



West Virginia Department of Transportation Policy: **Medical Accommodation Policy**

Issued by the Secretary of Transportation

Policy No: DOT 3.2

Issue Date: 07/15/2002

Revised: 11/22/2022

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1.0 PURPOSE

The West Virginia Department of Transportation (WVDOT) recognizes the need for continued and sustained employment of employees who have medical condition(s) or a qualifying event under the Family and Medical Leave Act (FMLA) that limits or prevents them from performing essential functions of their currently assigned job classification and job duties.

Such recognition extends to employees injured on the job as well as those whose impairments did not arise from employment.

WVDOT further recognizes and supports the requirements of State and Federal laws, rules, and regulations regarding the rights of employees who have physical and mental disabilities.

2.0 SCOPE

This policy applies to all WVDOT employees, excluding Parkways Authority employees.

3.0 DEFINITIONS

- 3.1 **Agency**: means any authority, bureau, commission, or Division or similar cabinet subpart of the WVDOT.
- 3.2 **Agency head**: means the chief executive officer of an agency.
- 3.3 **Americans with Disabilities Act (ADA) Committee**: inclusive of at least one member of the Human Resources (HR) Division, the Legal Division's Employment Section, the ADA coordinator, and any other agency representative as determined from time to time by the Secretary or his or her agency designee.
- 3.4 **District Manager**: means the administrative head of the District regardless of whether the person is an engineer or another classification.
- 3.5 **Division Director**: is the administrative head of a WVDOT Division.
- 3.6 **Employee**: A person who lawfully occupies a position in a WVDOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship.
- 3.7 **Fitness for Duty Examination**: A medical or psychological examination and evaluation by a medical practitioner to determine if an employee is able to perform his or her duties without a medical accommodation or with a revised medical accommodation.
- 3.8 **Impairment**: A medically documented physical or mental condition that temporarily or permanently limits an employee's ability to perform essential functions of a currently assigned job classification and job duties.

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- 3.9 **Marginal Job Functions:** Refers to those functions constituting part of a job that are accessorial, extra, incidental, nonessential, or peripheral.
- 3.10 **Medical Practitioner:** A medical doctor, certified physician's assistant or nurse practitioner licensed to practice medicine in West Virginia or in the State where treatment is being provided to the employee.
- 3.11 **Productive:** Refers to work that advances the mission of the organizational unit.
- 3.12 **Medical Accommodation Agreement:** A written agreement entered into by WVDOT, the employee, and the supervisor of the employee that sets forth terms and conditions of the medical accommodation; the time frame for the medical accommodation; the respective responsibilities of the employee and the employee's supervisor; and other information, terms, or conditions, as deemed relevant by Medical Accommodation Committee.
- 3.13 **Medical Accommodation Committee (MAC):** A committee inclusive of at least one member of the Human Resources (HR) Division, the Legal Division's Employment Section, the ADA Committee, and any other agency head, as determined from time to time by the Secretary or his or her agency designee. In each case, the committee will also include the Division Director or District Manager and the agency safety personnel, if necessary, or other subject-matter expert, who shall advise the core committee members on the job duties and tasks of the employee, the agency's needs, safety concerns, and any impact the medical accommodation may have on the agency's ability to conduct business.
- 3.14 **Qualifications:** The minimum training and experience requirements of a job classification as established by the HR Division; or transitional training requirements established by WVDOT.
- 3.15 **Reasonable Accommodations:** A modification or adjustment to a job, the work environment, or how the job is usually done or a transfer to an appropriate position for which the employee qualifies thus enabling the employee with a (permanent or temporary) disability to successfully perform essential functions of a job.
- 3.16 **Safe:** Refers to job duties that are within the physical capabilities of the employee which the employee is permitted to perform by their medical practitioner.
- 3.17 **Secretary:** Secretary of WVDOT.
- 3.18 **Transitional Training Requirements:** The minimum education, experience, or combination thereof an employee must possess to enter an on-the-job training program designed to permit transfer to a position, the essential functions of which the employee is capable of performing with or without reasonable accommodation.
- 3.19 **Temporary Transitional Employment:** Temporary assignment of an employee to job duties with essential functions the employee can safely perform until able to return to regular duties; or return to the pre-injury or pre-illness job with temporary suspension of some of the essential functions. Provided, however, that such temporary transitional employment must also be productive work that advances the mission of WVDOT and the organizational unit involved. Temporary transitional

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employment assists the employee to assess future ability to return safely and productively to performing the pre-injury or pre-illness work. Program expectations may include documented progress toward full duty.

