



City of Portland, Oregon
FIRE AND POLICE DISABILITY, RETIREMENT
AND DEATH BENEFIT PLAN

Administrative Rules

TWO AND THREE BENEFITS

SECTION 5.10 – RETURN TO WORK AND VOCATIONAL REHABILITATION PROGRAMS

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Administrative Rules

Section 5.10 – Return to Work and Vocational Rehabilitation Programs Plan 2 & 3

5.10.01 – PURPOSE

Return to Work programs and Vocational Rehabilitation services are designed to return a disabled Member to gainful employment and reduce the payment of disability benefits by the Fund. Vocational Rehabilitation Services are optional and are approved at the discretion of the Director.

5.10.02 – DEFINITIONS

“Attending Physician.” The term “Attending Physician” means:

- (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or
- (B) For a period of sixty (60) days from the first visit on the initial Claim or for eighteen (18) visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified physician or a physician appointed by the Director, unless otherwise determined by the Director.
- (C) For a period of sixty (60) days from the first visit on the initial Claim or for eighteen (18) visits, whichever first occurs, a doctor of naturopathy or naturopathic physician licensed by the Oregon Board of Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States.
- (D) For a period of 180 days from the first visit on the initial claim, a physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or possession of the United States. A physician assistant may provide compensable medical services for 180 days from the date of the first visit on the initial claim and may also authorize the payment of disability benefits for a period not to exceed 180 days from the date of the first visit on the initial claim.

“Base Pay.” The term “Base Pay” means the Base Pay of the Two or Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the

straight-time portion of the overtime hours in the Member's regular work schedule shall be included in Base Pay.

"Base Pay at Disability." The term "Base Pay at Disability" means the Member's base pay amount at the time the disability payment is due.

"Date of Disability." The term "Date of Disability" means the date that the Member's Attending Physician establishes that the Member is first unable to perform the Member's required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Fire or Police.

"Full-Time Work." For the purpose of Other Employment, the term "Full-Time Work" means working an average of at least thirty-six (36) hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

"Nurse Practitioner." A nurse practitioner licensed under ORS 678.375 to 678.390 may provide compensable medical services for 180 days from the date of the first visit on the initial claim and may also authorize the payment of disability benefits for a period not to exceed 180 days from the date of the first visit on the initial claim.

"Original Injury." The term "Original Injury" means the period from the first occasion of medical treatment or disability resulting from a service-connected injury/illness or occupational disability through the date the Member first reaches a medically stationary status.

"Other Employment." The term "Other Employment" means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

"Pursue Other Employment." The term "Pursue Other Employment" means an active, serious and continuing effort to seek Full Time Work each week that the Member claims benefits.

"Substantial Gainful Activity." The term "Substantial Gainful Activity" means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member's rate of Base Pay in Effect at Disability.

"Transferable Skills." The term "Transferable Skills" means the knowledge, skills and abilities demonstrated in past training and employment which make a Member employable at work with a new employer and with earnings equal to or exceeding one-third (1/3) of the Member's rate of Base Pay at Disability.

"Transitional Duty." The term "Transitional Duty" means available tasks that allow a disabled Member to return to work at an assignment that is less physically/mentally demanding than the Member's regular work for a limited period of time. Also known as "Limited Duty."

“Vocational Assessment.” The term “Vocational Assessment” means an evaluation, performed by a certified vocational counselor, consisting of one or more tests conducted to determine if a Member has reached a level of Substantial Gainful Activity.

“Vocational Rehabilitation.” The term “Vocational Rehabilitation” means any services, goods or allowance intended to support the Member’s return to work efforts. A process initiated as early as possible for a Member who has been disabled and may require a different job or career as a result. May include Vocational Assessment, labor market surveys, developing alternative work plans, retraining and assistance with job-seeking skills.

5.10.03 – TRANSITIONAL DUTY RETURN TO WORK PROGRAM

The Transitional Duty Return to Work Program is a program designed to assist Members who are temporarily disabled due to an injury or illness.

