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"Bargaining for the Future"

Work-Related Injuries and Illnesses

[Federal employees are entitled to compensation for injuries or illnesses sustained in the performance of their duties. Appropriated Fund employees are covered by the Federal Employees Compensation Act (FECA), 5 U.S.C. Chapter 81. Non-appropriated Fund Employees are covered by the Longshore and Harbor Workers' Act, 33 U.S.C. Chapter 18. Both statutes provide compensation for lost wages and the payment of medical expenses and services. They are administered by the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP). (Within OWCP, the Division of Federal Employees' Compensation administers FECA, and the Division of Longshore and Harbor Workers' Compensation administers the Longshore Act.)

Under both statutes, the employing agency does not make determinations on whether a claim is valid or how much compensation should be received. These determinations are the exclusive domain of OWCP. It is a criminal offense for an agency official to interfere with an employee's right to file a claim for compensation, including refusing or failing to file any necessary forms or reports. (18 U.S.C. 1922) Contract language for Non-appropriated fund units will be developed in the near future.

The amounts of compensation and types of medical services paid for in the case of work-related injuries and illnesses are provided in the law and the OWCP's regulations, and do not need to be listed in a collective bargaining agreement. However, there are a number of procedural protections that should be part of each Local's and Council's contract.]

APPROPRIATED FUND

Section 1.0 Reporting of Injuries and Illnesses

Section 1.1 [Contract Minimum]

Employees have the right and are encouraged to report any and all injuries and illnesses that are work-related, regardless of how seemingly minor, to a supervisor or manager. Injuries should be reported as soon as possible, after receiving necessary first aid or emergency care.

[It is in the employee's interest to notify the supervisor and file a notice of injury or illness with OWCP as soon as possible. Even injuries that appear to be extremely minor can become life threatening, and failure to promptly notify the supervisor can lead to the denial of a claim. Agencies might propose that employees must report all injuries and illnesses within a certain time limit. Any time limits that are not set in the OCP's regulations should be rejected. In addition, the Agency cannot state that any notices of injury or illness after a certain period will be denied. Remember, the Agency never determines whether

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a claim is approved or rejected. That is the sole province of OWCP.]

Section 1.2 [Contract Minimum]

If the employee is unable to forward this notice, another person may do so on the employee's behalf.

[20 CFR 10.100 (a) provides that another person may provide notice of a traumatic injury on the employee's behalf. 20 CFR 10.101 (a) allows this for occupational illnesses.]

Section 1.3 [Contract Minimum]

Supervisors will not in any way question the validity of the reported injury or illness or otherwise inhibit the employee from filing the Notice and Claim with OWCP.

Section 2.0 Action Immediately Following Notice

Section 2.1 [Contract Minimum]

A. Upon receiving a report of a work-related injury, supervisors will immediately provide the employee with a copy of Form CA-1, Federal Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, along with instructions on how to complete and submit the form. Employees may complete their portion of the form and submit it to the supervisor or designee.

B. Upon receipt of a CA-1, the supervisor or designee will complete the Receipt of Notice portion of the form and provide the employee with a photocopy of the entire submitted form.

C. No later than 10 work days from the receipt of a CA-1 from the employee or someone on behalf of the employee, the Agency will complete the Employer portion of the form and transmit the form to the Office of Workers' Compensation Programs, U.S. Department of Labor (OWCP). The employee will be provided with a copy of both sides of the completed form when it is submitted to OWCP.

[The time limit comes from 20 CR 10.110. This regulation also requires that the Agency provide the employee with a copy of both sides of the completed form. The Contract Minimum language requires that the employee receive a receipt for any notice that is submitted so that the requirement that it be timely transmitted to OWCP can be enforced.]

D. When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the Agency shall authorize such examination and/or treatment by issuing a Form CA-16. This form shall be issued within four (4) hours of the claimed injury. In the case of emergency, verbal authorization may be provided; however the form must be issued not later

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than 48 hours after the claimed injury. The form will include the name, title and signature of the Agency official authorizing examination and/or treatment. The authorization to obtain medical examination and/or treatment shall not be withheld.

[20 CFR 10.300 (a) and (b).]

E. The Agency will notify the employee of the employee's right to select his or her treating physician. The Agency will not require the employee to be examined or receive treatment from any Agency doctor or health unit, or any other physician or facility designated by the Agency.

