

**CITY OF OCEANSIDE  
ADMINISTRATIVE DIRECTIVE**

**SUBJECT: Stay at Work/Return to Work Policy**

**NUMBER**  
AD-30

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Supersedes Disability and Reasonable Accommodation Policy (ADA), #05-02, 12/9/09; Modified Duty, 2008-5, 6/8/08, and Reduced Work Hours: (Non-Work-Related Injury/Illness), #03-04, 2/13/04; Stay at Work/Return to Work Policy #AD-30, 4/20/2009

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**I. Purpose**

It is the policy of the City of Oceanside to retain, preserve and maintain its most valuable asset, its employees, at their most productive level. To that end, the City offers two programs designed to assist employees with physical and mental limitations and medical conditions requiring temporary work restrictions and reasonable accommodations.

The City's Stay at Work/Return to Work Program complies with all applicable Federal and State laws and local requirements. In the event of any conflict between this policy and applicable federal or state statutes or binding case law, the applicable statutes and/or case law shall prevail.

The Stay at Work/Return to Work Policy outlines two programs designed to address an employee's work restrictions. Employees with work restrictions will be immediately referred to the Human Resources Department who, in cooperation with the employee, will assess the employee's limitations and determine which of the two programs best meets the employee's work restrictions.

These programs include:

- The Reasonable Accommodation Program which ensures that job applicants and employees with a qualifying disability receive equal employment opportunities through reasonable accommodations as required by applicable Federal and State laws.
- The Transitional Work Program which allows eligible employees with temporary work restrictions to return to a productive and rewarding position at the earliest appropriate time as determined by their treating physician.

**II. Reasonable Accommodation Program**

The City has a duty under State and Federal law to reasonably accommodate those applicants and employees who meet the definition of a qualified individual with a disability and who are otherwise able to perform the essential functions of their job with or without accommodation. The City's Reasonable Accommodation Program is designed to ensure that persons with disabilities have equal access to employment.

The City's Reasonable Accommodation Program has been developed to and will comply with all applicable Titles of the Federal Americans with Disabilities Act

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(ADA), the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), the Fair Employment and Housing Act (FEHA) and Assembly Bill 2222.

To that end, the City is required to:

- Engage in a timely, good-faith interactive process with applicants or employees in need of reasonable accommodation.
- Provide reasonable accommodation for those applicants and employees who, because of their disability, are unable to perform the essential functions of their job on a temporary or permanent basis.

**A. Eligibility Requirements for Reasonable Accommodation**

Applicants and employees with a qualified disability as defined by FEHA are entitled to a reasonable accommodation. Applicants and employees with a qualified disability must be qualified to perform the *essential functions* of the job for which they are applying or the job in which they are employed with or without reasonable accommodations. The essential functions of all City positions are defined in the job description and/or job analysis.

Medical information may be required to determine if the individual meets the FEHA definition of an individual with a qualified disability. The City will request medical documentation of functional limitations to support an accommodation request. Confidentiality of medical information will be protected. Only information that is required regarding the nature of the work recommendations and conditions will be provided to the employee's supervisor.

**B. What is a Qualified Disability**

FEHA defines a person is recognized as "disabled" if he/she:

- Has a physical or mental disability that limits (i.e., makes the achievement of the major life activity difficult) one or more major life activities (construed broadly to include physical, mental, and social activities and working); or has a history of such an impairment known to the employer; or
- Is incorrectly regarded or treated as having or having had such an impairment (whether or not one actually exists); or
- Is regarded or treated as having or having such an impairment that has no presently disabling effects but may become a qualifying impairment in the future.

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**C. What is a Reasonable Accommodation?**

An accommodation is any appropriate measure that would allow the applicant or employee with a disability to perform the essential functions of the job. An accommodation is reasonable if it does not impose an undue hardship on the employer. Examples of reasonable accommodations may include providing leave, relocating the work area, buying or modifying equipment, modifying examinations and policies and/or providing mechanical or electrical aid or other accommodations.

**D. Process for Determining Reasonable Accommodation**

This process applies to all employees with industrial and non-industrial injuries and illnesses who meet the definition of a qualified disability.

Accommodations will be made on an individual basis according to the case-by-case needs and circumstances of the employee and the City. While the City will make every effort to accommodate a qualified individual with a disability, there may be circumstances which impose an undue hardship on the operation of the business. An undue hardship is an action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation.

