



7.08 INJURED EMPLOYEE RETURN TO WORK

Applicability

The provisions of this Administrative Rule apply to all City employees except those who are covered under the [Fire and Police Disability and Retirement Fund](#). The rights under ORS 659.A.043 and ORS 659.A.046 for eligible employees expire three (3) years from the date of injury.

Definitions

Reinstatement: Return of a medically stationary injured employee to his/her job at injury.

Re-employment: Return of medically stationary injured employee to an available and suitable job. (Usually occurs when employee is not released to his or her job at injury.)

Available: Under reinstatement, an injured employee's job at injury is available if it exists, regardless of the hiring or assignment of a replacement employee to that position. Under reemployment, a job is available if declared vacant. In the case of both reinstatement and reemployment, the injured employee's right to a position is subject to any seniority or other employment restrictions contained in the applicable collective bargaining agreement.

Medically Stationary: No further material improvement would reasonably be expected from medical treatment or the passage of time.

Suitable: Under the State of Oregon's Administrative rules pursuant to ORS 659.A.043, a suitable job is one that is substantially similar to the former job in compensation, duties, responsibilities, skills, location, duration and shift for which the injured employee is qualified. Under ORS 659.A.046, a suitable job is one that the injured employee is physically capable of performing and is as similar as practicable to the former job in compensation, duties, responsibilities, skills, location, duration and shift. Substantially similar compensation is defined as the *normal* compensation the employer pays to others of the same education, skill and seniority who are employed to do that job. This compensation need not be at the same rate the injured employee was earning at the time of the injury, but must be in compliance with ORS 656 and the Workers' Compensation Division's Administrative Rules.

Reasonable Accommodation: In some cases, the City may be able to, or be required by law, to provide reasonable accommodation to the job at injury to accommodate the employee's medical restrictions. This determination should be made in consultation with the Vocational Counselor (if any) or Risk Management, the City's Return-to-Work Coordinator, and the City Attorney's office.

**Non-Medically Stationary
Temporary Return to Work
Process**

A permanent or probationary employee who has suffered an on-the-job injury will be returned to a suitable assignment as soon after the injury as possible.

1. An injured employee who is not able to return to regular duties because of medical restrictions will be provided, whenever practical, modified/transitional work by the bureau in which the employee was injured. The assignment to such work shall be in writing and state that the assignment is for a maximum of 90 consecutive calendar days. The bureau at injury and Risk Management will review the assignment for possible extension of modified/transitional employment after 90 days.
2. The employee's base wage rate will be the same as what he/she received for the job at injury.
3. The bureau may utilize the employee to perform any suitable assignment not outside the medical restrictions defined by the employee's treating physician.
4. Prior to returning to work, the injured employee must provide a return-to-work release from the treating physician specifying medical restrictions, if any.
5. Bureaus may require injured employees working under sheltered employment to update their medical restrictions weekly or bi-weekly with the treating physician.
6. Employees with injuries resulting in permanent restrictions prohibiting return to the job at injury will be subject to the rules governing re-employment below.

See [Early Return to Work Program Policies and Procedures Manual](#) for further guidelines. The Attached Policy and Procedures Manual is not part of the binding Human Resources Administrative Rule.

**Medically Stationary and
Released to Work
Process
(Reinstatement)**

This section applies to injured employees who are released to their job at injury (reinstatement).

1. Risk Management notifies the injured employee, by certified mail, that they have been released for reinstatement to their job-at-injury. If not already working, the injured employee must make a demand for reinstatement within seven (7) calendar days following receipt of the notice from Risk Management. That demand must be made to the injured employee's bureau at injury, and a copy sent to the City's Return to Work Coordinator.
2. The City's Return to Work Coordinator and the bureau at injury may question the employee's medical ability to do the job and arrange for an Independent Medical Examination (IME). If the IME indicates the employee is medically unable to perform the essential functions of the job, and the employee is medically stationary, the re-employment process below applies.

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3. The City's Return to Work Coordinator immediately determines if there are any limitations on the injured employee's reinstatement rights under ORS 659.415 or collective bargaining agreement.
 4. Within seven (7) calendar days of the date of the employees demand for reinstatement the City's Return to Work Coordinator and the bureau at injury determine if the employee's job at injury is available either at the bureau at injury or another bureau.
 5. If the job at injury is available at the bureau at injury it must be offered to the employee. If the job is not available at the bureau at injury but vacant elsewhere in the City, the job must be offered to the injured employee.
 6. If the job at injury is not available in the bureau or vacant in the City, then within 14 days of the employees demand for reinstatement, follow the re-employment process below at Step 3.
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**Medically Stationary but
Not Released to Job at
Injury
(Re-employment)**

This section applies to injured employees who are not released to their job at injury (re-employment).

