

**DISTRICT OF COLUMBIA**  
**OFFICIAL CODE**

**TITLE 32.**  
**LABOR.**

**CHAPTER 15.**  
**WORKERS' COMPENSATION.**

**2001 Edition**

# DISTRICT OF COLUMBIA OFFICIAL CODE

## CHAPTER 15. WORKERS' COMPENSATION.

---

### TABLE OF CONTENTS

---

|  |  |
|--|--|
| § 32-1501. Definitions.  |  |
| § 32-1502. Administration; annual report to Council.   |  |
| § 32-1503. Coverage.   |  |
| § 32-1504. Exclusiveness of liability and remedy.  |  |
| § 32-1505. Commencement of compensation; maximum compensation.   |  |
| § 32-1506. Supplemental allowance.   |  |
| § 32-1507. Medical services, supplies, and insurance.  |  |
| § 32-1508. Compensation for disability.  |  |
| § 32-1509. Compensation for death.   |  |
| § 32-1510. Occupational disease.   |  |
| § 32-1511. Determination of average weekly wage.   |  |
| § 32-1512. Guardian for minor or incompetent.  |  |
| § 32-1513. Notice of injury or death.  |  |
| § 32-1514. Time for filing claims.   |  |
| § 32-1515. Payment of compensation.  |  |
| § 32-1516. Invalid agreements.   |  |
| § 32-1517. Assignment of compensation; exemption from claims of creditors.   |  |
| § 32-1518. Compensation as lien against assets.  |  |
| § 32-1519. Collection of defaulted payments.   |  |
| § 32-1520. Procedure in respect of claims.   |  |
| § 32-1521. Presumptions.   |  |
| § 32-1521.01. Establishment of Compensation Order Review Board.  |  |
| § 32-1522. Review of compensation orders.  |  |
| § 32-1523. Appearance of Corporation Counsel for Mayor.  |  |
| § 32-1524. Modification of awards.   |  |
| § 32-1525. Hearings before Mayor.  |  |
| § 32-1526. Attendance of witnesses.  |  |
| § 32-1527. Witness fees.   |  |
| § 32-1528. Costs in proceedings brought without reasonable grounds; penalty for unreasonable delay in payment of compensation. |  |

|   |  |
|---|--|
| § 32-1529. Powers of Mayor.   |  |
| § 32-1530. Attorney fees.   |  |
| § 32-1531. Employer record of injury or death.                        |  |
| § 32-1532. Employer reports.  |  |
| § 32-1533. Penalty for misrepresentation.                             |  |
| § 32-1534. Security for payment of compensation.                      |  |
| § 32-1535. Compensation for injuries where third persons are liable.  |  |
| § 32-1536. Notice of compensation secured.                            |  |
| § 32-1537. Discharge of liability.                                    |  |
| § 32-1538. Insurance policies.  |  |
| § 32-1539. Failure to secure payment of compensation.                 |  |
| § 32-1540. Special fund.  |  |
| § 32-1541. Administration fund.                                       |  |
| § 32-1542. Retaliatory actions by employer prohibited.                |  |
| § 32-1542.01. Establishment of Commission.                            |  |
| § 32-1542.02. Commissioner of Insurance and Securities; rate filings. |  |
| § 32-1542.03. Anti-fraud reporting requirement.                       |  |
| § 32-1542.04. Compliance.   |  |
| § 32-1543. Appropriations.  |  |
| § 32-1544. Severability.  |  |
| § 32-1545. Effective date.  |  |

# CHAPTER 15. WORKERS' COMPENSATION.

## § 32-1501. DEFINITIONS.

When used in this chapter, the term:

- (1) "Adoption" or "adopted" means legal adoption prior to the time of the injury.
- (2) "Brother" or "sister" includes stepbrothers and stepsisters, half-brothers and half-sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee.
- (3) "Carrier" means any person or fund authorized under § 32-1534 to insure under this chapter and includes self-insurers.
- (4) "Child" includes a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least 1 year prior to the time of injury, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent on the employee.
- (5) "Child," "grandchild," "brother," or "sister" includes only persons who are:
  - (A) Under 18 years of age, and also persons who, though 18 years of age or over, are substantially dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability; or
  - (B) Are students as defined herein.
- (6) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided herein.
- (7) "Death" as a basis for a right to compensation means only death resulting from an injury.
- (8) "Disability" means physical or mental incapacity because of injury which results in the loss of wages.
- (8A) "Domestic partner" shall have the same meaning as provided in § 32- 701(3).
- (8B) "Domestic partnership" shall have the same meaning as provided in § 32- 701(4).
- (9) "Employee" includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, in the District of Columbia, except:
  - (A) An employee subject to the provisions of § 7902 and subchapter I of Chapter 81 of Title 5, United States Code;
  - (B) An employee subject to the provisions of subchapter XXIII of Chapter 6 of Title 1;
  - (C) Any secretary, stenographer, or other person performing any services in the office of any member of Congress, or under the direction, employment, or at the request of any member of Congress;
  - (D) An employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia;
  - (E) An employee engaged in employment that is casual and not in the usual course of trade, business, occupation, or profession of the employer unless the employee is employed in domestic service in and around a private home by any employer who, during any calendar quarter in the same or the previous year, employed 1 or more household domestic workers for 240 hours or more; or
  - (F) Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if:
    - (i) Substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions;
    - (ii) The services of the salesperson or associated broker are performed under a written contract specifying that the salesperson or associated broker is an independent contractor; and

(iii) Such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.

(10) "Employer" includes any individual, firm, association, or corporation, or receiver, or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay within the District of Columbia.

(11) "Grandchild" means a child as above defined of a child as above defined.

(12) "Injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of third persons directed against an employee because of his employment.

(13) "Insurance consultation services" means any survey, consultation, inspection, advisory or related services performed by a carrier, its agents, employees or service contractors incident to an applicable policy of insurance for the purpose of reducing the likelihood of injury, death or loss, or to collect or verify information for purpose of underwriting.

(14) "Mayor" means the Mayor of the District of Columbia, or his designated agent.

(14A) "Nonscheduled benefits" means any partial disability not enumerated in § 32-1508.

(15) "Parent" includes stepparents and parents by adoption, parents-in-law, and any person who for more than 3 years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) "Person" means an individual, partnership, corporation, association, firm, trust, or legal representative thereof.

(17) "Physical impairment" means any physical or mental condition which is or is likely to be a hindrance or obstacle to obtaining employment.

(17A) "Physician" means a physician, dentist, or chiropractor licensed in:

(A) Accordance with Chapter 12 of Title 3; or

(B) Any state or jurisdiction of the United States, in accordance with the laws of that state or jurisdiction.

(17B) "Professional athlete" means a skilled athlete under a contract of hire or collective bargaining agreement.

(17C) "Professional athlete's work life expectancy" means the work life expectancy of a professional athlete that is determined separately for each professional sports franchise in the District by the Office of Workers' Compensation through its rulemaking authority.

(17D) "Safe workplace program" means a program that an employer implements voluntarily to promote safety in the workplace. A certified program shall include a formal written safety policy developed by a safety committee made up of equal numbers of management representatives and employee representatives who are elected by their peers and who serve on the clock, and whose functions include a workplace inspection at least annually, regular meetings with written records, and making recommendations to the employer of ways to eliminate workplace hazards and unsafe work practices, appropriate training in hazard assessment and control, effective accident and incident identification and the role of the federal and local Occupational Safety and Health Administration. Where there is a duty to bargain collectively, the employer shall collectively bargain the use and implementation of the safe workplace program.

(18) "Student" means a person regularly pursuing a full-time course of study or training at an institution which is:

(A) A school or college or university operated or directly supported by the United States, or by any state or local government or political subdivision thereof;

(B) A school or college or university which has been accredited by a state or the District of Columbia, or a state or District of Columbia recognized, or nationally recognized accrediting agency or body;

(C) A school or college or university not so accredited but whose credits are accepted, on transfer, by not less than 3 institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) An additional type of educational or training institution as defined by the Mayor, but not after he reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, where his 23rd birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if he shows to the satisfaction of the Mayor that he has a bona fide intention of continuing to pursue a full-time course of education or training during the

semester or other enrollment period immediately following the interim or during a period of reasonable duration during which, in the judgment of the Mayor, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed a student under this section during a period of service in the Armed Forces of the United States.

(18A) "Utilization review" means the evaluation of the necessity, character, and sufficiency of both the level and quality of medically related services provided an injured employee based upon medically related standards.

(19) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from other than the employer.

(20) "Surviving spouse or domestic partner" includes the decedent's spouse or domestic partner living with or dependent for support upon the decedent at the time of his or her death, or living apart for justifiable cause or by reason of his or her desertion at such time.

(21) When used in this chapter, the singular includes the plural.

(July 1, 1980, D.C. Law 3-77, § 2, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(a), 37 DCR 6890; Sept. 22, 1994, D.C. Law 10-169, § 2, 41 DCR 5145; Apr. 16, 1999, D.C. Law 12-229, § 2(a), 46 DCR 891; Oct. 14, 1999, D.C. Law 13-49, § 12(a), 46 DCR 5153; Sept. 12, 2008, D.C. Law 17-231, § 31(a), 55 DCR 6758.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-301.

##### *Effect of Amendments*

D.C. Law 13-49 added the definition of "nonscheduled benefits".

D.C. Law 17-231 added pars. (8A) and (8B); and rewrote par. (20), which had read as follows:

"(20) 'Widow' or 'widower' includes the decedent's wife or husband living with or dependent for support upon the decedent at the time of his death; or living apart for justifiable cause or by reason of his or her desertion at such time."

##### *Legislative History of Laws*

Law 3-77, the "District of Columbia Workers' Compensation Act of 1979," was introduced in Council and assigned Bill No. 3-106, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on April 22, 1980, and May 6, 1980, respectively. Signed by the Mayor on May 14, 1980, it was assigned Act No. 3-188 and transmitted to both Houses of Congress for its review.

For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

Law 10-169, the "District of Columbia Workers' Compensation Act of 1979 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-143, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-289 and transmitted to both Houses of Congress for its review. D.C. Law 10-169 became effective on September 22, 1994.

Law 12-229, the "Workers' Compensation Act of 1998," was introduced in Council and assigned Bill No. 12-192, which was referred to the Committee on Government Operations. The Bill was adopted on first and second reading on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-571, and transmitted to both Houses of Congress for review. D.C. Law 12-229 became effective on April 16, 1999.

Law 13-49, the "Criminal Code and Clarifying Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-61, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 19, 1999.

For Law 17-231, see notes following § 32-408.

##### *Miscellaneous Notes*

District of Columbia Workers' Compensation Equity Amendment Act of 1990 Rulemaking Disapproval Resolution of 1991: Pursuant to Resolution 9-145, effective November 22, 1991, the Council disapproved the proposed rules to implement the District of Columbia Workers' Compensation Equity Amendment Act of 1990.

Mayor authorized to issue rules: Section 4 of D.C. Law 8-198 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1 [subchapter I of Chapter 5 of Title 2, 2001 Ed.], issue rules to implement

the provisions of this act within 90 days from the date of enactment of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) The proposed rules shall include standards for:

(1) A coding system for medical reports and bills; and.

(2) The implementation of utilization review.

## **§ 32-1502. ADMINISTRATION; ANNUAL REPORT TO COUNCIL.**

(a) The Mayor shall administer the provisions of this chapter, and shall make such rules and regulations, appoint and fix the compensation of such personnel, and make such expenditures as may be necessary. All expenditures of the Mayor in the administration of this chapter shall be allowed and paid as provided in § 32-1541 upon the presentation of itemized vouchers therefor approved by the Mayor.

