



**U.S. Customs and
Border Protection**

JUN 21 2012

TO: Mark C. Masterson
Supervisory Program Manager, Benefits, Medical and Worklife Division
Office of Human Resources Management

FROM: Dr. Clifton Wilcox
Acting Director, Labor-Management Relations
Office of Human Resources Management

SUBJECT: Agency Head Review
Memorandum of Understanding – CBP Workers' Compensation Program Return-
To-Work Process: Light Duty and Permanent Reassignment Directive

The attached Memorandum of Understanding (MOU) signed June 6, 2012, memorializes an agreement between the U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU) concerning the CBP Workers' Compensation Program Return-To-Work Process: Light Duty and Permanent Reassignment Directive. The negotiated terms have been reviewed in accordance with 5 U.S.C. §7114(c) and under Department of Homeland Security, Customs and Border Protection Delegation Order 10-001 dated February 23, 2010.

The MOU does not violate existing law, rule or regulation, and is hereby approved. This approval does not constitute a waiver of, or exception to, any existing law, rule, regulation, or policy.

If you have any questions or need additional assistance, you may contact Don Stakes, Chief Labor Negotiator, by telephone at (202) 863-6335, or by electronic mail at Donald.Stakes@dhs.gov.

CC: Colleen M. Kelley, National President, NTEU
Jonathan Levine, Assistant Counsel for Negotiations, NTEU
Deborah Eres, Deputy Director, Labor-Employee Relations Field Services
Michael Pfeiffer, Supervisory CBP Officer, Office of Field Operations

Attachment

**MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. CUSTOMS AND BORDER PROTECTION (CBP)
AND
NATIONAL TREASURY EMPLOYEES UNION (NTEU)**

I. Introduction

This Memorandum of Understanding (MOU) is entered into by, and between the United States Customs and Border Protection, (hereinafter referred to as “Agency”) and the National Treasury Employees Union (hereinafter referred to as “Union”) and constitutes the parties’ agreement on all matters related to the CBP Workers’ Compensation Program Return-To-Work Process: Light Duty and Permanent Reassignment Directive.

II. Background

The parties exchanged proposals on August 30, 2011 and on November 17, 2011 and then met in person for face-to-face bargaining on November 22, 2011. Follow-up proposals were exchanged on December 6, 2011 and February 28, 2012. The Union then again sent proposals on April 13, 2012. On May 9, 2012, the Agency responded with its final offer, at which point the parties came to an agreement, memorialized herein.

III. Terms or Provisions of Agreement:

1. It is CBP’s policy to provide available light duty assignments that will include work (regular and/or overtime assignments) that the employee is qualified for and are consistent with documented medical restrictions.
2. CBP will provide the NTEU representative a copy of the light duty job offer.
3. In the event an employee has a reasonable privacy concern related to providing detailed medical information (e.g., information that includes a doctor’s prognosis) directly to the requesting official, upon request, CBP will make alternative arrangements for the employee to deliver the required information directly to a medically certified Agency representative e.g. to a Nurse Consultant, HRM, Benefits, Medical and Worklife Division, Medical and Fitness Branch.

IV. Effective Date and Termination

This MOU will be submitted for Agency head review immediately after the final signature of the chief negotiators. This MOU will become effective thirty-one (31) days after the date it is signed by the last chief negotiator or after Agency head review, whichever occurs first. Either party may request to reopen this MOU in accordance with Article 26 (Bargaining) of the CBP & NTEU National Collective Bargaining Agreement.

V. Signatures

Mark C. Masterson 6/6/12
For the Agency Date

[Signature] 6/6/12
For the Agency Date

[Signature] 6/5/12
For the Union Date

U.S. CUSTOMS AND BORDER PROTECTION DIRECTIVE [DRAFT]

CBP DIRECTIVE NO.

