

Chapter: Employee Injury/Illness	Effective Date: 10/1/22
Title: Return-to-Work Program	Page: 1 of 6
Statutes: Texas Labor Code §412.051(a)(1)	Replaces: PRS.23.04, 8/1/17

(a) **Policy.**

TJJD provides 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 and offer of an alternative work assignment is determined in a fair and consistent manner in accordance with 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 job classification and assigned position and:

- (A) can be performed while meeting the temporary activity restrictions identified on the [Texas Workers' Compensation Work Status Report, DWC Form-073](#); or
- (B) have been modified to allow the employee to work within the temporary activity restrictions identified on the DWC-073 form.

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

(3) **Human Resources Administrator** – The appropriate human resources administrator or designee.

(4) **Return-to-Work Coordinator** – The director of human resources or designee.

(c) **General Provisions.**

(1) The maximum period an employee may be assigned to an AWA is six consecutive weeks, except as noted in (c)(2) below.

(2) The six-week period may be extended only under extenuating circumstances and only with written approval from the director of human resources. However, the six-week period will not be extended for any of the following reasons:

- (A) employee's failure to make a timely appointment for medical evaluation;
- (B) employee delaying a medical evaluation appointment without good cause;
- (C) use of leave during the AWA assignment;
- (D) a reinjury having the same State Office of Risk Management (SORM) claim number; or
- (E) a new injury resulting in a new SORM claim number.

(3) An employee assigned to an AWA continues to:

- (A) hold the same position as was held before the work-related injury; and
- (B) receive the same salary rate as before the AWA unless an automatic increase is scheduled to take effect during the AWA.

- (4) The offer of an AWA does not mean that TJJJ recognizes the temporary activity restrictions as a disability protected by the Americans with Disabilities Act Amendments Act (ADAAA). An AWA is not an ADAAA accommodation. See [PRS.01.10](#) for procedures relating to ADAAA accommodations.
 - (5) An employee may decline an AWA offer, but this action could result in SORM reducing or terminating the employee's workers' compensation income benefits. TJJJ does not make this decision.
 - (6) The time an employee works while assigned to an AWA does not count against the employee's entitlement to family and medical leave (FMLA-covered leave) or non-FMLA leave (NFM leave).
 - (7) An employee may take leave in accordance with [PRS.28.02](#) during the AWA period.
 - (A) If the leave meets the criteria for FMLA-covered leave, it will count against the employee's FMLA-covered leave entitlement. See [PRS.28.10](#).
 - (B) If the leave meets the criteria for NFM leave, it will count against the employee's NFM leave entitlement. See [PRS.28.09](#).
- (d) **Procedures.**
- (1) **Developing AWA Descriptions for Temporary Job Duties.**
 - (A) **Secure Facilities and Halfway Houses.**
 - (i) The chief local administrator for each secure facility and halfway house must develop AWA descriptions for potential use before they are needed.
 - (I) The chief local administrator develops the AWA descriptions in coordination with the human resources administrator and the return-to-work coordinator.
 - (II) An AWA description is documented on the [Alternative Work Assignment \(AWA\) Description of Temporary Job Duties form, HR-048](#).
 - (III) An AWA description must include meaningful tasks and duties to help ensure the employee is productive while performing the AWA.
 - (IV) The AWA description may identify tasks and duties to be performed for more than one department or 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 human resources administrator maintains the AWA descriptions and the corresponding approvals from the return-to-work coordinator.

(B) **District Offices and Central Office.**

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

(2) **Eligibility Criteria.**

(A) For an employee to be eligible for an AWA offer, the following must be true:

- (i) the human resources administrator has received a [DWC-073 form](#) that:
 - (I) has been completed by the employee's attending health care provider; and
 - (II) indicates the employee may return to work with temporary activity restrictions;
- (ii) the employee is not on suspension with or without pay;

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

- (iii) the employee has not already performed and is not currently performing an AWA for the same injury (i.e., a reinjury under the same SORM claim number); and
 - (iv) the employee has 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 six-consecutive-week period (see [paragraph \(5\)](#) below).

