



# DISTRICT OF COLUMBIA GOVERNMENT OFFICE OF RISK MANAGEMENT

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## **PRE-1980 EMPLOYEES' WORKERS' COMPENSATION RIGHTS (Published on May 27, 2011)**

The purpose of this document is to provide information to the workers' compensation community regarding the special rights of workers' compensation claimants who were hired on or before December 31, 1979 ("pre-1980 employees")<sup>1</sup>. These rights are derived from the federal workers' compensation statute and are limited to narrow "finite entitlements" that existed under the federal law that was in place on December 31, 1979. These entitlements are limited to statutory provisions that affect rates of pay and impose absolute limits on compensation. *Despite these narrowly construed rights, pre-1980 employees are still required to follow all of the processes for receiving workers' compensation benefits as outlined by the current version of the District of Columbia's workers' compensation statute, and as explained in more detail below.*

### **Background**

The federal rights of pre-1980 employees originated in the District of Columbia's Home Rule Act, which was enacted on December 24, 1973 and preserved certain personnel rights and benefits of former federal civil service employees who became employees of the locally elected District government after the advent of Home Rule. While the Home Rule Act guaranteed pre-1980 employees a "floor" of personnel benefits, including workers' compensation benefits, these federal rights were not intended to be absolute. Congress recognized that the District would eventually establish its own personnel system, which the first-elected DC Council and Mayor did by enacting the Comprehensive Merit Personnel Act of 1979 ("the CMPA"). Several sections of the CMPA address workers' compensation, including the entirety of subchapter XXIII, which is the District's current workers' compensation statute. The CMPA gives the Mayor sole authority to administer workers' compensation benefits to District employees, whether they were hired before or after 1980.

Nonetheless, this authority of the Mayor is qualified by the existence of the Home Rule Act, as well as DC Official Code § 1-602.05, which states that each employee of the District employed as of December 31, 1979 shall be "guaranteed no reduction of current pay and benefits." This language has been narrowly interpreted by the DC Court of Appeals to apply only to "finite entitlements," and does not include statutory processes. *See American Federation of Government Employees, et al vs. Marion Barry Jr., et al* 459 A.2d 1045 (DC 1983),

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<sup>1</sup> Contrary to what has been asserted by some, the analysis in this document only applies to employees hired prior to 1980, not prior to October 1, 1987. Employees hired prior to October 1, 1987 are entitled to federal health and life insurance benefits under sections 2101 and 2201 of the Comprehensive Merit Personnel Act of 1979, but they do not have similar rights with respect to workers' compensation benefits. *See* DC Official Code §§ 1-621.01 and 1-622.01.



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### Processes vs. Finite Entitlements

*As a result of this distinction, all workers' compensation claimants must follow the same processes and procedures for receiving benefits, regardless of their date of hire. These processes are governed by the current version of the District CMPA and include:*

- (1) Administration of the program by the Mayor (DC Official Code §§ 1-623.02a);
- (2) Reporting of claims/Providing notice of injury (DC Official Code §§ 1-623.19 -- .22 and --.24);
- (3) Awarding of compensation (DC Official Code §§ 1-623.24);
- (4) Appealing claims decisions, including filing for Reconsideration (DC Official Code §§ 1-623.24 and --.28);
- (5) Issuing subpoenas (DC Official Code §§ 1-623.26);
- (6) Obtaining medical services and other benefits, including supplies and expenses (DC Official Code §§ 1-623.03);
- (7) Participating in vocational rehabilitation (DC Official Code §§ 1-623.04);
- (8) Following requirements for physical examinations, including requirements surrounding treating with panel physicians and attending AMEs (DC Official Code §§ 1-623.23);
- (9) Responding to requests for participating in recovery of overpayments (DC Official Code §§ 1-623.29);
- (10) Cooperating with subrogation and adjustment of claims (DC Official Code §§ 1-623.30 and --.31);
- (11) Negotiating lump-sum settlements (DC Official Code §§ 1-623.35);
- (12) Receiving compensation for nonresidents and injuries outside of the United States (DC Official Code §§ 1-623.36, --.37 and --.38);
- (13) Awarding of leave (DC Official Code §§ 1-623.43); and
- (15) Being assigned to modified work (DC Official Code §§ 1-623.47).

Pre-1980 employees, however, have several finite entitlements that originated with the 1979 federal law and that have been preserved as subchapter XXXIII of the CMPA has been amended over the years. These rights are reflected in the plain language of the CMPA. They include the following:

- (1) The new limitation on mental stress/emotional claims resulting from work performance, assignment, promotion, adverse personnel actions, etc., that went into effect on October 1, 2010, does not apply to pre-1980 employees. (DC Official Code § 1-623.02(b)).
- (2) The new limitation on the total period of eligibility for workers' compensation to 500 weeks does not apply to pre-1980 employees. (DC Official Code § 1-623.06).
- (3) Pre-1980 employees are exempt from the requirement that dependent pay cease for beneficiaries following the death of a claimant. (DC Official Code § 1-623.09(b)(2)).



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- (4) Pre-1980 employees are exempt from the October 1, 2010 change in law that eliminated augmented pay for dependents. (DC Official Code § 1-623.10).
- (5) Pre-1980 employees are entitled to maximum and minimum compensation limits under the federal pay scale, not the DC pay scale. (DC Official Code § 1-623.12(b)).
- (6) Pre-1980 employees are exempt from the October 1, 2010 change in the law that allowed the program to suspend benefits for non-compliance with vocational rehabilitation. (DC Official Code § 1-623.13).
- (7) Pre-1980 employees are entitled to 45 days of continuation of pay, not 21 days. (DC Official Code § 1-623.18(b)(2)).
- (8) In the case of death benefits, pre-1980 employees are entitled to 75% of the maximum monthly rate of basic pay for GS-15 on the federal pay scale. (DC Official Code § 1-623.02(e)(2)).