DATE:

ORIGINATING OFFICE: HRM:BM&W

SUPERSEDES: N/A

REVIEW DATE:

**SUBJECT: CBP WORKERS' COMPENSATION PROGRAM RETURN-TO-WORK
PROCESS: LIGHT DUTY AND PERMANENT REASSIGNMENT**

1. PURPOSE

1.1 The purpose of this directive is to set forth provisions and establish procedures for the administration of the Office of Workers' Compensation Program (OWCP) Return-to-Work (RTW) process within U. S. Customs and Border Protection (CBP). Through the CBP-wide implementation of this directive, CBP intends to accomplish the goals of the Presidential Safety, Health, and Return-to-Work Employment (SHARE) initiative and ensure that employees who incur on-the-job injuries/illnesses are provided all benefits to which they are entitled under the Federal Employees' Compensation Act (FECA).

1.2 The Presidential SHARE Initiative has four goals related to injury and illness: reducing total case rates; reducing lost-time case rates; increasing the timely filing of notices; and reducing the rates of lost production days.

2. POLICY

2.1 CBP's Office of Human Resources Management is responsible for overall administration of the FECA and its governing regulations.

2.2 It is CBP's policy to provide light duty assignments as soon as an employee is capable of returning to work as substantiated by the supporting medical documentation.

2.3 If an employee is determined to have permanent medical restrictions resulting from a work-related or occupational illness approved for benefits pursuant to the FECA, every effort will be made to permanently reassign that employee. Before vacant positions may be filled by merit staffing competitive procedures, approving officials must first give priority consideration to employees who have been determined to have permanent medical restrictions resulting from a work-related injury or occupational illness and qualify for permanent reassignment to those positions.

3. DEFINITIONS

3.1 Return-to-Work: The term “return-to-work” as per 20 CFR §10.505, is not limited to returning to work at the employee’s normal worksite or usual position, but may include returning to work at other locations and in other positions. In general, the employer should make all reasonable efforts to place the employee in his or her former or an equivalent position. Refer to Attachment 2: Order of Priority for Light Duty and Permanent Reassignment.

3.2 Partial Disability: Employees who cannot return to the position of record held at the time of a work-related injury, but who are not totally disabled from performing all gainful employment, are considered to be partially disabled. Employees are considered to be temporarily partially disabled until fully recovered and able to return to their position of record or until such time that maximum medical improvement (MMI) has been reached, in which case an employee is considered to be permanently partially disabled (PPD).

3.3 Light duty assignments: Light duty assignments for employees with temporary partial disabilities may include some duties associated and some not associated with their position of record. Light duty is temporary in nature consistent with the anticipated time frame for the individual’s expected full recovery as identified by supporting medical documentation.

3.4 Permanent Reassignment: Employees who have been determined to be permanently partially disabled may be permanently reassigned outside merit staffing competitive procedures to vacant positions at the same grade held at the time of injury for which they qualify and which comply with medical restrictions. When no vacant positions are available at the same grade, employees may be offered lower-graded positions for which they qualify and within their medical restrictions.

3.5 Loss of Wage-Earning Capacity (LWEC): When a partially disabled employee (temporary or permanent) is placed into a position with lower pay than that received at the time of injury, the employee is entitled to compensation from the OWCP based on the difference between the wages earned at the time of injury, disability, or recurrence, and the wages the claimant is capable of earning after the injury. This difference is called LWEC.

3.6 Injury Compensation Specialists (ICS) are employees of the Office of Human Resource Management (HRM), Benefits, Medical and Worklife (BM&W) Division, Workers’ Compensation Program Office who have sole responsibility for case management.

3.7 Injury Compensation Coordinators (ICC) are employed by the Assistant Commissioners’ offices, the Office of Border Patrol, Office of Field Operations and Office of Air and Marine, who perform workers’ compensation case work as a collateral duty.

3.8 The Permanent Reassignment Team (PRT) is comprised of several ICSs who have the additional special assignment to lead the permanent reassignment process.

3.9 Acronyms: In addition to these definitions and acronyms found throughout this directive, please refer to the acronyms listed in Attachment 1.

