

**Forest Service Handbook
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**Forest Service Handbook 6109.12 – Employment and Benefits Handbook
Chapter 30 - Injury/Illness Compensation**

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33 - Continuation of Pay

33.1 - Traumatic Injury

33.11 - Eligibility Requirements

Only an employee who suffers a traumatic injury is eligible for continuation of pay (COP). Only employees actually earning income and employed under an appointment are eligible for COP. For Forest Service purposes, all employees with competitive and excepted appointments are eligible; emergency firefighters, Title X employees, and those on IPA assignments are eligible. However, Job Corps and YCC enrollees, Senior Conservation Program enrollees and volunteers are not eligible for COP. Additionally, some situations exclude eligibility for COP (see 33.14).

33.12 - When Continuation of Pay Applies

Continuation of pay applies whenever the employee suffers a loss of wages due to a job-related injury. COP is available to an eligible employee for up to 45 calendar days and may begin any time up to 6 months from the date of the injury. Once begun, the employee is entitled to COP for up to 45 cumulative calendar days. The COP starts at the beginning of the first full day or shift after the disability begins. Charges against the 45-day period start whether the employee elects to receive COP, annual or sick leave. If the disability begins during the day or shift on which the accident occurred, keep the employee in regular pay status for the remainder of the day or shift.

33.13 - Effect of Interruptions and Partial Days of Work

If the employee begins on COP and then returns to work fulltime, the COP ceases. Within a 6-month period, beginning from the date the employee first returned to work following the initial disability, COP may resume if the disability recurs. If the recurrence is later than 6 months after first COP date, then COP does not apply. However, compensation for disability would apply. A partial day absent is charged as one full day against the 45 days. However, for accounting purposes, any time actually spent in work status is paid as regular salary. Examples follow:

Situation

COP BEGINS

A. The employee is injured on Thursday and does not return to work by the following week

Friday

B. The employee is injured on Friday and does not return to work on Monday, then

Saturday

C. The employee is injured on Friday and returns to work at the beginning of work shift on Monday

Physician determines if employee was disabled on Saturday or Sunday.

A new 45-day period is started for each different injury. However, the same 45-day period applies for a recurrence of a disability and the unused portion of the 45 days is available for COP.

33.14 - Controversion of Continuation of Pay

In the following situations continuation of pay does not apply. The Forest Service will controvert the claim and not begin, continue, or resume COP, if the controversion is clearly based on one of the nine following acceptable controversion categories:

1. The disability is a result of an occupational disease/illness.
2. The employee falls within the exclusions of 5 U.S.C.8101(1) (B) or (E). See FSH 6109.41, FPM 990-1, book 1, section 8101, for a listing of these exclusions.
3. The employee, such as a foreign national employed outside of the United States or Canada, is neither a citizen nor resident of the United States or Canada.
4. The injury occurred off the employing agency's premises and the employee was not involved in off-premises official duties.
5. The injury was caused by; (a) the employee's willful misconduct, (b) the employee's intention to bring about the injury or death of self or of another person or (c) the employee's intoxication was the proximate cause of the injury.
6. The injury was not reported on Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, within 30 days after the injury.
7. Work stoppage first occurred 6 months or more after the injury.
8. The employee initially reports the injury after employment has terminated.
9. The employee is enrolled in the Peace Corps, Job Corps, Youth Conservation Corps, Work Study Programs, or other similar groups. This restriction applies only to COP; individuals in these categories may be covered for other FECA benefits.

33.15 - Situations in Which Forest Service Believes Continuation of Pay Should Be Discontinued

1. Forest Service shall controvert and stop COP if:
 - a. The agency receives medical information from the physician that the employee is no longer disabled or is dead.
 - b. The agency receives notification from the OWCP district office that pay should be terminated.

c. The 45-calendar-day period expires.

2. Controvert and stop pay only if at least one of the prior conditions in 33.14 is met. If none of the conditions apply, COP is required. The supervisor may controvert for other reasons, but must continue pay for disability up to 45 calendar days. If the claim is controverted, the supervisor shall inform the employee of the reason for such action and whether pay will be terminated.

33.16 - Medical Requirements for Continuation of Pay (COP)

During COP, the employee must report to the physician on a regular basis until released for work. The supervisor will give the employee Form CA-17, Duty Status Report, for the physician to furnish interim progress reports. Such reports are to be completed as often as reasonably necessary. The physician must prepare an initial medical report on form CA-20, Attending Physician's Report, or a narrative report and send it to the OWCP. The original form CA-17 is to be sent to the supervisor and a copy to OWCP.

If, during the 45-day COP period, the physician indicates the employee is able to return to work, the employee must do so or an overpayment may result. In that case, OWCP will determine the excess payment and the supervisor, in coordination with the personnel office, will initiate action to resolve the overpayment. However, failure to report to light duty or part-time work when the physician indicates the employee could and such work is available, will not result in termination of COP. In such situations, the Forest Service must continue to pay and controvert. If OWCP agrees, then an overpayment will result and the Forest Service must collect the overpayment.

When the employee returns to work, the supervisor must submit Form CA-3, Report of Termination of Disability and/or Payment, to the reporting office for review and submission to OWCP.

33.17 - Determining Amount of Pay Employee Is Entitled To Receive Under Continuation of Pay (COP)

The amount of continuation of pay entitlement varies depending on the employee's scheduled workweek, employment category, base pay and extra earnings. Use exhibit 01, 02, or 03 of section 33.17g for calculations and basic formulas to calculate the average hourly COP rate.

