

Lawrence Berkeley National Laboratory

RETURN TO WORK PROCEDURE	Document No.	HSDM-2008-001
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1.0 PURPOSE:

This procedure establishes guidelines for returning employees with disabilities back to work, and for developing early return-to-work plans for employees who are on disability status. The goal is to ensure employees who sustain work-related and non-work-related injuries or illnesses receive assistance in maintaining employment during medical treatment and recovery. The process begins with Health Services' documented work restrictions, continues with the interactive process and ends with the Laboratory's temporary or permanent accommodation of functional impairment(s), or the employee's medical separation.

2.0 REVISION HISTORY:

Date	Revision No.	Change	Reference Section(s)
6/12/2008	1.0	New Procedure Drafted	Not Applicable

3.0 PERSONS AFFECTED:

- 3.1. Health Services Clinical staff and Integrated Disability Management staff involved in the receipt and dissemination of employee work restrictions
- 3.2. Human Resources Center Services staff involved in assisting with job accommodation
- 3.3. Human Resources Core Services staff involved in employee and labor relations, compensation and benefits, training and development, and equal employment opportunity and affirmative action
- 3.4. Chief Human Resources Officer (CHRO)
- 3.5. Division and department supervisors and managers
- 3.6. Employee and Labor Relations staff
- 3.7. Employee Health Care Provider
- 3.8. Third-Party Administrator for occupational cases.
- 3.9. Laboratory Legal Counsel
- 3.10. Facilities staff for purposes of workplace modification
- 3.11. Disabled Employee

4.0 POLICY:

The policy of Lawrence Berkeley National Laboratory is to encourage and promote the early and sustained return-to-work of its employees who have either temporary or permanent disabilities as a result of occupational or non-occupational injuries or illnesses.

The goal is to return Laboratory employees to suitable work within their work capacities and medical restrictions and to foster and support stay-at-work objectives.

- 4.1. The Laboratory provides reasonable accommodation for the known physical or mental disability of otherwise qualified employees, who are disabled or become disabled, and need accommodation to perform the essential functions of their positions. The Interactive Process shall be used to determine whether the employee can perform the essential functions of a position or if a reasonable accommodation can be provided so that the employee can perform the essential functions of the job.

5.0 DEFINITIONS

5.1. Disability ¹

- 5.1.1. Disability is a physiological disease, physical disorder, condition, cosmetic disfigurement, or anatomical loss that: Affects one or more of the following body systems: immunological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; and impairs or limits an individual's ability to participate in major life activities.

- 5.1.2. Disability also includes a mental or psychological disorder such as mental organic brain syndrome, alcoholism, emotional or mental illness, **and** specific learning disabilities (e.g. dyslexia), **except for:**

- 5.1.2.1. Sexual behavior disorder

- 5.1.2.2. Compulsive gambling

- 5.1.2.3. Kleptomania

- 5.1.2.4. Pyromania

- 5.1.2.5. Psychoactive substance use disorders resulting from current unlawful use of controlled substances.

- 5.1.3. Disability is also defined as

- 5.1.3.1. "Being regarded" as having or having had a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described above; or

- 5.1.3.2. As having such conditions as described above that has no current disabling effect but may become a physical disability; or

- 5.1.3.3. Any other health impairment not described above that requires special education or related services.

- 5.1.4. Permanent Disability/Impairments are conditions that are:

- 5.1.4.1. Long-term,

- 5.1.4.2. Chronic, or

- 5.1.4.3. Recurrent and, therefore, deemed a disability [for example, cancer, diabetes, HIV/AIDS, asthma].

- 5.1.5.** Transitory/Temporary Disability/Impairments are conditions that:
- 5.1.5.1.** Generally speaking, have an actual or expected duration of six months or less. For example, an uncomplicated fractured leg or arm that is expected to heal without permanent residuals (disability remaining from a disease or operation)]. Workers' Compensation definition of temporary disability differs.

5.2. Major Life Activities

Major life activities shall be broadly construed to mean physical, mental, work and social activities. These are activities that are *of central importance to daily life*.

