




OREGON DEPARTMENT OF FISH AND WILDLIFE POLICY

Human Resources Division

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| Title: | Reinstatement and Reemployment of Injured Workers | HR_480_17 |
| Supersedes: | HR_480_06, dated April 1, 2008 | |
| Applicability: | Classified (where not in conflict with the labor agreement), executive service, and management service employees | |
| Reference: | State Policy 50.020.03; 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; 105-050-0030; and 839-006-0100 through 839-006-0150 | |
| Effective Date: | November 1, 2010 | Approved:  |

I. PURPOSE

This policy establishes and defines the process of reinstatement or reemployment with ODFW/State of Oregon after an on-the-job injury or illness.

II. DEFINITIONS

- A. **Agency-at-Injury:** The state agency at which the injured worker was employed at the time the compensable injury occurred.
- B. **Attending Physician:** The doctor, physician, or physician assistant 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].
- C. **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.
- D. **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.
- E. **Injured Worker List:** A list of names of employees who were injured while employed with a state agency, who are unable to return to their former positions due to compensable, work-related injuries or illnesses.
- F. **Reinstatement:** Return of a worker who has sustained a compensable injury to the worker's former position according to ORS 659A.043.

- G. **Reemployment:** As used in this policy, the return of a worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former position and returns to work in an available and suitable position.
- H. **Suitable Position:** A position, meeting the worker's medical restrictions, that is most similar to the former position in terms of: compensation (the same salary range or within four salary ranges lower), duties, responsibilities, skills, location, duration (full or part-time, temporary or permanent) and shift.

III. POLICY

This policy designates the manner in which ODFW complies 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.

ODFW provides injured workers with written notice of their rights and responsibilities in the Injured Worker Information Packet and this policy (see http://inside.dfw.state.or.us/safety/Workers_Comp/Injured%20Workers%20Packet.pdf)

A. Reinstatement and Reemployment of Injured Workers

- 1. ODFW as the Agency of Injury
 - 1) shall reinstate injured workers who make a timely demand, in accordance with Section III. B. 1. a. of this policy, for reinstatement and are released by an attending physician to return to their former position;
 - 2) shall reemploy injured workers who make a timely demand, in accordance with Section III. B. 1. 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;
 - 3) shall give preference to injured workers in appointment to positions in entry-level classifications;
 - 4) may establish a trial service period upon reemployment of an injured worker to a position consistent with HR Policy 440_06, Trial Service Period, or an applicable collective bargaining agreement.
- 2. If an injured worker accepts an offer of suitable work and, after beginning the position, the worker is physically unable to perform the essential functions of the position, subject to applicable law, rule, policy and collective bargaining agreement, the department may remove the injured worker from the position. The department 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.
- 3. An injured worker shall:
 - a. have the right to reinstatement to the injured worker's former position or reemployment to an available, suitable position and; placement on the injured

worker list for positions in entry-level classifications as well as available and suitable classifications if the employee:

- 1) is an employee of an Executive Branch agency at the time of injury; and
 - 2) has a compensable injury or illness that occurred in the course and scope of their duties as a state employee, and
 - 3) has a written release for work from the attending physician that clearly indicates that the worker may return to his/her former position (reinstatement), or has medical restrictions preventing the worker from returning to his/her former position, but is medically released to other suitable positions (reemployment); and
 - 4) makes a timely written demand in accordance with Section III. B. 1. a. of this policy to his or her agency supervisor, human resource office or appointing authority for reinstatement or reemployment.
- b. notify the human resources office of the agency-at-injury within ten (10) calendar days when the need for a correction or change to an employee's placement on the injured worker list is identified including when there is a change to the injured worker's name, address or phone number, the worker participates 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. lose reinstatement and reemployment rights when the injured worker:
- 1) 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
 - 2) is eligible for and participates in vocational assistance under ORS 656.340; or
 - 3) 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
 - 4) prior to becoming released to suitable employment, refuses a bona fide (good faith) offer from the employer of transitional work (light duty or modified employment); or
 - 5) in the absence of extenuating circumstances, fails to make a written demand, to a party listed in Section III. B. 1. a. for reinstatement to his or her 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 his or her former position or to reemployment to a suitable position; or

- 6) in accordance with OAR 839-006-0131 clearly and unequivocally abandons employment with the state; or
- 7) in accordance with OAR 839-006-0131 has been discharged for bona fide reasons (good faith) not connected with the injury and for which others are or would be discharged; or
- 8) three (3) years have elapsed since the date of injury or three years have elapsed since the date a worsened condition occurred according to ORS 656.273.

