
CHAPTER 3 - CONTINUATION OF PAY

- 3-1 PURPOSE.** This chapter furnishes the information and instructions necessary for the Claims Examiner (CE) and Employing Agency's Workers' Compensation Coordinator (WCC) to understand and implement the provisions of the Comprehensive Merit Personnel Act (CMPA) pertaining to Continuation of Pay (COP).
- 3-2 AUTHORITY.** D.C. Code § 1-623.18 authorizes the Employing Agency (EA) to continue an injured worker's salary for up to 21 calendar days (unless hired before January 1, 1980, then 45 days) of wage loss due to disability and/or medical treatment following a job-related traumatic injury. The intent of this provision is to eliminate interruption of the employee's income for absences or temporary reassignment resulting from a traumatic injury that is quickly resolved or while the Public Sector Workers' Compensation Program (PSWCP) is processing the claim. COP is considered pay, not compensation, and is therefore subject to deductions for income tax, retirement, eligible benefits, etc.
- 3-3 COP DEFINED.** COP is the continuance of the employee's regular pay (not inclusive of premium pay or differentials) for a period not to exceed to 21 calendar days (unless hired before January 1, 1980, then 45 days) of disability. *See* D.C. Code §1-623.18.
- A. Disability. The employee is entitled to continued pay when he or she is totally disabled for work or partially disabled for work, including temporary reassignment by personnel action to a lower grade or position with a lower rate of pay.
- B. Medical Care. The employee is entitled to continued pay when he or she loses time from work due to the need for medical examination and treatment for the work injury.
- C. Light Duty. Informal assignment of light or restricted duties, without a personnel action and without loss of pay, is not counted as continued pay under D.C. Code §1-623.18 and does not decrease the number of COP days available to the claimant. *See* 7 D.C.M.R. §107.1(b).
- D. Relationship to Compensation. COP during the 21 or 45 day period is not considered compensation as defined by paragraph 12 of D.C. Code §1-623.01 and therefore is subject to income tax, retirement and other deductions. *See* D.C. Code §1-623.18(d).
- E. Waiting Period. If the disability is 14 days or less, the employee is not entitled to COP and must be placed on leave without pay (LWOP) status for the first three (3) days which would otherwise have been workdays for the employee. *See* D.C. Code §1-623.17(a). The three (3) day waiting period does not count toward the 21 days (or 45 days, if applicable) of COP eligibility unless the disability lasts 15

days or more, in which case the employee may be taken out of LWOP status. *See* 7 D.C.M.R. 112.3.

- (1) For purposes of the 3-day waiting period only, a “day” is eight (8) hours. Three (3) days consists of twenty-four (24) hours.
- (2) To the extent that a workday exceeds 8 hours, the remaining shift hours shall be counted toward the remaining days of the waiting period.

Example 3-3(E)(1):

A Fire & EMS employee who works a 24-hour shift is injured and unable to work. The employee files Form 1 and elects to charge the time off to COP rather than his personal leave. If approved, the employee is not entitled to COP for the first scheduled shift missed due to the work injury and must record the time off as leave without pay (LWOP), unless the employee’s period of disability exceeds 14 days or is followed by a permanent disability. NOTE: One 24 hour shift is equivalent to 3 eight hour “days” for COP waiting period purposes.

Example 3-3(E)(2):

A call center employee who works a 12-hour shift is injured and unable to work. The employee files Form 1 and elects to charge the time off to COP rather than his personal leave. If approved, the employee is not entitled to COP for the first 2 scheduled shifts missed due to the work injury and must record the time off as leave without pay, unless the employee’s period of disability exceeds 14 days or is followed by a permanent disability. NOTE: Two 12-hour shifts is equivalent to 3 eight hour “days” for COP waiting period purposes.

3-4 **ELIGIBILITY.** The policies and procedures for determining whether the injured or deceased individual was an employee of the District of Columbia government within the meaning of D. C. Code § 1-623.01(1) are found elsewhere in the PSWCP Manual. The eligibility of certain classifications of these employees to receive COP is determined by statute and regulation. *See* D.C. Code §1-623.18 and 7 D.C.M.R. §107.2.

- A. **Separate Legislation.** Persons whose entitlement to workers’ compensation benefits depend upon separate legislation, such as pensioned or pensionable members of the District of Columbia Metropolitan Police Department and the Fire and Emergency Medical Services, are also excluded from COP.
- B. **Individuals Serving Without Pay or for Nominal Pay.** Persons whose employment status for compensation purposes is determined under D.C. Code § 1-

623.01(1)(B) or (C), who work without pay or for nominal pay (e.g. volunteers), and are generally not carried in a regular, continuing-pay status are not eligible for COP unless the individual is also an employee within the meaning of D.C. Code §1-623.01(1)(A). *See* 7 D.C.M.R. § 107.2.

- C. Jurors. Any person serving as a petit or grand juror subject to Chapter 121 of Title 28 of the United States Code is entitled to COP, if he/she is also a District employee as defined under D.C. Code § 1-623.01(1)(A) and (B). *See* 7 DCMR § 107.2.
- D. Temporary Employees. Persons in this category are civil officers or employees of the District government and are included under the provisions of D.C. Code § 1-623.18. However, COP for employees in this category is limited to the term of their employment. In other words, if the employee's term expires within the 21-day COP period, COP will expire the same day the term expires. Once COP expires, Claimant shall only be entitled to workers' compensation. Like any other person who first makes a claim for COP after District employment ceases, a temporary employee who first reports a traumatic injury after the employment ends is not entitled to COP. *See* 7 DCMR § 110.1(g).