(b) The Mayor shall report annually to the Council by February 1st of each year on the status, from the previous fiscal year, of the workers' compensation program. The report shall include the following:

(1) The total number of cases, the total number of lost time cases, the number of medical only cases, the number of cases where no compensation was paid, the number of cases that are more than 500 weeks, the number of permanent partial disability scheduled cases, the number of permanent partial disability nonscheduled cases, the number of permanent total disability cases, the number of temporary total disability cases, the total number of lost time cases, the number of medical only cases, the number of cases in which claimant was represented by an attorney, cumulative total attorney fees paid, the number of cases controverted, the number of controverted cases decided in favor of employer and decided in favor of claimant, the growth in the assigned risk plan, the number of cases in and the future liability of the special fund; and

(2) The percentage of the total number of cases each year that are: more than 500 weeks; permanent partial disability; permanent partial disability nonscheduled; permanent total disability; and temporary total disability.

(July 1, 1980, D.C. Law 3-77, § 3, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(b), 46 DCR 891.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 36-302.

#### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

#### *Miscellaneous Notes*

Workers' Compensation Equity Amendment Act Rulemaking Approval Resolution of 1995: Pursuant to Proposed Resolution 11-177, deemed approved October 11, 1995, Council approved proposed rules to implement the Workers' Compensation Equity Amendment Act of 1990.

## **§ 32-1503. COVERAGE.**

(a) Except as provided in subsections (a-1) through (a-3) of this section, this chapter shall apply to:

(1) The injury or death of an employee that occurs in the District of Columbia if the employee performed work for the employer, at the time of the injury or death, while in the District of Columbia; and

(2) The injury or death of an employee that occurs outside the District of Columbia if, at the time of the injury or death, the employment is localized principally in the District of Columbia.

(a-1) No employee shall receive compensation under this chapter and at any time receive compensation under the workers' compensation law of any other state for the same injury or death.

(a-2) This chapter shall not apply if the employee injured or killed was a casual employee except that for the purposes of this chapter, casual, occasional, or incidental employment outside of the District of Columbia by a District of Columbia employer of an employee regularly employed by the employer within the District of Columbia shall be construed to be employment within the District of Columbia.

(a-3) An employee and his employer who are not residents of the District of Columbia and whose contract of hire is entered into in another state shall be exempted from the provisions of this chapter while such

employee is temporarily or intermittently within the District of Columbia doing work for such nonresident employer, if such employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of such other state, so as to cover such employee's employment while in the District of Columbia. The benefits under this chapter or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in the District of Columbia.

(b) Every employer subject to this chapter shall be liable for compensation for injury or death without regard to fault as a cause of the injury or death.

(c) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(d) Liability for compensation shall not apply where injury to the employee was occasioned solely by his intoxication or by his willful intention to injure or kill himself or another.

(e) The requirements of this chapter shall apply with regard to the nonprisoners employed in a prison industries program operating on the grounds of a District correctional facility, whether within the District or elsewhere, and maintained in accordance with the Prison Industries Act of 1996. The requirements of this chapter also shall apply with regard to prisoners employed in a prison industry approved under the Bureau of Justice Assistance Private Sector Prison Industry Enhancement Certification Program as defined in § 24-231.01(1).

(July 1, 1980, D.C. Law 3-77, § 4, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(b), 37 DCR 6890; May 8, 1996, D.C. Law 11-117, § 18(b), 43 DCR 1179.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-303.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

Law 11-117, the "Prison Industries Act of 1996," was introduced in Council and assigned Bill No. 11-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1996, and February 6, 1996, respectively. Signed by the Mayor on February 26, 1996, it was assigned Act No. 11-221 and transmitted to both Houses of Congress for its review. D.C. Law became effective on May 8, 1996.

##### *Miscellaneous Notes*

Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

### **§ 32-1504. EXCLUSIVENESS OF LIABILITY AND REMEDY.**

(a) The liability of an employer prescribed in § 32-1503 shall be exclusive and in place of all liability of such employer to the employee, his legal representative, spouse or domestic partner, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law on account of such injury or death.

(b) The compensation to which an employee is entitled under this chapter shall constitute the employee's exclusive remedy against the employer, or any collective-bargaining agent of the employer's employees and any employee, officer, director, or agent of such employer, insurer, or collective-bargaining agent (while acting within the scope of his employment) for any illness, injury, or death arising out of and in the course of his employment; provided, that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

(c) The furnishing of, or failure to furnish, insurance consultation services related to, in connection with or incidental to an applicable policy of insurance shall not subject the insurer, its agent or employees undertaking to perform such services to liability for damages from injury, death or loss occurring as a result of any act of omission in the course of such services.

(d) This section shall not apply:

(1) If the injury, loss or death occurred during the actual performance of consultation services and was caused by the active negligence of the carrier, its agent or employees which was the proximate cause



of the injury, death or loss; or

(2) To any consultation services required to be performed under the provisions of a written service contract not incidental to an applicable policy of insurance.

(July 1, 1980, D.C. Law 3-77, § 5, 27 DCR 2503; Sept. 12, 2008, D.C. Law 17-231, § 31(b), 55 DCR 6758.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-304.

##### *Effect of Amendments*

D.C. Law 17-231, in subsec. (a), substituted "spouse or domestic partner," for "husband or wife,".

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For Law 17-231, see notes following § 32-408.

### **§ 32-1505. COMMENCEMENT OF COMPENSATION; MAXIMUM COMPENSATION.**

(a) No compensation shall be allowed for the first 3 days of the disability, except the benefits provided for in § 32-1507; provided, that in case the injury results in disability of more than 14 days the compensation shall be allowed from the date of the disability.

(b) Compensation for disability or death shall not exceed the average weekly wages of insured employees in the District of Columbia or \$396.78, whichever is greater. For any one injury causing temporary or permanent partial disability, the payment for disability benefits shall not continue for more than a total of 500 weeks. Within 60 days of the expiration of the duration of the compensation provided for in this subsection, an employee may petition the Mayor for an extension of up to 167 weeks. The extension shall be granted only upon a finding by an independent medical examiner appointed by the Mayor of continued whole body impairment exceeding 20% under the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. An injured employee shall have up to 3 years after termination of nonscheduled benefits to re-open his or her case due to changes in condition.

(c) The minimum compensation for total disability or death shall be 25% of the maximum compensation.

(d) For the purposes of this section, the average weekly wage of insured employees in the District of Columbia shall be determined by the Mayor as follows: On or before November 1st of each year, the total wages reported on contribution reports for employees, excluding employees of the government of the District of Columbia, and the government of the United States, to the District Unemployment Compensation Board for the year ending on the preceding June 30th shall be divided by the average monthly number of such employees (determined by dividing the total employees reported for the preceding year, excluding employees of the government of the District of Columbia, and the government of the United States by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage as so determined shall be applicable for the year beginning the following January 1st.

(e) The average weekly wage shall not be deemed to have changed for any calendar year unless the computation in subsection (d) of this section results in an increase or decrease of \$2 or more, raised to the next even dollar.

(July 1, 1980, D.C. Law 3-77, § 6, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(c), 46 DCR 891.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-305.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1506. SUPPLEMENTAL ALLOWANCE.**

(a) When the average weekly wage has changed as provided for in § 32-1505, any person who has a total and permanent disability or any surviving spouse or domestic partner who is receiving payments for

income benefits under this chapter in amounts per week less than the new maximum for total disability or death shall receive weekly from the carrier, without application, an additional supplemental allowance calculated by the Mayor in accordance with the provisions of subsections (b) and (c) of this section; provided, that such allowance shall not commence to accrue and be payable until the average weekly wage exceeds \$396.78. The Mayor shall notify the carrier of the amount of such additional supplemental allowance.

(b) In any case where a person with a total disability, or surviving spouse or domestic partner is receiving the maximum weekly income benefit applicable at the time such award was made under this chapter, the supplemental allowance shall be an amount which, when added to such award, will equal the new maximum weekly benefit.

(c) In any case where a person with a total disability, or a surviving spouse or domestic partner is receiving less than the maximum weekly income benefit rate applicable at the time such award was made under this chapter, the supplemental allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a percentage of the new maximum determined by multiplying it by a fraction, the numerator of which is his present award and the denominator of which is the maximum weekly rate applicable at the time such award was made.

(d) No supplemental allowance referred to in subsections (b) and (c) of this section shall exceed 5% of the maximum weekly benefit received the preceding benefit year.

(July 1, 1980, D.C. Law 3-77, § 7, 27 DCR 2503; Apr. 24, 2007, D.C. Law 16-305, § 48(a), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 31(c), 55 DCR 6758.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-306.

##### *Effect of Amendments*

D.C. Law 16-305, in subsec. (a), substituted "a total and permanent disability" for "been totally and continuously disabled"; and in subsecs. (b) and (c), substituted "person with a total disability" for "totally disabled person".

D.C. Law 17-231 substituted "surviving spouse or domestic partner" for "widow or widower".

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For Law 16-305, see notes following § 32-241.

For Law 17-231, see notes following § 32-408.

## **§ 32-1507. MEDICAL SERVICES, SUPPLIES, AND INSURANCE.**

(a) The employer shall furnish such medical, surgical, vocational rehabilitation services, including necessary travel expenses and other attendance or treatment, nurse and hospital service, medicine, crutches, false teeth or the repair thereof, eye glasses or the repair thereof, artificial or any prosthetic appliance for such period as the nature of the injury or the process of recovery may require. The employer shall furnish such additional payment as the Mayor may determine is necessary for the maintenance of an employee undergoing vocational rehabilitation, not to exceed \$50 a week.

(a-1)(1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chapter.

(2) For purposes of this subsection, the phrase "eligible to receive" means:

(A) An employee is away from work due to a job-related injury for which the employee has filed a claim for workers' compensation benefits under this chapter; or

(B) An employer has knowledge of a job-related injury of an employee who is away from work due to the job-related injury pursuant to which workers' compensation benefits may become due under § 32-1515.

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this chapter, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers'

compensation benefits.

(5) Each provider of medical care or services pursuant to this chapter shall use a standard coding system for reports and bills generated pursuant to this chapter. Medical care and services shall be billed at the rate established in the medical fee schedule adopted by the Mayor. This fee schedule shall be based on 113% of Medicare's reimbursement amounts.

(b)(1), (2) Repealed.

(3) The employee shall have the right to choose an attending physician to provide medical care under this chapter. If, due to the nature of the injury, the employee is unable to select a physician and the nature of the injury requires immediate treatment and care, the employer shall select a physician for him. Where medically necessary or advisable, or at the request of the employee, the attending physician shall consult with the employee's personal physician.

(4) The Mayor shall supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have the authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may order a change of physician or hospital when in his judgment such change is necessary or desirable.

(5) Each person who provides medical care or service under this chapter shall utilize a standard coding system for reports and bills pursuant to rules issued by the Mayor. Medical care and service shall be billed at a usual and customary rate.

(6) Any medical care or service furnished or scheduled to be furnished under this chapter shall be subject to utilization review. Utilization review may be accomplished prospectively, concurrently, or retrospectively.

(A) In order to determine the necessity, character, or sufficiency of any medical care or service furnished or scheduled to be furnished under this chapter and to allow for the performance of competent utilization review, a utilization review organization or individual used pursuant to this chapter shall be certified by the Utilization Review Accreditation Commission.

(B) When it appears that the necessity, character, or sufficiency of medical care or service to an employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee, or employer may initiate review by a utilization review organization or individual.

(C) If the medical care provider disagrees with the opinion of the utilization review organization or individual, the medical care provider shall have the right to request reconsideration of the opinion by the utilization review organization or individual 60 calendar days from receipt of the utilization review report. The request for reconsideration shall be written and contain reasonable medical justification for the reconsideration.

(D) Disputes between a medical care provider, employee, or employer on the issue of necessity, character, or sufficiency of the medical care or service furnished, or scheduled to be furnished, or the fees charged by the medical care provider shall be resolved by the Mayor upon application for a hearing on the dispute by the medical care provider, employee, or employer. A party who is adversely affected or aggrieved by the decision of the Mayor may petition for review of the decision by the District of Columbia Court of Appeals.

