

SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

POLICIES & PROCEDURES MANUAL

POLICY 31.050 - RETURN TO WORK/MODIFIED DUTY POLICY

Date: August 24, 2021
Revision No.: 3
Supersedes: May 12, 2020
First Adopted: September 1994

POLICY:

The goal of the San Bernardino Municipal Water Department (Department) is to return employees to productive work as soon as medically possible following an injury or illness. Prior to returning to work, the employee must provide a medical release from their treating provider and specific guidelines regarding medical work restrictions, if any.

This policy works in conjunction with applicable leave provisions in the Memoranda of Understanding for all units as well as applicable State and Federal regulations. If an employee is out of work due to a work-related or personal injury/illness and the absence meets the criteria, the absence will count toward the employee's Family Medical Leave Act (FMLA) and/or California Family Rights Act (CFRA) entitlements.

This policy covers an employee's ability to return to work after experiencing an industrial injury/illness or a personal injury/illness. The policy covers scenarios including, but not limited to:

- Returning to work on a regular schedule with no restrictions
- Returning to work on a regular schedule with temporary work restrictions and receiving a modified duty assignment, if available
- Returning to work on a reduced schedule with or without temporary work restrictions and potentially being placed in a modified duty assignment, if applicable
- Inability to return to work

Temporary Modified Duty:

By definition, modified duty work assignments are temporary. In no way should a modified duty work assignment be perceived as permanent work activity.

Employees who are released to return to work on a reduced schedule

basis or on a regular or reduced schedule basis with temporary job restrictions may be eligible for a modified duty assignment for industrial injury/illness as supported by medical evidence from a treating physician recognized by the workers' compensation carrier as documented on a return to work order. For nonindustrial injury/illness, the temporary modified duty restriction must be documented by a licensed treating provider on a return to work order.

The Department will provide temporary modified duty assignments whenever possible, for a period of up to 90 days. At the end of that time frame, each individual case will be evaluated if the employee has not been medically cleared to return to normal work duties. An extension of temporary modified duty for up to 30 days may be offered on a case-by-case basis if the employee is anticipated to return to work in the usual and customary assignment within a reasonably short period of time and/or if the employee shows improvement and continues to have medical restrictions modified or removed. Any extensions of temporary modified duty will be reviewed every 30 days thereafter based on the above criteria.

Modified duty is a temporary assignment which is for a specified and limited period of time. Modified duty must fulfill a necessary job function appropriate to the employee's skills and level of experience as determined by the employer, and which the employee can perform without violating any medical restriction imposed as a result of a temporary disability, sickness, or injury.

Modified duty assignments are not a matter of right. Modified/alternate tasks will be developed on a case-by-case basis. The Department will make a reasonable attempt to return the employee to his/her regular position, including potential modifications to the job. However, the Department reserves the right to offer temporary modified duty employees any job within the Department that meets the medical restrictions set by the treating provider and does not place the employee in the situation of potentially exacerbating his/her injury/illness. Therefore, a modified duty assignment may result in a change to work location, work hours, shift, etc. The availability and duration of such assignments are limited by departmental needs. Employees working modified duty must communicate any problems or concerns to their supervisor immediately.

During a modified duty assignment, the employee will be compensated at his/her normal rate of pay and the salary will be charged to the employee's regular division/section regardless of the location of the assignment. Employees working temporary modified duty shall not be permitted to work overtime. A modified duty assignment does not in any way create a right for the employee to occupy that or any other position on a regular basis.

If at any time the injured employee's medical restrictions change, he/she must notify supervision as soon as practicable and provide a

copy of the new medical release including any revised medical restrictions.

Temporary modified duty restrictions must be written in the form of specific physical work restrictions and include the probable length of time the restrictions will be in place. Work restrictions such as "light duty" are not specific/descriptive as to actual physical limitations and cannot be accommodated. Examples of specific restrictions include, but are not limited to:

- Limitations on lifting (no lifting over 10 lbs.), walking (walk 50% of shift), stooping, bending, sitting, etc.
- Restricted number of hours to be worked per day or per week, with or without limitations on the duties performed.

