

Title 2. Employment – Chapter 209 EARLY RETURN TO WORK

209.1 Purpose and Policy
209.2. Adoption, Amendment, Repeal
209.3. Definitions
209.4. Scope

209.5. Employee Responsibility
209.6. Original Supervisor Responsibility
209.7. Placement Site Supervisor Responsibility

209.1. Purpose and Policy

209.1-1. The purpose of this law is to:

- (a) assist an employee in returning to work with temporary activities, restrictions and/or other recommendations prescribed by a healthcare provider;
- (b) place an employee with temporary activities, restrictions and/or other recommendations in a job with responsibilities that reflect his or her capabilities;
- (c) assist an employee with temporary activities, restrictions and/or other recommendations during the transition from a modified duty position to his or her original job;
- (d) provide a capable work force for areas which are understaffed or have a need for short term, temporary employees; and
- (e) include all employees of the Oneida Nation.

209.1-2. It is the policy of this law that:

- (a) all Early Return to Work participants and supervisors shall cooperate with all aspects of this law; and
- (b) failure to cooperate with this law may result in disciplinary action according to the Nation's policies and procedures, suspension of worker's compensation benefits, and/or removal from a modified duty position.

209.2. Adoption, Amendment, Repeal

209.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-30-97-B; amended by resolutions BC-06-09-99-D, BC-01-26-11-G, and BC-11-13-13-A; and emergency amended by resolution BC-05-12-21-H.

209.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

209.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

209.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

209.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

209.3. Definitions

209.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Days" means calendar days.
- (b) "EHN" means the Employee Health Nursing Department.

- (c) “Modified duty” means temporary, transitional work within the healthcare provider’s prescribed activities, restrictions, and other recommendations for the employee, which reflects that individual’s functional capacity and/or rehabilitative needs.
- (d) “Oneida Worker’s Compensation Law” means Chapter 203, Latiyótashe Kayanláhsla, of the Oneida Code of Laws.
- (e) “Original supervisor” means the employee’s day-to-day/immediate supervisor or his or her designee.
- (f) “Period of modified duty” means a period of calendar days which begins on the first day that the employee is able to return to work in accordance with a healthcare provider’s prescribed activities, restrictions and/or other recommendations.
- (g) “Placement site supervisor” means the supervisor of a work area an employee is placed in, other than his or her original department, for a period of modified duty.
- (h) “Restrictions” means activity limitations which are prescribed by a healthcare provider for a specified duration of time because of an injury, illness, or pregnancy which results in an employee being unable to perform one (1) or more essential functions of his or her job, or is unable to work the full workday that he or she would otherwise have been scheduled to work.
- (i) “TPA” means a third party administrator of worker’s compensation benefits.
- (j) “Worker’s compensation benefits” means all medical and compensatory costs associated with a work-related injury or illness paid on behalf of or to an employee.

209.4. Scope

209.4-1. Modified duty includes, but is not limited to, accommodation in the employee’s original department or a suitable alternate placement site assigned by an EHN RN-Case Manager. Modified duty may not be available. If available, modified duty is always temporary.

209.4-2. If available, modified duty shall be for the duration of the employee’s period of recovery and return to original full duty, or up to ninety (90) days, whichever comes first.

- (a) The period of modified duty shall begin on the first day that the employee is able to return to work, as prescribed by the healthcare provider.
- (b) Modified duty may be allowed up to a total of one hundred eighty (180) days within a three hundred sixty-five (365) day period for those with a work-related injury or illness, or for those with a non-work-related injury or illness. The first day of any three hundred sixty-five (365) day period begins on the first day of the period of modified duty. No new job description may be created to accommodate restrictions during the initial one hundred eighty (180) day period.
- (c) If an employee is unable to return to regular work duty after one hundred eighty (180) days of being on modified duty due to a non-work-related injury or illness, the employee’s supervisor shall discuss with the employee the following as first options:
 - (1) The ability of the employee to qualify for disability benefits; or
 - (2) The use of the employee’s available personal and/or vacation time to cover the additional time the employee is placed under restrictions until the medical provider provides a written release allowing the employee to return to work with no restrictions; or
 - (3) If the employee does not qualify for disability or there is no vacation or personal time available to the employee, taking a leave of absence pursuant to Personnel Policies and Procedures IV.D.3, Leave of Absence.

