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Approved for Release

Date

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**DEPARTMENT OF COMMERCE  
OFFICE OF HUMAN RESOURCES MANAGEMENT  
HUMAN RESOURCES (HR) BULLETIN #256, FY21**

**SUBJECT:** Workers Compensation Return-To-Work Program

**EFFECTIVE DATE:** Upon release of this HR Bulletin

**EXPIRATION DATE:** Effective until canceled or superseded

**SUPERSEDES:** HR Bulletin #182, FY14, “Workers Compensation Return-To-Work Program”

**PURPOSE:** The bulletin defines bureau responsibilities for implementing the Workers’ Compensation Return-To-Work (RTW) Program.

**BACKGROUND:** The Department of Commerce (Department) is committed to preventing work-related injuries and illnesses and maintaining workplaces free from recognized hazards. However, when work-related injuries and illnesses occur, all reasonable efforts will be used to ensure that affected employees receive appropriate medical care and return to work as soon as they are medically able.

There are direct and indirect costs associated with workplace injuries and illnesses. Direct costs include workers’ compensation (WC) payments, medical expenses, and costs for legal services. Examples of indirect costs include training replacement employees; reporting, investigating, and recording accidents and implementing corrective measures; repairing or replacing damaged equipment and property, lost productivity, and other costs associated with lower employee morale and absenteeism.

From 2016–2020, the Department paid out more than \$61 million in direct workers’ compensation costs, which does not include indirect costs that can be equal to the direct costs. The majority of costs (\$43.2 million) are attributable to compensation expenses alone. These costs can be effectively reduced by returning injured employees to work as soon as they are medically able. During this time, the Office of Occupational Safety and Health (OOSH), Bureau Workers Compensation Points of Contact, and the Department’s WC contractor (Managed Care Advisors (MCA)) have worked together to resolve long-term claims through return to work, closure of resolved claims, and reduction in compensation due to work capability. This collaboration has resulted in more than \$19 million in lifetime avoided compensation costs (estimated) as of 2019. Despite these successes, it is critical that bureaus remain committed to

supporting the return to work (RTW) process, including finding limited/light duty assignments, developing job offers, and leveraging other Department resources where appropriate.

An effective RTW program is critical to reducing the Department's overall WC costs, comprised of three elements: 1) the actual chargeback costs, 2) the Continuation of Pay (COP) costs, and 3) the indirect costs.

In 2016–2020, the Department's WC chargeback costs (equal to direct workers' compensation costs) were \$61 million, including the medical and compensation payments made to employees as a result of work-related injury and illness claims. The compensation costs for the 2016–2020 period were \$43.2 million.

For the same period, the second cost element is the approximate \$17.8 million medical cost including annual expense for COP, which the bureaus pay to cover the first 45 days an employee is absent from work due to a work-related injury. An effective RTW program can also reduce COP costs.

The third cost element is indirect costs, which are conservatively estimated to equal or exceed the chargeback costs. Reducing chargeback and COP costs will reduce indirect costs to the bureau.

**COVERAGE:** This bulletin applies to all Department bureaus, organizations, and operating units (OUs), including the U.S. Patent and Trademark Office (USPTO). Commitment is required from the bureaus to generate short- and long-term savings in three ways. First, their review of old claims will identify claims that are no longer eligible for benefits and can be resolved. It will also identify those cases with RTW potential. Second, bureaus will identify jobs that are suitable for the employee's medical limitations, and will make offers to return employees to work. Third, bureaus and OUs will review new claims, challenge claims that are questionable with respect to the fact of injury or work-relatedness, and work with newly injured employees to return them to work as soon as they are medically able, in order to reduce COP costs.

**POLICY:** The Employees Compensation Operation and Management Portal ([ECOMP](#)) is a website that provides Federal agencies with an electronic system for recording workplace injuries and illnesses, and processing claims under the Federal Employees Compensation Act ([FECA](#)). At the Department, all bureaus are required to use ECOMP to file the initial OSHA 301 form (injury/illness reports); workers' compensation claims (e.g., CA-1s and CA-2s; usually filed within 30 calendar days of sustaining the work-related traumatic injury or illness); and claims for compensation due to lost work time (e.g., CA-7s).