Assignments may not be available at all times nor to all employees. While working a modified duty assignment, the employee must make sure that he/she complies with the restrictions outlined by his/her treating physician and notify supervision immediately of any problems or concerns. If the employee's restrictions change at any time, he/she must notify his/her supervisor immediately and give the supervisor and Human Resources a copy of the revised medical release order including any restrictions.

Refusal of a modified duty assignment that complies with the employee's restrictions as specified by the treating provider, or failure to report for a temporary modified duty assignment, may result in the termination of leave benefits and/or separation from employment.

The employee may be required to provide periodic updates from his/her treating physician. Temporary restrictions will be reviewed after 90 consecutive days by the Department, workers' compensation carrier and/or treating physician.

If a modified duty assignment is not available, Human Resources will determine what remaining leave benefits are available to the employee, if any, and/or initiate the Interactive Process (IAP) as necessary.

Modified duty assignments end at or on the earliest of:

- The date the employee is released to his/her regular schedule with no restrictions.
- The date the physician determines the employee has permanent restrictions.
- The date the maximum assignment period ends as specified in this policy.
- The date the employee fails to report for a modified duty assignment.
- The date the employee fails to complete a required medical evaluation without good cause.

- The date the Department is no longer able to provide such duty
- The employee is terminated due to resignation, retirement, or other such occurrence.

If a modified duty assignment is not available, Human Resources will determine what remaining leave benefits are available to the employee, if any, and/or initiate the Interactive Process (IAP) as necessary.

If the restrictions provided on the return to work form from the treating provider are determined to be permanent, the employee is not eligible for a modified duty assignment and the Department will initiate the IAP process to determine whether reasonable accommodation can be offered.

Maximum Medical Improvement (MMI) with Permanent Work Restrictions

If the employee has reached MMI per the treating provider and no work restrictions are noted on the return to work order, or the noted permanent restrictions do not conflict with the usual and customary duties of the employee's regular position, the employee may be returned to his/her regular position.

If permanent restrictions that conflict with the usual and customary duties of the employee's regular position are noted on a treating provider's return to work form, whether an industrial or non-industrial injury/illness, the employee is not eligible for a modified duty assignment. The Department will initiate the IAP process to determine if reasonable accommodation can be offered. The employee will be released from work pending the IAP and will be placed on FMLA leave, if applicable. The employee will be required to use his/her accrued leave during this time and may be eligible for Workers' Compensation benefits or to apply for Short-Term and/or Long-Term Disability benefits depending on the circumstances and type of injury/illness (industrial or non-industrial).

Inability to Return to Work

If an employee is unable to return to work with or without restrictions as noted by a treating physician, the employee must notify Human Resources immediately, and may be required to provide periodic updates from his/her physician every thirty (30) days. In conjunction with this review, the employee may be required to submit to a periodic physical examination as a condition of continued leave.

It is the employee's responsibility while off work to provide Human Resources with a current telephone number, email address, and a mailing address where the employee can be reached.

The employee must notify his/her supervisor immediately of any changes in medical condition.

If an employee has exhausted all protected leave benefits and is still unable to return to work, the employee may request a Leave of Absence Without Pay for consideration by the Water Board. Once an approved Leave of Absence expires, or the Water Board denies a requested extension, the Department will initiate the IAP process to determine if a reasonable accommodation can be offered. If it is determined that a reasonable accommodation cannot be offered, the Department will apply for a disability retirement on behalf of the employee if he/she so qualifies. If the employee does not qualify for a disability retirement or cancels a disability retirement application filed on his/her behalf, he/she will be separated from employment.

Interactive Process (IAP)

When needed to identify or implement an effective, reasonable accommodation for an employee with a disability, or once available leave programs are exhausted for employees unable to return to work, the Department will initiate the IAP process in accordance with State and Federal laws/regulations.

The Department shall initiate an IAP when:

- (1) An employee with a known physical or mental disability or medical condition requests reasonable accommodations, or
- (2) The Department otherwise becomes aware of the need for an accommodation through a third party or by observation, or
- (3) The Department becomes aware of the possible need for an accommodation because the employee with a disability has exhausted leave under the California Workers' Compensation Act, for the employee's own serious health condition under the CFRA (California Family Rights Act) and/or the FMLA (Family Medical Leave Act), or other federal, state, employer or other covered entity leave provisions and yet the employee or the employee's health care provider indicates that further accommodation is still necessary for recuperative leave or other accommodation for the employee to perform the essential functions of the job.
- (4) The employee has reached MMI and either cannot return to work or has permanent work restrictions as specified by the employee's health care provider.

