I. PURPOSE

We strive for the safest possible work environment and conditions for our employees. The purpose of this policy is to outline procedures for conducting the basic structure of the Virginia Workers' Compensation Law, the procedures department heads, supervisors, and employees must follow an on-the-job injury and authorizes supplemental payments for injured employees in certain circumstances.

The Workers' Compensation Law enacted by the legislature of the Commonwealth of Virginia sets the requirements for the employer in the handling of employee illness, injury, and disability arising from a job-related accident. Enforcement and interpretation of this law rest primarily with the Virginia Workers' Compensation Commission. The intent of this law is to provide for the financial needs of the employee and provide an incentive for the individual to return to work.

II. DEFINITIONS

A. Accident: Refers to an identifiable incident or sudden precipitating events that result in obvious sudden mechanical or structural change in the body.

B. Agreement to Pay Benefits: This form is completed by the Third-Party Administrator whenever a claim has been accepted as compensable and the injured worker is entitled to an award. The Award Agreement provides the basis for the award of compensation.

C. Arising out of: Refers to the causal connection between employment and the injury. There must be a connection between the accident and the risk under which the work is performed. The risk must be peculiar to work and does not include an injury from a hazard to which the employee would have been equally exposed apart from the employment.

D. Average Weekly Wage: The earnings of the employee in the employment in which he/she was working at the time of the injury. This is usually calculated by adding the wages of the employee for the 52-weeks prior to the injury divided by 52.

E. Compensable Injury: All injuries that occur on the job are not covered by the Virginia Workers' Compensation Act. To be covered, there must be an injury by accident that arises out of and occurs in the course of employment.

F. Death Benefits: A specific sum payable for a specified period to survivors of an employee who dies as the result of a compensable injury or disease.
G. **In the course of:** Refers to time, place and circumstances under which the injury occurred. An accident occurs in the course of employment when it takes place within the period of the employment, at a place where the employee may reasonably be and while the employee is reasonably fulfilling duties of his employment or doing something related to employment.

H. **Injury/Illness:** Is defined as an impairment of sufficient severity to prevent an employee from performing the essential function(s) of the job or temporary limited duty.

I. **Injury Leave:** Is defined as leave permitted due to a job-related injury or illness deemed compensable by the City of Portsmouth under Workers' Compensation.

J. **Job-Related Injury:** Is defined as an injury sustained by an employee while in the course and scope of his or her job with the City of Portsmouth as defined in the Virginia Workers' Compensation Act and covered by Workers' Compensation.

K. **Job-Related Illness:** Is defined as an illness or occupational disease sustained by an employee while in the course and scope of his or her job with the City of Portsmouth as defined in Virginia Workers' Compensation Act and covered by Workers' Compensation.

L. **Maximum Medical Improvement (MMI):** An injury that is well stabilized and unlikely to change substantially, with or without medical treatment. Once an injured worker reaches MMI, a physician can assess how much, if any, permanent partial disability resulted from the work injury.

M. **Medical Expenses:** Reasonable and authorized medical, surgical, hospital and rehabilitation costs incurred as a result of a compensable injury or occupational disease.

N. **Net Pay:** For an employee who has sustained an “injury on the job” net pay is the monetary compensation received in a normal pay cycle prior to going on Workers' Compensation less Federal, State and FICA taxes.

O. **Occupational Disease:** Is a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment. A condition must be a disease to receive benefits under the Virginia Workers' Compensation Act.

P. **Panel of Physicians:** This is a list of physicians approved by Virginia Workers' Compensation Third-Party Administrator and the City of Portsmouth for the injured worker to seek medical attention from. These physicians are to be used to seek medical attention outside of an emergency situation that may be considered as life-threatening.

Q. **Permanent/Temporary Disability Payments:** A specific sum payable for a specified period for disability compensation incurred as a result of a compensable injury or occupational disease as set by the Workers' Compensation Commission. This is an amount equal to 66 2/3 percent of the average weekly wage of an employee or a scheduled amount as set by the Workers' Compensation Act. A specific sum payable for a specified period for a permanent or partial disability incurred to a specific part of the body, as a result of a compensable injury or occupational disease.

