

The background features a dark blue gradient on the left, transitioning into a complex, glowing blue pattern on the right. This pattern consists of numerous thin, parallel lines that curve and spiral together, creating a sense of depth and movement, similar to a tunnel or a data stream. The overall effect is modern and technological.

LWOP and Restoration Rights

OBJECTIVE

The objective of this course is to understand:

1. What is Leave Without Pay (LWOP)?
2. When does LWOP Begin following a compensable injury?
3. How do you document LWOP? What is the Nature of Action Code/Rule & what do those codes mean?
4. What effect does LWOP have on creditable service?
5. What is PL-108-92? How do you record LWOP time for enhanced annuity?
6. How do you document RTD from LWOP? What is the Nature of Action Code/Rule?
7. What is the employee's restoration rights as documented on the LWOP action (5 CFR part 353)?
8. How do you calculate restoration right time before removing an employee from Federal Service?

What is Leave Without Pay (LWOP)

- Leave without pay (LWOP) is a temporary non-pay status and absence from duty. In most cases, LWOP is granted at the employee's request and is a matter of supervisory discretion and limited by agency internal policy. However, OPM has recognized that employees have an entitlement to LWOP while receiving workers' compensation payments from the Department of Labor and therefore should not be denied. When LWOP is granted because of an on-the-job injury or illness and extends, or is expected to extend, for 80 hours or more it should be officially documented on a "Notification of Personnel Action" SF-50.

When does LWOP Begin following a compensable injury?

- LWOP begins immediately following Continuation of Pay (and/or) if medical indicates the employee will be totally disabled for 80 hours or more.
- *Scenario: John Doe has a serious traumatic injury on the morning of June 1st. John seeks immediate medical attention, and due to the severity of the injury is temporarily totally disabled for 120 days (4 months). John files a CA-1 traumatic Injury claim late afternoon on June 1st.
- In this situation we know John will be out for 120 days, he is eligible for 45 days of continuation of pay (COP) from June 2nd to July 16th. Because we know there will be at least another 75 days (2.5 months) of lost time, the agency should instruct the employee to file form CA-7 in ECOMP by the 30th day of the COP period and the agency should submit the completed form to the OWCP by the 40th day of the COP period. At the same time the agency should be processing a personnel action for LWOP to begin on July 17th. *Note: Because disability will exceed 14 days, there is no 3-day waiting period.

How do you document LWOP? What is the Nature of Action Code & what do those codes mean?

Table 15-A. Documenting Placements in Nonpay or Nonduty Status and Written Warnings, Continued

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Rule	If Action is	And	Then NOAC is	Nature of Action is	Authority Code is	Authority is	Required Remark Code is	And Remark is	Notes	Additional Remarks
31	Leave without pay (LWOP)	LWOP is for temporary assignment to a State or local government, or an institution of higher learning	460	LWOP NTE (date)	NYM	Req 334.101				Jump to listing of additional remarks required for some actions.
32		LWOP is granted because of an on-the-job injury or illness and extends, or is expected to extend, for 80 hours or more (see Note 3)			Q3K	5 CFR part 353	N10	To (or expected to) be paid under 5 U.S.C. chapter 81	3. Rule 32 only applies when the injury or illness is compensable under the provisions of 5 U.S.C. chapter 81 , subchapter I.	
33		LWOP is for more than 30 calendar days during a reduction in force notice period	460	LWOP NTE (date)	L9K	Req. 351.806				
34		LWOP, scheduled for more than 30 calendar days, was requested by employee in lieu of annual leave during advance notice period of a separation for failure to accept new assignment or to relocate with position			DAK	Req. 530.101-Decl	M76	Requested, in lieu of annual leave, after declining offer of (position title, series, grade, and location)		

What effect does LWOP have on creditable service?

- Under regular LWOP using the DAM authority code, only 6 months of non-pay time is creditable. This is a common mistake made by agencies which causes employees who return to work from LWOP to lose creditable service time. LWOP under workers compensation using the Q3K code is all creditable service time.
- Further, if the employee who is on LWOP and receiving compensation under 5 U.S.C. chapter 81, is separated from Federal service but later returns to Federal service after a period of separation, they are deemed to have been in a LWOP status during that period of separation in which he or she received workers' compensation benefits. The period of deemed LWOP is creditable for years of service counted towards eligibility and computation of benefits, and in the computation of the high-3 average salary.
- *Note: This only applies if the separated employee did not apply for OPM benefits. If the employee, applied for OPM benefits, they are considered an annuitant, and must elect between workers' compensation and OPM benefits. As an annuitant if the former employee returns to work, they are considered a re-employed annuitant and will receive credit for the period of separation during which they received workers' compensation only if they are reemployed for 5 years of actual, continuous full-time employment.

