

Chapter: Employee Injury/Illness	<b>Effective Date: 3/15/15</b>
<b>Title: Return-to-Work Program</b>	Page: 1 of 6
ACA: N/A	Replaces: PRS.23.04, 12/1/11
Statutes: <a href="#">Texas Labor Code §412.051(a)(1)</a>	

(a) **Policy.**

The Texas Juvenile Justice Department (TJJD) develops alternative work assignments to assist employees who have temporary activity restrictions resulting from an on-the-job injury that prevents them from performing their position's essential functions. The availability of an AWA is determined in a fair and consistent manner in accordance with the provisions of this policy.

(b) **Definitions.**

Except as noted below, see the PRS Glossary for definitions of certain terms used in this policy.

(1) **Alternative Work Assignment (AWA)** - A temporary assignment of duties and tasks that:

- are not the same as and do not have the same physical requirements as the essential functions of the employee's position, and
- can be performed while meeting the temporary activity restrictions identified on the Texas Worker's Compensation Status Report, DWC-73.

Note: A waiver of one or more non-essential job duties when necessary to comply with medical restrictions is not an AWA.

(2) **AWA Supervisor** - The supervisor responsible for supervising an employee while the employee is assigned to an AWA. The AWA supervisor may be different from the employee's regular supervisor.

(3) **Return to Work Coordinator** - The human resources manager responsible for employee services, or his/her designee.

(c) **General Provisions.**

(1) The maximum period that an employee may be assigned to an AWA is 12 consecutive weeks. The maximum period is not extended for any reason, including:

- (A) use of leave during the AWA assignment;
- (B) a re-injury having the same State Office of Risk Management (SORM) claim number; or
- (C) a new injury resulting in a new SORM claim number.

(2) An AWA is not an authorized or budgeted position. An employee assigned to an AWA continues to:

- (A) hold the same position he/she held before the work-related injury; and
- (B) receive the same salary rate received for his/her position.

(3) The offer of an AWA does not mean that the agency recognizes the temporary activity restrictions as a [disability](#) protected by the Americans with Disabilities Act (ADA). An AWA is not an ADA accommodation. See [PRS.01.10](#) for procedures relating to ADA accommodations.

(4) An employee may decline an AWA offer, but this action could result in the State Office of Risk Management (SORM) reducing or terminating the employee's workers' compensation income benefits. TJJD does not make this decision.

(5) The time an employee works while assigned to an AWA does not count against the employee's family and medical leave (FMLA leave) entitlement or non-FMLA leave (NFM) leave entitlement.

- (6) An employee may take leave in accordance with [PRS.28.02](#) during the AWA period.
  - (A) If the leave meets the criteria for family and medical leave (FMLA leave), it will count against the employee's FMLA leave entitlement. See [PRS.28.10](#).
  - (B) If the leave meets the criteria for non-FMLA leave (NFM leave), it will count against the employee's NFM leave entitlement. See [PRS.28.09](#).
- (7) Unless specified otherwise within this policy, references to the human resources administrator (HRA) mean the appropriate HRA or his/her designee.

(d) **Procedures.**

(1) **Developing Alternative Work Assignment Descriptions.**

(A) **Secure Facilities and Halfway Houses.**

- (i) The [chief local administrator \(CLA\)](#) for each secure facility and halfway house must develop AWA descriptions for potential use before they are actually needed.
  - (I) The CLA develops the AWA descriptions in coordination with the HRA and the return-to-work coordinator.
  - (II) An AWA description is documented on the AWA Description of Duties form, [HR-048](#).
  - (III) An AWA description must include meaningful tasks and duties to help ensure the employee is being productive while performing the AWA.
  - (IV) The AWA description may identify tasks and duties to be performed for more than one department/program area on an as-needed basis (e.g., a "floater" assignment).
- (ii) The return to work coordinator:
  - (I) determines the minimum number of AWA descriptions needed at each secure facility and halfway house;  
  
Note: The minimum number is in proportion to the number of employees assigned to the location.
  - (II) approves any newly developed or revised AWA descriptions before use; and
  - (III) approves the deletion of any AWA descriptions.
- (iii) The HRA maintains the AWA descriptions and the corresponding approvals from the return to work coordinator.

(B) **District Office and Austin Office Locations.**

An employee's CLA coordinates development of an AWA description with the return to work coordinator on an as-needed basis.

(2) **Eligibility Criteria.**

- (A) To be eligible for an AWA offer:

- (i) the HRA must have received a Texas Workers' Compensation Work Status Report, DWC-73, that:
  - (I) has been completed by the employee's attending physician; and
  - (II) indicates the employee may return to work with temporary activity restrictions;

- (ii) the employee must not be on suspension with or without pay;

Note: Being under investigation for alleged misconduct does not affect an employee's AWA eligibility, as long as the employee is not suspended during the investigation.

- (iii) the employee must not have already performed or be performing an AWA for the same injury (i.e., same SORM claim number); and
- (iv) the employee must have returned to full duty after performing any previous AWA (i.e., an employee who incurs a new injury while performing an AWA cannot be offered another AWA if the employee has not returned to full duty after performing the previous AWA).

- (B) An employee's eligibility for an AWA offer is not affected by how long the temporary activity restrictions are expected to continue.

- (C) An employee is no longer eligible to work in an AWA for a particular claim if the AWA expires before the end of the 12-consecutive-week period (see [paragraph \(5\)](#) below).

