

**FISH AND WILDLIFE SERVICE
OCCUPATIONAL SAFETY AND HEALTH**

Occupational Safety and Health

Part 240 Safety Program

Chapter 10 Workers' Compensation Program

240 FW 10

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OVERVIEW

10.1 What is the purpose of this chapter? This chapter:

- A.** Identifies roles and responsibilities to ensure employees who are injured or become ill due to the performance of official duties receive their rightful benefits in a timely manner, and
- B.** Establishes and explains how to implement management controls to keep associated costs contained by ensuring employees return to work as soon as they are medically able, monitoring claims and costs for accuracy, and investigating allegations of fraud or abuse.

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10.2 What is the scope of this chapter?

A. This chapter applies to all U.S. Fish and Wildlife Service (Service) employees and anyone who performs official work for the Service, such as volunteers with a signed Volunteer Services Agreement (Optional Form (OF) 301A) (see section 10.5C for more information).

B. Written agreements between the Service and some groups (e.g., the Student Conservation Association) should specify whether their parent organization or the Service covers these individuals for injury compensation. If the Service covers them, they fall within the scope of this chapter.

C. Contractors are responsible for complying with the safety and health clauses in their contract agreements. The Service is generally not responsible for their workers' compensation.

10.3 What are the authorities for this chapter?

A. Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101 and 8149).

B. Crimes and Criminal Procedure, False Statement or Fraud to Obtain Federal Employees' Compensation and False or Withheld Report Concerning Federal Employees' Compensation (18 U.S.C. 1920 and 1922).

C. Regulations for Compensable Injury (5 CFR 353, Subpart C).

D. Regulations for Claims for Compensation under FECA (20 CFR 10).

E. Departmental Policy on Workers' Compensation Program Management (Department of the Interior Office of Human Resources (OHR) Memorandum, dated April 29, 2009).

F. Departmental Policy on Workers' Compensation Return to Work Program (Departmental OHR Memorandum, dated April 29, 2009).

10.4 What terms do you need to know to understand this chapter?

A. Chargeback Year. The timeframe (July 1 – June 30) that the Office of Workers' Compensation Programs (OWCP) uses for recording workers' compensation costs. OWCP issues a chargeback report quarterly.

B. Continuation of Pay (COP). The Service's payment of regular salary for up to 45 calendar days while OWCP adjudicates the claim if there is time lost from work due to an injury (see section 10.12).

C. Illness. A condition produced by the work environment over more than 1 work day or shift.

D. Injury. A condition of the body caused by a specific or series of events within a single work day or shift.

E. Third-Party Claim: A claim submitted to collect damages for an injury or death that someone else (such as a property manager in a leased building) caused through their actions or negligence (see section 10.14).

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10.5 As a Service employee, what do you need to know about the Federal Employees' Compensation Act (FECA)?

A. What it is: FECA is a law that provides benefits for civilian employees of the United States who have suffered work-related injuries or occupational diseases. These benefits include payment of medical expenses and compensation for lost wages. FECA also provides for payment of benefits to dependents of employees who die from work-related injuries or diseases. Employees who fully or partially recover from their injuries are expected to return to work. FECA is administered by the Department of Labor's OWCP through 12 district offices located across the United States.

B. Making a claim: The process to request approval for benefits under FECA is complex and time sensitive. We encourage you to contact your Regional/Headquarters (HQ) Injury Compensation Specialist to discuss your claim and maintain contact until your case is closed. OWCP will review the documentation you provide and determine whether or not to approve your claim. The Service does not have the authority to approve or deny your claim—only OWCP does. (See section 10.8.)

C. Who's covered: Federal employees who meet FECA requirements are eligible for benefits regardless of the length of time on the job or the type of position held. Probationary, temporary, term, part-time, seasonal, and intermittent employees are covered on the same basis as permanent employees. Special legislation provides coverage to volunteers (who have a signed Volunteer Services Agreement (OF 301A) and are injured when working within their scope of duties) and Youth Conservation Corps staff and enrollees (see 240 FW 9 for additional information). In some circumstances, employees loaned by other agencies are covered.

D. What's covered: Injuries and illnesses caused by employment are covered if they occur during or because of official Government work. FECA does not cover injury or death if it is the result of willful misconduct of the injured employee, by intent to bring about the injury or death of oneself or another, or by intoxication of the injured employee (also see section 10.6).