3-5 PSWCP RESPONSIBILITIES.

- A. Intake. The PSWCP shall provide a 24-hour call center or web application that is capable of receiving reports of injury to employees. Upon receipt of such report, the call center or web application shall generate a completed Form 2-Part A and send said report to the immediate superior or EA WCC for execution, with a copy to the EA WCC. If the employee's immediate superior or EA WCC certifies that the employee's injury was a properly compensable work injury, the Program shall issue a first-fill card for prescription drugs and pay for the employee's initial treatment.
- B. COP Decision Review. The PSWCP shall have the authority to review and override all decisions concerning COP made by the EA upon:
- (1) Appeal by the employee; or
 - (2) Claim for compensation submitted by the employee.

- 3-6 EMPLOYEE RESPONSIBILITIES. To be eligible for COP, an injured employee must meet three requirements: 1) experience a traumatic injury that is job-related ; 2) be medically unable to work due to the traumatic injury; and 3) file timely written notice of such injury and assert a claim for COP within thirty (30) days of the traumatic injury on Form 1. In addition to those three elements, if the employee requests COP, the employee must also present medical evidence in support of any claimed disability within ten (10) calendar days after making a claim for COP. The injured employee is also responsible for advising his or her physician of any available modified duties within one (1) day of an

offer, and for returning to duty upon release to any available work, whether regular, light, or modified.

- A. Traumatic Injury. A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. *See* 7 D.C.M.R. § 199.1(kk). Such an injury is distinguishable from an occupational disease or illness in that the latter is a condition produced by the work environment over a period longer than a single work day or shift.
- B. Timely Notice of Injury. The injured employee, or someone acting on his or her behalf, must provide:
- (1) A written report on Form 1 (Employee's Notice of Injury/ Claim for Continuation of Pay),
 - (2) Form 4 (Employee Authorization for Release of Medical Records), and
 - (3) Form 5 (Employee Authorization for Release of Earnings) to the WCC within thirty (30) days after the traumatic injury. *See* 7 D.C.M.R. § 104.2.

If an employee makes a claim for continuation of pay, the employee shall also submit completed Forms 3 and 3A within ten (10) days of submitting Form 1.

The employee's submission of a sick leave slip or any form of leave request other than Form 1, Form 3, Form 3A, Form 4 and Form 5 to the EA may not be construed as an election of personal leave over COP for disability resulting from a traumatic injury.

D.C. Code § 1-623.22, which provides that failure to file a claim in a timely fashion may be excused for exceptional circumstances, does not apply to claims for COP.

- C. First Work Stoppage. The employee's first work stoppage must occur within thirty (30) days of the date of injury in order for the employee to be entitled to COP. If the employee's work stoppage occurs more than thirty (30) days after the injury, the employee may claim workers' compensation. If the employee's work stoppage during the workers' compensation period lasts under fifteen (15) days, the employee is only eligible for workers' compensation after three days on leave without pay (LWOP).

Example 3-6(C):

An employee, who works 8-hour shifts Mondays to Fridays, is injured on Friday, February 1st. The employee returns to work on Monday in crutches and continues to work until March 15th. On March 15th, the employee's doctor took him out of work for ten (10) days because he needed a procedure to treat his injury. Because the employee's first work stoppage occurred on March 15th, more than thirty (30) days after the date of injury, the employee is not eligible for COP. The employee may, however, receive wage loss benefits through workers' compensation. The employee's workers' compensation wage loss payments will be limited to seven (7) work days because the first three (3) days of wage loss must be charged and recorded as leave without pay (LWOP). Had his doctor placed him out of work for 15 days or more, the first three days of wage loss would not have to be charged to LWOP.

- D. Medical Evidence. The employee must ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to when the employee can return to his or her date of injury job, is provided to the WCC and the PSWCP within ten (10) calendar days after filing the claim for COP. *See* 7 D.C.M.R. § 108.1(b). The EA may continue the employee's pay absent such evidence if the nature and severity of the injury warrant the continuation. COP may be reinstated retroactively if payment was not initially authorized but supporting medical evidence is later received, unless the employee is receiving or has been approved for indemnity compensation.
- E. Advising the Physician. Where the WCC has advised the employee that a specific alternative position exists, the employee must provide the treating physician a description of any specific alternative positions offered to the employee within three (3) days of the offer and ensure that the treating physician responds promptly to the WCC and the PSWCP, with the opinion as to whether and how soon the employee could perform that or any other specific position. Additionally, the employee must so advise the treating physician and ask the physician to specify the work limitations imposed by the injury. The employee must provide the WCC and the PSWCP with a copy of the physician's response. *See* 7 D.C.M.R. § 108.1.
- F. Return to Duty. The injured employee must return to work upon notification by the treating physician that the employee is able to perform regular work, light duty, or modified duty, and the WCC has advised that work within those restrictions is available. If the employee refuses to do so, the continued absence from work will result in controversion of COP. COP will be controverted if the employee refuses to respond to the agency's offer of alternative work that accommodates the limitation(s) arising out of the disability. Refer to Chapter 9 – Return to Work for information pertaining to an employee's requirement to accept modified duty assignments.

