



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-032300 Workers' Compensation and Early
Return to Work

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Alisha Tafoya Lucero, Cabinet Secretary

Original Signed and Kept on File

AUTHORITY:

- A. Americans with Disabilities Act.
- B. The Family and Medical Leave Act.
- C. Chapter 52, Workers' Compensation, NMSA, 1978, as amended.
- D. State Personnel Board Rule NMAC 1.7.10.13
- E. General Services Division Rule 91-703
- F. Public Officers and Employees NMSA 1978, §10-11-6.1

REFERENCE:

- A. ACA Standard 2-CO-1C-05, *Standards for the Administration of Correctional Agencies*, 2nd Edition.
- B. ACA Expected Practices 5-ACI-1C-01 and 5-ACI-1C-15 Performance Based Standards and *Expected Practices for Adult Correctional Institutions*, 5th Edition.
- C. ACA Standards 4-APPFS-3D-27, *Standards for Adult Probation and Parole Field Services*, 4th Edition.
- D. ACA Standard 2-CI-1A-6, *Standards for Correctional Industries*, 2nd Edition.
- E. Governor's Executive Order No. 91-27

PURPOSE:

To provide specific guidelines for handling Workers' Compensation claims and the Early Return to Work Program and to ensure each work site has an accident reporting system. [4-APPFS-3D-27] [2-CI-1A-6]

APPLICABILITY:

All employees of the New Mexico Corrections Department (NMCD).

FORMS:

- A. **Release to Full Duty** form (*CD-032301.1*)
- B. **Doctor Visit/ Modified Work Assignment (Work Related)** form (*CD-032301.2*)
- C. **Doctor Visit/ Modified Work Assignment (Non-Work Related)** form (*CD-032301.3*)

DEFINITIONS:

- A. American with Disabilities Act (ADA): Federal Legislation signed into law July 26, 1990. It is an anti-discrimination statute which requires that qualified persons with disabilities be given the same consideration for employment as individuals without disabilities.
- B. Appointing Authority: The level of authority within the NMCD that can authorize hire.
- C. AWOL: Absent Without Official Leave.
- D. Early Return to Work Program (ERTW): Modifications to duties in accordance with *State Personnel Board Rule 1 NMAC 7.10.13*. Early Return to Work assignments includes "Modified Duty Assignments" and "Temporary Duty Assignments" as defined in the policy. Such assignments may last for up to six (6) months, which may be extended with permission of the State Personnel Director for an additional six (6) months.
- E. Family and Medical Leave Act (FMLA): This act provides up to 12 weeks of unpaid, job-protected leave for eligible employees to tend to their own or a family member's serious medical condition, birth of a child or military exigency and up to 26 weeks of leave to care for a covered service member or veteran.
- F. LWOP: Leave without pay.
- G. Leave Time: Time accrued as sick leave, annual leave and compensatory leave.
- H. Modified Work Assignment (MWA): A Modified Work Assignment is given to an employee who can perform all of the essential functions of their job classification but is unable to perform some of the non-essential functions of their job classification; which classification may be subject to reasonable accommodation. The employee is relieved of performing some of the non-essential functions of their classification.
- I. MMI: Maximum Medical Improvement.
- J. Pre-Existing Physical Impairment: A disclosure of a prospective employee's medical condition regardless of origin, which could or will affect the person's ability to perform the duties of the position for which the person applied. Medical histories are not public record, and disclosures will be held confidential.
- K. RMD: Risk Management Division of the State of New Mexico.
- L. Root: Determination of main cause of a problem or a problematic event arrived at through a root cause analysis.
- M. Temporary Duty Assignment (TDA): A Temporary Duty Assignment is given to an employee who cannot perform all of the essential functions of their classification; for which classification it is not possible to reasonably accommodate the employee by relieving the employee of performing any essential functions (e.g., Correctional Officers and Correctional Officer Specialists). It is a temporary duty assignment comprised of a combination of duties from one or more positions.

POLICY:

The NMCD will comply with all provisions of the *New Mexico Workers' Compensation Act*, the and the *ADA* to ensure that all employees are aware that they are covered under the provisions of these laws.

