

SUL ROSS STATE UNIVERSITY

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SRSU Policy: Return to Work Policy

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Policy Reviewed by: Director of Human Resources

Approval Authority: Vice President for Finance and Operations

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It is the policy of Sul Ross State University to provide a return to work program as the means to return employees to meaningful, productive employment following injury or illness. In order to provide the highest level of quality service to the citizens of Texas, it is necessary for every employee of Sul Ross State University to be available for work, ready, and capable of performing the duties and responsibilities for which the employee was hired.

The return to work program provides opportunities for any employee of this agency who sustains a compensable injury during the course and scope of employment, a disability as defined by the Americans with Disabilities Act (1990) and ADA Amendments Act of 2008 (ADA of 1990 and ADAA of 2008), and/or a serious health condition as defined by the Family Medical Leave Act to return to work at full duty. If the employee is not physically capable of returning to full duty, the return to work program provides opportunities, when available, for the employee to perform a temporary assignment in which the employee's regular position is modified to accommodate the employee's physical capacities, or to perform an alternate duty position.

This return to work program shall not be construed as recognition by this agency, its management, or its employees that any employee who participates in the program has a disability as defined by the ADA of 1990 and ADAA of 2008. If an employee sustains an injury or illness that results in a disability under the ADA of 1990 and ADAA of 2008, it is the employee's responsibility to inform his/her supervisor or a person in a responsible management position when a disability under the ADA of 1990 and ADAA of 2008 exists and that a reasonable accommodation is necessary to perform the essential functions of his/her job. Sul Ross State University does not have to approve the most expensive accommodation on the market. Disapproval of a request for accommodation will be based on undue hardship to the University to include impact on operations and business, cost factors involved, and the effect on the safety of the requestor or other individuals.

Specific procedures shall be provided to guide all employees regarding the return to work program. All employees, divisions, and facilities of Sul Ross State University are expected to support and fully comply with this policy and the procedures provided to implement this policy.

A. DEFINITIONS

The following definitions apply to this procedure:

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1. Serious Health Condition - an illness, injury, impairment or physical or mental condition that involves:
 - a. inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or
 - b. continuing treatment by a health care provider, including a period of incapacity.
2. FMLA Leave - Federal leave entitlement of up to 12 weeks of unpaid leave when an eligible employee is unable to work because of a serious health condition. The absence from work must be a period of incapacity of more than three consecutive calendar days. The leave is normally continuous, but may be taken intermittently or on a reduced leave schedule.
3. Lost Time - Time spent away from work at the direction of the treating doctor as a result of a compensable injury sustained in the course and scope of employment. The term does not include time worked in a temporary assignment.
4. Full Duty - Performance of all duties and tasks of the position for which the employee is employed. Full duty entails performing all essential and non-essential functions of the employee's regular job.
5. Temporary Assignment - Performance of a temporary job assignment that is intended to return an injured employee to work at less than his/her full duties when a compensable injury or serious medical condition prevents the employee from working full duty. Two types of temporary assignments are modified duty and alternate duty.
6. Modified Duty - Performance of all of the essential functions, but only a portion of the non-essential functions and tasks of the regular job duties for which the employee is employed. Modified duty allows the employee to return to current employment in his/her regular job, and perform those duties and tasks that are within the capabilities of the employee, given the restrictions to duty imposed by the treating physician. Modified duty is a temporary arrangement until the injured employee can resume full duty. If the employee is a qualified individual with a disability as defined under the Americans with Disabilities Act (1990) and ADA Amendments Act of 2008 (ADA of 1990 and ADAA of 2008), then modified duty may become a permanent arrangement as a reasonable accommodation, if the accommodation does not create an undue hardship on the University. Sul Ross State University does not have to approve the most expensive accommodation on the market. Disapproval of a request for accommodation will be based on undue hardship to the University to

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include impact on operations and business, cost factors involved, and the effect on the safety of the requestor or other individuals.

7. Alternate Duty - Performance of the essential functions of a job or position other than the position for which the employee is employed. Alternate duty allows the employee to temporarily perform other duties and tasks that are within the restrictions to duty imposed by the treating doctor. Such alternate duty may be physically located in the same facility or in some other facility. Alternate duty is a temporary arrangement until the injured employee can resume full activities of his/her regular job. If the employee is a qualified individual with a disability as defined under the ADA of 1990 and ADAA of 2008, then alternate duty may become a permanent arrangement as a reasonable accommodation, if the accommodation does not create an undue hardship on the University. Sul Ross State University does not have to approve the most expensive accommodation on the market. Disapproval of a request for accommodation will be based on undue hardship to the University to include impact on operations and business, cost factors involved, and the effect on the safety of the requestor or other individuals.

B. PROHIBITED ACTIONS

This return to work policy and procedure shall not be applied to any situation or circumstance in a manner that discriminates on the basis of race, color, sex, national origin, or disability.

