

**EMPLOYEE RIGHTS UNDER THE
WORKERS' COMPENSATION AND INJURED ON DUTY PROGRAM**

A Project of the AFSCME DC47 Health & Safety Advisory Committee

**Health & Safety Office
Kathy Black, Director
AFSCME DC47 Health & Welfare Fund
1606 Walnut Street
Philadelphia, PA 19103
(215) 893-3770**

EMPLOYEE RIGHTS UNDER THE WORKERS' COMPENSATION AND INJURED ON DUTY PROGRAM

I. Introduction

This booklet is designed to acquaint our members who work for the City of Philadelphia or the First Judicial District with the major provisions of the Injured On Duty (IOD) and Workers' Compensation systems, and to answer the most frequently asked questions about these programs. The document includes the important distinctions between the two systems, an outline of appeal procedures, information about services available from the Union's Health & Safety office, and tips on how to get the best treatment and all the benefits you are entitled to under these programs.

The Union urges everyone to utilize the IOD system (or Workers' Comp) any time you are hurt at work, no matter how minor the injury or illness. **Going to your own doctor when you are injured at work is against the law. It is also a drain on our Health & Welfare Fund, which drives up costs.** Failing to report workplace hazards and injuries lets the City off the hook. They cannot be held accountable for benefits or for fixing the hazards that lead to injuries, if employees go outside the system for treatment.

The Union also urges everyone to report your injury to the Union's Health & Safety Office as soon as possible. You may call Kathy Black, Health & Safety Director, at 215-893-3770, e-mail her at kblack@dc47.org, or ask your steward to call her. Kathy is available to assist all employees who are injured or ill as a result of their work and to make sure they are treated fairly, receive appropriate treatment, and get any help required to obtain benefits, including legal referrals when necessary.

There is no specific definition of "injury" or "illness" under the law, although a long list of possible diseases related to noise, chemicals and other toxic exposures is included in the Workers' Compensation Act. If your work causes you an injury, illness or disease of any kind, you may be eligible for Workers' Compensation or IOD. However, no compensation will be paid for an injury or death when it is intentionally self-inflicted or is caused by an employee's violation of the law, including, but not limited to, the illegal use of drugs. An injury or death

caused by intoxication also may not be covered.

II. If injured on duty, or ill as a result of something at work, what should I do?

A. If it is an emergency situation, go to the nearest facility which can handle the medical problem.

In most cases, this will be a hospital Emergency Room. It does not matter whether the facility is within the network, nor does it matter whether you are at your usual workplace or somewhere else on assignment. If you require emergency transport, call one, or have someone call for you.

After treatment, contact your supervisor as soon as possible (same day or next day). As soon as you are released from the treating facility, arrangements must be made to go to the City Compensation Clinic for follow-up evaluation and treatment. This request must be made through your supervisor or, in some departments, through the Safety Officer.

B. In a non-emergency situation, inform your supervisor of the injury or illness and request a referral to the Compensation Clinic. Failure to seek treatment at the employer's Compensation Clinic will cause your claim to be denied and your IOD/Workers' Comp benefits forfeited.

If you are away from your usual workplace, but in duty status, you are still eligible for Injured on Duty coverage. Call your Supervisor for a referral to one of the City's network clinics for IOD treatment.

C. Under the law, you have the right to choose which clinic you wish to visit and which doctor you wish to see from the City's network. Clinic addresses and the names of each treating physician at those clinics should be posted in your workplace. They can also be obtained from your Safety Officer or from the Union's Health and Safety Director. Unless you express a preference, you will be sent to the nearest clinic in the network and you will see whichever doctor is available there. You can check with coworkers about their experiences with the network doctors, or you may call the Union to discuss your options. If you have no preference, you should go to the designated clinic for your workplace. If you experience problems with any of the doctors you can request a transfer later. (See discussion on this topic later in the document.)

D. Demand appropriate care at the Clinic. Don't let the doctor tell you she or he doesn't believe in x-rays or other diagnostic tests. If you don't feel well enough to return to work, push the doctor to prescribe something, and/or release you from work. Don't be intimidated.

