# West Virginia State Agencies Return-to-Work Guidelines

# **Purpose**

This program is intended to provide State Agency employees with an opportunity to continue as valued members of their respective teams while recovering from an injury or illness. The State Agencies wish to minimize the negative impact of injury and illness on both employees and the work place by gradually returning employees to their pre-injury job utilizing transitional duty work during the recovery period, when medically approved.

Transitional duty is either a temporary accommodation or temporary modification of work that is assigned when an employee has temporary limitations and cannot return to his/her regular job. It is a gradual return to work based on an employee's improving condition.

The goal of transitional duty is to return the employee to regular employment upon completion of the program. This program is intended to benefit injured or ill employees by promoting a safe and speedy recovery while keeping their work patterns and income consistent.

# **Definitions**

Americans with Disabilities Act of 1990, as Amended (ADA) - the ADA (Americans with Disabilities Act) is a federal law signed into law on July 26, 1990, extending civil rights protections to individuals with physical or mental disabilities. This law was amended effective January 1, 2009, and is referred to as ADAAA.

**Employee** - any person who has been hired by the State of West Virginia to provide services on a regular basis in exchange for compensation and who does not provide these services as part of an independent business or temporary staffing company.

**Family Medical Leave Act (FMLA)** - a federal law which entitles a qualified employee to 12 work weeks of job protected leave, with or without pay, during any 12-month period for a qualified reason as set forth in the Act.

**Functional Capacity Evaluation (FCE)** - an assessment tool utilized for those who have suffered an injury / illness that may affect employment. It is a standardized way to collect information regarding functional abilities to determine whether or not an employee can return to his/her previous job duties.

**Functional Job Description**-a written document that provides detailed information about the physical requirements of a specific job in the workplace. The job description should include precise measurements of physical demands and classification of each job function as essential or nonessential.

**Healthcare Provider (HCP)** - a person licensed under the laws of a state to practice medicine, or a medical practitioner approved by the Public Employees Insurance Agency.

**Job Function Evaluation** - a description which includes the duties and functional requirements of the position. A Job Function Evaluation assists the healthcare provider in making an informed decision regarding whether an employee can Return-to-Work with or without limitations.

**Limitations/Restrictions** - inabilities that prohibit an employee from performing his/her full job duties. Limitations and restrictions are determined by the treating healthcare provider.

**Modified Work Assignment** - a temporary change in the employee's regular job duties that allows him/her to perform some or all of his/her job tasks to meet any physician restrictions or recommendations for work.

**Return-to-Work (RTW)** - the process by which the employee has been released by the Healthcare Provider (HCP) to return to the workplace with or without restrictions.

**Return-to-Work Coordinator** - the designee within each State Agency responsible for the administration of the Return-to-Work Program within that Agency, facility or department.

**Temporary Transitional Work** - either a temporary accommodation or temporary modification of work that is assigned when an employee cannot return to his/her regular job. It is graduated Return-to-Work based on the employee's changing condition. The goal of transitional duty is to safely return the employee to regular employment upon the completion of the program. Transitional work will occur within the employee's originating department when available.

**Treating Physician** - a physician who has been selected or has provided an employee with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with the employee.

**Work Hardening Program** - an individualized, job-specific program of activity to facilitate Return-to-Work. Work hardening programs use real or simulated work tasks and progressively graded conditioning exercises based on the individual's measured tolerances. It provides a transition between no work and returning to work with or without restriction.

**Work Conditioning Program** – is a program that trains an employee to return to a particular job. The program provides educational sessions, a complete exercise program and simulated work activities. The length of the program can range from two to six weeks.

# **Program Guidelines**

## **Eligibility**

State Agency employees with an injury/illness that temporarily affects their ability to perform their pre-injury job duties are eligible to be assigned to transitional duty. These criteria for eligibility must also be met:

- The employee must be released by the treating physician to participate in the transitional work process.
- The employee must have the potential of returning to his/her pre-injury job and be able to perform the essential functions within 90 days with or without permanent accommodations.

## **Availability of Transitional Work**

Transitional work is handled on a case-by-case basis and is dependent upon the business necessity of the participating Agency. Transitional or modified work is never guaranteed. This program does not constitute an employment contract or a guarantee of continued employment, and the Office of the Insurance Commissioner reserves the right to change these guidelines at any time. An employee may be denied the opportunity to return to work at less than full duty upon request of the appointing authority and approval of the Director of the West Virginia Division of Personnel as provided in subdivision 14.4(h) of the Division of Personnel Administrative Rule.

