

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
103 DOC 221
TEMPORARY MODIFIED WORK PROGRAM

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MASSACHUSETTS DEPARTMENT OF CORRECTION	DIVISION: ADMINISTRATION
TITLE: TEMPORARY MODIFIED WORK PROGRAM	NUMBER: 103 DOC 221

PURPOSE: The purpose of 103 DOC 221.00 is to establish Department of Correction ("Department") guidelines for the implementation of a temporary modified work program to provide Department employees with an opportunity to return to work after a work-related injury, where a limited period of modified duty is required for medical reasons. To the extent that this program can also benefit employees with non-work-related injuries, then those employees should have access to temporary modified work when it is available.

REFERENCES: M.G.L. c. 124, § 1 (c) and (q)

APPLICABILITY: All Department Employees **PUBLIC ACCESS:** Yes

LOCATION: Department's Central Policy File
Deputy Commissioner of Admin Services Policy File
Each Institution's Policy File
Department's Personnel Policy Manual

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:

- Deputy Commissioner of Administrative Services Division
- Assistant Deputy Commissioner, Administration
- Superintendents and Division Heads

EFFECTIVE DATE: 07/18/2013

CANCELLATION: 103 DOC 221 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules or regulations regarding temporary modified work programs, which are not consistent with this policy.

SEVERABILITY CLAUSE: If any part of 103 DOC 221, is for any reason, held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner, or otherwise inoperative such decision shall not affect any other part of this policy.

221.01 Definitions

Appointing Authority: The Commissioner of Correction.

Deputy Commissioner Administrative Services Division: The executive staff person whose duties include, but are not limited to the management of:

- a. Budget Office
- b. Administrative Services
- c. Audit and Compliance Unit
- d. Internal Affairs
- e. Personnel Office
- f. Labor Relations
- g. Staff Development
- h. Food Services
- I. Contract Services
- j. Employee Assistance Services Unit
- k. Resource Management
- l. Industries

Commissioner: The Commissioner of Correction.

Employee: A full-time or regular part-time bargaining unit, managerial, or confidential employee of the Department of Correction, excluding all persons paid through other subsidiary accounts.

Policy: A definite course of action adopted or pursued by the Department that guides and determines present and future decisions, statement(s) of guiding principles directing activities toward the attainment of objectives, and overall goals of the Department.

Superintendent: The chief administrative officer of a state correctional institution.

Collective Bargaining Agreement: The contract which applies to an employee's bargaining unit.

221.02 Temporary Modified Work Program Goals

The goal of the Temporary Modified Work Program (TMWP) is to provide Department employees with an opportunity to return to work after a work-related injury, where a

limited period of modified duty is required for medical reasons. To the extent that this program can also benefit employees with non-work-related injuries, then those employees should have access to temporary modified work when it is available. In returning these employees to work, it is also the Department's goal that positions that have been identified as suitable for the TMWP be staffed by TMWP employees, thereby freeing up full duty employees for the more physically demanding aspects of correctional work. The Department recognizes that the employees participating in the TMWP are not necessarily capable of performing the essential functions of their position, for this limited time period, but this is consistent with the temporary nature and the goal of the TMWP. The Department's Division of Human Resources shall maintain a list of identified TMWP positions, by institution.

221.03 **Eligibility Guidelines**

- 1) When the Superintendent determines that TMWP positions are available within the institution, TMWP should be offered to any employee who is currently receiving workers' compensation benefits where the institution is in possession of a medical report which indicates that the employee is capable of returning to restricted duty. If TMWP positions are still available then TMWP should be offered to any employee who has a temporary, non-work-related medical condition which makes the employee unable to perform full duty work, and where the institution is in possession of a medical report which indicates that the employee is capable of performing some level of restricted work.

- 2) Prior to the employee actually assuming duties under the TMWP, the employee shall provide the Department with a medical report which indicates that he/she is capable of performing the modified work assignment. That medical report must indicate that the employee's need for modified work is not likely to be permanent and should be resolved within one-hundred and twenty (120) days. The medical report shall specifically indicate what the employee's restrictions are. If the employee is restricted by

his physician, with regard to inmate contact, then the note must clearly state that the employee is capable of having, at the very least, incidental contact with inmates. Incidental inmate contact is the interaction with inmates where that interaction is generally limited to coincidental meetings in common spaces, but it specifically excludes the exercise of supervision or care and custody obligations with respect to inmates.