E. Pre-existing medical conditions aggravated by employment: FECA covers diseases and illnesses aggravated, accelerated, or precipitated by employment. The employee must submit medical and factual evidence showing that this is the case.

F. More information: You can find a complete listing of all of FECA's provisions on the OWCP Web site.

10.6 What is considered "performance of duty" and covered by FECA, and what is not? Usually, the injury or illness must occur on Service premises during working hours while the employee is performing assigned duties or engaging in an activity that is reasonably associated with employment. Workers performing assigned duties away from Service premises are also covered.

A. Breaks and lunch: Unless the employee is in travel status or is performing regular duties off the premises, an injury that occurs during breaks or lunch off the premises is usually not covered. Injuries that happen on Service premises during breaks or lunch may be covered, but coverage depends on the activity that causes the injury.

B. Work-related recreational activities:

(1) Injuries that occur during recreation that is part of training or assigned duties, or that occur while the employee is in pay status, may be covered. Injuries that occur during informal recreation on Service property (e.g., jogging) may also be covered, as may injuries that occur while an employee is engaged in activities approved as part of an individual plan developed under a formal physical fitness program that the Service manages.

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(2) Injuries that occur during informal recreation off Service property (e.g., playing on a Service-sponsored baseball team) may also be covered. To be covered, the employee's supervisor must explain what benefit the Service derived from the employee's participation, the extent to which the Service sponsored or directed the activity, and whether the employee's participation was required or not.

C. Commuting to and from work: Employees are usually not covered by FECA for injuries that occur before they reach work or after they leave. However, coverage may be extended when the Service provides transportation to and from work, when the employee is required to travel during an emergency, or when the employee is required to use his or her automobile during the work day.

D. While on travel status: An employee in travel status is covered by FECA 24 hours a day for all activities incidental to the work assignment if OWCP determines the activities are within the scope of employment. Such activities include obtaining meals, using the hotel room, and traveling between the hotel and the work site. Coverage usually does not extend to recreational or sightseeing trips. The employee must provide OWCP travel authority documentation.

10.7 Who is responsible for the Service's workers' compensation program? See Table 10-1.

Table 10-1: Responsibilities for the Service's Workers' Compensation Program	
This official...	Is responsible for...
A. The Director	<p>(1) Providing adequate resources to accomplish the requirements in this chapter, and</p> <p>(2) Approving or declining to approve this policy.</p>
B. Regional Directors	<p>(1) Providing adequate resources to accomplish the requirements in this chapter for their Region;</p> <p>(2) Designating a qualified Regional Injury Compensation Specialist and an alternate, or otherwise ensuring that those duties are accomplished;</p> <p>(3) Ensuring the Department of the Interior's (Department) Safety Management Information System (SMIS) is used for initiating injury and illness workers' compensation claims; and</p> <p>(4) Ensuring there is a process in place to return injured employees to work as soon as medically feasible.</p>
C. The Assistant Director – Business Management and Operations	<p>(1) Designating a Bureau Injury Compensation Program Manager, and</p> <p>(2) Providing adequate resources to the Bureau Injury Compensation Program Manager to accomplish the requirements in this chapter.</p>
D. The Assistant Director – Budget, Planning and Human Capital through the Division of Human Resources	<p>(1) Assisting Human Resource Officers and Headquarters (HQ) supervisors with informal and formal light duty and alternate work assignments for injured employees, and</p> <p>(2) Designating the HQ Injury Compensation Specialist responsible for managing claims for employees whose duty station is in HQ.</p>
E. The Bureau Injury Compensation Program Manager	<p>(1) Serving as the Service liaison with the Department's Workers' Compensation Program Manager;</p> <p>(2) Updating this policy, as necessary;</p>