The Department shall engage in a timely, good faith, interactive process as follows:

- (1) The Department shall either grant the employee's requested accommodation, or reject it after due consideration, and

initiate discussion with the employee regarding alternative accommodations.

(2) The employee may be required to provide reasonable medical documentation in a timely manner. The documentation may include a description of physical and/or mental limitations that affect potential workplace accommodation. Such an explanation should include a description of the employee's functional limitation(s) to perform the essential job functions.

(3) If information provided by the employee requires clarification, the Department shall identify the issues requiring clarification, specify any necessary further information, and allow the employee a reasonable time to produce the clarified/supplemental information.

(4) In order to assess a requested accommodation or to advance the interactive process, the Department shall analyze the job involved and the essential functions of the job. The Department may consult experts.

(5) If reassignment to an alternate position is considered as an accommodation, the Department may ask the employee to provide information about his or her educational qualifications and/or work experience that may help find a suitable alternative position for which the employee is qualified and can perform the essential functions. If the employee is reassigned to a classification/position at a lower salary level than his/her previous position, he/she shall be placed at the rate in the new range nearest to, but no greater than, his/her previous rate. There shall be no freezing of an employee's previous salary at a rate greater than the rate for the classification to which the employee is reassigned on a permanent basis. If the employee is reassigned to another position, he/she will be subject to a new probationary period. Reassignments as a result of reasonable accommodation shall not result in promotion.

(6) Supervisors, managers, and safety personnel may be informed of restriction(s) on the work or duties of employees with necessary reasonable accommodations.

Employees who are offered reasonable accommodation on a permanent basis in their regular position or reassignment to another position will receive confirmation in the form of a memo similar to the samples at the end of this policy.

If the determination is made that an employee may not or cannot be reasonably accommodated in accordance with State and Federal laws/regulations on a long term basis, the employee cannot be returned to his/her regular assignment because of medical

limitations and/or work restrictions, and/or the employee is not qualified for any vacant positions within the Department in which any medical limitations and/or work restrictions can be reasonably accommodated, the Department shall file for disability retirement on behalf of the employee if he/she so qualifies. If the employee does not qualify for disability retirement or cancels a disability retirement application filed on his/her behalf, the employee will be separated from employment.

PROCEDURE:

Human Resources will coordinate modified duty assignments with Division Directors, and either the attending physician or workers' compensation carrier.

The employee's time sheet shall be maintained by the employee's regular division.

Policy Review

Title change from "Light Duty Program" and other substantive changes Board Approved: 5/12/2020

Substantive changes Board Approved:

8/24/2021

**SAMPLE
CITY OF SAN BERNARDINO
MUNICIPAL WATER DEPARTMENT
INTEROFFICE MEMORANDUM**

TO :

FROM :

SUBJECT : TEMPORARY MODIFIED DUTY

DATE :

COPIES :

As of DATE your doctor has indicated that you must work with the following temporary restrictions:

- Restriction #1
- Restriction #2
- Restriction #3, etc.

The Department has determined that the above restrictions can be accommodated in your current position, JOB TITLE, in the DIVISION /SECTION.

These restrictions are in effect until DATE. You are required to provide additional documentation from your treating provider of your work status on or before this date.

You are the best person to recognize your limitation; please notify me or your supervisor immediately if you experience any problems. Do not attempt to perform duties exceeding your restrictions.

These restrictions are in effect indefinitely. You are the best person to recognize your limitations; please notify me or your supervisor immediately if you experience any problems.

I have read, understand, and acknowledge receipt of this memorandum:

Employee Signature

Date

Supervisor Signature

Date

Director Signature

Date

**SAMPLE
CITY OF SAN BERNARDINO
MUNICIPAL WATER DEPARTMENT
INTEROFFICE MEMORANDUM**

TO :

FROM :

SUBJECT : TEMPORARY MODIFIED DUTY

DATE :

COPIES :

As of DATE your doctor has indicated that you must work with the following temporary restrictions:

- Restriction #1
- Restriction #2
- Restriction #3, etc.

