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| <b>SUBJECT:</b>  | <b>Reinstatement and Reemployment of Injured Workers</b> | <b>NUMBER:</b>         | <b>50.020.03</b> |
| <b>DIVISION:</b>   | <b>Human Resource Services Division</b>                  | <b>EFFECTIVE DATE:</b> | <b>03/05/08</b>  |
| <b>APPROVED: Signature on file with the Human Resource Services Division</b> |  |                        |                  |

**POLICY STATEMENT:**

It is the policy of the State of Oregon, in accordance with ORS 659A.043, 659A.046 and 659A.052 (2), to reinstate to their former positions, reemploy to available and suitable positions and provide preference to entry-level classifications, those employees with compensable work-related injuries or illnesses.

**AUTHORITY:**

ORS 240.015; 240.250; 240.306; 656.340; 659A.043; 659A.046; 659A.052; OAR 105-040-0010; 105-040-0020; 105-040-0030; 105-040-0060; 839-006-0100 through 839-006-0150

**APPLICABILITY:**

All injured workers where not in conflict with an applicable collective bargaining agreement; all Executive Branch Agencies subject to ORS 240.

**ATTACHMENTS:**

None

**DEFINITIONS:**

**Agency-at-Injury:** The state agency **employing** the injured worker **when** the compensable injury occurred.

**Attending Physician:** The physician primarily responsible for the injured worker's care related to the compensable condition in the workers compensation claim [see ORS 656.005 (12) (b) for further definition].

**Entry-Level Classification:** All limited competitive and non-competitive appointment classifications as listed in OAR 105-040-0060; all classifications defined as entry in their title; single-level classifications and the first level of a classification series.

**Former Position:** The regular duties, responsibilities, classification and status held by the employee at the time the worker sustained a compensable injury or illness. The former position does not include temporary duties or compensation such as work out of class or developmental or rotational job assignments.

**Injured Worker List:** A list of employees injured while employed with an **Executive Branch** state agency, **which** are unable to return to their former positions due to compensable, work-related injuries or illnesses. **The employee must not have waived reemployment rights in accordance with state workers' compensation laws.**

**Reinstatement:** Return of an **injured** worker to the worker's former position per ORS 659A.043.

**Reemployment:** As used in this policy, **when an injured** worker is disabled from performing the duties of the worker's former position **returns to work in** an available and suitable position.

**Suitable Position:** A position **that** meets the worker's medical restrictions **and** is most similar to the former position in terms of compensation, duties, responsibilities, skills, location, duration (full or part-time, temporary or permanent) and shift.

See also HRSD State Policy 10.000.01, Definitions; and OAR 105-010-0000

**POLICY:** (1) General Provisions:

- (a) This policy designates the manner in which state agencies comply with reinstatement, reemployment and preference to entry-level classification obligations. This policy also establishes, consistent with law and rule, the responsibilities and obligations of injured workers. Additionally, the Department of Administrative Services, Human Resource Services Division Administrator, in accordance with ORS 659A.052(3), may compel any agency within the Executive Branch to provide reinstatement to the former position, to appoint to an available, suitable position or to give preference in appointment of an injured worker to a position in an entry-level classification.
- (b) An agency-at-injury shall provide written notice in any reasonable form, including but not limited to a copy of this policy, to injured workers of **their** rights and responsibilities pursuant to this policy.
- (c) An agency:
  - (A) shall reinstate injured workers who make a timely demand in accordance with Section (2)(a)(A) of this policy for reinstatement and are released by an attending physician to return to their former position;
  - (B) shall reemploy injured workers who make a timely demand in accordance with Section (2)(a)(A) of this policy for reemployment who are unable to perform the tasks of their former position due to their compensable injury, and have received the attending physician's medical release to suitable employment;
  - (C) shall give preference to injured workers in appointment to positions in entry-level classifications;
  - (D) may establish a trial service period upon reemployment of an injured worker to a position consistent with HRSD State Policy 40.065.01, Trial Service Period, or an applicable collective bargaining agreement.
- (d) If an injured worker accepts an offer of suitable work, begins the position, then **cannot** physically perform the essential functions of the position, **the employing agency may remove the injured worker from the position** subject to applicable law, rule, policy and collective bargaining agreement. The employing agency shall notify the agency-at-injury of the removal. Upon receipt of this notice, the agency-at-injury shall place the injured worker on leave status in their former position and ensure that the injured worker remains active on the injured worker list for all appropriate classifications.
- (e) An injured worker:
  - (A) **has** the right to reinstatement to the injured worker's former position or reemployment to an available, suitable position and **to** placement on the injured worker list for positions in entry-level classifications as well as available and suitable classifications if the employee:
    - (i) is an employee of an Executive Branch agency at the time of injury; and

- (ii) has a compensable injury or illness that occurred in the course and scope of their duties as a state employee; and
- (iii) has a written release for work from the attending physician that clearly indicates that the worker may return to **the** former position (reinstatement), or has medical restrictions preventing the worker from returning to **the** former position, but is medically released to other suitable positions (reemployment); and
- (iv) makes a timely written demand in accordance with Section (2)(a)(A) of this policy to **the** agency supervisor, human resource office or appointing authority for reinstatement or reemployment.