33.17a - Work Week for Continuation of Pay Purposes

A week is defined as each week in which the employee was in a work or leave-with-pay status. It does not mean each calendar week of the year. It is the actual scheduled workweek of the employee and does not necessarily equal 40 hours. If an employee's scheduled tour of duty is three 8-hour days per week, this 24-hour week counts as 1 workweek for COP purposes.

33.17b - Category 1 Employees

For a regular full-time or part-time employee who is scheduled to work the same number of hours each week, the weekly pay rate shall be equal to the number of nonovertime hours

regularly scheduled each week times the hourly pay rate on the date of injury. The hourly COP pay rate shall include earnings as defined in section 33.17f. Category 1 includes employees classified as:

1. Permanent Full-time (PFT). Regularly scheduled tour of duty is 40 hours per week (or 80 hours per pay period), 52 weeks per year.
2. Permanent Part-time (PPT) - Regular tour. Regularly scheduled tour of duty of less than 40 hours per week, working the same number of hours each week, 52 weeks per year.
3. Temporary Full-time (TFT). Regularly scheduled tour of duty is 40 hours per week or (80 hours per pay period) but the appointment is limited to less than 1 year.
4. Temporary Part-time (TPT) - Regular tour. Regularly scheduled tour of duty of less than 40 hours per week working the same number of hours each week, each week of the year, or each week of the period of the appointment, if less than 1 year.

33.17c - Category 2 Employees

For a regular part-time employee who is not scheduled to work the same number of hours per week, the weekly pay rate shall be the average weekly earnings during the actual period of Federal employment during the 1-year period prior to the date of injury, exclusive of overtime. The hourly COP pay rate shall include earnings as defined in 33.17f. Category 2 includes employees classified as:

1. Permanent Part-time (PPT) - Variable tour. An employee who works a regularly scheduled tour of duty of less than 40 hours per week and does not work the same number of hours each week, 52 weeks per year.
2. Temporary Part-time (TPT) - Variable tour. An employee who works a regularly scheduled tour of duty of less than 40 hours per week and does not work the same number of hours each week, each week of the year, or each week of the period of appointment, if less than 1 year.

33.17d - Category 3 Employees

For employees not listed in Category 1 or Category 2, such as: Irregulars (Casual Firefighters); Permanent Seasonals, regardless of guaranteed tour of duty, and Intermittents, the hourly pay rate shall be the average of the employee's Federal earnings during the 1-year period prior to the date of injury, exclusive of overtime. However, the average annual earnings cannot be less than 150 times the average daily wage earned during the 1-year period prior to the date of injury. (The daily wage is the hourly rate times 8.) The hourly COP rate shall include extra earnings as defined in 33.17f. Category 3 includes employees classified as:

1. Permanent Intermittent (PI). Works when called, but has no limitation of hours or days on the appointment.

2. Temporary Intermittent (TI). Appointment limited to less than 1 year. Works only when called.

3. Permanent Seasonal - Part-time. A permanent or temporary appointment with a guaranteed number of full-time pay periods and part-time pay periods totaling 26 pay periods (52 weeks) per year. Tour of duty alternates between regularly scheduled full-time and regularly scheduled part-time. The temporary appointment is limited to 1 year or less.

4. Permanent Seasonal - Intermittent (CWN - Call When Needed). A permanent or temporary appointment with a guaranteed number of part-time pay periods per year. Tour of duty alternates between a regularly scheduled part-time tour and intermittent (CWN) status. The temporary appointment is limited to 1 year or less.

5. Casual. Employees hired on an emergency basis such as fighting fires under a special plan. Employment is strictly temporary and only for the duration of the emergency.

33.17e - TAPER (Temporary Appointment Pending Establishment of a Register), Excepted Indefinite, and Excepted Conditional

These employees are included in Category 1, 2, or 3 depending on their tour of duty.

33.17f - Earnings

Category 1, 2, and 3 employees' earnings shall include regular base pay rate plus: premium, night, or shift differential; Sunday or holiday pay; environmental differential for Wage Grade (WG) and hazardous duty pay for General Schedule (GS). However, overtime pay must never be made a part of the COP rate. Do not include payment for lump-sum leave or payment of OWCP compensation in the computation for COP.

1. Extra Earnings. Extra earnings, in addition to the basic rate of pay for Category 1 employees, may be regular and recurring and/or fluctuating. Compute as follows:

a. Regular and Recurring. A regularly scheduled shift differential is regular and recurring. The COP rate will be the employee's regular weekly base rate of pay plus the amount of differential paid as determined by the work schedule in effect for the pay period at the time of injury. For example:

An employee works full-time (40 hours per week) at \$5 per hour. The work schedule calls for a \$0.50 per hour shift differential for 8 hours per day on Monday, Wednesday, and Friday. Under these conditions, the employee earned \$12 per week in shift differential (\$0.50 per hour for 8 hours per day for 3 days). When added to the employee's regular pay of \$200 per week (40 hours x \$5 per hour), the average weekly earnings equal \$212. The hourly COP rate is \$5.30 per hour (average weekly rate of \$212 divided by 40 hours per week).

b. Fluctuating. Differentials are fluctuating if not scheduled and recurring, but occur on a nonregular basis due to working conditions, hazard or environmental

differential factors. Include fluctuating differentials when computing COP for employees who are injured, begin disability, or experience a recurrence while in a job for which the employee received fluctuating differentials during the previous 1-year period. In such situations, the COP rate would be the employee's regular weekly base rate of pay plus an amount equal to the average extra pay earned during the 1-year period prior to the date of injury divided by the number of weeks in pay status. For example:

