

# Continuation of Pay

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# Objectives

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- Provide an overview of COP
- Discuss who is eligible for COP
- Address when COP is payable
- Discuss counting COP days
- Determine when controverting challenging, or terminating COP may be appropriate

# What is Continuation of Pay?

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- COP is the continuation of an employee's regular pay with no charge to sick or annual leave.
  - Paid by the employer.
  - Subject to all taxes and deductions.
  - OWCP has exclusive authority.
- Payable for a maximum of 45 calendar days for each traumatic injury.

# Who is eligible for COP?

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- To be eligible for COP an employee must:
  - Suffer a traumatic injury.
  - File form CA-1 within 30 days of the date of injury.
  - Begin losing time off from work within 45 days from the date of injury.



# Who is eligible for COP?

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Most employees are eligible for COP, however, the FECA excludes certain persons from eligibility for COP. COP cannot be authorized for members of these excluded groups, which include but are not limited to:

- persons rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay;
- volunteers (for instance, in the Civil Air Patrol and Peace Corps);
- Job Corps and Youth Conservation Corps enrollees;
- individuals in work- study programs, and
- grand or petit jurors (unless otherwise Federal employees).

# When is COP payable?

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COP is payable when:

- An employee is out of work as a result of:
  - Medical treatment
  - Disability
- An employee returns to work with a wage loss (i.e. loss of shift differential).
- An employee is formally reassigned to another position with a lower rate of pay.

This does not include a reduction of pay that is due solely to an employer being prohibited by law from paying extra pay to an employee for work they do not actually perform.

# When is COP payable? Employee Responsibilities

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- Employee responsibilities:
  - File CA-1 form within 30 days of the date of injury.
  - Provide supporting medical documentation within 10 calendar days from the date the COP is claimed, or the date disability began (whichever is later).
  - Accept suitable light duty work when available and offered by the employing agency. Offer of light duty ultimately needs to be in writing. If the agency wants OWCP to take any action based upon the offer it needs to be in writing.
  - Keep supervisor informed of any changes in work status.

# Knowledge Check 1

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Employee A, a federal employee, sustains an injury on 04/01/2022 and filed a traumatic injury claim on 06/17/2022. Would the employee be eligible for COP?



# Knowledge Check 1

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Employee A, a federal employee, sustains an injury on 04/01/2022 and filed a claim on 06/17/2022. Would the employee be eligible for COP?

**ANSWER:**

**No, the employee did not meet the requirement of filing the CA-1 form within 30 calendar days of the date of injury as required.**

# Counting COP days

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- Days of entitlement (45)
  - Entitled only to the time necessary to obtain treatment.
  - Each day with a period charged to COP will be counted as one day of COP entitlement.
  - Scheduled days off and holidays occurring during a period of disability will be counted toward COP entitlement.
  - Leave used during a period when COP is otherwise payable is counted toward the 45-day COP maximum as if the employee had been in a COP status. The employee has one year from the date the leave was taken or the date OWCP provided written approval of the claim (whichever is later) to change periods of leave taken to COP.

# Counting COP days

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- Days of entitlement (45)
  - Disability on the date of injury is not normally counted as COP except when the injury occurs before the start of an employee's work shift and the employee is disabled for work, in that case, the date of injury is counted as a COP day.
  - Compressed work schedules – Regular Day Off (RDO) will count as a COP day if the employee was disabled for work immediately preceding or following the RDO and medical evidence supports disability.
  - Part-time or intermittent schedules - All calendar days on which medical evidence indicates disability are counted as COP days, regardless of whether the employee was or would have been scheduled to work on those days.

## Knowledge Check 2

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Employee B begins work at 8:30 am on 4/4/22. He sustains an injury at 10:30 am on 4/4/22 and leaves to obtain medical care. How would the time off be charged?

## Knowledge Check 2 - Answer

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Employee B begins work at 8:30 am on 4/4/22. He sustains an injury at 10:30 am on 4/4/22 and leaves to obtain medical care. How would the time off be charged?

