

**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: 2020-0511-01**

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

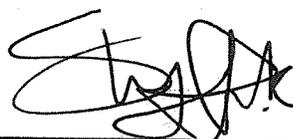
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In this emergency of operational necessity rulemaking by the Department of Corrections and Rehabilitation (the "Department") pursuant to Penal Code section 5058.3, the Department is amending regulations pertaining to a Limited Term Light Duty Assignment (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 6/1/2020 and, pursuant to section 5058.3 of the Penal Code and Executive Order N-40-20, will expire on 1/8/2021. The Certificate of Compliance for this action is due no later than.

**Date: May 27, 2020**



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**Steven J. Escobar  
Attorney**

**Original: Ralph Diaz, Secretary  
Copy: Sarah Pollock**

**For: Kenneth J. Pogue  
Director**



## **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, 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.