A permanent full-time employee earns \$5 per hour for a weekly wage of \$200. During the year prior to the injury, the employee earned \$520 in hazard differential. $\$520 \text{ divided by } 52 \text{ weeks} = \$10 \text{ average weekly differential pay}$. $\$200 \text{ basic weekly pay} + \$10 \text{ average differential pay} = \$210 \text{ average weekly pay for COP purposes}$. $\$210 \text{ divided by } 40 \text{ hours per week} = \$5.25 \text{ COP hourly rate of pay}$.

c. Both Regular and Recurring and Fluctuating. Category 1 employees may have been paid a current regular and recurring shift differential yearlong, plus fluctuating hazard and/or environmental differentials also earned during the 1-year period prior to the injury. COP in such situations is computed as follows:

--If an employee who has been receiving a fluctuating differential such as hazard or environmental pay on a non-regular basis, is transferred to a new position and is scheduled to work regular and recurring shifts with no fluctuating differential, compute COP based on income from the new, regular and recurring work shift.

--If the same employee (who had been receiving a fluctuating differential) also is paid a fluctuating differential in his or her new position (a regular and recurring shift), compute weekly COP based on income from the new, regular and recurring work shift plus the amount of extra (fluctuating) pay earned during the 1 year prior to the date of injury and divide by the number of weeks in pay status.

--If an employee who is receiving a fluctuating differential remains in that position, but work hours become regular, that is, any differential received is now regular and recurring, COP is to be computed based only on income from this new, regular, and recurring work shift.

--If that same employee (who now receives a regular and recurring differential) also receives fluctuating differential during the new regularized work schedule, the COP computation should also take into consideration the amount of extra (fluctuating) pay earned during the 1 year prior to the date of injury divided by the number of weeks in pay status.

33.17g - To Compute Continuation of Pay (COP)

Include any and all extra earnings (regular and recurring and/or fluctuating) in the total Federal earnings during the 1-year period prior to the date of injury.

1. To process COP for Forest Service employees, use the applicable formula in exhibit 01, 02, or 03 to calculate the COP hourly rate of pay. Pay that average hourly rate for the employee's regularly scheduled tour of duty. If an employee's hourly rate of pay changes, a personnel action must be processed.

2. Within-grade increases, promotions, statutory salary increases, and such, that the employee would have received prior to injury, affect COP payments. The effective date of the applicable pay increase will be the date it would have been effective prior to the injury, disability, or recurrence. COP payments shall be increased by the percentage increase in the employee's base rate of pay. To determine the new rate of COP, increase the rate currently paid to the employee by the percentage increase in the base rate of pay. Examples follow:

--An employee is injured on June 1, 1984, and is placed on COP on June 2, 1984. This employee receives a within-grade increase amounting to 4 percent on June 27, 1984.

Compute appropriate hourly COP rate in accordance with exhibit 01, 02, or 03. This is the hourly rate to be paid for the period June 2, 1984, to June 27, 1984. As of June 27, 1984, this rate is increased by the percentage increase (4 percent) in the base rate of pay.

An employee may also receive a pay increase after the date of injury but prior to the initiation of COP. To determine this hourly COP rate, first compute the employee's hourly COP rate based on earnings for the year prior to the date of injury, or the hourly wage rate at the time of injury, depending on the category of employee. This hourly rate is then increased by the percentage increase affecting the employee's base rate of pay.

--An employee is injured on June 6, 1984 and placed on light duty with no lost time. This employee receives a within-grade increase, amounting to 4 percent, on July 11, 1984. The employee is placed on COP on November 15, 1984.

Compute appropriate hourly COP rate based on earnings prior to June 1, 1984, or based on hourly pay rate on June 1, 1984, in accordance with exhibits 01, 02, or 03, depending on the category of employee. Increase this computed hourly rate by the percentage increase (4 percent) in the base rate of pay. The result is the employee's hourly COP rate.

33.17g - Exhibit 01

**DETERMINATION OF ADJUSTED PAY RATE
FOR CONTINUATION OF PAY**

Category 1 Employees. Regular full-time or part-time employees who are scheduled to work the same number of hours per week yearlong or duration of appointment. (See section 33.17b for Category 1 types of employees.)

1. Determine the regular weekly pay on the date of injury. (Basic hourly rate of pay times the number of nonovertime hours scheduled to work each week.)

\$ 318.40

2. Determine the extra average weekly earnings, if any.
(See section 33.17f, item 1, for calculating extra earnings.)

\$ 20.00

3. Add items 1 and 2 above. The result is the COP average weekly pay.

\$ 338.40

4. Divide the result in item 3 above by the number of nonovertime hours regularly scheduled to work each week. The result is the hourly COP rate of pay.

\$ 8.46

5. If an employee receives a base pay rate increase, step increase, COLA, etc., while in receipt of COP, or after the date of injury but before the employee is placed on COP, see section 33.17g, item 2 for computation of revised COP rate.

\$ _____

33.17g - Exhibit 02

Category 2 Employees. Regular part-time employees in the regular work force of the agency who are not scheduled to work the same number of hours per week (variable workweek). (See section 33.17c, for Category 2 types of employees.)

1. Determine the total Federal wages earned during the 1-year period prior to the date of injury, exclusive of overtime. (See 33.17f, for calculating earnings.)

\$8600.00

2. Determine the total number of weeks worked during the 1-year period prior to the date of injury.

46

3. Divide the total earnings in item 1 above by the total number of weeks worked in item 2. The result is the weekly COP rate of pay.

