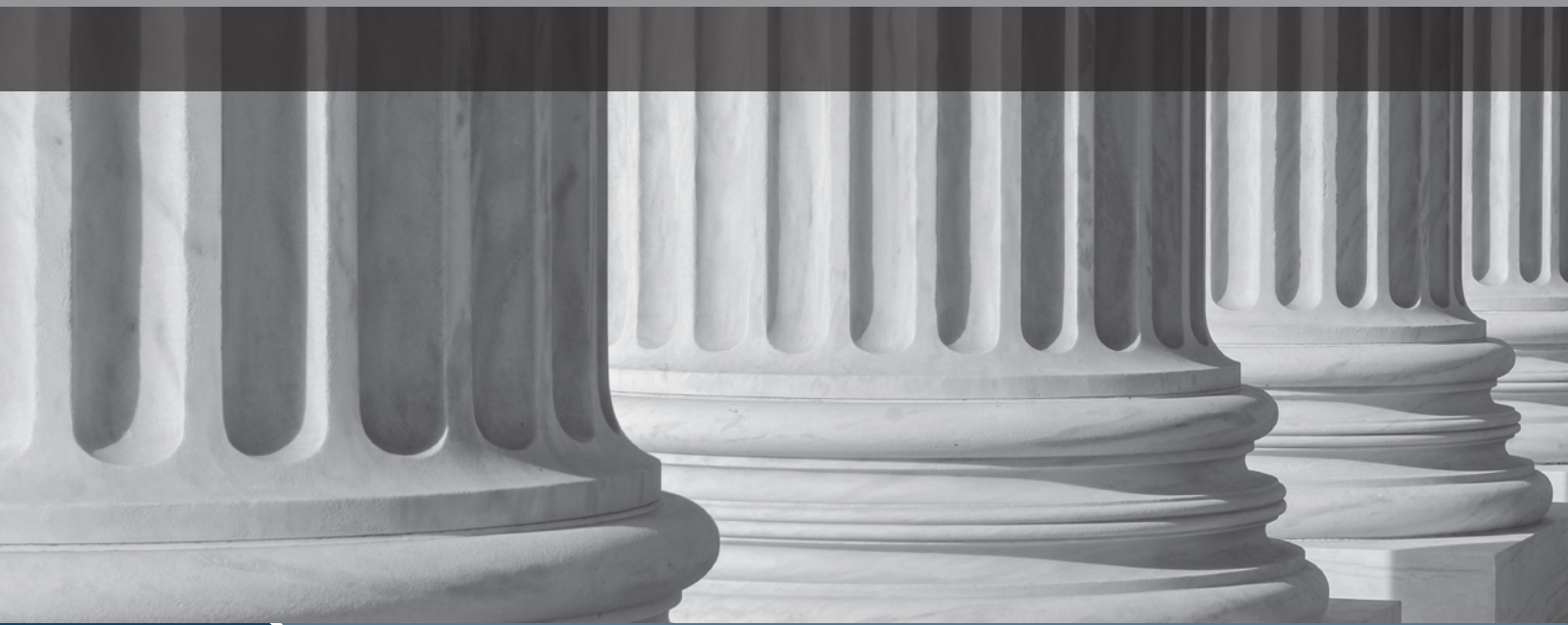


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DISTRICT OF COLUMBIA Overview of Workers' Compensation Law

**AN OVERVIEW OF DISTRICT OF COLUMBIA
WORKERS' COMPENSATION LAW**

DISTRICT OF COLUMBIA WORKERS' COMPENSATION STATUTE

What is the citation for the state workers' compensation statute?

District of Columbia Code Annotated §32-1501, *et seq.*

SCOPE OF COMPENSABILITY

Who are covered “employees” for purposes of workers' compensation?

Employee includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, in the District of Columbia, with some limited exceptions. D.C. Code Ann. §32-1501 (9)

Identify and describe any “statutory employer” provision.