(E) The employer shall pay the cost of a utilization review if the employee seeks the review and is the prevailing party.

(7) Medical care providers shall not hold employees liable for service rendered in connection with a compensable injury under this chapter.

(c) Vocational rehabilitation shall be designed, within reason, to return the employee to employment at a wage as close as possible to the wage that the employee earned at the time of injury. The Mayor shall monitor the provision of vocational rehabilitation of employees with disabilities and determine the adequacy and sufficiency of such rehabilitation. Where, in the judgment of the Mayor, the employer fails or refuses to provide adequate and sufficient rehabilitation services as required in subsection (a) of this section, the Mayor may order that the supplier of such services be changed, and may use the special fund provided in § 32-1543 in such amounts as may be necessary to procure such services, including necessary prosthetic appliances or other apparatus. When the Mayor pays for such services out of the special fund, he shall institute proceedings against such employer to recover the amounts expended.

(d) If the employer fails to provide the medical or other treatment, services, supplies, or insurance coverage required to be furnished by subsections (a) and (a-1) of this section, after request by the injured employee, such injured employee may procure the medical or other treatment, services, supplies, or insurance coverage and select a physician to render treatment and services at the expense of the employer. The employee shall not be entitled to recover any amount expended for the treatment, service, or insurance coverage unless the employee requested the employer to furnish the treatment or service or to furnish the health insurance coverage and the employer refused or neglected to do so, or unless the nature of the injury required the treatment or service and the employer or his superintendent or foreman

having knowledge of the injury neglected to provide the treatment or service; nor shall any claim for medical or surgical treatment be valid or enforceable, as against the employer, unless within 20 days following the 1st treatment the physician giving the treatment furnishes to the employer and the Mayor a report of the injury or treatment, on a form prescribed by the Mayor. The Mayor may, however, excuse the failure to furnish such report within 20 days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment or to an examination by a physician selected by the employer, or to accept vocational rehabilitation the Mayor shall, by order, suspend the payment of further compensation, medical payments, and health insurance coverage during such period, unless the circumstances justified the refusal.

(e) Whenever, in the opinion of the Mayor, the injured employee or his employer, a physician has improperly estimated the degree of permanent disability or the extent of temporary disability occasioned by the injury or where in the opinion of such parties a physician recommends a treatment for an injury not generally recognized by the medical community the Mayor shall cause such employee to be examined by another physician selected by the Mayor and to obtain from such physician a report containing his estimate of such disabilities and a recommendation for treatment. If the report of such physician shows that the estimate of the former physician is improper or that the treatment recommended is not one that is generally recognized in the medical community, the Mayor shall have the power in his discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, or, in appropriate cases, to the special fund.

(f) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons and shall be subject to regulation by the Mayor.

(g) The liability of an employer for medical treatment as provided in this section shall not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ, or suit has been brought against such 3rd party. The employer shall, however, have a cause of action against such 3rd party to recover any amounts paid by him for such medical treatment in like manner as provided in § 32-1535(b).

(h) When an employer and employee so agree in writing, nothing in this chapter shall be construed to prevent an employee, whose injury or disability has been established in accordance with the provisions of this chapter, from relying in good faith, on treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, by a duly accredited practitioner thereof, and having nursing services appropriate therewith, without suffering loss or diminution of the compensation benefits under this chapter; provided, the employee shall submit to all physical examinations required by this chapter.

(i) The employee and employer are entitled upon request to all medical reports made pursuant to claims arising under this chapter.

(July 1, 1980, D.C. Law 3-77, § 8, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(c), 37 DCR 6890; Apr. 16, 1999, D.C. Law 12-229, § 2(d), 46 DCR 891; Apr. 24, 2007, D.C. Law 16-305, § 48(b), 53 DCR 6198.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-307.

##### *Effect of Amendments*

D.C. Law 16-305, in subsec. (c) substituted "employees with disabilities" for "disabled employees".

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

For Law 16-305, see notes following § 32-241.

##### *Miscellaneous Notes*

Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

## **§ 32-1508. COMPENSATION FOR DISABILITY.**

Compensation for disability shall be paid to the employee as follows:

- (1) In case of total disability adjudged to be permanent, 66 2/3% of the employee's average weekly wages shall be paid to the employee during the continuance thereof. Loss of both hands, or both arms,

or both feet, or both legs, or both eyes, or of any 2 thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined only if, as a result of the injury, the employee is unable to earn any wages in the same or other employment;

(2) In case of disability total in character but temporary in quality, 66 2/3% of the employee's average weekly wages shall be paid to the employee during the continuance thereof;

(3) In case of disability partial in character but permanent in quality, the compensation shall be 66 2/3% of the employee's average weekly wages which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with paragraph (2) or (4) of this subsection respectively, and shall be paid to the employee, as follows:

(A) Arm lost, 312 weeks' compensation;

(B) Leg lost, 288 weeks' compensation;

(C) Hand lost, 244 weeks' compensation;

(D) Foot lost, 205 weeks' compensation;

(E) Eye lost, 160 weeks' compensation;

(F) Thumb lost, 75 weeks' compensation;

(G) First finger lost, 46 weeks' compensation;

(H) Great toe lost, 38 weeks' compensation;

(I) Second finger lost, 30 weeks' compensation;

(J) Third finger lost, 25 weeks' compensation;

(K) Toe other than great toe lost, 16 weeks' compensation;

(L) Fourth finger lost, 15 weeks' compensation;

(M) Compensation for loss of hearing of 1 ear, 52 weeks. Compensation for loss of hearing of both ears, 200 weeks, provided that the Mayor may establish a waiting period, not to exceed 6 months, during which an employee may not file a claim for loss of hearing resulting from nontraumatic causes in his occupational environment until the employee has been away from such environment for such period, and provided further, that nothing in this subparagraph shall limit an employee's right to file a claim for temporary partial disability pursuant to paragraph (5) of this section;

(N) Compensation for loss of more than 1 phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the 1st phalange shall be one half of the compensation for loss of the entire digit;

(O) Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot;

(P) Compensation for loss of binocular vision or for 80% or more of the vision of an eye shall be the same as for loss of the eye;

(Q) Compensation for loss of 2 or more digits, or 1 or more phalanges of 2 or more digits, of a hand or foot, may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot;

(R) Compensation for permanent total loss of use of a member shall be the same as for loss of the member;

(S) Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member. Benefits for partial loss of vision in 1 or both eyes, or partial loss of hearing in 1 or both ears shall be for a period proportionate to the period benefits are payable for total bilateral loss of vision or total binaural loss of hearing as such partial loss bears to total loss;

(T) The Mayor shall award proper and equitable compensation for serious disfigurement of the face, head, neck or other normally exposed bodily areas not to exceed \$7,500;

(U) In any case in which there shall be a loss of, or loss of use of, more than 1 member or parts of more than 1 member set forth in subparagraphs (A) to (S) of this paragraph, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where 1 injury affects only 2 or more digits of the same hand or foot, subparagraph (Q) of this paragraph shall apply; and

(U-i) In determining disability pursuant to subparagraphs (A) through (S) of this subsection, the most recent edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment may be utilized, along with the following 5 factors:

- (i) Pain;
- (ii) Weakness;
- (iii) Atrophy;
- (iv) Loss of endurance; and
- (v) Loss of function.

(V)(i) In other cases the employee shall elect:

(I) To have his or her compensation calculated in accordance with the formula set forth in either sub-subparagraph (ii)(I) or (II) of this subparagraph; and

(II) To receive the compensation at the time the employee returns to work or achieves maximum medical improvement.

(ii) The compensation shall be 66 2/3% of the greater of:

(I) The difference between the employee's actual wage at the time of injury and the average weekly wage, at the time of injury, of the job that the employee holds after the employee has a disability; or

(II) The difference between the average weekly wage, at the time the employee returns to work, of the job that the employee held before the employee had the disability and the actual wage of the job that the employee holds when the employee returns to work.

(iii) If the employee voluntarily limits his or her income or fails to accept employment commensurate with the employee's abilities, the employee's wages after the employee becomes disabled shall be deemed to be the amount the employee would earn if the employee did not voluntarily limit his or her income or did accept employment commensurate with the employee's abilities. Notwithstanding the provisions of this section, in the case of injury occurring on or after April 16, 1999, the periods of compensation set forth in subparagraphs (A) through (S) of this paragraph shall each be reduced by a proportion of 25% of the stated period of weeks, rounded upward to the nearest whole week.

(W) The compensation and remuneration payable to a professional athlete claimant pursuant to subparagraph (V)(ii) of this paragraph shall be determined by referring to the date of the claimant's disability and a date that is not later than the date on which the claimant's employment as a professional athlete would have ended, as determined pursuant to § 32-1501(17C), if the disability for which he or she seeks compensation and remuneration pursuant to subparagraph (V)(ii) of this paragraph had not occurred.

(4) Any compensation to which any claimant would be entitled under paragraph (3) of this section, excepting paragraph (3)(V) of this section, shall, provided the death arises from causes other than the injury, be payable in full to and for the benefit of the persons following:

(A) If there be a surviving spouse or domestic partner and no child of the deceased to such spouse or domestic partner;

(B) If there be a surviving spouse or domestic partner and surviving child or children of the deceased, one half shall be payable to the spouse or domestic partner and the other one half to the surviving child or children;

(C) The Mayor may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement, the appointment for such a purpose shall not be necessary;

(D) If there be a surviving child or children of the deceased but no surviving spouse or domestic partner, then to such child or children;

(E) If there be no surviving spouse or domestic partner and no surviving children, such unpaid amount of the award shall be paid to the survivors specified in § 32-1509 (other than a spouse, domestic partner, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in § 32-1509(4), but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each.

(5) In case of temporary partial disability, the compensation shall be 66 2/3% of the injured employee's wage loss to be paid during the continuance of such disability, but shall not be paid for a period exceeding 5 years. Wage loss shall be the difference between the employee's average weekly wage before the employee had the disability and the employee's actual wages after the employee had the disability. If the employee voluntarily limits his income or fails to accept employment commensurate with his abilities, then his wages after the employee had the disability shall be deemed to be the amount he would earn if he did not voluntarily limit his income or did accept employment commensurate with his abilities.

(6)(A) If an employee receives an injury, which combined with a previous occupational or nonoccupational disability or physical impairment causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability and shall be the payment of:

- (i) All medical expenses;
- (ii) All monetary benefits for temporary total or partial injuries; and
- (iii) Monetary benefits for permanent total or partial injuries up to 104 weeks.

(B) The special fund shall reimburse the employer solely for the monetary benefits paid for permanent total or partial injuries after 104 weeks.

(C) The requirements of this paragraph shall apply to injuries occurring prior to April 16, 1999.

(7) In each case, payment of benefits shall be 66 2/3% of the employee's average weekly wage.

(8) The Mayor may approve lump-sum settlements agreed to in writing by the interested parties, discharging the liability of the employer for compensation, notwithstanding §§ 32-1516 and 32-1517, in any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or individuals entitled to benefits pursuant to § 32-1509. The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to § 32-1530. These settlements shall be the complete and final dispositions of a case and shall be a final binding compensation order.

(9) Repealed.

(10) An award for disability may be made after the death of an injured employee from causes other than work-related injury. If the award made is for permanent partial disability, pursuant to paragraph (3)(A) through (U) of this section, the award shall be payable in full pursuant to paragraph (4) of this section. If the award made is for any other category of disability, the amount of the award shall be computed from the date of the injury to the date of death, and shall be payable in full in the same manner as an award payable pursuant to paragraph (4) of this section.

