

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES
August 6, 2002**

CIVIL SERVICE BULLETIN 8.20B

TO: All Agency and Department Heads, Human Resource
Representatives, EEO Representatives

SUBJECT: Workers' Compensation Return-To-Work Program

This Bulletin is intended to clarify and update the Workers' Compensation Return-To-Work (RTW) Program and provides direction for the administration of the program. This bulletin supersedes Civil Service Bulletin 8.20A (08/28/97).

The Bureau of Human Resources, Employee Health & Benefits – Workers' Compensation (WC) Division, will provide on-going training sessions and general guidance for supervisors and other departmental employees who are involved with the implementation and administration of the RTW Program.

Specific questions concerning the RTW Program should be directed to the Bureau of Human Resources, Workers' Compensation Division.

General Policy

It is the policy of the State of Maine to provide suitable return-to-work opportunities for state employees who have the capacity to return to work but are unable, temporarily or permanently, to perform the work of their permanent positions due to a work-related injury or illness. RTW opportunities under this policy will be provided in accordance with the requirements and provisions of the Maine Workers' Compensation Act, the State of Maine civil service laws, rules, regulations, Americans with Disabilities Act, and applicable collective bargaining agreements.

In order to accomplish this policy, the State of Maine has developed the RTW Program for employees who suffer a work-related injury or illness. The RTW Program has the following objectives:

- A. Return employees who have an identified work capacity to state employment when there is neither a probability of re-injury to themselves nor a direct threat to others.
- B. Minimize financial hardship and emotional stress to the employee who has suffered a work-related injury or illness.
- C. Assist employees in returning to work at a level as close as possible to their pre-injury/illness earnings and productivity.
- D. Retain qualified and experienced employees.
- E. Reduce the costs of workers' compensation benefits borne by the state.

I. PROGRAM COMPONENTS

1. EARLY INTERVENTION PROGRAM - Early intervention is the key to the RTW Program. Each agency must develop and implement a strategy and process for ensuring that workers' compensation claims are given immediate and thorough attention, for ensuring the effective case management of each work-related injury or illness, and for ensuring that injured employees are provided the extent of care and support needed to facilitate their return to a whole, productive life as soon as possible.

All early intervention programs must meet the approval of the Bureau of Human Resources, WC Division. The WC Division is available to work with agency workers' compensation designees and human resource directors to help develop a strategy that reflects each agency's workers' compensation performance, finances, and resources.

2. OCCUPATIONAL PLAN - The Occupational Plan (OP) is a formal written plan that is jointly developed by the RTW Coordinator, WC Case Manager, appropriate medical provider(s), Medical Case Manager (when applicable), and the employing agency. The OP is specific to the employee being served and provides the blueprint for the return-to-work process for that employee. The OP includes specifications for the classification(s) of work, special accommodations, and other factors and/or arrangements that are compatible with the employee's return-to-work capabilities, and provides the focus necessary for a successful job match. The OP may include the following components:

- Work capacity evaluation
- Job goal
- Identification of physical, academic, personal and/or environmental issues that need to be addressed
- Accommodation measures
- Use of transitional duty position
- Interdepartmental job search

To the extent possible, the OP will be cooperatively agreed to by the placement agency, the employee, and the originating agency if a transitional duty position is used. However, an employee may not refuse a return-to-work opportunity that fairly recognizes the employee's work capacity and that is approved by the medical provider(s) involved with the design of the OP.

3. TRANSITIONAL DUTY POSITION - Transitional duty positions are established to accommodate an employee with a work-related injury or illness when the injury or illness prevents the employee from returning to his or her

permanent position, but allows the employee to return to work in a modified capacity. A transitional duty position is *temporary* and provides an interim means for the employee to return to work in a modified capacity until the employee's work capacity increases. A transitional duty position may also be used to provide interim employment for an injured employee pending the availability of a more suitable position, or to provide the employee new work skills.

Transitional duty positions that are used for an employee's OP provide only *temporary* employment, and must be reviewed at least every six (6) months. Extensions of a transitional duty position beyond six (6) months will require justification based on one or more of the following conditions:

- A. The employee is not able to return to his or her pre-injury circumstance and progress reports indicate positive progress toward meeting the OP.
- B. The employee needs more job training to reach a specific job goal.
- C. The employee's injury or illness prevents a permanent employment action, but it is anticipated that permanent work capacity will be attained in the future.
- D. The initial job goal was not realistic, as documented by OP progress results.
- E. The job goal specified by the OP cannot be accomplished or pursued further due to the unavailability of a permanent or other suitable position.

