

Policy and Procedure 8-10

Return to Work/Need for Accommodations

Issued By:	Robert W. Farrell, State Forester
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Codes/Mandates:	Executive Order 109 (2010) Americans with Disabilities Act (ADA)
References:	Americans with Disabilities Act (42 U.S.C. 12101 et seq.) Job Accommodation Network: http://askjan.org/ DHRM Workers Compensation: http://www.dhrm.virginia.gov/workerscomp
Forms:	8.18 Authorization for Release of Medical Information 8.32 Physical Demands Assessment and Return-to-Work Release 8.33 Request for Accommodation and Transitional Employment Plan

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PURPOSE

To prescribe policy and procedures to (i) facilitate the return to from a temporary occupational or non-occupational injury or illness, and (ii) determine accommodations for a disability covered under the American with Disabilities Act.

POLICY

The Virginia Department of Forestry (VDof) is committed to supporting the return to work of employees who sustain occupational as well as non-occupational related illnesses or injuries through compliance with all applicable state and federal laws and requirements.

DEFINITIONS

“Agency” and **“VDOF”** means the Virginia Department of Forestry.

“Americans with Disabilities Act” or **“ADA”** means the federal law that prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. The ADA is codified at [42 U.S.C. 12101 et seq.](#)

“Commonwealth” means the Commonwealth of Virginia.

“Disability” means an illness, injury or other medical condition, including pregnancy, that prevents an employee from performing the duties of his/her job. A disability can be total or partial and permanent or temporary.

“Maximum Medical Improvement (MMI)” means the point at which the employee has recovered and no further progress is anticipated.

“Modified/Transitional Duty” means a temporary job modification when an employee returns from a personal or occupational-related injury or illness to medically restricted or modified duties. Duties assigned can be those identified in the employee's current job description with restrictions or another assignment. Modified or transitional duty is generally limited to 90 days or less but could be extended on a case-by-case basis.

“Occupational injury/illness” means an injury or illness that occurs on the job to an eligible employee for which benefits are awarded by the Virginia Workers' Compensation Commission (VWCC) and are payable under the Workers' Compensation Act of Virginia (the Act).

“Reasonable Accommodation” in relation to the ADA, means any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

“Return-to-Work Coordinator” means a designated staff member who acts as the primary contact to the Workers' Compensation Program and facilitates VDOF's Return-to-Work Program. The return-to-work coordinator for VDOF is the director of human resources assisted by the HR benefits administrator.

“Transitional Employment Plan (TEP)” means documentation of the duties the employee will perform during the transitional duty period.

PROCEDURES

Modified/Transitional Duty and Return to Work

VDOF strives to provide modified/transitional duty and return-to-work options for employees who sustain occupational or non-occupational injuries/illnesses. Supervisors are encouraged to review all possible options to provide appropriate assignments that take into account the injured/ill employee's special circumstances.

If it is determined that the employee has permanent restrictions, which result in his/her inability to perform the essential functions of his/her primary position, the provisions of the Americans with Disabilities Act (ADA) and other applicable laws will be applied to determine suitability for employment.

The goals of modified/transitional duty and the return-to-work program are:

- ◆ Help the employee by keeping him/her functional in the workplace, which aids overall recovery.
- ◆ Increase productivity and maintain work processes by decreasing lost work time and daily operating costs for the agency.
- ◆ Help control costs by reducing medical and disability costs.
- ◆ Create positive workplace morale through support for the injured worker.

Transitional Employment Plan

Transitional employment plans are prepared and developed based on the physical capability of the worker, the business needs of the company and the availability of transitional work. VDOF will determine appropriate work hours, shifts, duration and locations of all work assignments.

VDOF reserves the right to determine the availability, appropriateness and continuation of all transitional employment plans.

Modified/Transitional duty is generally limited to 90 days. As a result, current medical documentation from the employee's physician will be required every 30 days to update the transitional employment plan and to verify prognosis for full duty release assuring the employee is transitioning back to full duty.