Upon notification that an employee has a permanent or chronic work restriction or need for an accommodation, the City will utilize the following process for all accommodation assessments:

- Engage in a timely, good-faith interactive process with applicants or employees in need of reasonable accommodation within seven business days of the date the City receives notice of the disability.
- The Human Resources Representative will work with the employee to ensure all the information necessary for conducting an accommodation assessment is obtained and available during the "interactive process".
- The Human Resources Representative will facilitate and participate in the "interactive process" to determine effective reasonable accommodations, if any, for an employee or applicant with a disability. The employee may have a representative of his/her choice present at this meeting.

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- The employee (and the employee's representative), a representative from the employee's department and the Human Resources Representative will discuss the work restrictions or limitations provided by the employee's treating physician and the essential functions of the position as listed in the approved job description for the employee's usual and customary position. They will also discuss ideas for possible accommodations. The focus is on what the employee can do under his or her work restrictions and/or functional limitations. This meeting is recorded for file documentation.
- Discussion items will be recorded by a representative of the Human Resources Department. The recorded information may include the agreed-upon accommodation and start date for work, as well as rate of pay, anticipated hours and other relevant information, when available. Date of meeting and signatures of all participants are recorded on the document.

If the assessment is for a Workers' Compensation claim, the employee shall sign the Notice of Offer of Modified or Alternative Work form (DWC-AD 10133.53) from the Workers' Compensation Division of Human Resources and complete any other form(s) regarding availability of alternate or modified work. Note that Labor Code § 4636 requires that the employer provide written notice of availability of alternate or modified work within thirty (30) calendar days of receipt of doctor's work restrictions.

- If no accommodation can be implemented for the employee's usual and customary position, all positions in the City for which there are openings will be reviewed. The employee must meet the minimum qualifications for the open, alternate position. The essential functions of the alternate position will be reviewed for any accommodation which may be necessary.
- If no accommodation is available or the employee refuses the accommodation offered, the employee may be eligible for Labor Code 4850 benefits or disability retirement and/or may be separated in accordance with applicable due process requirements.

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### **III. Transitional Work Program**

It is the City's philosophy that returning employees to the work environment at the earliest feasible time will not only improve the employee's economic situation, but may also improve the emotional well-being of the injured or ill employee while potentially accelerating the healing process.

The goal of the Transitional Work Program is to return employees who are functionally or physically compromised due to illness or injury, regardless of occupational or non-occupational cause, to meaningful work in a safe and timely manner.

The Transitional Work Program is designed to facilitate recovery by providing the employee with temporary transitional work activities during a period when their injury or illness may not allow them to perform all the essential functions of their assigned job with or without accommodation.

The City developed this program because it understands that employees may have illnesses and/or injuries that are not covered by the Fair Employment and Housing Act, Americans with Disabilities Act or Workers' Compensation, for which they need a temporary accommodation or modification. Where feasible, transitional duty assignments allow the City, the employee and the employee's department or division to make temporary modifications to the duties or work schedule of the employee's existing position or to temporarily assign the employee to duties outside of their existing position.

#### **A. Eligibility Requirements for Transitional Duty Assignments**

If, following the interactive process, it has been determined that there is no reasonable accommodation that would allow the employee to perform the essential functions of his or her job with or without accommodation, the employee will be assessed for eligibility for a transitional duty assignment. Transitional duty assignments are open to all City employees that have been released to work by their treating physician, Agreed Medical Examiner (AME), Qualified Medical Examiner (QME) or Independent Medical Examiner (IME) with temporary work restrictions as defined herein.

A temporary work restriction is a physical or mental limitation expected to last ninety (90) calendar days or less for which there is no reasonable accommodation that will allow the employee to perform all the essential functions of their assigned job.

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If the physician does not specify work restrictions, if there is any question regarding the employee's ability to work, or if there is a need for clarification of the physician's instructions, a representative from Human Resources may contact the physician (with employee's permission) to obtain the necessary information to determine if transitional work is appropriate.

**1. Industrial Injuries:**

Eligibility for employees with industrial (work-related) injuries will be determined based upon the information provided in the Work Status Form completed by the employee's treating physician. Transitional duty assignments for employees with industrial injuries or illnesses will be coordinated by the Workers' Compensation Division of Human Resources.

**2. Non-Industrial Injuries:**

Eligibility for employees with non-industrial injuries will be determined based upon the information provided in the Return to Work Status Form completed by the employee's treating physician. Transitional duty assignments for employees with non-industrial injuries or illnesses will be coordinated by the City's Human Resources Representative. Department supervisors should contact Human Resources immediately if an employee returns to work with any restrictions from their medical provider so an accommodations meeting can be conducted.

