CITY OF PORTLAND, OREGON

Bureau of Police
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EXECUTIVE ORDER

DATE: November 13, 2007

TO: All Members

RE: DIR 415.00 Return To Work Policy

ACTION: This is a new directive relating to City of Portland Administrative Rules regarding procedures for employees returning to work. The entire directive is included in this Executive Order for your review.

Index: Title:
Refer: City Administrative Rule 7.08
ORS 659A.043
ORS 659A.046

POLICY (415.00)

The purpose of this directive is to provide information to members about the City of Portland's policy to establish guidelines for the Bureau for providing return to work opportunities for sworn members who are recovering or have recovered from illness or injury and are restricted because of the illness or injury or members who are temporarily limited because of pregnancy-related condition(s).

PROCEDURE (415.00)

Directive Specific Definitions

Transitional Duty: Temporary work opportunities for members who are recovering from illness or injury and are not medically stationary but are expected to return to full duty within a determined period of time or who are temporarily limited due to pregnancy. If a transitional duty assignment is available, a member who is awaiting a restricted duty assignment may be eligible for an available Transitional Duty assignment at the discretion of the Bureau.

Restricted Duty: Work opportunities for members whose medical restrictions prohibit the member from performing front-line police work on a permanent basis. Typically the member has been declared medically stationary by a qualified medical professional and has been released to perform a restricted duty assignment. However, FPDR may conclude based on medical evidence that the member's condition and abilities make the member medically eligible for Restricted Duty.

Job analysis: Includes two components: (1) Job tasks within a job classification identified by the Bureau that may be performed by a member who is eligible for a Transitional Duty or

Restricted Duty assignment; and (2) a physical and/or mental capacities assessment of a Transitional Duty or Restricted Duty assignment. The physical and/or mental capacities assessment is typically facilitated by FPDR or the City's Risk Management Division.

Medically Stationary: The term means that no further material improvement can reasonably be expected from medical treatment or the passage of time. It does not mean that a member's condition has stopped deteriorating or has been stabilized. It means that in terms of reasonable medical probability, the condition is not going to improve.

Phase One: Refers to the launch phase of the Return to Work Restricted Duty Program, which included the identification, notification, and return of eligible members. Potentially eligible members were first formally notified of Return to Work efforts in June 2006.

Return to Work Coordinator: The BHR contact between the Bureau, FPDR, the member and qualified medical professionals as necessary who is assigned to facilitate the return-to-work program for medically stationary members unable to return to their job at injury.

The Bureau will identify a limited number of Transitional Duty and Restricted Duty assignments within sworn classifications for members with medical restrictions. The Bureau will work with the member, the member's medical providers, the FPDR, the City's Risk Management Division and Bureau designated physicians as necessary in determining a member's ability to perform the tasks of the available assignments.

a. The Bureau will designate a representative to coordinate Return to Work efforts for members on Transitional Duty.
b. Due to the complexity of the legal issues involved, BHR will designate a Return to Work Coordinator to facilitate the process for Restricted Duty.

Transitional Duty Requirements

a. The Bureau will identify a limited number of assignments in the Bureau suitable for members with temporary restrictions.
b. For members who are temporarily limited because of injury or illness and are receiving disability benefits from FPDR, FPDR is responsible for coordinating review of the job analysis by a qualified medical professional to determine if the Transitional Duty assignment is within the member's limitations. The Bureau reserves the right to require the member to be examined by a qualified medical professional of the Bureau's choosing, at its expense.
c. For members who are temporarily limited because of work-related injury or illness and are covered by the state workers' compensation system, the Bureau will work with the City's Risk Management Division and BHR to assess and meet its obligations under state law, Human Resources Administrative Rule 7.08, and other applicable City policies and collective bargaining agreement provisions.
d. For members who are limited because of pregnancy or who are temporarily limited by injury or illness unrelated to work and are not eligible for non-service connected disability from FPDR or workers' compensation, the Bureau will work directly with the member and the member's health care provider to determine the suitability of a Transitional Duty assignment.

Transitional Duty Assignments

Transitional Duty assignments may be reverted at any time to full duty assignments due to the

operational and business needs of the Bureau, including the need to provide efficient and effective public safety services, budget or staffing requirements.

a. Duration of Transitional Duty Assignments
   1. Transitional Duty assignments are made with the anticipation the member will return to full duty within a determined period of time. Transitional Duty assignments, which will be confirmed in writing, are for 90 calendar days or less, except for members who are restricted because of pregnancy. With the approval of the designated representative from the Bureau the Transitional Duty assignment may be extended for up to 90 calendar days. Approval for an extension requires the member to present substantive medical information that the member will be fully recovered within an additional 90 calendar day period of time. Under no circumstances will a member be allowed to remain on a transitional duty assignment beyond 180 calendar days.
   2. The duration of Transitional Duty assignments provided to members because of pregnancy-related restrictions will be made on a case-by-case basis.
b. Eligibility for Transitional Duty Assignments
   1. A member who is temporarily limited due to illness or injury is eligible if:
      a) The member provides the Personnel Division or the FPDR Liaison with a signed job analysis from the treating physician authorizing a return to an available transitional duty assignment. The physician must approve the member's ability to perform the requirements of the transitional duty assignment.
      b) The member has been determined by a qualified medical professional to be progressing through a fixed recovery period that is expected to be no longer than 90 calendar days.
      c) The member is otherwise qualified and suitable for the transitional duty assignment as determined by a designated representative of the Bureau and FPDR Liaison.
      d) The member has signed a "Transitional Duty Contract" if required by the Bureau.
      e) The assignment is available and meets the operational needs of the Bureau.
c. A member with an accepted workers' compensation claim under state law is eligible to return to work in accordance with state law, City Human Resources Administrative Rule 7.08 and other applicable City policies and collective bargaining agreement provisions.
d. A member who is temporarily limited because of pregnancy-related conditions will submit a written request to the Personnel Division or the FPDR Liaison and provide a job analysis authorizing the member to perform a transitional duty assignment.

