

AN ACT

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Columbia
Official Code

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to establish a time period for the District to begin payment of compensable claims and furnish medical services; to establish a time period in which injuries must be reported by District agencies; to establish a time period for utilization review decisions, to allow a claimant to appeal a utilization review decision, and to require that the medical opinion of a treating physician be accorded great weight; to establish a time period for the District to complete its investigation of an alleged injury; to establish the criteria for modifying a compensation award; to establish a time period to decide a reconsideration request and to require payment pending the reconsideration upon failure to make a timely investigation or determination.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Disability Compensation Effective Administration Amendment Act of 2004”.

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-623.01 *et seq.*), is amended as follows:

(a) Section 2303 (D.C. Official Code § 1-623.03) is amended by adding new subsections (e) and (f) to read as follows:

Amend
§ 1-623.03

“(e) The District government shall furnish or authorize payment for services, appliances, supplies, and reasonable transportation and expenses incidental thereto, to the injured employee within 30 days after the Mayor or his or her designee receives notice that the employee has been injured while in the performance of duty.

“(f) The Mayor or his or her designee shall provide a claimant with written authorization for payment for any treatment or procedure within 30 days after the treating physician makes a written request to the Mayor or his or her designee for this authorization. If the Mayor or his or her designee fails to provide written authorization to the claimant within 30 days of the request, the treatment or procedure shall be deemed authorized, unless the Mayor or his or her designee

commences a utilization review pursuant to section 2323(a-2) within 30 days of the request.”.

(b) Section 2319 (D.C. Official Code § 1-623.19) is amended as follows:

Amend
§ 1-623.19

(1) Designate the existing text as subsection (a).

(2) New subsections (b) and (c) are added to read as follows:

“(b) Failure to give the notice shall not bar any claim under this act if:

“(1) The employer or the Disability Compensation Fund had actual knowledge of the injury or death and its relationship to the employment and the employer has not been prejudiced by failure to give the notice;

“(2) The Mayor or his or her designee excuses the failure on the ground that for some satisfactory reason the notice could not be given; or

“(3) Objection to the failure is raised before the Mayor at the first hearing of a claim for compensation relating to the injury or death at the Department of Employment Services.

“(c) The time limitations in this section shall not apply to:

“(1) A minor until he or she reaches 21 years of age or has had a legal representative appointed; or

“(2) An incompetent individual while he or she is incompetent and has no duly appointed legal representative.”.

(c) Section 2320 (D.C. Official Code § 1-623.20) is amended as follows:

Amend
§ 1-623.20

(1) Redesignate the existing text as subsection (a) and amend the text to read as follows:

“(a) The immediate superior of an employee shall report to the Mayor an injury to the employee that results in his or her death or probable injury within 3 days from the date of the injury or death or the date that the superior has knowledge of the injury, whichever is earlier.”.

(2) A new subsection (b) is added to read as follows:

“(b) Notwithstanding section 2324(a)(1), failure of a superior to report an injury or death shall not impair a claimant’s right to compensation. The Mayor may:

“(1) Prescribe the information that the report shall contain;

“(2) Require the immediate superior to make supplemental reports; and

“(3) Obtain such additional reports and information from employees as are agreed on by the Mayor and the head of the employing agency.”.

(d) Section 2323(a-2) (D.C. Official Code § 1-623.23(a-2)) is amended as follows:

Amend
§ 1-623.23

(1) Add 2 sentences at the end of the second lead-in sentence to read as follows:

“A decision on the medical care or service to the employee shall be made by the utilization review organization or individual within 60 days after the utilization review is requested. If the utilization review is not completed within 120 days of the request, the care or service under review shall be deemed approved. If the Mayor denies medical care or service because the medical care provider or claimant has not provided enough information for the utilization review process, the provider or claimant may request approval for the medical care or service again by providing new information.”.

(2) Paragraph (3) is amended as follows:

(A) Add the phrase “or employee” after the phrase “If the medical care provider”.

(B) Add the phrase “, or employee” after the phrase “individual, the medical care provider”.

(3) Paragraph (4) is amended by adding a new sentence after the second sentence to read as follows:

“In all medical opinions used under this section, the diagnosis or medical opinion of the employee’s treating physician shall be accorded great weight over other opinions, absent compelling reasons to the contrary.”.

(e) Section 2324 (D.C. Official Code § 1-623.24) is amended as follows:

Amend
§ 1-623.24

(1) Subsection (a) is amended to read as follows:

“(a) The Mayor or his or her designee shall determine and make a finding of facts and an award for or against payment of compensation under this subtitle within 30 days after the claim was filed based on the following guidelines:

“(1) The claim presented by the beneficiary and the report furnished by the employee’s immediate superior; and

“(2) Any investigation as the Mayor or his or her designee considers necessary, provided that the investigation shall not extend beyond 30 days from the date that the Mayor received the report of the injury.”.

(2) New subsections (a-1), (a-2), (a-3), and (a-4) are added to read as follows:

“(a-1) Failure of an employee’s immediate superior to report an injury shall not prejudice a claimant’s right to benefits, nor relieve the Mayor or his or her designee of the duty to make a finding of facts and an award for or against payment of compensation within 30 days after the date the claim was filed.”.