3-7 EMPLOYING AGENCY RESPONSIBILITIES. When an employee has suffered a job-related traumatic injury, the EA should take action with respect to the following:

- A. Providing Notice of Injury. The EA should take the following steps to ensure that the injury is promptly reported and treatment is promptly authorized for the injured worker.
- (1) The immediate superior must call into the PSWCP call center to report the injury and notify the WCC, preferably before the end of the shift in which he or she becomes aware of the employee's injury, but no later than 24 hours after receiving notice.
 - (2) The immediate superior or WCC shall provide the employee with the Claim Information Packet, which shall include Form 1 (Employee's Notice of Injury/Continuation of Pay), Form 3, Form 3A, Form 4, and Form 5 upon notification of injury.

When a call is made into the PSWCP call center, Form 2-Part A will be generated. The forms will be e-mailed to the immediate superior and WCC. The WCC shall be responsible for ensuring that: Form 2 – Part A is signed by the immediate superior and returned to the PSWCP within 72 hours of receiving the PSWCP generated Form 2 – Part A.

- B. Right to Receive COP and Election. Upon receiving Form 1 from the employee, that also requests COP, the WCC shall notify the employee of the following:
- (1) The employee's right to receive COP, and the need to elect among COP, annual or sick leave, or leave without pay, for any period of disability. *See* 7 D.C.M.R. § 109.1(b).
 - (2) The employee is not entitled to COP for the first three work days prior to the commencement of COP and those days must be charged to leave without pay (LWOP), if the disability lasts less than 15 days. *See* D.C. Code § 1-623.17(a)(1).
 - (3) The employee must submit medical evidence of a disabling traumatic injury on the supplied Form 3 within ten (10) calendar days after filing a claim for COP, or COP may be controverted or terminated.
- C. Controversion. The EA through the WCC, or another delegate, based on the investigation, information, and or medical evidence received, shall inform the employee and the PSWCP whether COP will be controverted and, if so, whether pay will be terminated, and the basis for such action. The reasons must conform to those indicated in Section 3-8 below. The EA's decision must be accompanied with appeals rights to the PSWCP. The EA must also explain the basis for controversion on Form 2 - Part B and submit detailed information in support of the controversion to the PSWCP in accordance with 7 D.C.M.R. § 110.2. The EA may controvert a claim for COP for up to one (1) year after the claim is filed, as indicated in Section 3-8. Refer to Section 3-8 in this chapter for information pertaining to the controversion of COP.

Example 3-7(C)(1):

An employee sustains a work injury and files Form 1 with the EA, electing to charge the time off to COP rather than his personal leave. The EA investigates the claim and learns from viewing video footage and speaking to several witnesses that the injury reported never occurred. The EA may controvert the employee's claim for COP by completing Form 2 – Part B and explain that Claimant's COP is denied because video footage and witness statements obtained reveal that the injury never occurred. The EA must attach the witness statements and forward the video footage to the Program. The EA should contact the employee to verify whether the employee wants the absence to be charged to annual leave, sick leave, or leave without pay.

Example 3-7(C)(2):

An employee sustains a work injury on February 1st and files Form 1 with the EA, electing to charge the time off to COP rather than his personal leave. The EA investigates the claim and approves the employee's request. On February 14th, the employee is released to return to work with light duty restrictions. The EA notifies the employee in writing that it will accommodate the medical restrictions and instructs the employee to return to work on February 16th. The employee fails to return to work as directed. The EA should issue a notice to the employee controverting COP benefits effective February 15th. The EA may also take appropriate disciplinary action under the DPM.

D. Submission of Information. The WCC is tasked with:

- (1) Calling in the claim, if the immediate superior has not yet done so;
- (2) Signing or ensuring that the immediate superior sign Form 2 – Part A and returning it to the PSWCP within 72 hours;
- (3) Investigating the incident, reviewing the employee's completed Form 1, Form 3, Form 3A, Form 4, and Form 5, completing Form 2 – Part B, and transmitting all Forms, along with all other available pertinent information (including the basis for any controversion) to the PSWCP within three (3) business days after receiving the completed Form 1, Form 3, Form 3A, Form 4 and Form 5 from the employee. *See* 7 D.C.M.R. § 109.1(d).
- (4) In addition, the WCC shall submit any additional reports that the PSWCP requires.

E. Return to Duty. The EA through its WCC is responsible for advising the claimant of his or her obligation to return to work as soon as possible in accordance with the medical evidence. The EA may make the offer of temporary alternative work to the employee over the telephone, but must confirm the offer in writing no later

than three (3) days thereafter. A copy of the written offer shall be transmitted to the PSWCP. The PSWCP cannot evaluate the position to determine whether the position meets the claimant's physical restrictions until the position is offered in writing. Written offer of alternative employment to the employee shall include the following:

- (1) Return to work date and time;
- (2) If the employee works in a position, in which the employee's shift or schedule varies, the notice should also inform the employee of the shift he or she will be working for the remainder of the pay period;
- (3) Location to which the employee should report and to whom;
- (4) Notification of the effective date of the termination of the employee's COP, if applicable;
- (5) The rate of pay, duties, and responsibilities for the position, if the employee is directed to a position other than his or her pre-injury position;
- (6) The medical restrictions and accommodations provided, if the employee is returning to his or her pre-injury position with accommodations;
- (7) Notification that employee must take this notice to his or her physician and elect to accept the position within three (3) days of issuance or risk controversion of COP;
- (8) Notification that if the employee fails to report to work on the scheduled date without an excused absence, his or her failure to report may be designated as an absence without leave (AWOL), which may be subject to disciplinary action; and
- (9) Appeals rights to the PSWCP.

