

## CHAPTER 4-11-02 RISK MANAGEMENT WORKERS' COMPENSATION PROGRAM

### Section

4-11-02-01	History and Purpose
4-11-02-02	Definitions
4-11-02-03	Reporting a Work-Related Injury
4-11-02-04	Medical Treatment
4-11-02-05	Transitional Duty - Conditions for Offer - Termination - Additional Transitional Duty
4-11-02-06	Transitional Duty - Compensation - Effect of Duties Assigned
4-11-02-07	Failure by Employing Authority to Participate in the Transitional Duty Program
4-11-02-08	Transitional Duty - Effect of Family and Medical Leave Act
4-11-02-09	Permanency
4-11-02-10	Eligibility for Reassignment

#### **4-11-02-01. History and purpose.**

The fifty-seventh North Dakota legislative assembly directed the risk management division of the office of management and budget to administer a single workers' compensation account for the state. The purpose is to reduce the cost of workplace injuries while enhancing the recovery of injured employees.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

#### **4-11-02-02. Definitions.**

Terms used in this chapter are as defined in North Dakota Century Code title 65, except that "employee" is limited to an employee who is employed by the state at the time the employee sustains a compensable work injury. Additionally:

1. "Employing authority" means the state entity that is the employer at the time the alleged injury occurred to the employee.
2. "First aid" means any one-time treatment of minor bruises, scratches, cuts, burns, splinters, and other incidents, which do not ordinarily require medical care. Treatment is considered first aid even when provided by registered professional personnel employed by the employing authority.
3. "Receiving authority" means a state entity other than the employing authority that provides the transitional duty to an injured employee who is temporarily unable to return to the preinjury position.
4. "State" means any agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, or office of the state.
5. "Transitional duty" means employment that includes only short-term duties that can be taught to the employee quickly and which fall within the employee's restrictions and physical limitations.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

#### **4-11-02-03. Reporting a work-related injury.**

1. The risk management workers' compensation program contact for the employing authority shall file a completed incident report which includes details of the employee's alleged injury, the cause, the contributing factors, and the action taken to prevent further occurrences. The contact shall fax the report to the office of management and budget risk management division within forty-eight hours of the occurrence or first report of the alleged injury unless the employing authority has an approved data management system to furnish monthly reports to the risk management division. All employing authorities must meet the forty-eight hour filing requirement for suspected time loss claims.
2. For injuries requiring treatment other than first aid, the employee or the employing authority, or both, shall complete a North Dakota workers' compensation claim for injury form (SFN 2828) and shall file both parts C1 and C2 of the SFN 2828 electronically with the bureau as soon as possible and no more than forty-eight hours after the employee seeks medical treatment from the preferred provider or the provider selected by the employee prior to the alleged injury.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

#### **4-11-02-04. Medical treatment.**

1. Immediately following an injury, the employing authority shall:
  - a. Assist the employee onsite; or
  - b. Arrange for the transport of the employee for treatment to the preferred provider or the provider selected by the employee prior to the alleged injury.
2. An employing authority may not render medical care beyond first aid except for emergency response by qualified personnel unless the employer has chosen an onsite provider as its designated medical provider. The designated medical provider must be staffed by licensed physicians and x-ray and laboratory personnel whose job description and qualifications include treatment of employees.
3. An employee with an alleged compensable injury may request to change medical providers by submitting a letter to the bureau and the risk management division indicating the employee's request and the name, address, and telephone number of the proposed new medical provider.
4. After each visit to a treating medical provider, an employee with an alleged compensable injury shall submit to the employee's supervisor the provider's assessment of the alleged compensable injury with any restrictions and recommendations noted. Each physical assessment must be reported on the North Dakota workers' compensation claim for injury form (SFN 2828) part C3 and be submitted to the employee's supervisor as soon as possible and no more than forty-eight hours after the employee's visit to the treating medical provider.
5. If an employee is on family and medical leave because of an alleged compensable injury, the employee must submit certification from a licensed provider of health care substantiating the need for family medical leave.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

**4-11-02-05. Transitional duty - Conditions for offer - Termination - Additional transitional duty.**

1. The state shall offer an employee with an alleged compensable injury transitional duty meeting the limitations or restrictions imposed on the employee's ability to work due to the alleged compensable injury. Priority must be given to offering transitional duty within the jurisdiction of the employing authority. If transitional duty is not available, the employing authority shall determine if transitional duty is available elsewhere with the state. Transitional duty is determined to be appropriate if:
  - a. The employee is unable to perform the duties of the employee's preinjury position;
  - b. The employee files, in a timely manner:
    - (1) A notice of the alleged compensable injury; and
    - (2) A claim for workers' compensation;
  - c. Appropriate transitional duty is available;
  - d. The employee's treating medical provider approves the transitional duty;
  - e. The transitional duty is not prohibited by the source that funds the employee's preinjury position; and
  - f. The employee would otherwise be employed by the employing authority if the employee had not incurred the alleged compensable injury.
2. Transitional duty offered pursuant to this section must be terminated by whichever of the following occurs earliest:
  - a. When ninety days have passed since the date the employee began the assignment;
  - b. When the employee's treating medical provider verifies that the employee has permanent restrictions preventing the employee from returning to the employee's preinjury position;
  - c. When the transitional duty is no longer available;
  - d. When the employee's treating medical provider verifies that the employee is capable of performing the duties of the employee's preinjury position;
  - e. When the employee's entire claim or claim for disability benefits is denied by the bureau;  
or
  - f. When the employee retires or otherwise terminates employment.
3. The state may extend the original transitional duty or offer an employee who has an alleged compensable injury additional transitional duty if:
  - a. The employee has returned to work at the employee's preinjury position and is temporarily unable to perform the duties of that position due to the alleged compensable injury; and
  - b. The additional transitional duty is recommended by the risk management division and the bureau.
4. If the employing authority is unable initially to provide transitional duty and transitional duty is found with a receiving authority, the transitional duty with the receiving authority must end if

