



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Risk Management



Phillip A. Lattimore, III
Chief Risk Officer

ADMINISTRATIVE ISSUANCE SYSTEM

Administrative Order. No. 14-05

Dated: November 14, 2014

SUBJECT: Restoration Rights of Injured Employees

DISTRIBUTION: ORM Employees, HR Advisors, Agency Heads, Agency Risk Managers, Public Sector Workers' Compensation Program

EXPIRATION DATE: Until Superseded or Rescinded

The purpose for this Administrative Issuance is to provide information to the workers' compensation community about the rights of injured workers to return to work by setting forth the District of Columbia's policy and practice of restoring, retaining or returning injured employees to their pre-injury job within two years of receiving workers' compensation benefits, or until the expiration of the term, temporary or taper appointment of the injured employee.

A. Policy:

An effective workers' compensation program provides (1) job protection and security to employees who sustain workplace injuries, illnesses or death, and (2) medical treatment, wage loss compensation and other benefits to injured workers so that they can heal, recover and return back to work in a timely manner. Accordingly, a District employee with an accepted workers' compensation claim has an absolute right to be restored to his/her former position within two years of a workplace injury if the employee is able to return to work in a full duty capacity. D.C. Code § 1-623.45(b), which is applicable to career and educational service employees of all agencies that participate in the District's public sector workers' compensation program, provides that the department or agency which was the last employer shall "immediately and unconditionally" accord the employee the right to resume his/her former or equivalent position that he would have had or acquired had he/she not been injured, provided that the injury has been overcome within two years after the date the individual begins to receive workers' compensation benefits. Therefore, an employee who returns to full duty within two years from the time the compensation begins, or from the time compensable injury recurs if the recurrence begins after the employee resumes full time employment with the District government, shall be entitled to resume his or her former or equivalent position immediately upon the end of compensation. DPM § 827.15. This right depends on the extent of the recovery within the two year period.

B. Applicability

This Administrative Issuance shall apply to all career and educational service participants of the District of Columbia Public Sector Workers' Compensation Program (PSWCP) irrespective of

union affiliation or government service, and constitutes this agency's reasonable interpretation of its statute, regulations and policies. D.C. Code § 1-623.45.

C. Restoration and/or Retention Rights

Agencies are required to restore career and education service employees who receive public sector workers' compensation to their pre-injury position, or, to a position substantially similar to the pre-injury position, or to the next available position for which the employee is qualified to hold, for two years from: (1) the date of the commencement of compensation; (2) the time compensable disability recurs after the employee resumes full-time employment with the District; or (3) until the expiration of the term, temporary or TAPER appointment, whichever comes first. See District Personnel Manual (DPM) § 827.3; § 827.15; § 827.17.

1. **Leave without pay status:** During the two year restoration period in which the injured employee is unable to work because of a workplace injury, the human resource staff of the employing agency shall place the employee in a leave without pay status. DPM § 827.3.

2. **Notice of restoration rights:** At the time that the employee is placed in a leave without pay status, the agency shall inform the employee that he/she has the right to be restored to his/her position of record for two years. DPM § 827.6.

3. **Separation of Injured Employee:** At the end of the two year period, the agency may initiate action under DPM Chapter 16 to separate the employee from the agency's employment rolls.

4. **Promotions During the Two Year Restoration Period:** Even though an injured employee may be away from the workplace for two years, the agency shall consider the employee for all promotions for which the employee would have been considered had the employee been present. The agency shall promote the injured employee if it can determine that the employee would have received a promotion if he/she had not been injured and absent from work. D.C. Code § 1-623.45(a). DPM § 827.8. In all other cases, the promotion shall be discretionary.

5. **Increase of Salary Through Reclassification of Position During Restoration Period:** If the position of the injured worker is reclassified to a higher grade while the employee is recuperating from his/her injury, the agency shall place the injured worker in the upgraded position when he/she returns to work within the two year restoration period. D.C. Code § 1-623.45(a). DPM § 827.9.

6. **Transfer of Employee's Job Functions to Another Agency:** At times, an employee's job function is transferred to another agency while the employee is injured, not at work, and is on workers' compensation. The agency that gains the employee's job function shall also retain the injured worker in his/her position during the restoration period, or assign the employee to a position of like status and pay during the restoration period. DPM § 827.12.

7. **Abolishment of Agency:** An injured employee shall retain his/her restoration rights even if the employing agency is abolished and the employee's job functions are not transferred to another agency. DPM § 827.13. When an agency is abolished, the agency shall:

a. Provide the Director of the D.C. Department of Human Resources with a list of employees with restoration rights. The agency shall provide DCHR with the employee's name, date of birth, position, grade and pay, and the name of the agency unit in which the employee's position was located;

b. Request DCHR to state in the official personnel folder of the employee that the employee was provided with notice of his/her restoration rights (see Section A (2) above); and

c. Request DCHR to place each employee who seeks to be restored to duty according to personnel regulations.

