

CHAPTER 9 - RETURN TO WORK

- 9-1 PURPOSE AND SCOPE.** To establish the rights and obligations of employees and Employing Agencies (EA) in connection with returning employees who sustain compensable injuries under Subchapter 23 of the Comprehensive Merit Personnel Act (CMPA) to gainful employment.
- 9-2 POLICY.** The Public Sector Workers Compensation Program (PSWCP) and Employing Agencies (EA) shall ensure that employees who sustain compensable injuries under Subchapter 23 of the CMPA are afforded the opportunity to return to gainful employment within the District of Columbia government, as granted by law.
- 9-3 AUTHORITY.** The rights to return to employment for employees who sustain compensable injuries are outlined at D.C. Official Code §§1-623.04, 1-623.45, 1-623.47, and where applicable, the Americans with Disabilities Amendments Act of 2008 (ADA), 42 U.S.C. §12101 *et seq.*
- 9-4 DEFINITIONS.** As used in this Chapter, the following definitions shall apply:
- A. **COMPENSABLE DISABILITY.** The loss of wage earning capacity due to a work-related injury or disease that the PSWCP has accepted as compensable.
 - B. **COMPENSABLE INJURY.** An injury as defined under Section 2301(5) of the Act.
- 9-5 RESPONSIBILITY.** The District of Columbia Public Sector Workers' Compensation Program (PSWCP), the employee, and the EA have the following obligations in implementing an employee's rights to restoration of duty:
- A. **PSWCP.** The PSWCP shall return employees to work and/or provide vocational rehabilitation services, as required under Section 2304 and 2347 of the CMPA. The PSWCP Return to Work Specialist (RWS), the EA's Workers' Compensation Coordinator (WCC), and the employee with compensable disabilities who is medically able to return to work should work collaboratively to achieve the goal of returning the employee to work consistent with the provisions of this Chapter. The RWS shall maintain a list of all positions temporarily vacated by Workers' Compensation indemnity recipients. The RWS shall refer to the list of vacated positions in order to identify suitable modified duty assignments.
 - (1) **ADA Interactive Process.** When an employee who sustains a compensable disability is medically released to return to limited duty, the Program shall notify the employee of his or her right to make a request for reasonable accommodations under the ADA from the EA.
 - B. **EMPLOYEE.** The PSWCP is a return to work program. Employees are obligated to return to regular duty as soon as they are medically able to do so, and to avoid

activities while recovering from a work injury that might aggravate the compensable injury/condition. An employee, who is still under treatment for accepted conditions, who fails to adhere to medical restrictions and recommendations rendered during the course of treatment may have his or her benefits suspended pursuant to D.C. Official Code §1-623.24(E).

- (1) **Notice.** An employee, who is placed out of work as a result of a compensable injury, but is medically released to return to work in any capacity by a qualified health professional or qualified physician, must notify the PSWCP immediately, but not to exceed one (1) day of receiving the medical release. Failure to do so may result in the suspension of benefits.
- (2) **Medical Release.** An employee, who sustains a compensable disability, must receive a medical release to return to work by a qualified health professional or qualified physician prior to returning to work. An employee who works without such a release may be subject to disciplinary action prescribed under the District Personnel Manual (DPM) and suspension of his or her compensation benefits pursuant to D.C. Official Code §1-623.24(E).
- (3) **Return to Work.** An employee with a compensable disability is required to seek reemployment within the time limits provided by Section 2345 of the CMPA (D.C. Official Code § 1-623.45) as soon as he or she is medically able after a compensable injury. This includes accepting a modified duty assignment when offered and participating in vocational rehabilitation services at the PSWCP's direction. Upon expiration of his or her retention rights, an employee who is able to work is required to exercise due diligence in seeking reemployment within and outside of the District government.

