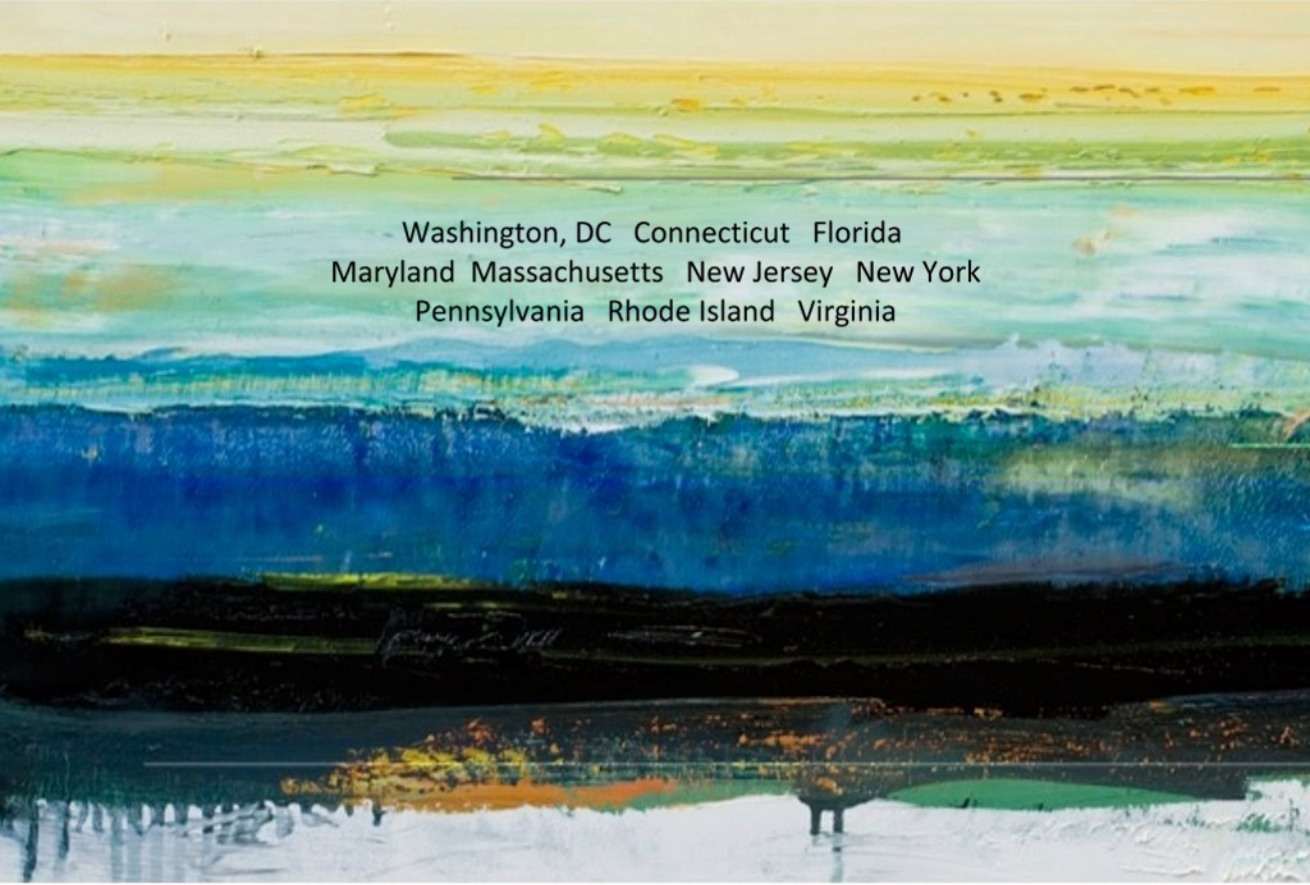


# KIERNAN TREBACH

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Washington, DC Connecticut Florida  
Maryland Massachusetts New Jersey New York  
Pennsylvania Rhode Island Virginia

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# About Us

Kiernan Trebach is a mid-sized law firm with offices throughout the Northeast and Mid-Atlantic regions of the United States - from Maine to Florida.

Kiernan Trebach represents the evolution of a firm founded in the 1980s that was structured to ensure its vitality and success long after the careers of its founding members. Kiernan Trebach began as a small insurance defense and coverage firm with one primary client. In the ensuing decades, we have grown by demonstrating to our clients that we can achieve better results in a more cost-effective manner than many of our competitors. We pride ourselves on evaluating cases for early resolution to provide certainty and cost containment for our clients. When a case cannot be resolved, we have the talent and experience to litigate the case through trial and appeal, if necessary.

Kiernan Trebach began in 1989 with a single office in Washington, D.C. and a handful of attorneys. We are proud of our progress through the years, maturing into a firm of more than 100 attorneys with offices throughout the Northeast and Mid-Atlantic states. We have focused on a slow and sustainable growth process to create a diverse working environment, while remaining sensitive to the needs of our employees and their families. Kiernan Trebach has become respected for our effective defense of clients ranging from Fortune 100 companies to individuals and small business owners. We take pride in knowing our clients, understanding what they want, and exceeding their expectations.

Kiernan Trebach's clients rely on the firm's expertise to manage risk in major cases throughout the country. We have a proven record as dedicated litigators who are mindful of the financial and business impacts of litigation. Our practice is devoted exclusively to the representation of corporations, insurers, and self-insureds. We are actively engaged in advising and counseling clients on risk management, claim resolution, insurance coverage, and every aspect of defense-related litigation.

Kiernan Trebach's focus on the client has allowed us to establish lasting relationships with clients who rely on us whenever they need counsel, for matters large and small. Kiernan Trebach's client partners include well known entities such as McDonald's Corporation, Howard University, Amtrak, Target, UPS, and some of the most respected insurance companies in the world.

If you are a current client, we thank you for your support and loyalty throughout the years. If you are looking for a law firm who will partner with you and work to achieve your goals, we would welcome the opportunity to meet with you.

# DAVID M. SCHOENFELD

## PARTNER

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### Practice Areas

Alternative Dispute  
Resolution  
Construction  
Workers Compensation

### Education

University of Maryland  
School of Law, J.D., with  
Honors, 1990  
University of Wisconsin,  
Madison, Bachelor of  
Science, 1987

### Court Admissions

District of Columbia  
Maryland  
District of Columbia Court of  
Appeals  
Court of Appeals of  
Maryland  
United States District Court  
for the District of Columbia  
United States District Court  
for the District of Maryland  
United States Court of  
Appeals, District of  
Columbia Circuit  
Supreme Court of the United

### Experience

David M. Schoenfeld is the Senior Workers' Compensation Partner in the Washington, D.C. Office. He has nearly thirty years of experience in workers' compensation insurance defense matters and in the representation of home builders in construction related concerns.

Mr. Schoenfeld represents large national carriers, local carriers, self-insured's and home builders before administrative agencies, court trials and before the appellate courts in Maryland and the District of Columbia. Many appellate matters he has handled have positively impacted the interpretation of the law in his practice area.

Mr. Schoenfeld is a graduate of the University of Wisconsin, Madison (1987), and the University of Maryland School of Law, with Honors (1990). While in law school, Mr. Schoenfeld served as an Asper Fellow for the Honorable Joseph Howard, Judge on the Federal District Court in Baltimore. Bar admissions include the Supreme Court of the United States, Maryland Court of Appeals, District of Columbia Court of Appeals, Federal District Court of Maryland, and Federal District Court for the District of Columbia.

Mr. Schoenfeld served for three years as the President of the Associate of Compensation Insurance Attorneys, Co-chaired the Workers' Compensation Section for the Montgomery County Bar Association and served as the Section Chair for the Law Firm

**Professional Affiliations**

Past President, Association for Compensation Insurance Attorneys, 2005-2008  
Co-Chair, Worker's Compensation Section, Montgomery County Bar Association, 2008 - 2009  
Co-Host, Law School for The Public Television Program  
Volunteer Judge, Teen Court, States Attorney Office, Montgomery County Circuit Court  
"AV" Martindale-Hubbell; Peer Review Rated 10/10 "Superb AVVO Rated SuperLawyer Awarded Workers' Compensation Ins. Defense Lawyer of the Year in Washington, DC, 2019 & 2020 - Global Law Experts

Management Section for the Montgomery County Bar Association for three years. Mr. Schoenfeld was honored to have been selected as a Bar Leader of the Montgomery County Bar Association. He appears regularly as a Host of the Law School for the Public Television Program produced by the Montgomery County Bar Association and is a volunteer Montgomery County Circuit Court Judge for Teen Court, a diversionary juvenile criminal court administered by the Montgomery County State's Attorney's Office.

Mr. Schoenfeld is Martindale Hubbell Peer Review "AV" (Preeminent) rated; AVVO "Superb" 10/10 rated, has been selected as a Washington DC Super Lawyer and is Global Law Experts 2019 and 2020 recipient for the Workers' Compensation Ins. Defense Lawyer of the Year in Washington, DC. He has been selected as a presenter at numerous continuing education seminars. In 2017 Mr. Schoenfeld was honored to receive the William Neal Award for Volunteerism from State's Attorney John McCarthy for his service to the Montgomery County Teen Court and in 2019 Mr. Schoenfeld was further honored to receive the Community Service Award from the Montgomery County Bar Foundation for his service as a Host on the Law School for the Public television series.



# LISA A. ZELENAK

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### Practice Areas

Alternative Dispute  
Resolution  
Transportation  
Workers Compensation

### Education

The Catholic University of  
America, Columbus School  
of Law, J.D., 2002  
Indiana University of  
Pennsylvania, B.A., 1999

### Court Admissions

District of Columbia  
Maryland  
Virginia  
U.S. District Court of  
Maryland

### Experience

Lisa is a partner in the firm's Washington, DC office. Lisa has been practicing workers' compensation and employment law for over 20 years, both in private practice, and as in-house counsel to an insurance company.

Lisa represents both national and local insurance carriers, self-insureds, third-party administrators and employers in all aspects of industry from retail to construction. She has extensive experience appearing before administrative agencies, and trial and appellate courts.

# DOUGLAS A. DATT

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### Practice Areas

Alternative Dispute  
Resolution  
Construction  
Employment  
Workers Compensation

### Education

Walter F. George School of  
Law, Mercer University,  
J.D., 1981, Delta Theta Phi  
Wake Forest University,  
B.A., cum laude, 1978

### Court Admissions

District of Columbia  
Maryland  
U.S. Court of Appeals  
District of Columbia  
U.S. Court of Appeals for the  
Fourth Circuit  
U.S. Court of Appeals for the  
Fifth Circuit  
U.S. District Court for the  
District of Columbia  
U.S. District Court for the  
District of Maryland  
U.S. District Court Eastern  
District of Virginia  
U.S. District Court Western  
District of Virginia

### Experience

Doug is a Partner in Kiernan Trebach's Rockville, Maryland office. Prior to joining Kiernan Trebach, Mr. Datt practiced for more than 30 years with a firm he co-founded in 1992. He is an experienced trial attorney and counselor working on behalf of both businesses and individuals. His excellent legal abilities translate not only to satisfied clients, but also to recognition by his peers.

Doug began his legal career as an Assistant District Attorney in the Atlantic Judicial Circuit in Hinesville, Georgia. After gaining valuable trial experience prosecuting major felonies, he returned to Maryland in 1983 where he served as Assistant State's Attorney for Charles County, MD. Doug was responsible for prosecuting a variety of crimes including murder, rape, child abuse and theft-related offenses, among others.

Doug's civil litigation practice includes advising clients and litigating in the areas of personal injury, construction defects and accidents, breach of contract, workers' compensation and general tort defense litigation. Doug regularly counsels corporate and business clients on a variety of complex issues in matters ranging from collections, breach of contract, corporation formation, asset sales, purchases, employment-related issues, and responses to government subpoenas. Doug is a court-appointed mediator for the District of Columbia Court of Appeals, providing mediation services in Workers' Compensation



## Professional Affiliations

Maryland Bar Association  
Montgomery County Bar Association  
DRI

cases, and also mediates cases privately for parties.

## Notable Matters

- *Cheeks of N. Am., Inc. v. Fort Myer Constr. Corp.*, No. 11-7117, 2012 U.S. App. LEXIS 15496 (D.C. Cir. July 26, 2012)
- *EEOC v. Conn-X, LLC*, Civil Case No. L-09-2881, 2012 U.S. Dist. LEXIS 16316 (D. Md. February 8, 2012)
- *Bastian v. D.C. Dept. of Employment Services*, 16 A.2d 975 (D.C. 2011)
- *Mackey v. D.C. Dept. of Employment Services*, 976 A.2d 224 (D.C. 2009)
- *Capitol Paving of D.C., Inc. v. District of Columbia*, 496 F. Supp. 2d 54 (D.D.C. 2007)
- *Dillon v. D.C. Dept. of Employment Services*, 912 A.2d 556 (D.C. 2006)
- *D.C. Water & Sewer Auth. v. D.C. Dept. of Employment Services*, 843 A.2d 750 (D.C. 2004)
- *Hudson Trail Outfitters v. D.C. Dept. of Employment Services*, 801 A.2d 987 (D.C. 2002)
- *Park Ctr, III Ltd. P'ship v. Pa. Mfrs. Ass'n Ins. Co.*, 30 Fed. Appx. 64 (4th Cir. 2001)
- *Anderson v. Russell*, 247 F.3d 125 (4th Cir. 2001)
- *Glass v. State*, 171 Ga. App. 156, 319 S.E.2d 60 (1984)
- *White v. State*, 169 Ga. App. 207, 312 S.E.2d 199 (1983)
- *Holloman v. State*, 168 Ga. App. 683, 310 S.E.2d 734 (1983)
- *Holloman v. State*, 167 Ga. App. 683, 307 S.E.2d 266 (1983)
- *Blair v. State*, 166 Ga. App. 434, 304 S.E.2d 535 (1983)
- *Griffin v. State*, 166 Ga. App. 176, 303 S.E.2d 514 (1983)
- *Williams v. State*, 165 Ga. App. 553, 301 S.E.2d 908 (1983)
- *Petouvis v. State*, 165 Ga. App. 409, 301 S.E.2d 483 (1983)
- *Jones v. State*, 165 Ga. App. 180, 300 S.E.2d 534 (1983)
- *McKenzie v. State*, 162 Ga. App. 522, 292 S.E.2d 722 (1982)
- *Weathers v. State*, 160 Ga. App. 581, 287 S.E.2d 565 (1981)
- *Baxter v. State*, 160 Ga. App. 181, 286 S.E.2d 460 (1981)

# KATHLEEN A. WYNNE

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### Practice Areas

Employment  
Healthcare  
Premises Liability  
Workers Compensation

### Education

The George Washington  
University, J.D., 2002  
Fairfield University, B.S.,  
1999

### Court Admissions

District of Columbia  
Maryland  
Virginia  
U.S. District Court for  
Maryland  
U.S. District Court for the  
Eastern District of Virginia  
U.S. Court of Appeals for the  
Fourth Circuit  
U.S. Court of Appeals for  
Veterans Claims

### Experience

Kathleen has been representing clients in insurance defense and workers compensation matters for nearly twenty years, and has tried cases at the administrative, district, and circuit court levels. Her education and background in biology, as well as her five years working as a pharmacy technician prior to entering law school, have allowed Kathleen to provide specialized counsel to her clients on complicated medical and scientific issues. In addition, Kathleen has experience handling matters involving securities, telecommunications, veterans affairs, insurance coverage, guardianship, and business and commercial litigation.



