



**EVOLVE EXPANDE EXCEL**  
**Emerge to Greater Heights**

**2022** DoD VIRTUAL BENEFITS & WORK-LIFE SYMPOSIUM



**IC Session: ICPA Credentialing Level I Questions  
and Answers Review**

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- Review of Procedures and Regulations, with new examples, for three topics:
  - Performance of Duty
  - Continuation of Pay
  - Leave Buy Back

## Objectives

- Injuries occurring on an employer's premises are covered when:
  - ✓ they occur during normal working hours or a reasonable time prior to or after normal working hours (usually within 30 minutes)

**AND**

- ✓ the employee is performing assigned duties or actions reasonably incidental to their employment
- Agency premises is any facility/ property that is owned, controlled, or maintained by an agency
  - ✓ Examples include injuries sustained in break rooms and rest-rooms, eating at your desk, etc. as long as the injury was not caused by a prohibited activity.

## Performance of Duty: Industrial Premises

- Coverage is afforded to employees off premises when:
  - ✓ The employee's duties require work off premises.
  - ✓ The employee is sent on a special off premises errand or mission by the employer.
  - ✓ The employee works at an alternate work site off premises.
- Coverage is afforded to employees performing work in a teleworking arrangement while they are in the area of their home that has been designated for telework.
  - ✓ Other areas of the employees home are not considered agency premises even if the employee is performing an activity that would normally be considered to be incidental to employment. (*ECAB S.F. and Department of Interior, 09-2172*)

## Performance of Duty: Industrial Premises

- Employees are covered while traveling for activities reasonably incidental to the travel including the traveling itself
- Covered while eating, sleeping and brushing teeth
- NOT covered during a substantial deviation for personal activities such as sightseeing or skydiving.
- It is myth that employees are covered 24/7 while traveling

Performance of Duty: TDY

- Employees with a fixed place of employment and fixed hours of work traveling to and from work are generally not covered unless there are special circumstances such as:
  - ✓ Employees are recalled under an emergency
  - ✓ Employee is directed by management to alter their route for an assigned duty
  - ✓ Employee must travel between 2 different duty stations

## Performance of Duty: Travel to and from Work

- Injuries are compensable in these situations:
  - ✓ Paid to participate, required, and/or employer sponsored
  - ✓ Fitness is a requirement of position, injuries sustained on or off duty when exercising
  - ✓ Participating in a structured program on or off premises
  - ✓ Exercising on premises during authorized breaks in a designated area, even if not part of a structured program
  - ✓ Voluntarily receiving medical treatment including vaccines at employing agency

Performance of Duty: Recreation, Fitness, Breaks,  
Vaccine

- An employee injured during horseplay is considered to be in the performance of duty if the the horseplay was of a character that could be **reasonably be expected** where a group of workers are thrown into a personal association for extended periods of time.
  - ✓ Supervisor should determine if the particular activity was a reasonable incident of employment or was an isolated, unanticipated event.
  - ✓ Supervisor should also determine whether the horseplay constituted a prohibited activity, resulted from the employee's intoxication, willful misconduct, or intention to bring about self-injury or injury to another or occurred while employee was removed from assigned duties of course of employment.

## Performance of Duty: Horseplay



- Generally, as with all injuries, the dispute must have arisen out of assigned work duties and not purely personal matters or issues “imported from the outside” i.e. unrelated work duties. A few examples:
  - ✓ Co-workers argue about completing required paperwork related to their regular duties = Factors of Employment.
  - ✓ Heated dispute about what happened at a ball game/restaurant/party outside work= NOT a Factor of Employment
- Injury or death caused by the assault of another person can be covered if the cause of the assault can be proven to be directly related to work activity or work environment
- If the assault resulted from non work issues being imported into the workplace then coverage is not afforded.

## Disputes with Employees and Assaults

- If the employee was injured while engaged in a prohibited activity, it must be determined whether the employee knowingly engaged in the act which was prohibited by the Employing Agency
  - ✓ Was the employee fully aware of the prohibited activity?
  - ✓ What was the extent to which the employee diverted from assigned duties?
  - ✓ Was the particular act within the general scope of the assigned duties?