- A. All claims of Worker Compensation will be handled in compliance with the procedures in *CD-032301*.
- B. All employees shall practice safety in the workplace and in operation of equipment at all times.
- C. Workers' compensation shall be a part of the personnel policy manual. **[5-ACI-1C-01]**
- D. All incidents that result in injury to an employee are reported to the administrator or designee within a specified period of time. The administrator or designee will review the report and take appropriate corrective action. **[2-CO-1C-05]**
- E. All employees who have direct contact with offenders shall receive an appropriate physical examination prior to job assignment. All other employees receive medical screening prior to job assignment. Employees receive re-examinations according to a defined need or schedule. **[5-ACI-1C-15]**



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AUTHORITY:

Policy *CD-032300*

PROCEDURES: [4-APPFS-3D-27] [2-CI-1A-6] [5-ACI-1C-15]

NOTIFICATION/TREATMENT/EARLY RETURN TO WORK:

A. Employee Obligations:

1. All employees shall immediately report to their immediate supervisor any accident or injury that has occurred during their normal work assignment.
2. All employees shall complete the **Workers' Compensation Notice of Accident** form (*NOA-I*), available through the Human Resources Bureau (HR), for any accident or injury that has occurred during their normal work assignment even if it is a minor accident or injury not requiring medical treatment and not resulting in loss of time from work.
3. All employees placed in a TDA or MWA approved by their physician, who refuse the assignment or by performing tasks or acts not consistent with or authorized by their TDA/MWA are in violation of their TDA/MWA and may be subject to disciplinary action.

B. Immediate Supervisor Obligations:

1. The immediate supervisor, in conjunction with the employee, shall complete the **Workers' Compensation Notice of Accident** form (*NOA-I*), if involved in any minor accident or injury not requiring medical treatment and not resulting in loss of time from work.
2. The immediate supervisor, in conjunction with the Fire Safety Program Manager, will investigate the accident scene to determine the root cause of the accident and will make necessary changes to reduce the likelihood of recurrence of the same type accident. They will complete the **Workers' Compensation First Report of Accident** form (*WCA EI.1*), (available through HR), describing all details related to the accident and a copy will be sent to the respective payroll officer and the state's contractor adjuster.
3. If the investigation produces evidence that the employee willfully or intentionally violated NMCD policy, the report will be submitted to the appropriate appointing authority for possible disciplinary action.

C. Contractor Adjuster/Insurance Carrier:

1. Will process the claim in its entirety and will file the claim with the *Workers' Compensation Administration*.

D. Safety Program Director: [2-CO-1C-05]

1. Will review the accident report and, if warranted, conduct a follow-up investigation.
2. Will follow-up on changes made to reduce the likelihood of recurrence of the same type of accident.
3. Report any noted problems to injured employee's adjustment to the workplace, supervisor, or co-workers to the appointing authority for possible resolution.

E. Labor Relations' Obligations:

1. Will inform the employees of the Department's ERTW.
2. Will provide the employee with a list of the essential job functions or TDA for medical evaluation by the employee's treating physician.
3. In the event the employee's treating physician does not release the employee to return to normal duty, and a MWA or TDA is available, the physician will be advised of available work for evaluation.
 - a. No employee will be permitted to return to full duty (or otherwise considered qualified to return to full duty) unless they have provided HR with a **Release to Full Duty** form (*CD-032301.1*)
 - b. It is the employee's responsibility to provide his or her treating physician with a blank **Release to Full Duty** form (*CD-032301.1*). If the treating physician completes said form, i.e., releases the employee back to full duty, the employee shall provide HR with an original copy of the form within three (3) working days of said release. It is the employee's responsibility to obtain the form from HR and provide it to their physician. Unless and until the employee provides HR with the **Release to Full Duty** form, the Department will assume that the employee has not been released to full duty and cannot perform the essential functions of their pre-injury, full duty position even if the employee has provided HR with treating physician's notes, reports opinions, letters, etc., that state that the employee can return to full duty.
4. If the employee declines a MWA or TDA that has been approved by the treating physician, HR will notify RMD with copies to the appropriate appointing authority and HR Administrator.
5. HR will make the necessary arrangements to return the employee to work as soon as possible and complete the **Doctor Visit/ Modified Work Assignment (Work**

Related) form (*CD-032301.2*) or the **Doctor Visit/ Modified Work Assignment (Non-Work Related)** form (*CD-032301.3*).