C. **EMPLOYING AGENCY (EA).** The EA shall work with the PSWCP to return employees to work and/or provide vocational rehabilitation services, as required under Section 2345 and 2347 of the CMPA (D.C. Official Code §§ 1-623.45 and 1-623.47) and the ADA (42 U.S.C. §12101 *et seq.*). To support this effort, EAs shall have a designated Workers Compensation Coordinator (WCC). The WCC is responsible for handling and safeguarding the personnel and medical records and information of employees who sustain compensable injuries under Subchapter 23 of the CMPA (D.C. Official Code § 1-623.01 *et seq.*) and to carry out the EA's return to work responsibilities as outlined below.

- (1) **Maintenance of Records.** The EA shall identify the position vacated by an employee who sustained compensable injuries under Subchapter 23 of the CMPA (D.C. Official Code § 1-623.01 *et seq.*). The EA shall maintain the necessary records to ensure that such employees are afforded the rights and benefits granted by law and outlined in this chapter.
- (2) **Notification.** The EA shall immediately notify the PSWCP when an employee, who was absent from work due to a compensable disability, returns

to work, but not at the direction of the PSWCP. The EA shall provide such notice in writing through electronic mail to the RWS and CE.

- (3) **ADA Determination and Accommodation.** When an employee who sustains a compensable disability is medically released to return to limited duty and requests for reasonable accommodations under the ADA, the EA should determine whether the employee is eligible for reasonable accommodations under the ADA. However, the fact that an employee is awarded workers' compensation benefits, or is assigned a workers' compensation disability rating, does not automatically mean that the employee has a qualified disability under the ADA. Not all employees who sustain compensable injuries under Subchapter 23 of the CMPA (D.C. Official Code § 1-623.01 *et seq.*) necessarily have a disability within the meaning of the ADA (42 U.S.C. §12101 *et seq.*). If the EA determines that the employee is not eligible for accommodations under the ADA, the EA shall work with the PSWCP to identify and provide the employee with a modified duty assignment consistent with Section 2347 of the CMPA (D.C. Official Code § 1-623.47). (Refer also to Section 9-6 of this Chapter.)
- (4) **Modified Duty Assignment.** Section 2347 of the CMPA (D.C. Official Code § 1-623.47) requires EAs to provide a modified duty assignment, if available, to an employee who sustains a compensable disability under Subchapter 23 of the CMPA (D.C. Official Code § 1-623.01 *et seq.*) and can work in a modified duty assignment. Modified duty assignments may be within the EA or at another agency. EAs, through their WCC, shall work with the RWS to place injured workers within another agency when modified work assignments are not available within the EA and provide the RWS with the job description, pay rate, grade and step, and all other documents necessary for placing the employee in a modified duty assignment, where the employee is not performing the duties of his or her pre-injury position no later than three (3) days prior to the start date of the modified duty assignment.
- (5) **Vocational Rehabilitation.** Section 2304 of the CMPA (D.C. Official Code § 1-623.04) requires that the PSWCP direct and provide vocational rehabilitation services to employees with compensable disabilities. In doing so, the statute further requires the PSWCP to use the services or facilities of the District of Columbia government, when practicable. Therefore, EAs shall collaborate with the RWS and DCHR and allow for use of District Government services and facilities to provide employees with vocational rehabilitation services, as described in this Chapter.
- (6) **Retention Rights.** Section 2345 of the CMPA (D.C. Official Code § 1-623.45) provides employees with certain rights to resume their pre-injury employment status depending on whether an employee overcomes his or her injury and can return to his or her pre-injury position within two years of the

date compensation begins and lessening of disability. (Refer also to Section 9-10 of this chapter.)

9-6 EVALUATION.

