



**STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES
DEVELOPMENT
POLICIES AND PROCEDURES**

POLICY NO. 902.001 ECD/WC	NO. of PAGES 15
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TITLE: RETURN TO WORK PRIORITY PROGRAM	APPROVED: Kathleen N. A. Watanabe, Director
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I. POLICY

Employees who are injured due to a work related accident or disease may be provided temporary light duty job assignments and shall be provided a priority of placement in other jobs when they are unable to permanently return to their usual and customary work.

II. RATIONALE

The State of Hawai'i, as an employer, is committed to retaining employees who become disabled due to work related injury or illness. Returning an injured employee to work as soon as possible greatly enhances the employee's recovery.

III. DEFINITIONS

"Alternate work" means work involving a change of the employee's position to which a disabled employee is assigned when the employee can no longer perform the usual and customary duties and responsibilities of his/her pre-injury work.

"Civil service employee" means an employee who has met all requirements for membership in the civil service under §76-27, HRS.

"Claims manager" means a person assigned to manage a workers' compensation claim filed by a State employee.

"Eligibility period" means a period not to exceed six months. The eligibility period begins with the departmental meeting and runs concurrently with the initial 30 calendar days to review options. It ends with a placement or the completion of one statewide job search within the six month period. For civil service employees with a not-to-exceed ("NTE") date, the eligibility period shall not exceed the expiration date of their appointment.

"Light duty" means temporary work that is different from the employee's usual and customary duties and responsibilities in any department of the executive branch. Work is planned/assigned to adhere to the physical and/or psychological restrictions set by the employee's or employer's physician. The employee remains appointed to their current position throughout the entire light duty assignment.

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“Modified work” means changes in non-essential or marginal usual and customary duties and/or responsibilities of the employee’s current work.

“Physician” means a doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, an optometrist, or a podiatrist, as defined by §386-1, HRS.

“Priority placement” means a job placement process for those employees who are unable to permanently return to their usual and customary work because of a work related injury or illness. Placement shall occur without the requirement of a probation period.

“Regular work” means the usual and customary duties and responsibilities of the employee prior to the workers’ compensation injury.

“Representative” means an attorney or union agent who has written authorization to represent an employee regarding their workers’ compensation claim.

“Work injury” means a personal injury suffered under the conditions specified in §386-3, HRS.

IV. SCOPE

This procedure shall apply to all civil service employees in the executive branch who become disabled due to a work related injury or illness, except that civil service employees who are serving an appointment with a not-to-exceed (“NTE”) date shall qualify with limitations that are based on the expiration date of their appointments.

Employees who have disabilities that are characterized as environmental restrictions as defined by *Placement of Disabled Civil Service Employees With Environmental Restrictions or Non-Work Related Injuries or Illnesses*, Policy and Procedure No. 300.005, shall not be governed by this policy.

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V. PROCEDURES

A. ASSESSMENT

1. Return to Work Assessment

- a. The claims manager shall continuously assess all medical information that is received on a claim. Based upon these assessments, a determination may be made that an employee who is on temporary total disability ("TTD") may be able to return to some type of employment.
- b. When a physician clearly states that the employee is able to return to regular work, no further assessment shall be necessary.
- c. When a physician states that the employee could possibly return to either regular work or some other form of employment such as modified work, light duty or alternative work, an *Estimated Functional Capacities Form* ("EFC") shall be sent to the physician with a copy of the employee's current position description. See *Attachment B1, Estimated Functional Capacities Form* and *Attachment B2, Mental Residual Functional Capacity Assessment*. This report shall identify the employee's current physical and/or psychological capabilities and limitations.
- d. The claims manager shall review the EFC report and determine whether placement efforts should begin. If the EFC report indicates that the employee:
 1. Is able to return to regular work, no further assessment is necessary;
 2. Is able to return to regular work with modification, continuing assessment is required;
 3. Is continuing to recover from the injury and is able to perform light duty, placement efforts for light duty shall be initiated; or

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B. LIGHT DUTY

1. Light Duty Assignments

- a. The Departmental Personnel Officer (“DPO”), on behalf of the appointing authority, shall consider temporary modification of the employee’s regular work responsibilities and duties in order to accommodate the employee’s light duty restrictions.
- b. If a temporary modification of the employee’s regular work is not possible, the DPO shall consider assigning the employee to light duty tasks within the department at the employee’s normal work site or another geographical location that is reasonable for the employee.
- c. If light duty assignments are not available in the department, the employee may be referred to HRD, Employee Claims Division, for assignment to light duty in other departments, provided appropriate funding restrictions are followed.
- d. The employee remains appointed to his/her current position throughout the entire light duty assignment.

