



## 7.08 INJURED EMPLOYEE RETURN TO WORK

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### 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.

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### Definitions

**Authorized Health Care Provider:** A health care professional who meets the definition of attending physician, or as provided in Oregon Workers' Compensation laws.

**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:** As defined in Oregon Workers' Compensation Law, medically stationary means no further material improvement would reasonably be expected from medical treatment or the passage of time.

**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.

**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.)

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

**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

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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.

**Transitional Duty:** Changes in the work environment to allow an employee with temporary limitations/restrictions to work at tasks that are less physically or mentally demanding than his/her regular work during the employee's recovery from a work related injury/illness. Transitional duties may include job restructuring, assistive devices, workstation modification, reduced hours, or reassignment to another job. Also known as temporary modified duty or light duty.

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## **Early Return to Work Program**

A permanent, temporary 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 temporary medical restrictions will be provided, whenever practical, transitional work by the bureau in which the employee was injured. Transitional work may include temporary changes in the work environment, assigned tasks or the manner by which assigned tasks are completed. The assignment to such work shall be in writing and state that the assignment is for a maximum of 90 consecutive calendar days. The employee's progress while in the Early Return to Work Program will be monitored by Risk Management staff.

Transitional assignments beyond 90 days are extremely rare and in most cases will not exceed a total 90 consecutive days. The bureau at injury and Risk Management will review the assignment for possible extension of transitional duty after 90 consecutive days. If a decision to extend the assignment beyond 90 consecutive days is made, it will occur in accordance with Risk Management protocols, and take into account the particular circumstances of the situation as well as reliable medical information from a qualified medical professional. In no event will a transitional assignment exceed 12 months from the first day of the assignment.

The Early Return to Work Program shall end at any point that the employee's authorized health care provider determines the medical restrictions are expected to be permanent, and that the employee will not be capable of returning to his/her regular work.

The City of Portland may modify, change or discontinue the Early Return to Work Program or conditions of the program at any time.

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 authorized health care provider.

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4. Prior to returning to work, the injured employee must provide a return-to-work release from the authorized health care provider specifying medical restrictions, if any.
  5. Bureaus may require injured employees working under sheltered employment to update their medical restrictions following each visit with the employee's authorized health care provider.
  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.
  7. Injured workers who are temporary employees only have rights to return to a temporary position and in no case does the temporary employee have job rights in excess of the terms of their temporary hire with the City.

See [Early Return to Work Program](#) for further guidelines.

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**Released to Job at Injury  
Process  
(Reinstatement)**

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

1. In accordance with Oregon Workers' Compensation Law, ORS 656.340(3), within five (5) days after notification that the employee's authorized health care provider has released the employee to return to his/her regular work, 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 at his/her regular work. If not working at the time of notification, 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 Risk Management.
2. 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.
3. Risk Management will work with the Bureau of Human Resources to determine if there are any limitations on the injured employee's reinstatement rights under ORS 659A.043 or collective bargaining agreement.
4. Within seven (7) calendar days of the date of the employee's demand for reinstatement the bureau at injury determines if the employee's job at injury is available. If the job at injury is available at the bureau at injury, barring any limitations by statute, collective bargaining agreement or these administrative rules, the job must be offered to the employee.
5. If the job at injury is not available at the bureau at injury but vacant elsewhere in the City, barring any limitations by statute, collective bargaining agreement or these administrative rules, the job must be offered to the injured employee. Risk Management will work with the Bureau of Human Resources to assist in

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facilitating the employee's return to work.

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.
  7. An injured worker who does not accept an offer of reinstatement may lose the right to return to work.
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**Not Released to Job at  
Injury  
(Re-employment)**

This section applies to injured employees who are not released to their job at injury.

1. In accordance with Oregon Workers' Compensation Law, ORS 656.340(3), within five (5) days after notification that the employee's authorized health care provider has released the employee to return to work with permanent restrictions, Risk Management sends the required notification to the employee.

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 Bureau of Human Resources and Risk Management.

The bureau at injury may consult with Risk Management, the Bureau of Human Resources and the City Attorney, in determining if reasonable accommodation can be provided that would allow the employee to successfully perform the duties of their job at injury. Careful documentation regarding the employee's permanent restrictions and any 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, a Bureau of Human Resources representative shall meet with the employee and review a listing of all City job class titles which are suitable (substantially similar to the former job in compensation, duties, responsibilities, skills, location, duration and shift for which the injured employee is qualified) and do not represent a promotion. This list should be developed immediately after Step 2 above. The Bureau of Human Resources representative shall work with the employee, in consultation with the Vocational Counselor or Risk Management if necessary, once suitable job classes are identified to determine if said job classes are within the injured employee's medical restrictions. The Bureau of Human Resources representative will send the employee the class specifications of the jobs identified as suitable.
4. The Bureau of Human Resources representative will conduct a continuing search for available work within the job classes identified as suitable until the employee is reemployed or until his/her rights are terminated in accordance to ORS 659A.046(3).

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When a suitable job becomes 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 authorized health care provider has released the employee to do the job and the City does not contest the employee's ability to do the job, the job must be offered to the employee.
6. 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.
7. An injured worker who does not accept an offer of reemployment may lose the right to return to work.

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**Process for Medical Layoff**

In the event the medically stationary employee is not able to return to work, 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.

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**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](#).

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**Frequently Asked Questions**

[Attachment A](#), listing frequently asked questions is not part of the binding Human Resources Administrative Rule.

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**Administrative Rule History**

Adopted by Council March 6, 2002, Ordinance No. 176302  
Effective April 5, 2002  
September 16, 2005  
Revised July 9, 2007

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## **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.