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Table 10-1: Responsibilities for the Service's Workers' Compensation Program	
This official...	Is responsible for...
	<p>(3) Interpreting this policy and serving as a consultant to resolve Servicewide questions or issues;</p> <p>(4) Providing technical advice and assistance to the Regional/HQ Injury Compensation Specialists, upon request;</p> <p>(5) Periodically reviewing SMIS to determine relevant statistical information and then sharing this information with those responsible for workers' compensation and safety program improvements, such as Directorate members, Regional/HQ Injury Compensation Specialists, and Regional/HQ Safety Managers;</p> <p>(6) Determining if cases the Regional/HQ Injury Compensation Specialists refer for potential fraud or abuse should be investigated, and serving as or designating a Contracting Officer's Technical Representative if the investigation is contracted out; and</p> <p>(7) Managing Regional/HQ Injury Compensation Specialists' access to SMIS and the Department of Labor's Agency Query System (AQS).</p>
<p>F. Regional/HQ Injury Compensation Specialists, or other personnel designated by the Regional Directors</p>	<p>(1) Managing workers' compensation cases in compliance with 20 CFR 10, the requirements in this chapter, and the Department's workers' compensation policies (for Regional Injury Compensation Specialists, this includes managing cases for HQ employees geographically located in their Region);</p> <p>(2) Successfully completing the following training:</p> <p style="padding-left: 20px;">(a) Upon appointment, Managing Workers' Compensation Cases, Parts 1 and 2 in DOI Learn;</p> <p style="padding-left: 20px;">(b) Within 6 months of appointment, the Department of Labor's basic injury compensation specialist training; and</p> <p style="padding-left: 20px;">(c) Every 3 years, completing the Department of Labor's advanced injury compensation specialist training, attending the Federal Workers' Compensation Conference or comparable conference, or repeating the basic injury compensation training;</p> <p>(3) When notified that someone has filed a claim, following up with the employee and his/her supervisor, offering technical advice and assistance, and ensuring that the employee and the supervisor complete his/her sections of the claim so that OWCP will receive the completed form within 14 calendar days;</p> <p>(4) Generating a claimant profile in SMIS for people who are not paid through the Federal Personnel Payroll System, such as volunteers;</p> <p>(5) Ensuring the employee understands that it is his/her burden of proof and</p>

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This official...	Is responsible for...
	<p>responsibility to provide substantive medical evidence and other information throughout the lifetime of the case;</p> <p>(6) Advising the employee and the medical facility, when applicable, to send bills to OWCP's Bill Processing Facility and ensuring the employee understands that it is his/her responsibility to manage billing compliance, submission, and resolve issues and disputes. If requested, serving as an advisor in billing disputes;</p> <p>(7) Ensuring that the employee, supervisor, and timekeeper are aware of the need to stop and amend COP usage when cases are denied;</p> <p>(8) Serving as the liaison between the OWCP claims examiner and the injured worker and serving as a consultant in the disposition of OWCP developmental letters, as needed;</p> <p>(9) Maintaining OWCP case files in accordance with section 10.23 and Exhibit 2 of this policy;</p> <p>(10) Tracking cases on the chargeback report in SMIS and notifying the Bureau Injury Compensation Program Manager of any errors that need correction;</p> <p>(11) Checking and updating the medical status of cases coded by OWCP as "Periodic Rolls (PR)" every year, "Partial Work Potential (PW)" every 2 years, and "No Return to Work Potential (PN)" every 3 years;</p> <p>(12) Interpreting this policy and serving as an advisor to resolve Regionwide/HQ questions and issues;</p> <p>(13) Coordinating with Human Resources staff to ensure:</p> <p style="padding-left: 40px;">(a) Injured seasonal employees are offered a seasonal job when a suitable position becomes available</p> <p style="padding-left: 40px;">(b) Employees are counseled about Office of Personnel Management (OPM) Disability Retirement when it becomes apparent that the employee will be separated from the Service because of the inability to work (see section 10.17D);</p> <p>(14) Referring reports or suspicions of potential fraud or abuse to the OWCP Claims Examiner and the Bureau Injury Compensation Program Manager;</p> <p>(15) Working with Regional/HQ Safety Office personnel to ensure information is accurate in SMIS about restricted days or days away from work; and</p> <p>(16) Coordinating with Human Resources staff and Project</p>