Transitional work will be assigned that is predominantly within a classification that is of the same or lower pay grade as the current pay grade to which the employee is assigned.

#### **Length of Program and Program Extensions**

All employees will have their transitional work assignments reviewed regularly (at a minimum of every 30 days) or on an as-needed basis by their supervisor and the Return-to-Work Coordinator. A transitional duty assignment will be limited to 90 days. If the time limit is reached, and the employee needs additional time under the transitional duty program, the work assignment may be extended in two-week time periods. A plan of action will be developed that will encourage resolution within the newly established extension of time. This will occur only if:

- the employee's physical condition is improving; and
- the employing work site/location continues to be able to use the employee's services; and
- the work site/location continues to be able to accommodate the injured / ill employee.

Only in exceptional circumstances should transitional work extend beyond 90 days. Extended transitional duty beyond 90 days requires the written approval of appropriate senior management within the participating Agency.

In some instances, the employee may be able to perform transitional work but the restriction becomes permanent. The Agency Human Resources Representative should be contacted to determine if the employee qualifies under the Americans with Disabilities Act (ADA) for permanent accommodations so that interactive dialogue may begin. Please refer to the *Administrative Rule*.

## **Supervision and Work Place Conduct**

The supervisor will oversee the transitional duty employee, taking into consideration his/her medical capabilities and limitations and following the organization's work rules. If an infraction of rules occurs, the supervisor will proceed with implementing the organization's counseling and/or progressive discipline procedures. When transitional duty has resulted in a change in location/area, the temporary supervisor will oversee and coordinate work performance with the employee's originating location. Employees are expected to wear appropriate attire and safety equipment for the job tasks being performed, and comply with all established policies and procedures, i.e. call-ins.

## **Location of Transitional Duty**

Every effort will be made to accommodate the employee within the employee's originating location/area without negatively affecting productivity. This priority of placement will occur:

- Current duties same location
- Modified duties same location
- Different duties same location
- Different duties different location

All offers of transitional duty depend upon the employee being: (a) medically approved to return to work; (b) approved by the applicable Agency to return to work; (c) able to meet the standards for returning to work; and (d) able to perform the work.

#### Types of Modifications

Options for modifications that will be considered include but are not limited to:

- <u>Modify Work Tasks</u> to meet the employee's restrictions. This may mean temporary reassignment of tasks that are unable to be performed safely.
- Modify the Method of completing the work that is assigned to the employee. The time needed to complete a task or the productivity rate could be temporarily altered, in some instances.
- Modify the Work Schedule to allow for physical therapy or work hardening (allowing the employee to work six (6) hours and take leave to attend therapy for two (2) hours, for example), or to permit the employee to return to work part-time and gradually add hours each week to full duty.

- Combine a Set of Duties for the injured / ill employee that are not currently assigned to the employee. This opportunity for work would remain in effect during the course of the transitional duty assignment as long as the location/work site is able to provide these duties and the individual Return-to-Work goals are being met for the injured/ill employee.
- Modify the Work Site to minimize the effect of the impairment on the employee and the Agency. This might mean the addition of work aids, ability to work while seated, reduction or elimination of standing work, or a reduced amount of walking or lifting. Functional or ergonomic changes to how the job is done might be provided.
- Assign the Employee Transitional Duties Within the Location/Work Site that temporarily allows him/her to work within his/her capabilities. These duties must be beneficial to the location or area.
- Assign the Employee to perform duties in Another Location/Work Site that temporarily allows him/her to work within his/her capabilities. These duties must be beneficial to the location or area.
- Revise Tasks for a Limited Period of Time Which are Beyond the Employee's Physical Capabilities for a specified length of time. Time limits will be individually determined on a case-by-case basis, depending upon the physical demands of the job and essential functions of the position.

#### Offers of Transitional Duty Work

Offers of transitional duties will be made verbally and/or in writing (via certified mail). An offer of transitional duty within the employee's restrictions should be considered in the same manner as any other performance expectation. If the employee fails to accept or reject transitional work within 5 days of receipt of the written offer, the offer shall be considered as officially rejected. Failure to accept a bona fide offer of transitional duty within the restrictions outlined by the medical provider may lead to disciplinary action, up to and including termination.

If an employee who has filed a workers' compensation claim fails to accept a bona fide offer of transitional duty, the payment of workers' compensation indemnity benefits could be suspended by the claim representative.