R. **Light Duty:** Is defined as a medically-required temporary; (1) restriction in the essential function(s) of the job performed by the employee, (2) reduction in the number of hours the employee is scheduled to work, and/or (3) assignment to a set of job duties that are within the employee's capabilities. Temporary limited duty assignments may be made within the employee's department, or to another City of Portsmouth department.

S. **Subrogation:** This is the City's claim for recovery of all monies paid to or to be paid pursuant to the workers' compensation laws set forth in the Code of Virginia that constitutes a lien against any recovery obtained against a third-party responsible for the accident/injury. The City will be reimbursed from any settlement with
or judgment against a third-party responsible for a compensable injury. Proceedings involving the City's subrogation rights and/or the City's workers' compensation lien will be conducted in accordance with the applicable provisions of the Code of Virginia.

T. **Termination of Wage Loss Award:** This form is completed by the Third-Party Administrator when the injured employee returns to work at the pre-injury wage or is able to return to pre-injury work.

U. **Treating Physician:** Is defined as a medical doctor selected by the employee from a panel of physicians provided by the City in accordance with the Workers' Compensation Act.

V. **Third-Party Administrator:** Term used for administrators the City uses to process claims, referred to TPA.

W. **Workers' Compensation Status:** The leave status in which an employee is placed if his/her absence exceeds seven (7) calendar days and such absence is caused by an injury or other disabling condition which is found to be compensable under the Virginia Workers' Compensation Act. An employee shall not be placed in such a status until our Third-Party Administrator and Workers' Compensation Program Coordinator have collaborated and determined the injury by accident is compensable under the Virginia Workers' Compensation Act guidelines or a final order is entered by the Commission establishing that the employee is eligible for such compensation.

### III. PROCEDURES

Any employee who sustains or witnesses a work-related injury or any employee who is diagnosed with an occupational disease shall immediately report such injury/disease to his/her supervisor and the First Report of Injury (VWC Form #3), Authorization for Medical Treatment and Supervisor/Employee Accident Investigation must be completed. Employees are not required to be treated following a work-related injury/disease. However, a supervisor may consult with the Director of Human Resource Management or designee to request a fitness for duty evaluation whenever, in the supervisor's opinion, the employee is not able to perform the essential functions of his/her regular job, or the employee may pose a direct threat to him/herself or others. The Director of Human Resources Management or designee must authorize all fitness for duty evaluations. Not all injuries/diseases that occur at work are covered through Workers' Compensation.

A. **Medical Treatment**

When an employee informs his/her supervisor of a work-related injury/disease, the supervisor will provide the employee with an Authorization for Medical Treatment and Supervisor/Employee Accident Investigation. Certain classified employees seeking medical treatment may be required to undergo a drug and alcohol screening at the medical facility where treatment is sought.

1. The employee completes the employee portion of the Authorization for Medical Treatment and Supervisor/Employee Accident Investigation with as much detail as possible making sure to include exact body parts injured. A panel physician must be selected for all injuries even if the employee is not seeking treatment at the time of the injury.

2. The supervisor completes the First Report of Injury (VWC Form #3) and the supervisor portion of the Authorization for Medical Treatment and Supervisor/Employee Accident Investigation.

3. The supervisor is responsible for forwarding the completed Authorization for Medical Treatment and First Report of Injury (VWC Form #3) within 24 hours and the Supervisor/Employee Accident Investigation within 48 hours to the Workers' Compensation Coordinator at workerscomp@portsmouthva.gov.

4. If the employee is seeking medical treatment, he/she takes the Authorization for Medical Treatment to the panel physician to be completed. Supervisor should make a copy of the form before the employee
leaves and forward a copy to the Workers’ Compensation Coordinator at workerscomp@portsmouthva.gov. The employee is required to return the Authorization for Medical Treatment to the Workers’ Compensation Coordinator after receiving medical treatment.

5. Even if the employee does not seek medical treatment, the Authorization for Medical Treatment must still be completed, and a panel physician must be selected by the employee.

6. If at any subsequent time an employee reports to his/her supervisor that he/she is experiencing a problem from a work-related injury/illness or disease for which he/she has previously sought medical treatment, the employee should be instructed to contact the Workers’ Compensation Coordinator or the City’s Third Party Administrator directly. In most instances, the employee will be directed to seek treatment with the panel physician previously chosen and seen for the injury. Do not complete another Authorization for Medical Treatment.