“(a-2) Failure of the Mayor or his or her designee to complete an investigation under subsection (a) of this section shall not prejudice a claimant’s right to benefits.

“(a-3)(1) If the Mayor or his or her designee fails to make a finding of facts and an award for or against payment of compensation within 30 calendar days, the claim shall be deemed accepted, and the Mayor or his or her designee shall commence payment of compensation on the 31st day following the date the claim was filed. This section shall not apply if the Mayor provides notice in writing that extenuating circumstances preclude the Mayor from making a decision within this period, which shall include supporting documentation stating the reasons why a finding of facts and an award for or against compensation cannot be made within this period.

“(2) If after the commencement of payment, the Mayor makes a determination against payment of compensation, payment shall cease; provided, that the Mayor or his or her designee may recoup benefits under section 2329. The claimant shall not be required to repay monies received until all administrative remedies to the Department of Employment Service have been exhausted under subsection (b) of this section and under section 2328.

“(a-4) (1) A claimant who disagrees with a decision of the Mayor or his or her designee under subsection (a) of this section shall have the right to request reconsideration of that decision within 30 days after the issuance of the decision. The request shall be written and contain reasonable medical or factual justification for the reconsideration.

“(2) The Mayor or his or her designee shall provide a written decision on the reconsideration request within 30 days of receipt of the request. If the Mayor or his or her designee fails to make a written reconsideration decision within this period, the claim shall be deemed accepted, and payment of compensation to the claimant shall commence on the 31st day following the date the request was filed. If the Mayor or his or her designee later makes an award against payment of compensation, payment shall cease immediately; provided, that the Mayor or his or her designee may only recoup benefits in accordance with section 2329, and not until all administrative remedies to the Department of Employment Service have been exhausted under subsection (b) of this section and section 2328.

“(3) A claimant who disagrees with a decision of the Mayor or his or her designee under subsection (a) of this section may waive reconsideration under this subsection, and request a hearing under subsection (b) of this section.

(3) Subsection (b) is amended by adding a new paragraph (3) to read as follows:

“(3) The Mayor or his or her designee shall begin payment of compensation to the claimant within 30 days after the date of an order from the Department of Employment Services Administrative Law Judge.”.

(4) Subsection (d) is amended to read as follows:

“(d)(1) “The Mayor may modify an award of compensation if the Mayor or his or her designee has reason to believe a change of condition has occurred. The modification shall be made in accordance with the standards and procedures as follows:

“(A) The Mayor shall provide written notice to the claimant of the proposed modification with the supportive documentation relied upon for the modification;

“(B) The claimant shall have at least 30 days to provide the Mayor with written information as to why the proposed modification is not justified; and

“(C) The Mayor shall conduct a full review of the reasons for the proposed modification and the arguments and information provided by the claimant.

“(2) If the Mayor determines that modification of the award is required, the Mayor shall provide written notice to the claimant of the modification, including the reasons for the modification and the claimant’s right to seek review of that decision under subsection (b) of this section.

“(3) The Mayor may not modify benefits until requirements under this subsection have been completed, or until any deadline established by the Mayor for the submission of additional information has expired, whichever is later, except that the following modifications may be made contemporaneously with the provision of a notice under this subsection:

“(A) The award of compensation was for a specific period of time which

has expired;

“(B) The death of the claimant;

“(C) The claimant has returned to work based upon clear evidence;

“(D) The claimant has been convicted of fraud in connection with the

claim; or

“(E) Payment of compensation has been suspended due to the claimant’s failure to participate in vocational rehabilitation or cooperate with the Mayor’s request for a physical examination.

“(4) An award for compensation may not be modified because of a change to the claimant’s condition unless:

“(A) The disability for which compensation was paid has ceased or lessened;

“(B) The disabling condition is no longer causally related to the employment;

“(C) The claimant’s condition has changed from a total disability to a partial disability;

“(D) The employee has returned to work on a full-time or part-time basis other than vocational rehabilitation under section 2304; or

“(E) The Mayor or his or her designee determines based upon strong compelling evidence that the initial decision was in error.”.

(5) New subsections (e) and (f) are added to read as follows:

“(e) The Mayor shall provide a claimant and his or her attorney with access to the claimant’s file within 5 business days after a request to review the file is made. The claimant shall be provided, upon request, with one set of copies of the documents in the file.

“(f) A claimant who is not satisfied with a decision under subsection (d) of this section may, within 30 days after the issuance of a decision, request a hearing on the claim before a Department of Employment Services Disability Compensation Administrative Law Judge under subsection (b) of this section.”.

(f) Section 2329 (D.C. Official Code § 1-623.29) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1) Before seeking to recover an overpayment or adjust benefits, the District government shall advise the individual in writing:

“(1) That the overpayment exists, and the amount of the overpayment;

“(2) That a preliminary finding shows that the individual either was or was not at fault in the creation of the overpayment;

“(3) That the individual has the right to inspect and copy government records relating to the overpayment; and

“(4) That the individual has the right to request a waiver of the adjustment or recovery and to present evidence that challenges the fact or amount of the overpayment or the preliminary finding that he or she was at fault in the creation of the overpayment.”.