**ANSWER:**

**The time off would be charged to Administrative Time since the injury occurred during the scheduled tour of duty and the time was lost on the date of injury.**

## Knowledge Check 3

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Employee C slips and falls while entering the government building where she works. The incident took place at 8:50 am. She is off work for the entire day as a result of the fall. Her normal working hours are 9:00 am to 5:30 p.m. How would the time be charged?

## Knowledge Check 3 - Answer

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Employee C slips and falls while entering the government building where she works. The incident took place at 8:50 am. The employee is off work for the entire day as a result of the fall. The employee works 9:00 am to 5:30 p.m. Form CA1 for a traumatic injury claim was filed timely. How would the time be charged?

**ANSWER:**

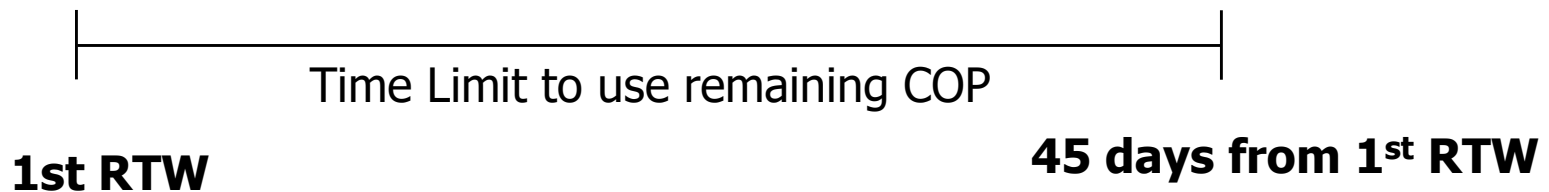
**The time off should be charged to COP since it occurred before the start of the workday.**

# Time Limit to Use Remaining COP

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Injured Employees can use the remaining days of COP if they stop work within 45 days from the time they first returned to work following their initial period of disability. (FECA Bulletin 99-06)

Time charged to administrative leave on the date of injury is considered the initial period of disability for COP purposes.





# Time Limit to Use Remaining COP

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- There is an exception to the time limit. Any remaining entitlement can be used beyond the 45th day limit if:
  - the period of disability starts prior to the 45th day **AND**
  - the period runs continuously without interruption
- In this situation COP will be paid until the employee is no longer disabled for work or the 45-day entitlement to COP is exhausted, whichever occurs first.

# FECA Bulletin 99-06

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Consistent with Section 10.205, Section 10.207(c) allows any balance of COP remaining after the injured employee returns to duty to be used for a recurrence of disability, or for medical treatment, which begins within 45 days of the first return to work. . . the question has arisen, "When does time begin to toll for using a balance of COP in cases where there is no lost time immediately following an injury?". Various OWCP publications could be read differently on this issue. **The Regulations, Procedure Manual, Publication CA-810, and the Resource Book for the Agency Workshop use the terms "work stoppage", "disability", and "lost time" variously in reference to when time begins to toll for using a balance of COP.**

To clarify, time lost on the day of injury that is charged to administrative leave is considered a work stoppage, whether the time is used to obtain medical treatment or for disability. If the time away from work is so minimal that no administrative leave is charged, such as a brief visit to the health unit, this is not considered a work stoppage for the purpose of tolling time. **Where administrative leave is charged on the date of injury, that constitutes a work stoppage, and the return to work after the administrative leave, whether that be on the date of injury or the following day, is considered the first return to work, and the 45 days for using any balance of COP begins to toll on that date.**

## Knowledge Check 4

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Employee D is injured on 6/6/22 at 1:15 p.m. He elects to be treated by a private physician and is off work the rest of the day. He returns to work the next day. How would you calculate the last day he can use COP?

## Knowledge Check 4 - Answer

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Employee D is injured on 6/6/22 at 1:15 p.m. He elects to be treated by a private physician and is off work the rest of the day. He returns to work the next day. How would you calculate the last day he can use COP?