If the doctor returns you to work but you don't feel well enough to work, call your supervisor, go home, and appeal for the time to be covered by E-time (excused with pay). The Appointing Authority is permitted to grant this leave, even if the doctor has released you to work, if the restrictions or medication you are under render you incapable of performing your normal work duties. Some departments are reluctant to use this authority. You may need

assistance from the Union to appeal to have the time covered, and you may need to use your own sick leave until the dispute is resolved. However, you should think of your own health and well being first, and if you are not well enough to work, report to your supervisor that you are going home sick.

The City authorizes paid time off under IOD only when a network doctor has determined that you are too ill or injured to perform your usual work duties. If you are in work status but your symptoms and pain flare up periodically, you will be required to get a referral to the Comp Clinic each time, you will be re-examined, and the doctor will then determine whether you should return to work. **Your own sick leave will be charged if you take time off for a work-related illness or injury without the authorization of the Comp doctor. This authorization must come from the Comp doctor who is overseeing your case. If you have been referred to a specialist who thinks you should be released from work, you still must get time off approved by the primary IOD treating physician.**

E. An Employee Illness and Injury Report must be filed as soon as possible. This should be done immediately upon an employee's return from the clinic in a non-emergency case, and in emergency cases, the information should be given to the supervisor or department designee when medically possible. It is the supervisor's or Department designee's responsibility to complete and file this form. **The employee should get a copy of the form, and should forward a copy to the Union's Health and Safety Office. Filing an injury report is not the same as requesting Workers' Comp or IOD benefits. It is just a notice to the employer of the incident.**

Be sure to list every single ache, pain and affected body part on the initial form, no matter how minor it seems at the time. Frequently, after the most acute injuries have healed, other problems will emerge. If injuries have not been mentioned in the original incident report, it is likely the City will dispute your attempt to receive treatment for them later.

F. Why is it important to report an accident/injury immediately, and see a doctor, even if you feel okay?

This is sometimes an adversarial process, and you should proceed accordingly from day one. Establish your case immediately; build your credibility. Don't give them room to ask later why you didn't complain about this when it happened. Also, you are probably not a doctor and you cannot determine whether you are just fine or not. Some injuries, especially those of the soft tissues, can take a day or two, or more, to manifest. Swelling, deep bruising, increased pain can come later. If you have not reported an accident or injury, it will be much harder to get treatment and benefits later.

Under the law, you have 120 days to notify the employer of an injury or illness, but each day you wait reduces your credibility later, should you need to file an actual claim. Also, **when you file can affect when your lost time benefits become payable.** If you report within the first 21 days, your injury and lost time will be compensable from "Day One" under the IOD system, and "Day Eight" under Workers Comp. The employer has no responsibility for benefits after 21 days until notice is given. In other words, if you get treatment on your own, and you

wait two months to notify your employer you were injured on duty, you cannot recover the lost time or treatment costs of those first two months.

III. What are the differences between IOD and Workers' Compensation?

A. Although the City's IOD program is a State-approved plan, it does differ in some important respects from the state-run Workers' Comp plan. The City is permitted to administer their own program as long as it meets the basic requirements of the law for all workers. That is, the same forms must be filed with the state, the same deadlines and notices apply. However, under Civil Service Rules and the terms of our contract, we have better benefits under the IOD system, and one big trade-off. Provisions of the IOD Program are contained in Civil Service Regulation 32.

1. Lost time is paid from day one of an injury under IOD. This is an important distinction for our members, because it is unusual that they are injured seriously enough to be out of work a week or more. Under Workers' Comp, lost time benefits do not begin until the 8th calendar day of lost time. If the disability period lasts 14 days or more, then benefits are retroactive to the first day. The days do not have to be consecutive; they can accumulate over many months, as they do, for instance, with repetitive stress disorders, or orthopedic injuries that have "flare up" periods.

2. Employees get lost time compensated at a higher rate under IOD than under Workers' Comp. Workers' Comp pays 2/3 of gross pay, up to a cap (\$675 in 2003), which is lower than the pay rate for many of our members. Under Workers' Comp, your level of compensation will never go up. No matter how long you are out of work, and no matter how many pay raises are awarded over that period of time, your Workers' Comp check will remain the same. IOD pays 75% of gross, with no cap, which for most of our members is about the same as their take-home pay (taxes are not deducted). Some members with many dependents may experience a slight reduction in pay under IOD. Under IOD, your lost time compensation will go up in accordance with any contractual pay increases awarded while you are out of work.