Process to Return to Full Duty Assignments

a. Any member on a Transitional Duty assignment determined to be released to full duty must submit a release from a qualified medical professional. A member who is on service connected disability, non-service connected disability or workers' compensation is expected to comply with FPDR or Risk Management requirements, if any.
b. Members are expected to notify the Personnel Division or the FPDR Liaison immediately when they are released to return to full duty.
c. The Bureau may require an Independent Medical Evaluation (IME) or Fitness for Duty Evaluation prior to the member's return.

Member Responsibilities

a. Members assigned to Transitional Duty will notify their immediate supervisor and the

Personnel Division or the FPDR Liaison of any change in their condition that modifies the original medical release.

b. Members receiving disability benefits from FPDR or Workers' Compensation payments are expected to inform FPDR or Risk Management of any changes in their condition.
c. Members assigned to transitional duty are expected to meet the conduct and performance expectations of the assignment.
d. Members who are considering refusing a transitional duty assignment that is within their restrictions should consider the potential consequences of a refusal. Refusal could subject the member to disciplinary action and ineligibility for disability benefits. Disability benefits or workers' compensation payment decisions are solely within FPDR's or Risk Management's jurisdiction.

Restricted Duty Assignments

a. The Bureau may identify a limited number of Restricted Duty assignments in the Bureau suitable for a member whose restrictions are of a permanent nature and prevent the member from performing front-line fire fighting or police work.
b. The Return to Work Coordinator is responsible for coordinating the return to work process for members who are eligible for Restricted Duty. This includes facilitation with the member, FPDR, qualified medical professionals and the Bureau, review of the job analysis, evaluation of potential ADA issues, using the appropriate return to work procedures and drafting offer letters.
c. For members who are covered by the state workers' compensation system, the Bureau will work with the City's Risk Management Division and BHR to assess and meet its obligations under state law, Human Resources Administrative Rule 7.08, and other applicable City policies and collective bargaining agreement provisions.

Duration of Restricted Duty Assignments

Although Restricted Duty assignments have no specified time limit, the Chief of Police retains the right to impose a specified time limit at any time. Restricted Duty assignments may be reverted to full duty assignments because of the operational and business needs of the bureau, including the need to provide efficient and effective public safety services, budget or staffing requirements.

While in a Restricted Duty assignment, members may be required to submit medical updates on an annual basis, or when a question arises such as the need to have a qualified medical professional verify that the member is physically or mentally capable of returning to full duty. A report from a qualified medical professional must be submitted to the Return to Work Coordinator.

Eligibility for Restricted Duty Assignments

Eligibility to participate in the Restricted Duty program begins when:

a. A determination has been made that the member is not expected to or is unable to return to the job at injury.
b. The member is medically stationary or otherwise deemed medically eligible for a Restricted Duty assignment by FPDR.
c. The member is a permanent City employee with Civil Service status in the rank of the available assignment and has successfully completed probation.

d. For members with an accepted workers' compensation claim under state law, the member has been deemed eligible to return to work in accordance with state law, City Human Resources Administrative Rule 7.08 and other applicable City policies and collective bargaining agreement provisions.
e. For members receiving disability benefits from FPDR, the member is receiving disability benefits under the new plan in effect on July 1, 1990.
f. Other criteria include:
    1. The Return to Work Coordinator receives reliable medical information indicating that the member is able to perform the requirements of the restricted duty assignment.
    2. The assignment is available and meets the operational needs of the Bureau.
    3. The member is otherwise qualified and suitable for the assignment. Certain assignments may require additional selection criteria for placement eligibility.

