
POLICY #: 214
SECTION: Employment Practices
SUBJECT: *RETURN-TO-WORK AND MODIFIED DUTY PROGRAM*

PURPOSE

NapaSan understands that an injury or illness can adversely affect an employee's ability to work. Therefore, according to this Policy, upon an employee's return to work from medical leave due to an illness or injury, NapaSan will consider providing temporary Modified Duty Assignments to enable employees to return to work while recovering from the injury or illness. Any such potential Assignment shall be consistent with the business needs of the department and agency.

The purpose of the Return-to-Work and Modified Duty Program ("Program") is to allow employees to work in a temporary modified work assignment with fewer physical and/or mental demands while the employee recovers from an injury or illness. At the end of the Modified Duty Assignment, an employee must be able to perform the essential functions of his or her job, with or without a reasonable accommodation.

If an employee's Memorandum of Understanding (MOU) includes language that applies to light or modified duty, this Policy shall be considered a supplement to such MOU language and should be interpreted to be consistent with the MOU.

POLICY

The Return-to-Work and Modified Duty Program is voluntary and available at the request of the employee. It covers several scenarios where an employee's ability to return to work is affected due to an employee's injury or illness. This Policy addresses scenarios, including but not limited to:

- An employee returning to the same position with no work restrictions;
- An employee returning to work on a regular schedule with restrictions and assigned a Modified Duty Assignment, if available;
- An employee returning to work on a reduced schedule without restrictions;
- An employee returning to work with work restrictions and assigned a Modified Duty Assignment, if available;
- An employee is unable to return to work (e.g., because of the unavailability of a Modified Duty Assignment, employee's inability to perform the essential functions of his or her job, with or without an accommodation.)

1. Eligibility

Employees with non-industrial injuries and illnesses, who have been released by their primary treating physician to perform a temporary modified work assignment may be eligible for a Modified Duty Assignment. Modified Duty Assignments may not always be available depending on the nature of an

employee's job position, the applicable job restrictions and anticipated durations thereof, and NapaSan's operations. Therefore, a Modified Duty Assignment is not guaranteed and shall not be offered in all circumstances.

2. Definition

Modified or Light Duty means an assignment with duties that are less physically and/or mentally demanding created specifically for the purpose of providing alternative work for employees who are temporarily unable to perform some or all of their normal duties due to illness or injury. Modified Duty is for a specified and limited period of time that is appropriate to the employee's skills and level of experience as determined by NapaSan, and which the employee can perform without violating any medical restriction imposed as a result of a temporary illness or injury.

Modified Duty may include temporary modification of job functions, reduced working hours, changes in working conditions, or physical modification to the work place. NapaSan shall determine, at its sole discretion, whether a Modified Duty Assignment can be made and the type of Assignment to be provided. Any Modified Duty Assignment must be meaningful and add value to NapaSan's operations. NapaSan will not provide a Modified Duty Assignment that is inconsistent with the business needs of the agency, would pose an undue hardship upon its operations or other employees, or an Assignment that would endanger the health or safety of the returning employee or to others.

Modified Duty Assignments are not intended to be a permanent assignment, but a temporary way to bridge between an employee's inability to work due to injury or illness and a return to full employment status.

3. Fitness-for-Duty Exam and Medical Certification

Employees participating in the Return-to-Work Modified Duty Program may be required to undergo a Fitness-for-Duty medical examination to determine the extent of an employee's ability to perform his or her job functions and any work restrictions.

Employees are required to submit a Fitness for Duty and Return to Work Certification ("RTW") Form completed by his or her primary treating physician before initiating any Modified Duty Assignment.

4. Interactive Process

After the employee submits a completed RTW Form, the employee, the employee's supervisor, and the Human Resources Officer ("HRO") shall engage in a discussion, or an "interactive process," to identify possible options for a Modified Duty Assignment.

The interactive process will include an analysis, including but not limited to the following:

- What essential job functions the employee is able to perform, with or without an accommodation, as well as which job functions cannot be performed;
- Information provided by the employee's primary treating physician on the Return-to-Work Certification Form;
- Whether a Modified Duty Assignment is feasible, considering the nature of the employee's position and NapaSan's overall operations;
- Whether a Modified Duty Assignment will cause an undue hardship on NapaSan;
- Whether the employee is able to safely perform his or her job functions without causing harm to him or herself and others.