## Performance of Duty: Prohibited Activities

- There are three bars to compensation listed in the FECA. Injury or death **may not** be afforded coverage if it is demonstrated by the facts that the injury or death was the result of:
  - ✓ Will-full misconduct
    - Violating a safety rule
    - Disobeying other orders of the employer
    - Violating a law
  - ✓ Intoxication was direct cause of the injury (NOTE: merely because the employee was or may have been intoxicated does not automatically disqualify them from coverage)
  - ✓ Employer's intention to bring about injury or death to self or another

## Performance of Duty: Statutory Exclusions

- Explained Fall: external object or condition caused the fall
  - ✓ Example: tripping over a box in the walkway
  - ✓ Usually Compensable
- Unexplained Fall: no clear medical reason for fall
  - ✓ Example: Employee falls and hits their head on the floor
  - ✓ Usually Compensable
- Idiopathic Fall: evidence supports that the fall was caused by internal condition
  - ✓ Fall to the floor: Not covered
  - ✓ Falls and hits desk, then the floor: nly desk impact injury covered

## Performance of Duty: Types of Falls

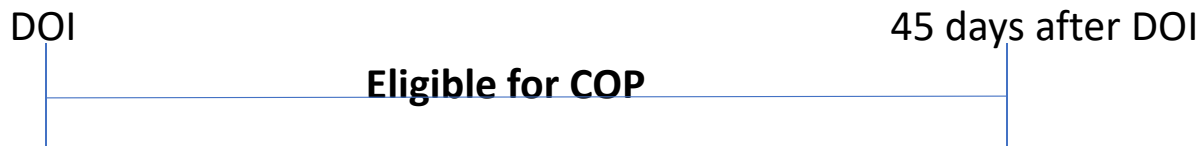
- Workers' compensation law does not apply to each and every illness that is somehow related to an individual's employment.
- Where the disability results from his/her emotional reaction to regular or specially assigned work duties **or** to a requirement imposed by the employment, the disability comes within the coverage of the Act.
- An emotional condition caused by an administrative action is not compensable unless error or abuse on the part of the agency is shown.

## Performance of Duty: Emotional Conditions

- COP is the continuation of an employee's regular pay with no charge to sick or annual leave.
  - ✓ It is paid by the employer and not OWCP
  - ✓ It is subject to all taxes and deductions since it is a continuation of an employee's regular pay.
  - ✓ OWCP is the exclusive authority with regard to COP
- Paid for a maximum of 45 calendar days for each traumatic injury

## Continuation of Pay (COP)

- To be eligible for COP an employee must:
  - ✓ Suffer a traumatic injury
  - ✓ File Form CA-1 within 30 days of the date of injury
  - ✓ Begin losing time from work within 45 days from the date of injury



*Reference 20 CFR 10.205*

COP Eligibility?

- An employee is out of work as a result of:
  - ✓ Medical treatment
  - ✓ Disability
  - ✓ Agency's inability to accommodate the work injury limitations
- An employee returns to work with a wage loss (i.e. loss of shift differential)
- An employee is formally reassigned to another position with a lower rate of pay.

***This does not include a reduction of pay that is due solely to an employer being prohibited by law from paying extra pay to an employee for work not actually performed.***

When is COP payable?



- Most employees are eligible for COP; however, the FECA excludes certain persons
- COP cannot be authorized for members of these excluded groups, which include but are not limited to:
  - ✓ Persons rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay
  - ✓ Volunteers (for instance, in the Civil Air Patrol and Peace Corps}
  - ✓ Job Corps and Youth Conservation Corps enrollees
  - ✓ Individuals in work-study programs
  - ✓ Grand or Petit Jurors (unless otherwise Federal employees)