Order of Eligibility for Restricted Duty Assignments

a. Members who meet the requirements as identified above will be eligible for an available restricted duty assignment in the following order:
    1. ADA qualified individuals entitled to a reasonable accommodation and/or a sworn member who has an accepted workers' compensation claim under state law, and is eligible for reemployment rights under ORS 659A.046.
    2. A member who is not ADA qualified but is receiving service connected disability benefits from FPDR.
    3. During Phase One of the Restricted Duty Program, the order of eligibility for members who are not ADA qualified and are receiving service connected disability will be members who are on leave the longest amount of time due to injury (first out, first in).
b. During Phase One of the Restricted Duty Program, the order of eligibility for members who are not ADA qualified and are receiving service connected disability will be members who are:
    1. Currently DPSST certified or will be within 6 months.
    2. On leave the least amount of time due to injury (last out, first in).
c. A member who is not ADA qualified and is receiving non-service connected disability benefits. During Phase One of the Restricted Duty Program, determinations of placement order for members who are not ADA qualified but receiving non-service connected disability benefits will follow the same order described above.
    1. The ending date of Phase One and effective date of Phase Two of the Restricted Duty Program will begin on a date certain as determined by the Return to Work Coordinator, the Chief of Police and the FPDR Director.
    2. Once Phase Two is in effect, the order of eligibility for Restricted Duty assignments at Bureau will be that ADA qualified individuals entitled to a reasonable accommodation and/or a sworn member who has an accepted workers' compensation claim under state law, and is eligible for reemployment rights under ORS 659A.046 are first eligible. Otherwise, the order of eligibility is that so long as all other requirements have been met, the member who was first released to Restricted Duty status shall be first eligible for placement.

Process to Return to Full Duty Assignments

a. Any member on a Restricted Duty assignment determined to be released to full duty must

submit a release from a qualified medical professional. A member who is receiving disability benefits from FPDR or workers' compensation payments is expected to comply with FPDR or Risk Management requirements, if any.

b. Members are expected to notify the Personnel Division or the FPDR Liaison immediately when they are released to return to full duty.
c. The Bureau may require an Independent Medical Evaluation (IME) or Fitness for Duty Evaluation prior to the member's return.
d. Member Responsibilities.
    1. Members assigned to a Restricted Duty assignment will notify their immediate supervisor and the Personnel Division or the FPDR Liaison of any change in their condition that modifies the original medical release.
    2. Members assigned to Restricted Duty are expected to meet the conduct and performance expectations of the restricted duty assignment.
    3. Members who are considering refusing a Restricted Duty assignment that is within their restrictions should consider the potential consequences of a refusal. Refusal could result in ineligibility for disability benefits. Disability benefits or workers' compensation payment decisions are solely within FPDR's or Risk Management's jurisdiction. Refusal could subject the member to disciplinary action or other employment actions.

General Provisions Pertaining to Transitional Duty and Restricted Duty Assignments

It is in the best interests of the affected member, coworkers, the Bureau and the community that members with medical restrictions do not engage in conduct that could possibly hinder their recovery or could jeopardize the safety and well being of the member or a member of the public.

The Bureau has the authority to require an independent medical examination or Fitness for Duty examination of a member at any time by a qualified medical professional of the Bureau's choosing at its expense. For members being considered for a Restricted Duty assignment, the Return to Work Coordinator also is authorized to require an examination, in consultation with the Bureau.

The availability of a restricted duty assignment does not affect a member's eligibility for a leave of absence for an injury or illness that is sustained in the line of duty or any other form of leave that the member may be eligible for under City Administrative Rules and state or federal law (i.e., Family and Medical Leave Act).

A member who is in a Transitional or Restricted Duty assignment for medical reasons is not prohibited from applying for promotion through the regular City civil service process. A member who is otherwise qualified may be eligible for promotion if the member is able to perform the essential functions of the assignment, the member is released to perform the essential functions by an appropriate medical professional prior to the effective date of the promotion, and the available assignment is in the rank in which the promotional vacancy exists.

This Return to Work program shall not be construed as recognition by the City of Portland, the Portland City Council, City management, or City employees or agents that any employee who participates in the program is a qualified individual with a disability as defined by the Americans with Disabilities Act (ADA) of 1990 or state law.

If an employee sustains an injury or illness that results in a disability under the ADA, it is the employee's responsibility to inform his or her supervisor, the Bureau's Personnel manager, or a person in a responsible management position that the member believes that a disability under the

ADA exists and that a reasonable accommodation is necessary to perform the essential functions of his or her job. City ADA processes and forms are required and can be found online at the city's website.

Termination of Eligibility for Return to Work Program

After the effective date of Phase Two of the Restricted Duty Program is in effect, a member's eligibility for this program may end when one of the following events occurs.

a. For members under the workers' compensation system, any of the events described in ORS 659A.043 or 659A.046 (Reinstatement/Re-employment rights for injured workers).
b. For FPDR members.
    1. A medical determination is made that the member cannot return to reemployment at any sworn assignment with the Bureau.
    2. If unable to return under the RTW program, the member accepts employment with another City bureau or non-City employer.
    3. If the member is unable to return under the RTW program, FPDR has determined the member is eligible for and the member participates in vocational assistance for jobs outside of sworn law enforcement or sworn fire service professional jobs at the Bureau.
    4. The worker refuses a bona fide offer from the Bureau of a sworn Transitional Duty or Restricted Duty assignment.
    5. Five years elapse from the date of injury.
    6. If the member is terminated or separated for any reason other than lack of an available and suitable Transitional Duty or Restricted Duty assignment at the Bureau.
    7. A decision that a member is not eligible for the RTW program by the Bureau for any other reason may be made on a case by case basis.

FOR MORE INFORMATION:
Please contact Marsha Palmer, Strategic Services Division, at 503-823-0264.

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