No transitional duty positions will extend beyond one (1) year unless approved by the WC Division. Centrally funded transitional duty positions will be administered by the WC Division and monitored by the RTW Coordinator, the agency workers' compensation designee, and the agency human resource director. Policies and instructions for the use of transitional duty positions are available through the WC Division.

II. RTW PROGRAM REQUIREMENTS & ADMINISTRATION

1. ORIGINATING AGENCY - The agency in which an employee was injured has the primary responsibility for a work-related injury or illness. This primary responsibility requires the originating agency to implement an early intervention program for:

- A. Processing and managing workers' compensation claims.
- B. Establishing and maintaining liaison with workers' compensation employees and health care providers.
- C. Analyzing work capacity, to include the use of medical and vocational rehabilitation specialists if needed.

- D. Developing functional job descriptions to address the physical and/or other health-related requirements for all positions that may be considered as return-to-work opportunities.
- E. Assistance in the development of an occupational plan that specifies the logistics and time frame for the employee's return to work.
- F. Providing or conducting a search for a position within the department/agency that is consistent with the return-to-work terms of the employee's occupational plan.

If the originating agency is able to provide an available position (see 4. and 5. below) that is consistent with the return-to-work terms of an employee's OP, the employee must be appointed to that position. No further return-to-work efforts will be made. Agency heads will receive annually a 'report card' from the Governor's Office rating their department/agency's performance in adopting an aggressive, results-oriented, accident and injury plan to include return-to-work opportunity placements.

2. OTHER STATE AGENCIES – In the event that the originating agency is unable to provide a return-to-work opportunity that satisfies the terms of the OP for an employee, the originating agency must contact the RTW Coordinator for assistance in conducting a search for suitable return to work opportunities in other state departments/agencies. The state is a single employer for the purpose of return-to-work opportunities and all agencies must cooperate in the state's efforts to return a workers' compensation employee to meaningful, productive employment. When an available position [see 4. and 5.] is located that is consistent with the return-to-work terms of the employee's OP, the employee must be appointed to that available position. No further return-to-work efforts will be made.

3. RESPONSIBILITY OF RTW COORDINATOR – The RTW Coordinator will provide resources and coordination for identifying employment opportunities that are available in other state agencies for return-to-work employees. The RTW Coordinator will identify potential opportunities in accordance with the objectives of the OP, determine the availability of suitable positions with the agency involved, and coordinate placements with the Certification Unit of the Bureau of Human Resources.

4. AVAILABILITY OF POSITIONS – Positions will be available under the RTW Program in accordance with the following:

- A. The bumping and recall provisions of applicable collective bargaining agreements will take precedent over return-to-work placements.

- B. Any agency that is determined by the RTW Coordinator to have a suitable position for a return-to-work employee may choose to fill this position through the promotion, demotion, or transfer of an agency employee, rendering the position unavailable.
- C. After considering (A.) and (B.) above, a position that is determined by the RTW Coordinator to be a suitable position must be made available for a RTW appointment.

5. APPOINTMENT PROCEDURES – When a position is determined to be available that is consistent with the return-to-work terms of the employee's occupational plan, the agency in which that position is located will appoint the employee to that position. Since RTW appointments center on ability to do a job rather than actual placement on a register, the customary testing and qualification requirements for civil service appointments do not apply. A memo authorizing the appointment under the RTW Program and a Human Resources Profile (HRP) must then be forwarded to the Bureau of Human Resources. When a permanent placement is accomplished, compensation will be determined in accordance with civil service law, civil service rules, and the appropriate bargaining agreement. Absent specific requirements to the contrary, RTW appointments will generally be at a salary step that is at least above the average weekly wage utilized for workers' compensation.

6. ACCESS TO REGISTERS – PL 2001, Ch. 427 provides that employees placed in transitional duty positions retain the employment and bargaining unit status that the employee had attained immediately prior to the injury that resulted in workers' compensation payments.¹ Employees in transitional duty positions retain the rights of other employees under the civil service rules and the applicable bargaining agreement, including application for employment registers.

7. PROGRAM ASSISTANCE – The Workers' Compensation Division will provide training and guidance in all aspects of the RTW Program and will provide agencies further detailed instructions, procedures, and related materials that can be used to evaluate the work capacity of a RTW employee. In addition, supervisors may be required to participate in workers' compensation, safety and accident prevention, and the RTW Program training.

S/ Donald A. Wills

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¹ The scope of representation by the bargaining agent is limited to terms of employment unrelated to work capacity, the rehabilitation effort or any other matter prescribed or controlled by workers' compensation law unless such terms are specifically negotiated in accordance with Title 39-A, section 110.