### **ANSWER:**

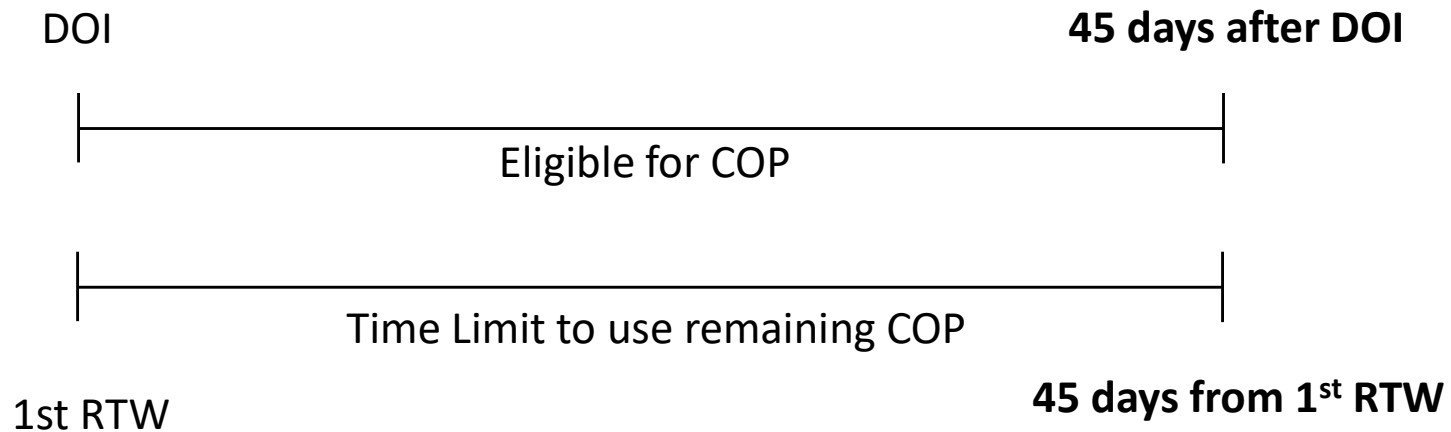
**The first return to work would be considered 6/7/22.**

**Since there was a work stoppage on the DOI. The employee has 45 days from 6/7/22 to use any remaining COP (7/21/22).**

# Scenario 1

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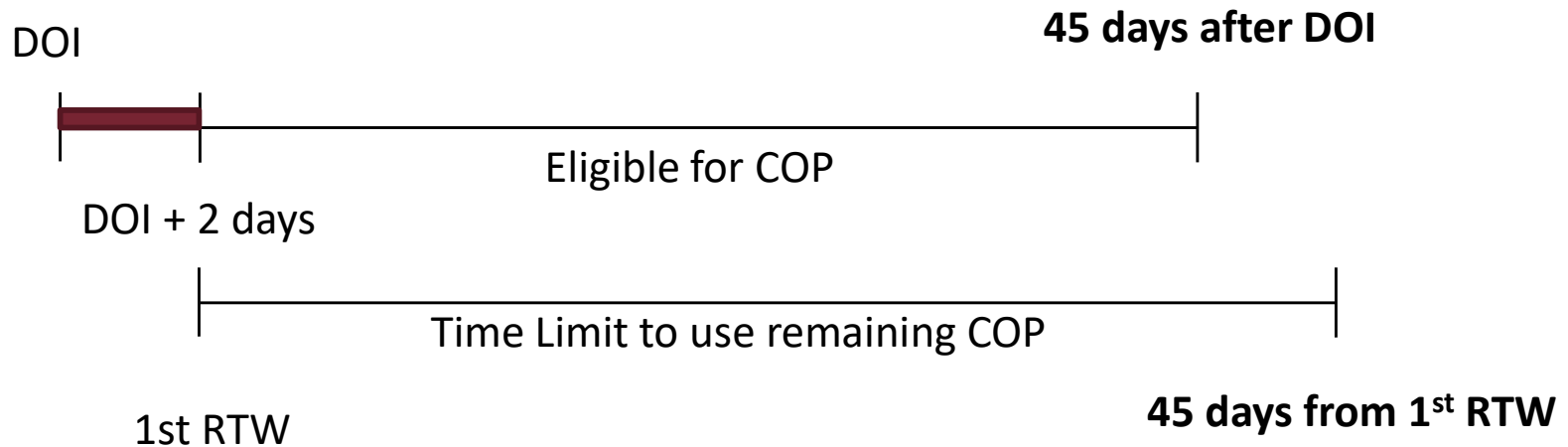
An employee is injured at work, files a CA-1, and elects to see her private physician. Three hours later the employee returns to work and is charged administrative time for the time she was gone.