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Table 10-1: Responsibilities for the Service's Workers' Compensation Program	
This official...	Is responsible for...
	Leaders/supervisors to ensure informal and formal light duty jobs or alternate work assignments are made available so that injured employees can remain at work or return to work as soon as medically possible.
G. Supervisors	<p>(1) Ensuring injured employees receive emergency medical treatment, if necessary;</p> <p>(2) Authorizing medical care by providing the employee with a Form CA-16, <i>Authorization for Examination and/or Treatment</i>, within 4-hours in cases of work-related injuries only. You can get this form from the Regional/HQ Injury Compensation Specialist;</p> <p>(3) Instructing an employee who is filing a claim to use the Department's SMIS to file online:</p> <p style="padding-left: 40px;">(a) If the claimant is incapacitated or unable to physically file a claim on SMIS, arranging for a proxy (typically a family member of the employee) to contact the Regional/HQ Injury Compensation Specialist to get temporary access to SMIS. The supervisor may only file on the employee's behalf if designated as proxy;</p> <p style="padding-left: 40px;">(b) In extreme circumstances when the employee or proxy cannot access a computer and instead completes a paper copy of the appropriate form, expeditiously completing the supervisor's section and sending the form to the Regional/HQ Injury Compensation Specialist;</p> <p style="padding-left: 40px;">(c) If the claimant is not paid through the Federal Personnel Payroll System (e.g., a volunteer), instructing the claimant to contact the Regional/HQ Injury Compensation Specialist to gain temporary access to SMIS;</p> <p>(4) Ensuring the employee's portion of the CA-1 or CA-2 is complete;</p> <p>(5) Completing the supervisor's section of the CA-1 or CA-2 form on SMIS, indicating whether they agree or disagree with the validity of the claim, and electronically forwarding it as soon as possible, but no later than 8 calendar days of the employee's filing (completion of his/her section), to the Regional/HQ Injury Compensation Specialist;</p> <p>(6) Providing the Regional/HQ Injury Compensation Specialist with a hard copy of the completed form with original signatures (whether or not you feel the claim should be approved). If the claimant is not paid through the Federal Personnel Payroll System, providing documentation that proves the individual was doing official work for the Service at the time of the injury, such as a signed Volunteer Services Agreement;</p> <p>(7) In coordination with Human Resources staff and the Regional/HQ Injury Compensation Specialist, identifying informal and formal light duty or alternate work assignments should the employee be unable to immediately return to his or her regular duties;</p>

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This official...	Is responsible for...
	<p>(8) Coordinating with the timekeeper to ensure that proper codes are entered on timesheets to correctly track any COP, wage loss compensation, and light duty hours:</p> <p style="padding-left: 40px;">(a) "160, FECA/COP – PAID (1st OCCURRENCE)" is the Quicktime code used for COP for lost duty hours, paid by the employing agency;</p> <p style="padding-left: 40px;">(b) "161, FECA/COP – UNPAID (1st OCCURRENCE)" is the Quicktime code used for COP tracking of non-duty hours (e.g., weekends, flex days, etc.);</p> <p style="padding-left: 40px;">(c) "162, FECA/OWCP" is the Quicktime code used for wage loss compensation filed by the employee with OWCP, for lost duty hours paid by OWCP at a reduced pay rate;</p> <p style="padding-left: 40px;">(d) "16A, FECA/COP LIGHT DUTY – PAID (1st OCCURRENCE)" is the Quicktime code used for COP for lost duty hours when used in conjunction with official (Notification of Personnel Action Form (SF-50) completed) light duty assignments and paid by the employing agency;</p> <p style="padding-left: 40px;">(e) "010, REGULAR HOURS" is the Quicktime code used for unofficial light duty or unofficial alternate work assignments;</p> <p>(9) Maintaining personal contact at least once a week with an injured employee who is not on the job;</p> <p>(10) In long-term cases, cooperating with Human Resources and the Regional/HQ Injury Compensation Specialist and continuing to look for opportunities for the employee to return to duty; and</p> <p>(11) When informed by an employee of any medical limitations or restrictions specified by a doctor in writing, immediately notifying the Regional/HQ Injury Compensation Specialist. (You may ask the employee to use Form CA-17, <i>Duty Status Report</i>, for this.)</p>
H. Employees	<p>(1) Reporting any work-related injury or illness to your supervisor immediately;</p> <p>(2) If medical treatment is needed for a work-related injury, requesting a Form CA-16, <i>Authorization for Examination and/or Treatment</i>, from your supervisor or Regional/HQ Injury Compensation Specialist. If your injury is an emergency, get immediate care first. Your supervisor may authorize medical treatment by telephone and then send the completed CA-16 to the medical facility within 48 hours. You cannot use CA-16 for receiving treatment for an illness. OWCP authorizes treatment for an illness if they approve your claim;</p> <p>(3) As soon as possible, completing Form CA-1, <i>Federal Employee's Notice of Traumatic Injury</i>, or CA-2, <i>Notice of Occupational Disease and Claim for</i></p>