An employee whose employer is an uninsured sub-contractor can assert a claim against the general contractor. Where there is a hierarchy of contractors, the first insured contractor in the hierarchy becomes liable for compensation benefits.

Are “illegal aliens” entitled to benefits of workers' compensation as The Immigration Control Act indicates that they cannot be employees although most state acts include them within definition of “employee”?

Yes, they are entitled to temporary total disability, medical benefits and scheduled permanent partial disability benefits, but not vocational services or any permanency benefit based upon wage loss.

What types of injuries are covered and what is the standard of proof for each:

- A. Traumatic or “single occurrence” claims.

Injury means accidental injury or death arising out of and in the course of the employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of third persons directed against an employee because of the employment. There is no requirement that a specific or unusual incident occur for there to be an injury under the Act. *Tremmer v. A.G. Prada Co.*, H&AS No. 84-185 (1985). An employee in the District of Columbia enjoys a rebuttable presumption that the claim is compensable if something unexpectedly went wrong within his or her body, and that the working conditions could have caused the harm.

B. Occupational disease (including respiratory and repetitive use).

See answer A. The same presumptions apply.

What, if any, injuries or claims are excluded?

An employee who is receiving benefits under the workers' compensation law of any other state for the same injury or death, casual employees of an employer, and employees who are only temporarily or intermittently employed in the District of Columbia are not covered by the Act. D.C. Code Ann. §32-1503

What psychiatric claims or treatments are compensable?

In general, disability causally related to psychological injuries is compensable if the employee establishes that the psychological injury resulted from a specific identifiable source within the obligations or conditions of the employment, rather than the employee's perceived conditions of the employment. Psychological injury cases are compensable regardless of the Claimant's pre-existing condition. The test for psychological injury is subjective rather than objective.

What are the applicable statutes of limitations?

A claim must be filed within one year from the date of injury or one year from the date the employee is aware or should have been aware of the causal relationship between the injury and the employment. D.C. Code Ann. §32-1514. However, the one year statute will not begin to run until the Employer's First Report of Injury is filed with the Office of Workers' Compensation. Furthermore, the employee must be advised by the employer of the filing of the First Report in order to commence the running of the statute. The employer is required to provide to the employee, by certified mail, return receipt requested, a statement of the employee's rights and obligations which identifies the employee's notice and limitation requirements. D.C. Code Ann. §32-1532

What are the reporting and notice requirements for those alleging an injury?

The employee should notify the employer in writing within 30 days of the injury or within 30 days of awareness of the relationship between an injury causing disability and the employment. Late notice will not bar a claim unless the employer otherwise had no knowledge of the injury and was also prejudiced by the late notice. D.C. Code Ann. §32-1513

Describe available defenses based on employee conduct:

A. Self-inflicted injury.

Liability for compensation does not apply where injury to the employee was occasioned solely by intoxication or the willful intention of the employee to injure himself or herself or another. D.C. Code Ann. §32-1503

B. Willful misconduct, “horseplay,” etc.

There is no applicable statutory defense. Courts, however, have recognized willful misconduct and horseplay as potential defenses, depending on the severity of the conduct. An employee may be deemed to have gone beyond the scope of the employment if he or she: (1) violated an express prohibition; (2) acted without authorization; or (3) was on a personal mission.

C. Injuries involving drugs and/or alcohol.

See answer A.

What, if any, penalties or remedies are available in claims involving fraud?

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation shall be guilty of a misdemeanor, and may be fined up to \$1,000.00 or subject to imprisonment not to exceed one year. D.C. Code Ann. §32-1533.

Is there any defense for falsification of employment records regarding medical history?

Not per se, but any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation shall be guilty of a misdemeanor, and may be fined up to \$1,000.00 or subject to imprisonment not to exceed one year. D.C. Code Ann. §32-1533.

Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?

Depending on the facts of a particular case, injuries during recreational and other non-work activities can be compensable, if they are sponsored or otherwise encouraged by the employer.

Are injuries by co-employees compensable?

Yes.