The policy of the Department is to provide suitable RTW opportunities for employees medically able to work, but because of temporary or permanent medical restrictions cannot perform some or all of their permanent job assignments. This policy is in accordance with the requirements and provisions of FECA, the Americans with Disabilities Act (ADA), and applicable statutes from the Code of Federal Regulations (CFR). Note: This bulletin does not alter the terms of an existing collective bargaining agreement. Department bureaus, organizations, and OUs are required to develop and submit yearly written RTW plans to the Director, OOSH. The RTW plans must be completed within 60 calendar days from the publication of the revised HR Bulletin #256 and by January 31 of each calendar year.

**PEER Initiative:** [Office of Management and Budget Memorandum Establishing PEER Initiative \(M-20-08; 1/09/2020\)](#) sets forth minimum goals for Federal agencies to reduce work-related injuries, improve reporting of injuries, and speed the return to work of injured workers.

The [Secretary of Labor’s Memorandum on PEER](#) Initiative (2/25/2020) clarifies the intent of the initiative’s goals. On March 15, 2021, the Acting Secretary of Labor issued a [PEER Goal Update Memorandum](#) for the Heads of Executive Departments and Agencies. With the publication of this March 15, 2021, PEER Goal Update Memorandum, the targets to achieve in FY 2021 and 2022 for Goal 5 have now been established:

As Department bureaus develop their written RTW plans, the following guidelines shall be used:

- Goal 5 of the [Peer Initiative](#) requires departments/agencies to increase the rate of return-to-work outcomes during the initial 45-day post-injury period for traumatic injuries by 1 percent per year above their FY 2020 performance.

**PEER Targets (Goals 1-6) FY20 through FY22**

<b>Executive Branch</b>	<b>FY18 Baseline Performance</b>	<b>FY20 Targets</b>	<b>FY21 Targets</b>	<b>FY22 Targets</b>
<b>Department of Commerce</b>				
Total Case Rate	0.62	1.00 or below	1 or 4% below 2019	1 or 4% below 2020
Lost Time Case Rate	0.4	1.00 or below	1 or 4% below 2019	1 or 4% below 2020
CA-1/CA-2 Timeliness	99.48%	99.48%	99.48%	99.48%
CA-7 Timeliness	96.95%	98.00%	98.00%	98.00%
Return to Work Rate During COP Period	Not Applicable	63.17%	63.80%	64.44%
Return to Work Rate	Not Subject to Goal	Not Subject to Goal	Not Subject to Goal	Not Subject to Goal

**Beginning with the publication of the revised HR Bulletin #256, bureaus will be required to submit quarterly reports in a Microsoft Excel spreadsheet** (within 7 calendar days after the end of the current quarter) to OOSH. This report will contain the following information:

- Number of open claims
- Number of employees returned to work, including the associated cost savings and cost avoidance
- Number of employees on COP and the associated cost

**Also, starting with the publication of the revised HR Bulletin #256, bureaus will put into effect their annual written RTW plans.** The next RTW plan must be completed and submitted to the OOSH Director within 60 calendar days from the publication of this revised HR Bulletin #256 and by **January 31** in subsequent years.

Bureau RTW plans can reduce their WC and COP costs. At a minimum, an effective RTW plan requires a commitment to:

- A. Establish Bureau Roles and Responsibilities
  - 1. List who has the authority to make a job offer.
  - 2. Provide an organizational chart showing the WC section and where their bureau, organization, or OU is located in the chain of command.
  
- B. Identify Open Claims– List all open claims, provide current status on all open claims, and analyze all current Department of Labor (DOL) documentation to confirm the employees/dependents are still eligible to receive benefits. Missing documentation should be requested and obtained from the DOL. If it is not available, a request should be made to the DOL to obtain it from the claimant. Track/document your RTW progress.
  - 1. Prepare a list of the bureau’s individual open claims that includes, at a minimum,
    - a) Name
    - b) Age
    - c) Current case status (i.e., PR<sup>1</sup>, DR<sup>2</sup>, PW<sup>3</sup>, PS<sup>4</sup>, UN<sup>5</sup>, UD<sup>6</sup>, PN<sup>7</sup> etc.),
    - d) Date of injury
    - e) Date of last medical report in the file
    - f) Total medical and compensation costs to date for each case starting from the beginning of the first DOL chargeback quarter (begins on July 1 of each year) to the current date
  - 2. Does the case have RTW potential?
    - a) Verify eligibility to continue receiving coverage
    - b) Get current medical data and eligibility/dependent forms, etc.
    - c) Identify jobs: obtain current resume, conduct vacant position search, and identify positions for which the employee qualifies
    - d) Make a job offer (in writing)
    - e) For employees returned to work, prepare an estimate of the projected cost savings and cost avoidance for the lifetime of each case. (Cost savings is calculated through the end of the chargeback year, and cost avoidance is calculated to the age of life expectancy using the SSA Retirement and Survivors Benefits: Life Expectancy Calculator <https://www.ssa.gov/oact/population/longevity.html>. Include an annual percent cost of living increase for each year up to age expectancy.)