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Table 10-1: Responsibilities for the Service's Workers' Compensation Program	
This official...	Is responsible for...
	<p><i>Compensation</i>, online in SMIS:</p> <p>(a) If totally incapacitated or unable to physically file a claim in SMIS, arranging for a proxy (typically, a family member) to contact your supervisor or the Regional/HQ Injury Compensation Specialist so they can get access to SMIS and electronically file on your behalf;</p> <p>(b) In extreme circumstances where you or your proxy cannot access a computer, completing a paper copy of the appropriate form and sending it to your supervisor as soon as possible so he/she can complete the supervisor section and send it to the Regional/HQ Injury Compensation Specialist;</p> <p>(4) Requesting assistance, if needed, to complete the CA-1 or CA-2 from your supervisor or Regional/HQ Injury Compensation Specialist;</p> <p>(5) Obtaining and providing written witness statement(s) for injuries online in SMIS, or providing the Regional/HQ Injury Compensation Specialist a printed copy from page one of the CA-1 or a written narrative statement with signature and date;</p> <p>(6) Telling your supervisor if you want the claim request submitted to OWCP (recommended if you have lost time from work or anticipate medical costs) or electronically held in SMIS as a matter of record. If held, the claim request can be activated at a later date should you lose time or have medical costs associated with your injury. If activated, it will be sent to OWCP for their review and approval or disapproval of the claim;</p> <p>(7) Identifying an acting supervisor on the CA-1 or CA-2 if you know your supervisor will be unavailable for 1 week or longer;</p> <p>(8) Ensuring that SMIS transmittals were properly sent;</p> <p>(9) Providing substantive medical evidence and other information throughout the lifetime of the case. You must submit initial medical evidence to OWCP as soon as possible or within 10 work days from:</p> <p style="padding-left: 40px;">(a) The date you claim COP, or</p> <p style="padding-left: 40px;">(b) The date the disability begins or recurs;</p> <p>(10) Informing your doctor of any particular light duty or alternate jobs made available and furnishing the doctor with a written description of specific duties and physical requirements for these jobs (see section 10.19);</p> <p>(11) Returning the original completed CA-16 or equivalent medical evaluation to your Regional/HQ Injury Compensation Specialist;</p> <p>(12) Informing your supervisor immediately of any medical limitations or</p>

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This official...	Is responsible for...
	<p>restrictions specified by your doctor in writing, and discussing possible alternate work assignments. You may also use the OWCP Form CA-17, <i>Duty Status Report</i>, for this;</p> <p>(13) Avoiding activities that might aggravate the injury or condition and extend time away from work;</p> <p>(14) Returning to light or regular duty as soon as you are able to do so;</p> <p>(15) Responding promptly to any job offer made by the Service or other Federal agency. Failure to accept the job or to provide an explanation for refusal to OWCP within 30 days may result in termination of compensation payments; and</p> <p>(16) Submitting bills promptly, only after the case has been accepted by OWCP, to the OWCP Bill Processing Facility. Bills for medical treatment may not be paid if submitted to OWCP more than 1 year after the calendar year in which you received the treatment or in which the condition was accepted as compensable.</p>

FILING A CLAIM

10.8 What should an employee and supervisor do when an employee is injured as a result of official duties? See Exhibit 1 for detailed procedures.

10.9 What is the time limit for filing a notice of injury or illness and claim for compensation?

A. We encourage employees to file a claim within 1 to 3 days of the date of the injury/illness. OWCP time limits are as follows:

(1) Form CA-1, *Federal Employees' Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation*, within 30 calendar days of the injury. If filed later than this, you may lose entitlement to some benefits, like COP;

(2) Form CA-2, *Notice of Occupational Disease and Claim for Compensation*, within 30 calendar days of the date the employee realized or should have been aware that the disease or illness was caused or aggravated by the employment.

B. The employee should provide medical evidence to OWCP of any disability within 10 working days of the injury, or risk possible interruption in the adjudication process or termination of COP.

C. The Regional/HQ Injury Compensation Specialist must process the completed form electronically via SMIS within 14 calendar days from the date of submission/signature of the claimant.

