



CITY OF NEWPORT NEWS PERSONNEL ADMINISTRATIVE MANUAL

Effective: 4/01/08

SECTION 1201	SUBJECT NON-OCCUPATIONAL DISABILITIES POLICIES, PROCEDURES AND GUIDELINES
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I. GENERAL

The purpose of this policy is to provide guidance for determining the appropriate course of action for situations in which an employee cannot perform the essential functions of his/her job due to a non-occupational disability.

Any employee who has a medical disability which prevents the employee from effectively and safely performing the essential functions of his/her job and any employee with a medical condition that may endanger or adversely affect the employee, other employees, the public or work operations will not be permitted to work at his/her regular job. The City will attempt to make reasonable accommodation(s) for employees with disabilities. However, each case of disability is considered individually with the appropriate course of action based on its specific circumstances. Factors considered in formulating appropriate action include the essential functions of the position, the nature and anticipated duration of the disability, the applicability of any federal, state or local regulations, the reasonableness of any accommodation, and any other relevant information.

Policies dealing with employee paid personal leave, paid medical leave, unpaid leaves of absence, attendance and related issues are found in other sections of the Personnel Administrative Manual and may apply to these situations. In addition various federal and state laws and regulations including the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA) may also apply to employees with disabilities. Designated managers are advised to consult with representatives of the Department of Human Resources for assistance in dealing with and coordinating these issues. Other provisions that may apply including the Retirement Plan, the City's Medical Insurance Plan and short and long-term disability programs are administered by the Finance Department.

II. DEFINITIONS

For the purpose of this policy, the following terms shall have the meanings ascribed to them unless the context clearly indicates otherwise:

- A. "Medical Officer" and "City Medical Officer" - any physician or other health care provider, hospital, medical institution or laboratory employed by or under contract to the City of Newport News to provide medical services, including consulting and advisory services, and shall include any employee or agent thereof.

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- B. "Health Care Provider" - physicians, osteopaths, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, Christian Science practitioners, and any health care provider that is recognized by the City of Newport News group health insurance plan.
- C. "Designated Manager" - each department and division may designate a level of management or a specific employee(s) to handle situations arising under this policy. Designated employees are hereinafter referred to as "Designated Manager" regardless of position held.
- D. "Department Head" - head of department or manager designated by the Department Head.
- E. "Director of Human Resources" - head of the Department of Human Resources or manager designated by the Director of Human Resources.
- F. "Disability" - any physical or mental impairment which renders the employee unable to perform the essential functions of the job, regardless of the duration of the disability. For purposes of application of the Americans With Disabilities Act (ADA), the definitions set forth therein shall apply.
- G. "Essential Functions" - the fundamental job duties and responsibilities and the basis for the job itself. A more detailed definition of essential functions is stated in Section 300, Employment Definitions. The essential functions and physical demands of a job are identified through a job review process.

III. INITIAL PROCEDURES

When an employee claims he/she cannot perform the functions of his/her job or it otherwise appears to a supervisor that the employee cannot perform the functions of the job for any period of time, the employee's supervisor or designated manager shall discuss the situation with the employee to determine the appropriate course of action. While each case is to be individually reviewed and determined, the following general policies and provisions apply in most instances of employee disability, regardless of duration.

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- A. When an employee claims he/she cannot perform one or more of the functions of his/her regular job, the employee's supervisor or designated manager shall immediately determine from the employee what function(s) cannot be performed and the employee's restrictions. If the restrictions appear to be of a temporary nature, the designated manager has the option to approve leave in accordance with applicable City policies or to make a temporary accommodation for the employee's work restrictions in accordance with paragraph V, section A.
- B. If a designated manager believes an employee is not medically able to effectively or safely perform the essential functions of his/her job or believes the employee is a danger to himself or others, the designated manager shall consult with Human Resources. Courses of action may include requiring the employee to be evaluated by the employee's health care provider or by a City Medical Officer to determine fitness for duty and any applicable work restrictions. See paragraph VIII. The designated manager may also require that the employee leave the workplace and take leave in accordance with applicable City policy.
- C. Supervisors are cautioned to exercise extreme care if an employee appears to be ill or impaired on the job. If the employee's condition appears to be such that the employee should not drive, the designated manager shall arrange for appropriate transportation. If necessary, the designated manager may have the employee driven home or to a medical facility in a City vehicle by another City employee. If the employee's condition appears serious, the designated manager shall summon medical assistance immediately.