(B) **shall** notify the human resources office of the agency-at-injury within **10** calendar days when the need **arises to** correct or change **the** employee's placement on the injured worker list, **or to** change the injured worker's name, address or phone number. **The** worker **shall also notify the employer if they** participate in vocational assistance under ORS 656.340, resigns or abandons employment with the State, or accepts a suitable position outside of the Executive Branch.

(C) loses reinstatement and reemployment rights when:

- (i) **the worker** cannot return to the former position, (loss of reinstatement rights) or cannot return to, or be placed in any position with the Executive Branch (loss of reemployment rights); or
- (ii) **the worker** is eligible for and participates in vocational assistance under ORS 656.340; or
- (iii) **the worker** accepts suitable employment with another employer (not an agency within the Executive Branch of the State of Oregon) after being released to suitable employment; or
- (iv) **the worker refuses a bona fide offer from the employer of transitional work (light duty or modified employment)** prior to becoming released to suitable employment; or
- (v) **the worker fails,** in the absence of extenuating circumstances, to make a written demand, to a party listed in Section 2(a)(A), for reinstatement to **the** former position or reemployment to an available, suitable position within seven calendar days of receiving notice from the insurer that the worker's attending physician has released the worker for reinstatement to **the** former position or to reemployment to a suitable position; or
- (vi) **the worker clearly and unequivocally abandons employment with the state** in accordance with OAR 839-006-0131; or
- (vii) **the worker** has been discharged for bona fide reasons not connected with the injury and for which others are or would be discharged **in accordance with OAR 839-006-0131**; or
- (viii) three years have elapsed since the date of injury.

(2) Procedures

(a) The injured worker:

- (A) may demand reinstatement to **their** former position or reemployment to an available, suitable position within seven calendar days of receiving notice from the insurer that the injured worker has been released to return to work **by the attending physician**. If a demand is made, the demand must be in writing and be made to the injured worker's supervisor, human resources office or appointing authority of the agency-at-injury and include the attending physician's latest statement of work capacity restrictions;
  - (B) may request consideration to positions in entry-level classifications, even where such positions are not "suitable," by advising, in writing, the human resources office of the agency-at-injury;
  - (C) **after making a** demand for reinstatement or reemployment, must cooperate with state agencies' efforts to reinstate or reemploy the injured worker **by**:
    - (i) accepting all invitations to interview for suitable positions; and
    - (ii) accepting an offer of a suitable position. Refusing to accept an offer of a suitable position may only be made as prescribed in Section 2(d)(D) of this policy; and
    - (iii) notifying the agency-at-injury of changes in address, telephone number, return to work status or medical status; and
    - (iv) **complying** with the State's reporting policy **in** Section 1(e)(B) of this policy.
  - (D) **failing** to cooperate with the State's efforts to reinstate or reemploy the injured worker may be subject to disciplinary action.
- (b)** The agency-at-injury:
- (A) reinstates the worker **upon timely demand provided** the worker is released by the attending physician. If the former position no longer exists the agency will reemploy the worker in a vacant position that is suitable;
  - (B) reemploys the worker in an available and suitable position within the agency-at-injury after receiving a worker's demand for a suitable position;**
  - (C) if a suitable position is not immediately available within the agency-at-injury, the agency facilitates the reemployment of an injured worker via the statewide injured worker reemployment process by:**
    - (i) requesting documentation of the injured worker's work experience, knowledge, skills and abilities via the state job application form;
    - (ii) evaluating the injured worker's experience, knowledge, skills and abilities and placing the injured worker on the injured worker list for all suitable classifications, including but not limited to entry-level classifications, at or within four salary ranges below the injured worker's current salary range for which the injured worker meets the minimum qualifications;
    - (iii) placing the injured worker on the injured worker list for additional **classifications which are more than four salary ranges below the former position** when such classifications are requested by the injured worker and where the injured worker meets the minimum qualifications;

- (iv) placing the injured worker on the injured worker list for the geographic areas in a similar location to the injured workers' former work site. "Similar location" is within a reasonable commuting distance, generally, no more than 35-miles from the official workstation or the distance of the injured worker's regular commute, whichever is greater;
- (v) accomplishing placement of the injured worker on the injured worker list within a reasonable timeframe not to exceed **two** weeks from receipt of the injured worker's **written** demand unless extenuating circumstances exist;
- (vi) obtaining updated information regarding the injured worker's relevant work-related restrictions or a specific release to perform the duties of a potentially suitable position;
- (vii) notifying DAS Human Resource Management and Consultation (HRMC) of the worker's placement on the injured worker list including an updated state application form and the worker's date of injury; (HRMC will notify other Executive Branch agencies that are not subject to this policy of the worker's reemployment rights.)
- (viii) sharing information regarding a worker's relevant work-related restrictions **upon the request of** a recruiting agency;

**(D) responds in writing** if the worker provides written notice that the job is unsuitable. **The agency** may notify the worker in writing that the injured worker has twenty calendar days to provide medical verification or a written explanation why the job is not suitable. In the absence of requiring such written explanation, the agency will offer a more suitable position.