Your current position, JOB TITLE, in the DIVISION /SECTION requires you to routinely perform the types of duties from which you are restricted and, therefore, in order to accommodate these restrictions, you are being temporarily assigned to DIVISION/SECTION. Please report to NAME on DATE and TIME.

These restrictions are in effect until DATE. You are required to provide additional documentation from your treating provider of your work status on or before this date.

You are the best person to recognize your limitations; please notify me or your supervisor immediately if you experience any problems.

I have read, understand, and acknowledge receipt of this memorandum:

Employee Signature

Date

Supervisor Signature

Date

Director Signature

Date

**SAMPLE
CITY OF SAN BERNARDINO
MUNICIPAL WATER DEPARTMENT
INTEROFFICE MEMORANDUM**

TO :

FROM :

SUBJECT : MEDICAL WORK RESTRICTIONS

DATE :

COPIES :

As of DATE your doctor has indicated that you must work with the following permanent restrictions:

- Restriction #1
- Restriction #2
- Restriction #3, etc.

Your current position, JOB TITLE, in the DIVISION /SECTION does not routinely include the types of duties from which you are restricted and, therefore, complies with the above restrictions. However, should you find yourself in a situation which does require performance of one of the above restricted activities, please contact your supervisor immediately for accommodation. Do not attempt to perform duties exceeding your restrictions.

These restrictions are in effect indefinitely. You are the best person to recognize your limitations; please notify me or your supervisor immediately if you experience any problems.

I have read, understand, and acknowledge receipt of this memorandum:

Employee Signature

Date

Supervisor Signature

Date

Director Signature

Date

SAMPLE

CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

CITY OF SAN BERNARDINO
WATER BOARD

TONI CALLICOTT
President

Commissioners
WAYNE HENDRIX
DAVID E. MLYNARSKI
RIKKE V. JOHNSON
THOMAS BRICKLEY



MIGUEL J. GUERRERO, P.E.
General Manager
ROBIN L. OHAMA
Deputy General Manager
STEVE R. MILLER
Director of Water Utility
KEVIN T. STEWART, P.E.
Director of Water Reclamation
JENNIFER L. SHEPARDSON
Director of Environmental &
Regulatory Compliance
CYNTHIA J. MOUSER
Director of Finance

“Trusted, Quality Service since 1905”

DATE

NAME

ADDRESS

CITY, STATE, ZIP

RE: RELEASE FROM WORK

MR/MS:

The Department received notification from TREATING PROVIDER on DATE that you have the following permanent work restrictions: LIST RESTRICTIONS. In light of your permanent restrictions you are not able to perform the essential functions of your position and the Deputy General Manager and your supervisor have determined that the Department cannot accommodate these restrictions on a permanent basis.

If applicable, your time will be counted as Family Medical Leave Act (“FMLA”). You will be required to use your accrued leave during this time. You may also be eligible to apply for Short-Term Disability benefits.

The Department will initiate the Interactive Process to determine if any reasonable accommodation(s) can be made. We will schedule a meeting as soon as possible and notify you in writing of the date and time.

IF WORK RELATED: The Department will notify the Department’s Workers’

Compensation administrator, York RSG, of your release from work. If you have questions regarding your eligibility for Workers' Compensation benefits during this time, please contact WC ADMINISTRATOR.

In the meantime, if you believe there are any available positions within the Department for which you qualify and are able to perform without violating your restrictions, please let me know so that we may consider whether such a position would constitute a reasonable accommodation. In addition, if there is any work that can be performed without violating your work restrictions, we will contact you.

In order to protect both parties, please do not to come into the Water Department Yards or other Water Department facilities during this process until further notified. Therefore, you will be asked to surrender your identification card and any other Water Department issued property pending the outcome of this process.