7. If at any subsequent time an employee reports to his/her supervisor that he/she is experiencing a problem from a work-related injury/illness or disease for which he/she did not seek medical treatment previously, the employee should be instructed to contact the Workers’ Compensation Coordinator.

8. The employee is required to obtain and provide Human Resource Management with all documentation regarding work status promptly after each doctor visit. The employee’s department will be informed promptly after receiving status update to keep the department’s management team informed.

9. The employee is responsible for attending all scheduled medical appointments. Failure to attend will result in the Workers’ Compensation claim being denied for medical non-compliance.

10. If the employee requires medication a Workers’ Compensation Temporary Prescription ID Card is available from the department supervisor or the Workers’ Compensation Coordinator. This will enable the employee to have the prescription filled at no cost to them.

11. The employee is responsible for forwarding all medical bills to the Workers’ Compensation Coordinator.

B. Emergency Treatment

In an emergency situation, the primary objective is to obtain immediate medical care for the injured employee by transporting them to the nearest hospital emergency facility for treatment. Should the severity of the injury be such that emergency medical services are indicated, 911 should be called. Human Resources Management should be contacted as soon as possible when a serious injury occurs.

1. In the event the employee is returned to full duty by the emergency room physician, an Authorization for Medical Treatment needs to be completed by the employee in case future medical treatment is needed.

2. If the employee is not cleared to return to full duty by the emergency room physician, he/she should take a copy of the Authorization for Medical Treatment for follow-up care the next day with his/her choice on the panel. The original signed copy needs to be sent to the Workers’ Compensation Coordinator.

3. If the employee is admitted to the hospital, the Director of Human Resource Management should be notified immediately.
IV. DETERMINATION OF COMPENSABILITY

All reports for workers' compensation are reviewed by Human Resource Management and forwarded to the Third-Party Administrator. The Third-Party Administrator determines if the injury/disease is covered under the provisions of the Virginia Workers' Compensation Act based on the information provided on the Authorization for Medical Treatment, Department Head/Employee Accident Investigation and First Report of Injury (VWC Form #3), interviews with the injured employee, department head and co-workers, and medical documentation. Although an employee may have been injured at work, a claim is compensable under Workers' Compensation Laws in Virginia only if the condition is an injury by accident, an occupational disease or an ordinary disease of life caused by the work environment as defined under the Virginia Workers' Compensation Act.

Should an injury or disease be found compensable, the employee's medical costs and wage loss for a specified period of time will be handled by the City and the Third-Party Administrator in accordance with this policy and the Virginia Workers' Compensation Act. While the City will file any report of injury or disease with the Virginia Workers' Compensation Commission, it is the responsibility of the employee to file a claim with the Workers' Compensation Commission within the time limit provided by law, which would be mailed to the employee's home once the First Report of Injury is filed by our Third-Party Administrator.

If an injury/disease is initially not accepted as compensable pending an investigation, the employee may be required to use his/her own leave until a determination is made on compensability.

Should an injury be initially accepted as compensable and later found to be non-compensable, medical bills not covered by the Third-Party Administrator shall be the responsibility of the employee and should be submitted to the employee's private medical insurer, if any. Any absence due to a non-compensable injury previously charged to workers' compensation will be changed to annual leave or sick leave if available. All leaves will run concurrently with FMLA when applicable and qualified. The Workers' Compensation Coordinator will notify the employee's department to change the absence to leave without pay (LWOP) and/or any other appropriate leave and notify the employee of any salary overpayment that is due back to the City. The Third-Party Administrator will notify in writing to the Workers' Compensation Coordinator that the claim has been denied. Human Resource Management will forward a copy of the denial letter to the employee's department. Subsequent to the denial of a claim and at any time, the employee may contact the Virginia Workers' Compensation Commission for further information concerning his/her rights.

V. RETURN TO WORK

A. If the employee seeks medical treatment, he/she will not be allowed to return to work without a release from the emergency room physician or the workers' compensation treating physician stating that the employee can return to work, with or without restrictions.

B. If the employee is released to return to work with restrictions, the employee shall immediately provide the Workers' Compensation Coordinator with the return to work note from the health care provider. The Workers' Compensation Coordinator will coordinate with the department's management team to determine whether the employee can be accommodated in his/her regular job, if such is available in the department. The department will notify Human Resource Management of the action taken.