(July 1, 1980, D.C. Law 3-77, § 9, 27 DCR 2503; May 10, 1989, D.C. Law 7-231, § 44, 36 DCR 492; Mar. 6, 1991, D.C. Law 8-198, § 2(d), 37 DCR 6890; Apr. 16, 1999, D.C. Law 12-229, § 2(e), 46 DCR 891; Oct. 14, 1999, D.C. Law 13-49, § 12(b), 46 DCR 5153; Apr. 24, 2007, D.C. Law 16-305, § 48(c), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 31(d), 55 DCR 6758; Sept. 26, 2012, D.C. Law 19-171, § 37(b), 59 DCR 6190.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-308.

##### *Effect of Amendments*

D.C. Law 13-49 made a clarifying technical amendment.

D.C. Law 16-305, in par. (3)(V)(ii), substituted "has a disability" for "becomes disabled" and "had the disability" for "became disabled"; and in par. (5), substituted "the employee had the disability" for "becoming disabled".

D.C. Law 17-231, in par. (4), substituted "spouse or domestic partner" for "widow or widower"; and, in par. (4)(E), substituted "surviving spouse or domestic partner" for "surviving spouse" and substituted "spouse, domestic partner, or child" for "wife, husband, or child".

D.C. Law 19-171 made a technical amendment to the enacting clause of D.C. Law 17-231, § 31(d), that did not change the text of the section.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

For Law 13-49, see notes following § 32-1501.

For Law 16-305, see notes following § 32-241.

For Law 17-231, see notes following § 32-408.

Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-

397, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 20, 2012, and April 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to both Houses of Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

*Miscellaneous Notes*

Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

## **§ 32-1509. COMPENSATION FOR DEATH.**

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(1) Reasonable funeral expenses not exceeding \$5,000.

(2) If there be a surviving spouse or domestic partner and no child of the deceased, to such surviving spouse or domestic partner 50% of the average wages of the deceased, for as long as the surviving spouse or domestic partner does not remarry or enter into a domestic partnership, with 2 years' compensation in 1 sum upon remarriage or entry into a domestic partnership; and if there be a surviving child or children of the deceased, the additional amount of 16 2/3% of such wages for each such child; in case of the death, remarriage, or entry into a domestic partnership of such surviving spouse or domestic partner, if there be 1 surviving child of the deceased employee, such child shall have his compensation increased to 50% of such wages, and if there be more than 1 surviving child of the deceased employee to such children, in equal parts, 50% of such wages increased by 16 2/3% of such wages for each child in excess of 1; provided, that the total amount payable shall in no case exceed 66 2/3% of such wages. The Mayor may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary.

(3) If there be 1 surviving child of the deceased, but no surviving spouse or domestic partner then for the support of such child 50% of the wages of the deceased; and if there be more than 1 surviving child of the deceased, but no surviving spouse or domestic partner then for the support of such children, in equal parts 50% of such wages increased by 16 2/3% of such wages for each child in excess of 1; provided, that the total amount payable shall in no case exceed 66 2/3% of such wages.

(4) If there be no surviving spouse or domestic partner or child or if the amount payable to a surviving spouse or domestic partner and to children shall be less in the aggregate than 66 2/3% of the average wages of the deceased, then for the support of grandchildren or brothers and sisters if dependent upon the deceased at the time of the injury, 20% of such wages for the support of each such person and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury 25% of such wages during such dependency. But in no case shall the aggregate amount payable under this paragraph exceed the difference between 66 2/3% of such wages and the amount payable as herein before provided to surviving spouse or domestic partner and for the support of surviving child or children.

(5) Weekly death benefits paid under this section shall not exceed the average weekly wages of insured employees in the District of Columbia, or \$396.78, whichever is greater.

(6) All questions of dependency shall be determined as of the time of the injury or knowledge by the employee of an occupational disease.

(July 1, 1980, D.C. Law 3-77, § 10, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(e), 37 DCR 6890; Sept. 12, 2008, D.C. Law 17-231, § 31(e), 55 DCR 6758.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-309.

*Effect of Amendments*

D.C. Law 17-231 substituted "surviving spouse or domestic partner" for "widow or widower" throughout the section; and rewrote par. (2), which had read as follows:

"(2) If there be a widow or widower and no child of the deceased, to such widow or widower 50% of the average wages of the deceased, during widowhood, or widowerhood, with 2 years' compensation in 1 sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16 2/3% of such wages for each such child; in case of the death or remarriage of such widow or widower, if there be 1 surviving child of the deceased employee, such child shall have his compensation increased to 50% of such wages, and if there be more than 1 surviving child of the deceased employee to such children, in equal parts, 50% of such wages increased by 16 2/3% of such wages for each child in excess of 1; provided, that the total amount payable shall in no case exceed 66 2/3% of such wages. The Mayor may, in his discretion,



require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary."

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

For Law 17-231, see notes following § 32-408.

*Miscellaneous Notes*

Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

## **§ 32-1510. OCCUPATIONAL DISEASE.**

In case of pneumoconiosis, such as silicosis and asbestosis, radiation diseases, and any other generally recognized occupational disease, liability for compensation rests with the employer of the last known exposure.

(July 1, 1980, D.C. Law 3-77, § 11, 27 DCR 2503.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-310.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1511. DETERMINATION OF AVERAGE WEEKLY WAGE.**

(a) Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

- (1) If at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage;
- (2) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by 12 and divided by 52;
- (3) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by 52;
- (4) If at the time of injury wages are fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by 26 the total wages the employee earned in the employ of the employer in the 26 consecutive calendar weeks immediately preceding the injury. If the employee has been in the employ of the employer less than 26 weeks, the total wages referred to in paragraph (3) of this subsection shall be the amount the employee would have earned had the employee been employed by the employer for the full 26 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation; or
- (5) If it be established that the employee, when injured, was a minor or a student as defined in § 32-1501(18) and that under normal conditions his wages should be expected to increase during the period of disability, whether such disability be temporary, partial, or permanent in character, the fact shall be considered in arriving at his average weekly wage.
- (6) If the injured employee has not worked in this employment during substantially the whole of the period, the employee's average weekly wage shall consist of 130 times the average daily wage or salary, divided by 26 weeks, which an employee of the same class working substantially the whole of the immediately preceding period in the same or similar employment, in the same or a similar neighboring place, shall have earned in the employment during the days when so employed.

(b) The terms "average weekly wage" and "total wages" as used in this section shall include reasonable value for board and lodging received from the employer plus gratuities declared for tax purposes by the employee.

(July 1, 1980, D.C. Law 3-77, § 12, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(f), 46 DCR 891; Oct. 14, 1999, D.C. Law 13-49, § 12(c), 46 DCR 5153.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-311.

*Effect of Amendments*

D.C. Law 13-49 in subsec. (a)(6) inserted the phrase "divided by 26 weeks," after the phrase "salary,".

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

For Law 13-49, see notes following § 32-1501.

## **§ 32-1512. GUARDIAN FOR MINOR OR INCOMPETENT.**

The Mayor may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter.

(July 1, 1980, D.C. Law 3-77, § 13, 27 DCR 2503.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-312.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1513. NOTICE OF INJURY OR DEATH.**

(a) Notice of any injury or death in respect of which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death, or 30 days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment. Such notice shall be given to the Mayor and to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or, in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Notice shall be given to the Mayor by delivering it to him or sending it by mail to him, and to the employer by delivering to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or, if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give such notice shall not bar any claim under this chapter:

(1) If the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and its relationship to the employment and the Mayor determines that the employer or carrier has not been prejudiced by failure to give such notice; or

(2) If the Mayor excuses such failure on the ground that for some satisfactory reason such notice could not be given; or unless objection to such failure is raised before the Mayor at the 1st hearing of a claim for compensation in respect of such injury or death.

(July 1, 1980, D.C. Law 3-77, § 14, 27 DCR 2503.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-313.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1514. TIME FOR FILING CLAIMS.**

(a) Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefor is filed within 1 year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within 1 year after the date of the last payment. Such claim shall be filed with the Mayor. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment. Once a claim has been filed with the Mayor, no further written claims are necessary.

(b) Notwithstanding the provisions of subsection (a) of this section, failure to file a claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is made at the 1st hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subsection (a) of this section shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) Where recovery is denied to any person, in a suit brought at law to recover damages in respect of injury or death, on the ground that such a person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation of time prescribed in subsection (a) of this section shall begin to run only from the date of termination of such suit.

(July 1, 1980, D.C. Law 3-77, § 15, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-314.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1515. PAYMENT OF COMPENSATION.**

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The 1st installment of compensation shall become due on the 14th day after the employer has knowledge of the job-related injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, biweekly, except where the Mayor determines that payment in installments should be made monthly or at some other period.

(c) Upon making the 1st payment and upon suspension of payment for any cause, the employer shall immediately notify the Mayor in accordance with a form prescribed by the Mayor that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation he shall file with the Mayor, on or before the 14th day after he has knowledge of the alleged injury or death and its relationship to the employment, a notice in accordance with a form prescribed by the Mayor stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death and the grounds upon which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is not paid within 14 days after it becomes due, as provided in subsection (b) of this section, there shall be added to such unpaid installment an amount equal to 10% thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subsection (d) of this section, or unless such nonpayment is excused by the Mayor after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in § 32-1522 and an order staying payments has been issued by the Mayor or court. The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(g) Within 16 days after final payment of compensation has been made, the employer shall send to the Mayor a notice, in accordance with a form prescribed by the Mayor, stating that such final payment has

been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Mayor within such time the Mayor shall assess against such employer a civil penalty in the amount of \$100.

(h) The Mayor: (1) May upon his own initiative at any time in a case in which payments are being made without an award; and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation or from the employer, that the right to compensation is controverted, or where payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Whenever the Mayor deems it advisable he may require any employer to make a deposit with the District of Columbia Treasurer to secure the prompt and convenient payment of such compensation, and payments therefrom upon any awards shall be made upon order of the Mayor.

(j) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due. All payments prior to an award, to an employee who is injured in the course and scope of his employment, shall be considered advance payments of compensation.

(k) An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the Mayor, whenever required.

(July 1, 1980, D.C. Law 3-77, § 16, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-315.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1516. INVALID AGREEMENTS.**

(a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose or any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000.

(b) No agreement by an employee to waive his right to compensation under this chapter shall be valid.

(July 1, 1980, D.C. Law 3-77, § 17, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-316.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1517. ASSIGNMENT OF COMPENSATION; EXEMPTION FROM CLAIMS OF CREDITORS.**

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims or creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

(July 1, 1980, D.C. Law 3-77, § 18, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-317.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1518. COMPENSATION AS LIEN AGAINST ASSETS.**

Any person entitled to compensation under the provisions of this chapter shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

(July 1, 1980, D.C. Law 3-77, § 19, 27 DCR 2503.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-318.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1519. COLLECTION OF DEFAULTED PAYMENTS.**

(a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 2 years after such default, make application to the Mayor for a supplementary order declaring the amount of the default. After investigation, notice and hearing, as provided in § 32-1520, the Mayor shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award the Mayor may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the Clerk of the Superior Court of the District of Columbia. Such supplementary order of the Mayor shall be final, and the Court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the Court shall otherwise direct. The Court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the Court.

(b) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Mayor may, in his discretion, and to the extent he shall determine advisable after consideration of current commitments payable from the special fund established in § 32-1540, make payment from such fund upon any award made under this chapter, and, in addition, provide any necessary medical, surgical, and other treatment required by § 32-1507 in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Mayor under this subsection; and for the purposes of enforcing this liability, the Mayor for the benefit of the fund shall be subrogated to all the rights of the person receiving such payment or benefits, including the right of lien and priority provided for by § 32-1518 as against the employer and may by a proceeding in the name of the Mayor under § 32-1520 or under § 32-1522(c), or both, seek to recover the amount of the default or so much thereof as in the judgment of the Mayor is possible, or the Mayor may settle and compromise any such claim.