Sincerely,

Robin L. Ohama
Deputy General Manager

SAMPLE CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

CITY OF SAN BERNARDINO
WATER BOARD

TONI CALLICOTT
President

Commissioners
WAYNE HENDRIX
DAVID E. MLYNARSKI
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MIGUEL J. GUERRERO, P.E.
General Manager
ROBIN L. OHAMA
Deputy General Manager
STEVE R. MILLER
Director of Water Utility
KEVIN T. STEWART, P.E.
Director of Water Reclamation
JENNIFER L. SHEPARDSON
Director of Environmental &
Regulatory Compliance
CYNTHIA J. MOUSER
Director of Finance

“Trusted, Quality Service since 1905”

DATE

NAME

ADDRESS

CITY, STATE, ZIP

MR./MS.:

As a result of the following permanent and stationary restrictions received from your doctor: LIST RESTRICTIONS, which could not be accommodated in your current position of JOB TITLE, you were placed on Family Medical Leave Act (FMLA) leave effective DATE pending the Interactive Process (IAP) and an IAP meeting was held with you and your representative on DATE.

During the IAP meeting it was determined that there is no reasonable accommodation that would allow you to perform the essential duties of your current position. It was also determined that you do not meet the experience, education, and/or certification requirements for the following positions open at that time: LIST OF OPEN POSITIONS. In addition, your permanent work restrictions could not be reasonably accommodated in the following positions also open at that time: LIST POSITIONS since the physical requirements of these positions are essentially the same as your current position.

During the IAP meeting, there were ADD NUMBER additional open positions discussed for which you may meet the education and experience requirements (LIST POSITIONS) that the Department agreed to review to determine if there were any

reasonable accommodations that would allow you to perform the essential duties of these positions. It has been determined that the physical requirements of these positions exceed your permanent work restrictions and cannot be reasonably accommodated to allow you to perform the essential functions. IF NO OPEN POSITIONS WERE DISCUSSED AS THE EMPLOYEE DID NOT MEET MINIMUM QUALIFICATIONS USE FOLLOWING LANGUAGE:

During the IAP meeting you were provided with a list of open positions and it was determined that there are no open positions for which you meet the minimum qualifications.

This letter is also to advise you that your FMLA leave expires on DATE. FMLA leave protects your job and maintains your health insurance(s) in the same manner as if you were actively at work. If you would like to request continuation of your job protection once FMLA leave expires, you would need to submit a request for a Leave of Absence for consideration by the Water Board.

Due to the expiration of your FMLA leave, the Department contribution toward your medical, dental, and vision expires on DATE (the last day of the month in which your FMLA expires). Therefore, your coverage in the Department's medical, dental, and vision plans will be terminated effective DATE. You will be offered COBRA (Consolidated Omnibus Budget Reconciliation Act) continuation coverage. You will receive a COBRA information and enrollment packet from Benefit Coordinators Corporation (BCC) in the mail. If you elect to enroll in COBRA, you will be responsible for the entire premium(s) plus administration fees.

For the reasons stated above, the Department is filing a disability retirement application on your behalf with CalPERS. The application is being mailed to CalPERS and they will be contacting you for further information.

Please feel free to contact Human Resources at (909)453-6090 if you have any questions.

Sincerely,

Robin L. Ohama
Deputy General Manager

**SAMPLE
CITY OF SAN BERNARDINO
MUNICIPAL WATER DEPARTMENT
INTEROFFICE MEMORANDUM**

TO:

FROM:

SUBJECT: ACCOMMODATION OF PERMANENT WORK RESTRICTIONS

DATE:

COPIES:

This memorandum is to confirm that an Interactive Process (IAP) Meeting was held with you on DATE regarding the following permanent work restrictions received from your doctor:

- Restriction #1;
- Restriction #2;
- Restriction #3, etc.

Your current position, JOB TITLE, requires that you perform these types of tasks in the performance of your daily duties and therefore, your restrictions cannot be reasonably accommodated on a permanent basis in your current position.

The Department has determined that your restrictions can be reasonably accommodated in the currently open position of JOB TITLE in the DIVISION/SECTION. The salary range for this position is RANGE and your hourly rate will be HOURLY RATE. The Department is offering you this position effective DATE.

I hereby accept the Department's offer of the JOB TITLE position effective DATE as an accommodation of my permanent work restrictions as outlined in this memorandum. I understand and acknowledge that I must notify my supervisor immediately if I experience any problems or find myself in a situation that requires the performance of duties that exceed my work restrictions, and I will not attempt to perform duties that exceed my work restrictions.

Employee Signature

Date

Supervisor Signature

Date

Director Signature

Date