

## **Model Transitional Duty Policy**

December 16, 2019

### **Disclaimer:**

***This sample policy and procedure is not intended to be all-encompassing and is believed to conform to current law and practice at the time of preparation. This transitional duty policy does not and is not intended to address every circumstance. However, municipalities and authorities are cautioned to seek legal advice from a qualified employment attorney before adopting any employment policies and procedures. Specific attention should be paid to modifying this policy to conform to local ordinances and collective bargaining agreements.***

- 1. Purpose:** To establish guidelines and procedures for transitional duty work assignments to employees who are recovering and recuperating from a work-related injury or illness, with temporary physical work restrictions or limitations, as diagnosed by a treating physician. Transitional duty assignments are temporary in nature.
- 2. Policy and Benefits:** According to a report authored by the ***American College of Occupational and Environmental Medicine***, unnecessary, prolonged work absence can cause significant harm to a worker's well-being. Workers who are on extended disability often lose social relationships with co-workers, as well as the self-respect and self-esteem that comes from earning a living. For many workers, their job is part of their identity, and being kept away by illness or injury is a very stressful experience. By allowing a more accelerated return to work and more significant support during recovery, transitional duty programs can help employees reduce the stress and disruption that injuries or illness cause in their daily lives, leading to better recovery. Transitional Duty programs offer time-limited, modified and meaningful work assignments to employees who, due to an on the job injury or illness, have been rendered temporarily incapable of meeting the physical demands of their usual duties. These assignments are modified to accommodate the physical limitations imposed by injury or illness, as determined by medical professionals involved in the care of the worker.

The (local unit type) is committed to providing opportunities for employees who have been injured on the job to return to the workforce as soon as possible. The (local unit type) views the Transitional Duty Program as a partnership with the employees who have been injured, with the sole objective of enhancing the recovery of employees to facilitate their return to work in their previous position as soon as possible.

The (local unit type) will make every effort on a case by case basis to accommodate an employee under the Americans with Disabilities Act (ADA) absent an undue hardship by the (local unit type).

Benefits of an effective transitional duty program include:

- Greater control and monitoring of worker's compensation claims, and an increased chance for a positive resolution of those claims.
- Retaining the services of trained and valuable employees.
- Avoidance of replacement and training costs of hiring a new employee.
- Faster recovery by injured employees, both physically and psychologically.
- Discouragement of fraudulent claims.
- Enhancement of employee morale.
- Compliance with the Americans with Disabilities Act (ADA) by accommodating disabilities and avoiding costly and unnecessary lawsuits.
- Identification of cross-training opportunities.
- Enhanced awareness of safe work practices and injury prevention.

### **3. Definitions:**

**Americans with Disabilities Act (ADA):** Federal legislation passed in 1990 that prohibits discrimination against people with disabilities. The ADA makes it unlawful to discriminate against a disabled person in terms of employment opportunities, access to transportation, public accommodations, communications, and government activities. The law prohibits state and local governments from discriminating against the disabled. Employers are required to make reasonable accommodations in order for a disabled person to perform their job function.

**Fair Labor Standards Act (FLSA):** Federal legislation enacted in 1938, and subsequently amended, setting forth the standards for minimum wage requirements, overtime payments, necessary recordkeeping provisions, and child labor in the U.S., which affect those employees working both on a full-time and part-time basis in the federal, state, and local government as well.

**Functional Capacity Evaluation (FCE):** A series of tests used to evaluate an injured employee's work-related physical abilities. A functional capacity evaluation is designed to be safe and to provide impartial information about



an injury or illness. The tests in an FCE are performed by an evaluator certified to conduct these examinations.

**Injured Worker (IW):** An employee (including persons on probationary, regular, casual or temporary status) of the (local unit type) who, due to an on the job injury or illness, has been rendered temporarily incapable of meeting the physical demands of their usual duties.

**Job Bank:** A listing of the job assignments available to injured employees under the Transitional Duty Program compiled, update and maintained by, the Transitional Duty Coordinator. The assignments may be in ANY department of the (local unit type), and not necessarily in the department where the injured employee works typically.

**Maximum Medical Improvement (MMI):** The point at which the Treating Physician determines that (1) the condition resulting from the injury or illness is stable, (2) additional medical treatment or physical therapy will not improve the patient's condition or (3) the patient has reached the medical plateau of recovery.