- 3.20 **Undue Hardship**: A situation where the reasonable accommodation required for an employee's return to work would cause significant difficulty or requires significant expense. Significant difficulty may be considered in light of the impact of the accommodation upon the operation of the organizational unit, including the impact on the ability of other employees to perform their duties and the impact on the organizational unit's ability to conduct business.
- 3.21 **Workers' Compensation Section**: members of the HR Division tasked to evaluate and assist WVDOT employees with Workers' Compensation claims.

4.0 POLICY

- 4.1 WVDOT will take action to lawfully attempt reasonable medical accommodations for an employee, unless undue hardship exists, who is determined by a medical practitioner to be temporarily or permanently disabled from performing essential functions of the currently assigned job classification and job duties.
- 4.2 WVDOT will attempt to return an employee to modified or alternative work as soon as possible following injury or illness so the employee may continue as a valuable member of their organizational unit while recovering from the temporary or permanent injury or illness.
- 4.3 WVDOT will assess a position's suitability based on operational needs, the essential job functions of the position, the employee's ability to perform the essential job functions, and the employee's individual skill set.
- 4.4 WVDOT may require a Fitness for Duty Examination by the employee's treating medical practitioner or by a medical practitioner of WVDOT's choosing to determine if an employee is able to perform his or her duties without a medical accommodation or with a revised medical accommodation.
- 4.5 In cases of occupational injury in which Workers' Compensation guidelines are applicable, WVDOT follows job placement priorities for employees returning to safe and productive work that include:
- A. Return to the pre-injury job.
 - B. Return to the pre-injury job with modification of tasks, work structure, or hours.
 - C. Return of the employee to temporary employment in a different position.
 - D. Return of the employee to temporary employment in a different position with on-the-job training.

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5.0 MEDICAL ACCOMMODATION POLICY FOR EMPLOYEE INJURED ON THE JOB

- 5.1 When, due to a compensable occupational injury or illness, an employee has a physical or mental impairment that substantially limits their ability to perform the essential functions of the currently assigned classification and job duties, the employee may request and apply for a medical accommodation by requesting the necessary paperwork from their District or Division HR representative. (Reference DOT-L13 Physician's/Practitioner's Statement).
- 5.2 An employee injured on the job may be reinstated to their former position and duties upon written verification from the treating medical practitioner that the employee can perform full or modified duty that is determined to be safe and productive.
- 5.3 A Medical Accommodation Agreement ([Form RW-4A Medical Accommodation Agreement – Workers Compensation Transitional Return to Work Agreement](#)) must be entered into by WVDOT, the employee, and the employee's immediate supervisor if a medical accommodation is requested and approved.
 - A. The Medical Accommodation Agreement will be drafted by MAC and then shall be shared by the employee's supervisor with the employee. Upon execution of the Medical Accommodation Agreement by both the employee and the employee's immediate supervisor, the Medical Accommodation Agreement shall be returned to MAC.
 - B. If the employee has been absent from work due to injury or illness, a written verification from the treating medical practitioner releasing the employee to return to work must be provided before the employee may be considered for reinstatement to their former position and duties. When the written verification from the treating medical practitioner releasing the employee to return to work includes specific restrictions of a temporary nature, MAC will determine if transitional modified duty is a safe and productive possibility.
- 5.4 Modifications or alternate assignment will be for a specific period of time, typically not to exceed **30-day increments**. In some cases, the Medical Accommodation Agreement will align with the timeframe specified by the treating medical practitioner, which may be longer than 30 days.
- 5.5 If marginal job functions are the only duties the employee is unable to perform, the employee's position may be modified such that the marginal functions will not be required or will be required only to the extent the employee can perform them to ensure safe and productive work.
- 5.6 Each case will be considered individually by WVDOT to determine if removal of marginal job functions will place an undue hardship on the agency or the organizational unit, and thus constitute an unreasonable accommodation.
- 5.7 In Workers' Compensation cases, reasonable accommodations, modifications of

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job duties, or a combination thereof to address temporary restrictions must be agreed upon by MAC, Workers' Compensation Section designee, in conjunction with the supervisor. Provided, if the supervisor concludes the restrictions can be accommodated with safe and productive work but the MAC, Workers' Compensation Section designee is not immediately available, the employee should be returned to work and the Workers' Compensation agreement, and a Medical Accommodation Agreement will be completed as soon as possible.