**B. Transitional Duty Assignment Determination**

It is the City's intent to provide all eligible employees with an opportunity to return to work as soon as possible; however, it cannot guarantee that a transitional duty assignment will be available at all times and under all circumstances for all eligible employees with temporary work restrictions. The City's ability to provide a transitional duty assignment is dependent upon the availability of transitional work assignments and the needs associated with the employee's temporary restrictions. Each employee with a temporary restriction will be evaluated on a case-by-case basis.

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**1. Industrial Injuries:**

The Workers' Compensation Division of Human Resources will notify the employee and his/her department that he/she is eligible for transitional duty. Notice will include the temporary restrictions included in the Work Status form completed by the employee's treating physician. Under no circumstances will an employee be allowed to return to work prior to providing the City with a Work Status form completed by the employee's treating physician.

The department, in consultation with the Workers' Compensation Division Human Resources Department, will consider the needs of the employee and determine if an appropriate transitional duty assignment is available within the employee's department. If an assignment is not available within the employee's department, the Workers' Compensation Division of Human Resources will attempt to secure a suitable assignment for that employee with another City department.

If the City is unable to provide a transitional duty assignment the employee will be placed in a leave of absence status and may be entitled to temporary total disability or Labor Code 4850 benefits if applicable.

Employees with industrial injuries who refuse available transitional work for which they are otherwise qualified are required to take a leave of absence and may not be entitled to temporary total disability or Labor Code 4850 benefits.

The employee will be entitled to the benefits of any applicable leave for which they qualify and will be required to use their accrued leave as required by City policy.

**2. Non-Industrial Injuries:**

The employee with a non-industrial injury that requires temporary work restrictions must provide the City with a Stay at Work/Return to Work form completed by their treating physician. Under no circumstances will an employee be allowed to return to work prior to providing the City with a Stay at Work/Return to Work form completed by their treating physician.

The department, in consultation with the Human Resources Representative, will consider the needs of the employee and determine

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if an appropriate transitional duty assignment is available within the employee's department. If an assignment is not available within the employee's department, the Human Resources Representative will attempt to secure a suitable assignment for that employee with another City department.

If the City is unable to provide a transitional duty assignment the employee will be placed on a leave of absence and will be entitled to all applicable leave for which they are entitled.

Employees with non-industrial injuries who refuse available transitional work for which they are otherwise qualified are required to take a leave of absence. The employee will be entitled to the benefits of any applicable leave for which they qualify and will be required to use their accrued leave as required by City policy.

**C. Length of Transitional Duty Program**

Eligible employees with approved transitional duty assignments may remain in the program for a maximum of ninety (90) calendar days per injury or illness.

Requests to extend a transitional duty assignment beyond the initial ninety (90)-day period must be submitted in writing to Human Resources and must include an updated Work Status or Stay at Work/Return to Work form, signed by the treating physician, prior to the end of the employee's existing transitional duty assignment. Requests for extensions will be reviewed on a case-by-case basis by the Human Resources Director or his/her designee (non work-related) or Workers' Compensation Division of Human Resources (work-related) in cooperation with the employee and his/her supervisor. Under no circumstance will participation in the transitional duty program for temporary work restrictions exceed one hundred eighty (180) calendar days for the same injury or illness.

Employees who have exhausted their transitional duty program time frame and continue to have temporary work restrictions will be required to take a leave of absence and be subject to the terms and conditions of the City's leave policy. The employee will be entitled to the benefits of any applicable leave for which they qualify during the leave of absence period associated with their temporary illness or injury regardless of whether it is industrial or non-industrial.

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The employee's restrictions will be further assessed through the interactive process to determine if he/she is entitled to applicable benefits under the Reasonable Accommodation Program. The employee will follow the Reasonable Accommodation Program procedures when his/her treating physician determines that the employee has a work restriction for which there is a reasonable accommodation and if/when it is determined that the employee meets the definition of a qualified individual with a disability under FEHA.

**IV. Identification of Employees for Referral**

Supervisors will instruct employees to contact the Human Resources Department regarding all temporary work restrictions and reasonable accommodations. Referrals may also be made by a representative from Human Resources.

**V. Confidentiality**

Confidentiality will be assured for all medical information obtained in the process. Workers' Compensation information given to the supervisor or department designee will be restricted to work status only, estimated length of temporary disability and next appointment, in compliance with state law. Release of medical information forms will be obtained and maintained, as law requires.