**Meaningful Work:** Work assigned under the transitional duty program which in the judgment of the (local unit type), has a serious, meaningful or useful quality and purpose. A written description of the work to be performed and the expected outcome shall be provided to each employee assigned meaningful work.

**Nurse Case Manager (NCM):** The medical professional assigned to each worker's compensation case who, along with the Treating Physician, works with the employee and the (local unit type) in directing the care of the injured employee.

**Transitional Duty Assignment:** A temporary work assignment that does not exceed an employee's medical work restrictions during a period of recovery from a work-related injury or illness. A transitional duty assignment does not evolve at any time into a permanent position, and the injured employee is returned to work on a regular full-time basis as soon as possible.

**Transitional Duty Program Coordinator (TDC):** An employee of the (local unit type) who has been duly assigned the responsibility of managing and directing the Transitional Duty Program by the Chief Administrative Officer or governing body of the (local unit type).

**Treating Physician (TP):** The authorized medical professional assigned to each worker's compensation case by the (local unit types) insurance professionals who, along with the Nurse Case Manager, works with the employee and the (local unit type) in directing the care of the injured employee. The Treating Physician is ultimately responsible for recommending an injured employee's ability to return to work under the transitional duty policy, and what restrictions should be imposed.

#### **4. Transitional Duty Program Guidelines:**

The (local unit type) has established the following guidelines for the Transitional Duty Program:

- a. Transitional Duty assignments are temporary in nature, and made at the sole discretion of the (local unit type) Transitional Duty Coordinator (TDC).
- b. In order for transitional duty to be offered to an employee, the employee must be qualified to perform the transitional duty assignment. If the employee is not qualified to perform the assignment (or cannot be trained by the local unit type to perform the assignment), the transitional duty assignment may be refused by the (local unit type).
- c. Transitional Duty is **temporary**, lasting no more than \_\_\_\_\_ (***NOTE: THE TYPICAL RANGE IS FROM 45 TO 90 DAYS FOR THE INITIAL ASSIGNMENT, WHICH MAY BE EXTENDED***) calendar days. This time frame may be extended at the sole discretion of the (local unit type) Transitional Duty Coordinator (TDC).
- d. All employees who are receiving Worker's Compensation indemnity payments and working Transitional Duty assignments must follow the restrictions imposed by the Treating Physician (TP) while engaging in all activities. ***PLEASE NOTE: It is recommended that local units seek the advice of their municipal attorney or labor counsel prior to seeking to bar injured workers who are receiving indemnity payments from engaging in outside employment.***



- e. The Transitional Duty policy does not affect the rights and privileges of employees under the provisions of the, Fair Labor Standards Act OR Americans with Disabilities Act or other federal or state law or regulations.
- f. Refusal of a transitional duty assignment may adversely affect the employee's worker's compensation temporary disability benefits.
- g. As long as the assignment involves "meaningful work" (as defined herein), and it falls within the physical restrictions established by the medical professionals, the employees may be assigned transitional duty work in ANY department of the (local unit type).
- h. Employees shall follow the policy of the (local unit type) regarding time off to attend medical appointments and physical therapy sessions which have been scheduled by the Nurse Case Manager. However, the employee is responsible for notifying the (local unit type) when they are unable to report to their transitional duty assignment due to a scheduled medical appointment.
- i. Transitional duty assignments are not guaranteed. Each assignment is reviewed on a case by case basis in accordance with the procedure set forth herein.
- j. The (local unit type) reserves the right at any time to request a functional capacity evaluation (FCE) of the injured employee to determine their fitness for assignment.
- k. Employees will be paid in accordance with applicable policies, salary ordinances, and collective bargaining agreements while on Transitional Duty. Employees participating in Transitional Duty assignments shall receive the full salary as long as they are working a full work day. **(NOTE: THE LOCAL UNIT TYPE WILL DETERMINE IF THIS PROVISION IS APPLICABLE. TYPICALLY, THE LOCAL UNIT WILL PAY THE INJURED WORKER THE BALANCE OF HIS/HER FULL SALARY, LESS THE AMOUNT OF TEMPORARY TOTAL DISABILITY BENEFITS PAID IF THE WORKER PARTICIPATES IN THE TD PROGRAM.)** All overtime assignments must be approved in advance by the department head, and must be in accordance with the transitional duty assignment and limitations set forth by the Treating Physician.