F. Termination of COP. The EA shall terminate COP when:

- (1) The 21-day (or 45-day if the employee was hired before January 1, 1980) period expires;
- (2) The period in which a claim for COP is controverted by the EA or the PSWCP;
- (3) The PSWCP accepts or denies the employee's claim for compensation of benefits; or

- (4) The employee returns to work, unless the employee returned to work in a position with a lower rate of pay.

See 7 D.C.M.R. § 113.1. See Section 3-11 for information pertaining to the termination of COP.

3-8 **CONTROVERSION OF COP.** As stated at 7 D.C.M.R. § 110.2, the EA may controvert a claim for COP based on the information submitted by the employee or secured upon investigation. "Controvert" means to dispute, challenge, or deny the validity of the claim. To controvert the claim, the EA must complete the indicated portion of Form 2 and submit detailed information in support of the controversion to the PSWCP.

- A. As outlined in 7 D.C.M.R. §107.2 and based on the employee's status (see paragraph 4 in this chapter), COP is not payable in the following instances:
 - (1) The claimant's status as an employee is defined by D.C. Code § 1-623.01(1)(B), which refers to persons serving without pay or nominal pay, and the claimant is not also an employee within the meaning of Section 2301(1)(A) of the Act; or
 - (2) The employee is statutorily excluded from receiving compensation under D.C. Code § 1-623.01 *et seq.* (e.g. the employee is a uniform member of the Metropolitan Police Department or the Fire Department of the District of Columbia).
- B. As outlined in 7 D.C.M.R. § 110.1, the EA can controvert COP in the following instances:
 - (1) The disability is a result of an occupational disease or illness, not the result of a traumatic injury;
 - (2) When the traumatic injury does not prevent the employee from working;
 - (3) No notice was provided pursuant to D.C. Code §1-623.19 within 30 days following the injury;
 - (4) The employee initially reported the injury after employment was terminated;
 - (5) The injury occurred off the EA's premises, and the employee was not in the course of employment. (For purposes of this section, course of employment means acting in furtherance of the scope of the EA or performing duties outlined in the employee's position description);
 - (6) The employee was not in the course of employment;

- (7) The injury resulted from the employee's willful misconduct, when the employee's intention to bring about the injury or death of himself or herself or of another person, or when the employee's intoxication by alcohol or illegal drugs was the cause of injury. See D.C. Code § 1-623.02 (a) (1)-(3). (Intoxication includes any controlled substance obtained or used without proper medical prescription and improper use of legally prescribed medication);
- (8) Work stoppage first occurs 31 days or more after the injury;
- (9) When the PSWCP denies the employee's claim for compensation;
- (10) When the employee was not in active pay status at the time of traumatic injury (for example, in the case of leave without pay or absence without official leave);
- (11) When the employee fails to comply with 7 D.C.M.R. §§ 107 and 108;
- (12) If the employee is not eligible for COP;
- (13) When the employee fails to return to work on the date provided in the notice of return to work, when offered alternative work that accommodates any limitations arising out of the disability; or
- (14) When the medical evidence does not support the claim for COP.

3-9 **INTERRUPTION AND FORFEITURE OF COP.** The EA may interrupt COP, or refuse to retroactively convert previously-used leave to COP, if the claimant fails to submit medical evidence supporting disability within ten (10) calendar days after the claim is submitted, unless the employer's own investigation shows disability to exist.

- A. **Interruption of COP.** If COP is discontinued on the basis that insufficient medical evidence is received within ten (10) calendar days to support disability, and such evidence is later provided for the period in question, the EA, through its WCC, may reinstate COP retroactive to the date of discontinuance of COP.
- B. **Forfeiture of COP.** COP may be forfeited based on refusal or obstruction of a PSWCP-directed scheduled medical examination. If an employee refuses to submit to or obstructs an examination required by the PSWCP under the provisions of D.C. Code §1-623.23(a), COP paid or payable during the period of the refusal is forfeited and is subject to recovery by the EA. Action to deny payment of COP (and any subsequent compensation) may be taken only if the claimant was provided written notice of forfeiture for failure to comply with D.C. Code §1-623.23(d) at the time the appointment was arranged. Obstruction under 7 D.C.M.R. §136.9 means “impeding or any attempt to hinder the physician's medical examination of the claimant, including not appearing for a medical examination, refusing to answer the physician's questions, refusing to cooperate

with the examining physician's request, and providing the physician with false statements.” Benefits deemed forfeited are not subject to restoration.

Example 3-9(B):

An employee sustains a workplace injury and files Form 1 for COP and Form CA7, Part A for workers' compensation benefits. The EA approves the employee's COP, but the employee's workers' compensation claim remains pending. In the course of adjudicating the employee's workers' compensation claim, the PSWCP's claims examiner instructs the employee to report to a physician for an additional medical examination. The employee fails to show up. The EA shall stop the employee's COP upon notification of the employee's obstruction by the PSWCP. The employee's absence during the forfeited period shall be charged to annual leave, sick leave, or leave without pay.

3-10 NOTICE OF COP CONTROVERSION, INTERRUPTION, OR FORFEITURE.

The EA shall issue written notice to the employee, when an employee's COP is controverted, interrupted, or forfeited. The notice shall document the basis and evidence for the action taken, the effective date of the action, and include a right for review by the PSWCP. The notice shall inform the employee that he or she has fifteen (15) days of the notice to seek review by the PSWCP. A copy of the notice shall also be provided to the PSWCP.