- 5.8 If an employee returns to work with medically imposed limitations under the terms of this policy and subsequently is deemed unable to perform the essential functions of the position as modified, the employee may be placed on leave consistent with WVDOT Employment Procedures, WV Code of State Rules, § 217-1-1 *et seq.*, or considered for other positions consistent with this policy.

6.0 MEDICAL ACCOMMODATION POLICY FOR EMPLOYEE WITH NON-OCCUPATIONAL INJURY OR ILLNESS

- 6.1 When, due to causes other than compensable occupational injury or illness, an employee has a physical or mental impairment that substantially limits their ability to perform the essential functions of the currently assigned classification and job duties, the employee may request and apply for a medical accommodation by requesting the necessary paperwork from their District or Division HR representative. ([Form DOT-L13 Physician's/Practitioner's Statement](#)).
- 6.2 Such requests for medical accommodation are considered and administered by MAC.
- 6.3 A Medical Accommodation Agreement ([form RW-4B Medical Accommodation Agreement – Non-Work-Related Transitional Return to Work Agreement](#)) must be entered into by WVDOT, the employee, and the employee's immediate supervisor if a medical accommodation is requested and approved.
- A. The Medical Accommodation Agreement will be drafted by MAC and then shall be shared by the employee's supervisor with the employee. Upon execution of the Medical Accommodation Agreement by both the employee and the employee's immediate supervisor, the Medical Accommodation Agreement shall be returned to MAC.
- B. If the employee has been absent from work due to injury or illness, a written verification from the treating medical practitioner releasing the employee to return to work must be provided before the employee may be considered for reinstatement to their former position and duties. When the written verification from the treating medical practitioner releasing the employee to return to work includes specific restrictions of a temporary nature, MAC will determine if transitional modified duty is a safe and productive possibility.
1. In cases where injury or illness does not permit the medical accommodation approval process to be completed by MAC prior to the need by the employee for a medical accommodation, with a written verification from the treating medical practitioner, an

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exception may be granted for a maximum of 30 days.

2. Modifications or alternate assignment will be for a specific period of time, typically not to exceed 30-day increments. In some cases, the Medical Accommodation Agreement will align with the timeframe specified by the treating medical practitioner, which may be longer than 30 days.
- 6.4 If marginal job functions are the only duties the employee is unable to perform, the employee's position may be modified such that the marginal functions will not be required or will be required only to the extent the employee can perform them to ensure safe and productive work.
- 6.5 Each case will be considered individually by WVDOT to determine if removal of marginal job functions will place an undue hardship on the agency or the organizational unit, and thus constitute an unreasonable accommodation.
- 6.6 In non-workers' compensation cases, reasonable accommodations, modifications of job duties, or a combination thereof to address temporary restrictions must be approved by MAC in conjunction with the supervisor. Provided, if the supervisor concludes the restrictions can be accommodated with safe and productive work but MAC is not immediately available, the employee should be returned to work and MAC's approval will be obtained and required paperwork will be completed as soon as possible.
- 6.7 If an employee returns to work with medically imposed limitations under the terms of this policy and subsequently is deemed unable to perform the essential functions of the position as modified, the employee may be placed on leave consistent with WVDOT Employment Procedures, W.Va. Code of State Rules, § 217-1-1 *et seq.* or considered for other positions consistent with this policy.

7.0 MEDICAL ACCOMMODATION POLICY FOR EMPLOYEES WITH PERMANENT DISABILITIES

- 7.1 In permanent impairment or disability cases, reasonable accommodations or modifications of job duties will be assessed and approved by the ADA Committee.
- 7.2 Whether due either to an on-the-job injury or a non-work-related injury or illness, if an employee has reached maximum medical improvement with a permanent impairment or disability, the employee may request and apply for a reasonable accommodation through permanent job modification to enable performance of the essential functions of the current position. Such request will be evaluated by the MAC, ADA Committee through an interactive review process. The MAC, ADA Committee shall assess the residual functional capacity of the employee for the purpose of identifying options for reasonable accommodation.
- 7.3 If an employee has reached maximum medical improvement with a permanent impairment and no job modification can be employed to enable performance of the essential functions of the current position, the employee may be eligible for transfer

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to another position for which they are qualified, and the essential functions of which they can perform with or without reasonable accommodation. Provided, that such a position is available within the organizational and budgetary confines of the WVDOT. Such transfers will be subject to a reasonable period of evaluation by the ADA Committee, after which a determination will be made as to whether the employee is successfully performing the new duties.