# GABRIELA M. E. SAINT-LOUIS

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General Litigation  
Workers Compensation

## Education

Loyola University New  
Orleans College of Law, J.D.  
Health Law Certificate  
George Washington  
University, BA Psychology,  
Public Health

## Court Admissions

District of Columbia  
Maryland  
New York  
U.S. District Court for the  
District of Columbia  
U.S. District Court Western  
District of New York

## Professional Affiliations

New York State Bar  
Association  
Maryland State Bar  
Association  
American Health Lawyers  
Association  
Haitian Lawyers Association

## Experience

Gabriela Saint-Louis is an Attorney at Kiernan Trebach's Washington, D.C. office. Ms. Saint-Louis dedicates her practice to personal injury and health law. She is driven by a lifelong passion for helping others, as well as a commitment to securing the justice her clients deserve.

Gabriela was born in Haiti and grew up in New Orleans, Louisiana. She now calls Washington, D.C. home, having lived in the area for nearly 14 years. During her time in law school, Gabriela served as a student law practitioner in the family law clinic, helping indigent clients with issues such as child custody, child support, and divorce. She was also a member of the Trial Advocacy Program, a board officer of the Black Law Students Association, and both an inductee and a board member of the Phi Delta Phi Legal Honors Society.

Intellectual curiosity helped get Gabriela through law school, and it motivates her to find answers for her clients to this day. She is empathetic and understanding of what others are going through. As an immigrant, she understands what it is like to face significant legal challenges. In relating to her clients, Gabriela likes to put herself in their shoes. She tries to remember that, although she may have encountered situations similar to theirs many times, for that client, at that moment, it may be the worst thing that has ever happened, and that person is trusting her to fix it. This motivates her to do everything she can to help.

Gabriela likes to volunteer with a variety of local organizations. She has done volunteer work for Food and Friends, a community-based organization in D.C., preparing meals specifically tailored for individuals with serious illnesses. She has also volunteered periodically to help raise funds to build homes for homeless families and to provide meals for vulnerable and destitute people struggling with hunger in Haiti.

In her free time, Gabriela enjoys watching sports, as well as re-watching her favorite shows, cooking, and spending time with her friends and family. She is fluent in Kreyol (Creole) and French, as well as conversational in Spanish.

### **Notable Matters**

- Successfully conducting over ten trials at both District and Circuit Court level
- Winning a two District Court verdicts

# DISTRICT OF COLUMBIA WORKERS' COMPENSATION BASICS

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## 1. History of the Act:

- a. Derived from the Longshore Act.
- b. The District of Columbia Act as undergone four major amendments since original enactment, most recently in 1999.
- c. The Act is also routinely interpreted by the CRB and the District of Columbia Court of Appeals, whose Decisions often have the impact of changing the interpretation of the law.

## 2. Claim Investigation:

### a. Injury:

- i. It must arise out of and in course of employment.
- ii. What is considered an injury in DC is very broad.
- iii. No practical differences between an accidental injury and occupational disease in DC.
- iv. An Occupational Disease must be a medical condition that is an expected result of working under the conditions inherent in the employment.
  1. The claims are handled in the same fashion.
  2. There are no separate notice or limitations provisions.
- v. Most injuries are compensable. There are defenses to certain types of injuries, including: self-inflicted injuries, horseplay, and drugs/alcohol (sole cause of injury).

### b. Jurisdiction: (32-1503(a))

- i. Has the Claimant received benefits pursuant to an order in another jurisdiction (32-1503(a-1))? Presently, the law stands that if the Claimant files a claim in DC after receiving an Order in a sister jurisdiction, the claim cannot be brought in DC. However, there was recently legislation to repeal that provision of the Act.
- ii. If hurt in an alternate jurisdiction, but regularly employed in DC the claim is likely covered (32-1503(a-2)).
- iii. If the Claimant is not a resident of DC, contract of hire is entered in another state, if Claimant is only temporarily or intermittently within DC, if there is insurance coverage in alternate jurisdiction, then jurisdiction can be contested (a-3).
- iv. If the Employer is principally located in the District of Columbia, the likelihood that jurisdiction will be found in DC is greater.

**3. Notice:** (32-1513)

- i. 30 days to notify the Employer of the injury and its relationship to employment. It is critical that the Claimant provide both, not simply that he/she/they were hurt.
- ii. 30 days begins running from the date the Claimant is aware of the relationship.
- iii. Notice shall be in writing, BUT, lack of writing is almost always excused.
- iv. If the Employer (supervisor) witnesses the accident and injury, notice will be deemed to have been given.
- v. Indemnity benefits vs. Medical benefits - Notice only bars indemnity Benefits, medical benefits must still be paid.
- vi. Considerations regarding raising notice at an Informal Conference. If you have a strong notice defense, you may want to raise it at the Formal Hearing level, when testimony is under oath.

**4. Statute of Limitations:** (32-1514)

- i. 1 year
- ii. However, period does not begin to run until Employer files a first report and sends the report and the rights form to the Claimant certified return receipt requested. There is an argument that the form must be received. Please use the current version of the Rights form, sending both the English and Spanish. Keep copies of what was sent and the Certified Mailing number.
- iii. Period does not begin running if the Employer makes payments in the interim.
- iv. Limitations MUST be raised at the first hearing (Informal Conference?) or is deemed waived.

**5. Intoxication:**

- i. If the Claimant's injury was caused SOLELY by his intoxication or willful intention to injure him/her or another, then the claim will be barred. (32-1503(d))
- ii. There is no bar if it is not the sole cause.

**6. Presumption:** (32-1521)

- i. Claim falls within the Act;
- ii. Notice given;
- iii. Injury was NOT as a result of Intoxication of the Claimant;
- iv. Injury was not as a result of the willful intention of the Claimant.

[NOTE: There is no statutory presumption that COVID-19 was contracted at the workplace.]

**7. Treating Physician:**

- i. Selected by the Claimant and a relationship has been established, however, the Claimant must be aware of his/her right to select a doctor (rights form);
- ii. If referred by the Employer it is less likely to be considered the treating physician;
- iii. If the claim, or body part, is completely contested, the Claimant may change doctors without permission;
- iv. If any voluntary/ordered payments have been made, the Claimant may only change doctors if agreed by the Employer or if authorized by OWC;
- v. Change in Treating Physician is an issue before OWC only;
- vi. The Employer cannot request the doctor be changed;
- vii. Treating Physician's opinion is afforded great weight and usually followed.

**8. Payment of Compensation:** (32-1515)

- a. DC is a voluntary pay jurisdiction;
  - i. Can pay without prejudice.
  - ii. There are instances where payments of benefits voluntarily work to the Employer's benefits as it will act to avoid the imposition of a binding compensation order.
- b. Waiting Period: 3 days. However, if the Claimant is out for more than 14 days he/she is paid those three days.



## 9. **Employer's First Report:**(32-1532)

- i. Due within 10 days from the Employer's knowledge of the injury
- ii. Limitations does not begin running until the Employer's First Report and the Claimant's Rights Form are BOTH filed with the OWC and sent certified mail, return receipt requested to the last known address of the Claimant.
  1. Limitations period for filing a claim is 1 year in DC.
  2. The Employer's First Report and the Rights Form must be sent to the Claimant, even if represented by counsel.
- iii. Penalty for failure to file timely: \$1,000.00.
- iv. The Agency is now strictly enforcing this requirement.

## 10. **Notice of Controversion:**

- i. Pay or controvert within 14 days.
- ii. Good faith basis for Controversion.
- iii. Interplay of *National Geographic* and *Tonya Jones* cases.
- iv. Penalties.
  1. Failure to pay or controvert timely, then a 10% on unpaid benefits is imposed. (32-1515e)
- v. If in doubt, file a Controversion.
- vi. Request a date stamped copy of the Controversion.

## 11. **Notice of Payment of Benefits** (Form 15; 32-1515g):

- i. OWC must be notified upon making of the FIRST and LAST payment of benefits (c).
- ii. Must be filed within 16 days after the final payment of benefits.
- iii. Applies to each TYPE of benefit as well, temporary total disability, permanent partial disability, etc.
- iv. Failure to file results in a \$100 civil fine.

## 12. Dispute Resolution:

### a. Informal Conference/Mediation: (DCMR 219.xxx)

- i. Testimony is NOT under oath.
- ii. The IC can be handled by a claims adjuster.
- iii. Issues to be cautious of: Limitations, Notice
- iv. Good “free discovery”
- v. *National Geographic* issues;
  1. If the Claimant is contested in the entirety and the Claimant meets with success, fees may be imposed.
  2. However, if it is a subsequent denial, so long as the Employer pays consistent with the Memorandum, imposition of Claimant's attorney's fees will be avoided.
  3. Fees are customarily up to 20% of all benefits secured, including medical benefits, plus costs such as deposition fees and medical records charges.
- vi. Agreements can be converted to a binding Final Order. However, it is currently unclear whether a “Final Order” is a “Compensation Order” for purpose of starting the statute of limitations clock. (see, *Levy, Lyles, Riley*)
- vii. Stipulations are not binding Orders even if converted to a Final Order by OWC.
- viii. The Informal Conference is usually done by telephone.
- ix. No Subpoena Power available to the Employer.
  - x. No one other than Claimant can testify. The Employer is not permitted to present witnesses to testify, however, the Employer representative can be present.
- xi. There are no rules of evidence; almost any document can be submitted.
- xii. Mediation aspect. The OWC makes an effort to resolve pending disputes by way of mediation.
- xiii. The parties will likely be called by the Examiner before the Informal Conference to verify the issues and determine if they can be resolved.
- xiv. The Memorandum of Informal Conference (decision) is not admissible at the Formal Hearing level.

**b. Memorandum of Informal Conference.**

- i. Payments recommended pursuant to a Memorandum must be made within 14 days of receipt of the Memorandum, if not controverted.
- ii. The parties must agree or controvert within 14 days. However, the application for Formal Hearing can be filed up to 34 working days following receipt of the Memorandum.
- iii. If controverted and an Application for Formal hearing is filed at AHD, the Memorandum becomes a nullity and no payment is due, although there can be advantages to the Employer voluntarily paying consistent with the Memorandum.
- iv. If no controversion or Application for Formal Hearing is filed within 34 working days, the Memorandum will become a Final Order. However, it is not certain whether it is considered a binding Compensation Order.
- v. May have to request the Memorandum be converted to a Final Order.
- vi. Following the issuance of *Levy*, it is unclear whether a Final Order issued by OWC is a binding Compensation Order that starts the limitations clock.

**c. Formal Hearing:**

- i. A Formal Hearing is a full trial before an Administrative Law Judge. It is the parties' only opportunity to introduce evidence in support of their position. All subsequent proceedings (unless the record is reopened) are on the record. The ALJ will issue a binding Compensation Order following the Formal Hearing.
- ii. Notice of Controversion must be filed within 14 days and the Application for Formal Hearing must be filed within 34 WORKING days from the (receipt) date of the Memorandum of Informal Conference.
- iii. There is no requirement that the parties proceed to an Informal Conference first. An Application for Formal Hearing can be filed at any time by an aggrieved party.
- iv. All issues are ripe for adjudication with limited exception: (change in treating doctor; attorney's fees at OWC, disfigurement - those issues must be presented to OWC).
- v. The Formal Hearing is the only opportunity to introduce evidence into the record.

- vi. The parties have subpoena power at the AHD level.
- vii. Need to have Employer's witnesses available.
- viii. The Formal Hearing is the only opportunity the Parties have to submit evidence, unless remanded and the Record reopened. All appeals from the Formal Hearing are on the Record.
- ix. Compensation Order:
  - 1. Payment must be received by the Claimant within ten (10) days of the date of the Employer's receipt of the Compensation Order.
    - a. The claim must be adequately reserved for that payment as the timeframe to make payment is very short.
  - 2. Failure to pay an order timely may result in an automatic 20% penalty. (32-1515(f)).
  - 3. An appeal from a Compensation Order is NOT a stay. Payments must continue.
- x. **Reopening:**
  - 1. One year to reopen an Order for Worsening (32-1524) for anything other than a wage loss PPD award, which is three years (see 32-1508(a)(3)(V)).
  - 2. Please note, there is a trend in the Agency towards viewing each benefit structure (TTD, TPD, PPD) as carrying its own limitations period, however, this is an area of unsettled law.
  - 3. Please Note: *Levy* issues and importance.

**d. Compensation Review Board (CRB): (32-1522 as amended)**

- i. The Petition and supporting brief, together with a copy of the Order being appealed, must be filed within thirty (30) days from the date of receipt of the Compensation Order. The reply brief is due fifteen (15) days thereafter.
- ii. The appeal is solely on the record created at the Formal Hearing. The CRB will not accept additional evidence, even if unavailable at the time of the Formal Hearing.
- iii. The CRB may schedule oral argument, but that is very rare.
- iv. 3 judge panel unless an *en banc* review is granted.
- v. Decisions are issued solely in writing.

**e. Court of Appeals:**

- i. The Petition for Review must be filed within thirty (30) days from the date of the CRB decision.
- ii. The appeal is solely on the record. Oral argument may be requested by the parties or ordered by the Court, at the Court's discretion. Most cases proceed without oral argument
- iii. The Court of Appeals has been affirming the CRB in excess of 90% of the time more recently.
- iv. The Court of Appeals will look to see if there is an error of law or misinterpretation of the facts.
- v. The Court of Appeals will look to Agency to interpret the Act.
- vi. This is the final appeal available. However, often the Court of Appeals decision is not the final decision as the matter is often remanded back to the Agency for further findings.