3-11 COUNTING COP DAYS. The 21 days (or 45 days for employees hired before January 1, 1980) during which pay may be continued are counted as calendar days, not work days. *See 7 D.C.M.R. § 107.3.*

- A. Subject to the waiting period provided at Section 3-14, COP may commence as early as beginning the first full day that the employee begins to lose time from work after the date of injury, unless the injury occurs before the beginning of the work shift on the work premises. The EA shall keep the employee in a pay status or grant administrative leave for any fraction of a day or shift lost on the date of injury, with no charge to the 21-day period (45-day for employees hired before January 1, 1980). If the injury occurs before the work shift begins, the date of injury may be charged as the first day of the 21-day period of COP (45-days for employees hired before January 1, 1980). In all cases, COP must begin within 30 days of the traumatic injury.

Example 3-11(A)(1):

An employee, who works Mondays – Fridays, sustains a workplace injury on Tuesday afternoon. He leaves work to seek medical attention and is taken out of work for the remainder of the week. The employee notifies his employer and remains out of work as directed. If the employee's disability exceeds 14 days, the employee's COP may begin as early as Wednesday, the day following his injury. If the employee's disability is less than 15 days, the first three days shall be charged to LWOP pursuant to Section 3-14, and COP begins the following Monday.

Example 3-911A)(2):

An employee, who works Mondays – Fridays, sustains a workplace injury on Tuesday afternoon. He receives medical treatment on the premises and returns to work. The employee reports to work on Wednesday. Thursday morning the employee goes to the doctor and is taken out of work for the remainder of the week due to the workplace injury. The employee notifies his employer and remains out of work as directed. If the disability exceeds 14 days, the employee's COP begins Thursday, the first day after the date of injury that he begins to lose time. If the employee's disability is less than 15 days, the first three days shall be charged to LWOP pursuant to Section 3-14, and COP begins the following Tuesday.

- B. If the employee stops work for a portion of a day or shift other than the date of injury, such day or shift will be counted as one full calendar day for purposes of counting the 21 days of COP (45 days for employees hired before January 1, 1980).
- (1) The employee is only entitled to payment of COP for the hours lost due to the work injury (and not the entire day or shift) if work is available for the remaining partial shift. Any payment of COP, however, shall be counted as one full day for the purpose of counting COP days.
 - (2) If the EA does not allow the employee to work a partial shift, the employee is entitled to payment of COP for the entire shift.
- C. Regular days off are included, when counting the 21 days of COP, if COP has been used on the regular work days immediately preceding or following the regular day(s) off and medical evidence supports disability. This rule does not apply when determining the COP start date.

Example 3-11(C)(1):

An employee, who works Mondays – Fridays, sustains a workplace injury on Friday afternoon. He leaves work to seek medical attention and is taken out of work for the entirety of the next week. The employee notifies his EA and remains out of work as directed. If the disability exceeds 14 days, the employee's COP begins Monday, which is the first day following the injury that the employee was scheduled to work. The intervening Saturday and Sunday, regular days off, are excluded in the 21 days of COP eligibility. If the employee's disability is less than 15 days, the first three days shall be charged to LWOP pursuant to Section 3-14, and COP begins the following Thursday.

Example 3-11(C)(2):

An employee, who works Mondays – Fridays, sustains a workplace injury on Thursday afternoon. He leaves work to seek medical attention and is taken out of work for the remainder of the week and through the entirety of the next week. The employee notifies his EA and remains out of work as directed. If the disability exceeds 14 days, the employee's COP begins Friday, which is the first day following the injury that the employee was scheduled to work. The intervening Saturday and Sunday, regular days off, are included in the 21 calendar days of COP. If, however, the employee's disability is less than 15 days, the first three work days shall be charged to LWOP pursuant to Section 3-14, and COP begins the following Wednesday.

Example 3-11(C)(3):

An employee, who has been out of work in excess of 14 days due to a traumatic work injury, is seen by his treating physician Friday morning and medically released to resume regular work duties the same day. The employee promptly notifies his employer that he can return to work and is told to report for duty on Monday. The intervening Saturday and Sunday should not be counted towards the employee's COP period because the medical release to resume regular work duties does not support ongoing disability over the weekend.

- D. Delayed Disability. An injury which does not immediately disable the employee or require medical care may later cause disability and/or require medical treatment. Provided that the claimant reported the injury on a form approved by PSWCP within 30 days following the injury, his or her entitlement to COP must begin within 30 days of the date of injury, whether its use results from disability due to the original injury or the need for medical treatment or recovery. However, where continuing days of COP bridge the 30th day, pay may be continued until entitlement is exhausted or the claimant returns to work.

In cases where the claimant is not immediately disabled, the employee should complete Form 1 in the same manner as if the injury were immediately disabling and indicate on the form that he or she is continuing to work. The immediate superior should call into the PSWCP call center to report the injury and sign the generated Form 2 - Part A. If disability subsequently occurs or medical care becomes necessary, the employee shall resubmit Form 1 and the WCC shall submit Form 2 - Part B with updated information concerning work stoppage. The employee shall also submit all required medical evidence, including Forms 3, 3A, 4 and 5 within ten (10) days of submitting the Form 1, which requests COP. The forms shall be transmitted to the PSWCP in the usual manner, and pay should be continued as described above, as long as more than 30 days have not elapsed from the date of injury.