(d) Termination of the employee. This step shall only occur after the supervisor can show that attempts to accommodate the employee as provided in 209.4-2(c) or (e) were made, and no agreement was able to be reached with the employee. The supervisor shall note in the employee's personnel file that the termination was for non-disciplinary reasons. The supervisor shall contact the HRD Equal Employment Opportunity Officers for assistance as needed. However, if a transfer of the employee to another position has been approved by HRD in writing and is in process, the modified duty may be extended up to a maximum of an additional 90 days to allow the transfer to be processed.

(e) If one hundred eighty (180) days have passed and an employee with a work-related injury or illness remains unable to return to his or her regular work duties, the employee shall contact the Employee Benefits department regarding Worker's Compensation benefits.

(f) An exception to (b) may be granted for a different illness or injury covered under the Oneida Worker's Compensation Law. The employee shall request an extension in writing to the EHN RN-Case Manager and shall provide medical documentation of the new illness or injury.

209.4-3. All cases shall be monitored by an EHN RN-Case Manager for appropriate continuing placement/accommodation.

209.4-4. Except as provided for in subsection (a), below, a mental/behavioral health condition is not considered an Early Return to Work condition.

(a) *Exception.* An employee on duty at or around the main Oneida Casino, Irene Moore Activity Center, or on the grounds encompassing the Oneida Casino, Irene Moore Activity Center and the Radisson Hotel and Conference Center on the evening of May 1, 2021, during the shooting incident, and diagnosed with a mental health injury as a result of that incident, shall not be subject to the above limitation and may be considered for modified duty, subject to the review and approval of the EHN.

209.4-5. An employee participating in the Early Return to Work Program is subject to all of the Nation's policies and procedures.

209.4-6. An employee in a modified duty position shall return to his or her original position as soon as the temporary activities, restrictions and/or other recommendations have been removed by his or her healthcare provider.

209.4-7. Departments shall assist and cooperate in creating and maintaining positions for employees on modified duty and may consult with EHN nurses in doing so.

209.5. Employee Responsibility

209.5-1. An employee shall:

(a) comply with temporary activities, restrictions, and/or other recommendations as prescribed by his or her healthcare provider;

(b) comply with the EHN case managers, including but not limited to, providing requested documents, and attending all scheduled meetings;

(c) accurately and immediately report any changes in his or her activities, restrictions or other recommendations prescribed by his or her healthcare provider; and

(d) submit copies of the healthcare provider's prescribed activities, restrictions and/or other recommendations to the Employee Insurance Department, the EHN RN-Case Manager, and to his or her original supervisor and, if applicable, placement supervisor.

- (1) The TPA is authorized to suspend an employee's worker's compensation benefits for reasons of employee non-compliance and/or refusal to participate in the Early Return to Work Program.

209.6. Original Supervisor Responsibility

209.6-1. Every time an employee submits new or revised activities, restrictions or other recommendations prescribed by his or her healthcare provider to his or her original supervisor, that supervisor is responsible for reviewing those with the employee to determine whether or not accommodation in the original department is available.

209.6-2. The original supervisor is responsible for communicating to the EHN RN-Case Manager whether the employee can be accommodated in the original department, or if the employee will need placement elsewhere.

209.6-3. When an employee is accommodated in his or her original department, the supervisor shall ensure that the employee works within the healthcare provider's prescribed activities, restrictions and/or other recommendations.

209.7. Placement Site Supervisor Responsibility

209.7-1. The placement site supervisor shall assume all aspects of the original supervisor's role including, but not limited to, approving personal and/or vacation time and issuing disciplinary action.

209.7-2. The placement site supervisor shall review new or revised activity restrictions or other recommendations prescribed by the employee's healthcare provider to determine whether accommodation within that department remains available.

209.7-3. The placement site supervisor shall ensure that the employee works within the healthcare provider's prescribed activities, restrictions and/or other recommendations.

End.

Adopted BC-02-19-97-L Emergency
Adopted BC-07-30-97-B Permanent
Amended BC-01-20-99-A Emergency
Amended BC-06-09-99-D Permanent
Amended BC-01-26-11-G
Amended BC-11-13-13-A
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