- A. Full Duty Release without Restrictions. If the employee is medically released to return to work full duty without restrictions, and the employee has not been terminated by the EA, the employee shall return to work immediately. If the employee does not return to work after receiving such release, the Claims Examiner (CE), RWS and WCC must collaboratively identify a return to work date for the injured worker. The RWS must then issue the employee written notice in accordance with this Section 9-9.
- B. Release to Return to Work with Restrictions. When an employee is medically released to return to work with restrictions, the CE should immediately notify the WCC and RWS. *If the employee's medical restrictions do not prevent the employee from performing pre-injury duties,* the employee should be returned to his or her pre-injury position. If medical restrictions do prevent the employee from performing pre-injury duties, the employee may request for a reasonable accommodation under the ADA. If the employee is ineligible or does not request accommodations under the ADA, the employee should be provided a modified duty assignment in accordance with Section 2347 of the CMPA. The consideration given to employees who are released to return to work with restrictions should occur in the following sequence:
- (1) **ADA Opportunity.** Where applicable, the ADA should always take priority consideration when returning an employee with work restrictions to work.
 - (2) **ADA Requested.** Requests for reasonable accommodations under the ADA shall be handled by the EA's ADA Coordinator. The ADA Coordinator shall determine whether the employee is eligible for accommodations under the ADA. The ADA Coordinator and employee shall notify the WCC and RWS of the determination. If the ADA Coordinator determines that the employee is not eligible for accommodations under the ADA, the RWS must work with the WCC and DCHR to place the employee at a modified duty assignment, as discussed in Section 9-7 of this chapter. If the ADA Coordinator finds that the employee is eligible for accommodations under the ADA, the RWS shall notify the CE of the employee's return to work, so the CE can adjust the employee's indemnity compensation benefits, where appropriate.
 - (3) **ADA Not Requested.** If an employee does not request for a reasonable accommodation under the ADA, and the employee cannot perform the duties of his pre-injury position, the EA shall provide the employee with a modified duty assignment pursuant to Section 2347 of the Act, if available. If the employee cannot be placed within the EA, the RWS shall work with DCHR to

identify suitable available positions within the District government that they employee may work at as a modified duty assignment.

- C. AFTER POSITION IS IDENTIFIED. Once the EA and PSWCP have identified a position for the employee to return to work at as a modified duty assignment, the RWS shall provide the employee with notice in accordance with Section 9-9, with a copy to the CE. Upon receipt of the notice of return to work, the CE must update the employee's claim status in ERisk from TTD to TPD or TTD to closed, depending on whether the employee is entitled to compensation benefits, while working in the modified duty assignment. **NOTE:** This is important because failure to adjust the employee's claim status in ERisk will prevent the employee from entering time and being paid, when they start the modified duty assignment.

Example 9-6(C).1

An employee who was employed as a school teacher is injured and placed out of work. The employee is later released to return to work with restrictions that prevent him from lifting more than 10 pounds. His pre-injury job requires him to teach and occasionally rearrange the classroom's furniture. The employee does not request for a reasonable accommodation under the ADA. The CE, RWS, and WCC review the employee's position description and restrictions. They collectively determine that the employee may perform his duties, if the employee receives assistance in lifting. The EA agrees to modify the employee's duties to excuse him from lifting. The CE, RWS and WCC identify a return to work date for the employee. The RWS provides the employee with notice to return to work in accordance with Section 9-9. Upon receipt of the notice of return to work, the CE must update the employee's claim status in ERisk. Because the EA may treat this as a modified duty assignment, the EA may limit the accommodations to 6 months in any 12-month period, if it so chooses. *See* also Section 9-7 of this chapter. If the Claimant fails to accept the modified duty position, the Program may forfeit the employee's workers' compensation benefits.

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Example 9-6(C).2

An employee, who was employed as a 911 call taker is injured on January 1, 2017 and placed out of work. On August 28, 2017, the employee is released to return to work with restrictions that limit the employee to working only 6 hours per day. Prior to the injury, the employee worked 12 hours per day. In light of her restrictions, the Program informs employee of employee's rights to make a request for ADA accommodations to the EA. The employee makes a request for ADA accommodations. After reviewing the request, the EA determines that working 12-hour days is an essential function of her job and denies her request for reasonable accommodations. But because the employee's restriction was caused by a work injury, the EA must provide her with a modified duty assignment, if available. Here, the EA may provide her with the requested accommodation as a modified duty assignment or temporarily place her in another position, where she can work despite her restrictions. Because it is a modified duty assignment, the EA may limit the accommodations to 6 months in any 12-month period, if it so chooses. See also Section 9-7 of this chapter.