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

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

- (i) After receiving the DWC-073 form and determining that an employee is eligible for an AWA, the human resources administrator 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-073 form.
- (ii) When determining whether an AWA is available, the human resources administrator must assume that each employee being offered or performing an AWA will perform the AWA for six consecutive weeks.

Note: This assumption is necessary even if the DWC-073 form indicates that the activity restrictions are not expected to last for six weeks. If the restrictions are extended for any reason, the employee must be allowed to continue performing the AWA assignment for the maximum six-week period.

- (iii) An AWA may be offered only if:
 - (I) an offer of the same AWA for an overlapping six-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 six-week period.

- (iv) If the number of newly eligible employees is greater than the number of currently unused AWAs, the human resources administrator 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 human resources administrator 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.

- (i) If an AWA is available, the human resources administrator:
 - (I) provides a completed [Bona Fide Offer of Temporary Alternative Work Assignment \(Return-to-Work Program\) form, HR-041](#), along with copies of the corresponding [DWC-073](#) and [HR-048](#) forms to the employee;
 - (II) emails copies of the forms to SORM within one workday after the HR-041 has been provided to the employee;
 - (III) emails SORM and the employee's regular supervisor to notify them of whether the employee accepted the AWA; and
 - (IV) if the employee accepts the AWA, notifies the AWA supervisor by an email that includes:
 - (-a-) an estimate of how long the employee will remain assigned to the AWA; and
 - (-b-) a copy of the HR-048.
- (ii) If the employee accepts the AWA, the AWA supervisor:
 - (I) meets with the employee to discuss the job duties and purpose of the AWA;
 - (II) obtains the employee's signature on the HR-048 form; and
 - (III) completes and signs the appropriate section of the HR-048 form and returns it to the human resources administrator.

(4) Performance of AWA.

(A) Employee's Responsibilities.

While performing an AWA, the employee must:

- (i) be productive, which means the employee must make effective use of work time and advise the AWA supervisor if all assigned duties/tasks have been completed;
- (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-073](#) form to the human resources administrator after each visit to the employee's attending 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) ensuring assigned tasks or duties do not exceed the physical requirements listed on the [HR-048 form](#);
- (ii) assigning enough tasks and duties to keep the employee productive;
- (iii) providing instructions as needed;
- (iv) ensuring the employee does not work overtime hours;
- (v) entering and maintaining the employee's work schedule in the Centralized Accounting and Payroll/Personnel System (CAPPS) and ensuring accuracy of time reporting and leave taken;
- (vi) consulting with the human resources administrator before approving the employee's leave to avoid conflicts with the employee's leave elections relating to workers' compensation benefits;
- (vii) notifying the human resources administrator of any change in the employee's status (availability for work, activity restrictions, etc.);
- (viii) initiating corrective or disciplinary actions for any rule violations committed by the employee while performing the AWA; and
- (ix) 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) Human Resources Administrator's Responsibilities.

The human resources administrator:

- (i) completes the [Supplemental Report of Injury, DWC Form-6](#), in accordance with [PRS.23.03](#), 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 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 an employee illness 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 six consecutive weeks;
- (iv) assesses the employee's ability to continue performing the AWA or return to regular duties upon receipt of an updated DWC-073 form with changes to the activity restrictions;
- (v) emails the employee's supervisor and the AWA supervisor if the employee is released by the attending health care provider to perform the essential functions of the employee's 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 the essential functions of the employee's assigned job classification and position; and
- (vi) enters or updates the assignment availability code in CAPPS to reflect the employee's current availability for work.

(5) **Expiration of AWA.**

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

(A) the human resources administrator receives a [DWC-073 form](#) that:

- (i) indicates the employee is able to perform the essential functions of the employee's assigned job classification and position without restrictions before the end of the six-week period; or
- (ii) includes additional activity restrictions that prevent the employee from continuing to perform the AWA duties for the remainder of the six-week period;

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

(B) the employee decides to discontinue the AWA for reasons unrelated to the activity restrictions documented on the DWC-073 form and has provided written notice of this decision;

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 human resources administrator. The employee's previous elections indicated on the [SORM-80 form](#) continue to apply until the employee is released to return to full duty.
