

SUBJECT: Reinstatement and Reemployment of Injured Workers **NUMBER:** 50.020.03

DIVISION: Chief Human Resources Office **EFFECTIVE DATE:** 2/01/2019

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT: Oregon state government reinstates employees with compensable work-related injuries or illnesses to their former positions, reemploys them to available and suitable positions, and provides them preference to entry-level classifications in accordance with ORS 659A.043, 659A.046, and 659A.052.

AUTHORITY: ORS 240.015; 240.250; 240.306; 656.340; 659A.043; 659A.046; 659A.052; OAR 105-040-0010; 839-006-0100 through 839-006-0150

APPLICABILITY: All employees where not in conflict with an applicable collective bargaining agreement

ATTACHMENTS: None

DEFINITIONS: **Agency-at-Injury:** The state agency employing the injured worker when the compensable injury occurred.

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) for further definition].

Entry-Level Classification: All limited competitive and non-competitive appointment classifications as listed in State HR Policy 40.010.02; all classifications defined as entry in their title; single-level classifications and the first level of a classification series.

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.

Injured Worker List: A list of employees injured while employed with an Executive Branch state agency, who are unable to return to their former positions due to compensable, work-related injuries or illnesses. The employee must not have waived reemployment rights in accordance with state workers' compensation laws.

Reemployment: As used in this policy, when an injured worker is disabled from performing the duties of the worker's former position and returns to work in an available and suitable position.

Reinstatement: Return of an injured worker to the worker's former position according to ORS 659A.043.

Suitable Position: A position that meets the worker's medical restrictions and is most similar to the former position in terms of compensation, duties, responsibilities, skills, location, duration (full or part-time, temporary or permanent) and shift.

Also refer to CHRO State Policy 10.000.01, Definitions.

POLICY:

(1) General Provisions:

- (a) This policy designates the manner in which state agencies comply 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. Additionally, the Department of Administrative Services, Chief Human Resources Officer, according to ORS 659A.052(3), may compel any agency within the Executive Branch to provide reinstatement to the former position, to appoint to an available, suitable position or give an injured worker preference in appointment to a position in an entry-level classification.
- (b) An agency-at-injury provides injured workers with written notice of their rights and responsibilities, in any reasonable form, including but not limited to this policy.
- (c) An agency:
 - (A) reinstates injured workers who make a timely demand in accordance with Section (2)(a)(A) of this policy for reinstatement
 - (B) reemploys injured workers who make a timely demand in accordance with Section (2)(a)(A) of this policy for reemployment who are unable to perform the tasks of their former position due to their compensable injury
 - (C) gives preference to injured workers in appointment to positions in entry-level classifications
 - (D) may establish a trial service period upon reemployment of an injured worker to a position consistent with State HR Policy 40.065.01 Trial Service Period, or an applicable collective bargaining agreement.
- (d) If an injured worker accepts an offer of suitable work, begins the position, and then cannot physically perform the essential functions of the position, the employing agency may remove the injured worker from the position subject to applicable law, rule, policy, and collective bargaining agreement. The employing agency notifies the agency-at-injury of the removal. Upon receipt of notice, the agency-at-injury places the injured worker on leave status in their former position and ensures the injured worker remains active on the injured worker list for all appropriate classifications.
- (e) An injured worker:

- (A) has the right to reinstatement to the injured worker's former position or reemployment to an available, suitable position and to placement on the injured worker list for positions in entry-level classifications as well as available and suitable classifications if the employee:
- (i) is an employee of an Executive Branch agency at the time of injury, and
 - (ii) has a compensable injury or illness that occurred in the course and scope of their duties as a state employee, and
 - (iii) has a written release for work from the attending physician that clearly indicates that the worker may return to the former position (reinstatement), or has medical restrictions preventing the worker from returning to the former position, but is medically released to other suitable positions (reemployment), and
 - (iv) makes a timely written demand in accordance with Section (2)(a)(A) of this policy to the agency supervisor, human resources office or appointing authority for reinstatement or reemployment.
- (B) Notifies the human resources office of the agency-at-injury within 10 calendar days when the need arises to correct or change the employee's placement on the injured worker list, or to change the injured worker's name, address or phone number. The worker shall also notify the employer if they 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) loses reinstatement and reemployment rights when:
- (i) the worker 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
 - (ii) the worker is eligible for and participates in vocational assistance under ORS 656.340, or
 - (iii) the worker 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
 - (iv) the worker refuses a bona fide (good faith) offer from the employer of transitional work (light duty or modified employment) prior to becoming released to suitable employment, or
 - (v) the worker fails, in the absence of extenuating circumstances, to make a written demand, to a party listed in Section 2(a)(A), for reinstatement to the 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 the former position or to reemployment to a suitable position, or

- (vi) the worker clearly and unequivocally abandons employment with the state in accordance with OAR 839-006-0131, or
- (vii) the worker is discharged for bona fide (good faith) reasons not connected with the injury and for which others are or would be discharged in accordance with OAR 839-006-0131, or
- (viii) three years elapse since the date of injury or three years elapse since the date a worsened condition occurred according to ORS 656.273.