4. AUTHORITY

4.1 5 U.S.C., Chapter 81, COMPENSATION FOR WORK INJURIES

4.2 Title 20 Code of Federal Regulations, Part 10 § 10.505 – 10.509

These regulations establish specific responsibilities for Federal employers to return partially recovered employees to productive and gainful employment and to provide permanent reassignment opportunities under certain conditions.

5. SCOPE

5.1 This directive covers any CBP employee who has sustained an on-the-job injury or work-related illness and has been approved for benefits pursuant to the FECA as determined by the OWCP.

5.2 Employees who file an occupational disease/illness claim are not entitled to light duty under FECA and this directive until the claim is approved by the OWCP. Such employees may request limited duty in accordance with CBP Directive XXXX-XX, *Temporary Light Duty*.

6. RESPONSIBILITIES

6.1 The CPB Office of Human Resources Management is responsible for the overall implementation and administration of this directive.

6.2 Assistant Commissioners; Chief, Office of Border Patrol; and Headquarters Office heads are responsible for ensuring compliance with the procedures outlined in this directive.

6.3 Principal Field Officers and (PFO) and Principal Headquarters Officers (PHO) are also responsible for ensuring compliance with the procedures in this directive. These officials shall delegate to designated supervisors or managers responsibilities to carry out duties specified in 6.4 and appoint Injury Compensation Coordinators (ICC) to carry out duties specified in 6.9.

6.4 Supervisors or managers with delegated authority will identify available potential light duty assignments. If sufficient light duties are not available within the employee's position of record, the delegated supervisor or manager will collaborate with the ICS/ICC and with other designated supervisors to identify available light duty assignments outside the employee's position of record. Consult the guidelines in Attachment 2: Order of Priority for Light Duty and Permanent Reassignment.

6.5 ICS responsibilities include, but are not limited to:

- providing case management of injured/ill employees in receipt of OWCP benefits until they are capable of resuming full duties or until a determination is made that they have reached MMI;
- with management's support, taking the lead in returning employees to suitable work as quickly as possible under this directive;
- monitoring cases to ensure that light duty is temporary in nature consistent with the anticipated time frame for the individual's expected full recovery as identified by employee's supporting medical documentation; and
- where MMI for permanent partial disability has been medically established, referring cases to the Permanent Reassignment Team (PRT) and assisting in the reassignment processes as needed.

6.6 Supervisors in consultation with the designated supervisor and or manager and the servicing ICS, will determine what modifications, if any, may be made to an injured employee's position of record; what duties, if any, in the employee's position of record can be performed within the medical restrictions; and whether supplemental duties outside the employee's position of record are necessary when the employee is able to return to work.

6.7 The PRT provides initial review of the medical documentation to ensure that it supports the need for permanent restrictions and refers the case to the CBP Headquarters RTW Nurse Coordinator (RTW/RN). The PRT collaborates with the RTW/RN, management, and the employee to facilitate an employee's permanent reassignment as specified in the applicable Procedures section of this directive.

6.8 The RTW/RN:

- when requested, provides consultation in complicated cases involving RTW or light duty issues;
- reviews medical documentation to ensure that it establishes MMI which qualifies an employee for permanent reassignment;
- reviews medical documentation to ensure that medical restrictions are current and clear; if not, writes to issuing physician requesting clarification;
- collaborates with the PRT and Human Resources Operations, Programs and Policy (HROPP) Division, HRM, to facilitate an employee's permanent reassignment (as specified in the applicable Procedures section of this directive).

6.9 The ICCs are responsible to process the initial OWCP claim forms received from supervisors and ensure that medical documentation is disseminated timely to the ICS. They assist in the RTW and in permanent reassignment processes as needed.

6.10 HROPP reviews and evaluates the current resume of an employee who is eligible for permanent reassignment consideration and determines the position titles, occupational series, and grades for which the employee qualifies within the medical restrictions.

