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## AUHR 7.08 MEDICAL LAYOFF

### Applicability

The provisions of this Administrative Rule apply to all Auditor's Office employees except those who are covered under the Fire and Police Disability and Retirement Fund. The rights under ORS 659A.043 and ORS 659A.046 for eligible employees expire three (3) years from the date of injury. Represented employees in the Auditor's Office are covered by HRAR 7.08.

### Definitions

**Authorized Health Care Provider:** A health care professional who meets the definition of attending physician, or as provided in Oregon Workers' Compensation laws.

**Injured Employee:** An employee of the Auditor's Office with a Workers' Compensation Claim accepted by the City of Portland - Risk Management.

**Medically Stationary:** As defined in Oregon Workers' Compensation Law, medically stationary means no further material improvement would reasonably be expected from medical treatment or the passage of time.

**Transitional Duty:** Temporary changes in the work environment to allow an employee with temporary limitations/restrictions to work at tasks that are less physically or mentally demanding than their regular work during the employee's recovery from a work-related injury/illness. Transitional duties may include job restructuring, assistive devices, workstation modification, reduced hours, or reassignment to another job. Also known as temporary modified duty or light duty.

### Early Return to Work Program

A permanent, temporary or probationary employee who has suffered an on-the-job injury will be returned to a suitable assignment as soon after the injury as possible.

1. An injured employee who is not able to return to regular duties because of temporary medical restrictions will be provided, whenever practical, transitional duty by the Auditor's Office. Transitional duty may include temporary changes in the work environment, assigned tasks or the manner by which assigned tasks are completed. The assignment to such duty shall be in writing and state that the assignment is for a maximum of 90 consecutive calendar days. The employee's progress while in the Early

Return to Work Program will be monitored by Management Services in consultation with Risk Management and Auditor's Office safety staff.

Transitional duty assignments beyond 90 days are extremely rare and in most cases will not exceed a total 90 additional consecutive days. The Auditor's Office in consultation with Risk Management will review the assignment for possible extension of transitional duty at least 15 business days prior to the end of the assignment. If a decision to extend the assignment beyond 90 consecutive days is made, it will occur in accordance with Risk Management protocols, and take into account the particular circumstances of the situation as well as reliable medical information from a qualified medical professional. Under no circumstances will a transitional duty assignment exceed 12 months from the first day of the assignment.

The Early Return to Work Program shall end when the employee is released for regular work or at any point that the employee's authorized health care provider determines the medical restrictions are expected to be permanent, and that the employee will not be capable of returning to their regular work.

The Auditor's Office may modify, change or discontinue the Early Return to Work Program or conditions of the program at any time.

2. The employee's base wage rate will be the same as what the employee received for the job at injury.
3. The Auditor's Office may have the employee perform any suitable assignment not outside the medical restrictions defined by the employee's authorized health care provider.
4. Prior to returning to work, the injured employee must provide a return-to-work release from the authorized health care provider specifying medical restrictions, if any.
5. The Auditor's Office may require injured employees working transitional duty to update their medical restrictions following each visit with the employee's authorized health care provider.
6. Employees with injuries resulting in permanent restrictions prohibiting return to the job at injury will be subject to the rules governing re-employment below.
7. Injured workers who are temporary employees only have rights to return to a temporary position and in no case does the temporary employee have job rights in excess of the terms of their temporary hire with the Auditor's Office

## Reinstatement to Regular Job

This section applies to injured employees who are released to return to their regular job (reinstatement).

1. In accordance with Oregon Workers' Compensation Law, ORS 656.340(3), within five (5) days after notification that the employee's authorized health care provider has released the employee to return to their regular work, Risk Management notifies the injured employee, by certified mail, that they have been released for reinstatement to their job-at-injury if not already working at their regular work. If not working in a City job at the time of notification, the injured employee must make a demand for reinstatement within seven (7) calendar days following receipt of the notice from Risk Management. That demand must be made to Risk Management, who will notify the Auditor's Office. The demand for reinstatement must comply with ORS 659A.043.
2. The Auditor's Office may question the employee's medical ability to do the job and arrange for a fitness-for-duty examination, but may only do so after consultation with Risk Management.
3. The Auditor's Office will consult with the Bureau of Human Resources to determine if there are any limitations on the injured employee's reinstatement rights under ORS 659A.043 or collective bargaining agreement.
4. Within seven (7) calendar days of the date of the employee's demand for reinstatement, the Auditor's Office determines if the employee's job is available. If so, barring any limitations by statute, collective bargaining agreement or these administrative rules, the job must be offered to the employee.
5. If the job is not available in the Auditor's Office but one is vacant elsewhere in the City, barring any limitations by statute, collective bargaining agreement or these administrative rules, the vacant job must be offered to the injured employee. Risk Management will work with the Bureau of Human Resources to assist in facilitating the employee's return to work.
6. If the job is not available in the Auditor's Office or no vacancies exist elsewhere in the City, then within 14 days of the employee's demand for reinstatement, follow the re-employment process below at Step 3.
7. An injured worker who does not accept an offer of reinstatement may lose the right to return to work.