\$ 186.96

4. Determine the total number of nonovertime hours worked during the 1-year period prior to the date of injury.

1468

5. Divide the total number of nonovertime hours worked in item 4 above by the total number of weeks worked in item 2 above. The result is the average number of hours worked per week.

31.9

6. Divide the weekly COP rate of pay in item 3 above by the average number of hours worked per week in item 5 above. The result is the average hourly COP rate of pay.

\$ 5.86

7. If an employee receives a base pay rate increase, step increase, COLA, etc., while in receipt of COP, or after the date of injury but before being placed on COP, see section 33.17g, item 2 for computation of revised COP rate.

33.17g - Exhibit 03

Category 3 Employees. Irregular, Permanent Seasonal, Intermittent, etc., employees. (See section 33.17d for Category 3 types of employees.)

1. Determine minimum COP to be paid:

a. Determine employee's average weekly earnings during the 1-year period prior to date of injury.

(1) Total Federal wages earned during the 1-year period prior to the date of injury. (See section 33.17f for calculating earnings.)

\$5296.76

(2) Determine the total number of weeks worked during the 1-year period prior to the date of injury. (See section 33.17a, for determining weeks worked.)

\$ 23

(3) Divide total wages earned in item 1a (1) above by total number of weeks worked in item 1a (2) above. The result is the average weekly wage.

\$ 229.12

b. Determine employee's minimum annual earnings available:

(1) Total Federal wages earned during the 1-year period prior to the date of the injury (see section 33.17e, for calculating earnings).

\$ 5296.76

(2) Determine the total number of nonovertime hours worked during the 1-year period prior to the date of injury.

\$ 736

(3) Divide total Federal wages in item 1b (1) above by the total number of nonovertime hours in item 1b (2) above. The result is the average hourly wage.

\$ 7.16

(4) Multiply the average hourly wage in item 1b (3) above by 8. The result is the average daily wage.

\$ 57.28

33.17g - Exhibit 03--Continued

(5) Multiply the average daily wage in item 1b (4) above by 150. The result is the minimum annual wage earnings available.

\$8592.00

(6) Divide the average wage earnings available in item 1b (5) above by 52 weeks. The result is the minimum average weekly wage earnings available.

\$ 165.23

2. Determine proper hourly rate.

a. Select the higher weekly rate of item 1a (3) or 1b (6).

\$ 229.12

b. If an employee is scheduled to work the same number of hours each week, divide the weekly rate 2a above by the number of nonovertime hours scheduled to work per week. The result is the adjusted hourly COP rate of pay.

\$ N/A

c. If the employee is not scheduled to work the same number of hours each week:

(1) Divide the total number of nonovertime hours item 1b (2) above by the total number of weeks worked, item 1a (2), to determine the average number of hours worked per week.

\$ 32

(2) Divide the weekly rate in item 2a above by the average number of hours worked per week item 2c. The result is the adjusted COP rate of pay.

\$ 7.16

3. If an employee receives a base pay rate increase, step increase, COLA, etc., while in receipt of COP or after the date of injury but before the employee is placed on COP, see 33.17g, item 2 for computation or revised COP rate.

\$ _____

33.18 - Processing Pay and Personnel Actions

The reporting office must coordinate its handling of continuation of pay with the unit's personnel office to ensure processing of appropriate personnel actions.

1. Change in Status of Employees. If the salary rate for COP is different from the rate normally received by the employee, process a personnel action in accordance with instructions in FSH 6109.41, FPM Supplement 296-33, and FSH 6109.31 - MODE Manual, appendix J, Nature of Action Code 204-26, Continuation of Pay - OWCP.

2. Termination of Temporary Employee on Continuation of Pay. If the employee's appointment will terminate because of appointment limitation, lack of work, lack of funds, etc., but the employee continues to remain eligible for COP benefits, process a personnel action in accordance with instructions in FSH 6109.41, FPM supplement 296-33, and FSH 6109.31 - MODE Manual, appendix J, Nature of Action, Termination-Involuntary, Conversion to Temporary Appointment, or Conversion to Excepted Appointment--Temporary. This is a termination of employment status. A leave-earning employee will no longer earn leave after the date of this conversion and a lump-sum payment will be made for leave accrued at the time of this action. If the employee is receiving COP at an adjusted, lower rate, the office submitting Form AD-581, Lump-Sum Leave or Compensatory Time Payments, must show the regular pay rate and provide an explanation in the remarks block of form AD-581 to ensure that the employee will be paid for lump sum leave due at the proper rate. If the COP is terminated because the employee has recovered or because the 45-day period ends, but the employee has separated, prepare a termination action in accordance with instructions in FSH 6109.41, FPM 296-33, and FSH 6109.31, MODE Manual, Appendix J, Nature of Action Code 903-98, Termination.

3. Receiving a Rate Different Than COP. If the employee returns to work and receives a rate different than the COP rate, process a personnel action in accordance with instructions in FSH 6109.41 - FPM supplement 296-33, and FSH 6109.31, MODE Manual, Appendix J, Nature of Action code 204-27, Return to Duty from COP.

33.19 - To Process Pay

Beginning with the first full day or shift after the disability begins, record all time lost, including holidays, in compliance with the employee's regular scheduled tour of duty on the Time and Attendance Report (T&A); use transaction code 67.

For example: If the employee's weekly tour of duty is 8-hours per day, Monday, Wednesday, and Friday, code only these 3 days for payment under code 67. (However, if this employee is disabled for the full week, Monday through Friday, all 7 days shall be charged against the 45-calendar-day limitation).