[This right is found in 20 CFR 120.300 (d).]

F. The Agency will not require the employee to provide a copy of the completed CA-16. This form is submitted by the employee or the employee's physician directly to OWCP.

Section 2.2 [Contract Minimum]

A. Upon receiving a report of an occupational illness, supervisors will immediately provide the employee with a copy of Form CA-2, Notice of Occupational Disease and Claim for Compensation, with instructions on how to complete and submit the form.

B. Upon receipt of a CA-2, the supervisor or designee will complete the Receipt of Notice portion of the form and provide the employee with a photocopy of the entire submitted form.

C. No later than 10 work days from the receipt of a CA-2 from the employee or someone on behalf of the employee, the Agency will complete the Employer portion of the form and transmit the form to the Office of Workers' Compensation Programs, U.S. Department of Labor (OWCP). The employee will be provided with a copy of both sides of the completed form when it is submitted to OWCP.

[The time limit comes from 20 CR 10.110. This regulation also requires that the Agency provide the employee with a copy of both sides of the completed form. The Contract Minimum language requires that the employee receive a receipt for any notice that is submitted so that the requirement that it be timely transmitted to OWCP can be enforced.]

Section 2.3 [Contract Minimum]

The Agency will not require the use of any electronic or other format for completing and submitting forms. It will accept and process forms whether filed electronically or on paper.

[Some agencies have created electronic systems for completing and submitting

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various forms for workers' compensation files. This is done for the convenience of the agency, not for the benefit of the employee. OWCP does not care whether the form was created electronically or by hand on paper. They just require the submission of the information contained on the form. Often the agency's electronic system will not save the information that is entered on the form. An employee might complete the electronic form and send it to an agency's compensation specialist. That individual can make changes that the employee would not be able to document, since the original information was not saved. The only form available would be the version the compensation specialist printed. In addition to always requiring that employees receive an immediate copy of any OWCP form they submit to the agency, the contract should avoid any requirements that a particular electronic format be used.]

Section 3.0 Continuation of Pay (COP)

Section 3.1 [Contract Minimum]

When an employee sustains a traumatic injury the Agency will continue the employee's pay without charge to leave, during any period of disability that results from that injury, for up to 45 calendar days. A "traumatic injury" is a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

[The definition of "traumatic injury" comes from 20 CFR 10.5 (ee).]

Section 3.2 [Contract Minimum]

The Agency will inform employees of the right to COP at the time the employee submits the CA-1.

Section 3.3[Contract Minimum]

The Agency will not require employees to use any of their own earned leave prior to going on COP, nor will the Agency attempt to counsel, convince or advise employees to use their own leave in lieu of COP.

Section 3.4 [Contract Minimum]

In the event the employee's workers' compensation claim is denied by OWCP, the employee may choose to have the time charged to annual or sick leave.

[Agency officials have been known to tell employees that they are not allowed to go on COP until they use up their annual and/or sick leave. This is false. There is never a circumstance in which the employee should choose to use leave rather than COP. Using leave does not extend the COP period. Any leave will count toward the 45-day maximum entitlement to COP. If the employee's workers' compensation claim is eventually denied, the Agency will convert any time spent

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on COP to leave. Provided that the employee has an adequate leave balance, there is no risk that the employee might lose pay by choosing COP at the time of the injury. If the employee does not have sufficient leave, consider whether leave can be advanced under the provisions of Article __, Leave.]

Section 4.0 Employee Medical Restrictions

Section 4.1 [Contract Minimum]

When, based on an employee's work-related injury or illness, the employee's physician places limitations or restrictions on the tasks the employee may perform or the conditions to which the employee may be exposed, these will clearly stated using OWCP's Form CA-17. the Agency will provide this form to the employee for the employee to bring to each visit to his/her doctor. The supervisor or designee will work with the employee and the employee's representative, if designated, to complete the portion of this form that states the work requirements of the employee's current position.