(July 1, 1980, D.C. Law 3-77, § 20, 27 DCR 2503.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-319.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1520. PROCEDURE IN RESPECT OF CLAIMS.**

(a) Subject to the provisions of § 32-1514, a claim for compensation may be filed with the Mayor in

accordance with regulations prescribed by the Mayor at any time after the first 3 days of disability following any injury, or at any time after death, and the Mayor shall have full power and authority to hear and determine all questions in respect of any claim.

(b) Within 10 days after such claim is filed, the Mayor shall notify the employer and any other person (other than the claimant), whom the Mayor considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered or certified mail.

(c) The Mayor shall make or cause to be made investigations of claims as he considers necessary, which may include processing the claim through a central system to give the Mayor an advisory opinion on the rate and degrees of disability. Upon application of any interested party the Mayor shall order a hearing within 90 days, unless the Mayor grants a special extension of time for the development of facts. The Mayor shall not use pre-hearing conferences to resolve workers' compensation claims. If a hearing on the claim is ordered, the Mayor shall give the claimant and other interested parties at least 10 days notice of the hearing, served personally upon the claimant and other interested parties or sent to the claimant and other interested parties by registered or certified mail. No additional information shall be submitted by the claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor. Within 20 days after a hearing is held, the Mayor shall by order reject the claim or make an award in respect of the claim based on substantial evidence before him. The Mayor shall, by order, reject the claim or make an award in respect of the claim based upon substantial evidence before him, if no hearing is ordered within 20 days after notice is given as provided in subsection (b) of this section.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.

(e) The order rejecting the claim or making the award (referred to in this chapter as a compensation order) shall be filed with the Mayor, and a copy thereof shall be sent by registered or certified mail to the claimant and to the employer at the last known address of each.

(f) An injured employee claiming or entitled to compensation shall submit to such physical examination by a medical officer of the District of Columbia or by a duly qualified physician or panel of physicians designated or approved by the Mayor as the Mayor may require. The place or places shall be reasonably convenient for the employee. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination.

(g) All medical reports submitted by the claimant or any other interested party shall become part of the record, except that the Mayor shall have the discretion to require the testimony at the hearing of any reporting physician. Copies of all medical reports submitted shall be supplied to any party upon request.

(July 1, 1980, D.C. Law 3-77, § 21, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(g), 46 DCR 891.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-320.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1521. PRESUMPTIONS.**

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary:

- (1) That the claim comes within the provisions of this chapter;
- (2) That sufficient notice of such claim has been given;
- (3) That the injury was not occasioned solely by the intoxication of the injured employee; and
- (4) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

(July 1, 1980, D.C. Law 3-77, § 22, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-321.

##### *Legislative History of Laws*

## **§ 32-1521.01. ESTABLISHMENT OF COMPENSATION ORDER REVIEW BOARD.**

(a) There is hereby established a Compensation Order Review Board ("Board") that shall consist of 5 members as follows:

- (1) The Chief Judge of the Office of Hearings and Adjudication ("OHA") within the Department of Employment Services who shall serve as Chairperson; and
- (2) Four Administrative Law Judges from the OHA, who shall:
  - (A) Be appointed by the Chairperson;
  - (B) Have received an overall rating of satisfactory or above in his or her most recent performance review; and
  - (C) Be a member in good standing of the OHA.

(b) The Chairperson shall have the authority to create from among the members of the Board one or more Compensation Order Review Panels ("panel") which shall:

- (1) Consist of 3 members and may include the Chairperson;
- (2) Decide matters before it by majority vote; and
- (3) Be prohibited from discussing the compensation order with the Administrative Law Judge who issued the compensation order while the matter is undergoing review.

(c) The Chairperson shall, within 7 days of an application for review being filed, create and assign a panel to review the application for review; provided, that no member of the panel is the Administrative Law Judge who issued the compensation order that is under review.

(d) The panel shall:

- (1) Review the compensation order for legal sufficiency;
- (2) Dispose of the matter under review by issuing an order affirming the compensation order; reversing the compensation order, in whole or in part, and amending the order based on the panel's findings, or by remanding the order to the issuing Administrative Law Judge for further review; except, that:
  - (A) The panel shall affirm a compensation order that is based upon substantial evidence and is in accordance with this chapter and other applicable laws and regulations and shall not disturb factual findings contained in the compensation order that are supported by substantial evidence; and
  - (B) Any reversal, in whole or in part, shall be supported by a written order, which shall contain the legal and factual basis for the reversal, and may amend the compensation order, in whole or in part, or remand the matter to the issuing Administrative Law Judge for additional findings of fact or conclusions of law and the issuance of a compensation order on remand; and
- (3) Make its disposition within 30 days of being assigned the application for review.

(e) A party aggrieved by the compensation order on remand may appeal it in the same manner as a compensation order.

(July 1, 1980, D.C. Law 3-77, § 22a, as added Dec. 7, 2004, D.C. Law 15-205, § 1102(a), 51 DCR 8441.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Emergency Act Amendments*

For temporary (90 day) addition, see § 1102(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1102(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

#### *Legislative History of Laws*

Law 15-205, the "Fiscal Year 2005 Budget Support Act of 2004", was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

#### *Miscellaneous Notes*

Short title of subtitle J of title I of Law 15-205: Section 1101 of D.C. Law 15-205 provided that subtitle J of title

## **§ 32-1522. REVIEW OF COMPENSATION ORDERS.**

(a) A compensation order shall become effective when filed with the Mayor as provided in § 32-1520, and, unless an application for review has been filed with the Board as provided in subsection (b) of this section, shall become final at the expiration of the 30th day thereafter.

(b)(1) Repealed.

(2) Repealed.

(2A)(A) A party aggrieved by a compensation order may file an application for review with the Board within 30 days of the issuance of the compensation order. A party adverse to the review may file an opposition answer within 15 days of the filing of an application for review.

(B) A Memorandum of Points and Authorities, which sets forth the legal and factual basis for the review or the opposition thereto, shall be filed with an application for review and an opposition answer; no further submissions shall be permitted, unless requested by the reviewing panel.

(3) Pursuant to the District of Columbia Administrative Procedure Act (§ 2- 501 et seq.), any party in interest who is adversely affected or aggrieved by a final decision rendered after review of a compensation order as provided in paragraph (2A) of this subsection or any party in interest who is adversely affected or aggrieved by a compensation order which has been filed as provided in § 32-1520 may petition for review of such decision or order by the District of Columbia Court of Appeals. If any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Mayor, the Court may order such additional evidence to be taken before the Mayor, and to be made part of the record. The Court may remand the case for appropriate action.

(c) If any employer or his officers or agents fail to comply with a compensation order making an award that has become final, any beneficiary of such award, or the Mayor, may apply for the enforcement of the order to the Superior Court of the District of Columbia for enforcement of such order and upon showing that such employer or his officers or agents have failed to comply therewith, the Court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and § 32-1520.

(July 1, 1980, D.C. Law 3-77, § 23, 27 DCR 2503; Dec. 7, 2004, D.C. Law 15-205, § 1102(b), 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-191, § 56, 53 DCR 6794.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 36-322.

#### *Effect of Amendments*

D.C. Law 15-205, in subsec. (a), substituted "an application for review has been filed with the Board" for "proceedings for the suspension or setting aside of such order are instituted"; in subsec. (b), repealed pars. (1) and (2), added par. (2A), and, in par. (3), substituted "(2A) of this subsection or" for "(2) of this subsection, or, if the Mayor has declined to review the order or does not establish a procedure for such review". Prior to amendment, pars. (1) and (2) of subsec. (b) had read as follows:

"(1) Where a compensation order is not in accordance with this chapter, such order may be suspended or set aside, in whole or in part, upon application of any party for review of the order by the Mayor, or, if the Mayor declines to review the order or does not provide for such review as authorized in paragraph (2) of this subsection or if a final decision pursuant to such review is not rendered within the time period established in paragraph (2) of this subsection, then by the District of Columbia Court of Appeals in accordance with paragraph (3) of this subsection.

"(2) The Mayor is authorized to establish an administrative procedure for review of compensation orders raising a substantial question of law or fact. Application for such review shall be made by any party within 30 days from the date a compensation order is filed as provided in § 32-1520. Final decisions issued pursuant to such review shall be rendered within 45 days from the date of the application and shall be based upon the record of the hearing. If a final decision is not rendered within such 45-day period the compensation order shall be considered a final decision for purposes of appeal pursuant to paragraph (3) of this subsection. The findings of fact in the order under review shall be conclusive if supported by substantial evidence in the record, considered as a whole. A case may be remanded for further appropriate action. If any party shall apply to the



Mayor for leave to adduce additional evidence and shall show to the satisfaction of the Mayor that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the initial hearing before the Mayor, the Mayor may order such additional evidence to be taken and to be made a part of the record. The Mayor may modify his findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole. The Mayor may modify or set aside his original order by reason of such modified or new findings of fact. The application by a party for leave to adduce additional evidence shall stop the running of the 45-day period in which a decision by the Mayor must be rendered. If the Mayor remands the case, any party may apply for review within 30 days from the date a new compensation order is filed. A final decision must be rendered within 45 days from the date of the application for review of such new compensation order, and if not rendered within such period, then upon expiration of the 45 days such new compensation order shall be considered a final decision for purposes of paragraph (3) of this subsection. The payment of any amounts required by a compensation order shall not be stayed pending final decision on review unless so ordered on the grounds that irreparable injury would otherwise ensue to the employer."

D.C. Law 16-191, in subsec. (b)(3), validated a previously made technical correction.

#### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 1102(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1102(b) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

#### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For Law 15-205, see notes following § 32-1521.01.

For Law 16-191, see notes following § 32-242.

### **§ 32-1523. APPEARANCE OF CORPORATION COUNSEL FOR MAYOR.**

In any court proceedings instituted under the provisions of this chapter, the Corporation Counsel of the District of Columbia shall appear as attorney or counsel on behalf of the Mayor whether the Mayor is a party to the case or interested, and shall represent the Mayor in any court in which such case may be carried on appeal.

(July 1, 1980, D.C. Law 3-77, § 24, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-323.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1524. MODIFICATION OF AWARDS.**

(a) At any time prior to 1 year after the date of the last payment of compensation or at any time prior to 1 year after the rejection of a claim, provided, however, that in the case of a claim filed pursuant to § 32-1508(a)(3)(V) the time period shall be at any time prior to 3 years after the date of the last payment of compensation or at any time prior to 3 years after the rejection of a claim, the Mayor may, upon his own initiative or upon application of a party in interest, order a review of a compensation case pursuant to the procedures provided in § 32-1520 where there is reason to believe that a change of conditions has occurred which raises issues concerning:

- (1) The fact or the degree of disability or the amount of compensation payable pursuant thereto; or
- (2) The fact of eligibility or the amount of compensation payable pursuant to § 32-1509.

(b) A review ordered pursuant to subsection (a) of this section shall be limited solely to new evidence which directly addresses the alleged change of conditions.

(c) Upon the completion of a review conducted pursuant to subsection (a) of this section, the Mayor shall issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation previously paid, or award compensation. An award increasing or decreasing the compensation rate may be made and shall be effective from the date of the Mayor's order for a review of the compensation case. If, since the date of the Mayor's order for a review of the compensation case, the employer has made any payments of compensation at a rate greater than the rate provided in the new

compensation order, the employer shall be entitled to be reimbursed for the difference in accordance with rules promulgated by the Mayor. If, since the date of the Mayor's order for review of the compensation case, the employer has made any payments of compensation at a rate less than the rate provided in the new compensation order, the employee shall be entitled to the difference as additional compensation in accordance with rules promulgated by the Mayor.

(d) A compensation order issued pursuant to subsection (c) of this section shall be reviewable pursuant to § 32-1522.

