



## EL PASO COUNTY DEPARTMENT OF HUMAN RESOURCES

### Workers' Compensation Policy and Procedure

Revised Date: January 8, 2018

#### I. Purpose

The County of El Paso provides workers' compensation benefits for incidental injury or death and all occupational illnesses arising out of and in the course of employment in accordance with Texas workers' compensation regulations as administered by the Texas Department of Insurance (TDI). The purpose of this policy is to establish uniform guidelines and procedures, consistent with TDI workers' compensation regulations and to identify associated responsibilities for injured employees and supervisors. The intention of this Policy is to comply with Texas law. To the extent of any conflict between this Policy and Texas law, this Policy is to be interpreted as consistent with Texas law.

#### II. Medical Treatment

When an incident occurs, proper medical attention should be sought. Per the Workers' Compensation Act and Rules, an injured employee has the right to choose their own treating doctor should they require medical treatment for an injury sustained on-the-job. The employee may contact the Human Resources Department, Risk Management Division should they need information on how to proceed with obtaining medical treatment (Phone: 546-2218 ext.4286).

#### III. Reporting Procedures

- A. An injured employee, or a person acting on that employee's behalf, shall report any on-the-job injury to their supervisor or Department Head immediately following the incident.
- B. An employee whose injury results from an occupational disease, or a person acting on that employee's behalf, must give notice not later than the 30<sup>th</sup> day after the date on which the employee knew or should have known that the injury may be related to their employment.
- C. Supervisors shall notify Human Resources Department, Risk Management Division immediately following an on-the-job injury and submit an **Investigation Report of Occupational Injury/illness** <http://intranet/hr/workcomp.htm> within 48 hours.

#### IV. Investigation Procedures

- A. The immediate supervisor, or other designated individual, will investigate all on-the-job injuries or occupational illnesses that occur within their jurisdiction of authority. The purpose of the investigation shall be to determine what happened, why it happened, and what steps should be taken to prevent a reoccurrence of the incident.
- B. Any attempt to defraud El Paso County with a false workers' compensation claim will result in disciplinary action up to and including termination. The case can also be

referred to the District Attorney for possible prosecution and to the Texas Department of Insurance, Division of Workers' Compensation Fraud Unit.

C. Principle Purposes of Incident Investigation:

1. To determine the cause of an incident so that similar incidents may be prevented through mechanical improvement, better supervision, and/or employee instruction.
2. To publicize the particular hazard among employees and their supervisors and to direct attention to incident prevention in general.
3. To determine facts bearing on legal liability.

**V. Conducting Investigations**

A. A Supervisor shall be required to investigate and document every on-the-job injury which involves personnel under their supervision. This is for the purpose of taking or recommending corrective action and preventing recurrence of similar incidents.

B. Each investigation should be started as soon as possible after the incident. A delay of only a few hours may permit important evidence to be destroyed or removed, intentionally or unintentionally.

C. Persons conducting investigations should follow the below guidelines:

1. Investigators should arrive at the scene as soon as possible after an incident has been reported in order to obtain facts while they are still fresh.
2. Investigators should interview the injured person and all witnesses to obtain the facts surrounding the incident.
3. Investigators should record information as to conditions present at the time of the incident. These could relate to weather, mechanical defects, or other unsafe working conditions. Also note any physical evidence that is available. If possible, photographs should be taken of the scene.
4. Investigators should note any reported unsafe acts that may have contributed to the incident.

D. Investigation Report:

1. Investigation results will need to be submitted to the Human Resources Department, Risk Management Division on Part III of an Investigation Report of Occupational Injury/Illness form within 48 hours. The report should include information that would answer the following questions:
  - a. WHO/WHAT was injured or damaged?
  - b. HOW did the incident happen?
  - c. WHERE did it happen?
  - d. WHEN did it happen?
  - e. WHO saw it happen?
  - f. WHAT persons, equipment, materials and conditions were involved?
  - g. WHY did the incident happen?
  - h. WHAT could/should have been done to prevent the incident and the reoccurrence of similar incidents?

The investigator must be thorough in determining WHY an incident occurred. For example, in a case of an employee eye injury, the investigator might list the cause as "failure to wear goggles". Examples of questions used to determine WHY the injury occurred include: "Why didn't the employee wear goggles"? Were goggles available? Was the employee

instructed to wear the goggles? If so, when was the employee instructed to wear them, by what means was the employee instructed to wear goggles and why didn't the employee wear them?

## **VI. Handling Emergencies**

- A. Judgment is a key factor in the handling of any emergency. Employees are expected to exercise their best judgment based upon the circumstances.
- B. The following is a list of guidelines to follow:
  - 1. The employee/supervisor/management personnel shall call the appropriate emergency service (medical, fire, police, or rescue). Call 911.
  - 2. The employee shall notify his/her supervisor.
  - 3. The employee will follow reporting and investigation requirements.