D. Employees must file a claim for compensation within 3 years from the date of injury. However, if a claim is not filed within 3 years, the employee may still receive compensation if he/she submitted a written

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notice of injury within 30 days, or the employee can prove the Service knew about the injury within 30 days after it occurred.

10.10 May someone other than the employee fill out a notice of injury or illness and claim for compensation? Yes. The injured/ill employee may designate a proxy to act on his/her behalf to fill out the employee's portion of Forms CA-1, CA-2, CA-5, or CA-5b. To designate a proxy, the injured employee contacts, or asks his/her supervisor to contact, the Regional/HQ Injury Compensation Specialist to give the proxy access to SMIS. The proxy should electronically complete and sign the CA-1 or CA-2 form in SMIS and then send it to the employee's supervisor. The CA-5 and CA-5b are hard copy forms you can get from your Regional/HQ Injury Compensation Specialist.

10.11 What if a supervisor or Regional/HQ Injury Compensation Specialist questions the validity of a claim? If a supervisor questions the validity of a claim, he or she must indicate that on the CA-1 (block 35), investigate the circumstances of the injury, and report the results to OWCP. All such allegations must be supported by factual evidence.

A. Examples of situations that may prompt the supervisor to question a claim's validity include if the employee:

- (1) Gives different versions of the circumstances or witnesses give a different account,
- (2) Reported for work with the appearance of a pre-existing injury, or
- (3) Reported the injury long after its alleged occurrence and appears to be able to perform his or her normal duties.

B. The Regional/HQ Injury Compensation Specialist may provide OWCP factual evidence indicating the validity of the claim as questionable if the supervisor doesn't.

C. OWCP will investigate and approve or deny the employee's injury claim based on its findings.

10.12. What is Continuation of Pay (COP) and when is an employee entitled to it? If you are injured and meet eligibility requirements, the Service may continue to pay your regular salary for up to 45 calendar days. This alleviates the need for you to use your sick or annual leave while OWCP adjudicates your claim. To receive COP, you must elect it on Form CA-1, *Federal Employees' Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation* (block #15). COP is subject to taxes and all other payroll deductions, and you cannot use it for an illness. You, your supervisor, and your timekeeper must carefully track the number of days of COP you use to ensure you don't exceed 45 days. Because there are so many aspects of COP that make it complex to understand and compute, you and your supervisor should contact your Regional/HQ Injury and Compensation Specialist for guidance. Following are some COP guidelines:

A. You must file the claim within 30 days and provide medical documentation to OWCP within 10 days of the date of injury.

B. COP starts the day after the injury. We must code time lost the day of the injury as administrative leave.

C. If the injury occurs before the beginning of the work day or shift, the first eligible day of COP is the date of the injury.

D. Any part of a day or shift counts as a full day of COP used, as well as regular days off when you use COP days before or after the days off.

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- E. If you use annual leave during a period when you could have used COP, those days are counted toward the 45-day COP maximum, as if you had been in COP status.
- F. Beginning the day you first return to work, you can use any COP balance remaining up to 45 calendar days from that date. For example, you could use a COP day 10 days after returning to work, if necessary, but you could not use a COP day 4 months after returning to work.
- G. COP is usable up to a maximum of 90 calendar days following the date of injury.
- H. There cannot be a break of more than 45 calendar days between the last time an employee used COP and the initial return to work.
- I. Once COP has ended, if you want OWCP to continue to pay your salary, you must submit a CA-7, *Claim for Compensation* and supportive medical documentation justifying the lost time as injury. You must also send OWCP Form CA-7a, *Time Analysis*, when time lost is intermittent. Otherwise, you must use sick or annual leave or go on leave without pay. If you plan to submit a CA-7, once you know that you will be out more than 45 calendar days, you must send it to OWCP on the 40th day of COP and every 2 weeks after that until you return to work or OWCP places you on their long-term rolls.

10.13 What are the penalties for filing a false claim? Anyone who knowingly and willfully falsifies, conceals, or covers up a material fact, or makes a false, fictitious, or fraudulent statement or representation, is subject to fines, dismissal, suspension from work, or imprisonment.

10.14 What are third party claims? When a party other than the injured employee or another Service employee appears to be responsible for an injury or death, OWCP may ask the employee to seek damages from that party. The third party may be an individual, a company, or a product manufacturer.