In instances where Transitional Duty work has been refused by the employee, an employee who is otherwise eligible for leave may be dismissed from employment in accordance with the Division of Personnel's *Administrative Rule* Section 12.2.

## **Compensation**

Employees performing transitional work are not guaranteed their same rate of pay as they had prior to their injury/illness. The pay rate will be determined by the position classification specification, salary range, knowledge, skills and abilities required for the transitional duty position as well as general market conditions. Any pay differentials to which the employee is entitled under workers' compensation statutes will be calculated and paid through the claims process.

## **Therapy and Medical Appointments**

Whenever possible, physical therapy and medical appointments should be scheduled to cause the least disruption to the productivity goals and work hours of the location/area. Any reduction in work time which results from a modified work schedule or from physical therapy or work hardening must be requested in accordance with Agency policy/procedure.

## Off-Site Work Hardening/Work Conditioning

Off-Site Work Hardening or Work Conditioning programs can be created in lieu of an onsite transitional Return-to-Work Program. This should be considered when:

- It has been estimated that the employee will require a lengthy (more than 90 days) transition returning to regular work.
- A transitional work assignment may cause significant disruption to productivity.

In order for a referral to work hardening to occur, a functional job description must be available; a set of job tasks simulating actual job demands must be created; and a Functional Capacity Evaluation (FCE) must be conducted. Assignment to a work hardening program can be through the insurance carrier.

#### **Exiting Criteria**

Criteria for exiting the program are:

- Employee is able to return to regular work *before* the end of the approved length of time.
- Employee is able to return to regular work *at the end* of the approved length of time.
- Employee cannot perform transitional duty as verified by the appropriate physician. If this occurs, active medical case management will continue, as well as work hardening and conditioning to facilitate progress toward work return.
- Employee is able to return to work with permanent accommodations (see Permanent Restrictions).

## **Permanent Restrictions**

The State of West Virginia is compliant with the Americans with Disabilities Act (ADA), and every effort will be made to accommodate employees at the work site who have sustained a permanent restriction and qualify under the ADA in a manner consistent with the ADA. Accommodations that pose an undue hardship or present a safety threat will not be made. Permanent restrictions are always coordinated through the specific State Agency Human Resources Representative or ADA coordinator. Permanent restrictions may impact employee classification and compensation. Please refer to the ADA and confer with the Division of Personnel's Employee Relations Representative for guidance.

## **Family Medical Leave**

In all instances, Return-to-Work Program activities will be coordinated with the FMLA (Family Medical Leave Act), where applicable. Please refer to the FMLA or the Division of Personnel's Employee Relations Representative for guidance in coordinating FMLA entitlements with this program.

### **Fraud**

It is the policy of the agencies of the State of West Virginia to fully investigate claims that, at the discretion of the claims administrator, appear to be suspicious in nature, or where excessive lag time between the occurrence and report has occurred, and no adequate explanation has been given for the excessive lag time, or where acceptable progress is not being made in the Return-to-Work process. All suspicions of workers' compensation fraud should be directed to Thomas Judy, SAWC Program Manager at 304-558-6279 ext. 1127.

## **Other Considerations**

- If an employee incurs a subsequent, unrelated injury / illness while performing the temporary transitional work assignment, the assignment may be extended to accommodate the subsequent unrelated injury / illness.
- Transitional work will be available only twice to an individual employee during a 12-month period following the date of injury; however, the availability may be extended at the agencies discretion.