What is PL-108-92? How do you record LWOP time for enhanced annuity?

- Public Law 108-92 was signed on October 3, 2003. The law allows a 1 percent annuity enhancement for Federal Employees' Retirement System (FERS) employees receiving disability compensation from the Office of Workers' Compensation Programs (OWCP). This provision is designed to make up for FERS beneficiaries' inability to participate in Social Security or the Thrift Savings Plan during periods of absence from the workplace while receiving workers' compensation benefits.
- A FERS employee who receives OWCP benefits during qualifying periods of absence is eligible for the enhanced annuity computation if the sum of all qualifying periods of absence totals 2 months or more. An employee's qualifying periods of absence include:
 - A period of (LWOP) while the employee is performing no work and is receiving OWCP benefits.
 - A period of separation from service while receiving OWCP benefits if the former employee is later reinstated in Federal service and earns title to a FERS annuity.

How to document Public Law 108-92

FERS Federal Employees Retirement System		Certified Summary of Federal Service Federal Employees Retirement System		Office of Personnel Management 5 CFR Part 841
Information for Agency			Instructions for Employee	
Section A – Identification				
1. John Doe				
Section B – Verified Service History Documented in Official Personnel Records				
Federal Agency or Military Service Branch	Appointment, Separation, or Conversion Dates for Civilian and Active Honorable Military Service		Name of Retirement System*	Remarks and Non-Creditable Time**
	From	To		
U.S. Army	10-12-78	10-11-1986	Honorable Active Duty	Military deposit paid in full
Department of Agriculture	03-16-1987	04-18-2008	FERS	
<i>OWCP</i>	<i>02-25-2007</i>	<i>04-18-2008</i>		<i>LWOP- OWCP – PL 108-92</i>
<i>Separation – OWCP</i>	<i>04-19-2008</i>	<i>09-15-2009</i>		<i>OWCP – PL 108-92</i>
Department of Agriculture	09-16-2009	01-08-2020	FERS	Voluntary Retirement

How do you document RTD from LWOP? What is the Nature of Action Code/Rule?

NATURE OF ACTION CODE

Table 16-A: Documenting Return to Duty Actions, Continued

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Rule	If return to duty is from (see Note 1)	And	Then Nature of Action Code is	Nature of Action is	Authority code is	Authority is	Notes	Remarks
6	Furlough	Employee was furloughed for less than 30 days under circumstances not described in Rule 4	292	RTD	CGM	5 U.S.C. 552a(e)(5)	1. "If Return to Duty is From" column reflects natures of action placing employee in nonpay status. Refer to Chapter 15 of this Guide for information on those natures of action.	Jump to Listing of remarks - (use as many remarks as applicable).
7	Suspension		292	RTD	CGM	5 U.S.C. 552a(e)(5)	1. "If Return to Duty is From" column reflects natures of action placing employee in nonpay status. Refer to Chapter 15 of this Guide for information on those natures of action.	Jump to Listing of remarks - (use as many remarks as applicable).
8	LWOP	Employee is returning from temporary assignment to state or local government or institution of higher learning	292	RTD	NYM	Reg. 334.101	1. "If Return to Duty is From" column reflects natures of action placing employee in nonpay status. Refer to Chapter 15 of this Guide for information on those natures of action.	Jump to Listing of remarks - (use as many remarks as applicable).
9		Leave without pay was granted because of an on-the-job injury			Q3K	5 CFR part 353		G11, P20

REMARKS

Table 16-B: Remarks

[Return to Table 16-A](#)

Rule	If	And	Then Remark Code is	And Remark is
1	Service computation date for leave accrual is adjusted due to nonpay time which is not creditable	All the nonpay time has been recorded on a Standard Form 50	B32	Changes SCD from (date) to reflect excess time in nonpay status during calendar year (year)
2		All of the nonpay time has not been recorded on a Standard Form 50	G31	Nonpay time not previously recorded in calendar year (year) totaled (number) hours
3	Due date for within grade increase is adjusted due to nonpay time which is not creditable		P12	Eligibility date for WGI adjusted to reflect excess time in nonpay status. New estimated eligibility date is (date)
4	Probationary (or trial) period is extended due to nonpay time which is not creditable		E05	Date for completion of probationary (or trial) period has been adjusted to reflect excess time in nonpay status. New estimated completion date is (date)
5	Waiting period for career tenure is extended due to nonpay time which is not creditable		T06	Date for conversion to career tenure has been adjusted to reflect excess time in nonpay status. New estimated conversion date is (date).
6	Employee received injury compensation during the nonpay time		G11	Employee paid under 5 U.S.C. chapter 81 from (date) through (date). The entire period shall be credited for all rights and benefits based on length of service.
7	Employee is being returned to duty under 5 CFR part 353 after absence due to compensable injury or duty with the uniformed services	Position and pay reflect actions effective during the period of absence	P20	Position and pay reflect the following actions effective during employee's absence: (list actions). Example: "Position and pay reflect the following actions effective during employee's absence: 702/Promotion, 11-20-94 to GS-202-7/1 at \$22,717.00 per annum."