## Re-employment

This section applies to injured employees who are not released by their health provider to return to their regular job.

1. In accordance with Oregon Workers' Compensation Law, ORS 656.340(3), within five (5) days after notification that the employee's authorized health care provider has released the employee to return to work with permanent restrictions, Risk Management sends the required notification to the employee.

The employee must make a demand for re-employment within seven (7) calendar days following receipt of the notice from Risk Management. The demand must be made to Risk Management, which will immediately send a copy to the Auditor's Office.

The Auditor's Office may consult with Risk Management, the Bureau of Human Resources and the City Attorney or other legal counsel to determine if changes to the regular job or worksite can be made that would allow the employee to successfully perform the duties of their regular job. The Auditor's Office will keep documentation regarding the employee's permanent restrictions and any final job or worksite changes.

2. If changes cannot be made, the Auditor's Office has fourteen (14) calendar days from the date of demand from employee to identify an available and suitable job and offer it to the employee.
3. If no job is available and suitable within the Auditor's Office, a Bureau of Human Resources representative shall meet with the employee and review a listing of all City job class titles that are suitable (substantially similar to the former job in compensation, duties, responsibilities, skills, location, duration and shift for which the injured employee is qualified) and do not represent a promotion. This list should be developed immediately after Step 2 above. The Bureau of Human Resources representative shall work with the employee, in consultation with the Vocational Counselor or Risk Management if necessary, once suitable job classes are identified to determine if they are within the injured employee's medical restrictions. The Bureau of Human Resources representative will send the employee the class specifications of the jobs identified as suitable.
4. The Bureau of Human Resources representative will conduct a continuing search for available work within the job classes identified as suitable until the employee is reemployed or until the employee's rights are terminated in accordance to ORS 659A.046(3).

When a suitable job becomes vacant, the Director of Human Resources, or designee, will determine if the injured employee is qualified for the job.

5. If the Director of Human Resources determines the employee is qualified, the authorized health care provider has released the employee to do the job and the City does not contest the employee's ability to do the job, the job must be offered to the employee.
6. If an injured employee qualifies for re-employment to a job class for which the employee has no status and there are employees on a lay-off for that job class, the laid-off employee's right for recall supersedes the injured employee's right to re-employment. If both employees have status in the job class, higher seniority prevails.
7. An injured worker who does not accept an offer of re-employment will lose the right to return to work.

### **Process for Medical Layoff**

In the event the medically stationary injured employee or an injured employee with documented restrictions is not able to return to work, the employee may be laid off for medical reasons. See [Administrative Rule on Medical Layoff](#).

The Bureau of Human Resources will provide instructions to the injured employee being medically laid off concerning their rights, if any, to re-employment or reinstatement as provided by ORS 659A.043 and 659A.046.

### **Vocational Rehabilitation**

The injured employee may also be entitled to vocational rehabilitation as provided under ORS 656.340. Risk Management, in conjunction with the Bureau of Human Resources, will ensure that the employee is informed of these benefits and services. An employee who accepts vocational rehabilitation shall not be placed on medical layoff and shall lose all reinstatement and reemployment rights under ORS 659A.043 and ORS 659A.046.

### **Non-Occupational Injuries**

If the employee incurs a non-occupational injury, refer to the Administrative Rules on Sick Leave, Family Medical Leave and Medical Layoff.

## Frequently Asked Questions

Attachment A listing frequently asked questions is for information only and not part of this rule.

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## Human Resources Rule Information and History

Questions about this administrative rule may be directed to the [Management Services Division](#) of the Auditor's Office.

Adopted by the City Auditor December 11, 2017.

Adapted from City of Portland Human Resources Administrative Rule 7.08 Injured Employee Return To Work.

Adopted by Council March 6, 2002, Ordinance No. 176302.

Last revised April 25, 2016.