- I. The employee's time card or work hours shall be maintained by the department to which the employee is regularly assigned.

#### **5. Creation of the Job Bank:**

In order to set up the "Job Bank," the Transitional Duty Coordinator (TDC) will contact all of the department heads in the (local unit type), and encourage each to fill out the Form found in the Appendix entitled, "Possible Transitional Duty Assignments." Based on the input from Department Heads, the TDC will establish a "Job Bank," which will be used for the assignments under the Transitional Duty program. The TDC will update the Job Bank assignments as frequently as necessary. In addition, the TDC will collaborate with the Nurse Case Manager assigned to the (local unit type), and formulate brief job descriptions for each of the assignments, including any medical restrictions that may be accommodated (i.e. standing, sitting, lifting, driving, bending, etc.).

#### **6. Transitional Duty Program Procedure: (As depicted on the Flow Chart found in the Appendices)**

Transitional duty assignments are the collective responsibility of the employer, (specifically the Transitional Duty Coordinator), along with the Claims Administrator, Treating Physician and Nurse Case Manager. The Transitional Duty Coordinator shall pay particular attention to the following:

- The TDC will make assignments with the goal of returning the employee to full duty as soon as possible. This may require the adjustment or modification of duties in the assignment as the employee's medical condition progresses (or regresses).
- The TDC shall maintain the confidentiality of all medical information related to the transitional duty assignments. Only individuals with an administrative "Need to Know" shall be included in discussions on transitional duty.
- The TDC shall contact upper management and the Claims Administrator if he or she becomes aware that an injured employee may have permanent medical restrictions. Permanent restrictions must be treated differently than temporary restrictions, and must be evaluated in accordance with possible implications under the Americans with Disabilities Act (ADA).



The Transitional Duty assignment process is as follows:

- A. An initial medical assessment of the injured employee is completed by the Treating Physician in order to determine (1) the work restrictions imposed, and (2) the estimated duration of the recovery period. The results of the written medical assessment are provided to the Nurse Case Manager for review. The Nurse Case Manager will consult the Treating Physician if any clarification is necessary. The (local unit type) will maintain an updated copy of all job descriptions and will forward job descriptions to the Nurse Case Manager for review as part of the assessment process.
  
- B. The NCM will contact the TDC to discuss the results of the initial medical assessment, and whether or not the injured employee is a candidate for a Temporary Duty assignment, and, if so, what Temporary Duty assignments are available. The TDC will consider the employee's skills, knowledge, abilities, risks (if any) to the motoring public or other employees, in addition to the physical limitations set forth by the TP. The following skills may be necessary to participate in a transitional duty assignment:
  - a. Sit or stand for some tasks
  - b. Understand and follow directions and procedures
  - c. Accept direction and function cooperatively
  - d. Communicate effectively and coherently using telephone, or when initiating or responding to verbal communication
  - e. Read and understand documents
  - f. Exercise independent judgment.

If the injured employee is not a candidate for an assignment, the NCM will review the case after each medical appointment with the Treating Physician to determine if the injured worker's status has changed, and if so, the NCM will contact the TDC.

It is extremely important for the TDC to communicate with the NCM regarding the employee's disposition relative to a Temporary Duty assignment.

- C. If a work assignment is available, prior to an assignment, the injured worker will meet with the TDC to go over the work assignment, what

the expectations are, and any other concerns the injured worker may have. If necessary, the TDC shall arrange for training for the IW. During that meeting, the IW will be given the **Letter Offering Transitional Duty Assignment (As found in the Appendices)**. The IW will be asked to sign the letter acknowledging his/her acceptance OR rejection of the work assignment. If the IW declines the assignment he/she will be directed to state the reasons in writing on the letter, and the TDC shall notify the IW that failure to accept the TD assignment may adversely affect his/her ability to collect worker's compensation temporary disability benefits. If the injured worker's objection is based on a disagreement with the Treating Physician's or Nurse Case Manager's work-related restrictions, the TDC shall discuss the case with the NCM and, if necessary the TP, prior to making a final decision. The decision of the TDC will be final, and shall be communicated to the IW and NCM.