5. **Length of Modified Duty**

The Modified Duty Assignment shall be temporary and shall end on the earliest of:

1. The date the employee is medically released to his or her regular position with no restrictions, according to the RTW Form completed by the employee's primary treating physician;
2. The date the employee's treating physician determines the employee has permanent restrictions that prohibit the employee from performing the essential functions of his or her job, with or without a reasonable accommodation;
3. The date the agency determines within its discretion that the Modified Duty Assignment period ends;
4. The date the employee fails to undergo a required medical examination, without good cause.

Generally, a Modified Duty Assignment should not last more than forty five (45) calendar days. Requests for an extended Modified Duty Assignment may be granted, up to an additional one-hundred-and-twenty (120) calendar days, upon approval by the General Manager. The General Manager will consider whether, according to an employee's primary treating physician, the employee's medical condition is improving and there is an expectation that the need for continued work modification will end at a determinable date within one-hundred-and-twenty (120) calendar days from the end of the initial Modified Duty Assignment period.

If, at the end of the specified Modified Duty Assignment period, an employee is unable to perform the essential functions of his or her job, NapaSan and the employee shall engage in a good faith interactive process to identify possible reasonable accommodation(s), to the extent the accommodation(s) do not cause an undue hardship on NapaSan.

6. **Coordination of Benefits**

Modified Duty Assignments that include reduced working hours or intermittent leave may be coordinated with short-term and long-term disability insurance, as appropriate. Such leave shall be administered in compliance with applicable state and federal laws regarding medical leave and disabilities.

7. **No Retaliation**

Modified Duty Assignments shall not be assigned as a form of discipline or retaliation to the employee. Further, during or after completing a Modified Duty Assignment, employees shall not be discriminated or retaliated against because of an employee's Modified Duty Assignment.

8. **Application Process**

Employees who wish to participate in the Return-To-Work and Modified Duty Program must follow the following application process:

a) **Notice Requirements**

For Non-Industrial Illness or Injury – If an employee's non-industrial illness or injury requires a medical leave of absence of five (5) or more days or requires intermittent leave for medical purposes, the employee is required to inform his/her immediate supervisor and the HRO as soon as possible after experiencing the illness or injury. If the need for leave is expected to be longer than seven (7) or more calendar days and the employee desires to coordinate his/her leave with short-term disability insurance, the employee shall inform the HRO of this fact as soon as practicable.

For Industrial-related Illness or Injury – Employees shall follow the notice requirements for industrial illness and injury as described in the Napa Sanitation District Injury and Illness Prevention Program.

b) **Complete Return-to-Work (RTW) Form**

The HRO shall provide the employee with a Return-to-Work (RTW) Form, the employee's job description, and any other available information to help the employee's primary treating physician make a determination of the employee's ability to return to work.

The employee must submit a completed RTW Form, signed by the employee's primary treating physician before an employee may begin a Modified Duty Assignment. The employee will not be allowed to return to work and perform any work assignments until the RTW Form is completed, signed and returned to the NapaSan HRO.

c) **Engage in the Interactive Process**

The HRO, the employee, and the employee's supervisor shall engage in discussion to determine what, if any, Modified Duty Assignment is available, as provided above in Section 4. Interactive Process.

d) **Respond to Modified Duty Offer Letter**

The HRO shall prepare an offer letter to the employee describing the Modified Duty Assignment, if any, that NapaSan is willing to extend to the employee. This offer shall include the start and end

date of the Modified Duty Assignment period and the specific modifications being offered. The employee shall have seven (7) calendar days from the date of the offer letter, to accept or reject the offer.

If an employee believes the Modified Duty Assignment is difficult, he or she can request another Fitness-for-Duty Examination, at the employee's cost. If the primary treating physician makes a change to the employee's work restrictions or finds that the modified assignment is not within the employee's restrictions, NapaSan will re-evaluate the availability of a Modified Duty Assignment and provide a new Modified Duty Offer Letter.

e) **Submit New Return-To-Work (RTW) Form**

At the end of the Modified Duty Assignment period, the employee must provide NapaSan with a new RTW Form completed and signed by the treating physician, indicating that the employee is released for unmodified work, or if the employee has reached maximum medical improvement, identifying any work restrictions.