These activities are functions such as:

- 5.2.1.** Caring for one's self (eating, bathing)
- 5.2.2.** Performing manual tasks (lifting, reaching)
- 5.2.3.** Seeing
- 5.2.4.** Hearing
- 5.2.5.** Speaking
- 5.2.6.** Walking
- 5.2.7.** Breathing
- 5.2.8.** Learning
- 5.2.9.** Working

5.3. Reasonable Accommodation

Reasonable accommodation is a term unique to the Americans with Disabilities Act and the Fair Employment & Housing Act. It involves persons with permanent impairment who require job accommodations. Reasonable accommodation is any practical change or adjustment to a job or work environment and in company policies that enables a qualified employee with a permanent disability to perform essential job functions. Employees with disabilities who are **limited** in their ability to perform their essential job duties because of permanent impairment can be provided reasonable accommodation.

Any form of accommodation that ensures equal employment opportunities is sufficient to meet the Lab's obligations under the law. The Laboratory need not accept the form of accommodation preferred by an employee, but there is a mutual obligation to search for a reasonable form of accommodation

Accommodations, if it does not create an undue hardship to the Lab, may include, but are not limited to:

- 5.3.1.** Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.
- 5.3.2.** Modifying an individual's job duties and requirements to include, but are not limited to:

- 5.3.2.1.** Job restructuring

- 5.3.2.2. Reassignment to a comparable vacant position (see section on Priority Reassignment/Special Selection)
- 5.3.2.3. Part-time or modified work schedules
- 5.3.2.4. Acquisition or modification of equipment and work-related devices
- 5.3.2.5. Modification of exams, training materials
- 5.3.2.6. Specific period of leave of absence

5.4. Unreasonable Accommodation

The Laboratory is **not** required to provide a requested accommodation under any of the following circumstances:

- 5.4.1. The Accommodation would result in an *undue hardship*.
- 5.4.2. Even after accommodation, the employee would be unable to perform the essential job functions.
- 5.4.3. After providing the accommodation, the employee would endanger himself, herself, or others by performing the essential job functions (*direct threat*).

5.5. Undue Hardship

Undue hardship for the employer is one factor to be considered when providing a job accommodation. It is defined as factors involving extraordinary cost, requiring extraordinary time, or fundamentally altering the nature or operation of the business. Each case must be assessed on a case-by-case basis.

5.6. Direct Threat

Direct threat means the probability of doing harm to the employee or co-workers or guests; the employer must assess whether the risk is significant and may cause substantial harm.

5.7. Interactive Process

The Interactive Process is a term unique to the Americans with Disabilities Act and to the Fair Employment & Housing Act. It is defined as an ***on-going communication between employer and employee***. Hence, the interactive process is a documented dialogue between the employee and line management about possible options for reasonably accommodating the employee's permanent functional impairments based on a disability. Once the job-related limitations/restrictions imposed by the employee's disability are ascertained, the dialogue can cover how those limitations could be overcome with a reasonable accommodation. A temporary "accommodation" is not mandatory for those with temporary work restrictions and does not require the interactive process.

The process includes the following parties:

- 5.7.1. Line management
- 5.7.2. Employee
- 5.7.3. Human Resource staff
- 5.7.4. Return-to-Work Specialist
- 5.7.5. Health Care Provider for the employee

5.8. Essential Job Function

Essential job functions are those job duties that are:

- 5.8.1.** Fundamental or critical to the job
- 5.8.2.** Directly related to why the job exists
- 5.8.3.** Not marginal tasks

5.9. Modified Work

Job duties of the employee's position that are modified to allow the employee with the disability to perform the job. Modifications might include a flexible work schedule or removal of some marginal job tasks, modification of equipment or providing assistive devices.

5.10. Alternate Work

Job duties of a different position which the employee with a disability is qualified to perform. It may be a lateral transfer into a vacant position with the employee's own department or within the Laboratory. It may also be a demotion into a vacant position ("last resort" accommodation) for which the employee is qualified.

5.11. Family Medical Leave Act (FMLA)

Federal Act that allows an eligible employee job protection during unpaid time off for qualifying medical leave for his/her serious health condition or a family member's serious health condition.

5.12. California Family Rights Act (CFRA)

State Act that provides an eligible employee similar coverage and protection as that of the FMLA.

5.13. Pregnancy Disability Leave (PDL)

Job protection for a female employee off work for pregnancy that runs concurrent with FMLA/CFRA if eligible for FMLA/CFRA

5.14. Workers' Compensation Leave/Absence

Employees who sustain on-the-job injury or illness may be eligible for FMLA/CFRA job protection.