**13. AWW: (32-1511)**

- a. Wage stack is available in the District of Columbia. The earnings of alternate job are included in the calculation.
- b. In most, but not all, instances the AWW is based upon 26 weeks of gross earnings prior to the week of the injury, but not including the week of the injury.
- c. If a Claimant is paid by the month or year, that will be the benchmark.
- d. Bonuses, board, lodging and tips are included in the wage calculation.
- e. If the Claimant is a minor or student, and Claimant's wages are expected to increase over time, which increase can be factored into the calculation.
- f. If a 26 week period does not exist, AWW may be based upon a like kind employee.
- g. The compensation rate is two-thirds of the AWW, with no rounding. There is no minimum compensation rate for benefits, with the exception of PTD. There is a maximum compensation rate.

## 14. **BENEFITS AVAILABLE:** (32-1508)

### **a. Temporary Total Disability.**

1.  $66 \frac{2}{3}$  of AWW up to the statutory maximum for that calendar year.
2. No Statutory Minimum despite what the statute states. The statutory minimum only applies to PTD cases. *Hiligh.*
3. A Claimant cannot receive more than 500 weeks of TTD benefits. However, if the Claimant can demonstrate at least a 20% disability, he/she can be entitled to an additional 167 weeks of benefits, for a total of 667 weeks. This may apply only to TTD and wage loss PPD benefits. Scheduled loss PPD and TPD may not be included in this 500 week cap. The law is unsettled on this issue at this juncture. *Turner.*

### **b. Temporary Partial Disability:**

1.  $66 \frac{2}{3}$  of the actual wage loss up to the statutory maximum for that calendar year.
2. Temporary partial benefits are limited to 5 years.
3. Please be aware that when calculating the wage loss the AWW is based upon the possible stacked wages.
4. The 5 years of temporary partial disability benefits do not count towards the 500/667 maximum number of weeks.

### **c. Permanent Partial Disability:**

#### **i. Scheduled Loss Disability:**

1. Scheduled Loss Body Parts: Fingers, hands, arms, toes, feet, legs, eyes, ears.
2. Paid at  $\frac{2}{3}$  AWW up to the statutory maximum for the year of the injury.
3. Site of manifestation of disability. For example a neck injury often leads to a PPD to the upper extremity(ies) and a back injury leads to lower extremity(ies) PPD.
4. Post 4/16/1999 injury: 25% reduction in weeks. However, the compensation rate per week remains high.

5. Apportionment does not exist in the District of Columbia, as the law is currently interpreted. The Employer will receive a credit for PPD to the same body part paid under a prior Order.
6. Economic Loss component in scheduled loss cases. The District of Columbia is a wage loss statute. The issue of wage loss is a consideration and may act to increase or decrease a PPD Award, even a scheduled loss PPD.
7. An Examiner/ALJ may pick a mid-point percentage figure. The Examiner (OWC) / ALJ (AHD) had broad discretion in making the PPD finding. *Negussie*.
8. The Act indicates that the most recent AMA Guides are to be used, currently the 6<sup>th</sup> Ed. However, ratings rendered pursuant to an earlier edition will be considered. In addition, the Agency considers the "Maryland Five Factors" of pain, weakness, atrophy, loss of endurance, and loss of function. Please note, the AMA 6<sup>th</sup> does rate pain.
9. The IME must cite to the tables/charts in the AMA Guides relied upon. The parties must submit those tables/charts to the ALJ as an exhibit at the Formal Hearing.

**ii. Non-Scheduled Disability:**

1. Any body part that is not specifically scheduled.
2. 66 2/3 wage loss up to the statutory maximum for the calendar year for the date of the injury.
3. Election: The Claimant is entitled to compare what the Claimant would have made had the Claimant remained in the pre-injury job to current earnings; OR can compare what the current job would have paid on the date of the injury. The Claimant receives whichever provides the greatest wage loss.
4. Post 4/16/1999 injury: 500 week cap on permanent partial disability benefits with a possible 167 additional weeks if at least 20% disabled.
5. The 500/667 week cap applies to total wage loss benefits only, not scheduled loss permanency or temporary partial disability benefits. A Claimant can receive scheduled loss PPD in addition to 500/667

weeks of wage loss benefits. Further, it does not apply to permanent total disability.

**d. Permanent Total Disability:**

1. Once a finding of PTD is made, the Claimant receives the Supplemental Allowance each year.
2. There is a 5% cap on increases from year to year. However, there is no cap in the first year.
3. The supplemental allowance often has the effect of significantly increasing the payment in the first year.
4. Date of annual adjustment, January 1.

**e. Death Benefits: (32-1509)**

1. Due to the complexity of the statute, it is recommended that the Statute be reviewed in each instance.
2. Check actual financial dependency.
3. In order to qualify for death benefits, it only needs to be demonstrated that financial support was provided by the decedent that provided for their pre injury lifestyle. If the decedent provided such a contribution, the individual can be considered financially dependent under the Act.
4. Death Benefits are paid at 50% of the AWW if there exists only one surviving dependent. However, if there exists more than one dependent, such as a child, the benefit is increased to the collective total of  $66 \frac{2}{3}$  % (compensation rate) for the collective group and benefits are proportioned among the dependents.
5. Benefits are subject to the Supplement Allowance increases.
6. Funeral expenses are granted up to \$5,000.00.
7. If there are no surviving dependents, the Employer is obligated to pay the \$5,000 assessment specified in 32-1540(d)(1).



**f. Disfigurement:**

1. Disfigurement is available in DC.
2. It is limited to \$7,500.00 and decided by an OWC Examiner.
3. The determination is discretionary on the part of the Examiner. However, the disfigurement's impact on the Claimant's ability to work should be primary consideration.
4. Employer's should be aware that it is common practice for a Claimant to present to an Examiner to be seen for disfigurement, with a Recommendation issued, when the Employer is completely unaware the benefits are being sought. It is often done *ex parte*.

**15. SETTLEMENT/STIPULATION**

**a. Stipulation:**

- i. We strongly recommend against "stipulating" to permanent partial disability in most instances. A stipulation is a voluntary payment and will not begin the running of the statute of limitations, even if converted to an Order by OWC.
- ii. If the Employer wishes to reach an agreement as to PPD, it is recommended that an Application for Formal Hearing be filed. The parties can then advise the Judge as to the percentage of PPD they believe appropriate at the Formal Hearing. A number of ALJ's have been honoring the agreed upon figure presented by the parties, however, not all the ALJ's. *Levy* requires an adjudication or the payment will be considered voluntary.

**b. Settlement:**

- i. All Settlements must be submitted to OWC for approval.
- ii. The Regulations indicate that when the Claimant and Employer are represented by counsel, a submitted settlement *shall* be approved. However, in practice the OWC evaluates whether the settlement is in the best interest of the Claimant.
- iii. Do not pay a settlement until approved by OWC.
- iv. Payment is due to be received by the Claimant within 10 days from the date of the Approval Order or a 20% automatic penalty will be imposed. There is no discretion; the penalty will be imposed if requested.

- v. It is recommended that careful evaluation be made if the Claimant remains employed at the Employer and the Employer therefore remains on the risk. An aggravation of an underlying injury is a new injury. Thus, unless no premium is paid for settlement, settlement may not be in the Employer's best interest.
- vi. Be aware, under *Levy* an open medical settlement may not be considered a "full and final settlement" and the Claimant may be able to reopen indemnity benefits at a later date. An Employer should be aware of the potential risk when evaluating how to proceed.
- vii. In light of Medicare issues, open medical benefits may be evaluated when appropriate. Closing indemnity benefits, even if you are unable to close medicals, may have significant value to Employers. However, please be aware that an open medical benefit settlement may be considered nothing other than a voluntary payment. This is a difficult analysis and one that requires weighing of risk.
- viii. Medicare: The parties are not permitted to impose upon Medicare the cost of medical care related to the injury. The parties must reasonably consider Medicare's rights in every settlement. If the settlement meets Medicare thresholds (\$25,000 or more and currently receiving Medicare benefits, or \$250,000 or more and a reasonable expectation to receive Medicare benefits in the next 30 months) then a Medicare Set Aside Trust approved by CMS is needed.
- ix. If the settlement does not meet Medicare thresholds and significant future care is needed, the parties should consider either a Medicare Set Aside or Medical Cost Projection analysis. Regardless of the analysis, the parties have the affirmative obligation to protect Medicare's interests as a secondary payer.

**16. Vocational Rehabilitation:** (32-1507)

- a. Vocational Rehabilitation is provided in the Act.
- b. It is found in the same provisions as Medical Benefits.
- c. There is no maximum timeframe for vocational rehabilitation benefits.
- d. The goal should be to return the Claimant to suitable alternative employment at as close to the same wage as possible.

- e. Temporary total, or temporary partial, disability benefits are paid while the Claimant is participating with vocational rehabilitation services, as appropriate.
- f. There is a \$50 stipend that can be requested as well, but arguably that is only when a Claimant's compensation rate does not exceed \$50 per week.
- g. If the Claimant fails to cooperate with vocational rehabilitation, benefits are suspended until he/she cooperates again. Benefits are not terminated for non-cooperation. Benefits must be restarted once the Claimant cooperates.
- h. Voluntary limitation of income becomes an issue when an Employer finds the Claimant suitable alternative employment and the Claimant declines to accept the position. Benefits can be terminated or reduction for voluntary limitation of income.

#### 17. **Medical Benefits** (32-1507)

- a. A Claimant is entitled to lifetime medical benefits for care that is reasonable, necessary and causally related to the occupational injury.
- b. An Employer can challenge the reasonableness and necessity, medical appropriateness, of medical care only by instituting Utilization Review.
- c. An Employer can challenge the causal relationship of ongoing care to the occupational injury by securing an IME.
- d. Utilization Review:**
  - i. Utilization Review is essentially a peer review.
  - ii. Utilization Review is required to challenge medical reasonableness and necessity of medical care.
  - iii. The reviewer must be a URAC certified.
  - iv. The opinion of the UR is given the same weight as that of the treating physician.
  - v. Must give the UR report to the challenged doctor, who has the right to comment.
  - vi. The issue of Utilization Review can be litigated at the Informal Conference or Formal Hearing.
- e. Medical Bills are paid "pursuant to the Act", not the full billing submitted by the provider. Currently it is the Medicare Allowance plus a percentage.

## 18. **Subrogation:** (32-1535)

- a. An Employer has an automatic lien against any third party recovery a Claimant may make related to the same incident.
- b. The lien is automatic, no notice is required. However, placing Claimant's counsel on notice is good practice.
- c. The Employer must pay a reasonable attorney fees, likely the same respective percentage as Claimant's counsel charges the Claimant to protect the lien, plus respective portion of costs.
- d. The right to pursue the third party is exclusive to the Employer for the first six (6) months following an Award under a Compensation Order. However, the Employer must institute the action within 90 days of the assignment or the claim reverts back to the Claimant. If the Claimant does not pursue the third party, and the Employer wants to do so, the Employer must secure the assignment of the claim from the Claimant. (DC Code §32-1535).
- e. If the Claimant settled the third party claim without the consent of the Employer, the Claimant cannot seek additional compensation under the worker's compensation claim.

## 19. **Mental Health Claims:**

- a. Mental Physical claims are available in D.C.
- b. Mental Mental claims area also available. The legal standard is no longer an objective person test. Instead, the standard is the same as a physical injury, i.e., an aggravation is compensable, no matter how minor. It is a truly subjective test. As currently interpreted, the threshold for compensability is quite low. Even minor stressors can create a potential claim.

## 20. **Miscellaneous**

- a. Special Fund no longer available for claims arising on or after 4/16/1999.
  - i. Special Fund relief may still be available for claims arising prior to 4/16/1999. A Petition must be filed outlining the entitlement to Special Fund relief.
  - ii. Special Fund relief will limit the Employer's exposure to 104 weeks of permanent disability benefits and medicals.
- b. Benefits may not be attached or assigned (32-1517)
  - i. The exception is for child support.

- c. Exclusive Remedy: (32-1504)
  - i. Workers' Compensation is the exclusive remedy against the Employer.
  - ii. Exclusivity extends to co-employees, who are protected from a third party action.
- d. Bad Faith: (32-1528)
  - i. Bad faith does not require animus.
  - ii. Bad faith is the absence of good faith. If the Employer discontinues treatment or challenges causation without an IME to support the position, that can be considered bad faith.
  - iii. Bad faith benefits are paid at the AWW rate, rather than the compensation rate.
- e. Attorney Fees: (32-1530)
  - i. A Claimant can seek to have his/her attorney fees paid by the Employer by filing a Petition at OWC/AHD.
  - ii. A Claimant can seek to impose an attorney fee upon the Employer if the case is challenged in the entirety and the Claimant ultimately secures benefits ("Initial Denial").
  - iii. If the parties proceed to an Informal Conference *on subsequent denial issues only* and the Employer pays consistent with the Memorandum of Informal Conference, then the Employer will not be responsible for a fee, even if the Claimant receives more benefits at the formal hearing level.
  - iv. The Agency currently recognizes a reasonable rate of \$310 per hour for Claimant's counsel who has been practicing for 20 years or more. Counsel with less experience is entitled to a lower rate. The Fee Petition must itemize the time spent.
- f. Medical Case Management:
  - i. NCM is not provided in the Act.
  - ii. Many Claimant's counsel refuse to allow Nurse Case Managers on the file.

- g. Forms:
  - i. The District Of Columbia has limited forms, however they are available on line at: <http://does.dc.gov/page/workers-compensation-does>
  - ii. There currently exists no mechanism to file on line or view claim documents on line in the District of Columbia.
  
- h. Medical Authorization:
  - i. An Employer cannot compel a Claimant to sign a medical authorization.
  - ii. In certain circumstances ALJ's have issued Orders directing a Claimant to sign a medical authorization.
  
- i. COVID-19
  - i. Very few cases involving COVID-19 have been fully litigated to date.
  - ii. There is no presumption of compensability although Emergency legislation passed does indicate that COVID-19 can be a compensable injury.
  - iii. There remains a question whether the claims will be viewed as occupational disease cases or accidental injury cases.
  - iv. COVID-19 cases are factually intensive, focusing on the activities and potential exposure of the Claimant in the few weeks before the alleged exposure.