**VI. Responsibilities**

**A. Injured or Ill Employee (Workers' Compensation)**

**1. Employee Responsibilities (Workers' Compensation)**

- Report all work injuries, no matter how slight, immediately to your supervisor or the Workers' Compensation Division of Human Resources.
- As soon as practicable, provide the physician's Work Status Report form to the Workers' Compensation Division of Human Resources for the initial medical visit and all subsequent visits.
- If it is not medically possible to return the required form, call the Workers' Compensation Division of the Human Resources Department immediately following your medical appointment and have the doctor fax the form within twenty-four (24) hours to (760) 435-6060.

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- It is the employee's responsibility to provide the Work Status Report form completed by their treating physician. Under no circumstance will an employee be allowed to return to work without written notification from their treating physician releasing them back to work.
- Cooperate with your supervisor and the Workers' Compensation Division of Human Resources in determining whether the transitional duty program or reasonable accommodation program is appropriate given your injury or illness.
- Cooperate with your supervisor and the Workers' Compensation Division of Human Resources in determining the appropriate transitional duty assignment given your injury/illness.
- Cooperate with your supervisor and the Human Resources Representative in determining the appropriate reasonable accommodation through the "interactive process".
- Report to work for your transitional assignment pursuant to the instructions provided by your supervisor or the Workers' Compensation Division of Human Resources.
- Follow your doctor's orders regarding your work restrictions, physical therapy appointments, all follow-up medical appointments, and prescribed medications.
- Notify your supervisor and the Workers' Compensation Division of Human Resources immediately if you are having any difficulty performing your transitional work assignment duties or if you believe you need a reasonable accommodation.
- Consult with your supervisor and the Workers' Compensation Division of Human Resources when modifications need to be made to an existing transitional duty assignment or reasonable accommodation.
- Note: Employees who are not able to participate in a transitional work assignment are still responsible for providing the Work Status Report form to the Workers' Compensation Division of Human Resources following each doctor's visit. These employees are also expected to comply with all doctors' orders, including

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participation in physical therapy and other respective responsibilities listed.

2. Supervisor Responsibilities (Workers' Compensation)

- Report all injuries/illness (work-related or not) to the Workers' Compensation Division of Human Resources, immediately following notice via email or telephone.
- Understand and adhere to the City's injury reporting procedure and Stay at Work/Return to Work policy.
- Consult with Workers' Compensation Division of Human Resources and employee to determine appropriate transitional duty assignment.
- Consult with the Human Resources Representative and the employee in determining the appropriate reasonable accommodation through the "interactive process".
- Maintain (weekly or biweekly) communication with the injured or ill employee throughout the recovery process.
- Work with the Workers' Compensation Division of Human Resources in developing the transitional task bank. The transitional task bank will be used for employees who need temporary work duties that meet their work restrictions or work capabilities.
- Refer all employees eligible for the transitional duty program or reasonable accommodations to Human Resources.
- Immediately report to Human Resources any absences related to the work injury, including those intermittent periods where the injured worker may start and stop transitional work.
- All work-related absences need to be verified with a completed Work Status Report form.
- Supervise workers in transitional duty assignments and with reasonable accommodations just as you would other employees regarding work performance.
- Consult with the employee and the Workers' Compensation Division of the Human Resources Department when modifications

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need to be made to an existing transitional duty assignment or reasonable accommodation.

**B. Injured or Ill Employee (Non-Work-Related)**

**1. Employee Responsibilities (Non-Work-Related)**

- Advise your supervisor immediately of any functional limitations or restrictions which you or your doctor believe require modifications to your existing work duties, no matter how slight.
- Provide the City's Stay at Work/Return to Work form to Human Resources following medical treatment for the initial visit and all subsequent visits. Forms are available on the Citywide Shared Drive and from the Human Resources Department.
- If it is not medically possible to return the form, call the Human Resources Representative immediately following your medical appointment and have the doctor fax the form within twenty-four (24) hours.
- A Stay at Work/Return to Work form must be provided to Human Resources prior to returning to work following a non-work-related illness or injury that results in temporary work restrictions and/or prior to modifying job duties or work schedules. Modified job duties and work schedules related to any illness or injury must be approved by a representative of Human Resources and your supervisor.
- Provide your treating physician with a copy of your job description and the Stay at Work/Return to work form.
- Cooperate with your supervisor and the Human Resources Representative in determining whether the transitional duty program or reasonable accommodation program is appropriate given your injury or illness.
- Cooperate with your supervisor and the Human Resources Representative in determining the appropriate transitional duty assignment, given your injury or illness and existing position.
- Cooperate with your supervisor and the Human Resources Representative in determining the appropriate reasonable accommodation through the "interactive process".

