



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER	
PRS: 19	
EFFECTIVE DATE: 06/25/2015	ORIGINAL ISSUED ON: 05/22/1995
REVISION NO: 4	

SUBJECT: MODIFIED / LIMITED DUTY

1.0 PURPOSE

The purpose of this policy is to establish parameters around the use of modified/limited duty for all employees who, due to injury, illness, or pregnancy are unable to perform their normal duties because of temporary restrictions placed upon them by their health care provider or a department-recommended or referred health care provider.

2.0 POLICY

It is the policy of the department that any employee who has been injured, suffered a serious illness, or is pregnant and is not able to perform his or her normal responsibilities in their job classification complies with certain departmental requirements related to modified/limited duty assignments.

3.0 APPLICABILITY

This policy is applicable to all Department of Public Safety employees.

4.0 REFERENCES

- A. DPS Policy PRS: 04 Workers' Compensation Program**
- B. DPS Policy PRS: 15 Absences from Work**
- C. CALEA Chapter 22: Compensations, Benefits, and Conditions of Work**
- D. Health Insurance Portability and Accountability Act (HIPPA) of 1996**

5.0 DEFINITIONS

- A. Modified/Limited Duty Assignment** – A set of temporary duties assigned to employees who are unable to perform their regular duties due to a work or non-work related injury or illness or pregnancy who have been released by their health care provider to work full or part time with restrictions. The employee may be assigned to his or her current classification with modified duties or to a “limited duty” assignment comprised of duties from a singular or variety of positions.

6.0 PROCEDURE

A. Requests or Provision of Modified/Limited Duty

1. Employees who are unable to perform their regular duties because of a compensable injury under the Workers' Compensation Act who are released by their health care provider to work full or part-time with restrictions will be afforded modified or limited-duty return to work opportunities whenever possible. The employee may be assigned to his or her current classification with modified duties or to a temporary “limited duty” assignment, at or below his or her current grade, comprised of a combination of duties from a variety of positions. Refusal of a

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modified duty assignment may impact eligibility for workers' compensation benefits and/or duty injury leave for NMSP Commissioned Officers.

2. Upon receiving all required documents, the HR Director or designee will, unless the employee chooses to exercise their right to qualifying leave under FMLA, coordinate approval or disapproval for a return to work assignment through the applicable Secretary, Deputy Secretary, Chief, Deputy Chief, or ASD Director who will consult with the employee's district commander, manager, and/or supervisor to determine whether or not productive full or part-time duty is available and, if available, to confirm the job duties to be performed and that they are consistent with the employee's restrictions – consulting with the HR Director when unsure. An employee will remain on applicable FMLA or non-FMLA leave and will not report to work until and unless they have been notified by HRB that they have been approved for modified duty.
3. Employees who are in need of, or qualify for, a modified/limited duty assignment should submit their requests by completing a Request for Modified/Limited Duty Form through their immediate supervisor directly to the Human Resources Bureau Director (or designee). Requests for modified/limited duty should be submitted within forty-eight (48) working hours of knowing of the need for such an accommodation or upon being released to limited/modified or part-time duty by the employee's health care provider.

4. **Medical Certification**

- a. Requests must be accompanied by a medical certification of the health condition and the anticipated date of return to normal duties.
 - b. **Work related injury or illness:** employees who have a work related injury or illness must, at a minimum, provide the completed Doctor Visit/Modified Work Assignment Form as the medical certification for a modified duty assignment.
 - c. **Non-work related injury or illness:** employees who have a non-work related injury or illness must submit medical certification on the Certification of Health Care Provider Form (or other pre-approved form).
 - d. Medical certifications must be complete and sufficient to enable the department to effectively respond to the request. If the employee needs to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment or specific reduced schedule requirements.
 - e. Medical certifications must be sent directly to the Human Resources Bureau upon receipt in a sealed envelope marked "confidential" or faxed by the employee directly to the Human Resources Bureau – do not send the Modified/Limited Duty Request and medical certification "up through the chain" of supervision.
5. Supervisors will be responsible for keeping the chain of command informed of such requests without violating confidentiality of an employee's medical information.
 6. The district commander/bureau chief will consult with the HR Director (or designee) to determine eligibility, job duties, proper completion of required documentation, etc. for the return to work assignment. The HR Director (or designee) will

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coordinate the request as set forth 6.0.A.2 of this policy. It will be the responsibility of the HR Director (or designee) to notify the employee of the approval/disapproval of their modified/limited duty request.

