

Chapter 5. Continuation of Pay (COP)

This chapter describes the employee's entitlement to continuation of his or her regular pay (COP) for periods of disability or medical care which occur soon after a traumatic injury.

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5-1. Definition and Entitlement

The FECA provides that an employee's regular pay may continue for up to 45 calendar days of wage loss due to disability and/or medical treatment after a traumatic injury. The intent of this provision is to avoid interruption of the employee's income while the case is being adjudicated. COP is not considered compensation and is therefore subject to the usual deductions from pay, such as income tax and retirement allotments. After entitlement to COP ends, the employee may apply for compensation or use leave.

An employee is entitled to receive COP when he or she is absent from work due to disability or medical treatment, or when he or she is reassigned by formal personnel action to a position with a lower rate of pay due to partial disability. Because informal assignment to light or limited duties without a personnel action does not result in pay loss, time worked in such a position may not be charged to COP. However, an employee whose work schedule is changed, so that a loss of salary or premium pay (e.g., holiday pay or night differential, though not Sunday pay) results, is entitled to COP for such wage loss whether or not the schedule was changed by a formal personnel action.

Temporary employees are entitled to COP on the same basis as permanent employees. If a termination date has been set for an employee prior to the injury, however, COP need not be continued past the date of termination as long as Form SF-52 showing the date of termination

has been completed. In this instance, OWCP will pay compensation to a disabled worker after employment has ceased. Like any other employee, a temporary worker who first reports a traumatic injury after employment ends is not entitled to COP.

5-2. Use of Leave Instead of COP

An employee may use annual or sick leave to cover all or part of an absence due to injury. If an employee elects to use leave, each full or partial day for which leave is taken will be counted against the 45 days of entitlement to COP. Therefore, while an employee may use COP intermittently along with sick or annual leave, entitlement is not extended beyond 45 days of combined absences.

An election of sick or annual leave during the 45-day period is not irrevocable. If an employee who has elected leave later wishes to elect COP, the supervisor must make such a change on a prospective basis from the date of the employee's request. Where the employee wishes to have leave restored retroactively, the supervisor must honor the request, provided he or she receives prima facie medical evidence of injury-related disability for the period in question.

5-3. Controversion

An agency's objection to paying COP for one of the reasons provided by regulation is called controversion. The supervisor may controvert a claim by completing the indicated portion of Form CA-1 and submitting detailed supporting information to OWCP. Even though a claim is controverted, the agency must continue the employee's regular pay unless at least one of the following conditions applies:

A. The disability is a result of an occupational disease or illness;

B. The employee comes within the exclusions of 5 U.S.C. 8101 (1) (B) or (E) (which refer to persons serving without pay or nominal pay, and to persons appointed to the staff of a former President);

C. The employee is neither a citizen nor a resident of the United States, Canada, or the territory under the administration of the Panama Canal Commission (i.e., a foreign national employed outside these areas);

D. The injury occurred off the employing agency's premises and the employee was not

engaged in official "off-premises" duties;

E. The employee caused the injury by his or her willful misconduct, or the employee intended to bring about his or her injury or death or that of another person, or the employee's intoxication was the proximate cause of the injury;

F. The injury was not reported on a form approved by OWCP (usually Form CA-1) within 30 days of the injury;

G. Work stoppage first occurred more than 45 days after the injury;

H. The employee first reported the injury after employment was terminated;

I. The employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, work study program, or other group covered by special legislation.

The agency may not continue pay under any of the above circumstances.

The agency may dispute an employee's right to receive COP (and/or the validity of the claim as a whole) on other grounds, for instance on the basis that the employee was not performing assigned duties when the injury occurred, or that the condition claimed is not the result of a work-related injury. Any such objection should be supported by factual evidence such as witness statements, pictures, accident investigation reports, or time sheets. If the validity of a claim is disputed for reasons other than the nine listed above, the agency must continue regular pay for up to 45 calendar days. COP may not be interrupted during the 45-day period unless one of the conditions in sections 5-6 or 5-8 is met.