9-7 MODIFIED DUTY ASSIGNMENTS (MDA). EAs are required to provide employees who sustain an injury during the course of their employment with a modified duty assignment, if *available*. An *available* position may be an established or unestablished position within the EA to be determined based on the EA's need and at the EA Director's discretion. The modified duty assignment may also be an established or unestablished position within a different agency, if one is not available within the EA.

- A. Eligibility for the ADA. Because an employee's right to accommodations under the ADA supersedes the right to modified duty assignments under the CMPA, the EA should first consider whether the employee is eligible for a reasonable accommodation under the ADA. If the RWS is advised that the employee is not entitled to accommodations under the ADA, the CE, RWS and WCC should work together to determine whether the EA can provide the employee with a modified duty assignment within the EA, consistent with Section 2347 of the CMPA.
- B. Modified Duty Assignment. A modified duty assignment may be the performance of the employee's pre-injury position with accommodations/modifications or the temporary assignment of an employee to a different position for a specified period, with the employee returning to his or her regular duties at the end of the assignment or when his or her compensable disability is overcome, whichever occurs earlier. The employee does not fill the position to which he or she is assigned temporarily because the employee continues to be the incumbent of his or her pre-injury position. Note that an accommodations or assignment that is permanent in nature would not constitute a modified duty assignment because D.C. Official Code §1-623.47 expressly requires that modified duty assignments be temporary and may be limited to a maximum duration of 180 days (assigned in 90-day increments) in any 12-month period. An accommodation or assignment

that is permanent in nature may, however, constitute an accommodation under the ADA.

Example 9-7(B)

An employee, who was employed as an IT specialist is injured on January 1, 2017 and placed out of work. On June 1, 2017, the employee is released to return to work with restrictions that limit the employee to standing and walking only 4 hours per day and prohibits the employee from bending. His position requires him to travel and get underneath work stations to connect systems. Prior to the injury, the employee regularly walked around from site to site fixing computers and regularly bended over to set up work stations. In light of his restrictions, the Program advises the employee of his right to make a request for reasonable accommodations under the ADA from his employer. The employee declines to request for ADA accommodations. The RWS reviews the employee's restrictions, resume, training and work history and learns that the employee has experience and training in providing IT support over the phone. The RWS confers with the EA to determine whether the EA can provide the employee with a modified duty assignment based on the employees training and restrictions. The EA happened to have an opening in telephone IT support that has not been filled. The position is sedentary in nature and allows the employee to work within his medical restrictions. The EA must offer the employee with the opened position as a modified duty assignment, until it is filled. Because it is a modified duty assignment, the EA may limit the accommodations to a maximum duration of 180 days (assigned in 90-day increments) in any 12-month period, if it so chooses.

Example 9-7(B)(2)

Employee A, who was employed as a kindergarten teacher at ABC Elementary School is injured on January 1, 2017 and placed out of work. On July 1, 2017, the employee is released to return to work with restrictions that limit the Employee A to lifting only 10 pounds. As a kindergarten teacher, Employee A is required to be able to lift young children, who may weigh up to 45 pounds. In light of her restrictions, the Program informs Employee A of the employee's rights to make a request for ADA accommodations. Employee A declines to request for ADA accommodations. The RWS reviews Employee A's restrictions, resume, training and work history and learns that the Employee A has experience with teaching high school students. The RWS also reviewed the list of employees receiving workers' identifies a position for a high school teacher, which was vacated by Employee B who suffered a work injury, but is unable to return to work. The RWS confers with the EA to determine whether the EA can temporarily reassign Employee A to Employee B's position as a modified duty assignment. The EA approves the reassignment and Employee A can now return to work in a temporary capacity. Because it is a modified duty assignment, the EA may limit the accommodations to 6 months in any 12-month period, if it so chooses. *See* also Section 9-7 of this chapter.