(July 1, 1980, D.C. Law 3-77, § 25, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-324.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1525. HEARINGS BEFORE MAYOR.**

(a) In making an investigation or inquiry or conducting a hearing the Mayor shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Prior to the hearing before the Mayor the parties may conduct such discovery, including but not limited to the use of interrogatories and depositions as, in the opinion of the Mayor, will be helpful in determining the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before the Mayor shall be open to the public and shall be reported stenographically or by such other method capable of producing an accurate transcript. The Mayor shall by regulation provide for the preparation of a record of the hearings and other proceedings before the Mayor.

(July 1, 1980, D.C. Law 3-77, § 26, 27 DCR 2503; Sept. 20, 2012, D.C. Law 19-168, § 2172, 59 DCR 8025.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-325.

##### *Effect of Amendments*

D.C. Law 19-168, in the first sentence of subsec. (b), substituted "reported stenographically or by such other method capable of producing an accurate transcript" for "stenographically reported".

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For history of Law 19-168, see notes under § 32-771.

##### *Miscellaneous Notes*

Short title: Section 2171 of D.C. Law 19-168 provided that subtitle R of title II of the act may be cited as "Workers' Compensation Transcription Efficiency Amendment Act of 2012".

### **§ 32-1526. ATTENDANCE OF WITNESSES.**

No person shall be required to attend as a witness in any proceeding before the Mayor at more than 25 miles of the place of the hearing, unless his lawful mileage and fee for 1 day's attendance shall be first paid or tendered to him; but the testimony of any witness including that of an interested party may be taken by deposition or interrogatories according to the rules of practice of the Superior Court of the District of Columbia.

(July 1, 1980, D.C. Law 3-77, § 27, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-326.

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1527. WITNESS FEES.**

Witnesses summoned in a proceeding before the Mayor or whose depositions are taken shall receive the same fees and mileage as witnesses in the Superior Court of the District of Columbia.

(July 1, 1980, D.C. Law 3-77, § 28, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-327.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-15301.

### **§ 32-1528. COSTS IN PROCEEDINGS BROUGHT WITHOUT REASONABLE GROUNDS; PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF COMPENSATION.**

(a) If the trier of fact or court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

(b) If the Mayor or court determines that an employer or carrier has delayed the payment of any installment of compensation to an employee in bad faith, the employer shall pay to the injured employee, for the duration of the delay, the actual weekly wage of the employee for the period that the employee is eligible to receive workers' compensation benefits under this chapter. The penalty shall be in addition to any amount paid pursuant to § 32-1515.

(July 1, 1980, D.C. Law 3-77, § 29, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(f), 37 DCR 6890.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-328.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

##### *Miscellaneous Notes*

Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

### **§ 32-1529. POWERS OF MAYOR.**

(a) The Mayor shall have the power to preserve and enforce order during any such proceedings, to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things in conformity with law which may be necessary to enable him to effectively discharge the duties of his office.

(b) If any person in proceedings before the Mayor disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Mayor shall certify the facts to the Superior Court of the District of Columbia which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the Court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the Court.

(July 1, 1980, D.C. Law 3-77, § 30, 27 DCR 2503.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-329.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

**§ 32-1530. ATTORNEY FEES.**

(a) If the employer or carrier declines to pay any compensation on or before the 30th day after receiving written notice from the Mayor that a claim for compensation has been filed, on the grounds that there is no liability for compensation within the provisions of this chapter, and the person seeking benefits thereafter utilizes the services of an attorney-at-law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the employer or carrier in an amount approved by the Mayor, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final.

(b) If the employer or carrier pays or tenders payment of compensation without an award pursuant to this chapter, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the Mayor shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation, within 14 days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation and thereafter utilizes the services of an attorney-at-law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by physicians employed or selected by the Mayor, as authorized in § 32-1507(e), and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Mayor or court in any such case, an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fee for claimant's counsel in accordance with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier.

(c) In all cases, fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Mayor or any court for review of any actions, award, order or decision, the Mayor or court may approve an attorney's fee for the work done before him or it, as the case may be, by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award, and the Mayor or court shall fix in the award approving the fee such lien and manner of payment.

(d) In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witness and the reasonableness of the fees of expert witnesses must be approved by the Mayor, or the court, as the case may be. The amounts awarded against the employer or carrier as attorney's fees, costs, fees and mileage of witnesses shall not in any respect affect or diminish the compensation payable under this chapter.

(e) Any person who receives any fees, other consideration or any gratuity on account of services rendered as a representative of a claimant, unless such consideration or gratuity is approved by the Mayor or court, or who makes it a business to solicit employment for a lawyer, or for himself in respect of any claim or award for compensation, shall upon conviction thereof for each offense be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(f) At no time shall an attorney's fee be approved in excess of 20% of the actual benefit secured through the efforts of the attorney. This provision applies to all benefits secured through the efforts of an attorney, including settlements provided for under this chapter.

(July 1, 1980, D.C. Law 3-77, § 31, 27 DCR 2503.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-330.

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1531. EMPLOYER RECORD OF INJURY OR DEATH.**

Every employer shall keep a record with respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the Mayor may by regulation require, and shall be available for inspection by an authorized representative of the Mayor or of any agency of the government of the District of Columbia at such times and under such conditions as the Mayor may by regulation prescribe.

(July 1, 1980, D.C. Law 3-77, § 32, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-331.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1532. EMPLOYER REPORTS.**

(a) Within 10 days from the date of any injury or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Mayor a report setting forth: (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Mayor may require. The employer shall also send a copy of the report together with such other information as may be required by the Mayor to the Department of Employment Services. The employer shall send to the employee or the employee's next of kin, by certified mail, return receipt requested, concurrent with the submission of the report to the Department of Employment Services, a statement of the employee's rights and obligations pursuant to this chapter, including the right to file a claim for compensation within one year from the date of injury or death.

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Mayor at such times and in such manner as the Mayor may prescribe.

(c) Any report provided for in subsection (a) or (b) of this section shall not be evidence of any fact stated in such report in any proceeding in respect of such injury or death on account of which the report is made.

(d) The mailing of any such report and copy in a stamped envelope, within the time prescribed in subsection (a) or (b) of this section, to the Mayor shall be a compliance with this section.

(e) Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed \$1,000 for each such failure or refusal.

(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subsection (a) of this section, the limitations in § 32-1514(a) shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subsection (a) of this section.

(g) On receiving the report provided by subsection (a) of this section, the Mayor shall notify the injured employee of the employee's rights and obligations under this chapter.

(July 1, 1980, D.C. Law 3-77, § 33, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(h), 46 DCR 891.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-332.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1533. PENALTY FOR MISREPRESENTATION.**

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed \$1,000 or by imprisonment of not to exceed 1 year, or by both such fine and imprisonment.

(July 1, 1980, D.C. Law 3-77, § 34, 27 DCR 2503.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 36-333.

#### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1534. SECURITY FOR PAYMENT OF COMPENSATION.**

(a) Every employer shall secure the payment of compensation under this chapter: (1) by insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any person or fund, while such person or fund is authorized: (A) under the laws of the United States, the District of Columbia, or of any state, to insure workers' compensation; and (B) by the Mayor to insure payment of compensation under this chapter; or (2) by furnishing satisfactory proof to the Mayor of his financial ability to pay such compensation and receiving an authorization from the Mayor to pay such compensation directly. The Mayor may, as a condition to such authorization, require such employer to deposit with the District of Columbia Treasurer either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Mayor, and subject to such conditions as the Mayor may prescribe, which shall include authorization to the Mayor, in case of default, to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. Any employer securing compensation in accordance with the provisions of this subsection shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this chapter the Mayor may take into consideration the recommendation of any District authority having supervision over carriers. Any carrier so authorized by the Mayor shall maintain a representative in the District of Columbia who can fulfill all of the obligations of the carrier under this chapter and who shall maintain a file of all active claims being serviced by the carrier in the District of Columbia. The Mayor may suspend or revoke the authorization of any carrier to insure payment of compensation under this chapter for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

(July 1, 1980, D.C. Law 3-77, § 35, 27 DCR 2503.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 36-334.

#### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1535. COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE.**

(a) If, on account of a disability or death for which compensation is payable under this chapter, the person entitled to such compensation determines that some person other than those enumerated in § 32-1504(b) is liable for damages, he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of such compensation under an award in a compensation order filed with the Mayor shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within 6 months after such award.

(c) A payment made pursuant to §§ 32-1509 and 32-1540(d)(1) shall operate as an assignment to the employer of all rights of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person.

(d) Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to:

(A) The expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the Mayor);

(B) The cost of all benefits actually furnished by him to the employee under § 32-1507;

(C) All amounts paid as compensation; and

(D) The present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Mayor, and the present value of the cost of all benefits thereafter to be furnished under § 32-1507, to be estimated by the Mayor, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative, less one fifth of such excess which shall belong to the employer.

(f) If the person entitled to compensation institutes proceedings within the period ascribed in subsection (b) of this section, the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Mayor determines is payable on account of such injury or death over the amount recovered against such third person.

(g) If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled under this chapter, the employer shall be liable for compensation as determined in subsection (f) of this section, only if the written approval of such compromise is obtained from the employer and his insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise in a form and manner prescribed by the Mayor.

(h) Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.

(i) The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representative if he is killed, by the negligence or wrong of any other person or persons in the same employ; provided, that this provision shall not affect the liability of a person other than an officer or employee of the employer.

(July 1, 1980, D.C. Law 3-77, § 36, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-335.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1536. NOTICE OF COMPENSATION SECURED.**

Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the Mayor, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

(July 1, 1980, D.C. Law 3-77, § 37, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-336.

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1537. DISCHARGE OF LIABILITY.**

In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the Mayor shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer, in respect to such liability, imposed by this chapter upon the employer, as he considers proper in order to effectuate the provisions of this chapter. For such purposes:

- (1) Notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier; and
- (2) Any requirement by the Mayor or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

(July 1, 1980, D.C. Law 3-77, § 38, 27 DCR 2503.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 36-337.

#### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1538. INSURANCE POLICIES.**

(a) Every policy or contract of insurance issued under authority of this chapter shall contain:

- (1) A provision to carry out the provisions of § 32-1537; and
- (2) A provision that insolvency or bankruptcy of the employer and discharge therein or both shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this chapter shall be cancelled prior to the date specified in such contract or policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Mayor and to the employer in accordance with the provisions of § 32-1513(c).

(c)(1) Employers implementing a safe workplace program shall qualify for certification for a 5% premium discount under the employer's workers' compensation insurance policy.

(2) For each policy of workers' compensation insurance issued or renewed in the District on and after April 16, 1999, there shall be granted, by the insurer, a 5% premium reduction pursuant to rules issued by the Department of Insurance, Securities, and Banking, in the premium for the policy if the insured has been certified by the Department of Employment Services, as having a safe workplace program that complies with the requirements of this chapter and has notified its insurer in writing of the certification. Certification of an insured shall be required for each of the 4 years in which the premium discount is granted. Thereafter, any premium discount authorized pursuant to this chapter shall be determined from the experience rating plan of the insured, or in the case of an insured not rated upon experience.

(3) The workers' compensation insurance policy of an insured shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount and to cancellation in accordance with the policy if it is determined by the Department of Employment Services that the insured misrepresented the compliance of its safe workplace program.

(4) The Commissioner of the Department of Banking and Financial Institutions may promulgate rules and regulations necessary for the implementation and enforcement of this section.

(July 1, 1980, D.C. Law 3-77, § 39, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(i), 46 DCR 891; June 11, 2004, D.C. Law 15-166, § 4(jj)(1), 51 DCR 2817; Apr. 13, 2005, D.C. Law 15-354, § 50, 52 DCR 2638.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 36-338.

#### *Effect of Amendments*

D.C. Law 15-166, in par. (2) of subsec. (c), substituted "Department of Insurance, Securities, and Banking" for "Department of Insurance and Securities Regulation".