5-4. Pay Rate for COP

An employee's regular pay is his or her average weekly earnings, including night or shift differential and various kinds of premium pay (but not Sunday pay). It also includes other extra pay, such as pay authorized by the Fair Labor Standards Act for employees who receive annual premium pay for standby duty and who also earn and use leave on the basis of their entire tour of duty, including periods of standby duty. Overtime pay is not included except for administratively uncontrollable work covered under 5 U.S.C. 5545(c)(2).

A. *Standard Tour of Duty.* For a full-time or part-time worker, either permanent or

temporary, 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, excluding overtime.

B. Non-standard Tour of Duty. For a part-time worker, either permanent or temporary, who does not work the same number of hours per week, the weekly pay rate equals the average weekly earnings for the year prior to the date of injury, excluding overtime.

C. Intermittent Work. For an intermittent or part-time worker, either permanent or temporary, who does not work each week of the year (or the period of appointment), the weekly pay rate equals the average of the employee's weekly earnings during the year before the injury. The pay rate is computed on the basis of the total earnings divided by the number of weeks worked (partial weeks worked are counted as whole weeks). The annual earnings used for this computation must not be less than 150 times the average daily wage earned within one year before the date of injury (the daily wage is the hourly rate times eight).

D. Increments of Pay. Night or shift differential as well as holiday or other extra premium pay (except for Sunday pay) should be included, but overtime pay may not be considered.

E. Changes in Pay. Changes in pay due to within-grade increases or promotions, demotions, terminations of temporary details, etc. which would have occurred but for the injury are included in COP since COP represents salary and not compensation. Moreover, an employee who moves into a higher-paying job during the COP period is entitled to receive COP at the higher rate of pay. Where the weekly COP rate is based on the employee's average weekly earnings during the year prior to the date of injury, the COP rate should be changed by the same percentage as the change in hourly pay or salary.

F. Lost Elements of Pay. An element is sometimes lost due to the effects of the injury. For instance, a night shift worker may be reassigned to the day shift to perform light duty, and thus lose night differential. In such instances COP should be granted for the lost element of pay. Each day for which COP is granted to cover a lost element of pay will count as one full day of COP.

5-5. Computation

Unless the injury occurs before the beginning of the workday, time loss on the date of injury

should be charged to administrative leave. The period to be charged to COP begins with the first day or shift of disability or medical treatment after the date of injury, provided that the absence began within 45 days after the injury. COP should be charged for weekends and holidays if the medical evidence shows the employee was disabled on the days in question. For example, if the physician states that disability will continue only through Saturday for an employee who has Saturday and Sunday off, COP will be charged only through Saturday.

If work stoppage occurs for only a portion of a day or shift, a full day of COP will be counted toward the 45-day entitlement, even though the employee is not entitled to COP for the entire day or shift. For example, if an employee who has returned to work must lose three hours to obtain physical therapy for the effects of the injury, he or she is entitled to only three hours of COP even though one full day will be counted. If the employee is absent for all or part of the remaining workday, the time loss should be covered by leave, LWOP, AWOL, etc., as appropriate, since absence beyond the time needed to obtain the physical therapy cannot be charged to COP.

If a partially disabled employee continues to work several hours a day, each day or partial day of absence from work is chargeable against the 45-day period.

5-6. Light- or Limited-Duty Assignments

When the physician's report shows that the employee is no longer totally disabled, he or she is required to accept any reasonable offer of suitable light or limited duty. Such an offer may be made by telephone but must be confirmed in writing within 48 hours to be valid. The offer should include a description of the duties and requirements of the offered position. If a personnel action is involved, the employee must be furnished with a copy of it prior to the effective date.