5.15. Liberty Mutual Disability Income

Short-term and long-term disability indemnity payments for eligible employees.

5.16. University of California Retirement Plan (UCRP) Disability Income

Disability income benefits allowing eligible employees who have protracted medical leaves a source of income while remaining disabled from work.

5.17 Medical Separation

A process whereby an employee who is unable to satisfactorily perform the essential, assigned functions of his/her position due to a disability or medical condition, may be

separated from employment. Prior to a medical separation being initiated, the Laboratory will ensure that the interactive process is completed and documented. This applies only to non-probationary employees.

6.0 RESPONSIBILITIES

- 6.1.** For all cases, Clinical staff, Health Services, shall:
 - 6.1.1.** Collect injury or illness incident information from the employee.
 - 6.1.2.** Process on-the-job injury/illness claim form for submission to the Workers' Compensation Claims Administrator within one day's knowledge and provide a copy to Integrated Disability Management group.
 - 6.1.3.** Communicate for industrial injuries, via the Health Status form, on an on-going basis (every time there is a change) the work restrictions to: the employee's supervisor, Human Resources Center staff, the Integrated Disability Management group and the Third-party Administrator within one day's knowledge.
 - 6.1.4.** Communicate for non-industrial injuries, on an on-going basis (every time there is a change), the work restrictions to: the employee's supervisor, Human Resources Center staff, and to the Integrated Disability Management group within one day's knowledge.
 - 6.1.5.** Contact the employee's supervisor and the Human Resources Center to determine if an accommodation can be provided which would enable the employee to perform the essential functions of the job.
 - 6.1.6.** Introduce employees with significant work restrictions to the Return-to-Work Specialist to initiate the interactive process, if needed, for those employees with permanent work restrictions and impairment.

- 6.2.** For Non-industrial cases, the Integrated Disability Management staff, Health Services, shall:
 - 6.2.1.** Prepare a file on the employee.
 - 6.2.2.** Provide the employee with any necessary FMLA, CFRA or Pregnancy Disability leave forms.
 - 6.2.3.** Receive from the employee the leave forms and collect employee data (payroll record, service years) to determine eligibility for FMLA, CFRA, or Pregnancy Disability leave.
 - 6.2.4.** Communicate which benefits or job protection the employee qualifies for (FMLA, CFRA, Pregnancy Disability, and Liberty Mutual) to: the employee's supervisor, Human Resources Center staff, Timekeeper, Payroll, and Compensation and Benefit staff.
 - 6.2.5.** Complete an Employer Statement form for the Third-party Administrator (Liberty Mutual) so the qualified employee is paid benefits.
 - 6.2.6.** Obtain position description from Human Resources Center and send to the Third-party Administrator (Liberty Mutual) upon request.
 - 6.2.7.** Guide and counsel the eligible employee qualifying for UCRP Disability Income benefits through the application process, if appropriate.

- 6.2.8.** Coordinate approvals and notices with UCRP, Human Resources Center, and Compensation and Benefits office.
 - 6.2.9.** Coordinate all disability-income benefits for the eligible employee.
 - 6.2.10.** Facilitate, through the Return-to-Work Specialist, a return-to-work plan for the employee on temporary restricted-duty and for the employee with permanent work restrictions.
- 6.3.** For Industrial cases, the Integrated Disability Management staff, Health Services, shall:
- 6.3.1.** Initiate a workers' compensation file upon receipt of a copy of the claim form submitted by the clinical staff on behalf of the employee.
 - 6.3.2.** Coordinate the workers' compensation benefits and other benefits the employee is entitled to with the Third-party Administrator (Workers' Comp Claims Administrator and Disability Claims Administrator), Payroll staff, Human Resources staff, and Compensation and Benefits staff.
 - 6.3.3.** Request the Position Description and the Physical, Environmental, and Mental demands form from the supervisor or the Human Resources staff, if needed.
 - 6.3.4.** Send the employee's wage statements, Position Description to the Third-party Administrator (Workers' Comp Claims Administrator and Disability Claims Administrator), upon request. Human Resources Center sends a copy of the personnel file.
 - 6.3.5.** Communicate claim status (acceptance, delay or denial) to: the supervisor, Human Resources staff, and Compensation and Benefits staff.
 - 6.3.6.** Guide and counsel the eligible employee qualifying for UCRP Disability Income benefits through the application process.
 - 6.3.7.** Coordinate approvals and notices with UCRP, Human Resources Center, and Compensation and Benefits office.
 - 6.3.8.** Facilitate, through the Return-to-Work Specialist, a return-to-work plan for the employee on temporary restricted-duty and for the employee with permanent work restrictions.
- 6.4.** For Industrial and Non-Industrial Cases, the Return-to-Work Specialist shall:
- 6.4.1.** Interface with the employee, supervisor, Human Resources staff, Clinical Staff and other Integrated Disability Management staff to obtain the necessary information to develop a return-to-work plan.
 - 6.4.2.** Initiate discussion of the interactive process and reasonable accommodation of the employee with the supervisor and Human Resources staff by requesting the Position Description and Physical, Environmental, and Mental demands of the particular job class
 - 6.4.3.** Communicate with the employee's medical care provider, if work restriction clarification is needed.
 - 6.4.4.** Provide the clarified work restriction information to the supervisor, Human Resources staff and other Integrated Disability Management staff and Clinical staff.