8. **Reduction-in-force** : Employees who have been injured on the job maintain their two year restoration rights in a reduction-in-force (RIF), including a RIF where an employee's job is not transferred to another agency. Consistent with the government's responsibility to restore injured workers to a job when an entire agency is abolished pursuant to paragraph 7, the pre-injury agency and DCHR must restore the employee to a position substantially similar to the pre-injury position, or to the next available position for which the employee is qualified to hold during the two year restoration period if the employee is able to work in a modified or full-duty capacity. The position can be in any government agency, and the placement shall be through a non-competitive process.

9. **Non-competitive Placement:** Agencies shall restore an injured worker to a job at a grade no higher than the last position held and the placement shall be through a non-competitive process. DPM § 830 (1)(j).

10. **Partially-Recovered Injured Worker:** Agencies shall make every effort to restore employees who have partially recovered and are able to return to work in a modified duty capacity. If the pre-injury agency is unable to find the injured worker a modified duty position, the PSWCP shall place the worker in a similar position in any government agency and shall require the pre-injury agency to pay the salary of the injured worker during the two year restoration period.

11. **No Restoration Rights for Employees Who Have Been Separated For Cause:** Injured workers who have been separated for cause (*i.e.*, performance or conduct) have no restoration rights.

12. **Job Performance on Restoration Rights:** An agency cannot refuse to restore an employee who suffered a compensable injury because of alleged poor performance prior to the injury. In other words, an agency cannot use the injury as a reason to circumvent performance-based or adverse action procedures that are otherwise required. However, an on-the-job injury does not prevent an agency from taking action against the employee for performance or conduct.

13. **Employees Who Are Physically Disqualified and Unable to Return to Former Job:** An agency shall make every effort to restore, within two years from the date that workers' compensation began, an injured employee who, because of the workplace injury (i.e. loss of leg) is unable to carry out the essential requirements of his/her job for which he/she has restoration rights, to another position with like status and pay in the agency for which the employee is qualified to hold. The disqualified employee must be able to perform other work. DPM § 827.16. If the pre-injury agency is unable to find the injured worker a duty position, the PSWCP shall place the worker in a similar position in any government agency and shall require the pre-injury agency to pay the salary of the injured worker during the two year restoration period.¹

D. Priority Consideration for Injured Workers Who Exceed Two Year Restoration Period.

Injured employees who were separated because of workplace injury or whose return to full duty takes longer than the two year restoration period shall be entitled to priority consideration for restoring the employee to his/her position or an equivalent position, provided he/she applies for re-appointment within thirty (30) days of the termination of his/her indemnity pay. DPM § 827.22; §844.1(b).

E. Right to Grieve When Agency Fails to Restore Injured Worker.

When an agency refuses to restore an injured worker, or determines it is not feasible to restore an employee, it shall notify the employee in writing of the reasons for its decision and of the employee's right to grieve the agency's failure to restore. DPM § 827.23. An employee may file a grievance with his agency or the personnel authority when he/she believes that any of these rules have been violated. The grievance shall be resolved under grievance procedures established in either Chapter 16 of the District Personnel Manual, the agency's personnel policies (if it is an independent entity) or under the relevant collective bargaining agreement. The injured worker shall also notify ORM of any grievance that it may have with the employing agency.

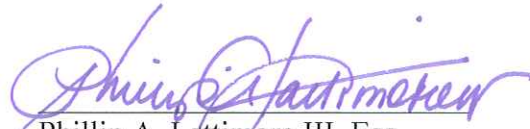
F. Investigations

The Office of Risk Management may investigate allegations of violations of this policy and report its findings to the City Administrator. In addition, ORM may request the D.C. Department of Human Resources to monitor and evaluate the administration of personnel practices to ensure compliance with workers' compensation regulations and policy, and take corrective and/or disciplinary action against any employee who fails to adhere to personnel regulations, if warranted. DPM § 846.2.

¹The difference between a physically-disqualified injured workers and one who is partially-recovered (paragraph 10 above) is that the partially-recovered employee is expected to fully recover eventually. The physically-disqualified employee typically has a permanent medical condition, such as the loss of a leg, which makes it unlikely that he/she will ever be able to return to the former position, provided that a human resource assessment is conducted that disqualifies the employee from the pre-injury job. An employee who is physically-disqualified from a pre-injury job may can work in another position in which the employee is qualified to perform.

G. Effective Date

This order is effective immediately.



Phillip A. Lattimore III, Esq.
Chief Risk Officer