



# Virginia Department of Corrections

## Financial Management and Procurement

### Operating Procedure 261.3

#### *Workers' Compensation*

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1-CTA-3B-07

<b>Content Owner:</b>	Christopher Cole Director of Procurement & Risk Management	<i>Signature Copy on File</i>	6/16/23
		Signature	Date
<b>Reviewer:</b>	Louis B. Eacho Chief Financial Officer	<i>Signature Copy on File</i>	6/16/23
		Signature	Date
<b>Signatory:</b>	Joseph W. Walters Deputy Director for Administration	<i>Signature Copy on File</i>	6/22/23
		Signature	Date

### REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

*The content owner reviewed this operating procedure in July 2024 and necessary changes are being drafted.*

### COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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## DEFINITIONS

**Adjusted Work Assignment** - A temporary work placement made by management consistent with the needs of the organizational unit, security procedures, and/or to satisfy restrictions established by the treating panel physician.

**Authorized Treating Physician** - The selected panel physician or the physician to which the injured employee has been referred by the panel physician.

**Department of Human Resource Management Workers' Compensation Services (DHRM/WCS)** - The state entity that oversees the third-party administrator contract for workers' compensation claims.

**Employee Accident Recording System (EARS)** - The Risk Management reporting system that captures the number of days out of work and the number of restricted duty days for each of the major facilities and field units as maintained on the OSHA 300 Logs.

**Modified Duty** - Duties that are modified or created to satisfy restrictions established by the authorized treating physician.

**Organizational Unit Head** - The person occupying the highest position in a DOC unit, such as a correctional facility, regional office, probation and parole office, Virginia Correctional Enterprises (VCE), Academy for Staff Development, Agribusiness Unit, and individual headquarters unit e.g., Human Resources, Offender Management, Internal Audit.

**Panel Physician** - The physician selected by the employee from a panel offered by the employing agency at the time the injury or illness was reported.

**Third Party Administrator** - The insurance company that administers workers' compensation claims for the Department of Corrections.

**Workers' Compensation Injury** - An injury by accident arising out of and in the course of the employment and accepted as a compensable claim by the DHRM/WCS.



## PURPOSE

This operating procedure ensures accountability and responsibility for coordination of Workers' Compensation benefits for all covered Department of Corrections (DOC) employee injuries or occupational diseases arising out of and in the course of employment. The DOC provides guidance for temporary adjustments in work assignments for employees who have experienced a workers' compensation injury or illness.

## PROCEDURE

### I. Administration

- A. This operating procedure and the *DOC Workers' Compensation Claims Manual* are applicable to all organizational units and employees within the DOC.
- B. Injuries and illnesses not covered by workers' compensation are addressed in Operating Procedure 150.3, *Reasonable Accommodations*.
- C. The Risk Management Unit (RMU) has oversight responsibility for the workers' compensation modified duty program within the DOC. RMU's responsibilities include:
  1. Develop, implement, and revise DOC operating procedures relating to workers' compensation modified duty.
  2. Provide workers' compensation training to DOC employees as needed.
  3. Issue supplemental instructions to DOC organizational units as needed to support compliance with State policies and DOC procedures.
  4. Review individual unit's modified duty recordkeeping and reporting functions and make recommendations to ensure compliance with current policies and procedures.

### II. Benefits

- A. COV §65.2 et seq., *Virginia Workers' Compensation Act*, provides coverage for partial salary and medical treatment as defined in the *Act*. (5-ACI-1B-17; 4-ACRS-7D-28; 4-APPFS-3D-27; 2-CO-1B-11; 1CTA-1B-09)
- B. In addition to the *Virginia Workers' Compensation Act*, salaried employees, both full-time and part-time, have supplementary salary and leave benefits for a limited period of time as defined in COV §2.2 - 2900 et seq., *Virginia Personnel Act*, and as outlined in the *DOC Workers' Compensation Claims Manual*.
- C. Wage (WE-14) and temporary salaried (P-3) employees have only the provisions guaranteed by the *Virginia Workers' Compensation Act*. Additional benefits stipulated in the *Virginia Personnel Act* do not extend to these employees.
- D. When an employee is disabled or killed in the line of duty, there may be benefits available; see Operating Procedure 150.4, *Line of Duty Death or Injury*.

### III. Employee Notice of Accident

- A. When an accident occurs, or there is exposure to an occupational disease, the employee or the employee's representative must immediately, or as soon thereafter as practical, give written notice of the accident or occupational disease to their supervisor. (2-CO-1C-05)
- B. The notice must state, at a minimum, the name and address of the employee, the time and place of the accident or exposure, the nature and cause of the accident/exposure, and the injury or occupational disease.