Are acts by third parties unrelated to work, but committed on the premises, compensable (e.g. “irate paramour” claims)?

Not generally.

BENEFITS

What criterion is used for calculating the average weekly wage?

Effective April 16, 1999, the average weekly wage is based on the employee's wages during the 26 weeks preceding the injury; 13 weeks for injuries prior thereto. Wage stacking is permitted.

How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

Such benefits are paid at two-thirds of the average weekly wage. The 2020 minimum compensation rate is \$383.86, and the maximum compensation rate is \$1,535.44. The minimum rate does not apply to TTD benefits, and benefits should be paid at the two-thirds rate without regard to the minimum compensation rate. Hiligh v. DOES, 935 A.2d 1070 (D.C. 2007)

How long does the employer/insurer have to begin temporary benefits from the date disability begins?

As soon as possible after the date of injury, but not later than the fourteenth day thereafter.

What is the “waiting” or “retroactive” period for temporary benefits (e.g. must be out ____ days before recovering benefits for the first ____ days)?

The employee must be out 14 days before recovering benefits for the first 3 days. §32-1505.

What is the standard/procedure for terminating temporary benefits?

Benefits may be terminated by entering into a stipulation if the employee has returned to work, or by filing a Notice of Controversion (Form No. 11 DCWC) setting forth the reason for the termination of the voluntary payment of benefits.

Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?

No.

What disfigurement benefits are available and how are they calculated?

The hearing examiner shall award proper and equitable compensation for serious disfigurement of the face, head, neck, or other normally exposed bodily areas, up to \$7,500.00. The calculation of disfigurement is discretionary.

How are permanent partial disability benefits calculated, including the minimum and maximum rates?

- A. How many weeks are available for scheduled member/parts, and the standard for recovery?

Each member listed in the schedule shown is assigned a corresponding number of weeks for which the employee will receive compensation if he or she has lost total use of the member. If the loss is only partial, then the percentage of permanent disability is determined by multiplying the anatomical rating by the number of weeks provided in the schedule. Effective April 16, 1999, the scheduled rates are as follows (100% impairment):

| | |
|-------------------------------------|------------------------|
| Arm 234 weeks | Leg 216 weeks |
| Hand 183 weeks | Foot 154 weeks |
| Eye 120 weeks | Thumb 57 weeks |
| First Finger 35 weeks | Great Toe 29 weeks |
| Second Finger 23 weeks | Third Finger 19 weeks |
| Toe other than Great Toe 12 weeks | Fourth Finger 12 weeks |
| Loss of Hearing Both Ears 150 weeks | |
| Loss of Hearing in One Ear 39 weeks | |

- B. Number of weeks for “whole person” and standard for recovery.

Compensation for injuries that are not specifically covered by the schedule (head, back or neck, heart attacks, strokes, mental conditions, etc.) are compensated based on actual loss of wage earning capacity. The employee must show that the injury has resulted in an actual diminution in post-injury wages before entitlement to compensation is established. If a wage loss is established, the employee receives compensation at the rate of two-thirds of the wage loss. However, the employee cannot receive temporary partial, temporary total, and permanent partial disability benefits for more than 500 weeks unless rated at 20% or more for whole body impairment, in which case an additional 167 weeks may be owed.

Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?

The statute requires that the employer provide vocational rehabilitation which must be designed, within reason, to return the employee to employment at a wage as close as possible to that earned at the time of injury. The Office of Workers' Compensation monitors vocational rehabilitation services and determines the adequacy and sufficiency of the rehabilitation. D.C. Code Ann. §32-1507

How are permanent total disability benefits calculated, including the minimum and maximum rates?

Lifetime permanent total disability benefits are calculated initially at the rate of 2/3 of the employee's average weekly wage. The maximum compensation rate for 2017 is \$1,469.96 and the minimum weekly compensation benefit is \$367.48. Additionally, a cost of living increase (supplemental allowance) must be factored in annually, not to exceed a five percent (5%) increase. There is a .08% increase in the Supplemental Allowance for 2017.