## NOTES:

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*This summary of the law and the related materials are not intended, and do not provide, legal advice, or create a lawyer-client relationship. Every case is different and the law is constantly changing. Legal advice should be tailored to each individual matter. You are urged to seek the advice of competent counsel should concerns or questions arise in a given matter. (2023; rev 3.11.2023; © KT)*

2023

DISTRICT OF COLUMBIA

2023

SCHEDULE OF DISABILITIES AND MAXIMUM BENEFITS

EFFECTIVE JANUARY 1, 2023

Table with columns for body parts (THUMB, FINGERS, HAND, ARM, TOES, FOOT, LEG, EYE, HEARING, BODY) and rows for percentage of disability (1% to 100%). Each cell contains a percentage and a dollar amount.

Non-Scheduled losses calculated at 2/3 of wage loss, not to exceed \$1,713.14. Subject to reduction as earnings increase. See §32-1508 for methods for calculating wage loss.

Maximum Compensation Rate: \$1,713.14

Minimum Compensation Rate (PTD ONLY): \$428.29

[Do NOT use the minimum rate for TTD/TPD/PPD]

NOTE: The above figures are MAXIMUM amounts. Benefits are paid at 2/3 AWW up to the maximum. The percent columns on the outside of the chart represent percentage of disability. The remaining columns show this percentage in terms of weeks and total benefits. The top figure in each box represents the number of weeks; the lower figure, dollar amounts. Maximum PPD rate for 2023 = \$1713.14. ©KT 2023. rev 3.11.2023



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**MURIEL BOWSER**  
**MAYOR**

**DR. UNIQUE MORRIS-HUGHES**  
**DIRECTOR**



January 13, 2023

Dear Employer/Insurer:

Pursuant to the District of Columbia Workers' Compensation Act of 1979, D.C. Official Code, § 32-1505, effective January 1, 2023, the maximum weekly compensation payment for the District of Columbia private sector workers' compensation claims is \$1,713.14. The minimum weekly compensation payment is \$428.29.

Further, in accordance with the Act, D.C. Code, as amended, §32-1506, *Supplemental Allowance*, claimants who are permanently totally disabled, the surviving spouse or the domestic partner who is receiving indemnity payments in amounts per week less than the new maximum shall receive a supplemental allowance increase equal to 5.60% of the current benefit amount. For all cases entitled to the supplemental allowance, the employer/insurer is required to file an amended Memo of Payment of Workers' Compensation, Form No. 9 DCWC, with the Department of Employment Services - Office of Workers' Compensation, 4058 Minnesota Avenue, N.E., Washington, D.C. 20019.

The Department of Employment Services/Office of Workers' Compensation looks forward to continuing to provide quality services to all stakeholders. Should you have any questions, please contact Mohammad R. Sheikh, Deputy Director for the Labor Standards Bureau, at (202) 671-1555 or by e-mail at [mohammad.sheikh@dc.gov](mailto:mohammad.sheikh@dc.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'U. Morris-Hughes', written over a horizontal line.

**Dr. Unique Morris-Hughes**  
**Director**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services



MURIEL BOWSER  
MAYOR

DR. UNIQUE MORRIS-HUGHES  
DIRECTOR

**COMPENSATION RATES UNDER THE DISTRICT OF COLUMBIA  
WORKERS' COMPENSATION ACT OF 1979**

YEAR	MAXIMUM	MINIMUM	PERCENTAGE INCREASE
07/26/82 THRU 12/31/84	\$396.78	\$99.20	--
01/01/85	\$413.26	\$103.22	4.15%
01/01/86	\$431.70	\$107.93	4.46%
01/01/87	\$453.94	\$113.49	5.15%
01/01/88	\$481.92	\$120.48	6.16%
01/01/89	\$513.00	\$128.25	6.45%
01/01/90	\$551.46	\$137.87	7.50%
01/01/91	\$584.10	\$146.03	5.90%
01/01/92	\$613.09	\$153.27	5.00%
01/01/93	\$647.84	\$161.96	5.36%
01/01/94	\$679.17	\$169.79	4.80%
01/01/95	\$701.52	\$175.38	3.30%
01/01/96	\$723.34	\$180.84	3.10%
01/01/97	\$748.83	\$187.21	3.50%
01/01/98	\$774.32	\$193.58	3.40%
01/01/99	\$834.82	\$208.71	7.80%
01/01/00	\$894.47	\$223.62	7.10%
01/01/01	\$948.76	\$237.19	6.00%
01/01/02	\$993.02	\$248.25	4.70%
01/01/03	\$1,022.00	\$255.50	2.92%
01/01/04	\$1,055.96	\$263.99	3.32%
01/01/05	\$1,106.34	\$276.59	4.78%
01/01/06	\$1,155.84	\$288.96	4.48%
01/01/07	\$1,233.00	\$308.25	6.68%
01/01/08	\$1,288.00	\$322.00	4.47%
01/01/09	\$1,355.00	\$338.75	5.21%
01/01/10	\$1,355.00	\$338.75	0.00%

YEAR	MAXIMUM	MINIMUM	PERCENTAGE INCREASE
01/01/11	\$1,349.00	\$337.25	-0.44%
01/01/12	\$1,416.45	\$354.11	5.69%
01/01/13	\$1,416.45	\$354.11	0.00%
01/01/14	\$1,440.39	\$360.10	1.69%
01/01/15	\$1,462.43	\$365.61	1.53%
01/01/16	\$1,465.79	\$366.45	0.23%
01/01/17	\$1,466.96	\$366.74	0.08%
01/01/18	\$1,491.90	\$372.98	1.70%
01/01/19	\$1,521.74	\$380.44	2.00%
01/01/20	\$1,535.44	\$383.86	0.90%
01/01/21	\$1,553.87	\$388.47	1.20%
01/01/22	\$1,631.56	\$407.89	5.80%
01/01/23	\$1,713.14	\$428.29	5.60%

**Note** - There is a 5% cap on Supplemental Allowance – See Sec. 32-1506(d) of Act.

**DISTRICT OF COLUMBIA GOVERNMENT  
 OFFICE OF WORKERS' COMPENSATION  
 4058 MINNESOTA AVENUE, N.E.  
 WASHINGTON, D.C. 20019  
 (202) 671-1000**

\_\_\_\_\_  
 Date of This Report

\_\_\_\_\_  
 Employee Social Security No.

\_\_\_\_\_  
 Employer Identification No.

\_\_\_\_\_  
 Insurer No.

**Warning: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.**

**EMPLOYEE'S  
 NOTICE OF ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE**

Employee Name and Address:	Employer Name and Address:	Insurer Name and Address:

**NOTICE TO EMPLOYEE**

**YOU MUST FILE THIS REPORT WITHIN 30 DAYS AFTER YOU BECOME AWARE OF AN ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE AND ITS RELATIONSHIP TO YOUR JOB. THE ORIGINAL FORM SHOULD BE MAILED TO THE D.C. GOVERNMENT, OFFICE OF WORKERS' COMPENSATION AT THE ABOVE ADDRESS. A COPY SHOULD BE MAILED OR DELIVERED TO YOUR EMPLOYER. YOU MUST RETAIN A COPY FOR YOUR RECORDS. IN ORDER TO PRESERVE YOUR RIGHTS UNDER THE LAW, YOU MUST FILE A CLAIM FORM NO. 7A-DCWC, WHICH CAN BE OBTAINED FROM YOUR EMPLOYER OR THE OFFICE OF WORKERS' COMPENSATION.**

**Date and Time of Injury:** \_\_\_\_\_ am/pm?

**Place where injury occurred:** \_\_\_\_\_

**Description of Injury:** \_\_\_\_\_

**THIS IS TO NOTIFY YOU** \_\_\_\_\_  
 (Employer)

**THAT I** \_\_\_\_\_ while in your  
 employ, sustained an injury  or contracted an occupational disease  as described above, caused by:

**Treating Physician's Name and Address:** \_\_\_\_\_

**DISTRICT OF COLUMBIA GOVERNMENT  
 OFFICE OF WORKERS' COMPENSATION  
 4058 MINNESOTA AVENUE, N.E.  
 WASHINGTON, D.C. 20019  
 (202) 671-1000**

\_\_\_\_\_  
 Date of This Report

\_\_\_\_\_  
 Employee Social Security No.

\_\_\_\_\_  
 Employer Identification No.

\_\_\_\_\_  
 Insurer No.

**Warning: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.**

**EMPLOYEE'S CLAIM APPLICATION**

Employee Name and Address:	Employer Name and Address:	Insurer Name and Address:

**NOTICE TO EMPLOYER**

A CLAIM FOR WORKERS' COMPENSATION BENEFITS HAS BEEN FILED WITH THIS OFFICE. YOU HAVE 14 DAYS FROM THE RECEIPT OF THIS NOTICE, IF YOU HAVE NO PREVIOUS KNOWLEDGE OF INJURY OR ITS RELATIONSHIP TO EMPLOYMENT, TO BEGIN VOLUNTARY PAYMENTS OF WORKERS' COMPENSATION BENEFITS TO THE ABOVE NAMED EMPLOYEE, OR YOU MUST FILE A NOTICE OF CONTROVERSION, MEMO OF DENIAL OF BENEFITS, FORM NO. 11-DCWC WITH THIS OFFICE. FAILURE TO PAY BENEFITS, UNLESS YOU CONTROVERT THE EMPLOYEE'S RIGHT TO BENEFITS, WILL SUBJECT YOU TO PENALTIES UNDER THE ACT. YOU SHOULD CONTACT YOUR INSURER IMMEDIATELY.

Date and Time of Injury: \_\_\_\_\_ am/pm? Office Representative \_\_\_\_\_

Place where injury occurred: \_\_\_\_\_

Description of Injury: \_\_\_\_\_

**THIS IS TO NOTIFY YOU** \_\_\_\_\_

That while in the employ of the above named employer I sustained a disabling injury  or contracted an occupational disease  as described above. The disability was caused by: \_\_\_\_\_

Treating Physician's Name and Address: \_\_\_\_\_

**YOU SHOULD HAVE ALREADY FILED OR SHOULD FILE EMPLOYEE'S NOTICE OF ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE, FORM NO. 7 DCWC.**

**I HAVE FILED THE CLAIM WITH THE OFFICE OF WORKERS' COMPENSATION.**

\_\_\_\_\_  
 (Employee's Signature)



**District of Columbia Government  
Office of Workers' Compensation  
4058 Minnesota Avenue, N.E.  
Washington, DC 20019  
(202) 671-1000**

**Warning:** It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

\_\_\_\_\_  
Date of This Report

\_\_\_\_\_  
Employee Social Security No.

\_\_\_\_\_  
Employer Identification No.

\_\_\_\_\_  
Insurer No.

### EMPLOYER'S FIRST REPORT OF INJURY OR OCCUPATIONAL DISEASE

Employee Name and Address:	Employer Name and Address:	Insurer Name and Address:

**IMPORTANT:** Every employer shall file this report as soon as possible after knowledge of an occupational injury or disease to one of its employees, but no later than ten (10) days thereafter. Failure to file this form shall be subject to civil penalty not to exceed \$1,000.

Date and time of Injury: \_\_\_\_\_ am/pm? Day of the week? \_\_\_\_\_

Normal starting time: \_\_\_\_\_ am/pm? If employee back to work, give date and time: \_\_\_\_\_ am/pm?

At what wage? \_\_\_\_\_ If fatal, give date of death \_\_\_\_\_ (file supplement report)

Date/time disability began? \_\_\_\_\_ am/pm? Was the injured paid in full for this day? \_\_\_\_\_

Was the injured given Form No. 7 DCWC? Yes No Foreman/Supervisor \_\_\_\_\_

When did you or the foreman first learn of the injury? \_\_\_\_\_

Male Female DOB: \_\_\_\_\_ Employee's Telephone No.: \_\_\_\_\_

Occupation when injured? \_\_\_\_\_ Was this his/her regular occupation? \_\_\_\_\_

(Department or branch regularly employed): \_\_\_\_\_

Was the injured hired in DC? \_\_\_\_\_ How long employed by you? \_\_\_\_\_

Piece or time worker? \_\_\_\_\_ Hourly wage? \_\_\_\_\_ Hours worked/day? \_\_\_\_\_

Daily wages: \_\_\_\_\_ Days worked per week: \_\_\_\_\_ Average weekly earnings: \_\_\_\_\_

If board and lodging were furnished or gratuities reported in addition to wages, give estimated value per day, week, or month: \_\_\_\_\_

Employer's principal business function in DC: \_\_\_\_\_

Employer's Telephone No.: \_\_\_\_\_ Insurance Policy No.: \_\_\_\_\_

Location of plant or place where accident occurred: \_\_\_\_\_

On employer's premises? \_\_\_\_\_

Describe fully the events which resulted in injury or disease, what the employee was doing when injured and type of injury including parts of the body affected: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Witnesses: \_\_\_\_\_

Nature and location of injury (Describe fully): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attending Physician and Address (If Hospital Involved - Indicate): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name (Please Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Position

\_\_\_\_\_  
Name of Person Completing Form



**District of Columbia Government  
Office of Workers' Compensation  
4058 Minnesota Avenue, N.E.  
Washington, DC 20019  
(202) 671-1000**

\_\_\_\_\_  
Date of This Report

\_\_\_\_\_  
Employee Social Security No.

\_\_\_\_\_  
Employer Identification No.

\_\_\_\_\_  
Insurer No.

**Warning:** It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

## Memo of Payment of Workers' Compensation

Employee Name and Address:	Employer Name and Address:	Insurer Name and Address:

The employer is required to pay disability compensation and to file with the Office of Workers' Compensation (OWC), copy to employee, memorandum of payment in accordance with Section 16, as soon as possible after date of knowledge of injury, but by the fourteenth day thereafter. Filing shall also be made upon making provisional payment, adjusting such payment, and upon making payment resulting from an OWC award. Failure to pay and to file memoranda promptly, in the absence of a legitimate denial of benefit, shall subject the employer to an added ten percent (10%) of payment.

Date and time of Injury: \_\_\_\_\_

Description of Injury: \_\_\_\_\_

	Disability/Recurrence	First Supplemental Report- Received Date	1 <sup>st</sup> Payment	2 <sup>nd</sup> Payment
Date				

Compensation at the rate of \$ \_\_\_\_\_ per week. Average weekly wage of \$ \_\_\_\_\_.