## Scenario 2

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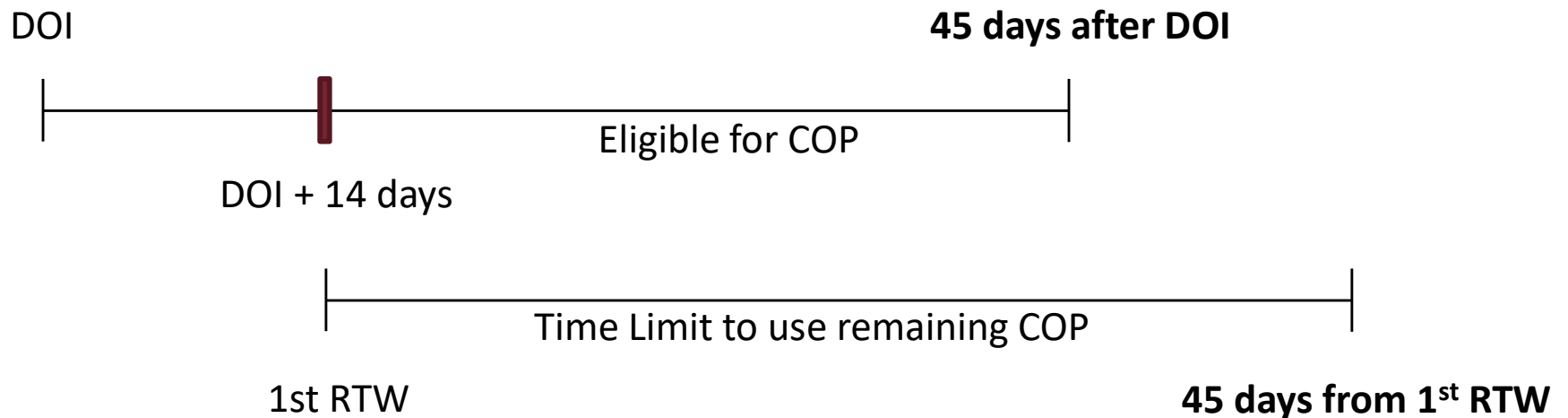
An employee is injured at work on Monday, files a CA-1, and elects to see his private physician. On Thursday, the employee returns with supporting medical documentation from his physician supporting the time off due to the injury.