How are death benefits calculated, including the minimum and maximum rates?

A. Funeral Expenses.

Funeral expenses up to \$5,000.00 may be allowed. D.C. Code Ann. §32-1509.

B. Dependency Claims

Death benefits are paid to the surviving spouse and children of the employee in the following manner: (1) a surviving spouse with no children receives 50 percent of the employee's average weekly wage during widowhood and receives a lump sum payment of two years compensation on the date of re-marriage; (2) 16 2/3 percent of the average weekly wage is added for each child supported by the surviving spouse; (3) a surviving spouse receives 50 percent of the average weekly wage for the first child and the amount is increased 16 2/3 percent of the average weekly wage for each additional child and is to be split evenly among the children. In any case, total compensation may not exceed two-thirds of the employee's average weekly wage, or the maximum benefit payable.

What is the criteria for establishing a “second injury” fund recovery?

If the employee sustains a work-related injury that combines with a pre-existing disability or impairment and causes substantially greater injury or death, the employer's liability may be limited to 104 weeks of permanent disability compensation. However, Special Fund has been abolished for injuries after April 16, 1999.

What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?

The employee may allege worsening of condition or claim additional compensation for any reason within: (1) one year of the rejection of a claim; (2) one year from the last payment of permanent disability benefits under the schedule; or (3) three years of payment of benefits under “Other Cases.” The last payment of “compensation” does not include payment of medical expenses.

What situation would place responsibility on the employer to pay an employee's attorney fees?

When a claim is controverted by the employer, and, through the services of an attorney, the employee is ultimately awarded benefits, the employer may be responsible for the employee's attorney's fee up to 20 percent of all benefits secured. These fees are paid in addition to the award.

EXCLUSIVITY/TORT IMMUNITY

Is the compensation remedy exclusive:

A. Scope of immunity.

The liability of the employer is exclusive and in place of all liability of the employer to the employee.

B. Exceptions (intentional acts, contractual waiver, "dual capacity," etc.).

If the employer fails to secure payment of compensation as required by the Act, an employee may elect to claim compensation under the Act or to maintain an action at law for damages. If the employee elects to maintain an action at law, the employer may not plead the defenses of negligence of a fellow servant, assumption of risk or contributory negligence. Additionally, intentional acts and/or sexual harassment may constitute exceptions to the exclusivity of workers' compensation as a remedy and permit a separate civil action against the employer.

Are there any penalties against the employer for unsafe working conditions?

None under the Act, but such penalties exist under both District of Columbia and federal law, and vary according to the severity of the offense.

What is the penalty, if any, for an injured minor?

None.

What is the potential exposure for "bad faith" or claims handling?

If the Department of Employment Services or a court determines that an employer/insurer has delayed the payment of any installment of compensation in bad faith, the employer/insurer must pay to the employee, for the duration of the delay, the employee's actual weekly wage for the period that the employee is eligible to receive benefits in addition to employee's regular compensation benefits.

What is the exposure for terminating an employee who has been injured?

An employer who discharges, or in any other manner discriminates against, an employee because he or she claims, or attempts to claim, compensation, or for testifying or preparing to testify in such a claim, is subject to a penalty up to \$1,000.00. Any employee so discriminated against must be restored to his or her employment and compensated for any wage loss arising out of the discrimination. However, if the employee ceases to be qualified to perform the duties of the employment, he or she is not entitled to such restoration to employment and back pay. The employer alone, and not the insurer, is liable for any such penalties and payments.

THIRD PARTY ACTIONS

Can third parties be sued by the employee?

Yes.

Can co-employees be sued for work-related injuries?

Yes.

Is subrogation available?

The employer has a lien against an employee's third party recovery for workers' compensation payments. This lien may be pursued by subrogation or direct action by the employer against that party.

MEDICALS

Is there a time limit for medical bills to be paid, and are penalties available for late payment?

There is no specific time limit for the payment of medical bills, but such bills are to be paid promptly when due.

What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?

