



# West Virginia Department of Transportation Policy: **Return to Work/Accommodation Policy**

*Issued by the Secretary of Transportation*

Policy No: DOT 3.2

Issue Date: 07/15/2002

Revised: 04/08/2019

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## 1.0 PURPOSE

The West Virginia Department of Transportation (hereinafter WVDOT) recognizes the need for continued and sustained employment of employees who have medical conditions that limit or prevent them from performing all functions of their currently assigned job classification and job duties.

Such recognition extends to employees injured on the job as well as those whose impairments did not arise from employment.

Transportation further recognizes the requirements of State and Federal laws and regulations regarding the rights of employees who have physical and mental disabilities.

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## 2.0 SCOPE

This policy applies to all West Virginia Department of Transportation (WVDOT) employees.

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## 3.0 DEFINITIONS

- 3.1 **Employee**: Any permanent employee of the Department of Transportation.
- 3.2 **Impairment**: A medically documented physical or mental condition that temporarily or permanently limits an employee's ability to perform all essential functions of currently assigned job classification and job duties.
- 3.3 **Medical Practitioner**: A medical doctor, certified physician's assistant or family nurse practitioner licensed to practice medicine in West Virginia or in the State where the treatment is provided.
- 3.4 **Productive**: Refers to work that advances the mission of the organizational unit.
- 3.5 **Reasonable accommodation**: A modification or adjustment to a job, the work environment, or how the job is usually done or transfer to a medically appropriate position for which the employee qualifies thus enabling the employee with a disability to successfully perform the essential functions of the job.
- 3.6 **Return to Work Plan**: A written rehabilitation plan including agreed upon temporary (transitional) job accommodation, the time frame for the accommodation, and the respective responsibilities of the supervisor and the employee.

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- 3.7 **Qualifications:** The minimum training and experience requirements of a job classification as established by the Division of Personnel; or transitional training requirements established by Transportation.
- 3.8 **Safe:** Refers to job duties that are within the physical capabilities provided by the medical practitioner.
- 3.9 **Undue Hardship:** A situation where the reasonable accommodations required for an employee's return to work would cause significant difficulty or require significant expense. Significant difficulty may be considered in light of the impact of the accommodation upon the operation of the organizational unit, including the impact on the ability of other employees to perform their duties and the impact on the organizational unit's ability to conduct business.
- 3.10 **Transitional Training Requirements:** The minimum education and/or experience an employee must possess to enter an on the job training program designed to permit transfer to a position, the essential functions of which the employee is capable of performing with or without reasonable accommodation.
- 3.11 **Transitional Employment:** Temporary assignment of an employee to job duties with essential functions the employee can safely perform until able to return to regular duties; or return to the pre-injury/illness job with temporary suspension of some of the essential functions. Provided, however, that such transitional employment must also be productive work that advances the mission of Transportation and the organizational unit involved.

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## 4.0 POLICY

- 4.1 WVDOT will make reasonable accommodations for an employee who is deemed by a medical practitioner to be temporarily or permanently disabled from performing all essential functions of the currently assigned job classification and job duties.
- 4.2 WVDOT will return an employee to modified or alternative work as soon as possible following injury or illness so the employee may continue as a valuable member of their organizational unit while recovering from the injury or illness.
- 4.3 In all cases of occupational injury, WVDOT will follow the first four rehabilitation priorities from Legislative Rule 85.CSR 15-4:
  - A. Return to the pre-injury job.
  - B. Return to the pre-injury job with modification of tasks, work structure or hours.
  - C. Return of the employee to employment in a different position.

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- D. Return of the employee to employment in a different position with on the job training.

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### **5.0 EMPLOYEE INJURED ON THE JOB & TRANSITIONAL RETURN TO WORK**

- 5.1 An employee injured on the job will be reinstated to their former position and duties upon written verification from the treating medical practitioner that the employee can perform full or regular duty.
- 5.2 When the treating medical practitioner releases an employee to return to work with specific restrictions of a temporary nature, WVDOT will determine if transitional modified duty is a safe and productive option.
- 5.3 Modifications or alternate assignment will be for a specific period of time:
  - A. Not to exceed 30-day increments; updated based on additional medical reports submitted every 30 days.
  - B. Not to exceed a total 90 consecutive calendar days without approval from the Director of WVDOH Human Resources.
- 5.4 A Return to Work Plan is drafted by either WVDOH/Workers' Compensation or WVDOH/Civil Rights Compliance to be shared by the employee's supervisor with the injured employee; both sign and the Plan is returned.
- 5.5 If marginal job functions are the only duties the employee is disabled from performing, the employee's position may be modified such that the marginal functions will not be required or will be required only to the extent the employee can perform them.
- 5.6 Each case will be considered individually to determine if removal of marginal job functions will place an undue hardship on the organizational unit, and thus constitute an unreasonable accommodation.
- 5.7 If an employee is disabled from performing essential job functions, consideration will be given as to whether any form of mechanical or other means can be used to permit the employee to perform the functions.
- 5.8 If an employee returns to work with medically imposed limitations under the terms of this policy and subsequently is deemed unable to perform the essential functions of the position as modified, he/she may be placed on leave consistent with the West Virginia Administrative Rule or considered for other positions consistent with this policy.

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### **6.0 EMPLOYEE WITH NON-OCCUPATIONAL INJURY OR ILLNESS & TRANSITIONAL RETURN TO WORK**

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- 6.1 When, due to causes other than compensable occupational injury or disease, an employee has physical or mental impairment that substantially limits their ability to perform the essential functions of their currently assigned classification and job duties, that employee will be treated in the same fashion under this policy as an employee injured on the job.
- 6.2 Provided, such cases are administered by WVDOH Human Resources/Civil Rights Compliance.

