County Executive

Dated: 11/3/03

FOR THE CHAUTAUQUA COUNTY SHERIFF'S
EMPLOYEES' ASSOCIATION:



Frank Fuller, President

Dated: 11/6/03

COUNTY OF CHAUTAUQUA SHERIFF'S OFFICE

General Municipal Law § 207-c
Application

Check one:

_____ New Illness/Injury

_____ Recurrence of Previous Illness/Injury
Date of Previous Illness/Injury _____

1. _____
Name of Employee

2. _____
Address

3. _____
Home Telephone Number

4. _____
Age

5. _____
Name of Supervisor

6. _____
Current Job Title

7. _____
Occupation at time of injury / illness

8. _____
Length of employment w/ Chautauqua County Sheriff's Office

9. _____
Date of incident
Or date of discovery

10. _____
Day of week

11. _____
Time of incident

12. a. _____
Name of Witness(es)

b. _____

c. _____

13. a. _____
Name(s) of co-employee(s) at the incident site

b. _____

c. _____

14. Describe what the employee was doing when the incident occurred. (Provide as many details as possible. Use additional sheet(s) if necessary.)

15. Where did the incident occur? Specify. _____

16. How was the claimed injury or illness sustained? (Describe fully, stating whether injured person slipped, fell, was struck, etc., and what factors led up to or contributed, including weather conditions or intervening factors such as damaged/faulty stairways, etc. Use additional sheet(s) if necessary.)

17. How /when was the incident first reported (i.e., in person, telephone)?

To whom? _____ Time _____

Witness (if any) _____

18. Was first aid or medical treatment authorized? _____

By whom? _____ Time _____

19. Name and address of attending physician _____

20. Name of hospital _____

21. State nature of injury and parts of body affected _____

22. Will the employee be returning to duty? _____

When? _____

Date of Report

Signature of Injured Employee/
Representative

Sworn to before me this
_____ day of _____, 20____

Notary Public

CC: Sheriff's Office Admin
County Insurance/Workers Compensation Office
Human Resources
Law Department
Jail

New York State Employees
Retirement System
Governor Smith State Office Building
Albany, New York 12244

To: the Comptroller of the State of New York

In compliance with Section 363 and 363-c of the Retirement Law instructing me to notify your department of any and all injuries sustained in the line of duty as an employee of the Chautauqua County Sheriff's Office, I hereby submit the following report:

Name of Employee

Retirement System Registration Number

Address

Date and time of incident

Description of injury or illness

Medical care required

Remarks

Date

Employee's Signature

Witness to injury

LIMITED MEDICAL AUTHORIZATION

TO:

RE: _____ dated _____
(Injury/Illness) (Date)

You are hereby authorized to permit the inspection and copying, by the County of Chautauqua, of all summaries, reports, x-rays, medical records, and other writings compiled by or for you in the course of your treatment of me, including any reports of hospitals and medical practitioners, diagnostic tests and procedures, and physicians' reports, related to my admission, care, treatment, diagnosis, and/or prognosis for injuries sustained by me as a result of an incident which occurred on or about _____. The County of Chautauqua agree(s) to be responsible for any charges incurred for these copies.

PLEASE TAKE NOTICE that this authorization specifically PROHIBITS the release of any interview, statement, summary, or report not contained in my existing medical records. Nor does it permit the removal of any of your original records or x-rays from your custody.

IT IS UNDERSTOOD AND AGREED by all parties herein that by accepting and using this authorization, the County of Chautauqua will promptly forward copies of any and all records obtained by this authorization to me at the following address:

IT IS FURTHER UNDERSTOOD AND AGREED that a copy of this authorization may be used with the same force and effect as the original.

STATE OF NEW YORK)
) SS.:
COUNTY OF)

On this ___ day of _____, 20___, before me personally appeared _____ to me known and known to me to be the same person described herein and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Notary Public

County of Chautauqua
And
Chautauqua County Sheriff's Employees' Association
General Municipal Law 207-c Procedure

Panel of Arbitrators Pursuant to section 7

1. Paul Caffera
2. Elizabeth Croft
3. Howard Foster
4. Mike Lewandowski
5. James Markowitz
6. James McDonnell
7. Stuart Pohl
8. Thomas Rinaldo
9. Jeffrey Selchick
10. John Watson