

 <p style="text-align: center;">Massachusetts Department of Correction POLICY</p>	Effective Date 6/28/2024	Responsible Division Deputy Commissioner, Career and Professional Development		
	Annual Review Date 6/28/2024			
Policy Name <p style="text-align: center;">103 DOC 221 TEMPORARY MODIFIED WORK PROGRAM</p>	M.G.L. Reference: Chapter 124, § 1(c) and (q)			
	DOC Policy Reference:			
	ACA/PREA Standards: Click here to enter text.			
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> Attachments Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> </td> <td style="width: 50%;"> Inmate Library Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> </td> </tr> </table>	Attachments Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Inmate Library Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Applicability: All Department Employees	
Attachments Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Inmate Library Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Public Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Location: Department's Central Policy File Each Institution's Policy File Department's Personnel Policy Manual			
<p>PURPOSE:</p> <p>The purpose of this policy is to establish Department of Correction (“Department”) guidelines for the implementation of the temporary modified work program, to provide Department employees with an opportunity to return to work after a work-related injury when it is available, 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.</p> <p>RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY: Deputy Commissioner, Career and Professional Development Executive Director, Administration Superintendents and Division Heads</p> <p>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.</p> <p>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.</p>				

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221.01

DEFINITIONS

Appointing Authority: The Commissioner of Correction

Deputy Commissioner of Career and Professional Development: The executive staff person who reports to the Commissioner, and whose duties include, but are not limited to, the management of the Office of Diversity & Equal Opportunity, Staff Training, Career Development and Succession Planning for the Agency, Human Resources, and the Employee Assistance Services Unit.

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.

Industrial Accident Agent: The Director of Leaves and Benefits or their designee.

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, when it is available, 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 TMWP positions identified, by each institution.

221.03

ELIGIBILITY GUIDELINES

- A. 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 modified 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 modified work.

- B. Prior to the employee actually assuming duties under the TMWP, the employee shall provide the Department with a medical report which contains a diagnosis of the employee's medical condition and indicates that the employee 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 body part(s) are involved and what the employee's restrictions are. If the employee is restricted by their 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 either a work-related or non-work-related injury. No TMWP employee shall return to work until an agreement has been 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 30th, 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 an appropriate type of leave if available.

221.06

EXTENSION OF TMWP PLACEMENT

- A. Before the expiration 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 upon the following:
 - 1. the availability of modified work positions; and the needs of the institution.
 - 2. medical documentation indicating that the employee will be able to return to fulltime, unrestricted duty within those sixty (60) days.
 - 3. the employee's ability to perform the TMWP position and comply with the Department of Correction rules, regulations, and policies.
- B. Such an extension of the TMWP shall require that the employee and their 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 Industrial Accident Agent receives such medical documentation and a waiver, they should forward their recommendations for or against an extension to the Deputy Commissioner of Career and Professional Development. The Deputy Commissioner of Career and Professional Development 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

- A. 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 returns to full duty, medical documentation must be provided which releases the employee for full duty work.
- B. 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 work or be placed on an appropriate type of leave, if available.
- C. If an employee, who is on TMWP due to an industrial accident, notifies the institution that they intend to resume their industrial accident leave, the

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

- D. In cases where the need for a modification 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 indicating that they are no longer able to perform one (1) or more of the essential functions of their 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. A TMWP agreement shall be completed and signed by the parties.
- E. Employees who are in their probation period shall be eligible for TMWP only when:
 - 1. The employee agrees to extend their probationary period by the length of the TMWP;
 - 2. 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,
 - 3. The Deputy Commissioner of Career and Professional Development approves in writing.

In the event of a department wide loss of computer infrastructure; a contingency plan for the Continuity of Operations Plan (COOP) is located in the ACA/Policy Coordinator's Office.

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).