6.11 HRM Labor and Employee Relations (LER) specialists will consult with and advise management regarding appropriate personnel actions for employees who refuse suitable light duty assignment offers or permanent reassignment job offers. LER will provide prior notice to the appropriate ICS whenever any removal action is being planned based on an employee's inability to perform (or related charges). In such cases, before advising management about next steps, LER will determine whether employees have been in receipt of OWCP benefits and their status relative to light duty or permanent reassignment initiatives to preserve the employee's rights in accordance with FECA regulations.

6.12 Employees who are sufficiently recovered to perform some type of work must accept offers of suitable light duty. An employee who has reached MMI must accept offers of suitable permanent reassignment. Employees must provide supporting medical documentation throughout the return to work and/or permanent reassignment process. They must cooperate in the permanent reassignment process and provide all requested information including resume.

7. GENERAL PROVISIONS

7.1 Supervisors of injured employees capable of returning to work will keep an employee in his/her position of record where there are sufficient assignments that can be completed within an employee's medical restrictions. The injured/ill employee should be advised in writing of any change CBP can make to the employee's regular duty assignments to accommodate the employee's medical restrictions resulting from the on-the-job injury.

7.2 Depending upon the nature and extent of the work-related medical condition warranting restrictions, any employee in a weapon carrying position may be prohibited or restricted from wearing a uniform, carrying the service weapon, or otherwise restricted in employing law enforcement powers as determined by Principal Field Officers, Principal Headquarter Officers, or their designees.

7.3 Assignments to light duty typically do not affect an employee's pay, position title, occupational series, grade/step, pay increases, promotions, or retirement benefits. However, the opportunity to earn compensation for Administratively Uncontrollable Overtime (AUO), under the Customs Officer Pay Reform Act (COPRA), Law Enforcement Availability Pay (LEAP), and/or Fair Labor Standards Act (FLSA) may be curtailed based upon the duty restrictions required by the employee's medical condition. Additionally, there may be instances where an employee serves in a light duty assignment for three months or longer where less than 25 percent of the work is at the employee's grade level. When an employee is close to fulfilling the year in grade requirement for a career ladder promotion, the supervisor of record should contact the servicing Human Resources Specialist. They will determine whether the employee meets the qualification requirements of having one year of specialized experience, which is also required to qualify for a career ladder promotion.

7.4 An employee who is temporarily partially disabled must be given priority consideration for light duty assignments for which he/she is qualified within their medical restrictions at the employee's grade at the time of the injury in the order of priority referenced in Attachment 2, Order of Priority for Light Duty and Permanent Reassignment.

7.5 Permanent Reassignments may affect an employee's pay, position title, occupational series, grade/step, pay increases, promotions, retirement, and/or benefits. Their eligibility for AUO, COPRA, LEAP, and FLSA may also be affected consistent with governing regulation or policy.

7.6 An employee, covered under OWCP, who has reached MMI and is permanently partially disabled must be given priority consideration for all vacant positions for which qualified within their medical restrictions at the employee's grade at the time of the injury and, if not available, lower-graded positions in the order of priority referenced in Attachment 2: Order of Priority for Light Duty and Permanent Reassignment.

7.7 When a partially disabled employee (temporary or permanent) is placed into a position with pay lower than that held at time of injury, the employee is entitled to compensation from OWCP based on the difference between the wages earned at the time of injury, disability, or a recurrence, and the wages currently earned. This compensation is based on 66.66 percent of this difference for single employees with no dependents and 75 percent of this difference for employees with dependents.

8. PROCEDURES FOR LIGHT DUTY

8.1 When an injury/illness is first reported by an employee, the supervisor is required to complete the supervisor's section (Side A) of the CA-17, Duty Status Report, which informs the treating physician of the physical requirements of the employee's position, including, as appropriate, any use of firearms or tactical equipment. This completed CA-17 is provided to the injured/ill employee to take to his/her treating physician, who then completes the physician's section (Side B) of the CA-17 by indicating whether an employee is able to perform work, and if so, identifies necessary medical restrictions.

8.2 Upon receipt of CA-17 forms, the ICC will review the form to determine if the employee has been released to return to work. The original CA-17 form should be forwarded to the ICS.