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<sup>1</sup>Periodic Rolls  
<sup>2</sup>Daily Rolls  
<sup>3</sup>Loss of Wage-Earning Capacity  
<sup>4</sup>Schedule Award  
<sup>5</sup>Unreviewed  
<sup>6</sup>Under Development  
<sup>7</sup>No Employment Potential

- C. Identify Those Claims with No RTW Potential
  - 1. Verify eligibility to continue receiving coverage.
  - 2. Obtain current medical data and any other documents that would substantiate eligibility to receive benefits.
  
- D. Focus on New Work Related Injuries/Illnesses – Use ECOMP as an employee injury-reporting process that should include immediate communication with Safety Coordinators, Collateral Duty Safety Officers (CDSOs), and/or the Health Unit when an injury occurs.
  - 1. Develop a plan and timeline for how/when managers, supervisors, and employees will be trained in procedures for reporting work-related injuries and illnesses, submitting DOL/OWCP ECOMP forms, understanding the WC claims process, and understanding the RTW process.
  - 2. Track the lost workdays associated with new injuries.
  - 3. Ensure that every bureau follows the OSHA recordkeeping rules for reporting and recording work-related injuries and illnesses.
  
- E. Commit to Finding Light Duty Positions – Establish procedures to provide limited duty opportunities for employees who temporarily cannot return to their permanent positions. Provide light duty work if the employee temporarily cannot return to the original position, and advise the employee of the offer in writing. If the employee is unable to return to the original position, review other jobs in the bureau for possible accommodation and long-term case resolution.
  - 1. Identify bureau roles/responsibilities, including who has the authority to make a job offer and who has the authority to modify it.
  - 2. Compile a list of light duty positions (in the event the employee cannot return to their date-of-injury job) showing the office, location, and supervisor with contact information. At a minimum, the light duty position should include a position description showing the job title, grade, office, location, and supervisor with contact information.
  - 3. Develop a process that identifies RTW/light duty positions, how they will be funded, and who is responsible for this process.
  
- F. Allocate Resources – Ensure WC Specialists, Safety Coordinators/Managers, CDSOs, and supervisors are properly trained and have the skills to participate in returning injured workers to productive work as soon as they are medically able. Bureau RTW efforts will be successful if resources are allocated to identify light duty positions. In many bureaus, the CDSO is also the Collateral Duty WC Coordinator or Agency Reviewer (AR), usually in addition to other duties. Are your WC Coordinators or ARs properly trained? Do they have the skills to be effective?

- G. Document Results – Establish a protocol to document all RTW actions taken. A review of the documentation should be included in the quarterly RTW reports.

**RESPONSIBILITIES:** Responsibility for RTW efforts, development, and implementation of the RTW plan rests with each bureau/OU. Using DOL/OWCP ECOMP, the Department’s WC contractor receives new claims (injury, occupational injury, and death), processes claims, verifies, calculates, and controverts COP, verifies pay for compensation, leave buyback, obtains current medical restrictions, participates in hearings and reviews, resolves medical reimbursement issues, and performs short-/long-term claims management. OOSH will track compensation costs and savings, and report to the Department’s HR Director, Chief Financial Officer, and then back to the bureaus on the cost savings of the entire Department.

Management shall:

- Ensure that employees have the opportunity to receive immediate medical care when injured, and adhere to the guidelines set forth herein.
- Develop and implement a RTW program.
- Review the appropriate DOL/OWCP ECOMP injury and illness reports and WC forms within 3 calendar days from receiving an ECOMP case review notification email, and return claim forms to the employee if additional information is required.
- Ensure a thorough investigation of the incident and identify corrective action to prevent a recurrence.
- Provide light duty work if the employee cannot return to the original position; advise the employee of the job offer in writing.
- Provide the treating physician with information on available light duty jobs.
- If the employee is unable to return to the original position, review other jobs in the bureau for possible reasonable accommodation, retraining opportunities, and long-term resolution of the case.
- Investigate injuries and/or illnesses and report to the WC contractor and bureau safety coordinator, ensuring all appropriate forms and medical documentation are filed in a timely manner.
- Provide regular training and notice of the WC process that includes notifying employees of a requirement to submit documentation of current medical restrictions, and that a failure to do so may result in a challenge by the employing agency or denial of benefits by DOL/OWCP.
- Provide privacy protections that apply to information provided by employees, and the process by which these records will be safeguarded.