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### **7.0 EMPLOYEES WITH PERMANENT DISABILITIES**

- 7.1 Whether due either to an on the job injury or a non-work-related injury/illness, if an employee has reached maximum medical improvement with permanent impairment, accommodation through permanent job modification to permit performance of the essential functions of the current position will be explored. WVDOH/Civil Rights Compliance shall assess the residual functional capacity of the employee for the purpose of identifying options for reasonable accommodation.
- 7.2 If an employee has reached maximum medical improvement with permanent impairment and no job modification or means can be employed to permit performance of the essential functions of the current position, the employee will be eligible for transfer to another position for which he/she is qualified, and the essential functions of which he/she can perform with or without reasonable accommodation. Provided, however, that such a position is available within the organizational and budgetary confines of the Department. Such transfers will be subject to a reasonable period of evaluation, after which a determination will be made as to whether the employee is satisfactorily performing the new duties.

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### **8.0 RESPONSIBILITIES**

- 8.1 In workers' compensation cases, Human Resources shall notify the attending physician as soon as practical that WVDOH has a return to work program and that modified or alternative work may be provided.
- 8.2 The employee must immediately share any restricted duty work release provided by the attending medical practitioner with the organizational unit (ORG).
- 8.3 The ORG must then share the restricted duty release with either Human Resources (if workers compensation) or Civil Rights Compliance (if not workers compensation).
- 8.4 Handling workers compensation cases with temporary work restrictions, including drafting the Return to Work Plan, is the responsibility of WVDOH Human Resources/Workers' Compensation. A representative will act as a liaison between WVDOH, the injured worker, the attending medical practitioner, and the workers compensation carrier. WVDOH Human Resources

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Division/Workers' Compensation will ensure all paperwork and forms have been properly handled and submitted to the appropriate parties.

- 8.5 Handling non-workers compensation cases as well as worker compensation cases with permanent restrictions, including drafting the Return to Work Plan, is the responsibility of WVDOH/Civil Rights Compliance. A representative will act as a liaison between WVDOT, the disabled worker, and the attending medical practitioner. WVDOH/Civil Rights Compliance will ensure all paperwork and forms have been properly handled and submitted to the appropriate parties.
- 8.6 The manager or supervisor will work closely with Human Resources or Civil Rights Compliance, whichever is applicable, to coordinate the back to work efforts and will be responsible for introducing the employee back into the workplace in the modified or alternative arrangement as appropriate.

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### 9.0 ELIGIBILITY

- 9.1 To be eligible for consideration under this policy, a Physician's/Practitioner's Statement (DOP-L3) or a reasonable substitute which substantially outlines the same information as the DOP-L3 must be completed by the treating medical practitioner. The form must plainly state the employee's specific work restrictions as well as the anticipated time frame for the restrictions.
- 9.2 Employees must comply with all requirements of this policy and any other steps required by WVDOT or WVDOT's workers' compensation carrier.

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### 10.0 REQUIRED APPROVAL

- 10.1 In workers' compensation cases, reasonable accommodations and/or modifications of job duties to address temporary restrictions must be agreed upon by WVDOH Human Resources/Workers' Compensation in conjunction with the ORG manager. Provided, if the ORG manager concludes the restrictions can be accommodated with safe and productive work but the WVDOH Human Resources/Workers' Compensation designee is not immediately available, the employee should be returned to work and WVDOH Human Resources/Workers' Compensation agreement and a Return to Work Plan will be completed as soon as possible.
- 10.2 In non-workers compensation cases, reasonable accommodations and/or modifications of job duties to address temporary restrictions must be approved by WVDOH/Civil Rights Compliance in conjunction with affected ORG manager. Provided, if the ORG manager concludes the restrictions can be accommodated with safe and productive work but the WVDOH/Civil Rights Compliance representative is not immediately available, the employee should be returned to

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work and WVDOH/Civil Rights Compliance approval will be obtained and required paperwork will be completed as soon as possible.

- 10.3 In all cases with permanent restrictions, reasonable accommodations and/or modifications of job duties must be pre-approved by the Civil Rights Compliance Division in conjunction with affected ORG manager.
- 10.4 Specific accommodations to be made, employee responsibilities and approval will be documented in a Return to Work Plan to be shared with the employee and signed by the employee and ORG manager.

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### 11.0 WAGE DIFFERENTIAL BENEFITS

- 11.1 In cases of compensable workers' compensation injury, the employee may be awarded Temporary Partial Rehabilitation (TPR) benefits pursuant to WV Code 23-4-9(d) if the employee returns to work as part of a rehabilitation plan and the employee's new wage are less than the average weekly wage earned at the time of the injury.
- 11.2 The award of TPR is made by WVDOT's workers' compensation carrier.
- 11.3 Approved TPR benefits are calculated and issued upon receipt of pay documents delivered to WVDOT's workers' compensation carrier.
- 11.4 The aggregate award of TPR may not exceed 52 weeks per claim.
- 11.5 In cases of part-time return to work, leave will be accrued, and holiday pay will be made proportional to the hours worked.

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### 12.0 ENFORCEMENT & AUTHORITY

The WVDOT reserves the right to modify, amend or terminate the policy at any time, or to depart from it in particular cases due to specific circumstances or legal requirements.

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### 13.0 CHANGE LOG

April 8, 2019 -

- Reviewed and revised by WVDOH Human Resources, Workers' Compensation Section. Reviewed by WVDOH Civil Rights Compliance Division.

April 8, 2019 -

- Changed format per Policy and Procedure work group.