B. Reinstatement and Reemployment Procedures

1. The injured worker:

- a. may demand reinstatement to his/her former position or reemployment to an available, suitable position within seven (7) calendar days of receiving notice from the insurer that the injured worker has been released to return to work by their 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 specific entry-level classifications, even where such positions are not "suitable," by advising, in writing, the human resources office of the agency-at-injury of the specific entry-level classifications that the injured worker wishes to be appointed.
- c. once a demand for reinstatement or reemployment is made, must cooperate with state agencies' efforts to reinstate or reemploy the injured worker. Cooperation means:
 - 1) accepting all invitations to interview for suitable positions; and
 - 2) accepting an offer of a suitable position. Refusing to accept an offer of a suitable position may only be made as prescribed in Section III. B .4. d. of this policy; and
 - 3) notifying the agency-at-injury of changes in address, telephone number, return to work status or medical status; and
 - 4) compliance with the State's reporting policy.
- d. who fails to cooperate with the state's efforts to reinstate or reemploy the injured worker may be subject to disciplinary action.

2. ODFW as the agency-at-injury:

- a. upon the injured worker's timely demand for reinstatement, will reinstate the worker once the worker is released by the attending physician to the worker's former position. If the former position no

longer exists, or if the worker is not released to the former position but is released to suitable employment, the agency-at-injury will reemploy the worker in an available and suitable position, or

- b. if neither the former position nor a suitable position is immediately available within the agency-at-injury, will facilitate the return of the injured worker into an available and suitable position in other agencies via the statewide injured worker reemployment process by:
- 1) requesting documentation of the injured worker's work experience, knowledge, skills and abilities via the state job application form, and
 - 2) 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, and
 - 3) placing the injured worker on the injured worker list for additional classifications that 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, and
 - 4) 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, and
 - 5) accomplishing placement of the injured worker on the injured worker list within a reasonable timeframe not to exceed 2 weeks from its receipt of the injured worker's demand unless extenuating circumstances exist, and
 - 6) 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, and
 - 7) 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 under statute and administrative rule), and

- 8) sharing information regarding an injured worker's relevant work related restrictions with a recruiting agency's human resources office upon the hiring agency's request.
 - c. If the injured worker provides written notice that the job is unsuitable, may notify the injured worker, in writing that the injured worker has twenty calendar days to provide medical verification or a written explanation of why the job is not suitable. In the absence of requiring such written explanation, the agency will offer a more suitable position.
3. A recruiting agency must request 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 shall not be made to compete against other candidates for placement in the position;
 - c. may obtain information from the agency-at-injury or from the injured worker, a certificate from the attending physician, pertaining to 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 Section III. B. 4. d. – f. 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
4. 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, and
 - b. if unable to return to the injured worker's former position, must accept a bona fide (good faith) job offer of a suitable 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/she is physically unable to perform the duties of the position. In the event of a refusal based on physical ability the injured worker must:
 - 1) 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, and
 - 2) 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, even if the worker considers the position not suitable for reasons other than physical ability.
 - f. in the event that the injured worker considers the position to be unsuitable for reasons other than physical ability, the injured worker may:
 - 1) provide written notice to the agency-at-injury that the worker considers the position to be unsuitable;
 - 2) provide written notice that details reasons why the worker does not feel the position meets the definition of suitable position within 20 calendar days of being notified by the agency to specify the reasons in writing.
 - g. upon receipt of the written notice, the agency-at-injury shall determine whether the position is suitable or not 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.
5. ODFW as 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 III. A. 3. 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, and
 - b. cooperates with a recruiting agency in order to determine the suitability of the available position, and
 - c. retains the injured worker in a leave without pay status on the agency payroll until such time as:
 - 1) the injured worker is reinstated to his/her job at injury, or
 - 2) the injured worker is reemployed in an available, suitable position with the agency-at-injury or with another agency of the Executive Branch, or
 - 3) the injured worker loses reinstatement and reemployment

rights and becomes ineligible for placement on the injured worker list as set out in Section III. A. 3. c. of this policy;

- d. may initiate disciplinary action (pre-dismissal or separation of employment, as appropriate), if provisions of Section III. A. 3. c. of this policy are met, assuming other legal and contractual obligations have been met.

IV. POLICY CLARIFICATION

1. In the event that an agency-at-injury and an injured worker agree that an offered position is not suitable via the process described in III. D. 4. a.- g. of this policy, the injured worker shall remain on the injured worker list until such time as provisions of Section III. D. 4. a.- g. of this policy is met.
2. A managerial or supervisory position may be a suitable position for a returning injured worker whose former position was managerial or supervisory.
3. 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.
4. 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.
5. The State has no obligation to create a job for an injured worker.
6. Nothing in this policy prohibits an agency-at-injury from offering an available, suitable position to an injured worker prior to that injured worker making a demand for reemployment when it is reasonably anticipated by the agency-at-injury, the injured worker, or both, that the injured worker will not be able to return to the injured worker's former position.

SUPPORTING RESOURCES AND LINKS:

Updated Injured Worker Packet

http://inside.dfw.state.or.us/safety/Workers_Comp/Injured%20Workers%20Packet.pdf