- A. OWCP encourages supervisors to investigate the third party aspect of any claim and submit the information gathered.
- B. OWCP will contact the employee with specific instructions about this aspect of the claim. The employee should not try to settle the claim without first obtaining advice and approval from the Solicitor of Labor through OWCP.
- C. While a claim is pending against the third party, OWCP will pay any medical and compensation benefits to which the employee is entitled.
- D. If the employee receives a settlement from the third party, he/she must first pay outstanding legal fees and costs. He or she is then entitled to retain 20 percent of the remaining amount, plus an amount equivalent to a reasonable attorney's fee in proportion to the sum owed to OWCP. The sum owed to OWCP generally includes the total medical and compensation payments made by OWCP up to the time of settlement. The employee retains any money remaining, which is credited against future claims for benefits. OWCP will resume payment of compensation benefits and medical bills only after the beneficiary has submitted claims that exceed the amount of money remaining.

10.15 What happens when a Service employee is injured at the National Conservation Training Center (NCTC) or the Federal Law Enforcement Training Center (FLETC)? Both NCTC and FLETC have people who will help you to submit your claim using SMIS. Contact your immediate supervisor, explain the circumstances of your injury, and request that he or she complete the supervisor's section of the CA-1. Also contact your Regional/HQ Injury Compensation Specialist. The processing of the claim is the same as if you were at your permanent duty station.

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10.16 How are firefighting-related injuries handled? The Incident Management Team for the fire has staff that will help you submit your claim using SMIS. Contact your immediate supervisor, explain the circumstances of your injury, and request that he or she complete the supervisor's section of the CA-1. Also contact your Regional/HQ Injury Compensation Specialist. The processing of the claim is the same as if you were at your permanent duty station.

GETTING ACCEPTANCE OF A CASE

10.17 What has to happen to have a case accepted, and what happens afterward?

A. Establishing "fact of injury:" The employee must show that he/she actually sustained an injury or illness as a result of official work duties. Two factors are involved:

(1) Did an injury occur at the time and place and in the manner claimed? This is determined on the basis of factual evidence, including statements from the employee, the supervisor, and any witnesses. An injury doesn't have to be witnessed to be compensable.

(2) Is a medical condition present that may be related to the injury? This is determined on the basis of the attending physician's statement and medical evidence provided, such as discharge papers, office notes, and lab results.

B. OWCP considerations: Only OWCP can accept or deny a claim—the Service can't. OWCP considers the factual and medical evidence sent by the employee and the Service. To make its determination, OWCP applies the law, the regulations, and the procedures to the factual and medical evidence.

C. Employee notification:

(1) OWCP will send the employee a letter explaining whether or not the claim was accepted and stating the injury-related medical conditions they accept and benefits.

(2) If denied, OWCP sends a letter to the employee that states the specific reason for denying the case and that discusses the evidence that led to the decision. They send copies of the decision to the Service and to the employee's representative, if any.

(3) If the claim is incomplete, OWCP usually sends a letter to the employee explaining that the evidence provided is insufficient to support the claim. OWCP gives the employee 30 days to respond to a series of questions before making a final decision.

D. Benefits:

(1) Disability benefits: The disability benefits payable depend on what the medical evidence says. A condition for which medical benefits are payable does not always prevent an employee from working.

(2) OPM Disability Retirement: OPM oversees disability retirement and will consider your application, whether the disability is work-related or not. If your injury or illness is work-related, you may apply for both OPM disability retirement and workers' compensation, but if they are both approved, you must choose one or the other. Most employees choose the program that provides the best benefits for their personal situation. Contact your Regional/HQ Injury Compensation Specialist for assistance.

(a) If you choose workers' compensation and are eventually placed on the OWCP long-term rolls, you have 1 year from your separation date from the Service to sign an OPM disability retirement form.

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(b) Human Resources staff will hold this form and can process it at a later date if you ever want to switch from workers' compensation to OPM disability retirement.

(3) Death gratuity: In addition to death benefits provided by OWCP, the survivors of employees who died from work-related duties on or after August 2, 1990, are entitled to a death gratuity not to exceed \$10,000, less burial expenses and administrative expenses paid by OWCP. The Service makes the death gratuity payments, which are not considered dual-benefits and require no election with OWCP.

10.18 If an individual disagrees with an OWCP decision, what appeal rights are available? OWCP encloses a description of appeal rights with each formal denial decision. These rights include:

A. A hearing before an OWCP representative. The individual claiming benefits can testify and present written evidence. The hearing is held at a location near the individual's home. He or she may have a representative at the hearing, but is not required to do so.