Beginning \_\_\_\_\_

Compensation payment voluntary	Yes	No
Compensation payment results from OWC hearing award	Yes	No
<b>Memo indicating provisional payment already filed</b>	<b>Yes</b>	<b>No</b>
<b>Memo indicating adjustment in total disability</b>	<b>Yes</b>	<b>No</b>

**See attached wage schedule, except if maximum compensation or disability is less than seven (7) days.**

Missing wage schedule    Yes    No

When expected? \_\_\_\_\_ Provisional Payment of \$ \_\_\_\_\_, subject to later adjustment.

\_\_\_\_\_  
Name (Please Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Office Approval & Date



District of Columbia Government  
 Office of Workers' Compensation  
 4058 Minnesota Avenue, N.E.  
 Washington, DC 20019  
 (202) 671-1000

Date of This Report \_\_\_\_\_

Employee Social Security No. \_\_\_\_\_

Employer Identification No. \_\_\_\_\_

Insurer No. \_\_\_\_\_

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## Wage Schedule

Employee Name and Address:	Employer Name and Address:	Insurer Name and Address:

Employer must forward to insurer copies of this schedule no later than employee's tenth (10<sup>th</sup>) day of loss of wages.

This wage schedule is for 26 weeks prior to date of injury, for wages fixed by week, month, or year, and must be filed with Office of Workers' Compensation by insurer, together with Form No. 9 DCWC, except when maximum compensation is paid. (Wages: In addition to money payments, wages mean reasonable value of board, rent, and housing that were received from employer as well as gratuities declared for tax purposes.)

Date of Hire: \_\_\_\_\_ Date of Injury: \_\_\_\_\_

Hourly Wages: \_\_\_\_\_ Average Weekly Earnings: \_\_\_\_\_

Week Ending	1		Week Ending	4	
	Gross Earnings	Other Advantages (see wages definition above)		Gross Earnings	Other Advantages (see wages definition above)
1			14		
2			15		
3			16		
4			17		
5			18		
6			19		
7			20		
8			21		
9			22		
10			23		
11			24		
12			25		
13			26		

Total of columns 1,2,3 and 4 \_\_\_\_\_

If wages fixed by week, month, or year, state amount \_\_\_\_\_ per \_\_\_\_\_

\_\_\_\_\_  
 Representatives Name

\_\_\_\_\_  
 Signature



District of Columbia Government  
 Office of Workers' Compensation  
 4058 Minnesota Avenue, N.E.  
 Washington, DC 20019  
 (202) 671-1000

\_\_\_\_\_  
 Date of This Report

\_\_\_\_\_  
 Employee Social Security No.

\_\_\_\_\_  
 Employer Identification No.

\_\_\_\_\_  
 Insurer No.

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## Notice of Controversion Memo of Denial of Workers' Compensation

Employee Name and Address:	Employer Name and Address:	Insurer Name and Address:

Date of Accident: \_\_\_\_\_

Date First Report Received: \_\_\_\_\_

**YOUR WORKERS' COMPENSATION BENEFITS ARE HEREBY DENIED BY EMPLOYER OR INSURER FOR REASON(S) INDICATED BELOW. IF YOU DISAGREE, YOU MAY APPLY FOR A HEARING BY COMPLETING FORM NO. 20 (ON THE REVERSE). THE HEARING WILL BE SCHEDULED WITHIN 20 WORKING DAYS AFTER RECEIPT OF THIS NOTICE. IN THE INTERIM, IF YOU WISH TO PARTICIPATE IN AN INFORMAL CONFERENCE, YOU MAY CALL 202-671-1000 OR WRITE THE DIRECTOR AT THE ADDRESS ABOVE. YOU MAY BE REPRESENTED AT SUCH PROCEEDINGS IF YOU SO DESIRE, AND YOU WILL BE ADVISED IN WRITING OF THE PLACE, DATE AND TIME. IF YOU HAVE NOT ALREADY FILED AN EMPLOYEE'S CLAIM APPLICATION, FORM NO.7a DCWC, YOU MUST DO SO WITHIN ONE (1) YEAR OF THE DATE OF INJURY OR ONE (1) YEAR AGTER THE LAST PAYMENT OF COMPENSATION BENEFITS BY YOUR EMPLOYER.**

### REASONS

1.  No Employer- Employee Relations
2.  No Casual Relationship to Employment
3.  Improper Notice of Injury by Employee
4.  Continuing Disability Contested
5.  No Jurisdiction Under D.C. Law
6.  Other

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Authorized Representative \_\_\_\_\_  
 INITIAL DENIAL                       SUBSEQUENT DENIAL





THE GOVERNMENT OF THE DISTRICT OF COLUMBIA  
 DEPARTMENT OF EMPLOYMENT SERVICES  
 OFFICE OF WORKERS' COMPENSATION  
 4058 Minnesota, Avenue, N.E.  
 WASHINGTON, DC 20019  
 (202) 671-1000

Date of This Report: \_\_\_\_\_

Employee Social Security No. \_\_\_\_\_

Employer Identification No. \_\_\_\_\_

Insurer No. \_\_\_\_\_

**MEDICAL REPORT**

**IMPORTANT – THIS REPORT SHALL BE FILED IMMEDIATELY. FAILURE TO COMPLY WITHIN TWENTY (20) DAYS CAN RESULT IN UN-NECESSARY DELAY IN PAYMENT OF BENEFITS TO THE INJURED WORKER AND PAYMENT FOR SERVICES RENDERED. (sec. 8, d)**

**EMPLOYEE** \_\_\_\_\_  
 (Name) (Age) (Sex) (Soc. Sec. No.)

**EMPLOYER** \_\_\_\_\_  
 (Name) (Address) (Identification No.)

**CARRIER** \_\_\_\_\_  
 (Name) (Address) (Policy No.)

**PHYSICIAN** \_\_\_\_\_  
 (Name) (Address) (Specialty) (Tel. No.)

**FOR USE OF PHYSICIAN**

<b>Accident</b>	1. Date of accident: _____ 2. Time : _____ AM/PM
	3. Date disability began: _____ 4. State where and how the accident occurred as described by patient: _____ _____ _____
<b>Injury</b>	5. Give diagnosis of injury or disease: _____ _____ _____
	6. Will the injury result in a permanent defect? _____ 7. If so, what? _____
	8. Has the patient any physical impairment due to previous injury or disease? _____ If so, what? _____
	9. State physical limitations, if any: _____
	10. In your opinion is the injury and disability as a result of the accident described in (4) above? <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Treatment</b>	11. Date of your first treatment: _____ 12. Describe: _____ _____
	13. Who engaged your services? _____ 14. Were X-Rays taken? <input type="checkbox"/> Yes <input type="checkbox"/> No
	15. When? _____ 16. Where? _____
	17. X-Ray diagnosis: _____
	18. Did anyone else treat the patient? <input type="checkbox"/> Yes <input type="checkbox"/> No 19. If so, who? _____ 20. When? _____
	21. Hospital, if any? _____
	22. Admission Date: _____ 23. Discharge Date: _____
	24. If further treatment needed? <input type="checkbox"/> Yes <input type="checkbox"/> No 25. How long? _____
<b>Disability</b>	26. Will the patient ever be able to resume their regular occupation? <input type="checkbox"/> Yes <input type="checkbox"/> No
	27. Expected length of disability? <input type="checkbox"/> 2 weeks <input type="checkbox"/> 1 month <input type="checkbox"/> 3 months <input type="checkbox"/> 6 months or longer <input type="checkbox"/> Unknown
	28. Patient was or will be able to resume regular work on: _____
	30. Date of death, if any? _____

\_\_\_\_\_  
 Physician's IRS Number

\_\_\_\_\_  
 Physician's Signature

\_\_\_\_\_  
 Date



District of Columbia Government  
 Office of Workers' Compensation  
 4058 Minnesota Avenue, N.E.  
 Washington, DC 20019  
 (202) 671-1000

Date of This Report \_\_\_\_\_

Employee Social Security No. \_\_\_\_\_

Employer Identification No. \_\_\_\_\_

Insurer No. \_\_\_\_\_

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## NOTICE OF FINAL PAYMENT OF COMPENSATION PAYMENTS

Employee Name and Address:	Employer Name and Address:	Insurer Name and Address:

**INSTRUCTIONS:** This notice must be filed with the Office of Workers' Compensation, P.O. Box 56098, Washington, D.C. 20011, within 16 days after compensation has ended, subject to civil penalty.

Date and time of Injury: \_\_\_\_\_ Date of Last Payment: \_\_\_\_\_  
 Date employee returned to work: \_\_\_\_\_ Date employee lost pay because of injury: \_\_\_\_\_  
 Date employee able to return to work, per physician's report of work ability: \_\_\_\_\_  
 Was compensation paid at the maximum rate?  Yes  NO

Average weekly wage \$ \_\_\_\_\_ multiplied by 2/3 = Compensation rate \$ \_\_\_\_\_

State reasons for ending of payments: \_\_\_\_\_

### Enter All Disability Payments

TYPE OF DISABILITY	FROM (mo-day-yr)	To (mo-day-yr)	AMT. PAID PER WEEK	NO. OF WEEKS PAID	TOTAL
Temporary total					
Temporary partial					
Permanent Partial (non-schedule)					
Permanent Partial (Schedule loss, facial or other disfigurement)	Percent	Part of Body			
				Total	\$

### ENTER OTHER PAYMENTS

a. Attorney fees \_\_\_\_\_ c. Interest \_\_\_\_\_ **TOTAL:** \_\_\_\_\_  
 b. Penalty for late payment \_\_\_\_\_

Name of insurance carrier or self-insured employer \_\_\_\_\_

Signature of person authorized to sign for carrier \_\_\_\_\_ TITLE \_\_\_\_\_

**EMPLOYEE PLEASE READ CAREFULLY** If you have any permanent impairment of the body or other disability from the injury for which you have not received compensation, you should inform the Director at the above address of same, and request Form No. 7a DCWC in order to preserve your claim and rights under the law.

THE DISTRICT OF COLUMBIA GOVERNMENT  
DEPARTMENT OF EMPLOYMENT SERVICES  
ADMINISTRATIVE HEARINGS DIVISION (AHD)  
4058 MINNESOTA AVENUE, N.E., SUITE 4400  
WASHINGTON, D.C. 20019  
(202) 671-2233

**APPLICATION FOR FORMAL HEARING**

Name of party on whose behalf this Application is submitted:

\_\_\_\_\_  
OWC File No: \_\_\_\_\_

***IF THE PARTY APPLYING FOR A FORMAL HEARING IS  
REPRESENTED, A COPY OF THE REPRESENTATIVE'S  
AUTHORIZATION MUST BE ATTACHED TO THIS APPLICATION.***

Name, address, and phone number of the employee: \_\_\_\_\_  
\_\_\_\_\_

Name, address, and phone number of the employee's representative: \_\_\_\_\_  
\_\_\_\_\_

Name, address, and phone number of employer: \_\_\_\_\_  
\_\_\_\_\_

Name, address, and phone number of carrier: \_\_\_\_\_  
\_\_\_\_\_

Name, address, and phone number of the employer/carrier's representative:  
\_\_\_\_\_

**Have the parties attended an informal conference held by the Office of Workers'  
Compensation? ( ) yes ( ) no**

***Has the employee filed a claim (Employee's Claim Application, Form No. 7A DCWC)? ( ) yes ( ) no. If yes,  
attach a copy of the employee's claim. HEARINGS WILL NOT BE PLACED ON THE DOCKET UNTIL A CLAIM  
(EMPLOYEE'S CLAIM APPLICATION, FORM 7A DCWC) HAS BEEN FILED.***

-FORM20-

-2-

State the facts of the claim: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State the issues you will present for resolution at the hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Does the employee have other claims pending with the OWC? ( ) yes ( ) no.**  
**If yes, state OWC No(s):** \_\_\_\_\_

**Type or Print the name of the person submitting this Application:**

\_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*I HEREBY CERTIFY that a duplicate of the Application for Formal Hearing was (check applicable method) ( ) duly served in person. Or ( ) sent by certified mail on this \_\_\_\_ day of \_\_\_\_ to*

\_\_\_\_\_  
*(Opposing part (ies))*

\_\_\_\_\_  
*(Name of person making service)*

# QUARTERLY PREMIUM SURCHARGE PAYMENT FORM

Insurer Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Insurer NCCI Number \_\_\_\_\_

Date of Report	Quarter Ending Date	Dollar Amount Submitted

\_\_\_\_\_  
**CERTIFYING OFFICIAL (Type Name)**

\_\_\_\_\_  
**CERTIFYING OFFICIAL (Signature)**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**TELEPHONE NUMBER**

**Mail Form and Check to:**

D.C. Department of Employment Services  
 Office of the Chief Financial Officer  
 4058 Minnesota Avenue, NE - 5th Floor, Suite 5700  
 Washington, D.C. 20019  
 (Telephone: 202-671-1400)

**Submit a Copy of the Form to:**

D.C. Department of Employment Services  
 Office of Workers' Compensation  
 4058 Minnesota Avenue, NE, Insurance Unit  
 Washington, D.C. 20019  
 (FAX: 202-671-1929)

- (1) Checks are payable to the D.C. Treasurer.
- (2) This form may be reproduced or downloaded from the DOES website. The website address is [www.does.dc.gov](http://www.does.dc.gov).