2. Placement in Light Duty Assignments

- a. An appropriate physician (employee’s or employer’s) must approve and provide the parameters for an employee’s light duty assignment. The DPO shall provide the claims manager with a completed *Light Duty Report* for the physician’s approval. See *Attachment C, Light Duty Report*.
- b. Managers shall consider and utilize all employees who are referred for light duty assignments.
- c. Employees shall accept offers of light duty assignments that have been approved by an appropriate physician.

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- d. If an employee refuses an approved light duty assignment, the employee shall be placed on unauthorized absence from work for the hours that the employee should be on work status. Appropriate disciplinary action may also be taken by the appointing authority.

3. Light Duty Pay

When an employee is placed in a light duty assignment, the employee's department shall pay the employee's salary in accordance with statutory requirements. If the employee cannot be paid from the normal funding source, alternative funding must be obtained for payment to the employee.

4. Release From Light Duty

The employee's participation in light duty concludes when the employee:

- a. Is released to regular duty by an appropriate physician;
- b. Is placed in a modified or alternative work position;
- c. Refuses placement in a suitable light duty assignment;
or
- d. Is no longer eligible to participate in the Return to Work Priority Program.

C. PRIORITY PLACEMENT

1. Criteria for Participation

In order to participate in a priority placement, the employee shall be released by an appropriate physician to return to alternate work and the physician has determined that the employee is permanently unable to perform any or all of the essential functions of the employee's regular pre-injury position.

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2. Departmental Meeting

a. General

- i. As soon as practicable after determining that the employee is unable to return to his/her pre-injury work and after an appropriate assessment has been conducted, the DPO shall prepare for and schedule a meeting with the employee.
- ii. The purpose of such a meeting shall be to formally review the employee's status and to explain the employee's rights, responsibilities, and options.
- iii. Prior to the meeting with the employee, the claims manager shall submit a referral to the DPO and employee, or his/her representative, if applicable.

b. Notification of Departmental Meeting

The DPO shall prepare and issue a letter to the employee notifying him/her of the meeting. A copy of the letter shall also be sent to the employee's representative, if applicable. See *Attachment D, Sample Notice of Departmental Meeting*. At a minimum, the letter announcing the meeting shall contain the following information:

- i. Purpose of the meeting;
- ii. Date and time of the meeting;
- iii. Location of the meeting, specifically building address, room number or office number;
- iv. Departmental contact person and telephone number;
- v. Right to have representation at the meeting, i.e., union, legal counsel, or other person;
- vi. A request for documents or other information that the employee will be required to bring to the meeting;

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- ii. The employee's available options, including:
 - (a) Priority placement into alternative work, including:
 - (1) The eligibility period for placement;
 - (2) The need for a complete and thorough review of job search efforts, both departmental and statewide;
 - (3) A discussion of the advantages and disadvantages of geographical restrictions for job search efforts;
 - (4) The placement in an alternate work position;
 - (5) Discharge;
 - (6) Vocational rehabilitation benefits;
 - (7) Select priority; and
 - (8) The possible consequences of the employee's refusal of placement.
 - (b) Resignation, including:
 - (1) Notification to the employee that a resignation letter shall be submitted to the DPO at least 30 calendar days of the departmental meeting; and
 - (2) The resignation letter must include an effective date of resignation which must be within fifteen calendar days of the date of the resignation letter.

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- (c) Retirement, including:
 - (1) Referring the employee to the Employees' Retirement System; and
 - (2) Notifying the employee that a copy of his/her retirement application must be submitted to the DPO within 30 calendar days of the departmental meeting.
- (d) The employee shall have a 30 calendar day period in which to review his/her options, decide upon a course of action, provide all necessary paperwork, and notify the DPO of his/her decision.

e. Eligibility Period

Priority placement of an employee begins with the departmental meeting and runs concurrently with the initial 30 calendar day period to review options. It concludes with either a placement or the completion of one statewide job search within the six months period. For a civil service employee with an NTE date, the eligibility period shall not exceed the expiration date of his/her appointment.

f. Departmental Job Search

- i. The DPO shall attempt to place the employee in a suitable position. In considering vacancies, the DPO may modify, downgrade, or reallocate positions.
- ii. All identified vacancies must be approved as suitable for the employee by an appropriate physician.
- iii. The employee may be referred for placement before a position is filled through an internal vacancy announcement process. See *Administrative Directive No. 94-02*, attached as *Attachment A*.