***Reference 20 CFR 10.200***

## Who is Eligible for COP?

- Days of Entitlement: 45 calendar days

- ✓ Entitlement only to the time necessary to obtain treatment. 4 hours is generally considered reasonable for routine medical examinations whether time is charged to COP or compensation is claimed for the lost time (**CA-810 2-2 e(5)**).
- ✓ Each day with a period charged to COP will be counted as 1 day of entitlement.
- ✓ Scheduled days off and holidays occurring during a period of disability will be counted towards COP entitlement.
- ✓ Leave used during a period when COP is otherwise payable is counted toward the 45-day COP maximum as if the employee had been in a COP status.
- ✓ The employee has 1 year from the date the leave was taken or the date OWCP provided written approval of the claim (whichever is later) to change periods of leave taken to COP.
- ✓ Disability on the date of injury is not normally counted as COP except when the injury occurs before the start of an employee's work shift and the employee is disabled from work; in that case, the date of injury is counted as a COP day.

**Reference: 20 CFR 10.215**

## Counting COP days

- Days of Entitlement:
  - ✓ Leave used during a period when COP is otherwise payable is counted toward the 45-day COP maximum as if the employee had been in a COP status.
  - ✓ The employee has 1 year from the date the leave was taken or the date OWCP provided written approval of the claim (whichever is later) to change periods of leave taken to COP.
  - ✓ Disability on the date of injury is not normally counted as COP except when the injury occurs before the start of an employee's work shift and the employee is disabled from work; in that case, the date of injury is counted as a COP day.

***Reference: 20 CFR 10.215***

Counting COP days

- Days of Entitlement

- ✓ **Compressed Work Schedules:** Regular day off (RDO) will count as a COP day if the employee was disabled for work immediately preceding or following the RDO and medical evidence supports disability
- ✓ **Part-Time or Intermittent Schedules:** All calendar days on which medical evidence indicates disability are counted as COP days, regardless of whether the employee was or would have been scheduled to work those days.

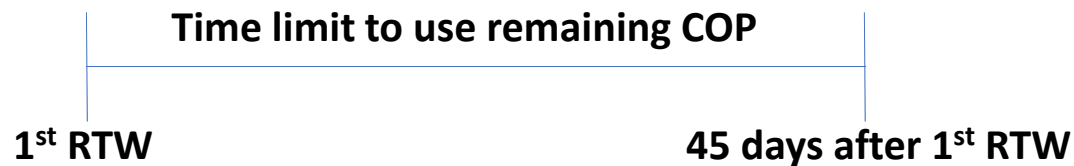
*Reference: 20 CFR 10.215*

Counting COP days

- It is very important to note when the employee actually stopped work to either see medical treatment or to recover from the injury
- In most situations the date of injury (DOI) is administrative leave.
- Do not count the date of injury as a day of COP unless the injury occurred before their shift began.
- Examples:
  - ✓ Drive onto the base toward their work site and was in an MVA
  - ✓ Walked into the work area and slipped, fell, hit by object

COP: Initial Period of Disability

- Claimant can use the remaining days of COP if they stop work within 45 days from the time they 1<sup>st</sup> RTW following their initial period of disability.
- Time charged to administrative leave on the date of injury is considered the initial period of disability for COP purposes.



*Reference: 20 CFR 10.207*

COP: Time Limit for use

- There is an exception to the time limit. Any remaining entitlement can be used beyond the 45<sup>th</sup> day time limit if:
  - ✓ The period of disability starts prior to the 45<sup>th</sup> day **AND**
  - ✓ The period runs continuously without interruption

In this situation, COP will be paid until the employee is no longer disabled for work or the 45 day entitlement to COP is exhausted, whichever occurs first.

***Reference: DFEC Procedure Manual 2-807-8g***

## COP: Time Limit Exception

- Injured Worker (IW) is injured on 06/01
- Disability starts on 06/01. Physician certifies IW disabled through 06/13
- IW returns to full time limited duty on 06/14. Physician wants IW to attend Physical Therapy (PT) on Tuesdays and Thursdays for the next two weeks.
- Physician takes IW off work again starting 07/20
- HOWEVER, the IW does not RTW before the 45<sup>th</sup> day after the 1<sup>st</sup> RTW. Can the IW get COP beyond this date? Explain why or why not.

