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Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
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WASHINGTON, D. C. 20004

IN REPLY REFER TO:
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(84-60)

December 20, 1984

OPINION OF THE CORPORATION COUNSEL
SUBJECT: Application of No-Fault Law to On-Duty Police and Fire Fighters.

Theodore Coleman, Chief
District of Columbia Fire Department
1923 Vermont Avenue, N.W.
Washington, D. C.

Dear Chief Coleman:

This will reply to your request dated February 22, 1984, with respect to the application to on-duty police and firefighters of the Compulsory/No-Fault Motor Vehicle Insurance Act, D.C. Law 4-155, effective September 18, 1982, D.C. Code §§35-2101 et seq. (1981) (hereinafter the No-Fault Law). It appears from your memorandum and the attachments, as well as from information received June 25, 1984, from the Metropolitan Police Department, that the following situation prompts your inquiry.

Firefighters and police officers who have been involved in on-duty motor vehicle accidents while operating vehicles owned by the District Government have through their attorney written their departments claiming to be entitled to benefits under the No-Fault Law, in addition to benefits already available to them under special statutory provisions for District police and firefighters. I have concluded that such employees are not entitled to additional benefits from the District government.

This conclusion has a complex statutory background.

For many years, work-related injuries to Federal and District employees were covered by the Federal Employees Compensation Act (FECA), 5 U.S.C. §8101 et seq. FECA is by its terms an exclusive remedy. See, e.g., Griffin v. United States, 703 F.2d 321 (8th Cir. 1983); Mason v. District of Columbia, 395 A.2d 399, 402 (D.C. 1978). That is to say, an employee who

suffers an injury resulting in death or disability in the scope of his employment is limited to the remedies under FECA. See United States v. Lorenzetti, __U.S.__, 104 S.Ct. 2284 (1984); 5 U.S.C. §8116(c). This exclusivity provision was enacted in 1949 to avoid multiple recoveries by injured employees and excessive costs to the United States due to the passage of several acts, such as the Federal Tort Claims Act, waiving sovereign immunity of the United States in certain damage actions. Mason v. District of Columbia, supra, 395 A.2d at 402. Thus it was held that, where FECA applies, that remedy is exclusive for a District of Columbia employee, even though under the facts of a particular case no compensation is payable, or the Act fails to provide for the full extent of the employee's damages. Tredway v. District of Columbia, 403 A.2d 732, 734-735 (D.C. 1979), cert. denied, 444 U.S. 867 (1979). However, District of Columbia police and firefighters have long had a separate system to pay for medical and surgical services and hospital treatment and for the continuation of salary benefits for injuries incurred in the line of duty. Policemen and Firemen's Retirement and Disability Act, 49 Stat. 358, ch. 241 (1935), as amended, D.C. Code §§4-601 et seq. (1981) (the Act). In 1957, Congress amended that Act to prevent double recoveries under it and under FECA. See Brown v. Jefferson, 451 A.2d 74 (D.C. 1982). It has been held that the Act precludes the Government's common-law tort liability to District police and firefighters for injuries incurred in the line of duty:

> Where Congress has established a comprehensive system to compensate injured employees, that scheme should be presumed to be the exclusive remedy against the Government. Anthony v. Norfleet, 330 F. Supp. 1211, 1213 (D.D.C. 1971).

The District of Columbia is no longer under the FECA system because it set up its own disability compensation system in Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act, D. C. Law 2-139, effective March 3, 1979, (D.C. Code, §1-624.1 et seq.) (CMPA). Police and firefighters appointed after January 1, 1980, come under the disability compensation provisions of CMPA. See D. C. Code, §§1-633.2 (a)(B), 1-633.3(1)(P), 1-637.1(m)(4). Brown v. Jefferson, supra, 451 A.2d at 74, 75. The compensation program is similar to the federal program it superseded, providing for medical and related services in case of injury in the performance of duty. CMPA also contains an exclusivity clause much like its federal counterpart. Compare 5 U.S.C. §8116(c) with D.C. Code, §1-624.16(c). In most respects, it is virtually identical to the federal statute save for the substitution of the "District" for "United States". The CMPA exclusivity clause reads as follows:

> The liability of the District of Columbia government or an instrumentality thereof, under this subchapter or any extension thereof with respect to the injury or death

> of an employee, is exclusive and instead of all other liability of the District of Columbia government or the instrumentality to the employee, his or her legal representative, spouse, dependents, next of kin and any other person otherwise entitled to recover damages from the District of Columbia or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative, or judicial proceeding under a workmen's compensation statute or under a federal tort liability statute. This subchapter does not apply to a master or a member of a crew of a vessel.