1. If an employee is able to work in a limited-duty status, such as 4 hours work - 4 hours COP, process a pay adjustment, Nature of Action Code 204-27, Pay Adjustment, reflecting the regular rate of pay for the employee. Complete the special employee code block to show code 35, manually paid employee. The T&A will show hours worked at the regular base rate of pay,

and the balance of the hours, up to the scheduled hours per day, shall be coded 67. Process Form AD-343, Payroll Action Request, to reflect hours paid at the regular rates and hours paid at COP rates. Attach AD-343 to the T&A report and submit to the National Finance Center (NFC) according to the instructions for manual pay actions in FSH 6109.31, MODE Manual. This procedure is necessary as two rates of pay for an employee cannot be processed in the system at NFC.

2. If it appears that an employee will only be on COP for 1 day or for less than a full pay period, do not process a personnel action reducing the rate of pay. Post the T&A showing the appropriate transaction code for hours worked and Code 67 for COP hours. Process AD-343 and submit it attached to the T&A and batch it for manual payroll.

3. If COP calculations (33.17f) produce a rate lower than the minimum wage, special manual handling will be required since NFC will not process a wage payment at less than the minimum wage rate through the computer system. Therefore, all such payments will have to be handled manually with form AD-343.

4. The appropriation and function are determined by the type of work the employee was doing at the time of injury.

33.2 - Disability Compensation for Loss of Wages

33.21 - Categories of Disability

For compensation purposes, categories of disability causally related to employment are: temporary total, permanent partial, and total.

33.22 - Disability Benefits

Federal employees who suffer disabilities as a result of employment are eligible for one or more of several types of wage loss compensation. Disability benefits are classified on the basis of the nature and extent of disability incurred. Compensation shall be paid so long as wage-earning capacity is lost due to a traumatic injury or occupational disease/ illness. Even if the employee returns to work part-time or to a lower paid position full-time, OWCP will continue to pay at least 66 2/3 percent of the loss of earnings. OWCP may pay up to 75 percent of lost earnings, if the disabled employee has one or more dependents.

Employee rights and the various forms of monetary relief follow:

1. Temporary Total Disability. Compensation is provided to an employee who suffers a temporary loss of regular earnings from inability to work due to a job-related injury or because of loss, or loss of use of a member or function of the body. The medical evidence shows that the employee is totally unable to perform any type of work for a certain period of time.

2. Permanent Partial Disability. If an employee who suffered a job-related injury or disease/illness is able to return to work a full shift or a full day, compensation for intermittent periods of wage loss due to disability may be received.

- a. The partially disabled employee must report earnings from employment or self-employment. Failure to either make a report when required or knowingly to omit or understate any part of earnings may cause the employee to forfeit compensation for any period when the report was required.
- b. The partially disabled employee who (1) refuses to seek suitable work or (2) refuses or neglects to work after suitable work is offered, procured, or secured is not entitled to disability compensation.

3. Permanent Total Disability. An employee whose job-related injury or disease/illness is so severe that it leaves the employee permanently and totally disabled for any type of work is entitled to compensation until death unless the employee is medically or vocationally rehabilitated.

33.23 - When Compensation is Payable

1. Traumatic Injury. In most cases, the employee is first entitled to the 45 days of Continuation of Pay. Therefore, the Office of Workers' Compensation Programs (OWCP) will not begin compensation payments for loss of wages until after the COP entitlement has been completed. A waiting period applies following the completion of COP as explained in item 3 of this section. The employee is entitled to compensation if the disability continues beyond 45 calendar days.

a. If medical evidence shows that disability is likely to continue beyond the 45 calendar days of eligibility for COP, or there is no eligibility for COP, a claim for compensation must be filed. Form CA-7, Claim for Compensation on Account of Traumatic Injury, must be completed by the supervisor, physician and the employee. It must be submitted to the reporting official for submission to the appropriate OWCP office within 5 working days following the end of the 45 calendar days of eligibility for COP, or within 5 working days of the beginning of the disability in those cases in which the employee is not eligible for COP.

b. The employee must file form CA-8, Claim for Continuing Compensation on Account of Disability, for additional periods of disability after form CA-7 has been submitted to OWCP. Form CA-8 must be completed by the employee and the supervisor. Form CA-20a, Attending Physicians's Supplemental Report, attached to the CA-8 is completed by the employee's physician. The completed form CA-8 with the CA-20a attached is then sent to the reporting official for submission to the appropriate OWCP office. The employee must file a completed form CA-8 with the CA-20a attached every 2 weeks during the remaining period of disability or until instructed otherwise by OWCP.

2. Occupational Disease/Illness. If the employee suffers a job-related disease/illness and the case is approved by OWCP, the employee is entitled to compensation for as long as the disability continues. The employee has the right to elect to use paid leave or to receive compensation. To claim compensation, the employee must file Form CA-4, Claim for Compensation on Account of Occupational Disease, within 10 calendar days after pay stops or

when disability terminates if the pay loss is less than 10 days. Form CA-4 is attached to form CA-20, Attending Physician's Report. Form CA-4 must be completed by the employee and the supervisor and the form CA-20 portion of the form must be completed by the employee's physician. The completed form CA-4 with form CA-20 attached must be submitted to the reporting official for submission to OWCP.

3. Waiting Period. There is a 3 calendar day waiting period before OWCP begins any compensation payments. However, the 3 day waiting period is waived if the disability continues or extends beyond 14 calendar days after the disability begins or after the expiration of the 45 days of COP, if COP applies. The 3 day waiting period begins on the first full day after pay stops unless the employee is entitled to COP. In cases of COP entitlement, the 3 day waiting period begins on the first full day after the expiration of the 45 days of COP.