(c) A recruiting agency requests an injured worker list when filling vacant positions and:

- (A) offers the suitable position to an injured worker appearing on the list if that worker meets the minimum qualifications and special requirements documented in the official position description;
- (B) may interview the injured worker to determine if the worker meets the special requirements of the position; however, the injured worker **does** not compete against other candidates for placement in the position;
- (C) may obtain information from the agency-at-injury or from the injured worker, **such as** a certificate from the attending physician **about** the worker's relevant work restrictions and capacities;
- (D) must offer the position to the qualified injured worker who has been on the injured worker list the longest if there is more than one qualified injured worker on the list for the vacant position;
- (E) notifies the agency-at-injury if the injured worker accepts a position; and
- (F) notifies the agency-at-injury if the injured worker fails to cooperate with the recruiting agency or fails to follow proper procedure for refusal of interviews or refuses job offers as outlined in Sections 2(d) below.
- (G) utilizes the Preferred Worker Program administered by the Department of Consumer & Business Services, Workers Compensation Division for the purposes of wage subsidy,

premium exemption, worksite modification, and reimbursement for related expenses.

See: [www.cbs.state.or.us/external/wcd/communications/emp\\_info3.html](http://www.cbs.state.or.us/external/wcd/communications/emp_info3.html)

- (d) The injured worker:
- (A) must provide the attending physician's release to the agency-at-injury and must return to the injured worker's former position within seven calendar days upon being released to perform the duties of the former position;
  - (B) **must accept a bona fide job offer of a suitable position** if unable to return to the injured worker's former position;
  - (C) may discuss the duties of the suitable position with the recruiting agency and may request written clarification of the duties;
  - (D) may refuse an offer of a suitable position if the worker believes that he **or** she is physically unable to perform the duties of the position. In the event of a refusal based on physical ability, the injured worker shall:
    - (i) provide written or verbal notice to the employing agency that the worker believes the worker is physically unable to perform the duties of the position;
    - (ii) provide medical verification of the worker's inability to perform the duties of the position within 20 calendar days of being notified in writing by the employing agency that medical verification is required.
  - (E) must accept an offer of a suitable position. If the worker considers the position not suitable for reasons other than physical ability the injured worker may provide written notice to the agency-at-injury **within 20 calendar days** that **specifies the reasons why** the worker considers the position to be unsuitable;
  - (F) **Upon receipt of the written notice**, the agency-at-injury shall determine whether the position is suitable. If the agency-at-injury determines the position is suitable, the injured worker must continue working in the position but may contest whether the position is suitable through an applicable grievance procedure or by filing a complaint with the Oregon Bureau of Labor and Industries.
- (e) The agency-at-injury:
- (A) removes the injured worker's name from the injured worker list when the injured worker has lost reinstatement and reemployment rights as set out in Section 1(e)(C) or when notified that the injured worker has accepted a suitable position **and there are no other classifications of work for which the worker qualifies which are closer to the injured worker's salary level at the time of injury**;
  - (B) cooperates with a recruiting agency in order to determine the suitability of **an** available position;
  - (C) retains the injured worker in a leave without pay status on the agency payroll until such time as:
    - (i) the injured worker is reinstated to **the** job at injury;
    - (ii) the injured worker is reemployed in an available, suitable position with the agency-at-injury or with another agency of the Executive Branch; or

(iii) the injured worker loses reinstatement and reemployment rights and becomes ineligible for placement on the injured worker list as set out in Section 1(e)(C) of this policy.

(D) may initiate disciplinary action (pre-dismissal or separation of employment, as appropriate), if provisions of Section 1(e)(C) of this policy are met, assuming other legal and contractual obligations have been met.

(3) Policy Clarification:

- (a) In the event that the agency-at-injury and an injured worker agree that an offered position is not suitable via the process described in 2(d)(E-F) of this policy, the injured worker shall remain on the injured worker list until such time as provisions of Section 1(e)(C) of this policy is met.
- (b) A managerial or supervisory position may be a suitable position for a returning injured worker whose former position was managerial or supervisory.
- (c) Preference in appointment means that qualified injured state workers are considered over all applicants for positions in any agency of the Executive Branch of the State of Oregon. Exceptions are other injured workers and employees entitled to appointment to the position pursuant to provisions or other employment restrictions of an applicable collective bargaining agreement.
- (d) A position is not available or vacant if another worker has a prior right to that job under a seniority or employment restriction provision of a valid collective bargaining agreement or if the position has been previously identified by an agency to be abolished.
- (e) The State has no obligation to create a job for an injured worker.
- (f) Nothing in this policy prohibits an agency-at-injury from offering an available, suitable position to an injured worker prior to the injured worker making a demand for reemployment when the agency-at-injury reasonably anticipates that the injured worker will not be able to return to the injured worker's former position.

Performance Measure: Percentage of injured workers provided notification by the agency at injury of the injured worker's rights and obligations under this policy.

Performance Standard: 100%

Performance Measure: Percentage of eligible injured workers who are placed on appropriate injured worker lists within 14 calendar days from the date of the worker's timely demand for reemployment.

Performance Standard: 100%