3. Under the IOD system, the City continues to pay your health insurance contribution, and you remain covered under the Health & Welfare plan for as long as you are out of work. Under Workers' Comp, no health insurance payments are made by the City. Therefore, your coverage would end at the next payment date for City contributions.

4. Both Workers' Comp and IOD compensation payments are exempt from taxes, although under IOD, FICA and pension contributions are still deducted. Under IOD, you will not accrue vacation while you are in no duty status, but all other benefits continue. **Under Workers' Comp, no pension payments are made by the City, no sick leave is accrued, all City benefits stop.**

5. You may receive IOD compensation benefits for one year and remain on the City payroll. After that, the City has the option of continuing your benefits in six month increments. Generally, they will renew you several times, especially if there is an expectation that you will eventually be able to return to work. Under Workers' Comp, the City is under no

obligation to maintain you on their payroll and can terminate you at any time.

6. The major trade-off for the higher compensation benefits under IOD is that you may not go to your own doctor at any time for treatment of your work-related injury. You must stay with the City's providers for the duration of your claim. **Under Workers Comp, you may opt out of the City's provider network after 90 days from the initial date of treatment, and go to a doctor or doctors of your own choosing.** If additional time is lost, it will be paid at the lower rate and health care premiums will not be paid by the City. The employee would be notified of their COBRA rights by the Health & Welfare Fund, and would be offered the right to pay their own premium for the time they are out of work. Pension contributions and all other City benefits would cease.

IV. What kinds of injuries are covered by Workers' Comp and IOD?

Compensable injuries, illnesses and diseases are those "arising in the course of employment and related thereto."

A. Does the injury have to be solely caused by the job? No. The employer must pay compensation regardless of the employee's previous physical condition, as long as something at work significantly contributes to an injury or disease.

i.e., history of heart trouble. A heart attack on the job caused by something at work is still compensable (though these are hard cases to prove.)

i.e., back problem resulting from a car accident. If lifting a small weight at work causes back to "go out", it is a compensable injury.

The only exception to this rule occurs when you apply for a *Service Connected Disability Pension*. (See separate discussion on this program in Section VII.B.)

B. Do you have to be on the premises to have a compensable injury? As long as you are in "duty status," regardless of your location, you are eligible for benefits. If you travel to other locations for your job, you are considered to be in duty status during the travel time and while you are at the other location. However, you are not eligible for benefits if you are injured during your normal commute to and from work. If you are going directly to a field assignment from your home, you might still have a case, but this would not be automatic and would be determined on a case-by-case basis.

C. What about employee negligence? What happens if you get injured when you fail to wear protective equipment? What if you're in an unauthorized area or doing an unauthorized job? What if you're fighting with a coworker and suffer a broken jaw? You are still entitled to benefits in the first two situations. If you're fighting with a coworker over a work assignment, or a tool or something else directly related to the job, that injury is also covered. Personal disputes resulting in injury are not covered. Nor are injuries suffered as a result of a violation of law - misdemeanor or felony. Also, if intoxicated on drugs or alcohol, you will not be eligible for benefits.

D. Are injuries that occur over a long period of time, i.e., cumulative injuries, compensable? No one incident must be pinpointed to claim compensable injury. Carpal tunnel

syndrome, tendinitis, and other repetitive strain injuries are compensable, though the City often contests them. These injuries are likely to result from computer use, truck driving, library check-out, repetitive heavy lifting, and other repetitive work.

E. What about injuries that occur outside of work, but are related to work?

Examples: A nurse develops a back condition at work but doesn't have a disabling injury until she twists it at home, bending behind a TV set to plug it in. A skin condition develops from chemical exposure at work, clears up, but recurs at home from hot water. These are compensable injuries but may be disputed by the employer.

F. Even injuries at a social event sponsored by work could be compensable - For example, a sprained ankle while playing on the employer's softball team or a grease fire burn while cooking at the Department picnic.