4. Return to Work, Termination of Disability. Use Form CA-3, Report of Termination of Disability and/or Payment, to report the termination of total or partial disability if the employee's return to duty date was not shown on either Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, or CA-2, Federal Employee's Notice of Occupational Disease and Claim for Compensation. The supervisor must complete form CA-3 and send it to the reporting official for review and submission to the appropriate OWCP district office. Failure to report the termination of disability immediately to the OWCP district office on form CA-3, will result in an OWCP overpayment to the employee.

33.24 - Recurrence of Disability

1. Traumatic Injury Case. An employee is entitled to compensation for a recurrence, as long as eligibility requirements are met, regardless of the employment status at the time of recurrence. Should an employee suffer a recurrence of disability, and again stop work, and the initial claim has been approved by OWCP, the supervisor shall immediately complete Form CA-2a, Notice of Employee's Recurrence of Disability and Claim For Pay/Compensation, and submit it to the reporting official for submission to OWCP. Follow-up medical care for a traumatic injury or disease/illness which causes time loss is not considered a recurrence, but part of the original injury. The decision whether a recurrence is valid rests with the OWCP. However, the reporting official should initiate certain action if a recurrence appears to be valid. The reporting official should:

- a. Initiate COP payments if all the following apply: (1) the employee is entitled to COP, (2) some of the 45 calendar days of COP entitlement remain, and (3) the recurrence is within 6 months of the time when the employee initially returned to work after the original disability.
- b. Use Form CA-16, Request for Examination and/or Treatment, to authorize additional medical treatment if the recurrence is within 6 months of the time when the employee initially returned to work after the original disability.

2. When Compensation Applies in a Traumatic Injury Recurrence. If a valid recurrence of disability occurs, the employee is entitled to compensation under the following circumstances:

- a. When COP payments expire if the employee is eligible for COP.
- b. Immediately if any one of the following categories apply:
 - (1) More than 6 months have passed since the employee first returned to duty status after the original injury.
 - (2) The employee was not eligible for COP payments for the original injury.
 - (3) If the disability is caused by an occupational disease/illness.

3. Occupational Disease/Illness Cases. After a recurrence of disability and work stoppage, the supervisor shall promptly complete Form CA-2a, Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation, and submit it to the reporting official for submission to OWCP. If the employee wishes to claim compensation as a result of the recurrence, Form CA-4, Claim For Compensation on Account of Occupational Disease, must be completed by the employee and the supervisor.

4. Recurrences That Required Contacting OWCP for Advice. The reporting office should contact the appropriate OWCP district office before taking any action on a recurrence under the following circumstances:

- a. There is doubt about the validity of the recurrence; that is, it does not appear directly related to the injury or original disability; the circumstances surrounding the recurrence are questionable; the medical aspects of the recurrence are complex; or there are mitigating factors that make a determination difficult.
- b. The recurrence occurred more than 6 months after the employee returned to duty from the original disability.
- c. The recurrence arises from an occupational disease/illness.

33.25 - Employee's Right To Use Sick or Annual Leave and Buy Back the Leave or Use Leave Without Pay

1. Using Leave or Claiming Compensation. The injured employee must decide whether to use accrued annual or sick leave to cover part or all the absence from work due to disability. The employee should be advised that the first 3 days of eligibility for compensation is considered a "waiting period." In a traumatic injury case, compensation is payable 3 days following the expiration of the 45 day COP. These first 3 days must be leave without pay (waiting period). However, if the employee buys back the leave, he or she is responsible for repurchasing all of the days including the first 3 days. If the employee is disabled more than 14 days following the date of eligibility for compensation, the 3 days are waived and compensation is payable from the first day of eligibility.

2. Variance Between Gross Compensation and the Amount the Employee Should Pay To Buy Back Leave. If the employee elects to take leave and the claim for compensation is subsequently approved, the employee may arrange with the Forest Service to buy back the leave used and have it reinstated to his/her account. The compensation to which the employee is entitled would pay a part of the buy-back cost; the employee would have to pay the balance. The OWCP calculates the gross amount of compensation based on the employee's gross pay at the rate of:

- 75 percent if the employee has a dependent
- 66 2/3 percent if the employee has no dependent

The amount of money which the employee owes the agency in order to buy back the leave will vary depending on grade/step structure, taxes and various rates of the different health plans, etc. Compensation is not taxable. The employee's health and life insurance is covered by the agency for 1 year. See FSH 6109.31 - MODE Manual, chapter VI - Payroll Adjustments, form AD-343, Payroll Action Requests, subsection A-20, for information about initiating leave buy-back action.

3. Using Leave Without Pay. Advise employees that choosing to take LWOP in order to be eligible for disability compensation purposes may be used as the basis for a claim for annual leave restoration only if the employee had previously scheduled annual leave in writing and the injury caused the employee to be unable to use the leave as planned.

4. Leave Buy-Back Eligibility Requirements. The employee must have; (a) an approved claim for compensation, (b) used sick and/or annual leave due to disability resulting from an on-the-job injury or illness, and (c) submitted a request in writing to OWCP to buy back the leave. Use Form CA-4, Claim for Compensation on Account of Occupational Disease, for occupational disease and form CA-7, Claim for Compensation on Account of Traumatic Injury, for traumatic injury. Determine the following before leave buy-back procedures begin:

- a. The number of sick or annual leave hours the employee used, and the dates leave was used; include holidays.
- b. The employee's hourly pay rate and gross (biweekly) salary before taxes.
- c. The amount of retirement and Federal Employees Group Life Insurance (FEGLI) paid during the period the leave buy back covers.
- d. The compensation rate and the amount of compensation the employee is entitled. OWCP will determine and confirm the period of eligibility and compute the gross amount of compensation based on the information submitted on form CA-4 or form CA-7. Exhibit 01 of this section is an example of a leave buy-back computation.