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- Report to work for your transitional assignment pursuant to the instructions provided by your supervisor or the Human Resources Representative.
  - Consult with your supervisor and the Human Resources Representative when modifications need to be made to an existing transitional duty assignment or reasonable accommodation.
  - Follow your doctor's orders regarding your work restrictions, physical therapy appointments, all follow-up medical appointments, and prescribed medications.
  - Notify your supervisor and Human Resources immediately when you are having any difficulty performing your transitional work assignment duties or reasonable accommodation.
  - Note: employees who are not able to participate in a transitional work assignment are still responsible for providing the Stay at Work/Return to Work form to Human Resources following each doctor's visit. Employees are also expected to comply with all doctors' orders, including participation in physical therapy and other respective responsibilities listed.
  - If you are an exempt employee, sign a Reduced Work Schedule/Intermittent Leave form upon approval of a reduced work schedule or intermittent Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA) leave.
2. Supervisor Responsibilities (Non-Work-Related)
- Report all injuries/illness (work-related or not) for which you, the employee or the employee's doctor believe require modifications to the employee's existing work duties, no matter how slight, immediately following notice via email or telephone.
  - Understand and adhere to the City's injury reporting procedure and Stay at Work/Return to Work policy.
  - Consult with the Human Resources Representative and employee to determine the appropriate transitional duty assignment.

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- Consult with the Human Resources Representative and the employee in determining the appropriate reasonable accommodation through the "interactive process".
- Maintain (weekly or biweekly) communication with the injured or ill employee throughout the recovery process.
- Work with the Human Resources Representative in developing the transitional task bank. The transitional task bank will be used for employees who need temporary work duties that meet their work restrictions or work capabilities.
- Refer all employees eligible for the transitional duty program or reasonable accommodation to Human Resources.
- Immediately report to Human Resources any absences related to the work injury, including those intermittent periods where the injured worker may start and stop transitional work.
- All non-work-related absences need to be verified with a completed Stay at Work/Return to Work form. Forms are available on the Citywide Shared Drive and from the Human Resources Department.
- Supervise workers in a transitional duty assignment or with reasonable accommodations just as you would other employees regarding work performance.
- Consult with the Human Resources Representative and the employee when modifications need to be made to an existing transitional duty assignment or reasonable accommodation.

**C. Human Resources Department Responsibilities**

- Establish clear, consistent Stay at Work/Return to Work policies and procedures.
- Upon notice of an employee's work restrictions assess, in consultation with the employee, his/her limitations and determine whether the work restrictions are appropriately addressed through reasonable accommodation or a transitional duty assignment.
- Facilitate the transitional duty assignment process for eligible employees under the Transitional Duty Program to determine

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appropriate transitional duty assignments. Write, review and approve all transitional duty assignments in accordance with this policy.

- Work with City Departments to find suitable transitional duty assignments, if any, outside of the eligible employee's department when needed.
- Facilitate the "interactive process" for qualified individuals with disabilities needing reasonable accommodation. Write, review and approve all reasonable accommodations in accordance with this policy.
- Communicate Stay at Work/Return to Work policies and procedures to supervisors and employees.
- Provide the treating physician with a job description and job analysis which contains an analysis of the physical requirements of the injured employee's job.
- Ensure that the supervisor provides appropriate transitional duty assignment training for employees in the Transitional Duty Program.
- Follow up regularly to see that the employee is recovering, and communicate with department to ensure that assigned tasks are appropriate given the employee's increasing capacity throughout the term of the employee's transitional work program.
- Maintain contact with employee, Workers' Compensation Division of Human Resources, if applicable, and supervisor as the work restrictions change until the employee is released to full duty and released from medical treatment. Monitor employee's next medical appointment and physical therapy if possible and where permitted by law.
- Administer appropriate and available leave.
- If work status or restrictions change, utilize the Interactive Process, to re-evaluate the employee to determine if reasonable accommodations are available and, if not, if continuation in the Transitional Duty Program is appropriate.
- When the employee reaches maximum medical improvement and/ or when the employee has permanent work restrictions, further engage the employee in the "interactive process" for a reasonable

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accommodation assessment of the essential functions of the employee's usual and customary position.

- D. Pay rate for transitional work will be at the rate of pay of the employee's regular position. No overtime will be authorized for transitional duty assignments.

**VII. Annual Evaluation Period**

The annual evaluation period will be extended for all employees who remain in a transitional duty assignment for more than two pay periods. The evaluation period will be extended by the same amount of time in which the employee was on transitional duty assignment. The extension will also apply to step/merit increases that may be associated with the employee's evaluation.

**VIII. Responsibility for Review**

This policy will be reviewed annually and updated by the Human Resources Director.

Approved: 1-15-13  
Date

  
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City Manager