Subpoenas for medical records, medical release authorizations and requests for production of documents may be used, but only when an Application for Formal Hearing has been filed.

What is the rule on (a) claimant's choice of physician; (b) employer's right to second opinion and/or Independent Medical Examination?

The Claimant has the right to choose a treating physician to provide medical care. The claimant may not change the treating physician without prior approval of the carrier. The claimant may obtain referrals from one specialty to another without prior approval. No limitations on number of IME's that can be performed in a given period.

What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?

All reasonable and necessary treatment which is causally related to the injury is covered, subject to the employer's right to seek utilization review of the proposed or previously rendered service. Chiropractic care and physical therapy are both covered.

Which prosthetic devices are covered, and for how long?

The employer must furnish any prosthetic appliance for such period as the nature of the injury or the process of recovery may require.

Are vehicle and/or home modifications covered as medical expenses?

Yes, if related to the injury reasonable and necessary.

Is there a medical fee guide or schedule, or other provisions for cost containment?

As of April 16, 1999, each provider of medical care or services must use a standard coding system for reports and bills. Medical care and services shall be billed at the rate established in the medical fee schedule adopted by the mayor. The fee scheduled is based on 113% of Medicare's prevailing rates. Utilization review is available for all medical providers' bills.

What, if any, provisions or requirements are there for "managed care"?

None.

PRACTICE/PROCEDURE

What is the procedure for contesting all or part of a claim?

The filing of a Notice of Controversion (Form No. 11 DCWC) contests all or part of a claim.

What is the method of claim adjudication?

A. Administrative level.

An Informal Conference concerning the claim is scheduled by a claims examiner of the District of Columbia Office of Workers' Compensation. The claims examiner issues a non-binding recommendation concerning the payment of compensation. Either party may reject the recommendation and request a Formal Hearing before an Office of Hearings and Adjudication administrative law judge. The order issued after a formal hearing is binding.

B. Compensation Review Board.

Any party disagreeing with the decision of the Informal Conference and Formal Hearing may seek further review at the Compensation Review Board. The CRB reviews cases based on the record and memoranda filed by the parties. No additional or new evidence is allowed. The CRB will review the prior order to determine if it is “legally sufficient.”

C. Appellate.

An appeal from the CRB may be taken to the District of Columbia Court of Appeals, which must affirm the decision of the Department if it is rational, supported by substantial evidence, and in accordance with the law.

What are the requirements for stipulations or settlements?

Stipulations and settlements must be in writing and submitted to the Office of Workers' Compensation for approval. Factors considered by the Office of Workers' Compensation include: (1) whether there is a valid dispute regarding issues of compensability of a claim; (2) the extent of total or partial disability and other liability under the Act; (3) the employee's age and educational level in relationship to vocational evaluation and entitlement; (4) whether the employee has reached maximum medical improvement; and (5) whether and why the employee has refused to undergo surgery to improve a medical condition.

Are full and final settlements with closed medicals available?

Yes.

Must stipulations and/or settlements be approved by the state administrative body?

Yes.

RISK FINANCE FOR WORKERS' COMPENSATION

What insurance is required; and what is available (e.g. private carriers, state fund, assigned risk pool, etc.)?

Every employer in the District of Columbia is required to “secure the payment of compensation” under the District of Columbia Workers' Compensation Act, either through insurance or by qualifying as a self-insurer. The District of Columbia does not have an insurance fund, but insurance is available through private insurers and an assigned risk pool. Insurers must be authorized to transact workers' compensation insurance in the District of Columbia.

What are the provisions/requirements for self-insurance?

A. For individual entities.

Employers may qualify as self-insurers by furnishing satisfactory proof to the District of Columbia government of the financial ability to pay compensation under the Act and by receiving authorization from the Mayor to pay such compensation directly. Applications for self-insurance are handled on a case by case basis and depend generally on the size and financial stability of the employer, the number of employees, and the previous claims history.

B. For groups or “pools” or private entities.

The Act does not specifically address group insurance or “pooling.”

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