8.3 The ICC and ICS will consult with the employee's supervisor to determine if there is sufficient work in the employee's position of record within the medical restrictions to allow the employee to return to work. If so, the supervisor verbally instructs the employee to return to work and explains what duties will be assigned. If sufficient light duties are not available within the employee's position of record, the ICC/ICS will request assistance from the designated

supervisors to identify available light duty assignments outside the employee's position of record. Consult the guidelines in Attachment 2: Order of Priority for Light Duty and Permanent Reassignment, when placing an employee outside the employee's position of record. When such assignments are available, the supervisor verbally instructs the employee where to report for work and explains what duties will be assigned

8.4 A written job offer must be provided to the employee within two business days from the date of the verbal offer. The ICS will prepare the written light duty assignment offer and provide the offer to the supervisor for signature for presenting to the employee. This letter advises the employee of the position title, occupational series, grade, step, specific job duties, physical requirements, organizational and geographical location of the job, the position availability date, and the employee's reporting date.

8.5 The ICS will forward a copy of the light duty assignment offer to the OWCP at the same time it is sent to the employee.

8.6 If an employee refuses to accept the light duty offer or does not respond to the offer within the allotted time frame as indicated in the written light duty offer, the ICS advises him/her to provide written justification for refusal, and submits that information to the OWCP for determination of light duty suitability and eligibility for continued compensation benefits.

8.7 If an injured/ill employee's justification for refusing the offer is found valid by OWCP or if OWCP otherwise finds the offer unsuitable, the ICS will consult with the designated supervisor responsible for identifying light duty assignments to develop a new or revised light duty offer to be presented to the employee. This process is repeated as many times as necessary to place the employee in a light duty assignment.

8.8 If an injured/ill employee's justification for refusal is found to be not valid by OWCP, OWCP will provide notification to the employee and CBP that the refusal is not valid and will give the employee another opportunity to accept the offer.

8.9 If the employee continues to refuse the light duty job offer and the refusal of the offer is found not valid by OWCP, OWCP will issue a decision and terminate compensation benefits. The ICS will notify management to consider appropriate personnel action and will provide LER with a package consisting of all relevant documentation.

8.10 An informational copy of all refusals will be provided to LER by the ICS pending final decision by OWCP.

9. PROCEDURES FOR PERMANENT REASSIGNMENT

9.1 In cases where the injured/ill employee's treating physician provides medical documentation that the injured/ill employee's restrictions are permanent, the ICS working in collaboration with the ICC, requests in writing, an updated resume from the employee and refers the case to the PRT.

9.2 The PRT and the ICS review the medical documentation to ensure that it supports the need for permanent restrictions and refers the case to the RTW/RN.

9.3 The RTW/RN provides a final review of the medical restrictions and requests HROPP to make a determination for qualifying vacant positions within the permanent medical restrictions of the employee. HROPP provides the qualification list to the RTW/RN. The RTW/RN and PRT review the qualification list and must verify that the positions meet the medical restrictions of the employee. The verified qualification list is returned to HROPP.

9.4 HROPP searches the vacancy database to identify actual vacancies following Attachment 2: Order of Priority for Light Duty and Permanent Reassignment. HROPP verifies the employee's actual qualification for identified vacancies.

9.5 Once a qualifying vacancy is identified, HROPP informs the PRT who notifies the approving official where the vacancy exists for the priority consideration that must be given to any employee who is eligible and qualified for permanent reassignment into that position.

9.6 If the reassignment is approved, the formal job offer is drafted. If the approving officials/management has concerns, PRT and HROPP facilitate an RTW conference with management to address concerns.

9.7 The PRT prepares the formal job offer letter in compliance with FECA regulations. This notice advises the employee of the position title, occupational series, grade, step, specific job duties, physical requirements, organizational and geographical location of the job, the position availability date, the employee's reporting date, the employee's specific medical restrictions, and the allotted time frame within which the employee must respond. The letter also advises that should the employee choose to decline the offer he/she must provide written justification.