C. If an accommodation assignment is not available in the department, either in the employee's current position or in another assignment in the same or another division or section of the department, the supervisor or designated manager will contact Human Resources Management for possible placement of the employee in Light Duty Employment in another department.
VI. OVERVIEW OF POLICIES GOVERNING EMPLOYEES WHO CANNOT PERFORM THEIR REGULAR JOB

When an employee is medically unable to perform the essential functions of his/her position due to an occupational injury or diagnosis of disease, the employee's circumstances will be reviewed by Human Resources Management to determine the best course of action.

Depending on the circumstances of the individual case, an employee who cannot perform the essential functions of his/her regular position may be placed on approved leave, accommodated in his/her regular position, offered light duty within his/her department, or placed in a light-duty capacity function in another department. The employee may be terminated under certain circumstances such as being unable to return to his/her regular position after reaching maximum medical improvement, not locating another position within the City, exhausting any time limit under this policy.

Employees who remain in their regular job will maintain regular pay, status, and benefits.

The following applies to employees who cannot perform the essential functions of their regular job:

A. Employees may remain in a regular pay status during covered absences totaling up to 1040 hours within the two years immediately following the injury or diagnosis of disease subject to coordination of hours worked in a Light-Duty Employment status.

B. Employees who can perform some work may be placed in a Light-Duty Employment assignment. The employee may remain in regular pay status while in the light-duty status for up to a total of 2080 hours within the two years immediately following the injury or diagnosis of disease subject to coordination of hours of light-duty with covered absences. See Section IX.

C. Employees who have both covered absences and Light Duty Employment within the two-year period following the injury or diagnosis of disease may remain on regular pay status for up to 2080 hours of Light Duty Employment and up to 1040 hours of covered absences not to exceed a combined total of 2080 hours. See Section VIII. See Attachment I for example.

D. Employees who have exhausted the maximum allowable time for covered absences at regular pay may be eligible for wage loss payments of 66 2/3's from the Third-Party Administrator for future covered absences in accordance with the Virginia Workers' Compensation Act.

E. At any time during this process when it appears that the employee can perform some work but will not be able to return to his/her regular position, the employee is encouraged to apply for other job openings with the City that may be available. See paragraph IX, Section A.

F. When an employee's covered absences at regular pay, leave of absence and any light-duty benefits have been exhausted and the employee has not been successful in locating another budgeted City position, he/she may be terminated. If terminated, the employee may be eligible for vocational rehabilitation services outside the City through the Third-Party Administrator in accordance with the Virginia Workers' Compensation Act. If the employee is eligible for disability or service retirement, he/she must apply before termination.

G. The provisions of this policy apply only to current City employees. If the employee retires, resigns or terminates for any reason, he/she will only be entitled to benefits as defined in the Virginia Workers' Compensation Act. If the employee is terminated for cause, he/she may forfeit the right to receive workers' compensation indemnity benefits.

H. It is the City's policy to seek reasonable accommodation for employees with disabilities in appropriate cases. See Section IX.
I. An employee with a covered disability under Workers’ Compensation may also be entitled to benefits under other programs such as FMLA, ADA, or Retirement. The employee should contact and consult with Human Resource Management in appropriate cases. See Section IX.

VII. ABSENCE FROM WORK

For purposes of this section, the terms “absence from work” and “covered absence” mean approved time away from work due to a compensable injury or disease, unless otherwise stated or unless another meaning is clear from the context in which the term is used.

Such time includes approved time away from work due to incapacity, doctor’s appointments, physical therapy, medical treatment; time spent traveling to and from work to attend medical appointments and similar medical reasons. It includes both continuous and intermittent periods of absence which are authorized in writing by the treating workers’ compensation physician. Generally, any time spent receiving medical treatment outside of work hours will not be compensated. The following compensation, status, and benefits apply when an employee is absent from work due to a compensable injury or disease.

A. Day of Injury

1. The employee’s compensation, status, and benefits remain the same.

2. The employee is granted the remainder of the workday at regular pay without charging paid leave for the day of the accident unless the employee is authorized to return to work immediately after seeing the doctor. In this case, if the employee does not return to work, he/she would be paid only for time actually worked and time spent receiving treatment during normal work hours.