## Office of Workers' Compensation

### EMPLOYEE'S RIGHTS AND OBLIGATIONS

#### District of Columbia Workers' Compensation Law

- You are required by law to promptly report your injury by filing Form No. 7 DCWC, Employee's Notice of Accidental Injury or Occupational Disease, with your employer and the Office of Workers' Compensation within thirty (30) days of the date of injury or the date you have knowledge that the injury is related to your job.
- In order to preserve your right to workers' compensation benefits under the law, you must file a written claim on Form No. 7A DCWC, Employee's Claim Application, within one (1) year after your injury, or within one (1) year after the last payment of benefits. Benefits include indemnity payments for lost wages, medical services and treatment, and vocational rehabilitation.
- Failure to timely file the Notice of Accidental Injury or Occupational Disease, Form No. 7 DCWC, or the Employee's Claim Application, Form No. 7A DCWC, may bar your right to future compensation. Copies of these forms and other pertinent information are available on the Department of Employment Services, Office of Workers' Compensation's website. The website address is <http://does.dc.gov>.
- You may not sue your employer as a result of a work-related injury or disease, the Workers' Compensation Law is your exclusive remedy.
- You have the right to choose a treating physician. Once you choose a treating physician you may not change physicians unless you get approval from your employer's insurance company or the Office of Workers' Compensation. Medical treatment includes medical services, supplies, prosthetic devices, and prescriptions. Medical services include treatment by a dentist, osteopath, podiatrist, and chiropractor.
- Compensation is not paid for the first three (3) days of disability unless the disability exceeds fourteen (14) days. Compensation is paid at the rate of 66  $\frac{2}{3}$ % of your average weekly wage. Unless your employer controverts your right to compensation within fourteen (14) days after he/she has knowledge of the injury, the first installment of compensation becomes due on the 14th day and must be paid within fourteen (14) days after it is due.
- You have the right to request an informal conference or a formal hearing on disputes arising on matters regarding your claim and you have the right to be represented by an attorney or other representative if you so desire.
- You may be entitled to vocational rehabilitation services if you are unable to return to the job you had prior to the injury.
- For injuries occurring on or after 4/16/1999, disability benefits for any one (1) injury causing temporary or permanent partial disability shall be limited to 500 weeks. However, within sixty (60) days of the expiration of the 500 week duration, an employee may petition the Mayor for an extension of up to 167 weeks.
- Your employer is required to advise you of your rights and obligations under the Workers' Compensation Law and if you need further information, call the Office of Workers' Compensation at (202) 671-1000 or fax (202) 671-1929. The web address is <http://does.dc.gov>.

### Oficina de Compensación de Trabajadores

## DERECHOS Y OBLIGACIONES DEL EMPLEADO

### Ley de Compensación de Trabajadores del Distrito de Columbia

- La ley le exige informar rápidamente de su lesión a su empleador y a la Oficina de Compensación de Trabajadores en el término de treinta (30) días de la fecha de la lesión o de la fecha en que tuvo conocimiento de que la lesión estaba relacionada con su trabajo, completando el Formulario N°. 7 DCWC, Notificación del empleado sobre lesión accidental o enfermedad laboral.
- Con el fin de preservar su derecho a los beneficios de la compensación de trabajadores en el marco de la ley, usted debe completar una reclamación por escrito en el Formulario N°. 7A DCWC, Solicitud de reclamación del empleado, en el término de un (1) año después de su lesión, o en el término de un (1) año después del último pago de beneficios. Los beneficios incluyen pagos de indemnización por salarios perdidos, servicios y tratamiento médico, y rehabilitación vocacional.
- Si no presenta la Notificación de lesión accidental o enfermedad laboral, Formulario N°. 7 DCWC, o la Solicitud de reclamación del empleado, Formulario N°. 7A DCWC, podría bloquear su derecho a una futura compensación. Copias de estos formularios y demás información pertinente están disponibles en el sitio web del Departamento de Servicios de Empleo, Oficina de Compensación de Trabajadores. La dirección del sitio web es <http://does.dc.gov>.
- Usted no debe demandar a su empleador como resultado de una lesión o enfermedad relacionada con el trabajo, la Ley de Compensación de Trabajadores es su único recurso.
- Usted tiene derecho a elegir el médico tratante. Una vez que elija al médico tratante no podrá cambiar de médico a menos que obtenga la aprobación de la compañía de seguros de su empleador o de la Oficina de Compensación de Trabajadores. El tratamiento médico incluye servicios médicos, suministros, dispositivos protésicos y prescripciones. Los servicios médicos incluyen el tratamiento del dentista, osteópata, podiatra y quiropráctico.
- No se paga compensación por los primeros tres (3) días de discapacidad a menos que la discapacidad exceda los catorce (14) días. La compensación se paga a razón del 66 ⅔% de su salario semanal promedio. A menos que su empleador controvierta su derecho a compensación en el plazo de catorce (14) días después de tener conocimiento de la lesión, el primer pago de compensación vence el día 14 y debe ser pagado a los catorce (14) días después del vencimiento.
- Usted tiene derecho a solicitar una conferencia informal o una audiencia formal sobre disputas que surjan en cuanto a cuestiones referidas a su reclamación y tiene derecho a ser representado por un abogado u otro representante si así lo desea.
- Usted podrá tener derecho a servicios de rehabilitación vocacional si no puede regresar al trabajo que tenía antes de la lesión.
- En el caso de lesiones ocurridas el o después del 4/16/1999, los beneficios de discapacidad por cada una (1) de las lesiones que provoquen una discapacidad parcial temporaria o permanente se limitarán a 500 semanas. No obstante, a sesenta (60) días de expirar la duración de 500 semanas, un empleado podrá solicitar al alcalde una extensión de hasta 167 semanas.
- Su empleador deberá informarle sus derechos y obligaciones en el marco de la Ley de Compensación de Trabajadores y si necesita más información, llame a la Oficina de Compensación de Trabajadores al (202) 671-1000 o envíe un fax al (202) 671-1929. La dirección web es <http://does.dc.gov>.

## OFFICE OF WORKERS' COMPENSATION

4058 MINNESOTA AVENUE, N.E. • WASHINGTON, DC 20019 • (202) 671-1000 • (202) 671-1929 (Fax)

**WARNING:** It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

### NOTICE OF COMPLIANCE

#### TO EMPLOYEES

1. You are required by law to report promptly to your employer and the Office of Workers' Compensation an occupational injury or disease, even if you deem it to be minor. Form No. 7 DCWC, Notice of Accidental Injury or Occupational Disease, to be obtained from the employer or the Office of Workers' Compensation, must be used for that purpose. After you have completed and signed the form, mail it to the Office of Workers' Compensation at the above address, and to your employer.
2. You are entitled, if required, to the services of a physician or hospital of your choice and lost wages. Call (202) 671-1000 or visit <http://does.dc.gov> for information.
3. You may not sue your employer as a result of a work-related injury or disease by reason of your exclusive remedy under the Workers' Compensation Law.
4. In order to preserve your right to benefits under the DC Workers' Compensation Law, you must file a written claim on Form No. 7A DCWC, Employee's Claim Application, within one (1) year after your injury, or within one (1) year after the last payment of benefits.
5. If you need information regarding your rights and obligations prescribed by law, you may call your employer first. If you require further information, you may call the Office of Workers' Compensation at (202) 671-1000 or visit <http://does.dc.gov>
6. The law gives you the right to legal representation if you so choose.

#### TO EMPLOYERS

1. You are required to have Workers' Compensation insurance coverage if you have one (1) or more employees.
2. You are required to display this poster at each worksite so that it will be of the greatest possible benefit to your employees.
3. You must file an Employer's First Report of Injury or Occupational Disease, Form No. 8 DCWC, with the Office of Workers' Compensation, send a copy to the nearest claim office of your insurer, for all occupational injuries or disease, as soon as possible, but no later than ten (10) working days after the date of knowledge thereof.
4. Your employee must file Form No. 7 DCWC, Employee's Notice of Accidental Injury or Occupational Disease. Please provide your employee with Form No. 7 DCWC and direct them to complete it and return it to you and the Office of Workers' Compensation. Once you have received notice from the employee, you are required to send the employee a notice of his/her rights and obligations by certified mail, return receipt requested.
5. You are required to report to the Office of Workers' Compensation, and your insurer, any disability of more than three (3) days which was not previously reported, as soon as possible, but no later than ten (10) working days after the date of knowledge thereof.
6. You are required to furnish, or cause to be furnished, reasonable medical and hospital services, other remedial care or vocational rehabilitation, and various types of disability compensation, to an injured or disabled employee.
7. You are required to obtain from the insurer identified below a supply of all required Workers' Compensation Forms, or you may download the forms and notice mentioned above at our website <http://does.dc.gov>.

**NOTICE:** Violation of the various provisions of the Workers' Compensation law provides for civil penalties.

The undersigned employer hereby gives notice of compliance with all provisions of the Workers' Compensation Law and Administrative Regulations.

#### NAME OF INSURANCE COMPANY

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

#### NAME OF EMPLOYER

Address \_\_\_\_\_ Phone: \_\_\_\_\_

Employer Representative: \_\_\_\_\_

Employer ID Number (if number unknown, employer to request from IRS)

**THIS NOTICE IS TO BE POSTED CONSPICUOUSLY IN  
AND ABOUT THE EMPLOYER'S PLACE(S) OF BUSINESS**





Government of the District of Columbia  
Department of Employment Services

Office of Workers' Compensation

4058 Minnesota Avenue, N.E.

Washington, D.C. 20019

APPLICATION FOR INFORMAL / MEDIATION CONFERENCE

Name of party on whose behalf this application is submitted: \_\_\_\_\_

OWC No.: \_\_\_\_\_

Date of Injury: \_\_\_\_\_

- IF THE PARTY APPLYING FOR INFORMAL CONFERENCE IS REPRESENTED AND THE REPRESENTATIVE HAS NOT ENTERED HIS / HER APPEARANCE, A COPY OF THE REPRESENTATIVE'S AUTHORIZATION MUST BE ATTACHED TO THIS APPLICATION.

Claimant name, address, and phone number: \_\_\_\_\_

Claimant representative's name, address, and phone number: \_\_\_\_\_

Employer name, address, and phone number: \_\_\_\_\_

Carrier name, address, and phone number: \_\_\_\_\_

Employer/Carrier representative's name, address, and phone number: \_\_\_\_\_

ISSUES TO BE DISCUSSED: \_\_\_\_\_

Employer/Carrier Position: \_\_\_\_\_

\_\_\_\_\_  
Signature of Party Requesting Conference

*Informal procedures may include informal conferences and mediation conferences provided that participation by interested parties in these conferences is voluntary. Informal conferences shall be held at the Office or by telephone. A statement supporting good cause must be attached to the Application. The Associate Director and/or Supervisor will make the final decision.*

*One major purpose of the informal conference is to amicably dispose of controversies, whenever possible. It is a requirement that: all pertinent written / documentation (i.e.) (factual, medical, etc.) shall be provided to the office and exchanged among all parties at the earliest possible date, or at least 48 hours prior to the commencement of the conference. [This process serves to assist in ensuring an expeditious resolution of controversies.]*

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

<b>D.C. Department of Employment Services Office of the Director 4058 Minnesota Avenue, N.E., Suite 5000 Washington, D.C. 20019</b>	<b>PROGRAM: Administrative</b> <hr/> <b>DATE: MAR 14 2016</b>
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**DIRECTIVE: Administrative Issuance No. 16-01**

**TO: Compensation Review Board  
Administrative Hearings Division  
Office of Workers' Compensation**

**FROM: Deborah A. Carroll *DAE*  
Director**

**SUBJECT: Policy Directive Regarding the Award of Attorney Fees in District of  
Columbia Workers' Compensation Cases**

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The purpose of this policy directive is to revise and clarify the standards to be utilized in awarding attorney fees in workers' compensation cases.

Background

D.C. Code § 32-1530 and § 1-623.27 authorizes an award of a "reasonable" attorney's fee in specified circumstances provided the fee award does not exceed 20% of the actual benefit secured through the efforts of the attorney. In determining whether to award an attorney's fee, and the amount, the D.C. Department of Employment Services (DOES) has been guided by the factors set forth in 7 DCMR § 224 and 7 DCMR § 132:

- a. The nature and complexity of the claim including the adversarial nature, if any, of the proceeding;
- b. The actual time spent on development and presentation of the case;
- c. The dollar amount of benefits obtained and the dollar amount of potential future benefits resulting from the efforts of an attorney;

- d. The reasonable and customary local charge for similar services; and
- e. The professional qualifications of the representative and the quality of representation afforded to [the] employee.

DOES' May 12, 2005, Policy Directive Clarifying the Award of Attorney Fees in District of Columbia Workers' Compensation Cases is amended and revised so that the DOES' Labor Standards Bureau Office of Workers' Compensation (OWC), Administrative Hearings Division (AHD), and Compensation Review Board (CRB) shall process attorney fee applications as follows:

1. Effective July 1, 2016, the maximum hourly rate for an attorney's fee award shall be in accordance with the following schedule:

<b>Number of Years of Practice Experience in Worker's Compensation Law</b>	<b>Maximum Hourly Rate Awardable</b>
Two (2) years or less	\$200.00
Above Two (2) years to five (5) years	\$240.00
Above Five (5) years to ten (10) years	\$260.00
Above Ten (10) years to twenty (20) years	\$280.00
Above Twenty (20) years and more	\$310.00

The hourly rate for services performed by a paralegal is \$96.00.

2. This Directive shall apply to all new claims filed pertaining to injuries sustained on or after July 1, 2016.
3. An attorney's fee assessed against the opposing party also shall be in accordance with D.C. Code § 32-1530, § 1-623.27 and 7 DCMR § 132, § 224 or § 269.
4. Beginning January 1, 2018, attorney's fees shall be adjusted every three years, based on the U.S. Department of Labor's Labor Standards Bureau Consumer Price Index for Washington-Baltimore Metropolitan Area, which will be declared and applied by the DOES Labor Standards Bureau.
5. An attorney fee, as set forth in a settlement agreement where both parties are represented by legal counsel, shall be approved by the OWC. D.C. Code § 32-1508(8). *Atkins v. Rite Aid Corp.*, CRB No. 09-124, OWC No. 642482 (April 27, 2010).

THE DISTRICT OF COLUMBIA GOVERNMENT  
DEPARTMENT OF EMPLOYMENT SERVICES  
OFFICE OF HEARINGS & ADJUDICATIONS  
4058 Minnesota Avenue, NE  
WASHINGTON, D.C. 20002

**APPLICATION FOR FORMAL HEARING**

Name of party on whose behalf this Application is submitted:

---

OWC File No.

IF THE PARTY APPLYING FOR A FORMAL HEARING IS REPRESENTED, A COPY OF THE REPRESENTATIVE'S AUTHORIZATION MUST BE ATTACHED TO THIS APPLICATION.

Name, address, and phone number of the employee: \_\_\_\_\_

Name, address, and phone number of the employee's representative:

Name, address, and phone number of the employer:

Name, address, and phone number of the carrier:

Name, address, and phone number of employer/carrier's representative:  
David M. Schoenfeld, Esquire, Kiernan Trebach LLP 1233 20<sup>th</sup> Street, NW, Suite 800, Washington DC 20036 202.712.7000

Have the parties attended an informal conference held by the Office of Workers' Compensation? (x) yes ( ) no.