- 6.4.5.** Facilitate the interactive process and reasonable accommodation of the disabled employee by providing the necessary forms to the employee, supervisor and Human Resources staff.
 - 6.4.6.** Participate as a facilitator in the interactive process meeting with the employee, supervisor, and Human Resources staff.
 - 6.4.7.** Verify that documentation of the interactive process and any reasonable accommodation provided has occurred by providing the documentation form (*Interactive Process Documentation Sheet*) to the supervisor and Human Resources staff.
 - 6.4.8.** Verify that the above process has taken place prior to any medical separation letters being generated.
 - 6.4.9.** Consult with the Laboratory Legal Counsel when necessary.
 - 6.4.10.** Consult with the Employee and Labor Relations staff and Equal Employment Opportunity Officer when necessary.
- 6.5.** Human Resources Center and Human Resources Core staff shall:
- 6.5.1.** Process Personnel Action forms for those employees on leaves of absence (occupational and non-occupational) and for those employees returning from leaves of absence, upon notification by the Integrated Disability Management group. NOTE: Health Services will do PAF when e-PAF begins.
 - 6.5.2.** Refer employees inquiring about UCRP disability income to the Integrated Disability Management group for counseling on benefits and commencement of the benefits application process.
 - 6.5.3.** Participate in the Interactive Process Meeting with the employee, supervisor, and Return-to-Work Specialist.
 - 6.5.4.** Document all activities (face-to-face meetings, phone calls, emails, correspondence) concerning the interactive process for identifying reasonable accommodation efforts in coordination with the employee's home department supervisor and the Return-to-Work Specialist. The Return-to-Work Specialist acts as a facilitator when accommodation attempts are being made in the home department.
 - 6.5.5.** Send the Position Description and Physical, Environmental, and Mental demands of an employee's job to Health Services' Integrated Disability Management group, upon request.
 - 6.5.6.** Send the employee the Notice of Intent to Medically Separate letter, , in consultation with the Return-to-Work Specialist, Employee and Labor Relations staff, and Legal Counsel as needed, upon notification that the employee cannot be accommodated or chooses to medically separate.
 - 6.5.7.** Send the employee the Notice of Medical Separation letter, in consultation with the Return-to-Work Specialist, Employee and Labor Relations staff, and Legal Counsel as needed, if there is no objection from the employee to the Notice of Intent to Medically Separate.
 - 6.5.8.** Process the paperwork to finalize the employee's medical separation and provide copies of the medical separation notices to the Return-to Work Specialist.

6.6. Department Supervisors/Managers shall:

- 6.6.1.** Contact the Return-to-Work Specialist upon notification by an employee of work restrictions in order to initiate discussion of the interactive process, if needed, or the provision of modified work, if applicable.
- 6.6.2.** Participate in the Interactive Process Meeting with the employee, Human Resource staff, and Return-to-Work Specialist
- 6.6.3.** Document all activities (face-to-face meetings, phone calls, emails, correspondence) concerning the interactive process for identifying reasonable accommodation efforts in coordination with the employee's supervisor and the Return-to-Work Specialist.
- 6.6.4.** Coordinate efforts to provide job accommodation with the Return-to-Work Specialist and the Human Resource staff.
- 6.6.5.** Send the Position Description and Physical, Environmental and Mental Demands of an employee's job to Health Services' Integrated Disability Management group, upon request, via the Human Resources Center.