## Scenario 3

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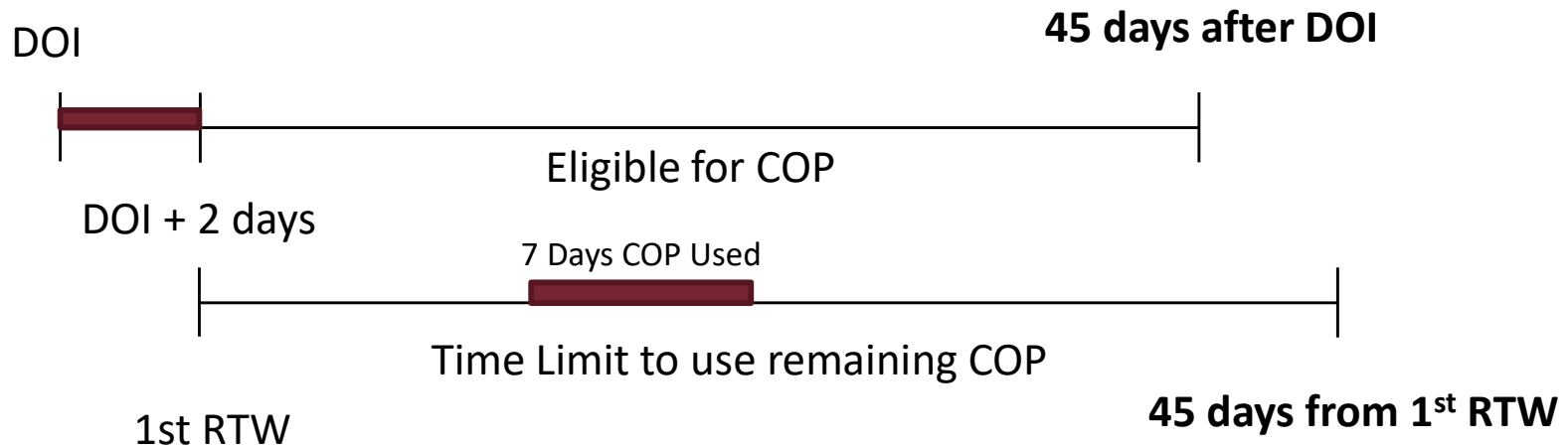
An employee is injured at work, files a CA-1 but loses no time on the DOI. Two weeks after the DOI the employee goes to see her private physician pertaining to the on-the-job injury. She takes 4 hrs off and returns to work.



# Scenario 4

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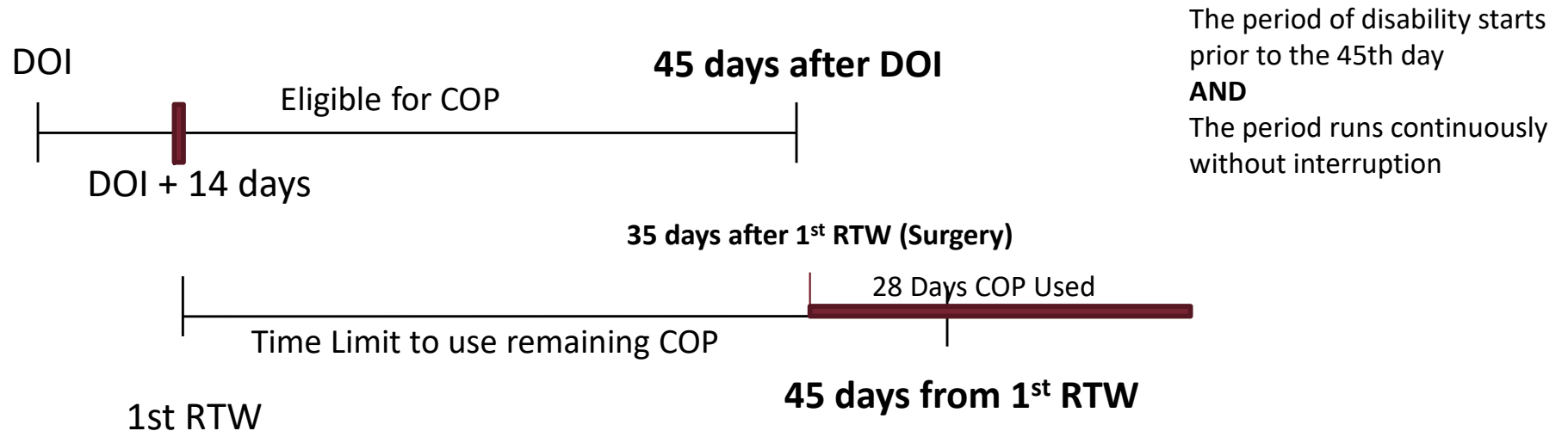
An employee is injured at work on Monday, files a CA-1, and elects to see his private physician. On Thursday, the employee returns with a note from his physician supporting the time off. Two weeks later the employee is placed off work for a week.





