

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt section: 3436.1

Amend section: 3436

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3**

OAL Matter Number: 2020-0210-02

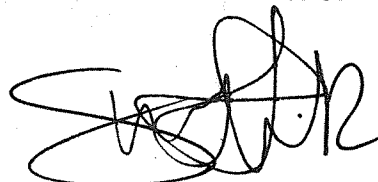
**OAL Matter Type: Emergency Operational
Necessity (EON)**

In this emergency of operational necessity rulemaking by the Department of Corrections and Rehabilitation (the "Department") pursuant to Penal Code section 5058.3, the Department is amending regulations pertaining to a Limited Term Light Duty Assignment (an "LTLDA") and adopting regulations pertaining to a Temporary Modified Work Assignment (a "TMWA"). Both an LTLDA and a TMWA permit an employee with documented temporary medical limitation(s) or restriction(s), that affect the employee's ability to perform one or more of the essential functions and requires the waiver of one or more essential functions of the employee's current classification and position, to remain working or return to work after an injury or illness.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 4/1/2020 and will expire on 9/9/2020. The Certificate of Compliance for this action is due no later than 9/8/2020.

Date: March 2, 2020



Steven J. Escobar
Attorney

Original: Ralph Diaz, Secretary
Copy: Sarah Pollock

For: Kenneth J. Pogue
Director

NOTICE PUBLICATION/REGULATION SUBMISSION

See instructions on reverse

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2020-0210-02EON	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 02 2020
1:51 PM

2020 FEB 10 P 4:34
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
20-0004

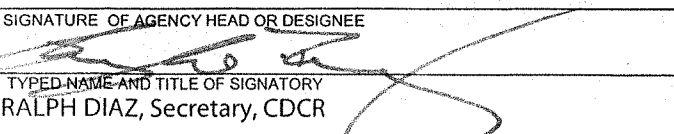
A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Limited Term Light Duty Assignments/Temporary Modified Work Assignment		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	3436.1	
	AMEND	3436	
	TITLE(S)	REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code § 11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§ 11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§ 11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Emergency Op. Necessity - PC 5058.3</u>	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, § 44 and Gov. Code § 11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, § 100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code § 11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>April 1, 2020</u>
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM § 6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Sarah Pollock	TELEPHONE NUMBER 916 445-2308	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) sarah.pollock@cdcr.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE

TYPED NAME AND TITLE OF SIGNATORY
RALPH DIAZ, Secretary, CDCR

DATE
2/2/20

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 02 2020

Office of Administrative Law

Title 15. Crime Prevention and Corrections

Division 3. Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 5. Personnel

Article 4. General Personnel Regulations

3436. Limited Term Light Duty Assignments.

~~(a) The Hiring Authority may utilize Limited Term Light Duty assignments to allow employees with documented medical limitations to work. The Hiring Authority shall place the employee in a vacant budgeted position within the employee's bargaining unit, or allow the employee to continue working in their current position, while temporarily waiving the essential functions of the job. A Limited Term Light Duty Assignment (LTLDA) temporarily allows an employee with documented temporary medical limitation(s) or restriction(s), that affects the ability to perform one or more of the essential functions and requires the waiver of one or more essential functions of the employee's current classification and position, to remain working or return to work after an injury or illness. A LTLDA is intended for utilization when employees cannot be accommodated with a reasonable accommodation.~~

~~(b) No position will be permanently identified as a "light duty" position. Limited Term Light Duty for any one employee shall not extend beyond 60 days in a 6-month period for any medical condition(s). In addition, Limited Term Light Duty shall only be offered for the duration of the vacant budgeted position (not to exceed 60 days). A Hiring Authority may authorize a LTLDA in a budgeted position or post as a transitional, short-term program to employees who are expected to be returned to regular-duty status within the time frames specified in Section 3436(c).~~

~~(c) A Limited Term Light Duty Assignment (LTLDA) shall not exceed 90 calendar days. Extensions will be considered case-by-case, based on a written request from the employee and supporting documentation from the employee's health care provider. However, in no circumstance shall an extension be granted if it would make the total duration of a LTLDA, Temporary Modified Work Assignment (TMWA) (as defined in Section 3436.1), or any combination of the two, exceed 360 days for the same injury or illness.~~

~~(d) A LTLDA is not a right or entitlement, but is based on assignment availability and operational needs.~~

~~(e) LTLDA assignments shall be made based on the employee's medical limitation(s) or restriction(s), employee's classification, and the needs of the Department.~~

(f) Employees placed in a LTLDA shall maintain all mandatory professional licensure, certification, training, and qualifications appropriate to their regular-duty classification provided the professional licensure, certification, training, or qualifications are not in conflict with any documented medical limitation(s) or restriction(s).

(g) LTLDA assignments would generally be to assignments with limited inmate contact and that are less strenuous than the employee's regular assignment.

NOTE: Authority cited: Sections 5054, and 5058 and 5058.3, Penal Code. Reference: Section 5058, Penal Code.

3436.1. Temporary Modified Work Assignments.

(a) A Temporary Modified Work Assignment (TMWA) temporarily allows an employee with documented temporary medical limitation(s) or restriction(s), that affects the ability to perform one or more of the essential functions and requires the waiver of one or more essential functions of the employee's current classification and position, to remain working or return to work after an injury or illness. A TMWA is intended for utilization when employees cannot be accommodated with a reasonable accommodation or a LTLDA, and provides employees the opportunity of a temporary assignment with duties that meet the employee's documented medical limitation(s) or restriction(s).

(b) The Hiring Authority may authorize a TMWA without regard to the employee's classification or position. A TMWA is only offered as a transitional, short-term program to employees who are expected to be returned to regular-duty status within the time frames specified in Section 3436.1(c).

(c) A TMWA shall not exceed 90 calendar days. Extensions will be considered case-by-case, based on a written request from the employee and supporting documentation from the employee's health care provider. However, in no circumstance shall an extension be granted if it would make the total duration of a TMWA, LTLDA, or any combination of the two, exceed 360 days for the same injury or illness.

(d) A TMWA is not a right or entitlement, but is based on assignment availability and operational needs.

(e) TMWA assignments shall be made based on the employee's medical limitation(s) or restriction(s), and the needs of the Department.

(f) Employees placed in a TMWA shall maintain all mandatory professional licensure, certification, training, and qualifications appropriate to their regular-duty classification provided the professional licensure, certification, training, or qualifications are not in conflict with any documented medical limitation(s) or restriction(s).

(g) Employees resuming regular duty shall be retrained when applicable.

(h) TMWA assignments would generally be to assignments with limited inmate contact and that are less strenuous than the employee's regular assignment.

(i) A vacant position or post is not needed when assigning a TMWA.

(j) Probationary employees who are placed in a TMWA shall be considered temporarily absent from their appointment classification pursuant to California Code of Regulations, Title 2, Section 443(f) and shall be subject to the probationary period extension provisions of California Code of Regulations, Title 2, Section 321.

NOTE: Authority cited: Sections 5054 and 5058, Penal Code. Reference: Section 5058, Penal Code.