COP should be paid if the employee has been assigned light or limited duty by formal personnel action and pay loss results (e.g., the employee is placed in a light duty position at lower pay). The dollar amount of COP will be the difference between the pay rates of the job held on date of injury and the light- or limited-duty position. One full day of COP should be charged for each day of light duty, even though the employee is working a full shift. COP should also be paid if the light or limited duty consists of work at regular duties for fewer than the usually scheduled number of hours. COP should also be paid if the light or limited duty consists of work at regular duties for fewer than the usually scheduled number of hours.

If the employee refuses to accept the work offered, COP should be terminated as of the date of the employee's refusal or after five workdays from the date of the offer, whichever is earlier. OWCP will then determine entitlement based on the medical reports and the duties of the offered position and issue a formal decision concerning payment of COP. A discussion of the criteria used in making such determinations is found in Chapter 8-4.

5-7. Recurrences

In many cases, an employee will return to work without using all 45 days of entitlement of COP. Should such an employee suffer a recurrence of disability, he or she may use COP if no more than 45 days have elapsed since the date of first return to work, including part-time work and light or limited duty. If the recurrence begins later than 45 days after the first return to work, the agency should not pay COP even though some days of entitlement remain unused. A period which begins before the 45-day deadline and continues beyond it may be charged to COP as long as the period of time is uninterrupted.

If a third-party credit has been established, the supervisor should contact OWCP before paying COP.

5-8. Terminating COP

COP should not be stopped unless:

A. Medical Evidence is Not Submitted Within 10 Workdays. This period should be counted from the date the employee claims COP or the disability begins (or recurs), whichever is later. If the agency has not received prima facie medical evidence of injury-related disability within that period, it may stop COP.

However, the agency need not wait 10 days to request such evidence, which is defined as medical evidence showing that the employee is disabled for the job held at the time of injury because of an employment injury. Pay may be continued without such evidence if the supervisor is satisfied that the employee sustained a disabling traumatic injury.

For the purposes of this provision:

(1) The 10-workday period begins with the workday after the employee claims COP or the disability begins (or recurs).

(2) A "workday" means the business day of the office or facility where the employee works or reports, such that the employee could submit the medical evidence to an authorized agency official.

B. The Employee is No Longer Disabled. The agency should terminate COP if: it receives medical information from the attending physician stating that the employee is no longer disabled for regular work; a partially disabled employee returns to full-time light or limited duty with no pay loss; or the employee refuses a suitable offer of light- or limited- duty work.

C. OWCP Notifies the Agency That Pay Should be Terminated.

D. The 45-Day Period Expires.

An employee who is scheduled to be separated and who reports a traumatic injury on or before the date of separation is entitled to COP up to the date of separation and to compensation thereafter.

5-9. Reporting COP--Form CA-3

A. Time Cards. Time loss for an employee who is receiving COP should be recorded as "COP" on the Time and Attendance Report. A diminishing record of the 45-day limitation is to be maintained in the "Remarks" block.

B. Completion of Form CA-3. Sometimes, return to duty information is shown on Form CA-1 when the injury is first reported. If not, the agency may (but is not required to) complete Form CA-3 and submit it to OWCP when entitlement to COP ends, the employee returns to work, or the disability ceases.

Any Form CA-3 filed should state the specific days and hours charged to COP and/or leave, and attachments may be used if necessary. The amount of money shown should reflect only the amount paid for COP; it should not include wages paid for light or limited duty or for parts of days actually worked. In cases of intermittent or delayed disability, time charged to COP may be reported by narrative letter rather than Form CA-3.

If the disability ends before the 45-day period expires, the agency should terminate COP. An employee who is no longer disabled must return to work upon notification by the attending

physician that he or she is able to perform full regular duty or suitable and available light or limited duty. If the employee does not return to duty, an overpayment which is subject to collection by the agency may result.

C. Formal Decision. In all cases OWCP has the final authority to determine whether the agency's action in paying or terminating COP is correct. If entitlement is denied, OWCP will issue a formal decision (usually conveyed by Form CA-1050). Payment made may then be charged, at the employee's option, to sick or annual leave or be deemed an overpayment subject to collection by the agency.