Thus, prior to the enactment of the No-Fault law, all compensation systems established by statute provided exclusive remedies for District employees, including police and firefighters, who suffered work-related injuries. Furthermore, courts had uniformly held that such statutes precluded further Government liability for work-related injuries.

The voluminous legislative history of the No-Fault law contains no indication that the Council of the District of Columbia ever considered amending or repealing the exclusivity of the compensation system already established for work-related injuries to District employees. Normally, repeals by implication are disfavored. Kremer v. Chemical Construction Corp., 456 U.S. 461, 468 (1982); 1A C. Sands, Statutes and Statutory Construction §§23.09, 23.10 (4th ed. 1972); Morton v. Mancari, 417 U.S. 535, 549-551 (1974).

It is clear from sections 8(a)(1) and 11(b)(2) of the No-Fault Law, D.C. Code §35-2107(a)(1) and 35-2110(b)(2), that enactment of the No-Fault law in no way lessens the duty of employers in general to pay compensation to their workers under existing statutes. Similarly, the No-Fault law has left intact the existing statutory duties of the District as an employer. See section 11(b)(4), D.C. Code §35-2110(b)(4). Thus, it appears from a reading of these sections of the No-Fault Law and pre-existing compensation statutes in pari materia that District employees may recover benefits in excess of the benefits provided from compensation statutes, but they can only recover from insurers other than the District Government. Cf. Freeman v. Ryder Truck Lines, Inc., 259 S.E. 2d 36 (Ga. 1979); Boothman v. Prudential Property and Casualty Insurance Co., 450 A.2d 139 (Pa. Sup. 1982); Augostine v. Pennsylvania National Mutual Casualty Insurance Co., 437 A.2d 985 (Pa. Sup. 1981).

The conclusion reached herein, maintaining the exclusivity of workmen's compensation remedies against the District under the No-Fault law, is in accord with the best reasoned decisions interpreting the no-fault laws of other states. See Wagner v.

National Indemnity Co., 422 A.2d 1061 (Pa. 1980); Mailhut v. Travelers Insurance Co., 377 N.E.2d 681 (Mass. 1978) (persons entitled to workmen's compensation from any State or federal service are excluded from PIP benefits); Swafford v. Transit Casualty Co., 486 F. Supp. 175 (N.D. Ga. 1980); IML Freight, Inc. v. Ottosen, 538 P.2d 296 (Utah 1975); cf., Demetriadis v. United States Postal Service, 465 F. Supp. 597 (E.D.N.Y. 1979) (FECA is exclusive remedy); Liberty Mutual Insurance Co. v. United States, 490 F. Supp. 328 (E.D.N.Y. 1980); Griffin v. United States, 703 F.2d 321 (8th Cir. 1983)*/

Sincerely,

Inez Smith Reid
Corporation Counsel, D.C.

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*/ But see Brown v. Boston Old Colony Insurance Co., 275 S.E. 2d 651 (Ga. 1981)(statute had been amended since Freeman, supra); Mathis v. Interstate Motor Freight System, 289 N.W.2d 708 (Mich. 1980)(both insurers and self-insurers required to pay under Michigan No-Fault statute); Record v. Metropolitan Transit Commission, 284 N.W.2d 542 (Minn. 1979); Affiliated FM Insurance Co. v. Grange Mutual Casualty Co., 641 S.W.2d 49,51 (Ky. App. 1982) citing United States Fidelity & Guaranty Co. v. Smith, 580 S.W. 2d 216 (Ky. 1979) (by implication); Ryder Truck Lines Inc. v. Maiorano, 44 N.Y. 2d 364, 405 N.Y.S. 2d 66, 376 N.E. 2d 1311 (1978); Carriers Insurance Company v. Burakowski, 93 Misc. 2d 100, 402 N.Y.S. 2d 383 (1978); Cady v. Aetna Life & Casualty Co., 113 Misc. 2d 1080, 450 N.Y.S. 2d 679 (1980); Mayor and City Council of Baltimore v. Rose, 47 Md. App. 481, 424 A.2d 160 (Md.Ct.Spec.App. 1981) (fireman entitled to recover from city under uninsured motorist coverage notwithstanding payment of disability benefits under the fire and police employees retirement system); Wellington v. City of New York, 422 N.Y.S. 2d 329, 101 Misc. 2d 970 (Cir.Ct.Bronx 1979) (police could recover sick leave and no-fault before statute was amended to preclude such double recovery).