(3) **Availability and Offer of an AWA.**

(A) **Determining Availability of an AWA.**

- (i) After the HRA receives the DWC-73 form and determines that an employee is eligible for an AWA, the HRA determines whether an appropriate AWA is available. To be appropriate, the AWA must not include physical requirements that exceed the activity restrictions identified on the DWC-73 form.
- (ii) When determining whether an AWA is available, the HRA must assume that each employee being offered or performing an AWA will perform the AWA for 12 consecutive weeks.

Note: This assumption is necessary even if the DWC-73 form indicates that the activity restrictions are not expected to last for 12 weeks. If the restrictions are extended for any reason, the employee must be allowed to continue performing the AWA assignment for the maximum 12-week period.

- (iii) An AWA may be offered only if:
  - (I) an offer of the same AWA for an overlapping 12-week period is not pending acceptance by another employee; and
  - (II) the start date for the AWA would not overlap with another employee's current performance of the AWA for the assumed maximum 12-week period.
- (iv) If the number of newly eligible employees is greater than the number of currently unused AWAs, the HRA determines AWA availability in order, beginning with the employee who has the earliest date of injury.
- (v) If an AWA is not available at the employee's regularly assigned facility or office, the HRA determines if an AWA is available at a similar facility or office located within 30 miles of the employee's regularly assigned location.

**(B) Offer of an AWA.**

If an AWA is available, the HRA:

- (i) provides a completed Bona Fide Offer of Temporary Alternative Work Assignment form, [HR-041](#), along with a copy of the corresponding DWC-73 and [HR-048](#) form to the employee;
- (ii) emails copies of the forms to SORM within one workday after the HR-041 was provided to the employee;
- (iii) emails SORM and the employee's regular supervisor advising whether the employee accepted the AWA; and
- (iv) emails the AWA supervisor if the employee accepts the AWA. The email must:
  - (I) identify how long the HRA anticipates the employee will remain assigned to the AWA; and
  - (II) include a copy of the HR-048 as an attachment.

**(4) Performance of Alternative Work Assignment.****(A) Employee's Responsibilities.**

While performing an AWA, the employee must:

- (i) be productive, which means that he/she must make effective use of work time and advise the AWA supervisor if he/she has completed all assigned duties/tasks;
- (ii) comply with the call-in and attendance requirements in [PRS.27.01](#) and all employee general rules of conduct; and
- (iii) provide an updated DWC-73 form to the HRA after each visit to the employee's health care provider. See [PRS.23.03](#) for additional information.

**(B) AWA Supervisor's Responsibilities.**

While the employee is performing the AWA, the AWA supervisor is responsible for all supervisory responsibilities in the same manner as for any other supervised employee. These responsibilities include, but are not limited to:

- (i) reviewing the corresponding HR-048 and ensuring no tasks or duties are assigned that exceed the physical requirements listed on the HR-048;
- (ii) assigning enough tasks and duties to keep the employee productive and providing instructions as needed;
- (iii) ensuring that the employee does not work overtime hours;
- (iv) entering and maintaining the employee's work schedule in the agency's automated timekeeping system and ensuring accuracy of time reporting and leave taken;
- (v) consulting with the HRA before approving the employee's leave to avoid conflicts with the employee's leave elections relating to workers' compensation benefits;
- (vi) advising the HRA of any change in the employee's status;

- (vii) initiating corrective or disciplinary actions for any rule violations committed by the employee while performing the AWA; and
- (viii) emailing the employee's regular supervisor with input for the employee's next performance evaluation if the employee performs the AWA for four or more weeks.

(C) **HRA's Responsibilities.**

The HRA:

- (i) completes the Supplemental Report of Injury form, DWC-6, per [PRS.23.04](#) when the employee begins performing the AWA or has additional days of [disability](#) during or after the AWA;
- (ii) ensures that the type of leave used, if any, during the AWA period is in accordance with [PRS.28.02](#) and other leave policies;

Note: The employee's previous elections regarding use of leave indicated on the Employee's Election Regarding Utilization of Sick and Annual Leave for General Employees form, SORM-80, continue to apply during the AWA period for any absences related to the on-the-job injury (e.g., absences for physical therapy for the on-the-job injury). These elections do not affect the type of leave used for unrelated absences (e.g., absence from the AWA due to the flu or due to the medical condition of a family member).

- (iii) monitors the AWA period to ensure the employee is not assigned to the AWA for more than 12 consecutive weeks;
- (iv) assesses the employee's ability to continue performing the AWA or return to regular duties upon receipt of an updated DWC-73 form with changes to activity restrictions; and
- (v) emails the employee's supervisor and the AWA supervisor if the employee is released by the treating physician to perform the essential functions of his/her position at any time during the AWA period or at the end of the AWA period. The email must include the effective date that the employee will begin performing his/her position's essential functions.

(5) **Expiration of AWA.**

The only time an AWA expires before the end of 12 consecutive weeks is when one of the following occurs:

- (A) the HRA receives a DWC-73 form that:
  - (i) indicates the employee may perform the essential functions of his/her position without restrictions before the end of the 12-week period; or
  - (ii) includes additional activity restrictions that prevent the employee from continuing to perform the AWA duties for the remainder of the 12-week period;

Note: This includes additional restrictions due to a re-injury or a new injury that occurred while performing the AWA.

- (B) the employee provides written notice that he/she has decided to no longer perform the AWA for reasons unrelated to the activity restrictions documented on the DWC-73 form;

Note: This written notice is treated in the same manner as if the employee declined an AWA offer.

- (C) the employee is placed on suspension with or without pay; or
- (D) the employee separates from employment.

(6) **Employee's Use of Leave After AWA Expiration.**

If the employee is unable to return to full duty at the end of the AWA, the employee must coordinate use of leave with the HRA. The employee's previous elections indicated on the SORM-80 form continue to apply until the employee is released to return to full duty.

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