transitional duty meeting the restrictions and limitations of the employee becomes available with the employing authority.

5. Transitional duty offered to an employee must be located twenty-five miles or less from the location of the employee's preinjury position, unless the employee agrees to accept transitional duty which is greater than twenty-five miles away from the location of the employee's preinjury position.
6. An employee must accept or decline transitional duty within twenty-four hours of receipt of the offer, when possible, and not later than two days. Failure by an employee to accept transitional duty that is approved by the employee's medical provider that is within twenty-five miles of the employee's preinjury position may jeopardize the employee's receipt of workers' compensation benefits.
6. If the employee is offered transitional duty with a receiving authority:
  - a. The transitional duty does not constitute a transfer to the position;
  - b. The employee shall be deemed to remain in the employee's preinjury position; and
  - c. The employing authority is responsible for the payment of the employee's salary and benefits.
7. An employing authority shall:
  - a. Coordinate with the receiving authority a description of the transitional duty to be offered to an employee with an alleged compensable injury; and
  - b. Review with the bureau and the office of management and budget risk management workers' compensation manager, after each physical assessment, the limitations placed on the injured employee by the medical provider to determine required adjustments to the transitional duty, if needed.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

#### **4-11-02-06. Transitional duty - Compensation - Effect of duties assigned.**

1. An employee who accepts transitional duty is entitled to receive the preinjury wage and the benefits of the employee's preinjury position for the number of hours the employee works or is on paid leave during the transitional duty.
2. For the duration of the transitional duty, the duties assigned to the employee may not be used to reclassify the employee's regular position or to reallocate the class in which the employee is employed.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

#### **4-11-02-07. Failure by employing authority to participate in the transitional duty program.**

1. The risk management division of the office of management and budget may impose a surcharge of twenty-five dollars per day upon an employing authority for each calendar day the employing authority fails to provide transitional duty to an employee with an alleged compensable injury if:

- a. The employee has been off work for at least five consecutive calendar days;
  - b. A position is available to meet the employee's limitations and restrictions; and
  - c. The employee has been cleared for transitional duty by the treating medical provider.
2. The risk management division of the office of management and budget shall deposit any funds collected pursuant to this section in the risk management workers' compensation fund.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

#### **4-11-02-08. Transitional duty - Effect of Family and Medical Leave Act.**

An employee who is placed on family and medical leave by the employing authority because of an alleged compensable injury may not be required to accept transitional duty offered in lieu of continuing on family and medical leave. If, however, an employee accepts transitional duty while on family and medical leave, the employee retains the right to be returned to the employee's preinjury position or an equivalent position upon expiration of the employee's family and medical leave.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

#### **4-11-02-09. Permanency.**

An employee shall be deemed permanently unable to return to the employee's preinjury position due to a disability arising from a compensable injury on the date on which the employee's treating medical provider has informed the bureau that the employee has permanent physical restrictions as a result of the work injury and the employing authority has notified the bureau that it cannot accommodate those restrictions.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1

#### **4-11-02-10. Eligibility for reassignment.**

1. An employee is eligible for reassignment with the employing agency under this section if:
  - a. The employee was a regular employee;
  - b. The employee would otherwise have continued in the regular position;
  - c. The employee is unable to perform the essential functions of the regular position, even with reasonable accommodations, because the employee is permanently unable to return to the preinjury position pursuant to section 4-11-02-09;
  - d. The bureau determines that the employee has a medical condition which results in the employee being unable to return to the preinjury position;
  - e. The bureau determines that the employee has permanent physical restrictions due to the compensable injury and that the employee may be eligible for vocational rehabilitation benefits;
  - f. The bureau determines that the employee's claim is not being contested; and

- g. If an employee must be completely retrained into a different capacity from the employee's employment at the time of the compensable injury, the employee, upon completion of training, may compete as an internal candidate for a position through regular procedures.
2. An employee is eligible for reassignment under this section in a full-time position if the employee's preinjury position was on a full-time basis. An employee whose preinjury position was part time, seasonal, or temporary is eligible for reassignment on the same basis as the employee's preinjury position. An employee who is eligible for reassignment on a full-time basis may be reassigned on either a full-time or part-time basis, as appropriate, based on the employee's permanent physical restrictions.
3. The employee, the employee's employing authority, and the bureau shall provide any necessary information for job development and reassignment to the personnel or administrative officer.

**History:** Effective March 1, 2002.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 65-04-03.1