## COP Example #1: Counting Days of COP



- This is the exception to the rule.
- Normally COP is not payable beyond the 45<sup>th</sup> day after the employee RTW, but if they stop work again before that deadline, and are out continuously, they can use any remaining COP days.
  - 06/02 through 06/13 = 12 days of COP
  - 4 PT visits = 4 days of COP
  - Total dates of COP used= 16, leaving 29 days of COP
  
  - 07/20 through 08/17 = 29 days
  - Leave without pay (LWOP) begins 08/18 and the IW should file a CA-7
- If they had RTW before the COP days ran out, then they cannot use any remaining days. Time limit was reached

## COP Example #1 Answer: Counting Days of COP

What if an employee is released to work light duty during the COP period?

- Can the Agency stop paying COP immediately?
  - No, a job offer needs to be made, and COP continues until employee reports to work or OWCP denies continuing COP due to refusal of of a suitable job.
  
- COP may be terminated if medical evidence shows they can work in their regular position.

COP Example #2

# Leave Buy Back (LBB)

- Allows an employee to change a period of leave to a period of LWOP and have the leave credited back to their leave account (accepted FECA claims)
  - ✓ Required coordination between Employing Agency and OWCP
  - ✓ Leave Buy Back is not required under FECA
- This is different from payment of compensation of lost wages in these ways:
  - ✓ The Employing Agency controls the process in that they have to approve that the LBB can be done
  - ✓ The Employee may claim compensation for periods of Annual and Sick Leave which are restorable **in accordance with the rules of the Employing Agency**
  - ✓ If OWCP certifies payment, the money is sent to the Agency, not the employee

## Leave Buy Back (LBB)

- Although the Forms required for the LBB process (CA-7, CA-7A and CA7B) were created by OWCP, and they determine if medical evidence supports disability for the period claimed, **the agency determines the process for LBB**. Most agencies require filing within one year of when the leave was used, or the acceptance of the claim (whichever is later).
- As such, denial for LBB is not appealable to OWCP since the process of LBB is left to the discretion of the Employing Agency.
- The only decision that could be appealed would be a denial of LBB from OWCP due to lack of medical evidence to support disability for the period claimed.

# Leave Buy Back (LBB)

- Value of the leave must be reimbursed to the agency before leave is re-credited. The reimbursement will include:
  - ✓ Payment from OWCP for the period of leave to be re-credited
  - ✓ If an additional amount is required, the employee is responsible for the remaining amount
  - ✓ If money is left over after DOL reimbursed DFAS then any excess amount is provided (refunded) to the employee
- “Use or Lose” applies to LBB
- If the employee “buys back” annual leave taken in a previous year and the leave will cause the employee’s leave balance to exceed the maximum allowable (usually 240 hours) at the end of that leave year, the excess leave will be forfeited at the beginning of the leave year to which it was re-credited.

# Leave Buy Back (LBB)

- OWCP will only pay for periods of disability supported by medical documentation
- The Employee is responsible for providing medical documentation to OWCP
- Process starts when the employee fills out CA-7, indicating that he/she wishes to proceed with LBB

# Leave Buy Back Forms

- Review of Forms used to claim LBB Compensation:
  - CA-7 : lists dependents, pay rate, period of compensation, type of compensation requested
  - CA-7A: used to list individual days of intermittent lost time, how many hours, why leave was used
  - CA-7B: only for calculating the estimated LBB total so that the employee can see what OWCP is going to pay and what they may owe toward the full LBB

## Leave Buy Back Example

- DFAS determines that the total salary paid to claimant for the period is \$10,000
- If claimant has dependents , the agency is paid  $\frac{3}{4}$  compensation.= \$7,500., claimant owes any balance
- If claimant has no dependents, the agency is paid  $\frac{2}{3}$  compensation= \$6666.66, claimant owes any balance
- Claimant MAY NOT do only  $\frac{2}{3}$  or  $\frac{3}{4}$  of their leave to avoid repaying their portion (because leave was paid at 100% of their salary).



Questions?