# Roles and Responsibilities

## **Employee Responsibilities**

- Understand the work rules and work in a safe and productive manner.
- Wear appropriate attire and safety equipment for the job tasks being performed.
- Report any incidents / injuries to the supervisor/manager immediately.
- Seek medical attention when it appears prudent to do so. For work-related injuries/illnesses, treatment must be obtained from an approved network provider. If possible, obtain the appropriate Functional Job Description to present to the HCP.
- Submit a completed Attending Physician's Report form (SAWC 219) to the Return-to-Work Coordinator within 24 hours of first visit to the HCP. This can be hand-carried, faxed or e-mailed.
- Complete an agency incident report form for work-related injuries / illnesses. Submit the form to the Supervisor/Human Resources.
- Contact the Return-to-Work Coordinator to complete electronic Report of Occupational Injury or Disease form for the State of West Virginia.
- Complete appropriate leave of absence forms for absences and forward to Human Resource Representative.
- Comply with the medical treatment plan, as directed by the physician.
- Respond to offers of transitional work within 5 days of the receipt of the written offer.
- Maintain regular weekly contact with the Return-to-Work Coordinator.
- Obtain a Physician's Statement of Physical Capabilities form (SAWC-PS-PC) from the treating physician indicating any restrictions or limitations.
- Submit Attending Physician's Report form from the healthcare provider to the Return-to-Work Coordinator every 30 days. This can be hand-carried, e-mailed or faxed.
- Limit time away from work by scheduling appointments and therapy outside of work hours, if possible.
- Participate and cooperate with return to work activities and transitional work, following all work rules.
- Obtain a final Attending Physician's Report Form indicating release to return to work from the treating physician and submit to the designated Return-to-Work Coordinator.
- Complete the SAWC-1 form and provide the form to Zurich. The SAWC-1 form can be found on the OIC website.

# Supervisor/Manager Responsibilities

- Advise all employees to report injuries/illnesses immediately to Zurich using the SAWC-1 form. The SAWC-1 form can be found on the OIC website.
- Allow employees with work-related injuries to seek appropriate medical care when it is prudent for them.

■ Employees may obtain a list of in-network providers by calling 866-426-6763 or consulting the Zurich On-line Directory: <a href="www.zurichna.com">www.zurichna.com</a> then

- Ensure that employees have the appropriate Functional Job Description to take to the healthcare provider.
- Assist with investigating the incident/accident.
- Assist employees, if needed, with completing the incident report form and Assignment of Future Wage forms, within 48 hours of an incident. If not possible, contact the Return-to-Work Coordinator.
- Complete any additional injury report and safety forms as required.
- Advise employees of their on-going responsibility to communicate information about work status to the Return-to-Work Coordinator and to follow call-in procedures as appropriate.
- Work with other team members to identify/approve transitional duty opportunities.
- Make verbal offers of transitional employment, after approved by management, to employees and communicate information to the Return-to-Work Coordinator. Written follow-up is generated by the Return-to-Work Coordinator, if needed.
- Maintain contact with employees who are absent from work, utilizing the Supervisory Script.
- Ensure that employees sign a Temporary Transitional Duty Assignment Agreement.
- Ensure the employee works within restrictions communicated by the Return-to-Work Coordinator.
- Obtain employees' signatures on the Temporary Transitional Duty Assignment when the assignment is complete. Forward the original to the Return-to-Work Coordinator.

#### Designated Return-to-Work Coordinator Responsibilities

- Maintain all original documentation for workers' compensation claims before, during, and after the employee's participation in the Return-to-Work Program. This documentation must be maintained in a file separate from the employee's personnel file.
- Electronically file the Report of Occupational Injury or Disease for West Virginia (SAWC 3) after communicating with employee.
- Distribute letters and forms (SAWC-1 and option form, etc.) for completion throughout the life of the workers' compensation claim and ensure all appropriate forms have been completed and forwarded, when necessary, to the insurance carrier.
- Review and verify information reported on required forms.
- Monitor workers' compensation claims for medical progress and coordinate return to work with employee's supervisor.
- Communicate weekly with employees receiving workers' compensation benefits.
- Notify the insurance carrier of changes in status of workers' compensation claims, including initiation and completion of transitional duty and return to regular work.

- Assist the supervisor/manager to create transitional duty positions. If no positions are available, contact other units, facilities or divisions within the Agency or Department to determine availability of such assignments.
- Offer transitional work to the employee via mail. Written offers shall be sent via certified mail.
- Coordinate FMLA and other applicable leaves, if appropriate, with Human Resource Representative(s).
- Act as a resource for employees and supervisors regarding workers' compensation benefits.
- Contact employees prior to their return to work to request Attending Physician's Report Form verifying release to return to work.

## **Human Resource Representative Responsibilities**

- Maintain all original documentation for leave of absence requests before, during, and after the employee's participation in the Return-to-Work Program. This documentation must be maintained in a file separate from the employee's personnel file.
- Distribute appropriate leave of absence forms throughout the life of the claim and ensure all forms have been completed.
- Communicate with employees on leave periodically, as appropriate.
- Coordinate FMLA and other appropriate leaves, if appropriate, with the Return-to-Work Coordinator.
- Act as a resource for employees regarding leaves of absence and benefits.
- Coordinate all requests for accommodations under the ADA.