***\*IF THERE IS ANY QUESTION WHATSOEVER ABOUT THE SERIOUSNESS OF AN INJURY, CALL FOR HELP AND TAKE EVERY PRECAUTION TO PRESERVE LIFE.***

## **VII. Worker's Compensation Leave and Benefits**

- A. Compensable Injury:
  - 1. In the event an employee sustains an on-the-job injury which is compensable as a workers' compensation claim and which requires the employee to be absent from work, such employee shall be placed on Workers' Compensation Leave until such time as the employee reaches Maximum Medical Improvement (MMI) or returns to work, whichever occurs first, The County shall provide the employee the notice and information required under FMLA. Any FMLA Leave shall run concurrent with Workers' Compensation Leave.
  - 2. Payment under workers' compensation: Employees who sustain a compensable work related injury which requires them to be off work will be paid according to the Texas Department of Insurance, Division of Workers' Compensation Act and Rules.
  - 3. Employees become eligible for Temporary Income Benefits (TIBs) starting on the 8th day of disability. The Department Head, Elected Official or their designee may apply the employee's sick leave, comp time or vacation leave during the waiting week or first seven (7) days of lost time at the voluntary written request of the employee in accordance with County leave policies.
- B. Health, Dental, Life, and Related Insurance Benefits
  - 1. During the period an employee is on Workers' Compensation Leave, the County shall continue to pay health and dental insurance benefits as long as the employee continues to pay their portion of the premiums within the required timelines. Should the employee fail to pay their portion of the insurance premiums, they shall be dropped from coverage. Upon return to work, the employee will have 31 days to reinstate equivalent insurance coverage that was dropped during their absence in accordance with a qualifying event or FMLA.
  - 2. The employee must make arrangements directly with the Auditors Department to continue to pay their share of the cost of any insurance coverage that the employee has elected under the County's benefit program.

### C. Leave Accrual

Employees who are off work and receiving weekly workers' compensation payments shall continue to accrue vacation leave and sick leave.

## VIII. Physician Letter

Prior to reinstatement the employee must submit a Work Status Report from the treating physician that states the employee is physically able to return to work with or without reasonable accommodations.

## IX. Modified Duty

### A. Eligibility:

1. The County of El Paso offers eligible employees the opportunity to work under the Modified Duty Program after sustaining a compensable on-the-job injury.
2. When an employee of the County of El Paso sustains a compensable work related injury, the treating doctor may release the employee to return to work with temporary physical restriction(s). In such circumstances, the County of El Paso will make reasonable efforts to enable the injured employee to return to work with the temporary, physical restrictions that progress the employee towards their regular duties as they recover.
3. This section describes the requirements and limitations for modified or alternate duty assignments for employees who are out on workers' compensation leave who have not yet reached Maximum Medical Improvement.
4. No assignment may be made to modified duty without the approval of the Risk Management Division and the employee's Department Head or Elected Official or their designee.
5. The County of El Paso reserves the right to adapt modified duty assignments as the injured employee's medical condition improves and physician-imposed physical restrictions are changed.
6. An employee on leave due to a work-related injury may be eligible to return to work in a modified capacity when the County receives the treating doctor's Work Status Report which documents a release to return to work with restrictions.

### B. Return to work Modified Duty options:

1. **Modified Duty:** Department is able to return the employee to their regular job with modifications as per the Work Status Report or the employee may be placed at a different job within the Department that meets the work restrictions;
2. **Alternate Duty:** The employee may be placed temporarily in another County Department that needs assistance and is able to accommodate the work restrictions.

### C. Work Status Reports:

Employee shall turn in the Work Status Report to the Risk Management Division on the date it is received from their treating doctor. Employees on a no-work status or modified duty status shall present an updated Work Status Report at the minimum of every 30 days.

D. Length of Modified or Alternate Duty:

Modified or Alternate duty will be limited to 90 calendar days. A 30 day extension may be granted on a case by case basis, if medical circumstances warrant, at the discretion of the Chief Human Resources Officer or their designee.

E. Monetary Compensation:

Employee's working modified duty will receive their regular salary for hours worked. If the modified duty assignment is available only for a portion of the employee's normal weekly hours or the employee is earning less than their average weekly wage, the employee will be compensated through workers' compensation (TIBs) based upon the Workers' Compensation Act and Rules of the State of Texas.

F. Refusal of Modified Duty Assignment:

Any employee that refuses to accept a modified duty work assignment in response to a written Bona-Fide-Offer of Employment may be separated from the County of El Paso.

G. Maximum Medical Improvement:

1. Upon Risk Management Division being notified of the MMI, Risk Management Division will submit a letter to the employee informing the employee they have 90 days, from the date of the notification letter, to return to work with or without reasonable accommodation, to perform the essential functions of the position for which they were hired.
2. At the time an employee is notified of being certified at Maximum Medical Improvement (MMI), the employee will no longer qualify to work modified or alternate duty and will be placed on leave without pay status unless the employee has other leave balances available. Should the employee desire to use such balances, the employee must request paid leave in writing from their Department Head, Elected Official, or their designee. Use of accrued leave cannot exceed 90 calendar days from the date of the notification letter.

This provision shall not be construed to limit any employee rights, including eligible benefits under the Family Medical Leave Act or Americans with Disabilities Act.

H. Employee Responsibilities:

The employee is expected to perform the modified duty work with the same diligence, care and effort as their regular duty work. Employee shall not engage in any behavior or task beyond their physical limitations as set forth in the Work Status Report at work or outside of work.

I. Supervisor Responsibilities:

Supervisors shall work with the Risk Management Division in identifying areas of availability of modified duty, assist in monitoring the employee in following work restrictions and support their goal of returning to work at regular duty.

J. Risk Management Responsibilities:

The Risk Management Division shall facilitate an employee's return to work by consulting with the employee, employee's department, employee's treating doctor and the Third Party Administrator to assure a safe return to work.

***\*This policy will not be construed or interpreted to mean any employee has a right to a modified duty assignment or that the County of El Paso is compelled to assign an individual to a modified duty status. Modified duty is granted on a case by case basis, based on the availability and need of the Department as well as the knowledge and skills of the employee, while operating in a modified capacity.***

Link to Injury Reporting Form

<http://intranet/hr/workcomp.htm>