Has the employee filed a claim (Employee's Claim Application, Form No. 7A DCWC)? (X) yes ( ) no. If yes, **attach a copy of the employee's claim.** HEARINGS WILL NOT BE PLACED ON THE DOCKET UNTIL A CLAIM (EMPLOYEE'S CLAIM APPLICATION, FORM 7A DCWC) HAS BEEN FILED.

State the facts of the claim: .

State the issues you will present for resolution at the hearing:

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Does the employee have other claims pending with the OWC? ( ) yes ( ) no.

If yes, state the OWC No(s): Unknown

Type or print the name of the person submitting this Application:

David M. Schoenfeld, Esquire, attorney for the Self-Insured Employer & TPA

Signature:

Date: \_\_\_\_\_

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Application for Formal Hearing were electronically filed and sent first-class mail, postage prepaid, this 22nd day of February 2023 to the following:

Original to: Chief Administrative Law judge  
Department of Employment Services  
Office of Hearings and Adjudication  
4058 Minnesota Ave., NE, Suite 4400  
Washington, DC 20019  
(Electronic Filing only)

Copies to: Associate Director  
Department of Employment Services  
Office of Workers' Compensation  
4058 Minnesota Ave., NE, Suite 3801  
Washington, DC 20019

Matthew Peffer, Esquire  
ChasenBoscolo Injury Lawyers  
7852 Walker Drive, Suite 300  
Greenbelt, Maryland 20770

Harris Lazarus  
Sedgwick Claims Management Services, Inc.  
P.O. Box 14991  
Lexington, Kentucky 40512-4663

*/s/ David M. Schoenfeld*

\_\_\_\_\_  
David M. Schoenfeld

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DR. UNIQUE MORRIS-HUGHES  
DIRECTOR

ADMINISTRATIVE HEARINGS DIVISION

<p>[REDACTED]</p> <p>Claimant v.</p> <p>[REDACTED]</p> <p>Employer and</p> <p>[REDACTED]</p> <p>Insurer/Third Party Administrator</p>	<p>AHD No.: [REDACTED] OWC No.: [REDACTED]</p> <p>Assigned ALJ: Hon. Donna Henderson</p>
---	--

**SCHEDULING ORDER**

An Application for Formal Hearing has been filed with the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES). The Formal Hearing (FH) in the above captioned matter will convene on 05/15/2023 at 11:00 AM. **All in-person hearings shall be held at 400 Virginia Avenue, SW, 1st Floor, Washington, D.C. 20024.**

The parties shall abide by the following deadlines and otherwise adhere to this Scheduling Order.

**PRE-HEARING DEADLINES**

Submission of Joint Pre-Hearing Statement and Stipulation Form	<b>03/24/2023</b>
Requests for Interpreter	<b>03/24/2023</b>
Requests for ADA Accommodations	<b>03/24/2023</b>
Discovery Closes	<b>04/14/2023</b>
Requests for Additional Time to conduct Formal Hearing	<b>04/24/2023</b>
Motions to Amend Joint Pre-Hearing Statement and Stipulation	<b>04/24/2023</b>

Deadline for Motions for Summary Decision	04/24/2023
Submission of Exhibits and Exhibit List	05/01/2023
Joint Request for Decision Based on Written Record	05/08/2023
Request to Withdraw Application for Formal Hearing with Interpreter Without Incurring Costs	05/12/2023
Request to Withdraw Application for Formal Hearing where no Interpreter Without Incurring Costs	05/12/2023

**CONSISTENT WITH THE FOREGOING, IT IS ORDERED:**

1. **CAPTIONS AND HEADINGS; SERVICE.** The name of the presiding Administrative Law Judge (ALJ), the date of the Formal Hearing, and the AHD number shall be included on **ALL** submissions, including correspondence, filed with Administrative Hearings Division (AHD). All submissions filed with AHD shall simultaneously be served upon the opposing party or parties.
2. **FORMAL HEARING.** The Formal Hearing in the above-captioned matter will convene on 05/15/2023 at 11:00 AM. Except as provided in Instruction No. 3, each party shall limit his/her/its respective presentation of evidence and argument to one hour. During this one-hour time period each party shall conduct the examination that party's witness(es), including rebuttal witnesses. At the option of the presiding ALJ, a party may present opening and closing statements.
3. **ADDITIONAL HEARING TIME.** Any party may request additional time not to exceed one hour to present its evidence, unless upon good cause shown more than one additional hour is required. The request, which must be in writing and submitted to AHD on or before 04/24/2023, shall state the basis therefor and contain a proffer of the evidence to be adduced during the additional time period.
4. **ELECTRONIC FILING AND SERVICE.** Electronic filing of all documents with AHD and service upon parties is required in all cases where the party is represented by legal counsel, in accordance with AHD rules of practice and procedure. Where a party is not represented by legal counsel, electronic filing and service is preferred but not required. Any person may contact the Administrative Hearings Division to schedule an appointment in the office for assistance with scanning and the electronic filing of documents.
5. **JPHS AND SF.** A completed Joint Pre-Hearing Statement (JPHS) and Stipulation Form (SF) shall be jointly executed by the parties and submitted to the Administrative Hearings Division by the party requesting the Formal Hearing on or before 03/24/2023. The JPHS and SF forms may be obtained on-line from the DOES website, at [www.does.dc.gov](http://www.does.dc.gov), or by calling the AHD main number at (202) 671-2233.
6. **WITNESS AND EXHIBIT IDENTIFICATION.** Any witness not identified in the JPHS shall not be permitted to testify except upon motion of the offering party and for good cause shown. Any exhibit not identified in the JPHS shall not be admitted into evidence except upon motion of the offering party and for good cause shown. Impeachment witnesses and/or impeachment exhibits need not be identified in the JPHS.
7. **MOTIONS TO AMEND JPHS OR SF.** Any motion to amend the JPHS or SF shall be filed with AHD on or before 04/24/2023. Any response to said motion shall be filed with AHD within five business days of service of said motion. A party's failure to file a timely response to said motion shall be deemed consent thereto.



8. DISCOVERY. Discovery in the instant matter shall be completed on or before 04/14/2023. Motions to compel discovery and motions for protective orders shall contain a statement setting forth the good faith efforts made to resolve any discovery disputes. Failure to set forth the good faith effort may result in a denial of the motion. In addressing discovery disputes, the *D.C. Superior Court Rules of Civil Procedure* shall serve as a guide. *See, e.g., Super. Ct. Civ. Rules 26 and 37.*
9. EXHIBITS AND EXHIBIT LIST. All documentary exhibits, including *de bene esse* depositions, shall be accompanied by an Exhibit List and electronically filed with AHD on or before 05/01/2023, with simultaneous service upon the opposing party. If a party is unable to file its exhibits electronically, the party will be permitted to file exhibit “hard” copies, tabbed and bound, accompanied by an Exhibit List and served upon the opposing party.
- a. Exhibits shall be sequentially numbered, beginning with the number one. Exhibits that include more than one document, such as medical records, shall be organized chronologically, with the oldest record first.
  - b. All Social Security numbers and financial account numbers shall be redacted.
  - c. Documents from the same medical care provider may be organized together within a single exhibit. The exhibit’s corresponding entry on the Exhibit List shall include the beginning and ending dates for those medical records.
  - d. The Exhibit List shall include both an identifying name for each exhibit and corresponding date or date range, and shall include the title, date, and author of all non-medical records.
  - e. Bate stamping, whether manual or electronic, is acceptable.
10. UTILIZATION REVIEW. Utilization Reviews are mandatory before the issue of reasonableness and necessity of medical treatment can be considered. *See generally, Gonzalez v. UNICCO Serv. Co., CRB No. 07-005, 2007 DC Wrks. Comp. LEXIS 95, at \*39 (Feb. 21, 2007); D.C. Code §32-1507(b)(6).* Failure to list a Utilization Review report as an exhibit in the JPMS, submit a Utilization Review report in an exhibit packet, or offer a medical care provider an opportunity to request a reconsideration of the opinion may lead to a finding that a party has waived the issue of the reasonableness and necessity of medical care. *See D.C. Code § 32-1507(b)(6)(C)* (60-day requirement to allow medical care provider to request reconsideration of utilization review opinion).
11. SUBMISSION ON WRITTEN RECORD. Where, after due and sufficient communication between the parties concerning the nature of the issues presented for resolution, it is determined the matter may be presented upon documentary evidence and/or written submissions, the parties may waive their right to a full evidentiary hearing and submit the matter for adjudication on the written record alone. To do so, the parties must file a joint motion with the ALJ to submit the matter on the written record no later than 05/08/2023.
12. INTERPRETERS. All requests for interpreter services shall each be made separately on or before 03/24/2023. Where a party is represented by legal counsel, the request shall be made through an electronic interface approved by AHD. Where a party is pro se, the request may be made in writing. The request shall contain the date and time of the Formal Hearing as well as the specific language and/or dialect required by the party or witness.
13. REASONABLE ACCOMMODATIONS. AHD endeavors to honor all reasonable requests for accommodation. A request for a reasonable accommodation for a party or witness shall be made in writing to AHD on or before 03/24/2023. The request shall contain the date and time of the Formal Hearing and specifically delineate the nature of the impairment and the requested accommodation. Any deadline in this case, including the date of the Formal Hearing, may be changed or postponed in response to a request for reasonable accommodation.

14. COSTS RELATED TO CANCELED FORMAL HEARINGS AND CONTINUANCES:

- a. Where the party applying for a Formal Hearing withdraws its Application or requests a continuance less than **24 hours** before the scheduled hearing, the costs of the court reporter incurred by AHD for the Formal Hearing will be assessed against said party.
- b. Where the parties notify the presiding ALJ that they have jointly reached a settlement of the matter or jointly request a continuance less than **24 hours** before the scheduled hearing, the cost of the court reporter's attendance incurred by AHD will be assessed equally against the parties.
- c. Whenever an interpreter has been requested, notice of the withdrawal of the Application for Formal Hearing, notice of settlement, or request for continuance of the hearing must be given to AHD at least **72 hours** prior to the convening of the scheduled hearing to avoid assessment of any incurred costs of the interpreter, which shall be assessed against the party withdrawing the Application for Formal Hearing or requesting the continuance, or equally assessed against the parties in the case of settlement or joint request for continuance of the hearing.
- d. Failure to comply with an order directing payment of the incurred costs of the court reporter or of an interpreter shall result in sanctions as warranted.

15. CONTINUANCES. A motion for continuance of the Formal Hearing shall be granted only upon a showing of good cause.

16. STATUS CONFERENCE. The presiding ALJ may, *sua sponte* or upon motion by either party, schedule a status conference which may, at the discretion of the ALJ, be conducted in person or via telephone.

17. FAILURE TO COMPLY WITH SCHEDULING ORDER. The presiding ALJ may issue an Order to Show Cause to any party who fails to perform pursuant to this Scheduling Order. Regardless of whether an Order to Show Cause is issued, the ALJ may take such appropriate action as warranted, including dismissal of the Application for Formal Hearing, setting the matter for *ex parte* proof, or certification of the facts to the Superior Court of the District of Columbia for contempt proceedings pursuant to *D.C. Code §32- 1529(b)*.

18. ALJ'S AUTHORITY. Nothing in this Scheduling Order shall limit an ALJ's broad authority to exercise control over the mode and order of examining witnesses, how evidence is presented, addressing preliminary issues, ruling upon motions, or otherwise governing the conduct of these proceedings.

**SO ORDERED.**

  
\_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE

02/27/2023

\_\_\_\_\_  
Date

## Workers' compensation and payments

There can be a delay between when a bill is filed for the work-related illness or injury and when the workers' compensation insurance decides if they'll pay the bill. Medicare can't pay for items or services that workers' compensation will pay for promptly (generally 120 days). Medicare may make a conditional payment if the workers' compensation insurer denies payment for your medical bills pending a review of your claim (generally 120 days or longer).

### Note

This isn't the same as when your workers' compensation case has been settled and you're using Workers' Compensation Medicare Set-aside Arrangement (WCMSA) funds to pay for your medical care. See below for more information on WCMSAs.

If the state workers' compensation insurance denies payment, and if you give Medicare proof that the claim was denied, then Medicare will pay for Medicare-covered items and services.

In some cases, workers' compensation insurance may not pay your entire bill. Workers' compensation insurance may agree to pay only a part of your bill if both of these are true:

- You had an injury or illness before you started your job (called a "pre-existing condition")
- The job made it worse

This is because the job didn't cause the original problem. You and workers' compensation insurance may agree to share the cost of your bill. If Medicare covers the treatment for your pre-existing condition, then Medicare may pay its share for part of the doctor or hospital bills that workers' compensation doesn't cover.

## Settle your workers' compensation claim

If you want to settle your workers' compensation claim, you or your lawyer should contact the recovery contractor. Settlements of workers' compensation claims are handled differently than a settlement of a no-fault or liability insurance claim. As part of settling your workers' compensation claim, you must repay Medicare for any Medicare payments for workers' compensation claim-related services you already got.

## Workers' Compensation Medicare Set-aside Arrangements (WCMSA)

If you settle your workers' compensation claim, you must use the settlement money to pay for related medical care before Medicare will begin again to pay for related care. In many cases, before a settlement is reached, the workers' compensation agency asks Medicare to approve an amount to be set aside to pay for future medical care. Medicare will look at certain medical documentation and approve an amount of money from the settlement. This money must be used up first before Medicare starts to pay for related care that's otherwise covered and reimbursable by Medicare.

You and the workers' compensation agency aren't required to set up a WCMSA—it's completely voluntary. However, you must make sure the settlement money is used only for related medical care. To get approval for a proposed WCMSA account for you to manage, or for more information about WCMSAs, visit [go.cms.gov/wcmsa](https://go.cms.gov/wcmsa).

### Using money in your WCMSA

To find out how to manage (self-administer) your WCMSA account, visit [go.cms.gov/WCMSASelfAdm](https://go.cms.gov/WCMSASelfAdm). Keep these in mind:

- Money placed in your WCMSA is for paying future medical and/or prescription drug expenses related to your work injury or illness/disease that otherwise would have been covered by Medicare.
- You can't use the WCMSA to pay for any other work injury, or any medical items or services that Medicare doesn't cover (for example, dental services).
- Medicare won't pay for any medical expenses related to the injury until after you have used all of your set-aside money appropriately.
- If you aren't sure what type of services Medicare covers, call Medicare before you use any of the money that was placed in your WCMSA.

