

CITY OF FRISCO PERSONNEL POLICIES
SECTION: ACCOMMODATIONS

Subject: RETURN TO WORK POLICY

Effective Date: 04/06/2021

Approved By: Ord 2021-04-31

Revision Date:

Revision Approved by:

I. STATEMENT OF PURPOSE:

The purpose of the Return to Work policy is to enable employees to continue using their skills and abilities at work while temporarily recovering from an injury, sickness, or disability that is preventing him/her from performing one or more of the essential functions of their position.

All modified duty accommodations are provided on a **temporary basis** to allow opportunities for an employee to progressively return to his/her position in a full duty capacity.

The policy provides up to 180 calendar days of modified duty if the City has available work and the modified duty request is supported by a licensed health care provider. The City will make every reasonable effort to provide an appropriate modified duty accommodation, subject to the provisions of the Return to Work policy. However, the City cannot guarantee it can provide work within modified duty restrictions.

The ultimate goal is to return qualified employees to their original jobs. The Return to Work policy attempts to provide modified, productive work that meets an employee's capabilities and medical restrictions provided by the treating physician. The Return to Work procedures are developed to meet the applicable state and federal laws and regulations that support and encourage return to work programs including: the Texas Workers' Compensation Act, Americans with Disabilities Act ("ADA"), and Family Medical Leave Act ("FMLA").

The support and participation of management and all employees are essential for the success of the City of Frisco Return to Work policy.

The City of Frisco is an equal opportunity employer. It is the policy of the City of Frisco to afford equal employment opportunity to all individuals regardless of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), age, national origin (including citizenship), veteran status, disability, and genetic information.

II. **ELIGIBILITY**

Employees eligible to participate in the Return to Work policy must:

- Be an active employee of the City;
- Be released by a licensed health care provider to return to work; and
- Provide a completed and signed City of Frisco [Modified Duty and Return to Work Form](#) or other documentation from a licensed physician, i.e. DWC73 (meeting the City's requirements) supporting their work restrictions and/or reduced hours.

Subject to applicable state and federal laws and regulations, because modified duty is a short-term accommodation, modified duty will not exceed 180 calendar days in the 12-month rolling period from the date modified duty is requested or 12-months from the date the physician approved modified duty, whichever is less. The 'rolling calendar' considers time used under the Policy in the 12-months prior to the date modified duty is requested. If an employee did not work modified duty during the previous 12-months, they are eligible for up to 180 calendar days of modified duty. If modified duty was worked during the previous 12-months, the number of calendar modified duty days worked will be deducted from 180 and the employee will be eligible for the remaining number of calendar days.

Example: Jane Doe has been cleared by her physician to return to work with restrictions. Jane was approved for 120-calendar days of modified duty from January 1 – May 1 and returned to full duty on May 2. Later that same year, Jane requested modified duty again and provided a return to work note with restrictions, Jane would only be eligible for 60 calendar days of modified duty.

III. **PROCEDURES**

Requesting Modified Duty:

An eligible employee requesting modified duty must take the following actions:

1. Provide a completed [Modified Duty and Return to Work Form](#) with identified restrictions requiring modified duty to Human Resources. The Modified Duty and Return to Work Form must be completed and signed by a licensed health care provider no less than 30 days from the date of the request. The Modified Duty and Return to Work Form must also specify the employee's detailed work restrictions, and anticipated duration of the restrictions.
2. Upon receipt of the Modified Duty and Return to Work Form, Human Resources will confirm the following: (1) if modified duty is available; and (2) if the work restrictions can be reasonably accommodated. Reasonable accommodations will be evaluated in accordance with the City's ADA policies.