D.C. Law 15-354, in subsec. (c)(4), substituted "Commissioner of the Department of Banking and Financial Institutions" for "Commissioner of Insurance and Securities".

*Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 4(j)(1) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

For Law 15-166, see notes following § 31-1004.

For Law 15-354, see notes following § 32-402.

## **§ 32-1539. FAILURE TO SECURE PAYMENT OF COMPENSATION.**

(a) Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be assessed a civil fine of not less than \$1,000 and not more than \$10,000; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally and personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the chapter in respect to any injury which may occur to any employee or such corporation while it shall so fail to secure the payment of compensation as required by § 32-1534.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after 1 of his employees has been injured within the purview of this chapter, and with intent to avoid the payment of compensation under this chapter to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000 and not more than \$10,000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) This section shall not affect any other liability of the employer under this chapter.

(July 1, 1980, D.C. Law 3-77, § 40, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(g), 37 DCR 6890.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-339.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 32-1542.01.

*Miscellaneous Notes*

Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

## **§ 32-1540. SPECIAL FUND.**

(a) There is established in the Treasury of the District of Columbia a special fund for the purpose of making payments in accordance with the provisions of §§ 32-1507(c), 32-1507(e), 32-1508(6), and 32-1519(b). Such fund shall be administered by the Mayor.

(b) The Mayor shall be the custodian of the special fund, and all moneys and securities in such fund shall be held in trust by the Mayor and shall not be used for purposes other than those provided by this chapter. The Mayor may invest any portion of the fund which, in the opinion of the Mayor, is not needed for current requirements in bonds or notes of the United States or any federal land bank; provided, that such investments are made pursuant to the Financial Institutions Deposit and Investment Act of 1997.

(c) Neither the District of Columbia nor the Mayor shall be liable in respect of payments authorized under §§ 32-1507(c), 32-1507(e), 32-1508(6) and 32-1519(b) in any amount greater than the money or property deposited in or belonging to such fund.

(d) Payments into such fund shall be made as follows:

(1) Each employer shall pay \$5,000 as compensation for the death of an employee of such employer

resulting from injury where the Mayor determines that there is no person entitled under this chapter to compensation for such death;

(2) All amounts collected as fines and penalties under the provisions of this chapter shall be paid into such fund; and

(3) The total assessment amount shall be allocated between self-insured employers and insured employers based on paid losses for the fiscal year preceding the year in which the assessment is based. The method of assessing self-insured employers shall be based upon paid losses. The method of assessing insured employers shall be a surcharge based on premium as set forth in this subsection. The portion of the total aggregate assessment to be collected from self-insured employers shall be equal to that proportion of the total paid losses during the preceding fiscal year, which the total paid losses of all self-insured employers bore to the total paid losses made by all self-insured employers and insurers on behalf of all insured employers during the preceding fiscal year. The portion of the total aggregate assessment that shall be collected from insured employers shall be equal to that proportion of total paid losses during the preceding fiscal year, which the total paid losses made on behalf of all insured employers bore to the total paid losses made by all self-insured employers and insurers on behalf of all insured employers during the preceding fiscal year.

(4) Any employer which becomes self-insured shall be assessed as if it were insured for 24 months after conversion. The new self-insured employer shall be assessed on the basis of premium. The premium basis shall be equal to its premium for the policy period immediately preceding conversion to be self-insured, multiplied by the percentage change in the self-insured's payroll. The payroll measurement period shall be the fiscal year immediately preceding conversion and the subsequent 2 fiscal years.

(5) On or after September 1, 1999, and annually thereafter, the Mayor shall notify insurers of the premium surcharge rate to be effective for policies written or renewed on and after October 1, 1999, and annually thereafter. The Mayor shall notify self-insured employers, at the same time, of the amount to be assessed against self-insured employers for the following fiscal year. The assessment against self-insurers and the surcharge rate applicable to policies of insured employers, together with amounts generated by paragraphs (1) and (2) of this subsection, shall be sufficient to generate revenue needed to satisfy obligations to the Special Fund. Should the Mayor subsequently determine that the assessments are insufficient to meet the Special Fund's obligations during a fiscal year, the Mayor may assess self-insurers and insured employers to cover any anticipated deficiency, based upon the allocation method set forth in this subsection. Self-insured employers and insurers, on behalf of their policyholders, shall remit any emergency assessment within 30 calendar days of receipt of notice from the Mayor.

(6) Every workers' compensation insurer shall collect, from each of its policyholders, an amount equal to the insured employers' assessment through a surcharge based on premium. These assessments shall include any amounts paid by insurers on behalf of their policyholders to cover an emergency assessment by the Mayor during the previous fiscal year. Assessments when collected shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, shall be treated as separate costs imposed upon insured employers. The total of the assessment imposed by this subsection shall be stated as a separate cost on an insured employer's policy, or on a separate document submitted to the insured employer, and shall be identified as the "Workers' Compensation Policyholder Surcharge." Each assessment shall be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge shall be excluded from the definition of premiums for all purposes, including computation of agents' commissions or premium taxes.

(7) Insurers and self-insurers shall forward to the Special Fund all amounts collected pursuant to this section. These collections shall be for the administration of the Special Fund and shall not be part of the General Fund of the District of Columbia. Any balance remaining at the end of any fiscal year shall not revert to the General Fund and shall be used exclusively to offset any Special Fund assessment required in the next immediate fiscal year.

(e) The special fund shall be audited annually by the Department of Employment Services. The Director of the Department of Employment Services shall file an audited financial report with the Council by March 1st detailing the financial status of the fund as of the end of the preceding fiscal year, including the fund's operation, cash flow, and changes in capital and surplus, using standard accounting principles.

(f) All civil penalties provided for in this chapter shall be collected by civil suit brought by the Mayor.

(July 1, 1980, D.C. Law 3-77, § 41, 27 DCR 2503; Mar. 18, 1998, D.C. Law 12-56, § 3, 44 DCR 6933; Apr. 16, 1999, D.C. Law 12-229, § 2(j), 46 DCR 891; Dec. 7, 2004, D.C. Law 15-205, § 1102(c), 51 DCR 8441.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-340.

#### *Effect of Amendments*

D.C. Law 15-205 rewrote subsec. (e) to read as follows:

"(e) The accounts of the special fund shall be audited in the same manner as similar accounts of the District of Columbia."

#### *Emergency Act Amendments*

For temporary amendment of section, see § 3 of the Financial Institutions Deposit and Investment Emergency Amendment Act of 1997 (D.C. Act 12-175, October 30, 1997, 44 DCR 6918).

For temporary amendment of section, see § 3 of the Financial Institutions Deposit and Investment Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-281, February 25, 1998, 45 DCR 1707).

For temporary (90 day) amendment of section, see § 1102(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) worker's compensation third-party administrator study provisions, see § 1112 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1102(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) worker's compensation third-party administrator study provisions, see § 1112 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

#### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Law 12-56, the "Financial Institutions Deposit and Investment Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-264, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on September 22, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 17, 1997, it was assigned Act No. 12-177 and transmitted to both Houses of Congress for its review. D.C. Law 12-56 became effective on March 18, 1998.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

For Law 15-205, see notes following § 32-1521.01.

#### *References in Text*

The "Financial Institutions Deposit and Investment Act of 1997," referred to in (b), is D.C. Law 12-56.

#### *Miscellaneous Notes*

Short title of subtitle K of title I of Law 15-205: Section 1111 of D.C. Law 15-205 provided that subtitle K of title I of the act may be cited as the Workers' Compensation Third-Party Administrator Study Amendment Act of 2004.

Section 1112 of D.C. Law 15-205 provides: "By January 1, 2005, the Mayor shall provide the Council with an analysis of anticipated financial costs and savings if a third-party administrator would administer the special fund established by section 41 of the District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980 (D.C. Law 3-77; D.C. Official Code § 32-1540)."

## **§ 32-1541. ADMINISTRATION FUND.**

(a)(1) There is established in the Treasury of the District of Columbia a fund to provide for the payment of all expenses to administer the provisions of this chapter. The fund shall be administered by the Mayor.

(2) The Mayor shall determine, for fiscal years commencing on or after October 1, 1999, the cost of administration of this chapter for each fiscal year and shall prorate and assess the costs of administration as provided in subsections (d) and (f) of this section. The cost of administration shall include any expenses that have been incurred, will be incurred, or that will accrue during the fiscal year.

(3) The Mayor shall determine, in each fiscal year commencing on or after September 30 of the fiscal year in which the Workers' Compensation Amendment Act of 1998 becomes effective, prior to the commencement of the fiscal year, the cost of administration of this chapter. The cost of administration shall include any expenses to be incurred or that will accrue during the fiscal year.

(b) The provisions of § 32-1540(b) and (e) shall apply to the fund established pursuant to subsection (a)(1) of this section.

(c) The Mayor shall determine, at the end of each fiscal year, the cost of the administration of this chapter. The cost of administration shall include any expenses to be incurred or which will accrue during the fiscal year.

(d) The total amount of costs to administer this chapter, shall be pro rated among the carriers and self-insurers authorized to insure pursuant to § 32- 1534. The assessment base shall be the total amount of compensation and medical payments that carriers and self-insurers have paid pursuant to this chapter during the preceding fiscal year; provided, however, beginning with the fiscal year commencing on or after October 1, 1999, the Mayor shall have the authority to assess each carrier or self-insured a minimum annual amount of \$1,000.

(e) The assessment for each carrier and self-insurer for the preceding fiscal year shall be redetermined, subsequent to each fiscal year, based upon the actual total amount of compensation and medical payments paid and the administrative costs incurred that year. Adjustments for differences between the beginning year assessment and the year end actual determination, if any, shall be made to the next ensuing assessment.

(e-1) If the Mayor fails to properly determine or redetermine the costs of administering this chapter or fails to properly determine or redetermine the assessment rate or assessments under this section, the assessment rates and assessments shall remain valid and no cause of action shall lie for the Mayor's failure.

(f) The Mayor shall assess each carrier and self-insurer for its pro rata share of the total amount of costs to administer this chapter in the fiscal year pursuant to this section, and shall give written notice by certified or registered mail to each carrier or self-insurer of the assessment against it.

(g)(1) Assessments shall be paid within the time prescribed by the Mayor.

(2) For a period not to exceed 12 months following April 16, 1999, the Mayor may permit payment of the assessment of each carrier or self-insured in quarterly installment payments.

(h) If a deficit is projected to occur in the administration of the fund created pursuant to subsection (a) of this section, prior to the end of the fiscal year, the Mayor is authorized to implement an emergency assessment in an amount deemed necessary to avoid the deficit. Self-insurers and carriers, on behalf of their policyholders, shall remit the emergency assessment within 30 calendar days of receipt of the assessment.

(i) The Mayor is authorized to promulgate rules deemed necessary or appropriate to carry out the purposes of this section, including provisions for making and preserving appropriate records, paying of assessments, inspecting these records, and the submission by carriers and self-insurers of reports prescribed by the Mayor.

(j) If a carrier or self-insurer fails to pay the assessment referred to in subsection (f) or (h) of this section, or to make and preserve records in the form and manner required by the Mayor, to file a report in the form and manner required by the Mayor, or to allow the Mayor to inspect records required by rules issued pursuant to this section, the Mayor may suspend or revoke the authorization of a carrier to insure for workers' compensation or a self-insurer to act as a self-insurer pursuant to this chapter.

(k) The administration fund shall be audited annually by the Department of Employment Services. The Director of the Department of Employment Services shall file an audited financial report with the Council by March 1st detailing the financial status of the fund as of the end of the preceding fiscal year, including the fund's operation, cash flow, and changes in capital and surplus, using standard accounting principles.

(July 1, 1980, D.C. Law 3-77, § 42, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(k), 46 DCR 891; Dec. 7, 2004, D.C. Law 15-205, § 1102(d), 51 DCR 8441; Sept. 24, 2010, D.C. Law 18-223, § 2193, 57 DCR 6242.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-341.