(2) Procedures

(a) The injured worker:

- (A) may demand reinstatement to their former position or reemployment to an available, suitable position within seven calendar days of receiving notice from the insurer that the injured worker has been released to return to work by the 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
- (C) after making a demand for reinstatement or reemployment, must cooperate with state agencies' efforts to reinstate or reemploy the injured worker by:
 - (i) accepting all invitations to interview for suitable positions, and
 - (ii) accepting an offer of a suitable position. Refusing to accept an offer of a suitable position may only be made as prescribed in Section 2(d)(D) of this policy, and
 - (iii) notifying the agency-at-injury of changes in address, telephone number, return to work status or medical status, and
 - (iv) complying with the State's reporting policy in Section 1(e)(B) of this policy.

(b) The agency-at-injury:

- (A) reinstates the worker upon timely demand provided the worker is released by the attending physician. If the former position no longer exists, the agency reemploys the worker in an available and suitable position, or
- (B) reemploys the worker in an available and suitable position within the agency-at-injury after receiving a worker's demand for a suitable position.
- (C) if a suitable position is not immediately available within the agency-at-injury, the agency-at-injury facilitates the reemployment of an injured worker in other agencies by:

- (i) requesting documentation of the injured worker's work experience, knowledge, skills and abilities via the state job application form, and
 - (ii) 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
 - (iii) 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
 - (iv) placing the 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
 - (v) Placing the worker on the injured worker list within a reasonable timeframe not to exceed two weeks from receipt of the injured worker's written demand unless extenuating circumstances exist, and
 - (vi) 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
 - (vii) notifying DAS Chief Human Resources Office (CHRO) of the worker's placement on the injured worker list including an updated state application form and the worker's date of injury. CHRO notifies other Executive Branch agencies that are not subject to this policy of the worker's reemployment rights under statute and administrative rule, and
 - (viii) sharing information regarding a worker's relevant work-related restrictions upon the request of a recruiting agency.
- (D) responds in writing if the worker provides written notice that the job is unsuitable. The agency may notify the worker in writing that the injured worker has twenty calendar days to provide medical verification or a written explanation why the job is not suitable. In the absence of requiring such written explanation, the agency offers a more suitable position.

- (c) A recruiting agency must request an injured worker list when filling vacant positions and:
- (A) offers a suitable position to an injured worker appearing on the list if the 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 does not compete against other candidates for placement in the position
 - (C) may obtain information from the agency-at-injury or from the worker, such as a certificate from the attending physician about 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, fails to follow proper procedure for refusal of interviews or refuses job offers as outlined in Sections 2(d)
 - (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
- (d) 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) must accept a bona fide (good faith) job offer of a suitable position if unable to return to the injured worker's former 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 they are physically unable to perform the duties of the position. In the event of a refusal based on physical ability, the injured worker must:

- (i) 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
 - (ii) 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. If the worker considers the position not suitable for reasons other than physical ability the injured worker may provide written notice to the agency-at- injury within 20 calendar days that specifies the reasons why the worker considers the position to be unsuitable
- (F) Upon receipt of the written notice, the agency-at-injury determines whether the position is suitable. If the agency-at-injury determines the position is suitable, the injured worker continues 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.
- (e) The agency-at-injury:
- (A) removes the injured worker's name from the injured worker list when the injured worker loses reinstatement and reemployment rights as set out in Section 1(e)(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 an available position, and;
 - (C) retains the injured worker in leave without pay status until such time as:
 - (i) the injured worker is reinstated to the job at injury, or
 - (ii) the injured worker is reemployed in an available, suitable position with the or with another agency of the Executive Branch, or agency-at-injury
 - (iii) the injured worker loses reinstatement and reemployment rights and becomes ineligible for placement on the injured worker list as set out in Section 1(e)(C) of this policy.
- (D) may initiate disciplinary action (pre-dismissal or separation of employment, as appropriate), if provisions of Section 1(e)(C) of this policy are met, assuming other legal and contractual obligations have been met.

(3) Policy Clarification:

- (a) In the event an agency-at-injury and an injured worker agree that an offered position is not suitable via the process described in 2(d)(E-F) of this policy, the injured worker remains on the injured worker list until such time as provisions of Section 1(e)(C) of this policy is met.

- (b) A managerial or supervisory position may be a suitable position for a returning injured worker whose former position was managerial or supervisory.
- (c) Preference in appointment means 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.
- (d) 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 agency previously identified the position for abolishment.
- (e) The State has no obligation to create a job for an injured worker.
- (f) Nothing in this policy prohibits an agency-at-injury from offering an available, suitable position to an injured worker prior to the injured worker making a demand for reemployment when the agency-at-injury reasonably anticipates that the injured worker will not be able to return to the injured worker's former position.