6.7. Laboratory Legal Counsel shall:

- 6.7.1.** Review cases involving issues with reasonable accommodation at the request of the Return-to-Work Specialist, Employee and Labor Relations staff and/or the staff of the Equal Employment Opportunity and Affirmative Action office.
- 6.7.2.** Provide opinion on referred issues on particular cases.

7.0 PROCEDURES

7.1. For Establishing and Communicating Work Restrictions

- 7.1.1.** Employee provides Health Care Provider's note to Health Services' Clinical Staff who reviews any work restrictions with employee.
- 7.1.2.** Nurse completes a Health Status form and gives copies to the employee.
- 7.1.3.** Nurse distributes copies of the Health Status form to parties listed on the distribution list form, including a copy to the Return-to-Work Specialist.
- 7.1.4.** Employee returns to work and employee gives one copy of the Health Status form to supervisor.
- 7.1.5.** Nurse and/or disability management staff coordinates with supervisor regarding accommodation for any permanent work restrictions provided. The Return-to-Work Specialist may assist in facilitating the accommodation, if necessary.
- 7.1.6.** If the work restrictions are temporary (transitory), the Nurse will ask the supervisor if modified work or transitional-duty assignments can be provided to the employee.
- 7.1.7.** If the supervisor indicates there is no modified work or transitional-duty work for the employee, the Nurse may consult the Return-to-Work Specialist to assist the supervisor in further exploring stay-at-work options for the employee.

7.1.8. If the employee's Health Care Provider's notes are unclear, the Return-to-Work Specialist will obtain clarification from the Health Care Provider concerning work restrictions and work capacities.

7.1.9. Once clarification is obtained, the Return-to-Work Specialist will communicate the information to the Nurse and/or disability management staff and to the supervisor.

7.2. Temporary Work Restrictions (for transitory impairment)

The Laboratory policy is to try to assist employees with temporary or short-term disabilities who do not need permanent job accommodations. Employees with temporary or short-term disabilities do not need permanent job accommodations. An interactive process in these cases need not take place with the employee. The Return-to-Work Specialist decides which disability cases are candidates for accommodation and when the interactive process and reasonable accommodation procedure will apply.

7.2.1. In cases involving workers' compensation injury/illness, the objective is to identify and provide temporary modified work or restricted-duty work for employees who have been absent due to illness/injury and are medically released to return to work while undergoing continued medical treatment.

7.2.2. When the employee's health care provider recommends a release to modified work, the clinical staff in Health Services will contact the supervisor and the Human Resources Center Staff. The supervisor is expected to make efforts at determining if the employee's regular job duties can be modified.

7.2.3. If the clinical staff in Health Services receives information from the employee's supervisor that modified work is not available, the Return-to-Work Specialist, in conjunction with Human Resources, may contact the supervisor to discuss the reason for non-availability of modified duty for the disabled employee.

7.3. Permanent Work Restrictions

7.3.1. Employees with permanent impairment (refer to section 5.1.4. Permanent Disability/Impairments) may or may not need job accommodation, depending on if the medical condition is continuous, in remission, or episodic in nature.

7.3.2. If it is not known that an employee has a permanent disability or the employee does not request job assistance for his/her permanent disability because there are no symptoms presently requiring an accommodation, there is no need to commence the interactive process.

7.4. Interactive Process Steps for Identifying and Providing Reasonable Accommodation

The Laboratory must consider reasonable accommodation of the "known" physical or mental limitations of an employee with a permanent disability. It is typically the employee's responsibility to make it known that an accommodation is needed.

However, if the Laboratory is aware of the disability and possible need for accommodation, it is obligated to consider accommodation, even though no express request is made.