- C. Placement outside of the Employing Agency. If the EA is unable to provide the employee with a modified duty assignment, the RWS should work with the EA and DCHR or other Agency HR Advisors to identify a suitable modified duty assignment for the employee within another agency.
- D. No Available Placement with District Government. If the RWS is unable to place the employee within the EA or another District agency, the case must be referred back to the CE for a determination of the employee's wage earning capacity pursuant to Section 2315 of the CMPA, unless the employee has reached maximum medical improvement and has not exhausted his or her right to vocational rehabilitation services under Section 2304 of the CMPA -- in which case the employee shall be placed in the vocational rehabilitation program. Note, however, that vocational rehabilitation services are not a substitute in place of a reasonable accommodation required by the ADA for an ADA-eligible employee with a disability-related occupational injury.
- E. Minimum Eligibility. To be eligible for placement into a modified duty assignment, the employee must have the appropriate medical release documents from a qualified medical provider to perform the modified duty. The medical release shall include any specific restrictions and their anticipated duration.
- F. Duration of Assignment. An employee's assignment to a modified duty assignment shall be temporary in nature. In any twelve (12) month period, the modified duty assignment may have a minimum duration of 2 basic non-overtime workdays, as that term is defined at D.C. Official Code § 1-612.01, or maximum duration of 180 days (assigned in 90-day increments). The modified duty assignment may be extended beyond 180 days, but always in 90-day increments at the EA's discretion, provided that the requirements of 6B D.C.M.R. 841 are met. The EA's duty to provide a modified duty assignment ends upon the employee's separation from District service.
- G. Determining Rate of Pay and Limitations. Part of identifying a suitable modified duty assignment for the employee involves identifying the appropriate modified rate of pay for the position identified, where the employee is unable to perform the duties of his or her pre-injury position during the modified duty assignment period. In doing so, consideration shall be given to the position description for the modified duty assignment, the employee's experience, training and qualifications. An employee, who is unable to perform the full scope of his or her duties and is temporarily assigned to a different position, shall have his or her rate of pay modified to reflect the appropriate rate of pay for the temporary assignment. The modified rate of pay, however, shall never exceed the employee's pre-injury rate of pay. If the modified rate of pay is lower than the employee's pre-injury rate of pay, the employee's wage loss benefits shall be adjusted in accordance with Section 9-8(D). Because the employee remains an incumbent of the position from which he or she is assigned while on modified

duty, the employee's pay for work performed in the modified duty position shall be paid by the EA.

- H. Notice, Time for Acceptance and Forfeiture. Once a modified duty position has been identified for an employee, the RWS shall issue a notice to the employee, CE, and WCC pursuant to Section 9-9. Upon receipt of the notice, an employee must elect to accept the modified duty assignment within three (3) days of issuance. If the employee declines or fails to respond to the notice, the employee's rights to future workers' compensation benefits shall be forfeited.

9-8 CALCULATION OF PAY. The process for calculating wage loss benefits for an employee who has not reached maximum medical improvement (MMI) differs based on whether the employee returned to work under a modified duty assignment, or regular work with accommodations under the ADA. Unless enrolled in vocational rehabilitation, an employee who has reached MMI should no longer receive Temporary Total or Partial Disability, but rather Permanent Disability under Section 2307 of the CMPA, provided that the employee petitions and qualifies for such award.