- 7.4 As part of the interactive review process, the employee shall provide the ADA Committee with any necessary paperwork requested. Following is a list of forms utilized in the process. This list is not exhaustive and additional information maybe required.
- A. Department of Transportation ADA Review Committee Request for Reasonable accommodation
 - B. Department of Transportation ADA Review Committee Medical Authorization
 - C. Department of Transportation ADA Review Committee Medical Provider List
 - D. WVDOT Physician's/Practitioner's Statement DOT L-13

8.0 MEDICAL ACCOMMODATION ELIGIBILITY; ALTERNATE WORK LOCATION AS A MEDICAL ACCOMMODATION ELIGIBILITY

- 8.1 An employee who is currently working but needs a medical accommodation to continue working, may request and apply for a medical accommodation by requesting the necessary paperwork from their District or Division HR representative. ([Form DOT-L13 Physician's/Practitioner's Statement](#)).
- 8.2 For WVDOT to consider any request and application for a medical accommodation, the employee must comply with all requirements of this policy and any other steps required by WVDOT or WVDOT's Workers' Compensation carrier.
- 8.3 A medical practitioner's statement must plainly state the employee's specific work restrictions as well as the anticipated time frame for the restrictions. This information is preferably provided on the DOT-L13 form. If an alternative form is used, the same information must be included.
- 8.4 The employee must immediately share with the Division Director or District Manager any restricted duty work release provided by the attending medical practitioner.
- 8.5 The Division Director or District Manager must immediately share the restricted duty release with MAC.
- 8.6 In each case, the Division Director, District Manager, or his or her agency designee, will work closely with MAC to coordinate the medical accommodation efforts and will be responsible for introducing the employee back into the workplace

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in the modified or alternative arrangement as appropriate for safe and productive work.

- 8.7 An alternate work location as a medical accommodation may only be considered for those positions where the essential functions of the job can be accomplished at the approved location.
- 8.8 In determining whether a recommendation of suitability for an alternate work location as a medical accommodation will be made, MAC will consider the following:
 - A. The needs and objectives of the agency.
 - B. The essential functions of the job.
 - C. The ability to monitor output and employee performance.
 - D. Employee performance concerns.
 - E. Impact on the employee's "team."
 - F. Other conditions as deemed relevant or pertinent by WVDOT.
- 8.9 Employees who qualify for leave under the FMLA may be considered for the medical accommodation of an alternate work location.
- 8.10 All recommendations of suitability for an alternate work location as a medical accommodation made by MAC shall be presented to the Secretary or his or her designee for final review and approval or denial.
- 8.11 Upon approval of a recommendation of suitability of an alternate work location as a medical accommodation by the Secretary, MAC, the employee, and the employee's supervisor must enter into a Medical Accommodation Agreement.
- 8.12 Nothing in this policy should be construed as providing the right for any employee to work from an alternate work location. The decision is solely at the discretion of WVDOT.
- 8.13 Employees working from alternate work locations are subject to all policies, rules and laws of the agency and the state.
- 8.14 In order for an employee to be eligible for a medical accommodation permitting them to work from an alternate location, the following must be met:
 - A. The employee must have completed their probationary period.
 - B. An employee who has transferred to a new position, must have been in that position for a minimum of two (2) months.
 - C. The employee must have an EPA 3 rating of no less than "meets expectations" for the previous 12 months.
- 8.15 Employees who are permitted to work from an alternate work location must:

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- A. Work a standard five (5) days a week, eight (8) hours a day, Monday through Friday.
- B. Work no more than their scheduled hours.
- C. Communicate daily with his or her supervisor.
- D. Submit daily to his or her supervisor a work log indicating tasks performed that day.
- E. Have access to both phone service and internet with adequate bandwidth.
- F. If the employee experiences a power or network outage on a day that he or she is scheduled to work from an alternative work location the employee is to report the situation to his or her supervisor. If service interruption lasts longer than one hour, the employee is to report to their assigned office or take appropriate leave.
- G. Any exceptions from these requirements may only be made in writing and approved by the Secretary or his or her designee.
- H. Medical Accommodation Agreements will limit an employee to an eight (8) hour work day, however, if needed, WVDOT may allow an employee to work a reduced work schedule under the terms and conditions of the Medical Accommodation Agreement for that employee.