It is a violation of the return to work policy, procedures and state or federal law for any employee, supervisor or manager of the University to:

1. Discharge or in any other manner discriminate against an employee of the University because the employee:
 - a. Files a workers' compensation claim in good faith;
 - b. Hires a lawyer to represent the employee in a workers' compensation claim;
 - c. Institutes or causes to be instituted in good faith a proceeding under the Texas Workers' Compensation Act; or
 - d. Testifies or is about to testify in a proceeding under the Texas Workers' Compensation Act.
2. Discharge or in any other manner discriminate against an employee of the University because the employee:

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- a. opposes any practice made unlawful by the FMLA or ADA of 1990 and ADAA of 2008;
 - b. has filed any charge, or has instituted or caused to be instituted any proceeding under or related to the FMLA;
 - c. has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the FMLA; or
 - d. has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the FMLA.
3. Interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided by the Family Medical Leave Act (FMLA);
 4. Discriminate on the basis of disability against an employee of the University who is a qualified individual with a disability under the ADA of 1990 and ADAA of 2008 in regard to:
 - a. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - b. Leaves of absence, sick leave, or any other leave;
 - c. Upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - d. Rates of pay or any other form of compensation, changes in compensation, and fringe benefits available;
 - e. Selection and financial support for training; or
 - f. Social and recreational activities.
 5. Limit, segregate, or classify a job applicant or employee in a way that adversely affects his/her employment opportunities or status on the basis of disability.
 6. Require a medical examination of an employee who is disabled as defined under the ADA of 1990 and ADAA of 2008 unless the medical examination is job related and consistent with business necessity.
 7. Make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability.

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C. DESCRIPTIONS OF ALL POSITIONS

All supervisors and managers are responsible for identifying, documenting and maintaining the essential and non-essential functions in a position description for all positions for which they are responsible. The physical requirements of the position should be included in all position descriptions as either essential or non-essential functions. All position descriptions shall be reviewed, and must be submitted for approval to the Director of Human Resources.

D. DESIGNATED RETURN TO WORK COORDINATOR

The Assistant Director of Human Resources will serve as the return to work coordinator. The return to work coordinator shall be responsible for coordinating all activities associated with the return to work program, unless specific duties are otherwise assigned to another person or position.

E. EDUCATION AND TRAINING

The return to work coordinator shall develop, maintain and provide an appropriate training module for inclusion in orientation training for new employees. The return to work coordinator shall also develop, maintain and provide an appropriate refresher training module for presentation to employees on an as needed basis.

F. EMPLOYEE PARTICIPATION IN THE RETURN TO WORK PROGRAM

In order for an employee of the University to be eligible to participate in this return to work program, the employee must have:

1. sustained a compensable injury as defined in the Texas Workers' Compensation Act that results in lost time away from work;
2. a serious health condition as defined by the Family and Medical Leave Act; and/or
3. a disability as defined by the ADA of 1990 and ADAA of 2008.

An employee who meets the above criteria shall be encouraged to participate in the program. However, participation by the employee in the program is voluntary and the employee cannot be forced to participate.

G. NOTIFICATION OF INJURY OR ILLNESS

An employee who sustains an injury or illness either on or off the job is expected to notify his/her supervisor, or a person in a management position, that an injury or serious health condition exists. Such notification should occur at the earliest

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possible time after occurrence of injury or knowledge that a serious health condition exists. Such notification should ideally occur within 24 hours of the injury or when the serious health condition first manifests itself. In order to receive workers' compensation benefits, an employee must give notice of injury within 30 days.

H. AUTHORIZATION FOR LEAVE OR LOST TIME

An employee who must miss work due to a compensable injury and/or a serious health condition must be certified or authorized by a health care provider to be off work. It is the employee's responsibility to obtain such certification from the health care provider and to return the certification to his/her supervisor in a timely manner. (see Appendix A - Certification of Health Care Provider) If an employee is disabled as defined under the ADA of 1990 and ADAA of 2008, the request must be job-related, consistent with business necessity and cannot inquire as to the nature or severity of the injury.

In general, the treating health care provider's certification should be provided by the employee to the supervisor according to the following time lines:

1. When the employee knows in advance that FMLA leave is necessary, the certification form should be provided to the supervisor a minimum of three work days prior to the time when leave will commence.
2. When the employee cannot know in advance that leave is necessary, the certification form should be provided to the supervisor within a maximum of three calendar days after the initial visit to the health care provider.

The employee's supervisor shall provide a copy of the employee's position description to take to the health care provider to assist the health care provider to determine whether the employee can perform the essential functions of the job.

I. SUBSTITUTION OF PAID LEAVE FOR UNPAID LEAVE

If an employee is injured off the job, the current General Appropriations Act requires the employee's accrued annual leave and accrued sick leave must be utilized before unpaid leave is taken. If a compensable work-related injury or illness is involved, the employee is not required to use all accrued annual or sick leave. The employee may elect to use, but may not be required to use, accrued sick leave before receiving workers' compensation temporary income benefits. However, if the employee elects to use sick leave, all accrued sick leave must be exhausted before the employee is entitled to workers' compensation temporary income benefits.