- A. Return to Work with Accommodations. An employee, who returns to work with accommodations, but not as a result of a modified duty assignment or vocational rehabilitation, shall receive compensation based on Section 2306 and 2314, if the disability is not permanent and the employee is not earning a full salary. The CE may refer to Chapter 5 for the process for calculating the employee's Temporary Partial Disability rate.
- B. Release to Return to Work with Accommodations. An employee who is released to return to work, and not otherwise working or placed in modified duty or vocational rehabilitation, shall also receive compensation based on Section 2306 of the CMPA based on imputed earnings developed pursuant to Section 2314 of the CMPA. The CE may refer to Chapter 5 for the process on calculating the employee's Temporary Partial Disability rate.
- C. Full Duty without Lost Time. An employee, who is released to return to full duty or is actually working full duty with accommodations, but suffers no lost time or wages, shall not receive any indemnity compensation.
- D. Modified Duty Assignment. An employee, who is working a modified duty assignment:
- (1) Shall not receive pay that exceeds his or her pre-injury rate of pay during the modified duty assignment.
 - (2) If the employee is not able to perform the full scope of duties of his or her pre-injury position, the employee shall receive partial disability benefits at the rate of 66 2/3% the difference between the pre-disability rate and the modified duty rate pursuant to Section 2347 of the CMPA. The CE may refer to

Chapter 3 for the process on calculating the employee's Modified Duty Assignment rate.

- E. Vocational Rehabilitation Program. An employee, who is enrolled in vocational rehabilitation, shall receive compensation at the rate provided at 2305 and 2310 of the CMPA, less the amount of any earnings received from remunerative employment other than employment undertaken pursuant to such rehabilitation. The CE may refer to Chapter 5 for the process on calculating the employee's Vocation Rehabilitation rate.

9-9 NOTICE.

- A. Employee. When an employee who has a pending claim for, or is receiving wage loss compensation, is medically released to return to work, he or she must immediately notify the PSWCP, but not to exceed one business (1) day of receiving the medical release.
- B. PSWCP and EA. Upon notification of an employee's medical release to return to work, the CE shall notify the RWS, and WCC. If the employee has not been terminated and has not already returned to work at the EA, the CE, RWS, and WCC should collaboratively identify a suitable position for the employee to return to -- as provided in the previous section -- and a return to work date for the injured worker. If the employee has already returned to work, the RWS shall confirm the RTW date with the EA and notify the CE. Once a suitable modified duty assignment and return to work date for the employee are identified, the RWS shall provide the employee, the CE, and the WCC with notice of the modified duty assignment orally and in writing. If the modified duty assignment is within another agency, the RWS should provide the same notice to that other agency. An employee, who is released to return to work full duty without restriction, who has not already returned to work, shall be issued written notice by the RWS to return to work. If the employee has returned to work, notice shall issue to confirm the employee's return to work. The notice in all instances shall include the following:
- (1) Return to work date and time;
 - (2) If the employee works in a position where 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 the employee will report;
 - (4) Notification that if the employee fails to report to work on the scheduled date and time 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;

- (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) If it is modified duty assignment, duration of the assignment; and
- (8) Notification that employee must elect to accept the position within three (3) days of issuance or risk forfeiture of benefits.

9-10 TERMINATION OF EMPLOYMENT. The Employing Agency may move to separate an employee, who does not overcome his or her disability within two (2) years: (i) after the date of commencement of compensation and provision of all necessary medical treatment needed to lessen disability; or (ii) from the time compensable disability recurs, if recurrence of disability begins after the injured employee resume regular full-time employment with the District government.

A. Definitions.

- (1) *Regular Full-time Employment.* Regular full-time employment under Section 2345 of the CMPA means the employee is able to perform the essential functions and duties of the job. If the employee reaches MMI before his or her right to retention expires and has permanent restrictions that prevent the employee from performing marginable functions of the position or requires a reasonable accommodation that would not impose an undue hardship, the EA shall make a reasonable effort to provide the employee with a reasonable accommodation or modified duty assignment that will allow the employee to return to his or her pre-injury position.
- (2) *Lessening of Disability.* Lessening of disability under Section 2345 of the CMPA means any increase in the employee's ability to work from the time of initial disability, supported by medical evidence.