3. If the employee does not seek medical treatment, but in the department head’s opinion, the employee is not able to perform the essential functions of his/her regular job, or the employee may pose a direct threat to him/herself or others, the department head should consult with the Director of Human Resources Management or designee to request a fitness for duty evaluation.

B. Absences of Up To 1040 Hours Within A One Year Period Immediately Following The Injury or Diagnosis of Disease

1. During covered absences, the employee remains on the payroll in his/her regular department with the same rate of pay, status and benefits to a maximum total absence of up to 1040 hours within the one year time period immediately following the date of the injury or diagnosis of disease subject to coordination of hours worked in Light Duty Employment. During covered absences, the employee may receive 66 2/3’s pay from the Third-Party Administrator based on his/her pre-injury average weekly wage up to the weekly maximum benefit allowed under the Workers’ Compensation Act and if necessary, a supplemental check will be issued by the City which will equal the base next pay less the amount of the workers’ compensation check and any City payroll deductions. The employee may choose to continue to receive his/her base net City paycheck by remitting the check from the Third-Party Administrator to the Department of Finance.

2. If the employee is working and takes leave for personal or medical reasons not related to the compensable injury or disease, the leave is charged as annual leave, sick leave, unpaid leave or other leave in accordance with applicable City leave and payroll policies.

3. During periods of absence within the two-year period, the employee shall not be eligible for any salary increases above his/her rate at the time of injury.

4. These absences may be covered under the Family Medical Leave Act and departments should consult Human Resource Management regarding documenting leave as such.
VIII. **Absences Exceeding The 1040 Hours or Absences After The Two Year Period Immediately Following The Injury Or Diagnosis Of Disease**

A. After the exhaustion of covered absences at full pay or after two years from the date of the injury or diagnosis of disease, whichever is earlier, the employee is no longer eligible for regular pay during covered absences but may be eligible for wage loss payments from the Third-Party Administrator equal to 2/3's of his/her pre-injury average weekly wages up to the weekly statutory maximum benefits allowed by the Virginia Workers' Compensation Act.

B. When an employee is working in his/her regular position or Light Duty Employment and has a covered absence after exhaustion of covered absences at full pay or after two years from the date of injury or diagnosis of disease, whichever is earlier, the employee's time and compensation are handled as follows:

1. Covered absences of a full day or less due to incapacity or medical treatment related to the compensable injury or disease may, at the employee's option, be charged to Workers' Compensation, if entitled, or to annual leave, sick leave or other applicable leave time in accordance with City leave policies, should the employee have sufficient leave balances to cover the absence. However, medical treatment shall be scheduled outside of work hours whenever possible.

2. Any covered absence of more than one workday due to incapacity, doctor's visit, therapy or other reasons related to a compensable injury or disease is not paid by the City if the employee is eligible for lost wages through Workers' Compensation. The employee shall contact the Third-Party Administrator to determine if he/she is eligible for lost time reimbursement through Workers' Compensation. If the employee is not eligible for reimbursement, the employee may charge leave in accordance with applicable leave policies.

IX. **LIGHT DUTY EMPLOYMENT**

The Workers' Compensation Light Duty Employment has been established to provide temporary Light Duty Employment to employees who experience a workers' compensation covered disability which prevents them from performing the essential functions of their regular job, but who are not totally disabled.

For purposes of this section "Light Duty" may include formal transfer collaborating with the Human Resource Management through job postings or reassignment to a different job or modified assignment in the employee’s regular department or another department that the employee is medically cleared to perform.

When an employee experiences a covered disability, the employee's department will attempt to place the employee back into his/her regular position provided the employee can perform the essential functions of his/her job. When the employee cannot perform the essential functions of his/her job but can perform some work, the employee may be placed in a temporary Light Duty Employment assignment in the employee's regular department or another department. See paragraph IV C. The assignment may provide full time, part-time and day-to-day assignments.

This program does not guarantee any employee a Light Duty Employment assignment, nor does it guarantee that employees with covered disabilities will be placed in any current or future budgeted vacancies which may arise.