9.0 TERMS AND CONDITIONS OF THE MEDICAL ACCOMMODATION AGREEMENT

- 9.1 WVDOT will set forth in the Medical Accommodation Agreement:
 - A. The medical accommodation provided or to be made.
 - B. The timeframe for the medical accommodation.
 - C. The employee's work schedule.
 - D. The respective responsibilities and expectations of WVDOT, the employee, and the supervisor of the employee.
- 9.2 The Medical Accommodation Agreement will be re-evaluated by WVDOT with the employee on a specified time frame designated by the Medical Accommodation Agreement to determine if the medical accommodation provided is or continues to be beneficial to the employee and WVDOT, requires modification, or requires termination.
- 9.3 The employee and the employee's immediate supervisor will be required to acknowledge and execute the Medical Accommodation Agreement.
- 9.4 The agency head or his or her designee will be required to acknowledge, approve, and sign-off on the Medical Accommodation Agreement.

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- 9.5 WVDOT may include in the Medical Accommodation Agreement other information, terms, or conditions as deemed relevant or pertinent by WVDOT.
- 9.6 Any violation of a term or condition of the Medical Accommodation Agreement by the employee or the employee's supervisor will be cause for disciplinary action, up to and including dismissal from employment, and/or termination of the Medical Accommodation Agreement.
- 9.7 If the medical accommodation provided or to be made includes an alternate work location, the Medical Accommodation Agreement will additionally include:
 - A. The method of accountability to be used and specifications as to how productivity of the employee will be measured and evaluated.
 - B. The respective accountability of the employee and the employee's immediate supervisor for tracking productivity of the employee.
 - C. WVDOT will supply available and necessary office supplies and equipment for the employee to perform his or her duties.
 - D. WVDOT will not reimburse the employee for expenses associated with working from an alternate work location (i.e., supplies, internet fees, office furniture, utilities, taxes, etc.)

10.0 WAGE DIFFERENTIAL BENEFITS

- 10.1 In cases of compensable Workers' Compensation injury, the employee may be awarded Temporary Partial Rehabilitation (TPR) benefits pursuant to W. Va. Code §23-4-9(d) if the employee returns to work as part of a Medical Accommodation Agreement and the employee's new wage are less than the average weekly wage earned at the time of the injury.
- 10.2 The award of TPR is made by WVDOT's Workers' Compensation carrier.
- 10.3 Approved TPR benefits are calculated and issued upon receipt of pay documents delivered to WVDOT's Workers' Compensation carrier.
- 10.4 The aggregate award of TPR may not exceed 52 weeks per claim.
- 10.5 In cases of part-time return to work, leave will be accrued, and holiday pay will be made proportional to the hours worked.

11.0 RELEVANT MATERIALS/DOCUMENTS

- 11.1 [DOT-L13](#) [Physician's/Practitioners Statement](#)
- 11.2 [RW-4A](#) [Medical Accommodation Agreement - Workers Compensation Transitional Return to Work Agreement](#)

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11.3 [RW-4B Medical Accommodation Agreement – Non-Work-Related Transitional Return to Work Agreement](#)

12.0 CHANGE LOG

April 8, 2019 -

- Reviewed and revised by WVDOH Personnel, Workers' Compensation Section. Reviewed by WVDOH Civil Rights Compliance Division.
- Changed format per Policy and Procedure work group.

November 22, 2022 -

- Updated language to reflect current procedures.
- Revised for use by WVDOT.
- Updated language to reflect temporary accommodations for injured or impaired employees.
- Revised to cover all types of medical accommodation.
- Updated forms.

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Approved by:

Clarence J. Keller, P.E. Chief Engineer Transportation
for Jimmy D. Wriston, P.E.
Secretary of
Transportation
Commissioner of
Highways

11/22/2022
Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.