G. Emotional Stress/Mental Injuries - These are the hardest cases to win, but mental injuries, and emotional trauma that causes physical injury, can be compensable. The Courts demand a threshold of evidence much higher than the medical community. The work must be objectively stressful and the mental condition must result from abnormally stressful incidents, as compared to just long-term job tension or personal reactions. In other words, there almost must be a signature, dramatic event or events to win benefits - i.e., the death of a coworker or a patient. Having a heavy workload or an obnoxious, abusive supervisor will not meet this criteria.

Especially in cases where an employee has been assaulted or suffered other serious trauma, both physical and psychological treatment may be warranted. It has not been the practice of most of the doctors in the City's system to routinely refer traumatized patients for counseling, though it is the position of the Union that these services should at least be offered. The Union recommends that you ask the doctor to refer you for counseling if you are assaulted, if you suffer a traumatic injury, or in any other case where you feel psychological therapy would benefit your recovery. The Union's Health & Safety Director can help you obtain this treatment if the doctor will not make a referral.

V. What kinds of medical treatment are permitted under the law?

Under the law, you are entitled to any related reasonable surgical and medical services rendered by a physician or other health care provider. That is, the treatment you receive and the provider you receive it from should be dictated by your medical needs alone. Do not let the doctor tell you that there are no chiropractors in the system, or that the City will not pay for aquatic therapy or traction, and therefore you can't have these treatments. There are health care providers of almost every description in the system. If you need the services of a health care provider who is not in the system, the doctors are still required to refer you to whomever can provide the treatment and services you need, and the City is still required to pay the bill.

The employer is also responsible for payment for all prescribed medications.

Usually, your prescriptions will be filled at the pharmacy in the facility where you get your medical treatment, although sometimes they will be mailed to you. There should be no charge to

you, and no charge to the Union's prescription plan.

Likewise, any expense for medical equipment or other expenses, such as crutches, canes, bandages, over the counter medications, should be borne by the City. Usually, the doctor will arrange for these products to be provided to you at the clinic, or delivered to your home. If you are ever required to obtain an item yourself, be sure to get a note from the medical provider explaining that they are required for treatment of a workplace injury, and ask the equipment or medication provider to bill the insurance company directly.

As a general rule, there is no requirement within the Pennsylvania Workers' Compensation Act that the insurance company pay for transportation to medical appointments, including physical therapy or chiropractic appointments. The cost of local travel to and from the doctor generally falls to the injured worker. In some cases, when an employee's mobility is severely impaired, we have gotten the City to provide transportation or reimburse cab fare, when a receipt is presented. These situations are evaluated on a case-by-case basis.

VI. What recourse do I have if I am denied IOD or Workers' Comp coverage?

A. An appeal procedure exists to challenge a denial of IOD benefits. You may request a hearing before the Appointing Authority. Usually, a representative from Risk Management will be present and the Department will rely on them to help make a decision. If this decision is unfavorable, you may appeal to the Civil Service Commission.

B. You may also file an appeal to Workers' Compensation and have a hearing before a Workers' Compensation judge.

C. There are pros and cons for each of these procedures, and the route you take should be carefully discussed with your Union rep, the Union's Health and Safety Director, and a competent Workers' Comp attorney. The Union works with several good lawyers, and PhilaPOSH (Philadelphia Area Project on Occupational Safety and Health) also maintains a referral list of Workers' Comp attorneys who charge a reduced fee for PhilaPOSH referred cases.

VII. What happens if I do not recover sufficiently to return to work?

A. Secondary Employment Program. If you have been out of work receiving IOD benefits for more than one year, and your doctors do not believe you will be able to return to your previous job, the City may enroll you in their Secondary Employment Program. A Vocational Counselor would contact you and work with you to try to find other employment for you that you can perform, given whatever restrictions the doctor has placed on you. Job placements may be within City government, but could also be outside the City system.