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- iv. The placement action shall not result in either a promotion or a higher base salary for the employee.
- v. The DPO shall continue to consider all suitable vacancies until the employee's eligibility in the priority placement program concludes.
- g. Statewide Job Search
 - i. When the DPO has determined that no modified or alternate positions are available within the department, the DPO shall request assistance from HRD, Employee Staffing Division ("HRD/ESD"), in identifying suitable positions for the employee in other departments. See *Attachment E, Request for Statewide Job Search Assistance*.
 - ii. HRD/ESD shall conduct one statewide job search review before the employee's eligibility in the priority placement program concludes.
 - iii. All identified vacancies must be approved as suitable for the employee by an appropriate physician.
 - iv. HRD/ESD shall send written notification to the DPO upon conclusion of the statewide job search.
- h. Appointment to Another Position
 - i. Placement of the employee in another position shall be made under the authority of *Administrative Directive No. 94-02, attached as Attachment A*.
 - ii. The appointment shall be made to the alternate position except for good cause as determined by the director.

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- iii. If the employee refuses the offer of an alternate position:
 - (a) The employee shall be discharged from employment; and
 - (b) The employee's workers' compensation benefits may be affected.
- iv. An employee who is placed in an alternate position by a departmental search under the priority placement procedures shall be eligible for additional placement services if the employee is deemed incapable of performing the duties of the new position due to the work related injury or illness. Additional job placement services shall begin at the statewide level.
- v. Employees who are placed through the Return to Work Priority Program shall not be required to serve a new probation period.

D. DISCHARGE FROM STATE SERVICE

1. Conditions for Discharge

An employee who is disabled by a work injury shall be discharged from State service if the employee:

- a. Fails to respond to the DPO notification letter scheduling the departmental meeting;
- b. Refuses or fails to attend the departmental meeting after proper notification was issued in accordance with *Notification of Departmental Meeting*, above.
- c. Fails to notify the DPO of his/her decision to participate in a priority placement program within the 30 calendar day period to review options;
- d. Refuses an offer of employment, refuses or fails to attend scheduled job placement meetings, or fails to report to work for the position to which he/she was appointed under the priority placement procedures; or

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- e. Cannot be placed within the executive branch by the conclusion of his/her eligibility period in the priority placement program; or
- f. Completes an appointment with an NTE date.

2. Notification of Discharge

The employee's department shall take the discharge action and notify HRD's Employee Claims Division and Employee Staffing Division. See *Attachment F, Notification of Employee Separation*.

E. VOCATIONAL REHABILITATION ("VR") BENEFITS

- 1. An employee with a work injury who resigns or is discharged because he/she is unable to be placed in an alternate position may be eligible for vocational rehabilitation benefits in accordance with chapter 386, HRS.
- 2. The vocational rehabilitation counselor shall assist the employee in locating employment outside of State government.

F. SELECT PRIORITY

1. Eligible Employees

A civil service employee who is discharged because he/she cannot be placed in an alternate position under priority placement procedures shall be placed on the select priority list in conformance with §386-142, HRS. See *Attachment F, Notification of Employee Separation*. However, a civil service employee with an NTE date shall be eligible for temporary vacancies, the duration of which shall be equivalent, as far as practicable, to the temporary period of the employee's previous appointment, less the term already served. The term already served shall include the period that the employee received workers' compensation benefits.

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2. Ineligible Employees

- a. An employee shall not be entitled to Select Priority if he/she is discharged for refusing a job offer, refusing or failing to respond to the letter notifying him/her of the departmental meeting, refusing or failing to attend scheduled job placement meetings, or failing to report to work for the position in which he/she was appointed under the priority placement procedures.
- b. An employee shall be ineligible for any employment in State government when he/she waives his/her right of re-employment in a compromise settlement agreement that is executed pursuant to §386-78, HRS.

VI. AUTHORITIES AND REFERENCES

A. AUTHORITIES

§ 76-27, Hawai'i Revised Statutes, *Probationary service and other requirements for membership in the civil service*

§ 386-1, Hawai'i Revised Statutes, *Definitions*

§ 386-3, Hawai'i Revised Statutes, *Injuries Covered*

B. REFERENCES

Administrative Directive No. 94-02, *On Returning Injured and Disabled Employees to Work*, dated April 21, 1994

VII. ATTACHMENTS

Attachment A: Administrative Directive No. 94-02, *On Returning Injured and Disabled Employees to Work*, dated April 21, 1994

Attachment B1: *Estimated Functional Capacities Form*

Attachment B2: *Mental Residual Functional Capacity Assessment*

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Attachment C: *Light Duty Report*

Attachment D: Sample Departmental Meeting Letter

Attachment E: Request for Statewide Job Search Assistance

Attachment F: Notification of Employee Separation

Attachment G: Flow Charts

1. Return to Work Priority Program
2. Light Duty
3. Priority Placement