3. Once confirmed, Human Resources will notify the employee if modified duty is available and/or what restrictions can be reasonably accommodated.
4. If the physician indicates that the employee is not able to return to his/her regular duties, even with minor modifications, but is physically able to perform alternative assignments in his/her own or another department, and a modified duty position is available (as outlined herein), the employee will be offered a modified duty assignment. The priority will be to return employees to their own departments unless duties are not available.
5. An employee who requests modified duty may remain on leave or work (if the City can reasonably accommodate a temporary restriction in the employee's existing position) until a determination can be made by the City on the availability of modified duty and/or other reasonable accommodations. The employee, if on leave, will be eligible to use accrued time according to policy while the City determines the availability of modified duty and/or other reasonable accommodations.
6. Upon receipt of notification from the treating physician for an on-the-job injury or illness, the employee can return to work to either his/her job with reasonable accommodations or another assignment, Human Resources will notify the employee in writing with a bona fide offer of employment. The offer should include a copy of a Work Status Report (DWC Form -073) that the offer is based on, stipulate the pay to be received by the employee, identify the location/shift/schedule of the position, the physical and time requirements of the position, and any other information the City determines is appropriate. The bona fide offer will include a statement that the employer will only give tasks within the employee's physical abilities, knowledge, and skill, and will provide training if necessary. If the offer is made at a lower pay rate, the workers' compensation carrier may make up the difference of the employee's former pay (if approved by the workers' compensation carrier). Human Resources will also contact the employee with the information that the employee has been approved for return to work by the employee's treating physician and that a position exists effective on a specific date with details regarding the position.

Approved Modified Duty:

Work assignments and schedules for approved modified duty will be determined by the assigned supervisor.

Employees participating in return to work through either a modified, regular position or an alternative position may not work at any employment outside of the City during the period of the modified regular position or an alternative position,

without approval from Human Resources and the Department manager.

Unavailable Modified Duty:

Modified duty may not be available due to one or more of the following reasons:

- insufficient return to work documentation;
- modified duty assignments are not available;
- the employee's work restrictions cannot be reasonably accommodated; and/or
- the employee has exhausted 180 calendar days of modified duty in the 12-month rolling period (as specified above).

Unavailable or Exhausted Modified Duty:

Subject to applicable state and federal laws and regulations, modified duty will exhaust when an employee reaches the maximum period of 180 calendar days within a 12-month rolling period under the Return to Work policy or any time he/she is medically deemed to have permanent restrictions whichever occurs first.

If an employee has exhausted time under the return to work program or if a modified duty assignment is not available, the employee may do the following:

- Resume or begin a continuous leave using FMLA or City Leave of Absence if the employee is eligible and time is available; and/or
- Request an accommodation under the ADA.

Contact the City's Leave of Absence Administrator in the Appendix.

Failure to accept a Modified Duty assignment for On-the-Job Injury:

A City of Frisco employee that refuses an approved modified duty assignment under workers' compensation, will no longer be eligible to receive salary continuation as provided by the City. The City of Frisco workers' compensation carrier may also elect to reduce or suspend workers' compensation benefits if a modified duty assignment is refused.

Modified Duty to Full Duty Transition:

Employees in a position that requires a post-job offer physical ability test are required to complete and pass the WorkSTEPS physical ability test prior to returning to work in a full-duty status.

Additionally, these positions must provide a full-duty release from their physician along with completing the below steps:

1. Provide a completed Modified Duty and Return to Work Form to Human Resources. Fire Personnel must complete the Fire specific Return to Work Authorization Form. For mental health-related treatment, employees must complete a Modified Duty and Return to Work Form.

The Modified Duty and Return to Work Forms must be completed and signed by a licensed medical provider and must specify the date an employee is released to return to work without restrictions.

2. Upon receipt of the Modified Duty and Return to Work Form, the City may refer an employee for a medical exam upon his/her return to duty and determination that such an exam is necessary in accordance with City policy. Human Resources will determine if an employee is required to complete a WorkSTEPS physical ability test if WorkSTEPS was required at the time the employee was hired for the position and if the injury or illness is tested through WorkSTEPS. If an employee qualifies to complete the WorkSTEPS physical ability test, Human Resources will notify the employee and provide the WorkSTEPS Information Form.
3. If an employee is not eligible or required to complete the WorkSTEPS physical ability test, Human Resources will notify both the employee and supervisor to authorize the release to return to work.
4. If an employee is released to full duty from a mental health provider, a Modified Duty and Return to Work Form must be completed and provided to Human Resources prior to returning to work.
5. The City will review any requests for accommodation in the return to work process through its ADA policy.

IV. DEFINITIONS

Active Employee:

- **Full-time employee:** An employee whose position requires working at least 40 hours per workweek;
- **Part-Time Employee:** An employee whose position requires working less than the normal 40-hour workweek but generally no more than 20 hours per week;

Essential Functions:

The basic job duties that an employee must be able to perform, with or without reasonable accommodations.