1. Risk Management notifies the employee that the treating physician has determined that the injured employee is medically stationary but restricted from returning to their job at injury. The employee must make a demand for re-employment within seven (7) calendar days following receipt of the notice from Risk Management. The demand must be made to the injured employee's bureau at injury, and a copy sent to the Return to Work Coordinator. The hiring bureau, in conjunction with the Bureau of Human Resources and the City Attorney, will determine if reasonable accommodation can be provided that would allow the employee to successfully perform the duties of their job at injury. Careful documentation regarding light duty and final accommodations should be kept by the bureau.
2. If no reasonable accommodation can be made, the bureau at injury has fourteen (14) calendar days from the date of demand from employee to identify an available and suitable job and offer it to the employee.
3. If no job is available and suitable within the bureau at injury, the City's Return to Work Coordinator shall meet with the employee and review a listing of all City job class titles which do not represent a promotion. The Return-to-Work Coordinator shall work with the employee, in consultation with Vocational Counselor or Risk Management if necessary, to identify jobs that may be suitable and within the injured employee's medical restrictions. This list should be developed immediately after Step 2 above. The City's Return to Work Coordinator will also notify the employee whether any of the positions are being recruited for and provide the injured employee with the proper application. The City Return-to-Work Coordinator will send the employee the class specifications of the jobs identified as potentially suitable.
4. The City's Return to Work Coordinator will conduct a continuing search for available work within the job classes identified as potentially suitable.

As potentially suitable jobs become vacant, the Director of Human Resources, or designee, will determine if the injured employee is qualified for the job.

5. If the Director determines the employee is qualified, the attending physician has released the employee to do the job and the City does not contest the employee's ability to do the job, the employee is certified to the job vacancy before any other eligible applicants
6. This process is continued and repeated until the employee is re-employed. If an employee refuses suitable employment for which their doctor has released them to perform, the employee's rights to re-employment under this administrative rule are extinguished.
7. If an injured employee qualifies for re-employment to a job class for which the employee has no status and there are employees on a lay-off for that job class, the laid-off employee's right for recall supercedes the injured employee's right to re-employment. If both employees have status in the job class, higher seniority prevails.

Process for Medical Layoff

In the event the medically stationary employee has exhausted all rights under the reinstatement and re-employment procedures in this rule, the employee may be laid off for medical reasons. [See Administrative Rule on Medical Layoff.](#)

The Bureau of Human Resources will provide instructions to the injured employee being medically laid off concerning his or her rights, if any, to re-employment or reinstatement as provided by ORS 659.A.043 and 659.A.046.

The injured employee may also be entitled to vocational rehabilitation as provided under ORS 656.340. Risk Management, in conjunction with the Bureau of Human Resources, will ensure that the employee is informed of these benefits and services.

Non-Occupational Injuries

If the employee incurs a non-occupational injury, refer to the Administrative Rules on [Sick Leave](#), [Family Medical Leave](#) and [Medical Layoff](#).

Frequently Asked Questions

Attachment A, listing frequently asked questions is not part of the binding Human Resources Administrative Rule.

Administrative Rule History

Adopted by Council March 6, 2002, Ordinance No. 176302
Effective April 5, 2002
September 16, 2005

Attachment A

Frequently Asked Questions

1. What do I do when an employee reports for work after being off due to a Work Comp injury and does not have a return to work (RTW) slip?

An employee cannot return to their regular work or modified work without direction from the treating physician. The employee should be asked to return to the physician for a RTW slip. This requirement is stated on the Employee Responsibilities sheet the employee signs.

2. The employee's modified duty limitations are expiring soon and employee says he/she is ok and doesn't have to see the doctor, can I put him/her back on the job based on statement?

No, an employee cannot work beyond the date of the limitations. You cannot and should not assume anything.

3. How do I know how long a modified duty slip should be good for? Sometimes there is no ending date on the slip.

Ask the employee when they are scheduled again to see the doctor. Call Risk Management as they may have the information you need. If no, Risk Management will call the physician to get the information for you.

4. What if I think I'm providing work within the modified duty release but the employee says he/she can't to the task assigned?

Talk to the employee to determine what task is being assigned that they believe they cannot perform. If you can make a reasonable adjustment do so however, if the task is clearly within the restrictions, the employee should return to the physician for clarification of restrictions.

5. What if I can't find anything for the employee to do?

You may contact Risk Management to see if they can offer suggestions to help. Your Bureau loss prevention person is usually a good resource for this as well. However, if there is no modified duty work or just a few hours per day let Risk Management know and we will pay time loss.

6. What if the employee tells me he/she can do more then the modified duty slip indicates?

Keep the job within the limitations. The employee should return to the doctor to increase his capabilities.

7. Can I call the doctor and get more specific information about the employee's capabilities?

Call the person assigned to the claim, who may have additional information that you do not. They also can access the physician easier.