7.4.1. Processing Requests

- 7.4.1.1.** If an employee with a permanent disability first requests a reasonable accommodation from his/her supervisor or if the supervisor knows of the employee's need for accommodation, the supervisor will contact the Return- to-Work Specialist who will discuss the request and obtain medical verification of employee's medical restrictions to determine if the interactive process will commence at that point.
- 7.4.1.2.** If an employee with permanent disability first reports to Health Services at which time work restrictions are provided to a Nurse, the Nurse notifies the employee's supervisor of the work restrictions. If the supervisor is unable to determine a reasonable accommodation at that time (i.e., job modification, flexible work schedule, etc.), the supervisor consults with the Return-to-Work Specialist who will facilitate the interactive process with the supervisor, Human Resources staff, and employee.
- 7.4.1.3.** The Return-to-Work Specialist coordinates the accommodation of permanent work restrictions with the supervisor and coordinates the provision of any temporary work assignments based on temporary restrictions with the supervisor in consultation with the Human Resources staff.

7.4.2. Preparing for the Interactive Process Meeting

- 7.4.2.1.** The Return-to-Work Specialist contacts the employee's supervisor and Human Resources Center staff to discuss accommodation options and to facilitate the scheduling of a meeting to discuss the particulars of the case prior to scheduling the interactive process meeting with the employee. The Return-to-Work Specialist, the supervisor and/or Human Resources staff reviews the Position Description and the Physical, Environmental, and Mental Demands form of the employee's current position for discussion with the employee at the Interactive Process meeting.
- 7.4.2.2.** In cases where further medical substantiation is required and the employee declines to sign a Medical Release form, the Return-to-Work Specialist solicits the cooperation of the employee in obtaining information from the employee's Health Care Provider.
- 7.4.2.3.** The Return-to-Work Specialist gives the *Request for Reasonable Accommodation* form to the employee for completion along with a *Physician/Health Care Provider's Certification of Employee's Disability and Need for Accommodation* form for completion by

his/her Health Care Provider. The employee returns both forms to the Return-to-Work Specialist for processing.

7.4.2.4. The Return-to-Work Specialist also gives the Position Description and Physical, Environmental, and Mental Demands (PEM) form provided by the supervisor to the employee to accompany the *Physician/Health Care Provider's Certification of Employee's Disability and Need for Accommodation* form for review by the employee's Health Care Provider. A copy of any correspondence and copies of these forms will be provided to the supervisor and Human Resources Center.

7.4.2.5. Upon receipt of additional medical information (clarification of work restrictions and work capacities), the Return-to-Work Specialist communicates the information to the supervisor and Human Resources staff. The Return-to-Work Specialist recommends the scheduling of the interactive process meeting with the employee.

7.4.3. The Interactive Process Meeting (refer to 7.4.2.5 regarding timing of this meeting)

7.4.3.1. During the Interactive Process meeting with the employee, the supervisor and/or Human Resources staff initiates a dialogue to review with the employee the essential job functions of the employee's position or the essential job functions of open, vacant positions during the Preferential Employment Process (Priority Reassignment/Special Selection) if applicable. The purpose is to determine if the employee can perform all essential job functions of a position with or without a reasonable accommodation. If an accommodation is needed the employee may provide suggestions for possible job accommodation(s). The Human Resources staff and supervisor, in consultation with the Return-to-Work Specialist, will determine the feasibility of a suggested accommodation.

7.4.3.2. The supervisor and/or Human Resources staff also offers suggestions for accommodations and together with the employee determine an effective, reasonable accommodation to allow the employee to reasonably perform all essential job functions of the identified job position.

7.4.3.3. Upon the identification of a reasonable accommodation, the accommodation is offered to the employee.

7.4.3.4. If no agreement is reached between the employee and supervisor, the employer's choice of reasonable accommodation is offered and, if accepted, is implemented.

7.4.3.5. If the employee refuses the offered reasonable accommodation, the interactive process is terminated and the refusal is documented. At this point, the department supervisor or manager, in consultation with Human Resources, will either send the Notice of Termination or Notice of Intent to Medically Separate to the employee.

7.4.3.6. An employee's medical information is not to be shared and should remain confidential. An employee's need for job accommodation may be shared with a supervisor or manager in cases where the

accommodation involves a transfer or demotion to another position in another department. The Return-to-Work Specialist may assist in facilitating the sharing of accommodation information

7.4.4. Priority Reassignment/Special Selection [Preferential Employment Process for Employees with Disabilities] (*Refer to RPM §2.01(B) (4) (d) on Affirmative Action, Reasonable Accommodation, Special Selection and (c) (3) (a) (vii) on Recruitment and Selection regarding disabled employee.*) Priority Reassignment is a special employment process whereby a non-probationary employee with a disability may be selected for another position at the Laboratory without the requirement that the position be publicized. This process does not provide a right to re-employment.