- (A) When a Member reports an injury or illness, they will be given certain forms to take to a doctor upon completion of an examination and/or treatment. If the doctor determines that the Member is not able to return to their regular duty but is capable of some level of work activity, the doctor will complete the appropriate forms indicating the restrictions and conditions for transitional work. FPDR will provide this information to the Member’s bureau which will then attempt to provide limited transitional work until the Member is able to resume regular duties.
- (B) Members performing limited Transitional Duty will receive their regular rate of pay for hours worked. If they work their regular full shift, there will be no loss of wages. If they work less than their regular full shift, a disability benefit will be payable in accordance with Chapter 5 of the City Charter and these Administrative Rules. The Member’s bureau may modify, change or discontinue the Transitional Duty assignment or conditions of the program at any time.
- (C) Whenever the Director has medical evidence that a Member who is receiving disability benefits is capable of performing Transitional Duty the Director shall notify the Member’s bureau chief of that fact. Included in the notification will be a report of the Member’s limitations and a request that the bureau chief provide the Member with a job that is compatible with the Member’s limitations.
- (D) Transitional Duty may include temporary changes in the work environment, assigned tasks or the manner by which assigned tasks are completed. The assignment is for a maximum ninety (90) consecutive days and will be monitored by staff and the bureau liaison.
- (E) If it appears to staff that a Transitional Duty assignment will not be completed in ninety (90) consecutive days, the Member’s bureau and staff will review the assignment for possible extension beyond ninety (90) consecutive days. If a decision to extend the assignment beyond ninety (90) consecutive days is made, it will occur in accordance with and Fire and Police Bureau protocols. The Member’s particular circumstances as well as reliable medical information from a qualified medical professional will also be taken into account.

- (F) The Director may provide a wage subsidy not to exceed 75% of the Member's wage for a specified number of days, not to exceed 180 days, approved for the Transitional Duty assignment.

5.10.04 – VOCATIONAL REHABILITATION PROGRAM GOALS

The goals of a Vocational Rehabilitation program are to assess the feasibility and benefit of Vocational Rehabilitation services to the Fund and the disabled Member; and

- (A) return the Member to their former job with the Bureau of Fire or the Bureau of Police;
- (B) return the Member to the same (but modified) job with the Bureau of Fire or the Bureau of Police;
- (C) return the Member to work, performing a different job that capitalizes on Transferable Skills with the Bureau of Fire or the Bureau of Police, or with another City of Portland agency;
- (D) return the Member to work, performing a different job that capitalizes on Transferable Skills with a different employer; or
- (E) return the Member to work, performing a different job that requires training with the Bureau of Fire or the Bureau of Police, another City of Portland agency or a different employer.

5.10.05 – VOCATIONAL ASSESSMENT

- (A) The purpose of a Vocational Assessment is to determine if the Member is capable of Substantial Gainful Activity, as defined in these Administrative Rules; as well as to determine if the Member is eligible for Vocational Rehabilitation services.
- (B) A Vocational Assessment of the feasibility of Vocational Rehabilitation will be done regarding a Member who:
 - (1) experiences a service-connected injury/illness or occupational disability or a nonservice-connected injury/illness; and
 - (2) has been declared or is reasonably expected to be declared Medically Stationary by the Member's Attending Physician; or
 - (3) is treated Medically Stationary pursuant to Section 5-306(d)(2) and administratively placed in a Medically Stationary status by FPDR; or
 - (4) has been determined by the Member's Attending Physician to have permanent restrictions or a reasonable expectation of permanent restrictions as a consequence of a service-connected injury/illness, occupational disability or a nonservice-connected injury/illness.
- (C) Components of a Vocational Assessment may include but not be limited to:

- (1) relevant work history for at least the preceding five (5) years;
 - (2) level of education, and proficiency in spoken and written English or other languages, where relevant;
 - (3) achievement or aptitude test data;
 - (4) permanent limitations due to the disability;
 - (5) an analysis of the Member's Transferable Skills;
 - (6) a list of jobs for which the Member has the knowledge, skills and abilities and for which a reasonable labor market is documented to exist; and
 - (7) Consideration of the vocational impact of any permanent limitations which existed prior to the disability.
- (D) For the purpose of determining Substantial Gainful Activity, labor market surveys will be confined to within a 50-mile radius of the location of the Member's City of Portland employment or a 50-mile radius of the Member's current residence if the labor market in which the Member currently resides offers more opportunity for gainful employment.