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J. PERIODIC STATUS REPORTS

If an employee is certified by a health care provider to be off work, the employee is required to submit periodic status reports to his/her supervisor to report the employee's status and intention to return to work. Such status reports are required at the time of each scheduled visit with the treating health care provider and are due immediately following the visit. (see Appendix A - Return to Work Status Report) The status report should be provided to the supervisor within 24 hours of the scheduled visit, or if a weekend or holiday is involved, before close of business on the next scheduled workday.

If an employee has returned to work in a temporary assignment and follow-up health care provider appointments are necessary, the employee shall schedule the appointments to minimize time away from the job. Time away from work for these health care provider appointments shall be counted against FMLA leave, if designated by the employer.

K. COMMUNICATIONS WITH THE EMPLOYEES

At the time of first communication with the employee, the return to work coordinator shall provide information to the employee that contains the following, as appropriate:

1. The University's return to work policy and procedures and appropriate forms.
2. If a job-related injury of occupational disease occurs:
 - a. Notification that the State of Texas provides workers' compensation benefits to employees who sustain compensable job-related injuries and/or occupational diseases;
 - b. How medical expenses and income payments are made;
 - c. How employee health benefits are continued;
 - d. The name, location and telephone number of the local Texas Workers' Compensation Commission's (TWCC) field office and the name of the TWCC ombudsman at that office. The notice should state that the employee has a right to information and assistance from the TWCC ombudsman with his/her claim; and
 - e. The rights available to the employee under the Texas Workers' Compensation Act.

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3. For FMLA leave:
 - a. Information regarding the employee's FMLA leave entitlement;
 - b. How employee health benefits are continued; and
 - c. Required certifications from the health care provider.

The employee's supervisor is responsible for maintaining regular, weekly communications with the employee. The purposes of these communications are to: encourage the employee during recuperation from the injury; communicate the value of the employee to the University; encourage return to work at the earliest possible date.

L. COMMUNICATIONS WITH THE WORKERS' COMPENSATION DIVISION

The claims coordinator is responsible for timely submission to the Workers' Compensation Division, Office of the Attorney General and/or to the Texas Workers' Compensation Commission, all required reports and other important documents in the University's possession regarding a workers' compensation claim, including the "Certification of Health Care Provider" form and "Return to Work Status" form. Timely submission of reports and forms is necessary in order to promptly initiate workers' compensation benefits, or cease payment of benefits when the employee returns to work. All reports and forms shall be submitted in a timely manner in accordance with the requirements of the Texas Workers' Compensation Act.

M. TEMPORARY ASSIGNMENT POSITIONS

If an employee is certified by the health care provider to return to work, but in less than full duty, the University may provide a temporary assignment position to the employee. Directors and managers are responsible for identifying temporary assignment positions to facilitate return to work based on the business necessity of filling the employee's position, the employee's entitlement to FMLA leave, the availability of temporary assignments, and other appropriate factors. These temporary assignments shall be coordinated with the Director of Human Resources. The maximum length of time that a temporary assignment may last must be based on relevant factors including the business necessity of the employee's original position being filled. Temporary assignment positions shall be identified, assigned and managed on a case by case basis based upon the business necessity of the University. The temporary assignment position shall be documented in a "bona fide offer of employment" letter to the employee.

N. BONA FIDE OFFER OF EMPLOYMENT

The bona fide offer of employment letter shall include the following information:

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1. The type of position offered and the specific duties;
2. A statement that the University is aware of and will abide by any physical limitations under which the treating doctor has authorized the employee to return to work;
3. The maximum physical requirement of the job;
4. The wage rate of the job;
5. The location of the temporary assignment;
6. The expected duration of the temporary assignment;
7. The consequences of not accepting a temporary assignment, in terms of duration and amount of temporary income benefits payable under the Texas Workers' Compensation Act, and if the leave has not been designated by the University as FMLA leave, the appropriate administrative penalties/disciplinary measures by the University as specified in the human resources procedures.
8. The person to contact if the employee has questions regarding the temporary assignment, job modifications, or questions regarding the FMLA or ADA of 1990 and ADAA of 2008.

The employee may accept or reject this bona fide offer of employment. The employee should be informed that rejection of the bona fide offer of employment may result in workers' compensation temporary income benefits (if applicable) being stopped by the Workers' Compensation Division as the state's insurance carrier. If the employee accepts the bona fide offer of employment, then the employee shall perform the duties of the temporary assignment position for the term of the assignment or until the employee is able to return to full duty, whichever is sooner. If the employee rejects the bona fide offer of employment, then the employee remains off work until the end of the FMLA leave entitlement period or until the employee is certified by the health care provider to return to full duty.

If the employee is unable to return to full duty by the end of the temporary assignment period and/or by the end of the employee's FMLA leave entitlement period, then the employee's continued employment with the University shall be considered based upon the business necessity of having the employee's position filled and whether any reasonable accommodation is required under the ADA of 1990 and ADAA of 2008.