Employee Responsibilities

To obtain modified/transitional duty the employee must:

- ◆ Submit a Form 8.33 Request for Accommodation/Transitional Employment Plan.
- ◆ Submit a Form 8.18 Authorization for Release of Medical Information.
- ◆ Request a Form 8.32 Physical Demands Assessment and Return-to-Work Release from the return-to-work coordinator and provide to the attending physician for completion.
- ◆ If the attending physician releases the employee to return to work on modified duty and has completed the Form 8.32 Physical Demands Assessment and Return-to-Work Release, the form must be returned to the return-to-work Coordinator within 24 hours following the medical treatment for assessment of transitional work.
- ◆ The employee **cannot** return to work without the release of the attending physician.

If released to modified/transitional duty, the employee must:

- ◆ Accept the transitional employment plan offered.
- ◆ Failure to follow the recommended course of treatment or to accept assignments may jeopardize the employee's benefits.
- ◆ Employee must notify the return-to-work coordinator within 24 hours of any and all changes in medical conditions.
- ◆ Employee will be required to obtain and submit updated medical information to the coordinator related to their prognosis and restrictions every 30 days if a transitional employment plan is developed.

Supervisor Responsibilities

When requested to provide modified/transitional duty, supervisors must:

- ◆ Actively assess the workplace for appropriate tasks and duties to encourage the employee's return to work.
- ◆ Complete section 4 of the submitted Form 8.33 Request for Accommodation/Transitional Employment Plan.
- ◆ Notify the return-to-work coordinator immediately of:
 - any work-related injuries;
 - if the employee misses time from transitional work, or
 - any changes to transitional work assignments.

Return-to-Work Coordinator Responsibilities

In consultation with the employee's supervisor, the return-to-work coordinator will:

- ◆ Review the restrictions set forth by the attending physician.
- ◆ Determine whether VDOF can provide transitional duty for the employee. As a part of this determination, transitional duty must meet VDOF's staffing needs and must accommodate the employee's medical restrictions

while taking into consideration the welfare and safety of the employee and co-workers. Communicate with the insurance carrier or attending physician as necessary.

- ◆ Follow up with the employee and supervisor every 30 days.

Long-Term Restrictions

If it is determined that the employee has long-term restrictions or has reached their Maximum Medical Improvement (MMI) that result in his or her inability to perform the essential functions of his or her primary position, the provisions of the Americans with Disabilities Act (ADA) and other applicable laws will be applied to determine suitability for employment.

Requesting Reasonable Accommodations

The applicant or employee is responsible for requesting a reasonable accommodation or providing sufficient notice to the agency that an accommodation is needed.

When a supervisor or manager observes or receives information indicating that an employee is experiencing difficulty performing the job due to a medical condition or disability, further inquiry may be required. Supervisors or managers should consult with the return-to-work coordinator for advice on how to proceed.

Communication is a priority and encouraged throughout the entire reasonable accommodation process. The interactive process is a collaborative process between the employee and/or applicant and the agency to explore and identify specific reasonable accommodation(s). (For information on the Interactive Process, see the U.S. Department of Labor, Job Accommodation Network at <http://askjan.org/topics/interactive.htm>).

Individuals Who May Request a Reasonable Accommodation

- ◆ Any qualified applicant with a disability who needs assistance with the job application procedure or the interview or selection process
- ◆ Any qualified agency employee with a disability who needs a reasonable accommodation to perform the essential functions of the position
- ◆ A third party, such as a family member, friend, health professional or other representative, on behalf of a qualified applicant or employee with a disability, when the applicant or employee is unable to make the request for reasonable accommodation. When possible, the agency must contact the applicant or employee to confirm that the accommodation is wanted. The applicant or employee has the discretion to accept or reject the proposed accommodation.

How to Request a Reasonable Accommodation

An agency applicant or employee may make a reasonable accommodation request to any or all of the following:

- ◆ Immediate supervisor or manager in the employee's chain of command
- ◆ Agency Human Resources Office
- ◆ Any agency official with whom the applicant has contact during the application, interview and/or selection process

Timing of the Request

An applicant or employee may request a reasonable accommodation at any time, even if the individual has not previously disclosed the existence of a disability or the need for an accommodation. A request is any communication in which an individual asks or states that he or she needs the agency to provide or change something because of a medical condition.