##### *Effect of Amendments*

D.C. Law 15-205 added subsec. (k).

D.C. Law 18-223 added subsec. (e-1).

##### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 1102(d) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1102(d) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2193 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

For Law 15-205, see notes following § 32-1521.01.

For Law 18-223, see notes following § 32-241.

*References in Text*

The effective date of the Workers' Compensation Amendment Act of 1998, referred to in (a)(3), is April 16, 1999.

*Miscellaneous Notes*

Section 2193(b) Of D.C. Law 18-223 provides:

"(b) This section shall apply as of July 1, 1980."

## **§ 32-1542. RETALIATORY ACTIONS BY EMPLOYER PROHIBITED.**

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter. Any employer who violates this section shall be liable to a penalty of not less than \$100 or more than \$1,000, as may be determined by the Mayor. All such penalties shall be paid to the Mayor for deposit in the special fund as described in § 32-1540, and if not paid may be recovered in a civil action brought in the Superior Court of the District of Columbia. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination; provided, that if such employee ceases to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

(July 1, 1980, D.C. Law 3-77, § 43, 27 DCR 2503.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-342.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

## **§ 32-1542.01. ESTABLISHMENT OF COMMISSION.**

(a) There is established the Workers' Compensation Insurance Study Commission ("Commission").

(b) The Commission shall:

- (1) Review the history of workers' compensation insurance rate structures in the District of Columbia since the enactment of this chapter;
- (2) Review the procedure for setting new workers' compensation insurance rates;
- (3) Study alternative structures and mechanisms for setting new workers' compensation insurance rates;
- (4) Study the possibility of the District of Columbia selling workers' compensation insurance to private employers; and
- (5) Report annually to the Mayor and the Council of the District of Columbia on the Commission's findings.

(c) To the extent feasible, the Mayor shall provide staff support to the Commission from the Department of Employment Services.

(d)(1) The Commission shall consist of:

(A) Two ex officio members who shall be the Directors of the Department of Consumer and Regulatory Affairs and the Department of Employment Services;

(B) Not more than 6 persons from the general public to serve as members who shall be appointed by the Mayor with the advice and consent of the Council within 45 days of enactment of the District of Columbia Workers' Compensation Equity Amendment Act of 1990; and

(C) The Mayor shall appoint, with the advice and consent of the Council, 1 person from the general public to serve as chairperson of the Commission within 45 days of the enactment of the District of Columbia Workers' Compensation Equity Amendment Act of 1990.

(2) Each member of the Commission shall serve a 3-year term.

(3) The Commission shall appoint other officers and establish rules and procedures as the Commission shall determine.

(4) Any vacancy on the Commission shall be filled in the same manner as the original appointment.

(e) The members of the Commission from the general public shall include representatives from labor, business, the medical community, the insurance industry, and consumer advocates. All members of the Commission shall serve without compensation, but may be reimbursed for reasonable actual expenses incurred in the performance of official duties, pursuant to rules issued by the Mayor in accordance with § 1-611.08.

(f) The Commission shall continue in existence for 3 years at which time the Commission shall terminate unless the Council determines that the Commission shall continue in existence or be reestablished.

(July 1, 1980, D.C. Law 3-77, § 43a, as added Mar. 6, 1991, D.C. Law 8- 198, § 2(h), 37 DCR 6890.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-342.1.

##### *Legislative History of Laws*

Law 8-198, the "District of Columbia Workers' Compensation Equity Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-74, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 24, 1990, it was assigned Act No. 8-261 and transmitted to both Houses of Congress for its review.

##### *References in Text*

The "District of Columbia Workers' Compensation Equity Amendment Act of 1990" referred to in (d)(1)(B) and (d)(1)(C), is D.C. Law 8-198.

##### *Miscellaneous Notes*

Mayor authorized to issue rules: See Historical and Statutory Notes following § 32-1501.

## **§ 32-1542.02. COMMISSIONER OF INSURANCE AND SECURITIES; RATE FILINGS.**

(a) The Commissioner of Insurance and Securities ('Commissioner') shall take into consideration the profits of the insurers when evaluating the rate filing for workers' compensation insurance.

(b) Each rating organization shall file, within 60 days after April 16, 1999, a loss cost filing for new and renewal policies for workers' compensation insurance to be effective on and after April 16, 1999.

(c) The filing shall reflect no less than an 11.3% reduction in benefits. The filing shall be subject to approval or disapproval by the Commissioner, but an approval or disapproval shall be made not later than 60 calendar days after first receipt of the loss cost filing.

(d) Within 30 days of the Commissioner's final decision regarding a filing by a rating organization made pursuant to this section, each insurer writing workers' compensation insurance in the District shall file revised rates for the voluntary market in accordance with this decision. These revised rates shall be applicable to all new and renewal workers' compensation insurance policies effective on or after April 16, 1999. For any policy in effect on April 16, 1999, through the end of the policy period the premium shall be reduced by a percentage which equals the benefit level reduction. With respect to new and renewal policies effective on or after April 16, 1999, and before the final approval of the rates filed pursuant to this section, each workers' compensation insurance carrier shall, not later than 45 days after the rates approved pursuant to this section become final, adjust the premium of the new or renewal policy for the period after April 16, 1999, to reflect the difference between the premium on the policy as issued and the premium which reflects the rates as finally approved.

(July 1, 1980, D.C. Law 3-77, § 43b, as added Apr. 16, 1999, D.C. Law 12- 229, § 2(m), 46 DCR 891.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-342.2

D.C. Law 12-229 added this section.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

### **§ 32-1542.03. ANTI-FRAUD REPORTING REQUIREMENT.**

The Director of the Department of Employment Services shall file an annual anti-fraud report with the Council by March 1st, which shall contain detailed and comprehensive information about the Department's anti-fraud activities relating to Workers' Compensation insurance during the preceding calendar year.

(July 1, 1980, D.C. Law 3-77, § 43c, as added Dec. 7, 2004, D.C. Law 15- 205, § 1102(e), 51 DCR 8441.)

*HISTORICAL AND STATUTORY NOTES*

*Emergency Act Amendments*

For temporary (90 day) addition, see § 1102(e) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1102(e) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

*Legislative History of Laws*

For Law 15-205, see notes following § 32-1521.01.

### **§ 32-1542.04. COMPLIANCE.**

(a) The Director of Employment Services ("Director") shall assign from the workforce in the Workers' Compensation office a staff equal to 5 full time equivalents to the enforcement of employer compliance with Workers' Compensation requirements, including enforcing existing law and referring cases to the Office of the Attorney General for prosecution.

(b) The Director shall file a semi-annual compliance report with the Council by March 31st and by September 30th, which shall contain detailed and comprehensive information about the compliance enforcement activities during the preceding 6 months.

(July 1, 1980, D.C. Law 3-77, § 43d, as added Dec. 7, 2004, D.C. Law 15- 205, § 1102(e), 51 DCR 8441.)

*HISTORICAL AND STATUTORY NOTES*

*Emergency Act Amendments*

For temporary (90 day) addition, see § 1102(f) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1102(f) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

*Legislative History of Laws*

For Law 15-205, see notes following § 32-1521.01.

### **§ 32-1543. APPROPRIATIONS.**

(a) There is hereby authorized to be appropriated such sum as is necessary for the Mayor to administer the provisions of this chapter.

(b) The Mayor shall reclassify Office of Workers' Compensation Hearing Examiners as Administrative Law Judges ("ALJs") and raise their level of compensation.

(c) The Mayor shall develop performance measures and qualifications for the ALJs for the Office of Workers' Compensation.

(d) Within 2 years following April 16, 1999, the Mayor shall submit to the Council an evaluation of the District's workers' compensation program that shall include the following:

(1) An analysis of the impact of provisions contained in this chapter in reducing costs, improving efficiency, and maintaining access to health care;

(2) A recommendation on whether the District government should assume additional administrative

functions related to the workers' compensation program including the statistical analysis and ratemaking now undertaken by the National Council on Compensation Insurance, including an assessment of costs involved;

(3) A recommendation on whether the District should adopt a managed care approach and a preferred provider approach and rationale if such a policy is recommended;

(4) An evaluation of the effectiveness of the Department of Insurance, Securities, and Banking in regulating workers' compensation insurance including the basis of ratemaking decisions and encompassing any recommended changes in law, regulation or administration to improve effectiveness;

(5) An analysis of and recommendation to address the disproportionate burden on District businesses posed by the pre-1982 claims under the Longshore and Harbor Workers' Act including estimates on savings possible if the U.S. Department of Labor is held to administrative cost standards equal to those associated with post-1982 claims;

(6) A recommendation on whether the District should create a "state accident fund" as exists in other jurisdictions as a means to reduce overall premium costs through more effective risk management; and

(7) An evaluation of the current occupational class codes and a recommendation for restructuring if advisable.

(July 1, 1980, D.C. Law 3-77, § 44, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(l), 46 DCR 891; Apr. 3, 2001, D.C. Law 13-229, § 2, 48 DCR 572; June 11, 2004, D.C. Law 15-166, § 4(jj)(2), 51 DCR 2817.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 36-343.

##### *Effect of Amendments*

D.C. Law 13-229 rewrote subsecs. (b) and (c) which had read:

"(b) The Mayor shall study and report to the Council on a proposal to reclassify Office of Workers' Compensation Hearing Examiners as Administrative Law Judges ('ALJs') and to raise their level of compensation.

"(c) The Mayor shall develop performance measures and qualifications for the ALJs for the Office of Workers' Compensation and recommend compensation levels within 90 days after April 16, 1999."

D.C. Law 15-166, in par. (4) of subsec. (d), substituted "Department of Insurance, Securities, and Banking" for "Department of Insurance and Securities Regulation".

##### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 4(jj)(2) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

##### *Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

For legislative history of D.C. Law 12-229, see Historical and Statutory Notes following § 32-1501.

Law 13-229, the "Worker's Compensation Administrative Law Judges Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-878, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-506 and transmitted to both Houses of Congress for its review. D.C. Law 13-229 became effective on April 3, 2001.

For Law 15-166, see notes following § 31-1004.

##### *References in Text*

The Longshore and Harbor Worker's Act, referred to in (d)(5), is codified at 33 U.S.C. § 901 et seq.

## **§ 32-1544. SEVERABILITY.**

Should a court of competent jurisdiction declare any provision of this chapter to be unconstitutional or beyond the authority of the Council of the District of Columbia, such declaration shall have no effect upon any other provision of this chapter.

(July 1, 1980, D.C. Law 3-77, § 45, 27 DCR 2503.)

#### *HISTORICAL AND STATUTORY NOTES*



*Prior Codifications*

1981 Ed., § 36-344.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

**§ 32-1545. EFFECTIVE DATE.**

This chapter shall take effect on 60 days after the expiration of the District of Columbia Workers' Compensation Act Emergency Amendment Act of 1982, after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1).

(July 1, 1980, D.C. Law 3-77, § 47, 27 DCR 2503; Apr. 22, 1982, D.C. Law 4-102, § 2, 29 DCR 1179.)

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 36-345.

*Legislative History of Laws*

For legislative history of D.C. Law 3-77, see Historical and Statutory Notes following § 32-1501.

Law 4-102, the "District of Columbia Workers' Compensation Act of 1979 Amendments Act of 1982," was introduced in Council and assigned Bill No. 4-314, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on February 9, 1982, and February 23, 1982, respectively. Signed by the Mayor on February 26, 1982, it was assigned Act No. 4-161 and transmitted to both Houses of Congress for its review.

*References in Text*

The "District of Columbia Workers' Compensation Act Emergency Amendment Act of 1982," referred to near the beginning of this section, is D.C. Act 4-160. Act 4-160 expired on May 26, 1982. Consequently, this chapter took effect on July 24, 1982.