A. **Employee Responsibilities**

1. The employee is required to accept the offered assignment. Refusal to accept the offered assignment and to participate in the program may result in the suspension of workers' compensation benefits, shall be deemed as insubordination and may result in termination of employment.
2. The employee is subject to all regular employment rules, regulations and standards while in the Light Duty Employment function.

3. The employee is responsible for performing assigned work properly and conscientiously and for maintaining acceptable conduct.

4. The employee is responsible for immediately reporting to his/her assigned department head any inability to perform the assigned work or other problems concerning work assignments.

5. The employee shall not and is responsible for not performing work that is outside the restrictions determined by the Workers' Compensation treating physician.

6. The employee is responsible for providing the Workers' Compensation Coordinator his/her work status updates promptly after each medical appointment. The Workers' Compensation Coordinator will update the department heads the status of the employee's work-related injury.

B. Department's Responsibilities

1. The department is responsible for ensuring that the employee performs only approved work. The employee is not to be assigned any work that does not fall within the restrictions which have been approved by the Workers' Compensation treating physician.

2. The department is responsible for maintaining required records and making periodic reports as required to the Department of Human Resource Management and for notifying the Workers' Compensation Coordinator of any problems.

3. A department utilizing Light Duty Employment should regard the employee's assignment as temporary. Each assignment will be reviewed on a case by case basis by Human Resource Management.

4. While the employee is in Light Duty Employment, Human Resources Management will continue to work with the employee to attempt to return him/her to full duty or to another vacant, regular budgeted position, if possible.

5. The department is responsible for addressing any misconduct, attendance, or unacceptable job performance issues of the employee with Human Resource Management.

6. If an employee suffers a second injury, or his/her work status changes due to a previous injury while working in Light Duty Employment, the employee's time period and Light Duty Employment will be determined by Human Resource Management.

C. Light Duty Employment Assignments, Compensation, Status and Benefits

Within the two years immediately following the injury or diagnosis of disease when the employee is working in an approved Light Duty Employment assignment, whether in the employee's department or in another department, the employee will remain on the employee's regular department payroll with the employee's regular pay, status, and benefits for a cumulative total of alternative employment and covered absences from the regular job not to exceed 2080 hours. For example, if the employee has no covered absences, the employee could remain in alternative employment up to 2080 hours. If the employee uses 1040 hours of covered absences, the employee would only be eligible to use 1040 hours of alternative employment. See examples in Attachment I.

The Director of Human Resources Management shall periodically review all cases and may in his/her sole discretion determine to extend the employee's Light Duty Employment on his/her regular department payroll.
by up to three additional months when the City's workers' compensation treating physician states the employee is making improvement and is expected to be able to return to full 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. During this time, the employee will remain on his/her regular department payroll with the employee's regular pay, status, and benefits. Factors that will be considered are the work the employee is performing, the department's operating requirements, the 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, the likelihood the employee's job will be available and other relevant factors.

1. Covered absences that occur while the employee is working Light Duty Employment are charged and paid as stated in Section VIII.

2. Employees may use annual leave, sick leave or other applicable leave for approved absences not related to the work-related injury or disease while in Light Duty Employment, subject to regular approval procedures.

3. If an employee works 80 hours or more a month in Light Duty Employment, the employee will accrue paid leave at his/her regular rate of accrual. If the employee works at least eight hours during the month, the employee will accrue one-half of the regular accrual.

4. The employee will receive retirement credit each month he/she is in an active pay status at least 15 calendar days with an appropriate pro-rating for 24-hour Fire employees.

5. The employee will remain eligible for participation in group health insurance plans at the regular employee rate during each month the employee is actively employed 8 hours or more.

6. The employee shall not be eligible for any salary increases above his/her rate at the time of injury while assigned to alternative employment.

7. If an employee is offered Light Duty Employment but refuses, the employee will not be entitled to Workers' Compensation benefits. The employee may be eligible for other leave benefits offered by the City in accordance with established policy.

8. If an employee suffers a second injury, or his/her work status changes due to a previous injury while working in Light Duty Employment, the employee's time period of full pay will be determined by the Director of Human Resources Management.

9. The status, compensation, and benefits for employees assigned to Light Duty Employment for a very brief period, on an intermittent basis or on a basis not otherwise covered by this policy, will be determined by the Director of Human Resources Management on a case-by-case basis.