- 7.4.4.1. If the employee with a disability cannot perform the essential functions of his/her current job, with or without an accommodation, and an alternate position is not available within the home department, the Return-to-Work Specialist and Human Resources Generalist assigned to the home department assists the employee in a search for alternative work within LBNL.
- 7.4.4.2. This Lab-wide search will be conducted using the *Special Selection and Recruitment* regulations found in the *RPM §2.01* (see 7.4.4).
- 7.4.4.3. Any effort at Lab-wide search for vacant positions or soon-to-be vacant positions is part of the overall *interactive process* to reasonably accommodate the employee. This process occurs when all efforts to determine if a reasonable accommodation cannot be made by the home department.
- 7.4.4.4. During the Priority Reassignment process, a current employee with a disability may be selected for another position at the Lab prior to a regular applicant pool being considered. This will occur when it is determined by the Human Resources Generalist and the Return-to-Work Specialist the employee meets the minimum required qualifications of the position and can perform the essential functions of the position, with or without accommodation.
- 7.4.4.5. Priority Reassignment process will typically last ninety (90) days. If through this process an alternate position is not located, the Return-to-Work Specialist will consult with the employee's home department regarding medical separation.
- 7.4.4.6. Priority reassignment for current employees with disabilities will be provided as follows:
 - 7.4.4.6.1 If within two (2) weeks of completing the interactive process meeting with the employee and home department, the home department is unable to provide a reasonable accommodation, the Return-to-Work Specialist and Human Resources Generalist will meet with the employee to explain and initiate the Priority Reassignment process. This meeting will occur in conjunction with the employee's home department supervisor. During the initial meeting, there will be a discussion to identify the employee's job

skills, knowledge, abilities, and job interests. There will also be a review of any additional job titles which appear consistent with the employee's skills and functional capacities.

7.4.4.6.2 During the meeting, the employee may be counseled, if necessary, on how to utilize the LBNL employment internet site to search for jobs and apply for jobs utilizing his/her resume.

7.4.4.6.3 The employee is instructed to contact the Return-to-Work Specialist and Human Resources Generalist assigned, via email or telephone, after the employee has identified a job for which the employee has interest and/or has applied. The Human Resources Generalist and the Return-to-Work Specialist evaluate the appropriateness of the job for which the employee has applied (e.g., physical demands, minimum qualifications).

7.4.4.6.4 If the employee applies for a job under Priority Reassignment consideration, the Human Resources Generalist notifies the hiring department of the requirement to first consider the employee (candidate) over all other applicants and the hiring department supervisor or manager will be counseled that review of this application has priority over review of all other applications. Competitive recruitment is not required when a position is to be filled by the appointment of a qualified employee with a disability (*see RPM §2.01 (c)(a)(vii)*). The Generalist will also confirm that the employee's resume has been received and will arrange for an interview with the employee.

7.4.4.6.5 The Human Resources Generalist assigned to the hiring department evaluates the employee's qualifications and experience against the minimum requirements of the position and will communicate with the Human Resources Generalist assigned to the home department.

7.4.4.6.6 If the employee/candidate minimally qualifies, the hiring department meets with the candidate for a qualifications review to confirm that he/she is qualified for the position. This can occur before the publication of the vacancy, or any time before a posted vacancy is filled.

7.4.4.6.7 The hiring department will not consider other resumes until a final decision has been made regarding Priority Reassignment employees.

7.4.4.6.8 If the hiring department confirms the candidate is minimally qualified, the hiring department makes an offer of employment (*Reference RPM §2.01 (B)(4)(d, Affirmative Action, Reasonable Accommodation, Special Selection*).

7.4.4.6.9 If the hiring department determines that the candidate is not minimally qualified for the position, the hiring department must contact the Return-to-Work Specialist and Human Resources Generalist working on the case to discuss the decision and in

consultation with the Return-to-Work Specialist makes a final decision.

7.4.4.6.10 If the priority candidate is not qualified, the hiring department must complete the *Candidate Disposition Form* and must inform the candidate that he/she is not qualified and documents the disqualification.