5.10.06 – VOCATIONAL REHABILITATION PROGRAM ELIGIBILITY

- (A) A Member is eligible for Vocational Rehabilitation services when:
- (1) the Member has fully participated in a Vocational Assessment as provided in these Administrative Rules; and
 - (2) vocational Rehabilitation services and associated costs are reasonably expected to reduce overall disability benefits that would likely be incurred until the Member reaches Disability Retirement Age.
- (B) A Member shall participate in Vocational Rehabilitation services if the Member meets the eligibility criteria in this section and the Member is not capable of Substantial Gainful Activity as defined in these Administrative Rules.
- (C) A Member who is determined to be capable of Substantial Gainful Activity may be approved for Vocational Rehabilitation services only if, after analysis, the Director determines that there is a reasonable likelihood that such services will result in a reduction in disability costs.

5.10.07– VOCATIONAL REHABILITATION PLAN

- (A) A Member who is determined to be eligible for Vocational Rehabilitation services, along with a Vocational Rehabilitation specialist, will develop a specifically achievable Vocational Rehabilitation plan.

- (B) The components of the Vocational Rehabilitation plan may include but not be limited to:
- (1) written vocational goals and objectives;
 - (2) the actions that must be taken to achieve the goals and objectives;
 - (3) the services (including any recommended training) needed to fulfill the plan;
 - (4) the projected start date and completion date of the actions to be taken and services to be provided;
 - (5) the job-seeking and placement-related activities that will facilitate securing employment;
 - (6) the way in which progress towards completing the plan will be evaluated; and
 - (7) the cost of the services and other expenses associated with the plan.
- (C) The Member will have the option of choosing to have future disability benefits reduced to the 25% minimum upon successful completion (or sixty (60) days after successful completion) of a vocational training program, in lieu of submitting wage information to for purpose of wage offset.
- (D) Vocational Rehabilitation plan types include:
- (1) **Return to Work Plans:** Services that are geared toward the Member being provided:
 - (a) a bona fide offer of return to work, performing a different job that capitalizes on Transferable Skills with the Bureau of Fire or the Bureau of Police; or
 - (b) a bona fide offer of return to work, performing a different job that capitalizes on Transferable Skills with another City of Portland agency.
 - (2) **Direct Employment Plans:** Services provided to a Member who has the necessary Transferable Skills to obtain suitable new employment with earnings equal to or exceeding one-third of the Member's rate of Base Pay in Effect at disability. Direct Employment Services may consist of one or more of the following:
 - (a) employment counseling
 - (b) job search skills instruction
 - (c) job development
 - (d) job analysis

- (3) Training Programs: Training programs shall consist of formal or informal instruction designed to teach a Member job skills which will enable the Member to obtain employment in or outside of the bureau which employed the Member.
 - (a) Training program services shall include plan development, training, monthly monitoring of training progress and job placement services if necessary.
 - (b) Training program services shall be limited to an aggregate of sixteen (16) months. As appropriate, the Director may allow an extension to twenty one (21) months, an additional five (5) months.
 - (c) Training plan objectives and the kind of training shall attempt to minimize the length and cost of training necessary to prepare the Member for suitable employment.
- (4) Optional Services: Optional services are limited services which may be provided to a Member, an otherwise ineligible Member or to an eligible Member in excess of those services described in these Administrative Rules. Such services are provided at the discretion of the Director. The cost associated with such limited services shall not exceed ten (10) percent of the total expense limit provided in Section 5.10.11 (K) of these Administrative Rules.

5.10.08 – COOPERATION IN VOCATIONAL REHABILITATION

- (A) A Member receiving disability benefits must cooperate in Vocational Rehabilitation processes as follows:
 - (1) fully participate in an assessment of Substantial Gainful Activity and the feasibility of Vocational Rehabilitation;
 - (2) if determined capable of Substantial Gainful Activity without retraining, participate in any Direct Employment or other Optional Services available in these Administrative Rules.
 - (3) if determined eligible for Vocational Rehabilitation, cooperate in the development of a reasonable and specifically achievable Vocational Rehabilitation plan consistent with the purpose and goals of Vocational Rehabilitation;
 - (4) fully participate in the approved Vocational Rehabilitation plan; and
 - (5) upon completion of an approved Vocational Rehabilitation plan, the Member “Pursues Other Employment,” as defined in these Administrative Rules, in the field for which the Vocational Rehabilitation services were provided.

- (B) For service-connected injury/illness or occupational disability benefits, a Member's failure to cooperate in any Vocational Rehabilitation services or plans may result in suspension or reduction of benefits.
- (C) For nonservice-connected disability benefits, a Member's failure to cooperate in any Vocational Rehabilitation services or plans may result in reduction or termination of benefits.