IV. MEDICAL CERTIFICATION AND EVALUATION

- A. An employee may be required to obtain and present certification from his/her health care provider supporting the need for leave of any duration or to obtain medical certification stating the employee's fitness for duty and/or work restrictions. Periodic evaluations may also be required to support the need for continued leave or restrictions. See paragraph V., B., 1. c.
- B. In some circumstances, the designated manager may require an employee to be evaluated by the City's Medical Officer to determine fitness for duty prior to granting leave or returning to work. Such cases must be approved by and coordinated by the Department of Human Resources. Some restrictions apply to cases covered by FMLA.

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V. ACCOMMODATION

Section A below states policies and procedures governing accommodation of temporary disabilities. Departments are encouraged but not required to accommodate employees with temporary disabilities.

General policies and procedures governing accommodation of permanent or long-term disabilities are stated in Section B below. In any case of permanent or long-term disability, the designated manager shall consult with the Department of Human Resources to determine applicable accommodation requirements and procedures. The City will attempt to provide reasonable accommodation for employees with disabilities covered by the Americans With Disabilities Act (ADA).

If an employee is offered modified duty or an alternative assignment for either a temporary or long-term disability and the employee refuses, the employee will be granted any leave covered by FMLA but paid medical leave may not be charged. The employee may charge leave to any accrued paid personal leave or compensatory time as applicable or may take unpaid leave in accordance with City policy. If leave is not protected by FMLA and the employee declines the assignment, the employee may be subject to disciplinary action. See Section 703, Leave for Medical Purposes.

A. Temporary Disabilities

1. Procedure

Managers are encouraged to make reasonable accommodation for disabilities which are expected to continue for six (6) months or less to allow an employee to remain at work in a modified or light duty capacity as stated below. However, there is no requirement to accommodate a temporary disability.

Generally, if such temporary accommodation is made, it shall not exceed six (6) months from the date of disability and will be periodically reviewed by the Department Head and the Director of Human Resources for determination as to whether the accommodation will be continued. While not required, a temporary accommodation may be extended by the Director of Human Resources for up to three months beyond the up to six month period when medical information supports that the employee is making improvement and will be able to return to full

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unrestricted duty within the three month period, and it is likely that the employee's former job or a job of similar level and status will be available. Factors that will be considered are the work the employee is performing, the department's operating requirements, reasonableness of the accommodation, the knowledge, skills and abilities of the employee, the difficulty in filling the job or modifying the assignment held by the employee, and other relevant factors.

If at any time the employee's disability is considered by the City to be covered by ADA, the provisions of section B below will apply.

2. Types of Reasonable Accommodation For Temporary Disabilities

Reasonable accommodations for temporary disabilities may include assigning the employee to other job duties if such are available, temporarily restructuring or modifying the employee's job duties to accommodate the employee's work restriction(s), and allowing the employee to work less than a full workday or work week. Other types of accommodation may be appropriate in particular cases. The following guidelines deal with two forms of temporary accommodation:

a. Temporary Job Modification

A department may temporarily modify an employee's job or position to meet the restrictions of the employee.

In determining whether to temporarily modify a job, departmental management will consider the nature of the work, the employee's work restrictions, the importance and frequency of the essential functions the employee cannot perform, the availability of others to do the functions that the employee cannot perform, the department's need for work that the employee can perform, any safety implications, and any other relevant factors.

A temporary job modification requires that all the work performed by the employee be the regular work of the job, not different work, (unless temporarily reassigned under subparagraph b. below) and the employee must be able to effectively and productively perform most of the essential functions of the job.

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b. Temporary Reassignment

An employee may be temporarily assigned to another job, another division, another department or another work location at the discretion of the employee's department head, the Director of Human Resources or the City Manager. When a reassignment is made, such assignment is regarded as transitional with the objective of facilitating the employee's return to his/her regular job.

In determining whether to make a temporary reassignment, the Department Head or designated manager will consider the availability of other work the employee can perform at the time, the qualifications of the employee to perform other necessary work which may be available at the time, the nature and anticipated duration of the employee's condition, the employee's work restrictions, the needs of the City and any other relevant factors.

Departments shall not maintain permanent "light duty" work assignments. Rather, the City's and the department's current needs are assessed at the time an employee with a temporary disability is being evaluated for temporary reassignment.

3. Status, Compensation and Benefits During Temporary Disability or Temporary Reassignment of less than Six (6) months

During the period an employee is temporarily assigned to other duties or the employee's job duties are temporarily modified in accordance with this policy, the employee's status, base salary and benefits will remain the same as the employee was receiving at the time the disability commenced.

If an employee works less than a full time schedule, the time not worked will be charged to appropriate available leave or taken as unpaid leave if paid leave is not available to the employee. Contact the Department of Human Resources for information regarding special provisions that may apply to employees in exempt positions.