# Scenario 5

An employee is injured at work, files a CA-1 but loses no time on the DOI. Two weeks after the DOI the employee goes to see her private physician pertaining to the on-the-job injury. She takes 4 hrs off and returns to work. Five weeks later she is approved for surgery and will be out for four weeks and then will be able to return to work on light duty.



# Determining Pay Rate

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## **§10.216 How is the pay rate for COP calculated?**

The employer shall calculate COP using the period of time and the weekly pay rate.

(a) The pay rate for COP purposes is equal to the employee's regular “weekly” pay (the average of the weekly pay over the preceding 52 weeks).

(1) The pay rate excludes overtime pay; but includes other applicable extra pay except to the extent prohibited by law.

(2) Changes in pay or salary (for example, promotion, demotion, within-grade increases, termination of a temporary detail, *etc.*) which would have otherwise occurred during the 45-day period are to be reflected in the weekly pay determination.

## Controverting COP

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The employer, in certain specific instances, is not required to pay COP to the employee. This can be found at 20 CFR 10.220.

1. The disability was not caused by a traumatic injury;
2. The employee is not a citizen of the United States or Canada;
3. No written claim was filed within 30 days from the date of injury;
4. The injury was not reported until after employment has been terminated;
5. The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties;
6. The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or
7. Work did not stop until more than 45 days following the injury.

# Controverting COP

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- The ONLY reasons where the agency is not required to pay COP:
  - The injury was caused by the employee's willful misconduct, intent to injure or kill himself/herself or another person; or was proximately caused by intoxication by alcohol or illegal drugs.
  - Work stoppage first occurred more than 45 days after the injury.
  - The employee first reported the injury after employment was terminated.

## Challenging Entitlement to COP

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If the employer disagrees with the employee's entitlement to COP but the situation does not meet one of the previously stated reasons, COP is paid unless otherwise directed by OWCP to terminate.

# Terminating COP

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COP should not be stopped unless:

- Prima facie medical evidence is not submitted within 10 calendar days of the employee's claim for COP or the date disability begins (whichever is later). Where the medical evidence is later provided, however, COP shall be reinstated retroactive to the date of termination.
- OWCP notifies the agency that pay should be terminated.
- COP has been paid for 45 calendar days.
- The employee returns to work with no loss of pay.
- The employee's period of employment expires or employment is otherwise terminated (as established prior to the date of injury).

# Terminating COP

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COP should not be stopped unless:

- The employee is no longer totally disabled -
  - Medical documentation provided by employee's treating physician indicates that the employee can return to regular work **AND**
  - The employee refuses a written offer of suitable alternative position which is approved by the attending physician.

The employing agency must inform OWCP that COP is being terminated, the basis for the termination, and the effective date of the termination.

# Terminating COP

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- COP may not be interrupted due to a disciplinary action unless:
  - Preliminary notice was issued to the employee before the date of injury **AND**
  - The action becomes final or otherwise takes effect during the COP period.



## Knowledge Check 5

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Employee E sustains an injury on 5/4/22 and files a claim immediately thereafter. She is off work from 5/4 to 5/18 and returns to work on 5/19. She has not provided any medical documentation supporting her time off work. Is all her time off covered by COP? If not, why not?

## Knowledge Check 5 - Answer

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Employee E sustains an injury on 5/4/22 and files a claim immediately thereafter. She is off work from 5/4 to 5/18 and returns to work on 5/19. She has not provided any medical documentation supporting her time off work. Is all her time off covered by COP? If not, why not?

### **ANSWER:**

**The employee has 10 calendar days from the date disability began to provide documentation supporting time off work.**

**Medical documentation needed to be provided by 5/14/22 (5/4/22 + 10 calendar days) to ensure uninterrupted COP entitlement.**

**Agency can stop paying COP on 5/15/22 until the employee provides supporting medical documentation.**

## Knowledge Check 6

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An employee's claim does not meet the regulatory requirements that permit controversion of the COP; however, the employer does not believe the employee is entitled. What should the employer do?