33.25 - Exhibit 01**LEAVE BUY-BACK COMPUTATION**

To buy back 277 hours of sick leave used due to a job related injury, determine the number of sick leave hours used, the hourly pay rate and gross salary (biweekly), and the amount of retirement and life insurance withheld during the period the leave buy-back covers. All this data can be obtained from the National Finance Center on form AD-355, Payroll Register and Accounting Distribution, for each pay period.

Pay Period	Biweekly Sick Leave Hours Used	Salary Before Taxes	Civil Service Retirement	Life Insurance	Hourly Rate
13	80	\$1,520.00	\$106.40	\$10.08	\$19.00
14	80	1,520.00	106.40	10.08	19.00
15	80	1,520.00	106.40	10.08	19.00
16	30	570.00	39.90		19.00
17	5	103.15	7.22		20.63
18	2	41.26	2.89		20.63
Total	<u>277</u>	<u>\$5,274.41</u>	<u>369.21</u>	<u>\$30.24</u>	<u> </u>

To convert 277 hours of sick leave to leave without pay do the following:

Multiply 270 sick leave hours @ \$19.00 p.h.	\$5,130.00
Multiply 7 sick leave hours @ \$20.63 p.h.	<u>144.41</u>
Gross	\$5,274.41
Less Civil Service Retirement as shown above	369.21
Less Federal Employees Group Life Insurance (shown above)	<u>30.24</u>
Amount Due	\$4,874.96
Less OWCP Compensation due employee @ 75% of the salary \$5274.41	<u>3,955.81</u>
Amount Employee owes to Buy Back Leave	\$ 919.15

Employee could not accrue annual or sick leave during pay period 14, 15, and 16. Therefore, a leave adjustment must be made for these pay periods.

33.26 - Benefits and Limitations of Right To Receive Compensation

1. While Receiving Earnings, Salary, or Leave. Except in three circumstances, an employee may not receive compensation for temporary total disability while receiving salary payments or leave payments. The three exceptions are:

- a. An employee may receive regular salary payments while receiving compensation for a scheduled award for the permanent loss, or loss of use, of each of certain members, organs, and functions of the body. See appendix C for a description of these benefits.
- b. An employee may receive salary for services while receiving compensation for partial disability computed on loss of wage-earning capacity.
- c. An employee may receive compensation while also receiving payment for leave, if the leave is a lump-sum payment made upon separation.

2. Schedule Awards. (See appendix C for more details). Compensation is provided for specified periods of time for the permanent loss, or loss of use, of each of certain members, organs, and functions of the body. This benefit is payable in addition to, but not concurrently with, compensation for temporary total or temporary partial disability payments or payments for loss of earning capacity. Compensation for loss of wage-earning capacity may be paid after the schedule award expires. Scheduled awards may be paid concurrently with either earnings or retirement pay, but may not be paid concurrently with other disability compensation payments from Office of Workers' Compensation Programs.

The employee must use Form CA-7, Claim for Compensation on Account of Traumatic Injury or, Form CA-4, Claim for Compensation on Account of Injury or Occupational Disease, whichever is appropriate to claim compensation for a schedule award. The procedure is the same as when filing for compensation for temporary total disability. Disability compensation will not be paid while the schedule award is being paid. Upon approval of a schedule award claim by OWCP, the employee will receive the scheduled awards in monthly payments equal to the monthly payments for disability compensation.

3. Reduction of Compensation for Subsequent Injury to Same Part or Function of Body. The duration of scheduled compensation is reduced by the period of compensation paid or payable under that schedule for an earlier injury if:

- a. Compensation in both cases is for disability of the same member or function.
- b. The Secretary of Labor finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability.

4. Lump-Sum Payments. The Office of Workers' Compensation Programs may make a lump-sum payment rather than monthly compensation payments to dependents in case of employee's death or to the employee in case of permanent disability or permanent partial

disability. OWCP is responsible for making calculations for payments in accordance with 20 CFR 10.311.

5. Overpayments. When an overpayment has been made to an employee or dependents because of an error of fact, the adjustment will be made by decreasing later payments to which that individual is entitled or by collection if no further payments are to be made. However, no adjustment of recovery will be made by the United States when the employee or dependents are without fault and when adjustment of recovery would be against equity and good conscience relative only to compensation payments. For overpayments relating to COP, follow guidelines and procedures for handling waiver of overpayments (FSH 6109.41, FPM 550, subchapter 3).

33.3 - Other Benefits Relating to Disability

33.31 - Vocational Rehabilitation

If an employee sustains a permanent injury which prevents returning to the work performed before the injury, OWCP may furnish vocational rehabilitation (such as classroom or on-the-job training), job counseling, and/or placement assistance. These services are intended to return the employee to productive employment either with the Forest Service or any other employer, full-or part-time. The services are usually provided through or in cooperation with facilities of State vocational programs.

In addition to rehabilitation services, OWCP may pay the following:

1. Maintenance. Up to \$200 per month may be paid for transportation and travel expenses.
2. Attendant. An employee may be paid a maximum of \$500 a month when the constant services of an attendant are needed because the employee is blind, has lost the use of both hands or both feet, is paralyzed and unable to work, or because of other disabilities resulting from a job related injury.