9.8 The PRT forwards the job offer letter to management for signature.

9.9 The PRT forwards the signed job offer letter to the OWCP at the same time it is sent to the employee.

9.10 If an employee refuses to accept the permanent reassignment offer, the employee must provide written justification to the official specified in the permanent reassignment offer letter. In such cases, and in cases when an employee fails to respond within the time frame referenced in the letter, the specified official will notify the ICS who refers the case to the OWCP for determination of suitability of the offer and entitlement to continuation of compensation benefits.

9.11 If the injured/ill employee's justification for refusing the permanent reassignment offer is found valid by the OWCP, or if the OWCP otherwise finds the offer unsuitable, the PRT incorporates OWCP's recommendations into a new permanent reassignment job offer.

9.12 The PRT forwards the new job offer letter to management for signature. The signed letter offering the new job will be sent to the OWCP at the same time it is sent to the employee. This process may be repeated as many times as necessary to place the employee in a permanent position.

9.13 If the injured/ill employee's justification for refusal is not found valid by the OWCP, the OWCP will provide a letter to the employee and CBP that it has found the offered light duty job offer to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability.

9.14 A copy of the OWCP's first letter to the employee for refusal of a suitable light duty job offer will be provided to LER by the ICS for informational purposes while awaiting OWCP's final decision.

9.15 If the employee presents such reasons as requested in the OWCP's first letter, and the OWCP determines that the reasons are unacceptable, the OWCP will notify the employee of that determination and that he or she has 15 days in which to accept the light duty job offer.

9.16 If the employee continues to refuse the light duty job offer after the 15 day letter, the OWCP will issue a decision and terminate compensation benefits. The ICS will notify management to consider appropriate personnel action and will provide LER with a package consisting of all relevant documentation.

10. MEASUREMENT

This policy will be administered through the Office of Human Resources Management Benefits, Medical & Worklife Division, Workers' Compensation Program Office. Regular review of workers' compensation cases, improvement of CBP's SHARE goals, and reduction of DOL/OWCP chargeback costs will be measured.

Katherine M. Coffman
Assistant Commissioner
Office of Human Resources Management

Attachments

ACRONYMS

BM&W	Benefits, Medical and Worklife Division
CBP	U.S. Customs and Border Protection
DOL	Department of Labor
FECA	Federal Employees' Compensation Act
HRM	Office of Human Resources Management
HROPP	Human Resources Operations, Programs and Policy
ICC	Injury Compensation Coordinator
ICS	Injury Compensation Specialist
LER	Labor and Employee Relations Division
LWEC	Loss of Wage-Earning Capacity
MMI	Maximum Medical Improvement
OWCP	Office of Workers' Compensation Program
PFO	Principal Field Officer
PHO	Principal Headquarters Officer
PPD	Permanent Partial Disability
PRT	Permanent Reassignment Team
RTW	Return-to-Work
RTW/RN	Return-to-Work Nurse Coordinator

Order of Priority for Light Duty and Permanent Reassignment

Priority Choice	Assigned Job Series	Assigned Duty Schedule	Assigned Work Location	Other Work Location (Same Commuting Area)	Same AC Office	Other AC Office
1st	Within	Within	Within		Within	
1a	Within	Within		Within	Within	
2nd	Outside	Within	Within		Within	
2a	Outside	Within		Within	Within	
3rd	Within	Outside	Within		Within	
3a	Within	Outside		Within	Within	
4th	Outside	Outside	Within		Within	
4a	Outside	Outside		Within	Within	
5th	Within	Within	Within			Within
5a	Within	Within		Within		Within
6th	Outside	Within	Within			Within
6a	Outside	Within		Within		Within
7th	Within	Outside	Within			Within
7a	Within	Outside		Within		Within
8th	Outside	Outside	Within			Within
8a	Outside	Outside		Within		Within

NOTE: Additional Considerations for Assignment for Light Duty:

- Little or no training should be required.
- If no other light duty assignments are available at the time of release, the injured employee may be assigned to perform on-line training while awaiting development of a light duty assignment.