B. A review of the written record by an OWCP representative. The claimant does not have to attend or testify, but he or she may submit written evidence.

C. Reconsideration by district office staff who were not involved in making the contested decision. The request must clearly state the grounds for requesting reconsideration, and it must include evidence not previously submitted or a legal argument not already made.

D. Review by the Employees' Compensation Appeals Board (ECAB). The ECAB is part of the Department of Labor, but separate from OWCP. Review by the ECAB is limited to the evidence of record, and no new evidence may be submitted. The claimant may be represented by an attorney or by any other person authorized by that individual.

AFTER ACCEPTANCE

10.19 What is an alternate work assignment (AWA)? An AWA is a temporary job assignment that accommodates the employee's medical limitations. An AWA should begin as soon as the employee's immediate medical needs are met, preferably the day of the injury. Delays can result in lost work time. Supervisors must provide meaningful work to injured employees who can work a minimum of 2 hours per day.

A. Supervisors must identify assignments that may be performed in case an employee is unable to perform his or her regular duties. When an employee is unable to perform his or her regular duties, or a light duty version of their regular position, the supervisor, in coordination with their servicing Human Resources office, must make every effort to find appropriate work that meets the employee's work restrictions. We encourage the supervisor to also ask for help from the Regional Safety Office to ensure the AWA is a safe alternative.

(1) AWAs continue until the physician permits the employee to return to regular duty or makes a final determination regarding the employee's work status.

(2) Typically, employees will be assigned alternate work within their normal division or workgroup. However, if the supervisor does not have work that the employee can perform, other supervisors should cooperate to ensure that the employee is assigned to another area where a need exists.

(3) Supervisors are responsible for overseeing AWAs and providing any instruction needed. The supervisor must provide full details about arrangements to the Regional/HQ Injury Compensation Specialist.

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B. It is important that all parties understand the duties and restrictions of an AWA. AWAs must be described in writing and signed by the physician, supervisor, and employee. Supervisors and employees must maintain copies of AWAs for a particular case and give a copy to the Regional/HQ Injury Compensation Specialist.

10.20 If an employee uses sick or annual leave due to an on-the-job injury, can the leave be restored and compensation paid instead? Up to 2 years of sick or annual leave may be repurchased, if the claim is approved and medical evidence shows that the employee was unable to work because of the injury during the period claimed.

A. An employee who uses sick or annual leave may request "leave buy-back" by submitting Forms CA-7, CA-7a, CA-7b, and medical documentation covering all instances to OWCP through the Regional/HQ Injury Compensation Specialist for coordination through the payroll office in Denver.

B. The employee will owe the Service the difference between the amount paid for leave, which is 100 percent of the employee's usual wage rate, and the amount paid for compensation, which is two-thirds (no dependents) or three-fourths (has dependents) of the wage rate. When this difference is paid, the Service restores the leave to the employee's account.

C. Repurchasing leave may also affect the employee's income taxes and within-grade increases.

10.21 How long does an accepted case remain open? An accepted case remains open for as long as medical care or disability continues. OWCP closes cases in which there is no activity for a period of several months and may send the original case file to the Federal Records Center. OWCP can request a closed case file from the Federal Records Center and reopen it at any time.

FILES AND RECORDKEEPING

10.22 Is the Service entitled to know what an employee's OWCP case file contains?

A. Yes, but only the Bureau Injury Compensation Program Manager and the Regional/HQ Injury Compensation Specialist have access to the records. OWCP will contact the Service to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider issues relating to retention, rehire, or other relevant matters.

B. Workers' compensation records are protected from release under the Privacy Act, which means OWCP, the Bureau Injury Compensation Program Manager, and the Regional/HQ Injury Compensation Specialists handle case file information with care and restrict access to those with a specific need to have it.

C. If someone wants copies other than the officials in section B above (e.g., the claimant, another Federal agency), they must request access by contacting the OWCP [District Office](#) of jurisdiction to request copies from the original files maintained there.

10.23 What are the recordkeeping requirements for Regional/HQ Injury Compensation Specialists to maintain? See Exhibit 2.

/sgd/ Rowan W. Gould
DEPUTY DIRECTOR

Date: October 22, 2012

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