Health Care Provider:

A Doctor of Medicine, osteopathy, psychology, or other legally qualified practitioners of a healing art that is licensed to practice in the state jurisdiction where care is being given and practicing within the scope of that license.

Modified Duty:

Modified Duty is a temporary assignment for an employee to facilitate his/her return to gainful and productive employment. Modified duty assignments must be appropriate to the employee's skills and level of experience, as determined by the City. An eligible modified duty assignment must adhere to temporary, physician-imposed physical restrictions and/or reduced hours without violating any medical restriction while recovering from an injury, sickness or disability that prevents him/her from performing all the essential functions of their position with or without reasonable accommodations.

Modified Duty and Return to Work Form:

A work status form administered by the City of Frisco for an employee recovering from an injury, sickness or disability to obtain specific restrictions from his/her treating physician to complete, sign and return to Human Resources. Human Resources will utilize the completed form to ensure restrictions can be reasonably accommodated.

The City of Frisco Modified Duty and Return to Work Form link is located at the bottom of the City of Frisco webpage under Benefits/Leave of Absence.

[https://www.friscotexas.gov/1313/Leave-of-Absence.](https://www.friscotexas.gov/1313/Leave-of-Absence)

WorkSTEPS Physical Ability Test:

A test that is administered by either a licensed Physical Therapist, Physical Therapist Assistant, or trained personnel under the direction of the City's contracted provider. The test allows the evaluator to assess the employee's ability to perform actual or simulated job tasks and physical fitness tests, which measure an employee's performance of physical tasks such as posture, flexibility, strength, lifting capacity, and other job-specific tasks related to the employee's job description.

V. EMPLOYEE RESPONSIBILITIES

The employee must fully understand his/her restrictions and that performing tasks that do not comply with the restrictions is strictly prohibited. While on a modified duty work assignment, if an employee encounters a situation that requires the employee to perform a task that does not comply with identified work restrictions, the employee must **not** perform the task and report the situation to his/her supervisor immediately.

All employees are responsible for the following:

- Notifying Human Resources if a physician prescribes work restrictions that impact one or more job functions;
- Timely providing supporting documentation;
- Maintaining communication with Human Resources and the modified duty supervisor on all work status updates, changes in work status, and submission of work status reports.
- Continuing to perform assigned job tasks in a satisfactory manner while on modified duty.

The employee will be in communication with the treating physician and Human Resources until:

- The alternative assignment ends;
- The physician temporarily prohibits the employee from performing the alternative or modified duty assignment;
- There is no longer any useful task available within the entity that the employee can perform;
- The employee fails to meet performance standards of the assignment;
- The employee fails to comply with all rules, regulations, or stipulations of the return to work program and/or the policies of the City of Frisco;
- The employee is able to return to his/her regular, pre-injury duties; and/or
- The employee terminates employment.

VI. CITY OF FRISCO EMPLOYEE NAVIGATOR

The City of Frisco navigator for all leave of absence programs, workers' compensation disability benefits, and the return to work program is the Human Resources Analyst. The Human Resources Analyst is the liaison between all City employees and the main point of contact for the City of Frisco FMLA leave administrator and workers' compensation carrier. The Analyst role is responsible for assisting and promoting policies and procedures while helping employees navigate the leave program. You can reach your City of Frisco Human Resource Analyst at 972-292-5200.

VII. APPEALS PROCEDURE

An employee may appeal a return to work decision by following the steps below:

- Present a written appeal to the Director of Human Resources.
- Director of Human Resources, or his or her representative, in coordination with the employee's Director, will meet with the employee and forward a recommendation to the City Manager.
- The City Manager will make a final and binding decision without further appeal.

VIII. FRAUD

An employee who fraudulently obtains and/or submits medical documentation regarding modified duty will be subject to disciplinary action up to, and including, termination.

Appendix A

The City of Frisco's Leave of Absence and ADAAA Administrator is:

The Hartford

P.O. Box 14285

Lexington, KY 40512-4285

Phone: 1-888-458-5541

Fax: 1-877-588-4817

www.thehartfordatwork.com