B. Service Connected Disability Pension. If you and your doctor(s) agree that you will not be able to return to full employment (whether or not you have been through the Secondary Employment Program), you may be eligible to apply for a Service Connected Disability Pension. This is a 70% (tax free) fixed rate pension. It has a salary offset should you later receive any

additional income from employment. **To be eligible for this type of pension, your disability must have been caused solely by the injury or illness you experienced at work. Disabilities that result from aggravation or exacerbation of a pre-existing, non-work related condition will not qualify you for a service connected disability pension.**

C. Ordinary Disability Pension. If you do not meet the criteria for a service connected disability pension, but you are unable to return to work, you may be eligible for this pension program. You have one year to apply for ordinary disability benefits following separation from the City, and you must have completed ten years of credited service. The disability benefit is calculated in the same manner as the regular service retirement benefit.

D. Workers' Compensation Benefits. If you are receiving benefits under Workers' Comp, and you are forced to retire because of your work injuries, you may be able to maintain lost wage benefits even after retiring. However, this is a process fraught with risk and should not be undertaken without the assistance of a competent, experienced Workers' Comp attorney.

Other important things to remember:

1. If you are dissatisfied with the treatment you are getting from your doctor or doctors, or anything else about the clinic or providers, you can request a change of venue and provider, to one of the other clinics in the network. Your request must be in writing, directed to Ward North America. It is the City's policy to grant at least one request for a change of venue. A second change is possible, but only for very good cause. Look through the list of treatment facilities and specify which one you wish to transfer to, based on convenience to work or home, your transportation constraints, or a particular doctor you wish to see.

2. If you retire while you are still receiving treatment, the employer's responsibility for medical treatment for your injury continues, even if you move away from this area. Under the law, a retirement is considered a voluntary removal from the work force. If you voluntarily removes yourself from the work force, you are not losing money because of the work injury and you are not entitled to lost wage benefits. Participation in the DROP Program is not considered "retirement" for purposes of IOD and Workers' Compensation.

3. If you require accommodations in the workplace in order to return to work after an injury, you may be eligible for benefits under the Americans With Disabilities Act. Accommodations under this law are individually determined, and can be as simple and inexpensive as a new chair or as extensive as retrofitting an office. The Union will work closely with any employee who may require this kind of assistance.

4. Employees are entitled to take someone with them when they go to a network doctor. In some cases, the Union's Health & Safety Director accompanies employees to doctor appointments, especially when there are problems with their case or their treatment. Lawyers who are involved in cases may also accompany an employee. An Unfair Labor Practice case some years ago established our right to take a witness/advocate to doctor appointments. This can

make a big difference if you think a doctor is not listening to you or is dismissing your complaints. Take advantage of this right when you can.

5. Ward North America is the City's and FJD's Insurance Administrator for Workers' Comp and IOD. An Adjustor and a Case Manager (usually a nurse) will be assigned to your case and will be the gatekeepers for appointments, referrals, benefits, etc. You will hear from them soon after your case is filed. Be sure you have their names and phone numbers handy at all times, as you are likely to have frequent interaction with them.

6. If you have a complaint about a doctor, regarding their attitude, the medical treatment they are prescribing or anything else, **put it in writing**. Likewise, if you have a complaint about your Case Manager or Adjustor, put it in writing. It should be directed to:

Sam Nicholson, Director
Employee Disability
Risk Management Division
Department of Finance
1515 Arch Street, 14th floor
Philadelphia, PA 19102

Send a copy to the Union's Health & Safety Director, Kathy Black, 1606 Walnut Street, 19103.

We have been successful in having doctors removed from the system and Adjustors removed from all DC47 cases because of mistreatment of our members.

Conclusion

Getting injured at work is no fun, and it definitely is not a free ticket for time off. Being forced to treat with a doctor you don't know and sort out complicated legal requirements can be extremely difficult, especially if you are in pain. If you do get hurt at work, you need good information about the system and all the expert assistance you can get.

The purpose of this publication is to familiarize you with the most important rights and responsibilities of an employee when injured at work, and to answer some of the most frequently asked questions of injured workers. It is not meant to be a comprehensive guide to every aspect of the IOD or Workers' Compensation systems. Both systems are extremely complex, and navigating many aspects of the law requires the assistance of a competent Workers' Compensation attorney.

We hope you find this booklet useful. If you have comments or questions, please call Kathy Black at the Health and Safety Office of the District Council 47 Health & Welfare Fund. For other updates on health and safety issues, visit our website at www.dc47afscme.org.

