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## Temporary Modified-Duty Assignments

### 1027.1 PURPOSE AND SCOPE

This policy establishes procedures for providing temporary modified-duty assignments. This policy is not intended to affect the rights or benefits of employees under federal or state law, City rules, current memorandums of understanding or collective bargaining agreements. For example, nothing in this policy affects the obligation of the Department to engage in a good faith, interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability that is protected under federal or state law.

### 1027.2 POLICY

Subject to operational considerations, the Berkeley Police Department may identify temporary modified-duty assignments for employees who have an injury or medical condition resulting in temporary work limitations or restrictions. A temporary assignment allows the employee to work, while providing the Department with a productive employee during the temporary period.

### 1027.3 ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

Employees on Workers' Compensation Leave: The City may assign any employee on Workers' Compensation leave who is medically released to return to modified duty when feasible, to such work within the Police Department which is consistent with medical limitations as determined by the attending physician and the employee's skills and abilities at no reduction in the employee's regular rate of pay. Prior to changing the shift of a member who is medically released to return to work on modified duty, the Department shall make a reasonable and good faith effort to accommodate the member's personal/family scheduling for the duration of the period on modified duty. However, if the Department is not able to accommodate the member's personal/family scheduling for the period of the modified duty the Department is not precluded from changing the member's shift.

### 1027.4 NON-INDUSTRIAL INJURIES

The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment. The City will periodically review such modified assignments in order to determine whether such assignments continue to meet the needs of the City.

The modified assignment may be in that employee's classification. To be eligible for such a modified assignment, the employee must initially, and subsequently at the request of the City, provide the Human Resources Department with a medical statement from his or her attending physician that clearly states the medical limitations and abilities of the employee and estimates when the employee will be able to return to a regular assignment. If modification of that assignment within that employee's classification does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily

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disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

#### **1027.5 GENERAL CONSIDERATIONS**

Priority consideration for temporary modified-duty assignments will be given to employees with work-related injuries or illnesses that are temporary in nature. Employees having disabilities covered under the Americans with Disabilities Act (ADA) or the California Fair Employment and Housing Act (Government Code § 12940 et seq.) shall be treated equally, without regard to any preference for a work-related injury.

No position in the Berkeley Police Department shall be created or maintained as a temporary modified-duty assignment.

Temporary modified-duty assignments are a management prerogative and not an employee right. The availability of temporary modified-duty assignments will be determined on a case-by-case basis, consistent with the operational needs of the Department. Temporary modified-duty assignments are subject to continuous reassessment, with consideration given to operational needs and the employee's ability to perform in a modified-duty assignment.

The Chief of Police or the authorized designee may restrict employees working in temporary modified-duty assignments from wearing a uniform, displaying a badge, carrying a firearm, operating an emergency vehicle, engaging in outside employment, or being otherwise limited in employing their peace officer powers.

Temporary modified-duty assignments shall generally not exceed a cumulative total of 1,040 hours in any one-year period.

#### **1027.6 PROCEDURE**

Employees may request a temporary modified-duty assignment for short-term injuries or illnesses.

Employees seeking a temporary modified-duty assignment should contact their supervisor, who will make notifications via the chain of command.

The division captain will make a recommendation to the Chief of Police regarding temporary modified-duty assignments that may be available based on the needs of the Department and the limitations of the employee. The Chief of Police or the authorized designee shall confer with the Personnel and Training Bureau or the City Attorney as appropriate.

Requests for a temporary modified-duty assignment of 20 hours or less per week may be approved and facilitated by the division captain, with notice to the Chief of Police.

#### **1027.7 ACCOUNTABILITY**

Written notification of assignments, work schedules and any restrictions should be provided to employees assigned to temporary modified-duty assignments and their supervisors. Those

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assignments and schedules may be adjusted to accommodate department operations and the employee's medical appointments, as mutually agreed upon with the division captain.

#### **1027.7.1 EMPLOYEE RESPONSIBILITIES**

The responsibilities of employees assigned to temporary modified duty shall include, but not be limited to:

- (a) Communicating and coordinating any required medical and physical therapy appointments in advance with their supervisors.
- (b) Promptly notifying their supervisors of any change in restrictions or limitations after each appointment with their treating medical professionals.
- (c) Submitting a written status report via the chain of command to the division captain after every medical appointment.

#### **1027.7.2 SUPERVISOR RESPONSIBILITIES**

The employee's immediate supervisor shall monitor and manage the work schedule of those assigned to temporary modified duty.

The responsibilities of supervisors shall include, but not be limited to:

- (a) Periodically apprising the division captain of the status and performance of employees assigned to temporary modified duty.
- (b) Notifying the division captain and ensuring that the required documentation facilitating a return to temporary/modified or full duty is received from the employee and provided to the Personnel and Training Bureau within 24 hours of receipt.
- (c) Ensuring that employees returning to full duty have completed any required training and certification.

#### **1027.8 MEDICAL EXAMINATIONS**

Prior to returning to full-duty status, employees shall be required to provide certification from their treating medical professionals stating that they are medically cleared to perform the essential functions of their jobs without restrictions or limitations.

The Department may require a fitness-for-duty examination prior to returning an employee to full-duty status, in accordance with the Fitness for Duty Policy.

#### **1027.9 PREGNANCY**

If an employee is temporarily unable to perform regular duties due to a pregnancy, childbirth or a related medical condition, the employee will be treated the same as any other temporarily disabled employee (42 USC § 2000e(k)). A pregnant employee shall not be involuntarily transferred to a temporary modified-duty assignment.

##### **1027.9.1 NOTIFICATION**

Pregnant employees should notify their immediate supervisors as soon as practicable and provide a statement from their medical providers identifying any pregnancy-related job restrictions or

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limitations. If at any point during the pregnancy it becomes necessary for the employee to take a leave of absence, such leave shall be granted in accordance with the City's personnel rules and regulations regarding family and medical care leave.

#### **1027.10 MAINTENANCE OF CERTIFICATION AND TRAINING**

Employees assigned to temporary modified duty shall maintain all certification, training and qualifications appropriate to both their regular and temporary duties, provided that the certification, training or qualifications are not in conflict with any medical limitations or restrictions. Employees who are assigned to temporary modified duty shall inform their supervisors of any inability to maintain any certification, training or qualifications.