The reasonable accommodation process begins as soon as possible after the request for accommodation is made.

Form of the Request

An initial request for accommodation may be made in any manner (e.g., writing, electronically, in person or orally).

The individual requesting an accommodation does not have to use any special words and does not have to mention the ADA or use the phrase "reasonable accommodation" or "disability."

Oral requests must be documented in writing by using the Request for Accommodation form to ensure efficient processing of requests.

Analysis for Processing Requests

Before approving or denying a request for accommodation, the supervisor/manager with assistance from the return-to-work coordinator will:

- ◆ Determine if the requestor is a qualified individual with a disability.
- ◆ Determine if the accommodation is needed to:
 - Enable a qualified applicant with a disability to be considered for the position the individual desires;
 - Enable a qualified employee with a disability to perform the essential functions of the position, or
 - Enable a qualified employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities.
- ◆ Determine whether the requested accommodation is reasonable.
- ◆ Determine whether there is a reasonable accommodation that will be effective for the requestor and the agency.
- ◆ Determine whether the reasonable accommodation will impose an undue hardship on the agency's operations.

An employee's accommodation preference is always seriously considered, but the agency is not obligated to provide the requestor's accommodation of choice, so long as it offers an effective accommodation or determines that accommodation would cause an undue hardship.

Obtaining Medical Documentation in Connection with a Request for Reasonable Accommodation

In some cases, the disability and need for accommodation will be reasonably evident or already known, for example, where an employee is blind. In these cases, the agency will not seek further medical documentation. If a requestor's disability and/or need for reasonable accommodation are not obvious or already known, the return-to-work coordinator may require medical information showing that the requestor has a covered disability that requires accommodation. The agency return-to-work coordinator may request medical information in certain other circumstances. For example, when:

- ◆ The information submitted by the requestor is insufficient to document the disability or the need for the accommodation;
- ◆ A question exists as to whether an individual is able to perform the essential functions of the position, with or without reasonable accommodation, or
- ◆ A question exists as to whether the employee will pose a direct threat to himself/herself or others.

Only medical documentation specifically related to the employee's request for accommodation and ability to perform the essential functions of the position will be requested. When medical documentation or information is appropriately requested, an employee must provide it in a timely manner or the agency may deny the reasonable accommodation request.

Confidentiality Requirements

Medical information obtained in connection with the return-to-work and reasonable accommodation process must be kept confidential. All medical information obtained in connection with such requests must be collected and maintained on separate forms and in separate physical or electronic files from non-medical personnel files and records. Electronic copies of medical information obtained in connection with the reasonable accommodation process must be stored so that access is limited to only Human Resources staff. Physical copies of such medical information must be stored in a locked cabinet or office when not in use or unattended. Generally, medical documentation obtained in connection with the reasonable accommodation process should only be reviewed by HR.

The agency return-to-work coordinator may disclose medical information obtained in connection with the return-to-work/reasonable accommodation process to the following:

- ◆ Supervisors, managers or agency HR staff that have a need to know may be told about the necessary work restrictions and about the accommodations necessary to perform the employee’s duties;
 - However, information about the employee’s medical condition should only be disclosed if strictly necessary, such as for safety reasons.
- ◆ To consult with the Department of Human Resources or the Attorney General’s Office about accommodation requests, denial of accommodation requests or purchasing of specific assistive technology or other resources, or
- ◆ Government officials assigned to investigate agency compliance with the ADA.

AUTHORITY

This policy and procedure is issued by the Virginia state forester.

INTERPRETATION

The director of human resources and deputy state forester are responsible for the interpretation of this policy and procedure.

APPROVAL

I certify that this policy and procedure is approved and ready for publication.

Hector Rivera

Director of Human Resources Name (Print)

Director of Human Resources Signature

Andres Alvarez

Chief of Administration Name (Print)

Chief of Administration Signature

Ed Zimmer

Deputy State Forester Name (Print)

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