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4. Provisions Governing Exhaustion of Leave or Leave of Absence and Situations in which the Disability Cannot Be Reasonably Accommodated

When an employee has a temporary non-occupational disability that cannot be reasonably accommodated or when any period of temporary accommodation is exhausted and the employee cannot return to full unrestricted duty in his/her regular position or another City job cannot be located, the employee will be placed on applicable paid leave, if available, and then on unpaid leave of absence in accordance with applicable City policy.

At the end of any unpaid leave of absence when the employee has not returned to full unrestricted duty in his/her regular position or the employee has not been placed in another City job, the employee shall be terminated provided the employee's FMLA benefits have been exhausted. However, before any action is taken, the department head shall consult with Human Resources.

If the employee is transferred to another budgeted position within the City, the employee's pay and benefits will be governed by the new position in accordance with applicable City policies.

If the disability exceeds six months or appears to be long-term, the employee will also be subject to provisions governing long-term disabilities. See Section B.

5. Other

Situations arising from normal pregnancy and childbirth are treated as any other temporary disabilities.

B. Long-term Disabilities

1. Procedure

a. At any time it appears an employee will be disabled from performing the essential functions of the employee's job for more than six (6) months due to a non-occupational injury/disease, the City will conduct a process to determine the appropriate course of action.

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- b. The designated manager of the employee's department shall consult with the Director of Human Resources.
 - c. The designated manager and the Director of Human Resources will review the employee's job requirements and medical information. The employee may be required to provide additional information from their health care provider and the City may also require the employee be evaluated by the City's Medical Officer.
 - d. The City will enter into an interactive process with the employee to identify restrictions and to identify and evaluate potential reasonable accommodations.
 - e. The Director of Human Resources will review all relevant information and make a determination in accordance with the Americans with Disabilities Act (ADA) as to whether the City is able to identify and provide reasonable accommodation. The employee's department, the City Attorney's Office, the Benefits Office, the City's Medical Officer and others as deemed appropriate may be consulted.
2. Long-term Disabilities Not Covered by ADA

There is no requirement to make accommodations for work restrictions of an employee with a disability which is not covered by ADA. The City will not permanently alter the essential job functions or assign an employee to another budgeted position as an accommodation.

Marginal job functions may be modified or eliminated and other reasonable accommodations may be made as long as the employee can perform all the essential functions of the job. In determining whether accommodations may be made, the designated manager and Director of Human Resources will consider factors such as the nature of the disability and work restrictions, the reasonableness and availability of accommodation, the ability of the employee to perform the essential functions of the job and other relevant factors.

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An employee may apply for other City jobs, however, the employee is not given preference and all regular selection procedures shall apply. If the employee is transferred to another job, the employee's rate of pay and status is governed by the new position and subject to adjustment in accordance with applicable City policies.

3. Disabilities Covered by ADA

ADA regulations prescribe several accommodations which must be considered in ADA cases. The City follows ADA provisions in attempting to make a reasonable accommodation for an employee with a qualifying disability. The following paragraphs deal with several accommodation approaches but do not constitute a complete list. Each ADA situation is reviewed individually to determine the appropriate course of action based on all relevant factors.

a. Accommodation in the Employee's Current Job

Consideration shall be given to determine if the employee can be reasonably accommodated in his/her current job by adjusting work schedules, providing assistance devices and equipment, providing interpreters, modifying work spaces or other similar actions which enable the employee to perform all the essential functions of the job.

b. Job Modification

Restructuring the position by reallocating or redistributing marginal functions shall also be considered. The essential functions of a job or position will not be reassigned or eliminated as an accommodation for a disability.

c. Assignment to Another Job

When it is determined that the employee cannot be accommodated in the job as stated above, another form of accommodation is to assign the employee to a current vacant position or a position which may be available in the immediate future for which the employee meets the minimum qualifications. This requirement applies first to jobs at a level equivalent to the employee's

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current position. If such are not immediately available then reassignment to lower level jobs shall be considered. Such placement will supersede all regular advertising, recruitment and selection processes. Placement determinations and rates of pay are made by the Director of Human Resources. There is no requirement under ADA to create a job or to promote an employee as an accommodation.

4. Status, Compensation and Benefits of Employee with Long-term Disabilities

Employees who are unable to perform the essential functions of their job are eligible for accommodation, alternative employment, paid leave, unpaid leave, and an unpaid leave of absence in accordance with applicable City policies and such actions will determine the employee's compensation, status and benefits. Employees may also be eligible for benefits under FMLA and ADA if applicable.

5. Exhaustion of Leave/Leave of Absence/Disability cannot be Reasonably Accommodated

Employees shall be terminated when the City is unable to make reasonable accommodation and after the employee has exhausted all accumulation of paid leave and unpaid leave of absence in accordance with City policy provided applicable provisions of FMLA and ADA have been satisfied. Employees may qualify for retirement or disability benefits and should be referred to the Department of Finance for information and assistance prior to a termination.

