



# Basic Employee Relations Course

## Medical Issues Related to Employment-Related Injuries

Agencies may encounter situations where an employee is injured on-the-job and receiving Office of Worker's Compensation Program (OWCP) benefits under the Federal Employees' Compensation Act. There are a number of medical and/or reasonable accommodation issues that may arise in this situation. The following questions and answers address some of the more common scenarios.

### Medical Documentation

**QUESTION:** May an agency establish a policy requiring that employees who have been approved to receive OWCP benefits submit periodic medical status reports to the agency, in addition to whatever reporting requirements are implemented by OWCP?

**ANSWER:** Yes. An agency may establish reporting requirements, including medical status reports, for an employee who is in a leave status; the fact that the employee is receiving OWCP benefits does not affect an agency's rights in this area. These requirements will probably be more important in cases of long absence where the agency must assess the likelihood of the employee's recovery and return to duty. Further, the agency must review medical documentation in order to make appropriate job offers to partially recovered employees.

**QUESTION:** If the agency does not possess sufficient medical information to make determinations regarding the employee's requests for accommodation or to evaluate possible job restructuring, the agency has the authority to require further medical documentation. What recourse does the agency have if it does not receive this information from the employee?

**ANSWER:** The agency may order the employee to undergo a medical examination under the provisions of 5 CFR 339.301(c). Should the employee refuse to undergo this examination or provide appropriate documentation, the agency must make determinations regarding possible accommodations without benefit of a medical assessment of the employee's condition. This may result in the employee being removed from Federal service for inability to perform his/her duties. Agencies must notify OWCP of the employee's refusal to submit to an examination directed by the agency.

**QUESTION:** Can an agency request medical documentation regarding the injury from OWCP?

**ANSWER:** Yes. The agency may contact the OWCP claims examiner responsible for the employee's case and request copies of the medical documentation, as well as any other data pertinent to the agency's decision regarding the employee's status. Agency representatives may want to speed up receipt of these documents by offering to review the file at the OWCP District Office and copy the appropriate documents themselves.



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## Restoration Obligations

**QUESTION:** What are an agency's restoration obligations regarding an employee's complete recovery from his or her injury?

**ANSWER:** The agency is obligated to restore an injured employee to his/her former position, or an equivalent position, if the employee is fully recovered within one year from the date compensation payments begin. This does not include periods of COP, annual leave, or sick leave. For example, if an employee is injured on January 9th, receives 45 days of COP, and begins receiving compensation on February 24th, the one year period begins on February 24th. The employee's right to restoration is the same whether or not he/she is on the agency rolls at the time of full recovery. An agency's restoration obligations are triggered by OWCP's determination that compensation should end because the employee is fully recovered and able to resume regular employment.

In situations where the employee recovers after one year and the agency has separated the employee because of a physical or mental inability to perform, the agency is required to provide priority consideration for the former position, or an equivalent position. To be eligible for this consideration, the employee must apply for restoration to his/her position within 30 days of the date OWCP compensation stops. Priority consideration is given by entering the individual on the agency's reemployment priority list. Note: If the agency has elected to keep the employee on the rolls, the employee would simply return to duty once he/she had fully recovered from the injury.

If an individual is determined to be physically disqualified to perform the duties of his/her former positions, or an equivalent position, he/she is entitled within one year of the date compensation begins to be placed in a position for which he/she qualifies. The position should be one that most closely approximates the seniority, status, and pay to which the employee would have been entitled.

**QUESTION:** What are an agency's restoration obligations regarding an employee's partial recovery from his or her injury?

**ANSWER:** A partially recovered employee does not have a right to restoration. However, an agency must make every effort to restore the employee, according to the circumstances of each case. This means agencies must make a good faith effort to place the employee in some position within the local commuting area for which he/she qualifies or to pay reasonable relocations expenses in some cases if no suitable position exists within the local commuting area. Adopting a pro-active approach to this placement program is crucial to the agency's efforts to reduce long-term compensation costs since the agency must absorb these costs while the employee remains out of work for the duration of the employee's life. One other benefit of



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part-time or partial work assignments is that they will keep the employee's skills up-to-date and allow a smoother transition back to his/her previous position if he/she fully recovers. (Note: The employee is entitled to consideration for placement in the position held at the time of injury once he/she has recovered fully.) Additionally, the employee may never recover sufficiently to return to his/her previous position and the agency can use the placement program to develop the employee's skills in other related areas of work.

When making job offers to a partially recovered individual, agencies must notify both the employee and the OWCP in writing. If OWCP determines that the agency has made a suitable job offer, OWCP will notify the agency and the individual that failure to accept the position may result in termination of compensation benefits unless the individual can demonstrate acceptable reasons for refusal.

### Reasonable Accommodation

**QUESTION:** Does the Rehabilitation Act of 1973 apply to situations where an employee partially recovers from an on-the-job injury?

**ANSWER:** Yes. Both the agency and the employee have the same responsibilities regarding reasonable accommodation in this situation that they would have in any case where an employee cannot perform the full range of his or her duties because of a handicapping condition.

**QUESTION:** At what point may the agency assume that the employee is likely to require long-term treatment and, therefore, proceed with a proposal to remove based on the employee's physical or mental inability to perform?

**ANSWER:** There is no one answer to when it is appropriate for an agency to take action to remove an employee who is unable to perform his/her duties due to an on-the-job injury. The primary decision in cases of long-term disabling conditions is whether or not the agency can accommodate the employee's absence from the previously held position. If not, the agency should explore alternative methods of accommodating the employee's condition in other positions for which he/she qualifies. If placement in another position is not possible and the agency can no longer accommodate the employee's absence, the agency may proceed to remove the employee for physical or mental inability to perform. As in all instances where an agency states that accommodation will be an undue hardship, the agency must be able to prove this statement on appeal. This action must be based upon a recent medical determination that the employee cannot perform the duties of the position.



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**QUESTION:** Must a removal action proposed for medical reasons be taken under Part 752?

**ANSWER:** Yes. Agencies that take an action based upon the employee's physical or mental inability to perform duties should proceed under the authority in Part 752. By its very nature, this situation would prevent the agency from providing the employee with an opportunity to improve, as required under Part 432 procedures.