### IV. Employer's Duty to Provide Medical Attention

- A. The Organizational Unit Head, or designee, will ensure a panel of at least three physicians is immediately offered to every employee who reports a work-related injury or exposure to an occupational disease. (1-



**CTA-3B-07)**

- B. Facility Unit Heads, or their designee, will ensure that written verification of the employee's selection is entered on the *Workers' Compensation Selection of Panel Physician* 261\_F2.
- C. Community Corrections Unit Heads, or their designee, will ensure that the panel of physicians presented to the employee and that written verification of the employee's selection is entered on the *Workers' Compensation Panel and Physician Selection for Community Corrections* 261\_F7.

**V. Employer Reporting Responsibilities**

- A. The Organizational Unit Head, or designee, will ensure required forms are completed and disseminated in accordance with specific instructions and time frames provided by their designated Human Resources Officer. (2-CO-1C-05, 1-CTA-3B-07)
- B. Facility Human Resources Officers, or their designees, will submit the *First Report of Injury (FROI)* to the RMU for review and quality control using the Sedgwick FROI Portal within three business days of notification or knowledge of the injury.
- C. Community Corrections employees will send the required information as instructed by the Community Corrections Human Resources Officer using the *Employer's Accident Report* 261\_F8 to the Community Corrections Workers' Compensation e-mail box. (CCWC@vadoc.virginia.gov) The Community Corrections Human Resources Officer, or designee, will submit the *First Report of Injury* to the RMU for review and quality control using the Sedgwick FROI Portal.
- D. The RMU will submit the *First Report of Injury* to MC Innovations using the Sedgwick FROI Portal as required by the DHRM/WCS within three business days of receipt.

**VI. Problem Resolution**

- A. The Organizational Unit Head or designee will be responsible for facilitating the prompt resolution of problems relating to workers' compensation claims.
- B. If all attempts to resolve the problem have been exhausted at the organizational unit level, the Organizational Unit Head or designee will refer the problem to the RMU for resolution.

**VII. Claims Management**

- A. The RMU will serve as liaison with the Department of Treasury, Division of Risk Management, the Virginia Workers' Compensation Commission, the Department of Human Resource Management, Workers' Compensation Services, the Office of the Attorney General (OAG), and commercial insurance providers regarding workers' compensation claims management procedures for the DOC.
- B. Upon request, the RMU and the Human Resources Unit will provide timely advice and assistance to organizational units regarding resolution of workers' compensation claims management issues.

**VIII. Visits and Advisement of Rights**

- A. The Organizational Unit Head, or designee, will visit any employee who is seriously injured in the line of duty, or the next of kin of any employee killed in the line of duty, to express sympathy on behalf of the DOC and to advise the individual of their rights under the state benefits programs; see Operating Procedure 150.4, *Line of Duty Death or Injury*.
- B. Specific information regarding rights/benefits should be obtained from the Virginia Workers' Compensation Commission.

**IX. DOC Workers' Compensation Claims Manual**

- A. Each organizational unit employee has access to a current copy the *DOC Workers' Compensation Claims Manual* on the Virtual Library.



- B. Workers' Compensation claims will be submitted and handled in accordance with the *DOC Worker's Compensation Instruction Manual*.
  - C. The Risk Management Unit is responsible to review and when necessary, update the *Manual*.
  - D. Copies of the *Manual* are also available from the RMU.
- X. Workers' Compensation Temporary Adjustments to Work Assignments
- A. Adjusted Work Assignment - In accordance with requirements of the DHRM/WCS, every effort will be made to enable an employee experiencing a workers' compensation injury to return to work as soon as practical.
  - B. Establishment of Adjusted Work Assignment
    1. If an employee is unable to return to their regular position and perform the required functions, a temporary adjusted work assignment will be offered in accordance with:
      - a. The employee's qualifications.
      - b. Any restrictions set forth by the authorized treating physician.
      - c. The needs of the DOC and compliance with security procedures.
    2. Prior to offering the employee a temporary adjusted work assignment:
      - a. It must be approved by the authorized treating physician.
      - b. The Organizational Unit Head or designee will notify the employee, and the employee's supervisor, in writing of the employee's modified work assignment. This notification will include:
        - i. A description of the physician's restrictions.
        - ii. Duties and responsibilities.
        - iii. Beginning date and review date of assignment.
      - c. The Organizational Unit Head or designee will ensure that temporary adjustments to work assignments do not relieve the employee from meeting mandated performance requirements, e.g., firearms recertification.
  - C. Prior to returning to work, the employee must provide the Organizational Unit Head with a written statement from the panel or authorized treating physician that:
    1. Releases the employee to return to work in accordance with any specified work restrictions or physical limitations.
    2. Includes an anticipated length of time before the employee can fully resume the responsibilities of the regular position.
  - D. Return to Work
    1. When presented with an adjusted work assignment, the employee must return to work in accordance with the Virginia Workers' Compensation Act.
    2. As determined on a case-by-case basis, any employee who refuses an adjusted work assignment offered by the DOC may lose entitlement to all wage compensation during such refusal.
  - E. Recordkeeping
    1. Within three working days of the employee's return to work, the Organizational Unit Head or designee, will provide a *Notification of Adjusted Work Assignment 261\_F1* concerning the employee's work restrictions and adjusted work assignments to the Human Resource at that organizational unit, with a copy to the RMU at RiskMgmt@vadic.virginia.gov and the DHRM/WCS Claim Administrator.
    2. When an employee under the traditional sick leave plan returns on an adjusted work assignment with a reduced work schedule, the employee will be reported as employed full-time.
      - a. Personal leave will be used for the hours the employee is not working.