Let's review Restoration Right Regulations

- 5 CFR Subpart C §353.301(a) Restoration rights. An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one.
- 5 U.S.C. §8151. Civil service retention rights (1) the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured.

Definitions:

- Eligibility: Having the right to do or obtain something
- Commencement: The beginning or start of something
- Compensation:
- 5 U.S.C. 8101(12) Compensation includes the money allowance payable to an employee or dependents and any other benefits paid for from the Employees' Compensation Fund.
- 20 CFR Chapter 1 Subchapter B part §10.5(a) States Benefits or Compensation is defined by the FECA at 5 U.S.C. 8101(12), which is the money OWCP pays to or on behalf of a beneficiary from the Employees' Compensation Fund. The terms Benefits and Compensation include payments for lost wages, loss of wage-earning capacity, and permanent physical impairment. The terms Benefits and Compensation also include the money paid to beneficiaries for an employee's death, including both death benefits and any death gratuity benefit. These two terms also include any other amounts paid out of the Employees' Compensation Fund for such things as medical treatment, medical examinations conducted at the request of OWCP as part of the claims adjudication process, vocational rehabilitation services under 5 U.S.C. 8111, services of an attendant and funeral expenses under 5 U.S.C. 8134, but do not include continuation of pay as provided by 5 U.S.C. 8118.

Why are agencies and employees confused?

- 5 CFR part 353 states: 1 year from the date eligibility for compensation began.
- 5 U.S.C. §8151 states: 1 year after the date of commencement of compensation
- The OWCP one year letter sent out by claims examiners state: 1 year of the date that wage loss began.

File Number: [REDACTED]
NO10m1-O-J

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July 24, 2023

Date of Injury: 09/13/2022
Employee: [REDACTED]

[REDACTED]

Dear [REDACTED]

This letter advises you of the effect that your work-related injury has on your employment status. Under Section 5 U.S.C. 8151 of the Federal Employees' Compensation Act, only a total recovery (that is, the ability to return to regular work) within one year of the date that wage loss began will protect your right to reclaim the job you held at the time of injury, or an equivalent job. You should make every effort to return to regular employment with your agency, within one year, either in the position held at the time of injury or in an equivalent position within your work capabilities. You are encouraged to contact your servicing personnel office to discuss the consequences of being in an extended Leave without Pay (LWOP) status.

The Merit Systems Protection Board (MSPB)

The MSPB's primary statutory functions is to protect Federal merit systems against prohibited personnel practices by adjudicating employee appeals over which the Board has been given jurisdiction.

- Adverse action –Part 752
- Unacceptable performance –Part 432
- Reduction in force –Part 351
- Denial of within-grade increase –Part 531
- Suitability –Part 731
- Restoration to duty –Part 353
- Retirement –Parts 831, 837, 838, 839, 841 to 847
- IRA –Part 1209
- VEOA, USERRA –Part 1208

Young vs USPS

1. Restoration begins 1-year from date eligibility for compensation began
2. Compensation: is defined as any money or benefit paid for from the "employees compensation fund" to include medical expenses
3. Claim: is defined as a written assertion of an individual's entitlement to benefits under the FECA
4. Filing a claim makes you eligible to be compensated out of the employee's compensation fund
5. Since the date the employee files the claim makes them eligible to be compensated, that is the date Eligibility for Compensation Began

What is OWCP's Position

When asked why they cite wage loss and not commencement of compensation according to 5 U.S.C. §8151 of the FECA, the response was "OWCP does not consider "compensation" to include medical benefits for the purposes of 8151" only wage loss.

How do you calculate restoration right time before removing an employee from Federal Service

Since there is no clarity on this issue, take the safe approach and start the clock 1 year from the date you cut the SF-50 placing the employee in LWOP. Legally you would win your MSPB case if you started the restoration right clock from 1 year of date of eligibility, but its better to err on the side of caution and give the employee the extra 45 days.

Questions