Employees shall:

- Adhere to all safety rules, regulations, and guidelines.
- Notify their supervisor as soon as practicable after they are injured on the job, and initiate the claims filing process.
- Using ECOMP, submit their OSHA 301 form, Injury and Illness Incident Reports, within 4 calendar days of sustaining a work-related injury/illness incident, prior to filing a WC claim (Form CA-1 or Form CA-2).

- Submit medical evidence of a disabling traumatic injury within 10 calendar days of the date of disability beginning, or pay may be terminated.
- Notify their supervisor of any changes in work status imposed by attending physician.
- Return to work in a light duty or modified job as provided for by a supervisor as soon as medically able after acceptable medical documentation clears him/her to return for such duty or work.
- Communicate with their supervisor on matters regarding their case.
- Submit medical reports and related documents from the attending physician or any referral physician to his/her supervisor and DOL/OWCP after each medical appointment, that are necessary to substantiate the claimed injury or requested adjustments to his/her workplace restrictions.
- Inform his or her supervisor when they have been released to perform full duties free of any work restrictions, by providing acceptable medical documentation clearing him/her for return to full-time duty.

**STAFFING LEVELS:** Bureaus or organizational units should have at least one skilled full-time Workers' Compensation Specialist. At a minimum, smaller bureaus shall assign these functional responsibilities as a collateral duty and shall ensure that this person receives appropriate training as identified by OOSH within 90 days of assuming duties.

**PROGRAM ASSISTANCE:** OOSH will review and update RTW guidance and provide training to bureau Workers' Compensation Specialists and supervisors annually.

#### **REFERENCES:**

U.S. Department of Commerce, Department Administrative Order (DAO) 202-810, Workers' Compensation for Federal Employees, April 21, 2017.  
[https://osec.doc.gov/opog/dmp/daos/dao202\\_810.html](https://osec.doc.gov/opog/dmp/daos/dao202_810.html)

U.S. Department of Commerce, DAO 209-3, Accident/Incident Reporting, and Investigation; February 9, 2021. [https://osec.doc.gov/opog/dmp/daos/dao209\\_3.html](https://osec.doc.gov/opog/dmp/daos/dao209_3.html)

U.S. Department of Commerce, HR Bulletin # 254, FY 21, [ECOMP](https://www.commerce.gov/sites/default/files/2018-12/hr-bulletin-FY14-189.pdf).  
<https://www.commerce.gov/sites/default/files/2018-12/hr-bulletin-FY14-189.pdf>

The Federal Employees' Compensation Act (FECA), administered by the Office of Workers' Compensation Programs (OWCP) of the U.S. Department of Labor (DOL), and FECA Publication CA-810, Injury Compensation for Federal Employees, primarily Chapters 8 and 9. (Revised 2009.)  
<https://www.dol.gov/sites/dolgov/files/owcp/dfec/regs/compliance/DFECfolio/CA-810.pdf>

U.S. Department of Labor Employees' Compensation Operations and Management Portal (ECOMP). [https://www.ecomp.dol.gov/?\\_ga=2.140115635.169786687.1615301206-1739091533.1614291257#/](https://www.ecomp.dol.gov/?_ga=2.140115635.169786687.1615301206-1739091533.1614291257#/)

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<https://connection.commerce.gov/collection/office-occupational-safety-and-health>

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DOC webpage: Workers' Compensation (FECA) Tools and Resources;  
<https://connection.commerce.gov/reference-and-other-resources/workers-compensation-feca-tools-and-resources>

DOC resource: Supervisor's Incident Response Checklist;  
[https://connection.commerce.gov/sites/connection.commerce.gov/files/supervisor\\_incident\\_resp\\_checklist\\_final\\_4-18.pdf](https://connection.commerce.gov/sites/connection.commerce.gov/files/supervisor_incident_resp_checklist_final_4-18.pdf)

DOC webpage: About ECOMP; <https://connection.commerce.gov/reference-and-other-resources/about-ecomp>