[Note that this language does not specify that the representative must be a Union representative. It would allow anyone to serve as a representative. By writing the language this way, the union avoids having a duty to fairly represent all employees in workers' compensation cases, without regard to union membership. As long as the union is not the exclusive representative for these matters, the union may offer to provide representation only to dues-paying members. This is an incentive for employees to join the union. For a discussion of the union's duty of fair representation, and how it applies only for those matters for which the union is the exclusive representative, see NTEU v FLRA, 721 F.2d 1402 (D.F.C. Cir. 1983, and AFGE Local 916 v FLRA, 812 F.2d 1326 (10th Cir. 1987)]

A. [Contract Objective]

The Agency and the Union will jointly create a standard CA-17 list of work requirements for each classification or position in the bargaining unit.

[Form CA-17 includes a list of "Usual Work Requirements" of the employee's job, such as the maximum weight the employee is required to lift or carry; the number of hours in the day the employee spends sitting, standing, climbing or walking; and the types of chemicals and level of noise to which the employee is exposed. The physician will then state on the form what restrictions the employee has in meeting these requirements. For example, the job might require the employee to spend a maximum of 7 hours each day sitting, but the doctor may limit the employee to no more than 3 hours.

These work requirements should be stated as specifically as possible

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based on the requirements of the employee's job. They are based on the employee's assigned duties, not necessarily the official position description. It may be possible to develop these lists of work requirements in advance. When this can be done, it can save time and effort when the claimant needs to visit the doctor. The union must ensure that the list of work requirements is complete and accurate. It will determine whether the employee can perform his/her job and still meet the doctor's medical restrictions. The Union's participation in writing the description of duties does not in itself create a duty of fair representation in individual workers' compensation cases. See the discussion in Section 4.1, above.]

Section 4.2 [Contract Minimum]

The Agency will make every effort to accommodate these limitations or restrictions, either by adjusting the duties of the employee's current job or detailing or reassigning the employee to another compatible position. Whenever possible, the position the Agency offers will be within the employee's current commuting area.

Section 4.3

If the Agency wishes to offer the employee a position meeting the doctor's medical limitations or restrictions, the offer will be made in writing, and include a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either to return to work or inform the Agency of his/her decision to accept or refuse the job offer. At the same time, the Agency will send this job offer to OWCP. The Agency will not direct the employee to report for duty in any position until OWCP determines that the offered job is suitable to the employee's medical limitations or restrictions.

[This is found in 20 CFR 10.507 and 10.516.]

Section 5.0 Monitoring of Medical Care

Section 5.1 [Contract Minimum]

The Agency will not contact an employee's physician in person or by telephone to discuss an employee's workers' compensation claim or solicit any information. Pursuant to OWCP's regulations, the Agency may contact the physician in writing concerning the employee's work limitations or restrictions.

[20 CFR 10.506 prohibits the agency from contacting the employee's doctor by telephone or by personal visit. It allows written contact "to aid in returning an injured employee to suitable employment."]

Section 5.2 [Contract Minimum]

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The Agency will send the employee a copy of any written communication to the employee's physician at the same time it is sent to the doctor. If the Agency receives a response from the physician, a copy will be sent to the employee the day on which it is received.

[5 CFR 10.506.]

Section 5.3

The Agency will not ask the employee to provide a copy of Form CA-20, Attending Physician's Report. This form is sent by the physician directly to OWCP.

[Some OWCP forms are submitted through the agency, and the agency retains a copy. Form CA-20 is not submitted through the agency. It contains medical information to which the agency is not entitled. This record belongs to OWCP.]

Section 6.0 Retirement

The Agency will not counsel, pressure, or attempt to influence employees to choose to retire, whether on disability or otherwise, in lieu of receiving continued workers' compensation benefits.

With few exceptions (e.g., air traffic controllers, fire fighters, law enforcement officers), there is no mandatory retirement age for federal employees. Employees are free to work as long as they wish. There should be no difference if the employee is unable to work due to a work-related injury or illness. No one is in a position to tell the employee that absent that injury or illness the employee would have retired at such-and-such age. Agencies prefer that employees on long-term workers' compensation retire instead. This is because workers' compensation benefits are paid from the agency's budget, while retirement annuities are paid from the retirement fund. A decision to choose retirement is irrevocable, even if the employee eventually recovers from the disability the injury or illness caused. There are differences between workers' compensation benefits and retirement annuities. A decision to retire should be based on a careful consideration of what best meets the needs of the employee and his/her family, not on the preference of the agency.]