B. Right to Retention. An employee's right to retention for the two (2) year period referenced in this section is not absolute. The employee only has the right to resume his or her former or equivalent position with all attendant rights to the extent that he or she would have had those rights but for the injury. This includes the right to within-grade increases provided at 6B D.C.M.R. §§ 1126 and 1127. Therefore, the EA may elect not to renew an employee, who is appointed to a term position because the employee never had an absolute right to renewal of the position prior to the injury, provided the employee's disability is not the cause for the EA's decision not to renew the term. For the same reason, EA may also take adverse action against, including moving for termination of, an employee who is

receiving workers' compensation, if the EA was in the process of taking such action prior to the employee being injured or disabled.

Example 9-9(B).1

An employee appointed to a term position not to exceed 13 months on January 1, 2017 has a compensable work injury on December 31, 2017 and is placed out of work. The employee's term is set to expire on February 1, 2018. Yet, as of February 1, 2018, the employee remains medically incapable of returning to his pre-injury position. Because the employee's term was set to expire on February 1, 2018, had the employee not been injured or disabled, the employee may be separated upon expiration of the term. Note, however, that the employee remains eligible for wage loss compensation until the employee experiences a change in condition under D.C. Official Code § 1-623.24.

Example 9-9(B).2

An employee has a compensable work injury on December 1, 2017 and is placed out of work. While the employee is out on workers' compensation, the EA discovers the employee had used his public office for significant private gain prior to the injury. The EA may move to separate the employee for his misconduct, notwithstanding the right to retention provided under Section 2345 of the CMPA, because the employee would have been subject to termination for his misconduct, had the employee not been injured or disabled. Note, however, that the employee remains eligible for wage loss compensation.

- C. Pre-Separation. Prior to separation, the employee remains an incumbent of his or her pre-injury position. As such, the EA is responsible for payment of the employer's portion of the employee's benefits for the entire duration that the employee remains an employee of the EA. In addition, if an employee is released to return to work and placed in a modified duty position, the EA is responsible for payment of the employee's salary and all matters related to the employee's time and attendance. Where an employee is temporarily assigned to another agency as a modified duty assignment, the EA shall work in collaboration with the assigned agency to manage the employee's time, attendance, and collateral personnel matters. However, the final authority over all personnel matters related to the employee remains with the EA with guidance and support from the PSWCP. EAs, who are under the authority of the Mayor shall also confer with DCHR prior to separating an employee under D.C. Official Code §1-623.45.

- (1) An employee who overcomes his or her disability within two (2) years after the date of commencement of compensation and initial release to return to work shall immediately and unconditionally be accorded the right to resume his or her former employment, or an equivalent position, as well as all other attendant rights which the employee would have had or acquired in his or her

former position had the employee not been injured or had a disability, including the rights to tenure, promotion, and safeguards in reduction-in-force procedures.

Example 9-9(C).1

A permanent employee, who was hired on June 15, 2010, is injured on January 1, 2012 and is placed out of work for his work injury. At the time of his injury, the employee was a Grade 12, Step 2. On July 1, 2013, the employee returns to his pre-injury position. What grade and step should the employee's salary be? Under D.C. Official Code §1-623.45, the time the employee was out of work for his compensable disability should be treated as creditable service. Thus, the employee should be placed at no lower than Grade 12, Step 4. And because at the time of reinstatement the employee would have had three (3) creditable years of service, upon rehiring to work the employee should be accruing annual leave at the increased rate prescribed at 6B D.C.M.R. § 1232.1(b).

D. Separation. An EA may move to separate an employee from his or her pre-injury position, if the employee does not overcome his or her disability within two (2) years from the date that compensation began and provision of all necessary medical treatment needed to lessen disability. An employee is presumed to have been provided all necessary medical treatment needed to lessen disability upon the employee's initial release to return to work in some capacity or increase in wage earning capacity. In that two (2) year period, the EA must provide the employee with a modified duty assignment, if available. The modified duty assignment may be subject to a six-month annual limitation at the EA's discretion. The EA shall adhere to all procedural requirements provided within the District Personnel Manual when moving for termination, which includes the provision of all applicable notices regarding termination and notice of temporary continued coverage. The EA shall ensure that respective entries are made in ERisk, proper separation documents are made part of the employee's personnel file, and notification is provided to the PSWCP and DCHR.