221.04 **Record Retention**

The medical report shall be given to the institution's industrial accident agent in cases involving a work-related injury. In cases involving a non-work-related injury, the medical documentation shall be provided to the Superintendent or designee who shall, in turn, notify the Division of Human Resources that a TMWP agreement can be drafted. No TMWP employee shall return to work until an agreement has been drafted and signed.

221.05 **Continuing TMWP Placement**

Once an employee has returned on a TMWP, that employee shall provide medical documentation of medical restrictions, if any, on the 60th, 90th, and 120th days. If the employee is unable to provide such documentation at these times, participation by the employee in TMWP shall be suspended or terminated and the employee shall be placed on the appropriate type of leave.

221.06 **Extension of TMWP Placement**

(1) At the end of one-hundred and twenty (120) days, if the employee's medical documentation indicates that the need for modified work continues, the Superintendent for the institution shall determine whether the employee's TMWP should be extended for up to, but not more than, sixty (60) days. This determination shall be based purely upon the following:

- (a) the availability of modified work positions;
- and,

- (b) medical documentation indicating that the employee will be able to return to full-time, unrestricted duty within those sixty (60) days.
- (2) Such an extension of the TMWP shall require that the employee and his/her Union sign a waiver of the terms of the collective bargaining agreement, which limits TMWP to one-hundred and twenty days (120) days. The employee shall be responsible for securing such waivers. Once the Superintendent receives such medical documentation and a waiver, he/she should forward his/her recommendations for or against an extension to the Deputy Commissioner of Administrative Services Division. The Deputy Commissioner of Administrative Services Division shall determine whether the extension shall be granted and shall notify the employee, the Superintendent, the employee's union, and the Division of Human Resources, in writing.

221.07 **Termination of TMWP Placement**

- (1) When any TMWP comes to an end, the employee must either return to full duty work or be removed from active work status. If the employee return's to full duty, medical documentation must be provided which releases the employee from unrestricted duty.
- (2) If, at any time during a TMWP assignment resulting from a non-work-related injury, the Superintendent determines that the position that an employee is filling is needed for an employee who is currently on industrial accident leave, the TMWP shall be suspended or terminated and the employee must either return to full duty or be placed on an appropriate type of leave.
- (3) If an employee, who is on TMWP due to an industrial accident, notifies the institution that he/she intends to resume his/her industrial accident leave, the Industrial Accident Agent

shall file a notice of resumption with the Department's Division of Human Resources.

- (4) In cases where the need for a restriction in an employee's duties arises out of a pregnancy, the situation shall be handled on a case by case basis by the Superintendent or Division Head until the employee brings in medical documentation that she is no longer able to perform one or more of the essential functions of her job. From that point, the Superintendent or Division Head shall place that employee in a TMWP position and notify the Division of Human Resources, in accordance with these guidelines.
- (5) Employees who are in their probation period shall be eligible for TMWP only when:
 - (a) The employee agrees to extend his or her probationary period by the length of the TMWP;
 - (b) the employee and the employee's union sign a waiver as to all issues where such a TMWP and/or an extension of the probationary period might violate the collective bargaining agreement; and,
 - (c) the Deputy Commissioner of Administrative Services Division approves in writing.

WAIVER
TEMPORARY MODIFIED WORK PROGRAM
103 DOC 221.06 (2) & 103 DOC 221.07 (5) (b)

I, _____, and the _____,
(Print Employee Name) (Union Name)
Hereby agree to extend the Temporary Modified Work Program beyond the one-hundred and twenty (120) days as limited by the applicable Collective Bargaining Agreement between the Commonwealth of Massachusetts and any relevant union.

By its duly authorized agent:

Union

Date

Employee

Date

This will serve to extend the term of a current Temporary Modified Work Program by ___ days (such extensions, in total, shall not exceed sixty (60) days).