- E. Recurrence of Disability. The continuance of COP for recurrence of disability provided at 7 D.C.M.R. § 109.2 is subject to the limitations in this section. If an

employee returns to work following the initial period of disability without using all 21 days of COP (45 days for employees hired before January 1, 1980) and then suffers a recurrence of disability within 21 days (45 days for employees hired before January 1, 1980) of the first return to duty following the initial period of disability, he or she should submit a completed Form CA1 (Request to Reinstate COP) and may elect to use the remaining days of COP provided that any valid period of entitlement to COP for the injury must begin within 30 days of the injury or 21 days (or 45 days, as applicable under section 2318 of the Act) of the date the employee first return to work after the initial disability.

NOTE: This section does not contemplate a new claim for a recurrence of a previously accepted disability, but rather a recurrence of disability for an injury that has not yet been accepted or declined by PSWCP.

- F. If the 21-day (or 45-day, if applicable) entitlement has been exhausted, or the recurrence begins more than 21 days (or 45 days, as applicable under D.C. Code §1-623.18) after the employee returned to work following the initial period of disability, the EA may not pay COP. Rather, the employee should claim compensation for wage loss on Form CA-7 Part A.

Example 3-11(F)(1):

An employee, hired after 1980 and entitled to 21 days of COP, sustains a work injury on the morning of January 1. The employee leaves work to seek medical attention and is gone for the remainder of the day. The employee returns to work on January 2 and continues to work until January 9. The employee is unable to work due to the work injury on January 10, 11, 12 and 13 and elects COP for those days. The employee returns to work on January 14 and does not lose any further time from work due to the injury until February 1. On February 1, 2 and 3, the employee again loses time from work due to the disability. The 21-day recurrence period began to run when the employee returned to work on January 2, because a work stoppage occurred on the day of injury. The employee is entitled to COP for the time lost in January, subject to the 3 day waiting period per D.C. Code §1-623.17, but is not entitled to COP for time lost in February, as it is more than 21 days after the first return to work date.

Example 3-11(F)(2):

An employee, hired after 1980 and entitled to 21 days of COP, sustains a work related injury on the morning of January 1. The employee leaves work to seek medical attention and is taken out of work for 2 weeks. The employee returns to work on January 15 and loses no further time from work due to the injury until February 1. The employee is out of work from February 1-10 and returns to work on February 11. In this example, the 21 day recurrence period starts to run on January 15. The employee is entitled to COP for the lost time in January and February, not to exceed 21 days total. The employee is not subject to the 3-day waiting period because the period of disability exceeded 14 days.

Example 3-11(F)(3):

An employee, hired after 1980 and entitled to 21 days of COP, sustains a work related injury on the morning of January 1. The employee leaves work to seek medical attention and remains out of work due to the injury until January 6. The employee returns to work on January 7 and continues to work until January 29. The employee is unable to work for 15 days starting on January 29. The employee is entitled to COP for January 2-6, subject to the 3 day waiting period per D.C. Code §1-623.17, -but not for time lost on or after January 29. The 21-day recurrence period began to run when the employee returned to work on January 7 and had lapsed when the employee began to lose time on January 29. The employee should claim compensation for wage loss on January 29 forward using Form CA-7 Part A.

3-12 TERMINATION OF COP. COP should not be terminated until one of the following circumstances occurs:

- A. Permanent Workers. Employees are entitled to receive COP for up to 21 calendar days (45 days for employees hired before January 1, 1980). *See* D.C. Official Code §1-623.18(b)(2). An exception exists where the employee is separated from employment. In this event, the employee will be separated regardless of the injury, and the employee is not entitled to COP after the date of separation.
- B. Temporary Workers. Temporary workers are often provided with a notice of appointment which indicates the date on which the appointment is scheduled to expire. The employee is not entitled to COP after the date of expiration. If a temporary worker's term of employment is changed, written notice of the change is necessary to support termination of COP at an earlier date than the original expiration of appointment date. Where termination of COP in a specific case depends upon the termination date of temporary or seasonal employment, the CE should determine the ending date of employment as the date the assignment would have ended were it not for the injury.
- C. Seasonal Workers. Where termination of COP in a specific case depends upon the termination date of seasonal employment, the end date of employment corresponds with the earlier of:
 - (1) The expiration date of the employment;
 - (2) The end of the “season” as determined by the EA; or
 - (3) The date the assignment would have ended were it not for the injury.
- D. Return to Regular Duty. COP is discontinued when the claimant returns to regular duty. COP is also terminated when the medical evidence indicates that the claimant is medically capable of returning to the date of injury job without restrictions stemming from the work-related medical condition.

- E. Return to Modified Duty. COP should be terminated when an employee fails to return to work when offered an alternative position that accommodates medically recommended work restrictions. See Section 3-12 in this chapter.
- F. Injury Due to Intoxication. COP shall be terminated, where the employee was injured while under the influence of alcohol or illegal drugs, or during improper use of controlled substances.
- G. Disciplinary Action. COP may be terminated when a preliminary notice of disciplinary action is issued before the injury and becomes final during the COP period. The CE must ensure that the case record contains documentation that the preliminary notice of termination was in fact issued prior to the date of injury. Where these conditions are not met, the CE must advise the WCC to continue pay.
- H. Controversion. COP may be terminated upon controversion by the EA or PSWCP.
- I. Compensation Claim Adjudication. COP shall terminate upon the PSWCP decision to accept or deny the employee's claim for compensation benefits.

3-13 COP AND MODIFIED-DUTY ASSIGNMENTS. Employing Agencies are expected to provide their injured employees with modified alternative-duty assignments during COP whenever possible, and claimants are expected to accept such offers of work. The WCC should promptly report an employee's return to modified duty to PSWCP. If a modified duty assignment is accepted, COP shall be controverted, unless the employee earns less than the employee's regular pay in his or her modified duty assignment. In which case, the difference between the employee's regular pay and the pay for the light duty or modified duty job shall represent COP paid.

3-14 REFUSAL OF A MODIFIED-DUTY ASSIGNMENT. Where the claimant refuses or fails to respond to an offer of work, the CE must determine whether the modified duty assignment is within the claimant's established work restrictions and provide the employee an opportunity to submit his or her reasons for the refusal.

- A. If the duties and physical restrictions of the modified assignment are found not to be within the claimant's medical restrictions as established by the employee's treating physician or the Additional Medical Examination doctor, the WCC should be advised and instructed to reinstate COP retroactive to the date of termination. If the work restrictions established by the treating physician or the Additional Medical Examination doctor are not on file, the WCC or employee should be asked to submit the medical documentation as soon as possible.
 - (1) When making a decision to accept or deny the employee's claim for compensation, the employee's refusal of a modified duty assignment cannot be the determining factor for denying a claim for compensation

if the modified assignment was not within the claimant's established medical restrictions.

- B. If the duties and physical restrictions of the modified assignment are found to be compatible with the claimant's medical restrictions as established by the employee's treating physician or Additional Medical Examination physician, the employee must be afforded ten (10) days to submit his or her reasons for the refusal. The decision to accept or deny a claim for compensation at the end of the COP period should be deferred pending the resolution of the issue.
- (1) If the claimant responds and the refusal is found to be justified, the EA should be instructed to reinstate COP retroactive to the date of termination. A decision to accept or deny any subsequent claim for compensation should be made based on the facts of the claim as made in Form CA-7 Part A.
 - (2) If the refusal is not found to be reasonable or justified (or the claimant does not respond within the 10-day period), the controversy of COP shall continue until such time as a determination is made to accept or deny the claim for compensation. A formal decision terminating entitlement to both COP and denying the claim for compensation should be issued pursuant to D.C. Code §1.623-47(i). Termination of entitlement to compensation is effective the date the EA terminated COP, rather than the date of the formal decision. The date of the EA's termination of COP should be the date the job was available to the employee.

3-15 PAYMENT OF COP. An employee is entitled to payment of COP at his or her regular pay rate, subject to existing benefit and tax deductions.

- A. The employee is not entitled to COP for the first three (3) scheduled work days follow the disability except:
- (1) When the disability exceeds 14 calendar days; or
 - (2) When the disability is followed by a permanent disability.
 - (3) An employee may use annual or sick leave while on disability, but the 3 day waiting period does not begin to run until use of annual or sick leave has ceased.

See D.C. Official Code §1-623.17. The employee's absence from work for first three (3) scheduled work days due to disability shall be charged to leave without pay (LWOP) prior to payment of COP.

- B. Overtime, Premium and Hazard Pay. Overtime, premium, and hazard pay may not be included in computing the pay rate for COP purposes.

- C. Within-Grade Increases and Promotions. Since COP is payment of salary and not compensation, grade increases and promotions which the employee would have received but for the injury are included.
- D. Regular Work Schedules. For an employee in the regular work force who works the same number of hours per week, the weekly pay rate equals the number of hours regularly worked each week times the hourly pay rate on the date of injury, in accordance with the following formula: $\text{Weekly Hours} \times \text{Hourly Rate} = \text{Employee's average weekly earnings}$. This applies to both full-time and part-time employees working on either a permanent or temporary basis.
- E. Irregular Work Schedules. For a part-time employee, whether permanent or temporary, who does not work the same number of hours per week, the weekly pay rate is the average of the weekly earnings for the year prior to the date of injury, in accordance with the following formula: Total pay earned during one-year period prior to injury (excluding overtime and differentials), divided by 52 weeks for the year prior to the injury (or prorated if employee worked less than a year). For purposes of this computation, a partial-work week is counted as an entire week.
- F. Intermittent and Seasonal Workers. For intermittent and seasonal workers, whether permanent or temporary, who do not work either the same number of hours or every week of the year, the weekly pay rate is the average of the employee's earnings in District employment, excluding overtime and differentials, during the year prior to the injury. The average annual earnings, however, must not be less than 150 times the average daily wage earned within one year prior to the date of injury. The pay rate should be computed using both the year prior and average weekly earnings formulas. The higher result should be accepted as the pay rate for COP.
- (1) Year Prior Calculation: The employee's weekly earnings during the year prior to the injury is calculated by dividing total pay in District employment (excluding overtime, premium, hazard or similar pay) by total number of weeks worked. For purposes of this computation, a partial-work week is counted as an entire week.
 - (2) Average Weekly Earnings Calculation: To determine the average weekly earnings, multiply 150 times the average daily wage earned during the year prior to the injury, divided by 52 weeks.

3-16 COP AND LEAVE ELECTION. An employee may use annual or sick leave to cover all or part of an absence due to a work injury, but the employee's COP for disability does not begin, and 3-day waiting period specified by D.C. Code §1-623.17(a) does not begin, until any use of leave ends.

- A. An employee may elect COP by checking the appropriate box on the front of the Form 1.
- (1) A Form 1 without an election between COP and leave should be construed as an election for COP.
 - (2) A leave election during the COP period is not irrevocable.

If an employee has elected sick or annual leave for the period and then wishes to elect COP, the EA is required to make such a change on a prospective basis (from the date of the employee's request). The EA shall adjust the employee's leave retroactively provided that the employee establishes that his or her work injury and resulting disability prevented the employee from submitting Form 1 and thereby necessitating the use of personal leave.

- B. Entitlement to COP may not be extended beyond the 21-day period (45-day for employees hired before January 1, 1980) nor may the EA give the employee administrative leave necessitated by the work injury, unless the circumstances meet the requirements of 6B D.C.M.R. §§ 1266.16 – 17.
- C. Once a claim for COP has been accepted, the EA is required to convert the employee to COP status immediately without the employee's written election. The employee shall remain in COP status until the expiration of the COP time period, until COP is controverted, or until a claim for compensation is accepted or denied by the PSWCP.
- D. If the PSWCP denies a claim for COP (or denies the claim in its entirety), the amount paid will be charged to sick or annual leave at the option of the employee, or shall be deemed an overpayment within the meaning of D.C. Code § 1-629.03.

3-17 FORMAL ADJUDICATION OF COP. The final determination on entitlement to COP rests with the EA when the disability is 21 days or less (45 days for employee hired before January 1, 1980). If the employee files a claim for compensation and the disability exceeds 21 days (45 days for employee hired before January 1, 1980), the final determination on entitlement to COP rests with the PSWCP. Final decisions regarding COP are not subject to appeal or grievance.

In instances where the employee files a claim for compensation and the disability exceeds or is expected to exceed 21 days (45 days for employee hired before January 1, 1980), the CE should give priority to cases in which COP has been terminated to determine whether the EA's action is correct by taking the following steps:

- A. COP Review. If the EA improperly controverted COP the CE will issue written notice to the EA and employee, indicating that the EA should continue payment of COP pending formal adjudication of the claim. If additional information is needed prior to adjudicating the claim for COP, the CE shall issue an appropriate letter requesting additional information.

B. COP Approval.

- (1) If the claimant meets the requirements for COP, and if the EA did not controvert the claim, a formal approval of COP is not needed, as the claimant is already receiving COP.
- (2) If COP was controverted by the EA but COP is in fact payable, the CE should release an acceptance letter that specifically includes a provision for approval of COP, indicating the accepted condition(s) and notifying the claimant of the procedures to follow for payment of COP.

The CE must notify the EA when a controverted claim is accepted and COP is approved and must provide a sufficient explanation as to why the EA's controversion of the claim was not upheld. This also applies to situations where the EA fails to provide a specific reason or argument for the controversion.

In such instances the EA is responsible for payment of COP until the date the compensation claim is accepted, subject to the limitation of D.C. Code §1-623.18 and 7 D.C.M.R. §112.

C. COP Denial.

- (1) If the entire case is denied, a formal Notice of Initial Determination (ID) is issued to the claimant pursuant to 7 D.C.M.R. § 120, with a copy to the WCC. COP paid may then be charged, at the employee's option, to sick or annual leave, or be deemed a debt to the District and subject to collection pursuant to D.C. Code §1-629.03. *See* D.C. Code §1-623.18(c).
- (2) If the claim is accepted but COP must be denied in whole or in part because the employee did not meet his or her responsibilities for eligibility, a formal denial of COP should be sent to the claimant and WCC. The formal decision should state the dates for which COP is approved, and explain why the other dates claimed are denied.

- D. COP Approval for Jurors. In a case where a juror, who is also a District employee, is eligible for COP, the CE should forward a copy of Form 1 to the WCC, advising it to continue the employee's pay beginning the day after the date of the employee's termination of service as a juror.

3-18 LEAVE RESTORATION. To the extent that an employee had to use personal leave as a result of his or her job-related injury prior to approval of COP, once his or her claim for COP has been accepted, the employee may be entitled to a restoration of leave. Any request for leave restoration granted under this section shall not result in an employee

receiving more than 21 days (45 days for employee hired before January 1, 1980) of COP. The employee may make a request to restore personal leave, however, any leave restored shall be subject to a 3-day LWOP waiting period, if the period of disability is under 15 days. The process for requesting restoration of leave are as follows:

- A. If the employee's disability does not exceed 21 days (45 days for employee hired before January 1, 1980), the request for leave reinstatement shall be made by submitting Form CA10 to the WCC within 14 days of approval for COP, or
- B. If the employee's disability exceeded 21 days (45 days for employee hired before January 1, 1980), the request for leave reinstatement shall be made by submitting Form CA10 to the PSWCP within 14 days of acceptance of the claim for indemnity benefits. *See* 7 D.C.M.R. § 114.2.

3-19 CLAIM FOR RECURRENCE OF INJURY. If an employee should make a claim for a recurrent disability arising out of an injury for which a claim has already been accepted, the employee shall only be entitled to reinstatement of compensation benefits, provided that the recurrence occurs within one (1) year after the last indemnity payment or the final order issued by a judicial entity. *See* D.C. Code §1-623.22(e). The employee shall not be granted COP for any injury, once a claim for compensation for the injury has been accepted by the PSWCP. If the employee making a claim for a recurrent disability arising out of an injury for which a claim has already not been accepted or denied by the PSWCP, refer to Section 3-11(E).