D. Termination of Light Duty Employment Assignments

Light Duty Employment assignments are intended to be temporary with the objective of facilitating the employee's return to his/her regular job or to another budgeted position within the City. Each case will be reviewed periodically on a case-by-case basis while the employee is recuperating. If at any time it appears that the employee can perform some work but will not be able to return to his/her regular position, the employee is encouraged to apply for other job openings with the City that may be available. Generally, Light Duty Employment assignments will terminate when the employee is medically cleared to return to regular duty, reaches maximum medical improvement, locates another budgeted position within the City, or exceeds 2080 hours under this policy.
Duty Employment may be terminated in the event of changes in operating needs, employee misconduct, less than acceptable job performance or similar circumstances. The Director of Human Resource Management is authorized to remove employees from the Light Duty Employment assignment at any time.

X. **EMPLOYMENT STATUS**

When an employee's covered absences, approved leave, leave of absence and Light Duty Employment benefits have been exhausted, the employee's status will be reviewed by Human Resource Management and one of the following will apply:

1. If the employee is transferred to another City position in another grade or status, the employee's pay and benefits will be governed by policies applicable to the new position. The employee may be eligible for a Workers' Compensation benefit in accordance with the Virginia Workers' Compensation Act when paid at a rate of pay lower than his/her pre-injury wages.

2. If the employee qualifies for disability retirement or service retirement under the City's retirement plan, the employee is encouraged to apply for benefits. If the employee retires, and the employee receives Workers' Compensation indemnity benefits, the retirement benefit will be adjusted in accordance with retirement policies. The employee will be removed from the regular payroll and shown as retired.

3. If the employee does not retire, the employee may be terminated. Human Resource Management will collaborate with the Department Head to review all the circumstances and any Americans with Disabilities Act (ADA), Family Medical Leave Act (FMLA) or other legal implications. If the employee is terminated, the employee may be eligible for a Workers' Compensation benefit in accordance with the Virginia Workers' Act and may qualify for vocational rehabilitation services to facilitate locating a job outside the City.

XI. **JOB STATUS**

The position of an employee who is unable to perform the essential functions of the position due to a compensable injury or disease will be held open for the employee for six (6) months from the date of injury or diagnosis of disease. The Director of Human Resource Management is authorized to make a final determination as to when the position will no longer be held open pending the employee's return. In order to make the determination, Human Resource Management will review the prognosis of the employee's treating physician regarding the anticipated return to unrestricted employment in his/her regular position, the applicable provision of FMLA and ADA, and other relevant policies. Should the employee subsequently be able to return to work, the employee will be eligible to apply for vacant positions within the City.

XII. **FRAUDULENT CLAIM FILING**

Falsification of information regarding a Workers' Compensation claim or providing false information about witnessing an accident/injury by an employee is a violation of the City Standards of Conduct and state law and shall subject that person to disciplinary action as prescribed by the Standards of Conduct.

XIII. **COORDINATION WITH ADA, FMLA AND OTHER BENEFITS**

Throughout an employee's disability, the City will endeavor to make reasonable accommodations for the disability on the same general basis as made for employees with non-occupational illnesses or injuries. The City will periodically review continuing disabilities and will determine if an employee should be considered an individual with a disability under the Americans with Disabilities Act of 1990 (ADA). Since there are several factors which must be considered on a case-by-case basis to make various determinations, and since individual situations may require coordination of policies and benefits between Workers' Compensation, ADA, FMLA, and retirement benefits, if applicable, departments should contact and consult with Human Resource Management in appropriate cases.

Workers' Compensation  
May 2020
XIV. THIRD-PARTY CLAIMS

An employee who makes a claim against another party for responsibility for the employee's injury must provide the Workers' Compensation Coordinator with the name of the insurance company providing coverage and the name of the employee's attorney if represented. The City is entitled to recover any amounts paid through Workers' Compensation should any recovery be received through a Third-Party Claim. Any employee who withholds funds rightfully due to the City under Section 65.2-310 of the Workers' Compensation Act of the Commonwealth of Virginia will be subject to disciplinary action, including dismissal. The City will also seek to recover such funds by any lawfully available means.

If you should have any questions regarding this policy, please call Human Resource Management at (757) 393-8626.

Approved:

[Signature]
City Manager