- Keep records of your workers' compensation-related medical and prescription drug expenses. These records show what items and services you got and how much money you spent on your work-related injury, illness or disease. You need these records to prove you used your WCMSA money to pay your workers' compensation-related medical and/or prescription drug expenses.
- After you use all of your WCMSA money appropriately, Medicare can start paying for Medicare-covered and otherwise reimbursable items and services related to your workers' compensation claim.

## Related Resources

[How Medicare works with other insurance](#)

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### Take Action

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### CMS & HHS Websites

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### Helpful Links

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# Workers' Compensation Medicare Set Aside Arrangements

A Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) is a financial agreement that allocates a portion of a workers' compensation settlement to pay for future medical services related to the workers' compensation injury, illness, or disease. These funds must be depleted before Medicare will pay for treatment related to the workers' compensation injury, illness, or disease.

All parties in a workers' compensation case have significant responsibilities under the Medicare Secondary Payer (MSP) laws to protect Medicare's interests when resolving cases that include future medical expenses. The recommended method to protect Medicare's interests is a WCMSA.

The amount of the WCMSA is determined on a case-by-case basis. To assist you in determining if a WCMSA is reasonable, please review Section 15.1 (Criteria) in the *WCMSA Reference Guide*. The guide contains information for attorneys, Medicare beneficiaries, claimants, insurance carriers, representative payees, and WCMSA vendors and is available in the Downloads section at the bottom of this page.

## When to submit a WCMSA for CMS Review

While there are no statutory or regulatory provisions requiring that a WCMSA proposal be submitted to CMS for review, submission of a WCMSA proposal is a recommended process. More information on this process can be found on the [WCMSA Submissions](#) page.

If you choose to submit a WCMSA for review, CMS requires that you comply with its established policies and procedures. CMS will only review WCMSA proposals that meet the following criteria:

- The claimant is a Medicare beneficiary and the total settlement amount is greater than \$25,000.00; or
- The claimant has a reasonable expectation of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.00

For more information on Review Thresholds, please see Section 8.1 (Review Thresholds) of the *WCMSA Reference Guide* available in the Downloads section found at the bottom of this page.

If you decide to submit a WCMSA for review, it can be submitted electronically through the [WCMSA Portal](#) (WCMSAP) or by paper/CD through the mail. The portal submission is the recommended approach for submitting a WCMSA as it is significantly more efficient than sending this information via the mail. For more information about this application, please see the [WCMSAP](#) page.

**Note:** For general information on CMS’s Coordination of Benefits & Recovery activities, please see the [COB&R](#) page.

## How to sign-up for WCMSA Web page updates

CMS provides you the ability to be notified when new information is posted on the WCMSA web pages. If you have not already signed up for these notifications, please enter your e-mail address in the “Receive E-Mail Updates” box at the bottom of this page. Next, select “Worker’s Compensation Agency Services” and any other topics you would like to receive notifications on. When notifications and new information, regarding WCMSA are available, you will be notified at the provided e-mail address.



### Downloads

[WCMSA Reference Guide Version 3.8 \(PDF\)](#)

## Conditional Payment Information

Under Medicare Secondary Payer law (42 U.S.C. § 1395y(b)), Medicare does not pay for items or services to the extent that payment has been, or may reasonably be expected to be, made through a no-fault or liability insurer or through a workers' compensation entity. Medicare may make a conditional payment when there is evidence that the primary plan does not pay promptly conditioned upon reimbursement when the primary plan does pay. The Benefits Coordination & Recovery Center (BCRC) is responsible for recovering conditional payments when there is a settlement, judgment, award, or other payment made to the Medicare beneficiary. When the BCRC has information concerning a potential recovery situation, it will identify the affected claims and begin recovery activities. Beneficiaries and their attorney(s) should recognize the obligation to reimburse Medicare during any settlement negotiations.

If Medicare is pursuing recovery directly from the insurer/workers' compensation entity, the beneficiary and beneficiary's attorney or other representative will receive a copy of recovery correspondence sent to the insurer/workers' compensation entity. The beneficiary does not need to take any action on this correspondence. However, if Medicare is pursuing recovery from the beneficiary, the BCRC will send recovery correspondence to the beneficiary.

### Conditional Payment Letter (CPL)

A CPL provides information on items or services that Medicare paid conditionally and the BCRC has identified as being related to the pending claim. For cases where Medicare is pursuing recovery from the beneficiary, a CPL is automatically sent to the beneficiary within 65 days of issuance of the Rights and Responsibilities letter (a copy of the Rights and Responsibilities letter can be obtained by clicking the [Medicare's Recovery Process](#) link). All entities that have a verified Proof of Representation or Consent to Release authorization on file with the BCRC for the case will receive a copy of the CPL. Please refer to the [Proof of Representation and Consent to Release](#) page for more information



on these topics. The CPL includes a Payment Summary Form that lists all items or services the BCRC has identified as being related to the pending claim. The letter includes the interim total conditional payment amount and explains how to dispute any unrelated claims. The total conditional payment amount is considered interim as Medicare might make additional payments while the beneficiary's claim is pending.

You can obtain the current conditional payment amount and copies of CPLs from the BCRC or from the Medicare Secondary Payer Recovery Portal (MSRP). To obtain conditional payment information from the BCRC, call 1-855-798-2627. To obtain conditional payment information from the MSRP, see the "Medicare Secondary Payer Recovery Portal (MSRP)" section below. If a settlement, judgment, award, or other payment occurs, it should be reported to the BCRC as soon as possible so the BCRC can identify any new, related claims that have been paid since the last time the CPL was issued.

For more information about the CPL, refer to the document titled *Conditional Payment Letters (Beneficiary)*. This document can be accessed by clicking the [Medicare's Recovery Process](#) link.

Contact information for the BCRC may be obtained by clicking the [Contacts](#) link.

## **Conditional Payment Notification (CPN)**

A CPN is issued to the beneficiary in lieu of a CPL when a settlement, judgment, award, or other payment has already occurred. A CPN provides conditional payment information and advises what actions must be taken because the settlement, judgment, award, or other payment has already occurred. After the CPN has been issued, the recipient is allowed 30 days to respond. If a CPN is received, any of the items listed below should be forwarded to the BCRC if they have not previously been sent:

- Proof of Representation documentation.
- Proof of any items and/or services that are not related to the case, if applicable.

- All settlement documentation if you are providing proof of any items and/or services not related to the case.
- Procurement costs and fees paid by the beneficiary.
- Documentation for any additional or pending settlements, judgments, awards, or other payments related to the same incident.

If a response is received within 30 calendar days, the correspondence will be reviewed, and a demand letter will be issued. If a response is not received in 30 calendar days, a demand letter will automatically be issued requesting repayment on all conditional payments related to the case without a proportionate reduction for fees or costs.

For more information about a CPN, refer to the document titled *Conditional Payment Notice (Beneficiary)*, which can be accessed using the [Medicare's Recovery Process](#) link.

## Disputing Claims on a CPL or CPN

If the beneficiary or his or her attorney or other representative believes any claims included on the CPL or CPN should be removed from Medicare's conditional payment amount, documentation supporting that position must be sent to the BCRC. The documentation provided should establish that the claims are not related to what was claimed or were released by the beneficiary. This process can be handled via mail, fax, or the MSPRP. See the “Medicare Secondary Payer Recovery Portal (MSPRP)” section below for additional details. The BCRC will adjust the conditional payment amount to account for any claims it agrees are not related to what has been claimed or released. Upon completion of its dispute review process, the BCRC will notify all authorized parties of the resolution of the dispute.

## Demand Calculation Option

If the beneficiary is settling a liability case, he or she may be eligible to obtain Medicare's demand amount prior to settlement or to pay Medicare a flat percentage of the total settlement. Click the [Demand Calculation Options](#) link to determine if the beneficiary's case meets the required guidelines.

# Medicare Secondary Payer Recovery Portal (MSPRP)

The MSPRP is an online self-service tool that may be used by attorneys to report a case and manage cases that have been reported to the BCRC. The MSPRP allows users to obtain updated conditional payment amounts, request a copy of a current conditional payment letter or make an electronic payment. Please click the [MSPRP](#) link for further details.

Page Last Modified: 12/01/2021 07:02 PM

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**CMS.gov**



A federal government website managed and paid for by the U.S. Centers for Medicare & Medicaid Services.

7500 Security Boulevard, Baltimore, MD 21244

## **Mandatory Insurer Reporting (NGHP)**

### **Mandatory Insurer Reporting for Non-Group Health Plans (NGHP)**

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) added mandatory reporting requirements with respect to Medicare beneficiaries who have coverage under group health plan (GHP) arrangements as well as for Medicare beneficiaries who receive settlements, judgments, awards or other payment from liability insurance (including self-insurance), no-fault insurance, or workers' compensation, collectively referred to as Non-Group Health Plan (NGHP) or NGHP insurance. Note: Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 is sometimes referred to as "Section 111". The term "Section 111" will be used on these pages for ease of reference.

The provisions for Liability Insurance, No-Fault Insurance, and Workers' Compensation found at 42 U.S.C. 1395y(b)(8):

- Added reporting rules, but did not eliminate any previously existing Medicare Secondary Payer (MSP) statutory provisions or regulations
- Did not change existing processes for MSP recovery and self-reporting other insurance to CMS
- Include penalties for noncompliance
- Define who must report, a responsible reporting entity (RRE), as "an applicable plan": "...[T]he term 'applicable plan' means the following laws, plans, or other arrangements, including the fiduciary or administrator for such law, plan, or arrangement: (i) Liability insurance (including self-insurance). (ii) No fault insurance. (iii) Workers' compensation laws or plans."
- Include what must be reported
- Specify the form and manner of reporting

The *Section 111 statutory language, Paperwork Reduction Act Federal Register Notice and Supporting Statement* can be found in the Downloads section below.

## Who Must Report

An organization that must report under Section 111 is referred to as a responsible reporting entity (RRE). In general terms, NGHP RREs include liability insurers, no-fault insurers, and workers' compensation plans and insurers. RREs may also be organizations that are self-insured with respect to liability insurance, no-fault insurance, and workers' compensation.

You must refer to the information provided in the *MMSEA Section 111 Medicare Secondary Payer Mandatory Reporting Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation User Guide (NGHP User Guide) Chapter III: Policy Guidance* found as a download on the **NGHP User Guide** page for a complete explanation of who must report. The Responsible Reporting Entities section of this chapter provides a detailed definition of an NGHP RRE, including scenarios related to corporate structure, bankruptcy, self-insurance pools and other insurer relationships that have a bearing on what entity must report under various circumstances.

## Reporting

The purpose of Section 111 reporting is to enable CMS to pay appropriately for Medicare-covered items and services furnished to Medicare beneficiaries. Section 111 NGHP reporting of applicable liability insurance (including self-insurance), no-fault insurance, and workers' compensation claim information helps CMS determine when other insurance coverage is primary to Medicare, meaning that it should pay for the items and services first before Medicare considers its payment responsibilities.

Reporting is accomplished by either the submission of an electronic file of liability, no-fault, and workers' compensation claim information, where the injured party is a Medicare beneficiary, or by entry of this claim information directly into a secure Web portal, depending on the volume of data to be submitted. Upon receipt of this information, CMS checks whether the injured

party associated with the claim report is a Medicare beneficiary, and determines if the other insurance is primary to Medicare. CMS then uses this information in the Medicare claims payment process and, if Medicare paid first when it should not have, uses it to seek repayment from the other insurer or the Medicare beneficiary.

## **Reporting Requirements – NGHP User Guide and Alerts**

Reporting requirements are documented in the NGHP User Guide which is available as a series of downloads on the **NGHP User Guide** page. The NGHP User Guide is made up of five chapters: Introduction and Overview, Registration Procedures, Policy Guidance, Technical Information, and Appendices. Each chapter can be referenced independently, but are designed to function together to provide complete information and instructions for NGHP reporting.

The NGHP User Guide is the primary source for Section 111 reporting requirements. RREs must also be sure to refer to important information published on the **NGHP Alerts** page. To obtain the most up to date information and requirements, refer to the NGHP User Guide and all pertinent alerts published subsequent to the current version of the User Guide. Comprehensive Computer-Based Training (CBT) modules covering all aspects of Section 111 reporting can be found on the **NGHP Training Material** page.

Please see the MMSEA Section 111 Mandatory Insurer Reporting Quick Reference Guide for Non-Group Health Plan (NGHP) Insurers download on this page for more general information.

## **Registration and the Section 111 COBSW**

Section 111 RREs are required to register for Section 111 reporting and fully test the data exchange before submitting production files. The registration process provides notification to CMS of the RRE's intent to report data to comply with the requirements of Section 111 of the MMSEA.

NGHP RREs must register on the Section 111 COB Secure Website (COBSW), This interactive Web portal may also be used to maintain current account information,

monitor reporting file processing, query an individual's Medicare status and, for RREs with a low volume of information to report, directly enter NGHP claim information. Refer to the NGHP User Guide and the How to Get Started download found under the How To menu option of the Section 111 COBSW for registration instructions. The link to the Section 111 COBSW can be found in the Related Links section below

## Reporting Assistance

After registration, you will be assigned an Electronic Data Interchange (EDI) Representative to assist you with the reporting process and answer related technical questions.

CMS conducts NGHP Town Hall Teleconferences to provide updated policy and technical information related to Section 111 reporting. Announcements for upcoming NGHP Town Hall events are posted to the NGHP **What's New** page. Transcripts from the current year can be found on the **NGHP Transcripts** Page while prior year transcripts can be found on the **Archive** page.

The Section 111 Resource Mailbox, at [PL110-173SEC111-comments@cms.hhs.gov](mailto:PL110-173SEC111-comments@cms.hhs.gov), is a vehicle that Responsible Reporting Entities (RREs) may use to send CMS policy-related questions regarding the Medicare Secondary Payer (MSP) reporting requirements included in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. RREs are requested to send only policy-related questions to the Section 111 Resource Mailbox.

If an RRE has a technical question, and if you are unable to contact your Electronic Data Interchange (EDI) Representative, for any reason, call the EDI Hotline at (646) 458-6740. If you have not registered to become an RRE, please directly contact the Benefits Coordination Recovery Center (BCRC) at 1-855-798-2627 (TTY/TDD: 1-855-797-2627 for the hearing and speech impaired).

Comprehensive Computer-Based Training (CBT) modules covering all reporting and registration requirements can be viewed from the **NGHP Training Material** page.