- D.** The TDC will review ALL assignments in 14 day intervals, and, if necessary meet with the injured worker. The NCM shall update the TDC on the employee's medical status after each medical visit. If it appears as if the IW will not be able to return to work after the initial **60 to 90 day (NOTE: CHOICE OF THE LOCAL UNIT TYPE)** limit, the TDC will consult with the NCM, and, if necessary, the TP, to determine whether the assignment should be continued until the employee reaches maximum medical improvement (MMI) OR, until the employee can return to work to his/her former position without restrictions. The decision of the TDC will be final.



**Sample Letter to Employee Offering Transitional Duty Assignment**

Date: \_\_\_\_\_

Employee Name: \_\_\_\_\_

Employee Address: \_\_\_\_\_

RE: Claim #: \_\_\_\_\_

Date of Injury: \_\_\_\_\_

Dear (Employee Name);

Based on the restrictions on the attached medical report, you cannot be accommodated in your current position. Therefore, we are offering you a transitional duty assignment in the \_\_\_\_\_ department, effective (Starting Date). This assignment is temporary, and will be reviewed periodically. Please report to (Name of Supervisor) at (Location) at (Time), on (date) for further instructions.

The duties assigned to you are based on the restrictions set forth by the authorized medical provider. Please refer to the attached form dated \_\_\_\_\_ from Dr. \_\_\_\_\_. The restrictions on the attached medical report must be followed when you are engaging in all activities. This transitional duty assignment will be re-evaluated whenever (1) your work restrictions change, (2) you have reached Maximum Medical Improvement as determined by the treating physician, (3) the work assignments have been completed, or (4) the departments' ability to provide transitional duty assignments changes.

Your work hours will be from \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_ days per week. You must schedule medical appointments in accordance with the policy of the (local unit type). Requests to leave early or come in late must be approved in advance by your supervisor.

\_\_\_\_\_ will take care of the administrative work involved with your temporary assignment, such as time sheets, leave

slips, and the authorized medical provider's return to work reports. Please ensure that all paperwork is accurate and submitted on a timely basis.

***If you refuse this transitional duty assignment without verifiable medical cause, your workers' compensation temporary disability benefits may be adversely affected.*** If you believe that the transitional duty assignment is in excess of the authorized medical provider's restrictions, or if you believe that the transitional duty assignment may aggravate your condition, please let us know. Please indicate your willingness to accept this assignment by signing this letter, checking the appropriate box below and returning it to the Transitional Duty Coordinator indicated below.

\_\_\_ I accept the temporary assignment

\_\_\_ I decline the temporary assignment

**Please indicate your reasons for declining the assignment:**

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DATE: \_\_\_\_\_

Signature: \_\_\_\_\_

Sincerely,

Transitional Duty Coordinator

***Attachments: Work Restrictions from Treating Physician***

CC: HR Dept.  
Claims Administrator  
Nurse Case Manager



**Best Practices Checklist for Transitional Duty Program**  
**Coordinators**

1.	Familiarize yourself with NJ Workers Compensation State Law provisions, especially with respect to return to work sections
2.	Inform and familiarize the provider's Nurse Case Managers and Treating Physicians of the (Local Unit Types) TD Program provisions.
3.	Work with the NCM and TP to adapt job descriptions for the Injured Workers to the restrictions imposed.
4.	Meet with the IW every 14 days.
5.	Document each conversation and meeting with the IW.
6.	Meet with Supervisors and explain the TD program and the restrictions imposed on the injured workers which must be followed.
7.	Be creative in establishing the temporary duty assignments in conjunction with Department Heads.
8.	Always make certain you are providing "meaningful work" and not jobs that demean the employee.
9.	Be prepared to provide training to the injured worker if necessary for their new temporary assignment.
10.	Follow up your initial meeting with the IW with a certified letter.
11.	Make sure you understand the provisions in collective bargaining contracts and that you do not violate those provisions in establishing temporary assignments.
12.	Obtain feedback from the injured workers and be prepared to modify the assignment based on valid comments or suggestions.
13.	Meet with the WC Claims Manager for your local unit to better understand their role in the process.
14.	If the IW refuses the job assignment, make sure you explain that the refusal may well jeopardize their ability to continue to receive temporary worker's compensation disability payments.