7.4.4.7. The process continues as the search for active, vacant jobs continues with the employee/candidate taking a proactive role. If after 90 days of time has elapsed from when the search for jobs in other department commenced, and placement into a lateral position or demotion does not occur, the *Priority Reassignment* process and the interactive process concludes. The record is documented that due diligence was applied in assisting the employee with reasonable accommodation.

7.4.4.8. Hiring managers will be allowed one (1) week to review the application. As noted, if the *Priority Reassignment* candidate is rejected, the manager selects the appropriate box on the *Candidate Disposition Form*. Detailed reasons regarding the essential functions (required skills) the employee does not possess, in relation to the job, must be documented in writing on the *Candidate Disposition Form*. The hiring manager provides the appropriate information disqualifying the *Priority Reassignment* candidate. (*See Candidate Disposition Form.*)

7.4.4.9. If there is disagreement amongst the hiring manager, the Human Resources Generalist and the Return-to-Work Specialist concerning the decision to disqualify the employee/candidate, a conference will be scheduled to discuss the reasons for the disqualification and further discussion will be opened regarding the means to reasonably accommodate the employee, if possible. Employee and Labor Relations and/or the Lab's Legal Counsel may be asked to provide further input.

7.4.4.10. For Workers' Compensation cases only:

7.4.4.10.1 If the employee secures alternative employment through the *Priority Reassignment* process, the Return-to-Work Specialist informs the appropriate Claims Administrator via email of the accommodation.

7.4.4.10.2 If the employee does not secure alternative employment through the *Priority Reassignment* process, the Return-to-Work Specialist informs the appropriate Claims Administrator via email of this lack of permanent modified or alternate work for possible consideration and/or receipt of the Supplemental Job Displacement Benefits (SJDB) voucher.

7.4.4.11. At the conclusion of the *Priority Reassignment* process, the home department supervisor or the Human Resources Generalist assigned to the home department meets with or calls the employee to discuss results and options (e.g., disability retirement or medical separation). The Benefits Analyst may also refer the employee to the Benefits Office for consultation.

7.4.4.12. If medical separation occurs, copies of the medical separation letter (both the Intent to Medically Separate and final Medical Separation Notification) will be provided to the Integrated Disability Management group in Health Services.

7.4.4.13. In the case of a *Priority Reassignment* case, the Return-to-Work Specialist summarizes the *Priority Reassignment* results in the *Interactive Process Activity Sheet* form, copies of which may be given to the employee's home department and Human Resources Center.

7.4.5 Follow-Up of Reasonable Accommodation

The Human Resources representative and the supervisor should follow up with the accommodated employee so that the appropriateness of the accommodation provided is assessed to ascertain if it is effective in allowing the employee to perform the essential job duties on an on-going basis. If there are questions or concerns, the Return-to-Work Specialist should be contacted. Factors to be considered:

7.4.5.1 Is the accommodation working for the employee?

7.4.5.2 Is the accommodation safe for the employee and others in the workplace?

7.4.5.3 Are there any additional, unknown, disability issues that have surfaced or have there been job changes that affect the employee's ability to perform the essential job functions?

7.4.6 Documentation of the Interactive Process and Reasonable Accommodation

All activities (meetings, phone calls, emails, and correspondence) related to the interactive process and the resulting reasonable accommodation(s) of the employee shall be documented on the *Interactive Process Documentation Sheet* by the Return-to-Work Specialist. A list of reasonable accommodations shall be maintained by the supervisor and/or Human Resources representative and housed in the employee's personnel file. All medical information is contained in Health Services and only work restrictions should be documented in the personnel file.

Footnote: ¹

Americans with Disabilities Act of 1990 (Federal law):

<http://www.ada.gov/pubs/ada.htm>

<http://www.eeoc.gov/policy/docs/accommodation.htm>

California's Fair Employment & Housing Act (State law):

<http://www.dfeh.ca.gov>

<http://www.dfeh.ca.gov/about/fehaDescription.aspx>

Equal Employment Opportunity Commission rules regarding the ADA:

<http://www.eeoc.gov/types/ada.html>

Additional Resources:

The Job Accommodation Network (JAN) 1-800-526-7234

www.jan.wvu.edu

U.C. Office of the President Human Resources/ Benefits

<http://www.ucop.edu/humres/welcome.html>