33.32 - Identifying a Job To Meet Physical Limitations

Compensation shall be paid to an employee who either cannot return to full-time duty or whose new position pays a salary lower than the one held at the time of the injury. However, all efforts must be directed toward returning the employee to maximum working capacity. Some possibilities include:

1. Detail to Other Positions. Employees who are able to work, but temporarily unable to return to their original job, may be detailed to other positions in which they can perform work for relatively short periods of time.
2. Restructuring Present Position. In some instances, it may be possible to reengineer an existing job by deleting duties an employee is not physically able to handle.

3. Reassignment to Other Positions. An injured employee may be reassigned to another position that the employee is physically able to perform. If the reassignment results in a lower representative rate or shorter tour of duty, it must be handled as an adverse action and in accordance with instructions in FSH 6109.41, FPM 752 for those employees covered.

33.4 - Action To Take and Status of Injured Employee During and After Disability

(5 CFR 353.201 and 304, FSH 6109.41 - FPM 351.)

33.41 - During Employee's Disability

1. Consider Employee for All Promotions. An injured employee who incurred an on the job injury or disease/illness is subject to the same terms and conditions of employment as if there had been no injury. Furthermore, the employee must be considered for all promotions for which that employee would have been considered if not disabled. If the position is upgraded during the employee's absence, place the employee in the upgraded position.

2. Physical Disqualifications. An employee who is released from competitive level may not be denied an assignment right solely because of not being physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be given appropriate assignment rights subject to recovery (5 CFR 351.701).

3. Employee's Status During and After Period of Disability. Many legal requirements relate to the status of employees who suffer job-related injuries and subsequent disabilities. These include restoration to duty, reemployment rights, job retention, reduction-in-force protection, within-grade increases, tenure based on length of service, leave-earning categories, and others. The following provides Forest Service procedures as well as legal requirements:

a. Status While Disability Is Continuing

(1) Excepted Employees. Continue an excepted employee in leave without pay status and on the rolls for at least as long as the employment would have continued had the employee not suffered a job-related disability. If the employee cannot return to work, the employee should be separated.

(2) Excepted Continuing Employees. Continue employee in LWOP status for 1 year from the date disability began. If, at the end of 1 year, review of the case indicates the employee cannot return to duty, terminate the employee.

(3) Employees With Competitive Status. Continue competitive employees in LWOP status for 1 year from the date disability began. The LWOP should be extended for periods of at least 6 months or 1 year if review of the case indicates the employee may be able to return to work. If, at the end of the initial year or upon subsequent review, it appears that the employee will not or cannot return to work, take steps to terminate the employee (FSH 6109.41, FPM 752). The personnel office representative must discuss with the employee the option of electing disability retirement or workers' compensation.

4. After Disability Completely Ceases Within 1 Year of Date Disability Began:

- a. Excepted Employees. If the employee was terminated, the Forest Service should give priority consideration for reemployment.
- b. Excepted Continuing Employees. Such employees should not be terminated by the Forest Service during the first year following the beginning of disability. If terminated, the employee shall be restored to the position held before the injury occurred.
- c. Competitive Career or Career-Conditional Employees. Such employees shall not be terminated by the Forest Service during the first year following the beginning of disability.

5. One Year or More After Date Disability Began:

- a. Excepted Employees. Such employees have no restoration rights. The Forest Service may give priority consideration for reemployment.
- b. Excepted Continuing Employees. The Forest Service shall make every reasonable effort to restore the employee to the position previously held or to an equivalent position.
- c. Competitive Career or Career-Conditional Employees. The Forest Service shall make every reasonable effort to restore the employee to the position previously held or to an equivalent position.

6. Status When Disability Has Partially Ceased Within 1 Year of Date Disability Began:

- a. Excepted Employees. If the employee was terminated, the Forest Service may give priority consideration on regular employment list.
- b. Excepted Continuing Employees. Such employees should not be separated by the Forest Service during the first year following beginning of disability. However, if separated, the agency must make every effort to restore the employee to the formal position or another position which the employee can perform.
- c. Competitive Career or Career-Conditional Employees. Such employees shall not be separated by the Forest Service during the first year following the beginning of disability.

7. One Year or More After Date Disability Began:

- a. Excepted Employees. The Forest Service may give priority consideration on regular employment list.
- b. Excepted Continuing Employees. The Forest Service should make an effort to restore the employee to a position which the employee can perform.

- c. Competitive Career or Career-Conditional Employees. The Forest Service must make a reasonable effort to restore the employee to a position similar to the one held or to any other position which the employee can perform.

33.42 - Required Personnel Actions Relating to Leave Without Pay Status

1. For Placement in a LWOP Status. Process a personnel action in accordance with instructions in FSH 6109.41 - FPM 296-33, and FSH 6109.31 - MODE Manual, appendix J, Nature of Action Code 206-20, Leave Without Pay - OWCP for extending from 80 hours LWOP or more, up to 30 days.

2. For Return to Duty Status After Leave Without Pay. Process a personnel action returning the employee to active duty status in accordance with instructions in FSH 6109.41, Appendix J, Nature of Action Code 103-08 RTD (from OWCP exceeding 30 days) or 205-08 RTD (from OWCP less than 30 days). The Office of Workers' Compensation Programs should send the agency a copy of the employee notice that disability compensation is being terminated.

3. Ascertain That All Leave Without Pay Time Was Actually Compensated by OWCP. Check with OWCP to be certain that all time shown in LWOP status for the employee was actually compensated by OWCP for injury compensation. This is necessary to confirm the allowance of full-time service creditability for time spent in LWOP.