(1) *Severance Pay.* An employee who, at the time of separation, is receiving disability compensation under title 23 of the CMPA, is not eligible for severance pay under D.C. Official Code §1-623.16. This prohibition, however, does not apply to an employee who is concurrently receiving a schedule award based on the permanent loss of use pursuant to D.C. Official Code § 1-623.07 or benefits paid on account of the death of an individual pursuant to D.C. Official Code § 1-623.09. Note, however, that if the employee who, at the time of separation by reduction in force, was not receiving disability compensation, but used to receive disability compensation, the entire time during which the employee received compensation or continuation of pay shall be counted as continuous service for purposes of determining whether the employee has satisfied the 12-month continuous service requirement needed for severance pay eligibility.

Example 9-9(D).1

An employee is injured on January 1, 2017 and is placed out of work. On July 1, 2017, the employee's physician releases the employee to return to work with restrictions that prevent him from performing his pre-injury duties. The employee is placed on a modified duty assignment. The employee's two-year right to retention under D.C. Official Code §1-623.45 begins to run on July 1, 2017. The employee may be terminated from his pre-injury position if his disability is not overcome by July 1, 2019. The employee, however, may remain eligible for workers' compensation benefits depending on the nature and extent of his or her

Example 9-9(D).2

An employee, who works eight hours per day is injured on January 1, 2017 and is not placed out of work, but returns to work with 4-hour work day restrictions. The EA accommodates his restrictions pursuant to its obligation to provide a modified duty assignment and adjusts the employee's work schedule accordingly, as a modified duty assignment. On April 1, 2017, the employee's disability lessens because his physician releases him to work 6 hours per day. The EA continues the accommodation and adjusts his work hours accordingly. The employee's two-year right to retention under D.C. Official Code §1-623.45 begins to run on April 1, 2017. If by April 1, 2019, the employee is unable to work full duty (his pre-injury schedule), the EA may move to terminate his employment. The employee, however, may remain eligible for workers' compensation benefits depending on the nature and extent of his or her disability.

- E. Post Separation. If after termination, the employee fully or partially recovers from his or her injury and can perform the duties of the original job or its equivalent, the EA should make all reasonable efforts to place the employee in his or her former or equivalent position. An employee's restoration rights should be provided pursuant to 6B D.C.M.R. § 827. This provision does not apply to employees whose employment was terminated for reasons other than their inability to return to work within two (2) years of the date of beginning of compensation and provision of all medical services to lessen disability.

9-11 POST-TERMINATION REHIRING. An employee separated as a result of an injury incurred while performing assigned duties shall be entitled, upon reemployment with the District government, to have counted as creditable service the entire time during which he or she received compensation. *See* 6B D.C.M.R. § 1129.16. This shall include rights to within-grade increases, as provided at 6B D.C.M.R. §§ 1126 and 1127.

Example 9-11

A permanent employee, who was hired on June 15, 2010, is injured on January 1, 2012 and is placed out of work for his work injury. At the time of his injury, the employee was a Grade 12, Step 2. On February 28, 2013, the employee is released to return to work with restrictions that prevent him from returning to his pre-injury position. The employee's two-year right to retention under D.C. Official Code §1-623.45 expires on February 28, 2015. On May 9, 2015, the employee is separated because he did not overcome his work injury within the two year retention period. In December 2016, the employee overcomes his disability and is released to return to work without restriction. The employee re-applies for positions with the District Government and is hired into a new position on July 17, 2016 with another agency with the same duties and responsibilities as his pre-injury position. What grade and step should the employee's salary be? Under D.C. Official Code §1-623.45, the time the employee was out of work for his compensable disability should be treated as creditable service. Thus, the employee should be placed at no lower than Grade 12, Step 6. And because at the time of reinstatement the employee would have had seven creditable years of service, upon rehiring the employee should be accruing annual leave at the increased rate prescribed at 6B D.C.M.R. § 1232.1(b).