**Possible Transitional Duty Assignments (For Illustrative Purposes Only):**

	<b><i>Office Clerical - Assistance with office and clerical tasks, such as:</i></b>
>	Operation of desktop or laptop computer, copy machine, fax, and printer, to input data.
>	Assist in setting up meetings.
>	Filing, answering phones, and taking messages.
>	Meeting and assisting residents and customers in the reception area.
>	Reviewing, categorizing, and, if warranted, shredding records for the (local unit type) record retention program.
>	Assisting in scheduling building inspections.
>	Assisting with the Police Accreditation Program (gathering or copying documents as needed).
>	Assisting with unique programs that arise.
>	Updating policy and procedures manuals
>	Coordinate repair and maintenance schedules
>	Assist with accreditation programs
>	Assist with setting up and training new employees
	<b><i>Assistance with Tasks Outside of the Building:</i></b>
>	Tracking inventory and assisting with the ordering of supplies
>	Checking current vehicle inventory against the vehicles listed on the auto insurance schedule of values.
>	Assisting with the Dog Canvas for the Dog Census, and checking dog license inventory.
>	Checking and documenting fire extinguisher inspections/replacements
>	Checking and documenting AED inspections/replacements
>	Assisting Code Enforcement officer in making inspections and documenting conditions.
>	Checking and documenting street light outages.

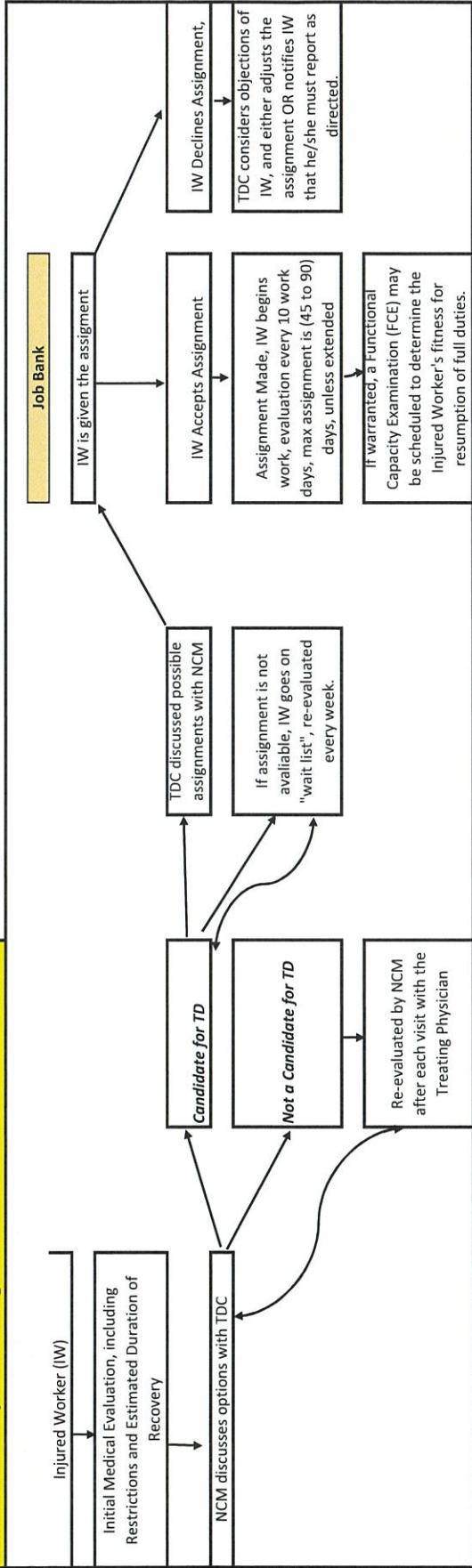


>	Inspecting the "repetitive loss" properties for the (local unit type) NFIP flood program.
>	Inspecting and documenting conditions in the (local unit type) playgrounds and athletic fields.
>	Following up on citizen complaints and, if necessary, conducting field inspections.
>	Meeting with Homeowner's Association representatives to discuss concerns
	<b><i>Light Maintenance Work:</i></b>
>	Empty and clean trash receptacles.
>	Light Painting.
>	Deliveries of materials and supplies (within lifting restrictions.)
>	Sweeping and cleaning up (local unit type) facilities and buildings.
>	Washing vehicles.





## Transitional Duty Model Program Flow Chart



<b>NCM</b> = Nurse Case Manager
<b>TP</b> = Treating Physician
<b>TDC</b> = Transitional Duty Coordinator
<b>IW</b> = Injured Worker