5.10.09 – SEEKING OTHER EMPLOYMENT

A Member receiving service-connected, occupational or nonservice-connected disability benefits who is released to modified duty and capable of Substantial Gainful Activity but who is unable to return to the bureau of which they were an employee at the time of becoming disabled, shall Pursue Other Employment within the Member's restrictions.

- (A) The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training.
- (B) A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. The Member will be required to provide verifiable documentation of their reasonable efforts to find gainful employment to the Director every other week. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts, personal visits, and submission of applications or résumés.

5.10.10 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

- (A) For service-connected and occupational disability benefits and for nonservice-connected disability benefits, if the Director obtains evidence that the Member is not cooperating in Vocational Rehabilitation or is not pursuing other employment, the Director shall notify Member of the Director's determination to suspend, reduce or terminate benefits.
- (B) The Member shall be notified of the rights under Charter Section 5-202(h)(3) to appeal the decision. Any such written request must be filed with the Director within sixty (60) days after the date of the decision being appealed.

5.10.11 - CESSATION OF ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES

A Member's eligibility for Vocational Rehabilitation services will end when any of the following conditions have been met:

- (A) The applicable purpose and goals of the Vocational Rehabilitation plan referred to in these Administrative Rules have been attained.
- (B) The Member has been employed with the bureau of which they were a Member at the time of becoming disabled for sixty (60) days, has been employed by another bureau or employer or has been self-employed for sixty (60) days. This provision

shall not apply if additional Vocational Rehabilitation services are required to overcome obstacles to the Member's continued employment.

- (C) The Member's employment ends for a reason unrelated to the Member's service-connected, occupational or nonservice-connected disability.
- (D) The Member has refused an offer of employment after they have been rehabilitated to the extent necessary that they possess the physical capacities, knowledge, skills and abilities for such employment.
- (E) The Member has declined Vocational Rehabilitation services, has become unavailable for Vocational Rehabilitation services or has retired.
- (F) The Member has failed, after written warning, to fully participate in a Vocational Assessment of their eligibility for Vocational Rehabilitation services or to provide requested information.
- (G) The Member has failed, after written warning, to fully comply with the Member's responsibilities under a Vocational Rehabilitation plan.
- (H) The Member has stopped attending training without notifying either the Vocational Rehabilitation services provider or the Director.
- (I) The Member's lack of employment or self-employment for which they have the necessary physical capacity, knowledge or skills and abilities cannot be resolved by Vocational Rehabilitation services.
- (J) The Member has misrepresented a matter which was material to the assessment of eligibility or the provision of Vocational Rehabilitation services.
- (K) Notwithstanding any other provision in these Administrative Rules, the period of time between plan implementation and plan completion reaches twenty four (24) months, or the total expenses associated with the plan reach the maximum allowance for the authorized plan, whichever comes first. The expense limit may be adjusted annually by the Director in keeping with similar annual adjustments made by the Oregon Department of Consumer and Business Services, Workers' Compensation Division, and published in Bulletin 124.

5.10.12 – VOCATIONAL REHABILITATION EXPENSES

- (A) Reimbursement will be consistent with the fee schedule established by the Oregon Workers' Compensation Division Administrative Rule 436-120-0720 and Bulletin 124.
- (B) To receive reimbursement for Vocational Rehabilitation services, a disabled Member must obtain such services from a provider of Vocational Rehabilitation services approved by the Director.
- (C) Reimbursement for Vocational Rehabilitation services provided to a Member will be authorized only if the services are included in a Vocational Rehabilitation plan which

has been approved in advance by the Director, subject to the limits provided in these Administrative Rules.

5.10.13 – RIGHT TO REQUEST A DIFFERENT VOCATIONAL REHABILITATION SPECIALIST

A Member has the right to request a different Vocational Rehabilitation specialist providing Vocational Rehabilitation services. Any such request should be made to the Director, who shall review the request, and in the event good cause for the requested change is established, the Director shall authorize the Member to work with a different Vocational Rehabilitation specialist.

5.10.14 – RIGHT OF APPEAL

Any Member adversely affected by a decision of the Director has the right of appeal to a hearings officer. Any such written request must be filed with the Director within sixty (60) days after the date of the decision being appealed.