Amend
§ 1-623.29

(2) Subsection (b) is amended to read as follows:

“(b)(1) Adjustment or recovery by the District government shall be waived when incorrect payment has been made to an individual who is without fault and recovery would defeat the purpose of this act or would be against equity and good conscience.

“(2)(A) For the purposes of this subsection:

“(i) The term “at fault” means that an individual has made an incorrect statement as to a material fact that he or she knew or should have known to be incorrect; failed to provide information which he or she knew or should have known to be material; or accepted a payment which he or she knew or should have known to be incorrect.

“(ii) The term “without fault” means an individual is receiving benefits pursuant to a good faith dispute as to whether his or her medical condition entitles him or her to receive those benefits.

“(iii) The phrase “recovery would defeat the purpose of this act” means that recovery would cause hardship to a current or former claimant or other beneficiary because he or she needs substantially all of his or her current income, including compensation to meet current ordinary and necessary living expenses which shall include:

“(I) Fixed living expenses such as food, housing, utilities, maintenance, insurance, and taxes;

“(II) Medical, hospitalization, and related expenses;

“(III) Expenses for the support of others for whom the individual is legally responsible; and

“(IV) Expenses that may be reasonably considered as part of the individual’s standard of living.

“(iv) The phrase “against equity and good conscience” means that recovery would cause severe financial hardship to an individual to make the overpayment.

“(B) The determination of whether an individual was at fault regarding an overpayment shall depend upon the totality of circumstances surrounding the overpayment including the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid. The government shall consider all pertinent circumstances including the individual’s age, intelligence, and any physical, mental, educational, or linguistic limitations including any difficulty with the English language.”.

(3) A new subsection (b-1) is added to read as follows:

“(b-1)(1) Before the District government may seek to recover an overpayment or adjust benefits, the government must allow the individual the opportunity to present evidence to the government in writing or at a pre-recoupment hearing. The evidence must be presented or the hearing requested within 30 days of the date of the written notice of the overpayment. The 30-day requirement can be waived for good cause including mental or physical incapacity of the individual or lack of timely receipt of the notice of adjustment or recoupment.

“(2) An individual shall be required to provide relevant information and documentation to support his or her claim of severe financial hardship or that the individual

needs substantially all of his or her current income to meet current ordinary and necessary living expenses. Failure to submit the requested information within 30 days of the request shall result in denial of a request for a waiver and no further request for a waiver shall be considered until the requested information is furnished.”.

(g) Section 2341 (D.C. Official Code § 1-623.41) is amended to read as follows:

Amend
§ 1-623.41

“On or after April 1, 1990, the Mayor shall award cost-of-living increases in compensation for disability or death whenever a cost-of-living increase is awarded pursuant to sections 1105 and 1106. The percentage amount and effective date of those increases shall be the same as for any increase granted under these sections. This section shall not apply to any collective bargaining agreements that are to the contrary.”.

(h) Section 2344 (D.C. Official Code § 1-623.44) is amended to read as follows:

Amend
§ 1-623.44

“Sec. 2344. Rules and regulations.

“The Mayor shall promulgate regulations that explain the standards and procedures that govern determinations for the modification of an award of compensation. An award may be modified only in accordance with those regulations which shall include the following criteria relating to:

“(1) Exchange of information including a claimant’s opportunity to provide medical, vocational, or other information to the Mayor prior to a modification of benefits;

“(2) Modification procedures including the manner and content of notices to a claimant concerning a proposed modification;

“(3) The procedures for providing additional information concerning a claim, the type of information that may be submitted, and the manner in which all information will be considered;

“(4) When a modification may properly be made, and the manner of notice to a claimant of the final decision.

“(5) Physical examinations including the weight that shall be given to competing medical reports;

“(6) File access including the manner in which a claimant or his or her attorney may request access to the claimant’s file;

“(7) Standard of review including the standard applicable to a modification process or appeal under this act;

“(8) Deadlines and extensions applicable to claimants and the Mayor, which also shall provide that a claimant’s failure to miss a deadline will be excused when good cause is found, a definition of “good cause”, and the procedures for determining whether good cause exists; and

“(9) Bases for modification including the legal bases upon which an award of compensation may be modified and the standards to determine whether a claimant’s change of condition would justify the modification.”.

(i) Section 2345(b)(1) and (2) (D.C. Official Code § 1-623.45(b)(1) and (2)) are amended to read as follows:

Amend
§ 1-623.45

“(1) Immediately and unconditionally accord the employee the right to resume his or her former, or an equivalent, position as well as all other attendant rights which the employee would have had or acquired in his or her former position had he or she not been injured or disabled, including the rights to tenure, promotion, and safeguards in reduction-in-force procedures, provided that the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the District of Columbia government; or

“(2) If the injury or disability is overcome within a period of more than 2 years after the date of commencement of payment of compensation or the provision of medical treatment by the Disability Compensation Fund, make all reasonable efforts to place, and accord priority to placing the employee in his or her former or equivalent position within such department or agency, or within any other department or agency.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 2, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of a veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.2(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia