



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Risk Management



Phillip A. Lattimore, III
Chief Risk Officer

Administrative Order No. AO-13-03

Date: July 3, 2013

SUBJECT: Continuation of Pay During the Pendency of an Initial Determination of Entitlement to Workers' Compensation Benefits

DISTRIBUTION: Office of Risk Management Employees, Third Party Administrator Employees, Agency Risk Managers and selected agency employees.

EXPIRATION: Until Superseded or Rescinded

1. Purpose

The purpose for this D.C. Office of Risk Management (ORM) Administrative Order (Order) is to provide information about the right an injured D.C. employee has to receive continuation of pay (COP) while a determination by the Public Sector Workers' Compensation (PSWC) Program (the "Program") as to whether the employee's injury is a compensable work place injury is pending. This Order will also provide information as to how to handle COP when a claim is ultimately denied.

2. Applicability

Pursuant to Section 6(j) of Reorganization Plan No. 1 of 2003, effective December 15, 2003 (50 DCR 6504, amended 50 DCR 7298), this Order applies to all ORM employees, employees of the Third Party Administrator who implements the District's PSWC Program, each agency Risk Manager and each agency employee responsible for processing an injured D.C. employee's claim for COP.

3. Authority

D.C. Official Code §§1-623.02b, 1-623.17, and 1-623.18; 7 DCMR §§109.3, 109.4, 109.6, and 109.8.

4. Policy

- a. Continuation of Pay, or COP, is the term used for the period in which an injured employee is entitled to continue to receive 100 percent of his/her regular salary despite being unable to work due to a temporary injury and/or medical treatment resulting from a workplace injury. The purpose of COP is to eliminate any interruption of the employee's income while the Program is processing the employee's claim that the injury took place while in the course and scope of his/her employment.

- b. An injured employee is not entitled to receive any compensation or COP during the first three work days after the date of injury. The employee must use accrued annual or sick leave to account for this initial period. *See* D.C. Official Code §1-623.17; 7 DCMR §109.3.
- c. Once the initial three work day waiting period has expired, the injured employee is entitled to, and shall receive COP, from the agency for a period not to exceed 45 days (if the employee was hired before January 1, 1980) or 21 days (if the employee was hired after January 1, 1980), so long as the employee has, using a form created by the Program for this purpose, filed a claim with her or his immediate supervisor within 30 days of the workplace injury. The right to COP begins immediately after the conclusion of the three day waiting period, and the employee is **not** required to (i) wait until the Program accepts his/her claim, (ii) use sick or annual leave, or (iii) take unpaid leave before collecting COP payments. COP is subject to the employee's usual deductions from his/her pay (*i.e.*, income tax, insurance, retirement, etc.). *See* D.C. Official Code §1-623.18; 7 DCMR §109.4.
- d. The right to receive COP, regardless of the injured employee's date of hire, terminates when the Program issues an Initial Determination (ID) as to whether the injured employee's claim for PSWC benefits has been accepted or denied. If the Initial Determination is issued before the expiration of the 45 or 21 day COP period, the injured employee is only entitled to receive COP for the period beginning after the three day waiting period and concluding on the date of the ID. *See* D.C. Official Code §1-623.18(b); 7 DCMR §109.4.
- e. If an injured employee receives COP and (i) the Program issues an Initial Determination denying the claim for benefits *or* (ii) the claim for COP is later denied or controverted, the employee shall be required to choose whether the COP payments should be charged to his/her sick or annual leave. For example, if the injured employee files a claim for PSWC benefits due to stress, receives 21 days of COP and the claim is later denied because stress is not a compensable injury, the employee will be asked whether she would prefer to have those 21 days converted and deducted from her accrued sick or annual leave. *See* D.C. Official Code §1-623.18(c); 7 DCMR §109.6.
- f. If the injured employee fails to return the form to inform the Program whether the COP payments should be charged to her or his sick or annual leave within 30 days, the employing agency shall charge the COP payments to the employee's sick leave. If there is insufficient sick leave available, the employing agency (after exhausting the available sick leave) shall thereafter charge the COP payments to the employee's annual leave. If there is insufficient sick and annual leave available, the employing agency shall notify the Program who will treat the unaccounted for COP as an overpayment subject to recovery by the Program. *See* D.C. Official Code §1-623.18(c); 7 DCMR §109.8.



g. A COP claim can be controverted before the expiration of the 45 or 21 day COP period if the Program determines (i) the injury occurred while the employee was off duty, (ii) the workplace injury was brought about as a result of intoxication, willful misconduct or intentional harm or death, (iii) the injury has not prevented the employee from working, (iv) the inability to work first arose six months or more after the date of the injury, if the claim has been accepted for medical benefits only, (v) the injury was first reported after the employee was terminated from the job, and/or (vi) the claim is not a compensable work place injury. *See* D.C. Official Code §1-623.18; 7 DCMR §109.5.

5. Final Arbiter of COP Issues

ORM is the final arbiter on COP issues. *See* D.C. Official Code §1-623.02b.

6. Effective Date

This Order is effective immediately.


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