7. The district commander/bureau chief must provide written documentation through their chain of command detailing the tasks the personnel on limited duty will be conducting. These tasks must be related to the employee's current assignment or related to the overall mission of that district/division. Updates will be provided to the chain of command upon request. This modification in duties will be applied towards that employee's annual evaluation.
8. **Recertification:** While on modified/limited duty the employee may be required to provide recertification of the health condition at intervals to be designated at the time the request is approved but at least every thirty (30) days unless the employee is on part-time FMLA leave. Employees on part-time FMLA leave will be informed by the HR Director (or designee) when medical recertification is required in compliance with FMLA. The recertification must include the expected duration of the need for modified duty and the anticipated date of return to normal duties.
9. **Return to Work/Fitness for Duty:** Before the employee returns to work in a non-modified/limited duty assignment, the employee may be required to submit a fitness for duty certification from the employee's health care provider stating that the employee is able to resume work. Such certification must include assessment against the essential functions of the position.
10. **Duration of Modified/Limited Duty**
 - a. **Maximum Medical Improvement:** An employee, who in the opinion of their health care provider has reached maximum medical improvement ("MMI"), will be evaluated to determine whether or not they can perform the essential functions of their pre-injury/illness position with or without reasonable accommodation.
 - b. **Non-work related injury or illness:** Employees who have not reached MMI will be afforded modified/limited duty if it has been less than six (6) months since the start of the non-work related injury/illness and substantial progress in the recovery of the injury or illness has been demonstrated and it has been anticipated that the employee will be able to return to full duty within the six (6) month period.
 - c. **Work-related injury or illness:**
 1. Employees who have not reached MMI will be afforded modified duty if it has been less than twelve (12) months since the start of injury/illness, substantial progress in the recovery of the injury or illness has been demonstrated and it has been anticipated that the employee will be able to return to full duty within the twelve (12) month period.
 2. Up to two (2) additional six (6) month extensions may be offered to commissioned law enforcement officers who continue to demonstrate substantial progress.

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- d. Employees who have suffered an injury or illness which is compensable under the workers' compensation act and who are physically or mentally unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation will be subject to 1.7.10.13 NMAC, and DPS policy PRS:23 *Involuntary or Voluntary Separation From Employment*.
11. Employees on modified duty assignment to a temporary position will maintain their salary and status for the duration of such temporary assignment.

B. Restrictions

1. Employees who are unable to safely operate motor vehicles due to a work or non-work related injury or illness must immediately surrender their department-assigned vehicles to their immediate supervisors. If no vehicle is assigned to them, they will refrain from driving one until medically cleared to do so.
2. While on modified/limited duty status, the affected employee may be restricted from working any outside employment as determined by the appropriate division director, in the best interest of the department.
3. The affected employee will not be allowed to work any overtime or special overtime projects unless approved by the appropriate bureau chief or commander. If approved, the duties performed during the overtime project must not exceed the limitations set forth by the employee's health care provider.
4. The duties to be performed by an employee on modified/limited duty status will be determined by the bureau chief or commander, with the concurrence of the health care provider treating the employee, the HR Director, and the appropriate division director.

C. Commissioned Employees

1. Commissioned employees on modified/limited duty status will:
 - a. Not carry departmental issued weapons on their person. The Chief may, at his discretion on a case-by-case basis, prohibit an employee from carrying a department-approved personal weapon off-duty when carried pursuant to Department Policy ADM: 13 *Carrying of Firearms*;
 - b. Continue to carry a concealed badge and wallet commission; and
 - c. Dress in appropriate civilian attire, according to their work assignment.
2. Commissioned officers who are unable to perform their regular field duties must surrender their marked, department-issued vehicle to their immediate supervisor until they are medically cleared to return to full-duty status.
3. Upon availability of unmarked units, personnel on limited duty status may be issued a unit as long as their condition allows them to safely operate a vehicle. This unmarked unit will be used strictly for department related activities.
4. Firearms Qualifications/Advanced Training Requirements
 - a. Once placed on modified/limited duty status, an employee will automatically be waived from all weapons qualifications, physical fitness standards, and other training requirements until such time as he/she can return to full-duty status.

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- b. Following a modified/limited duty assignment, and prior to assuming full-duty status, the officer must comply with the department's, and the New Mexico Law Enforcement Academy Board's, rules regarding weapons qualifications, physical fitness standards, and biennial, advanced training requirements.
5. NMSP Probationary Officers- modified/limited duty status will not count towards the completion of the NMSP commissioned officer's two (2) year probationary period.

D. Vacant Positions due to a Job-related Injury or Illness

1. A position may be permanently filled if there is a documented medical diagnosis or evidence that an employee with a job-related injury or illness has reached maximum medical improvement or that the employee's impairment or condition is permanent and that employee cannot perform the essential functions of the particular job.
2. A position may be permanently filled if there is a critical need and that need cannot be satisfied with temporary employment, and the department has made a "good faith" effort to do so, and the department has given advance notice to Risk Management Division.

7.0 ATTACHMENTS

NONE

8.0 APPROVAL

APPROVED BY: S/ Gregory J. Fouratt **DATE:** June 25, 2015
DPS Cabinet Secretary