6. HR will review Doctor's Query form after each visit to monitor the employee's progress.
7. The employee may return to work in an MWA for up to 6 months. The MWA may be extended for up to 6 additional months if substantial progress in recovery has been demonstrated and return to full duty is anticipated within these 12 months. If the employee cannot return to full duty within 12 months, a copy of the employee's complete ERTW file will be forwarded to the Human Resources Director.
8. The Human Resource Director shall review the employees file to determine if State Personnel Board (SPB) rules as well as Department policy were followed.
9. The Human Resource Director shall notify the employee in writing that he or she should return to their position, or a position that he or she qualifies for, within ninety (90) days and that failure to do so may result in the employee being separated (without prejudice) from their position.
10. During the ninety (90) day period, the Human Resource Bureau (HR) shall review Department job vacancies to determine if the employee can be permanently reassigned to another position under the following circumstances:
 - a. MMI has been reached and the employee cannot perform one or more of the essential functions of the present job classification with or without an accommodation.
 - b. MMI is not attained within 12 months for a MWA or TDA.
 - c. The employee reports that they will be unable, due to a permanent disability, to perform the essential job functions of his or her present position.
 - d. The Department will make reasonable efforts to find suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which the employee, (either with or without reasonable accommodation,)either; meets the requirements and can perform the essential functions of the job or the Department certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job.
 - e. If approval is granted by the appointing authority, the local HR administrator will inform the Human Resource Director who will proceed to request an exemption to the recruitment process through the State Personnel Office (SPO).

- f. If no suitable position is available or if the employee rejects an alternative employment offer, the appointing authority shall proceed with a notice of contemplated separation in accordance with State Personnel Board Rule 1.7.10.13 Separation without Prejudice.

F. General Counsel:

If no suitable vacant positions exist, the Office of General Counsel shall review the case to determine if all appropriate measures have been taken to return the employee to work.

G. Appointing Authority:

After review is completed, if a position is not available or if the employee rejects an alternative employment offer, the appointing authority shall take action to separate the employee.

H. Benefits Administration:

1. Upon adjudication by the *Workers' Compensation Administration* that the injured employee is entitled to benefits:
 - a. The employee will be given credit for a full workday on the date of the injury without charging it to sick leave.
 - b. The next five (5) working days are chargeable to sick leave, if the employee has sick leave available, or if sick leave has been exhausted, annual leave may be used at the employee's option. In either case, the employee must request the leave by completing form SPB 001 Leave Report Form.
 - c. After the first seven consecutive calendar days, when an employee is unable to work, Workers' Compensation will commence paying the employee 66 2/3% of the average gross weekly wage (or the maximum weekly payment specified by law, whichever is less).
 - d. Starting on the eighth consecutive calendar day, 1/3 of the employee's missed time is charged to sick leave until it has been exhausted and then to annual leave, in accordance with the following scale:
 - 1) 2.7 hours per day for full-time employees.
 - 2) 2 hours per day for three-quarter time employees.
 - 3) 1.4 hours per day for half-time employees.
 - 4) Indicated on the time sheet, "*On Workers' Compensation Coverage*", sick and/or annual leave must be requested by the employee by completing form SPB 001 Leave Report Form.
 - e. When an employee has exhausted his or her accrued leave, the employee must

request Leave without Pay using **Request for Leave without Pay** form (CD-032801.1) in maximum increments of 30 calendar days. A statement must accompany the request from the employee's treating physician indicating when the employee might be expected to return to duty. This option is only available if the treating physician indicated that the employee cannot return to work to MWA or TDA or such duty is not available.

- f. The employee will be informed when leave without pay has been granted for thirty (30) calendar days (or less if so requested). If they are unable to return to work after thirty (30) calendar days (or less, if less was requested and approved), they must submit a second request for LWOP a minimum of five (5) working days prior to the expiration of the approved leave or they will be charged AWOL and may be subject to disciplinary action including dismissal. LWOP cannot exceed thirty (30) calendar days for probationary employees or twelve (12) consecutive months for permanent employees, unless approved by the employee's Division Director.)
- g. If the employee fails to return to work as directed, the appointing authority will proceed with disciplinary action or separation from employment in accordance with SPB Rule NMAC 7.10.12 or 7.10.13 and *Department Policies*.
- h. If an employee is absent from work for 28 consecutive calendar days, Workers' Compensation insurance retroactively pays the employee for the first seven days they were absent from work. Since these seven days have already been paid by sick leave, it is necessary that the employee's supervisor notify the appropriate human resource staff or the payroll department in writing that the employee has been absent for twenty-eight (28) days. The payroll department will set up for 66 2/3% of the amount paid to the employee for the days of sick or annual leave in that seven (7) day period. An hour's adjustment will be used to reinstate twenty-seven (27) (2.3 of 40) hours leave to the employee's records based on the assigned work schedule at the time of the injury.