## Knowledge Check 6 - Answer

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An employee's does not meet one of the nine reasons which permit controversion of COP; however, the employer does not believe the employee is entitled. What should it do?

**ANSWER:**

**Pay the COP. Challenge the entitlement to COP and potentially the claim, if appropriate.**

## Knowledge Check 7

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Employee E sustains an injury on 5/4/22 and files a claim immediately thereafter. She is off work from 5/4 to 5/18 and returns to work on 5/19 and provides medical documentation supporting her time off work. How many days of COP are chargeable? How many days of COP entitlement are remaining? What is the last day she can use COP?

# Knowledge Check 7 - Answer

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Employee E sustains an injury on 5/4/22 and files a claim immediately thereafter. She is off work from 5/4 to 5/18 and returns to work on 5/19 and provides medical documentation supporting her time off work. How many days of COP are chargeable? How many days of COP entitlement are remaining? What is the last day she can use COP?

## **ANSWER:**

**5/4 would be authorized absence (administrative leave)**

**5/5-5/18 would be COP (14 days)**

**The employee would have 45 days to use the remaining balance (31 days)**

**5/19/22 1<sup>st</sup> RTW so 45 days from 5/19 inclusive = 7/2/22 is the last day to use COP**

## Knowledge Check 8

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On 6/3 the employee calls her supervisor at 12:30 p.m. and states that she cannot come back to work because “she is too sore from the therapy” and requests that her supervisor carry her on COP for the remainder of the day. The supervisor calls you requesting guidance.

What do you advise the supervisor?

## Knowledge Check 8 - Answer

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On 6/3 the employee calls her supervisor at 12:30 p.m. and states that she cannot come back to work because “she is too sore from the therapy” and requests that her supervisor carry her on COP for the remainder of the day. The supervisor calls you requesting guidance.

What do you advise the supervisor?

**ANSWER:**

**Medical documentation is required for each date that an employee attributes to workers’ compensation. Unless the treating provider has placed the employee off duty, he/she should request SL or AL.**



## Knowledge Check- Question 1

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Continuation of Pay (COP) applies to traumatic injury cases and is the continuance of the employee's regular pay for a period not to exceed:

- a) 1 calendar day of disability
- b) 30 calendar days of disability
- c) 45 calendar days of disability
- d) 1 year of disability

## Knowledge Check- Question 2

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- An employee must begin losing time from work due to a traumatic injury within 45 days of the injury to be eligible for COP.
- a) True
- b) False

## Knowledge Check- Question 3

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During the COP period, if a claimant stops work after 4 hours to attend a medical appointment, how many COP days will be counted towards the 45-day entitlement?

- a) 0 days
- b) ½ day
- c) 1 day

## Knowledge Check- Question 4

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Once an injured employee decides to use leave versus COP, they are unable to alter that decision.

- a) True
- b) False

## Knowledge Check- Question 5

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If an employee returns to work following a work stoppage without using all 45 days of COP and then suffers a recurrence of disability within 45 days from the first return to work, the employee:

- a) Is entitled to use the remainder of the 45 days
- b) Is not entitled to any other COP

## Take Away Tips

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- Continuation of Pay (COP) is the continuance of the employee's regular pay for a period not to exceed 45 calendar days of disability
- Employee must begin losing time from work due to traumatic injury within 45 days of the injury to be eligible for COP
- COP should be charged for weekends and holidays if the medical evidence shows the employee was disabled on the days in question - calendar days are counted, not just work-days.
- If an employee returns to work following a work stoppage without using all 45 days of COP and then suffers a recurrence of disability within 45 days from the first RTW date, the employee is entitled to use the remainder of the 45 days.

## Take Away Tips (cont'd)

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- To controvert COP, the agency must complete the indicated portion of Form CA-1 and submit detailed information in support of the controversion to the OWCP.
- An EA's objection to paying COP for one of nine reasons provided by regulation is called "controversion". COP may be controverted only if one of the nine reasons apply.
- When EA has paid COP, it may be stopped only in certain instances. Please see Continuation of Pay presentation for those instances.

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# Questions?

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