C. Recurring Disabilities

Should an employee experience more than two periods of disability, whether temporary or long-term, which exceed the periods protected by FMLA within a five (5) year period, the employee will be granted only statutory FMLA and ADA benefits.

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VI. RETURN TO WORK

- A. This section applies to employees who are released to return to work within any period of paid absence or unpaid leave of absence when the employee's job has been held open.

The designated manager is responsible for verifying that the employee is medically able to perform the essential functions of his/her position before allowing or requiring the employee to return to regular duty.

The designated manager shall require the employee to obtain certification from his/her health care provider that he/she is able to return to work and what, if any, restrictions apply. The designated manager, in consultation with the Department of Human Resources, may require an evaluation by the City's Medical Officer. Separate provisions may apply to cases covered by FMLA and designated managers are advised to consult with Human Resources.

- B. If the need for leave cannot be substantiated by information provided by the employee or by the City's Medical Officer, the employee shall be required to return to work. Separate provisions may apply to cases covered by FMLA. The employee's department head shall consult with the Director of Human Resources prior to requiring an employee to return to work in such cases.

VII. STATUS OF POSITION DURING DISABILITY, LEAVE, LEAVE OF ABSENCE, REASSIGNMENT OR ACCOMMODATION

The position of an employee who is unable to perform the essential functions of the job due to a disability will be held open for a reasonable period of time, but not less than the 12 week period required under FMLA. The Director of Human Resources is authorized to make final determination as to when the position will no longer be held open pending the employee's return. In order to make the determination, the Department Head and the Director of Human Resources will periodically review the situation to include operating needs, prognosis by the employee's treating physician regarding the anticipated return to unrestricted employment in his/her regular position, applicable provisions of FMLA and ADA, and other relevant factors, regulations and circumstances. Should the employee subsequently be able to return to work, the employee will be eligible to apply for vacant positions within the City. The status of the employee is governed by the provisions of this policy and by other applicable City policies.

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VIII. MEDICAL EVALUATION BY THE CITY'S MEDICAL OFFICER

The employee's department head, in consultation with the Director of Human Resources, or the Director of Human Resources in his/her sole discretion, may require that an employee be evaluated by the City's Medical Officer to determine the employee's fitness for duty and the appropriate course of any action when:

- the employee has claimed a medical condition which disables the employee from performing his/her job or;
- in the opinion of an employee's supervisor and department head, the employee is not able to effectively perform his/her job or;
- the employee has requested leave for medical reasons and confirmation is needed to respond to the request or;
- there is concern for the employee's safety or the safety of others or;
- it is necessary to confirm the employee's ability to return to regular duty or to identify work abilities or work restrictions.

This evaluation may be instead of, or in addition to, a requirement that the employee be evaluated by the employee's health care provider. All such referrals are coordinated by the Department of Human Resources to ensure appropriate coordination of information and compliance with FMLA and any other applicable regulation. The Director of Human Resources will discuss the essential functions and physical demands of the position and the behavior exhibited by the employee with the City's Medical Officer. The City's Medical Officer may examine the employee, obtain medical records, refer the employee to other health care providers and take any other actions necessary to conduct a thorough evaluation and determination of the employee's condition. The City will bear the costs of initial medical tests, evaluations, and diagnostic procedures ordered by the City's Medical Officer to determine a diagnosis. Once a diagnosis has been determined by the City's Medical Officer, subsequent diagnostic procedures and treatment for any condition will be borne by the employee.

Failure by an employee to participate in the evaluation process and to participate in an acceptable recovery regimen may result in disciplinary action, to include termination.

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IX. REFERRAL FOR PSYCHOLOGICAL EVALUATION

In the context of this policy, the employee's department head, Director of Human Resources, or the City's Medical Officer may recommend or require psychological evaluation of an employee. The employee may be referred to the Employee Assistance Program (EAP), the City's Medical Officer or to another agency or professional organization or individual for evaluation.

In the event of a mandatory referral, the employee is required to authorize the release of information by the City's Medical Officer and/or health care providers to the employee's department head and to the Director of Human Resources regarding the employee's identified problem. Disclosures made by the City's Medical Officer and/or health care providers shall include only relevant information that the providers in their professional judgment believe is directly related to the specific issues and is necessary to appropriately handle the case. Prior to mandatory referral, all cases should be approved by the Director of Human Resources.

If the employee has sought treatment on his/her own initiative, then the department head may require that the employee authorize release of appropriate information as stated above or the department head may refer the employee to the City's Medical Officer or to another provider on a mandatory basis.

There is no requirement that an employee who has engaged in misconduct be referred for psychological evaluation and treatment before personnel action is taken nor is an employee participating in treatment protected from having personnel action taken.

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