I. Public Employees Retirement Association (PERA) Contributions During Approved Workers' Compensation Leave

- 1. The Department may authorize payment of an employee's PERA member contributions and the corresponding employer contributions for an employee who is absent from work on approved workers' compensation leave as the result of a compensable work-related injury.
- 2. Payment of PERA contributions pursuant to this section is not an automatic benefit of an approved workers' compensation claim. To be considered for payment of PERA contributions under this section, the following conditions must be met:
 - a. The employee is an adult correctional officer.
 - b. The employee was injured while performing a work-related function or duty under inherently dangerous circumstances; and

- c. The employee is absent from work and has been placed on approved workers' compensation leave as a result of the injury.
3. If the Department determines that the employee qualifies under this section, the Department shall:
 - a. Pay the employee's required PERA member contributions and the corresponding employer contributions for the approved period of workers' compensation leave; and
 - b. Calculate the contribution amounts using the employee's salary at the time of the injury.
4. Nothing in this section shall be construed to require payment of PERA contributions for each employee receiving workers' compensation benefits or approved workers' compensation leave.

J. Public Employees Retirement Association (PERA) Service Credit for Certain Employees on Approved Workers' Compensation Leave

1. Upon approval of payment of PERA contributions pursuant to Section I of this policy, the Human Resources Director or designee shall provide written certification to PERA that the employee meets the requirements for certification pursuant to NMSA 1978, Section 10-11-6.1.
2. An employee certified pursuant to this section shall accrue service credit for the period of absence from work while on approved workers' compensation leave pursuant to NMSA 1978, Section 10-11-6.1, provided that:
 - a. The employee is an adult correctional officer member;
 - b. The employee retains membership in PERA during the period of absence from work on approved workers' compensation leave; and
 - c. The Department approved payment of PERA member and employer contributions pursuant to Section I of this policy.
3. The Department shall notify the employee in writing of its determination regarding eligibility for certification under this policy.
4. An employee who disagrees with the Department's determination may appeal the decision in writing to the Cabinet Secretary or designee within ten (10) working days of receiving the written notice.
5. The Cabinet Secretary or designee shall issue a written decision within ten (10) working days of receipt of the appeal. The decision shall be final.

K. Fire/Safety Program Manager:

1. Will examine all accident reports and work with the Facilities Safety and Sanitation Officer (FSSO) and Operations Manager where required, and take whatever corrective action is deemed necessary to prevent similar accidents in the future.
2. Will ensure that each accident report will be discussed at the monthly safety meeting immediately following the accident. If appropriate, an analysis of the accident, the root cause and basic preventive measures will be discussed in this meeting.

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Release to Full Duty

I have reviewed the ADA job description for the position of _____
and I am releasing _____ (employee name) to full duty, with no restriction,
based on the physical demands of the position. This release to full duty is effective
_____(Date).

Physician's Name

Physician's Signature

Date

1.	Diagnosis _____			
2.	Was the employee released today?		Yes ☐	No ☐
3.	X-ray(s)?	Today: Yes ☐	No ☐	Previously: Yes ☐ No ☐
4.	Medication prescribed? Yes ☐		No ☐	Continued ☐
	Will medication affect job performance? Yes ☐		No ☐	☐
5.	Can employee return to normal duty at this time?		Yes ☐	No ☐
6.	If "No", can employee return to work on a limited/restricted basis?		Yes ☐	No ☐
7.	If "Yes" to #6, what restrictions?		☐ No reaching above shoulder	☐ No pushing/pulling
	☐ No climbing of stairs or ladders	☐ No operation of machinery	☐ No lifting over _____	
	☐ No repetitive waist bending	☐ No kneeling/squatting	☐ Limited/no use of _____	
	Other _____			
	How long will restrictions last? Until next visit _____ other date _____			
8.	When is next scheduled visit? _____			
9.	Other comments _____			

1. Diagnosis _____

2. Was the employee released today? Yes ☐ No ☐

3. X-ray(s)? Today: Yes ☐ No ☐ Previously: Yes ☐ No ☐

4. Medication prescribed? Yes ☐ No ☐ Continued ☐
Will medication affect job performance? Yes ☐ No ☐

5. Can employee return to normal duty at this time? Yes ☐ No ☐

6. If "No", can employee return to work on a limited/restricted basis? Yes ☐ No ☐

7. If "Yes" to #6, what restrictions? ☐ No reaching above shoulder ☐ No pushing/pulling
☐ No climbing of stairs or ladders ☐ No operation of machinery ☐ No lifting over _____
☐ No repetitive waist bending ☐ No kneeling/squatting ☐ Limited/no use of _____

Other _____

How long will restrictions last? Until next visit _____ other date _____

8. When is next scheduled visit? _____

9. Other comments _____