- b. If the employee does not have personal leave or chooses not to use personal leave, the third-party administrator, Payroll Unit, and Risk Management Manager, RiskMgmt@vadoc.virginia.gov must be notified immediately beyond the 92nd calendar day.
  - c. The employee's leave will be restored at the workers' compensation rate (66 2/3%) when the DOC is reimbursed by the third-party administrator.
  - d. Employees under the Virginia Sickness and Disability Program (VSDP) will be reported similarly under VSDP guidelines.
3. To document any change in the employee's work status, a *Supplementary Report 261\_F10* must be provided to the third-party administrator at least every 30 days with a copy to the RMU, RiskMgmt@vadoc.virginia.gov.

#### F. Reporting

1. The Organizational Unit Head or designee will provide a quarterly report to the RMU, through Employee Accident Recording System (EARS), to include number of days out of work and number of restricted workdays.
2. Based on the data received from all organizational units, RMU will provide a quarterly report to senior management.

#### G. Review and Documentation

1. The Organizational Unit Head or designee will provide for the ongoing review and coordination of all work assignments within the organizational unit that have been adjusted due to workers' compensation restrictions.
2. In accordance with Operating Procedure 110.1, *Hours of Work and Leaves of Absence*, an employee who is on an adjusted work assignment must submit a panel physician statement every 30 calendar days to the Organizational Unit Head describing:
  - a. The employee's updated medical status.
  - b. The employee's ability to continue workers' compensation adjusted work assignments.
  - c. A tentative projected date for the employee to resume regular position duties; general duration guidelines for the injury or illness are acceptable.
  - d. In instances where a panel physician's statement is submitted that contains all the above information and outlines a specific time frame or date that exceeds the 30 calendar days, an updated panel physician statement would only be required at the expiration of the stated time frame.
3. The Organizational Unit Head or designee will review physician statements in considering the continuance of adjusted work assignments.
4. If the employee is assigned to a new supervisor for an adjusted work assignment, the new supervisor must document attendance and employee job performance and provide this documentation to the regular supervisor every 30 days.
5. When an employee continues to work in an adjusted work assignment for more than 90 calendar days, the Organizational Unit Head or designee will contact the RMU Claims Manager who will ensure the proper steps are taken to review the duties and determine if a transfer or demotion is appropriate. Additionally, options under the *Alternatives to Adjusted Work Assignments* section of this operating procedure may apply.

#### H. Alternatives to Adjusted Work Assignments

1. If an adjusted work assignment for the employee is not feasible or if the adjusted work assignment is not extended beyond the initial 90 calendar days, the Organizational Unit Head or designee will immediately contact the RMU Claims Manager who will notify the DHRM/WCS Claims administrator to coordinate providing assistance from rehabilitation agencies or other sources. Potential job placements must be coordinated through the Benefits Manager in Human Resources at Headquarters.



2. Additionally, the Organizational Unit Head or designee will advise the employee of the following options:
  - a. Use of paid sick leave, annual leave, or compensatory leave.
  - b. Leave without pay or conditional leave without pay.
  - c. Disability retirement or long-term disability.
  - d. Seeking other positions, either within or outside the DOC.
  - e. Separation.
- I. Decision Not to Offer an Adjusted Work Assignment
  1. The Organizational Unit Head must justify in writing any decision not to offer an employee an adjusted work assignment.
  2. Once the employee has been notified of this decision, a copy of the written justification must be placed in the employee's file and a copy will be provided to the DHRM/WCS Claim Administrator and the RMU Claims Manager within five working days of issuance.

## REFERENCES

COV §2.2 - 2900 et seq., *Virginia Personnel Act*

COV §9.1-400 et seq., *Line of Duty Act*

COV §65.2 et seq., *Virginia Workers' Compensation Act*

USDOJ, Bureau of Justice Assistance, *Public Safety Officers Benefits Programs*

Virginia Retirement System's, *Death-in-Service Benefits*

Operating Procedure 110.1, *Hours of Work and Leaves of Absence*

Operating Procedure 150.3, *Reasonable Accommodations*

Operating Procedure 150.4, *Line of Duty Death or Injury*

*DOC Workers' Compensation Claims Manual*

## ATTACHMENTS

None

## FORM CITATIONS

*Notification of Adjusted Work Assignment* 261\_F1

*Workers' Compensation Selection of Panel Physician* 261\_F2

*Workers' Compensation Panel and Physician Selection for Community Corrections* 261\_F7

*Employer's Accident Report* 261\_F8

*Supplementary Report* 261\_F10

