



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3436 and 3436.1	NCR Number: 20-09	Publication Date: July 3, 2020	Effective Date: June 1, 2020
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Section 3436 and adoption of Section 3436.1 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Limited Term Light Duty Assignments and Temporary Modified Work Assignments.

PUBLIC COMMENT PERIOD

The public comment period will close on **August 21, 2020**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **August 21, 2020**.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 04/18), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to S. Pollock, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2308, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to L. Mahannah, Employee Health and Wellness, at (916) 341-7041.

Original Signed By:

RALPH M. DIAZ
Secretary
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend Section 3436, and adopt new Section 3436.1 into Title 15, Division 3, Chapter 1, regarding Limited Term Light Duty Assignments and Temporary Modified Work Assignments.

PUBLIC COMMENT PERIOD

The public comment period begins **July 3, 2020** and closes on **August 21, 2020**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rmb@cocr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

CONTACT PERSONS

Primary Contact

S. Pollock
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Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy
Management Branch
P.O. Box 942883
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Program Contact

L. Mahannah
Telephone: (916) 341-7041
Employee Health and Wellness

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of a regulation on an emergency basis.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

This rulemaking action amends California Code of Regulations, Title 15, Section 3436, concerning Limited Term Light Duty Assignments (LTLDA), and adopts new Section 3436.1 concerning Temporary Modified Work Assignments (TMWA). Revisions to LTLDA involve a change to the length of a LTLDA for which an employee may be off duty due to a temporary disability which cannot be reasonably accommodated. New provisions concerning a TMWA provide employees the opportunity of a temporary assignment with work duties which meet the employee's documented medical limitation(s) or restriction(s) when employees cannot be accommodated with a reasonable accommodation or LTLDA.

Currently, Title 15, Section 3436 allows placement in a LTLDA for a maximum of 60 days. These amended regulations will expand the length of time eligible employees may be placed into a LTLDA from the current 60 days to a maximum of 360 days. This will allow the Department to use a LTLDA to accommodate an employee for a longer period of time when their documented medical limitation(s) or restriction(s) are still prevalent.

This action will:

- Provide new descriptive language and provisions for a LTLDA.
- Provide for a potential extension of an LTLDA, up to 360 days, on a case-by-case basis, and with supporting documentation from the employee's health care provider.
- Adopt a new section for TMWA.
- Provide that a TMWA will be considered when an employee cannot be accommodated with a reasonable accommodation or LTLDA.
- Establish provisions for TMWAs.

DOCUMENTS INCORPORATED BY REFERENCE

N/A

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The proposed regulations will benefit CDCR and California Correctional Health Care Services (CCHCS) employees by allowing them to potentially extend their LTLDA or TMWA up to 360 days. This will reduce financial impact to employees during temporary disability, injury, or illness when they cannot afford to demote, take medical leave due to not having sufficient personal leave credits to cover their absence, take an unpaid leave of absence, or leave the Department. Additionally, it will benefit the Department by reducing negative impact when employees are absent for extended periods of time due to temporary disability, injury or illness. And, the Department will benefit by retaining valuable trained employees that provide necessary services to accomplish the critical mission of the Department.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department performed a search of existing regulations and determined that the proposed regulations are neither inconsistent nor incompatible with existing regulations.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *27.8 million cost annually estimated*
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department believes there will be economic impact with the proposed regulations, as other full duty employees will have to be hired behind an employee who is removed from their regular position and placed in a TMWA within the CDCR or CCHCS. CDCR and CCHCS estimate costs of \$27.8 million annually, and will request funding through the State's budgetary process.

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulation will have no effect on the State's environment. These regulations may benefit the health and welfare, and worker safety of California residents by allowing for CDCR and CCHCS employees that need a LTLDA or TMWA accommodation to possibly extend their accommodation up to a maximum of 360 days. By extending their LTLDA or TMWA, this will benefit the health and welfare of the employee by allowing them to continue working in an assignment that will be conducive to their health needs; and it will benefit worker safety by not creating a situation where a re-injury/further illness could occur had the employee been forced to return to their regular assignment duties before they were physically able to do so.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

CDCR and CCHCS considered not amending current regulations, and retaining the existing language in Title 15, Section 3436. However, that option was rejected because CDCR and CCHCS would continue to lose the vital services of employees who would be out for extended periods after a 60-day LTLDA expired, thereby negatively impacting CDCR's ability to accomplish its critical mission. Also, employees would be required to continue to use personal leave, temporarily demote to positions in which they are able to perform the essential functions, request an unpaid leave of absence, or choose to leave CDCR.

CDCR and CCHCS also considered extending the duration of the LTLDA without adding the option of a TMWA. However, that alternative was rejected because of concern that insufficient vacant budgeted positions would be available for all employees who were eligible for an LTLDA.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

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.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) and California Correctional Health Care Services (CCHCS) propose to adopt provisions governing a change to the length of a Limited Term Light Duty Assignment (LTLDA) for which an employee may be off duty due to a temporary disability which cannot be reasonably accommodated. Currently, Title 15, Section 3436 allows placement in a Limited Term Light Duty Assignment (LTLDA) for a maximum of sixty days.

These regulations will expand the length of time eligible employees may be placed into a LTLDA from the current 60 days to a maximum of 360 days. This allows CDCR to use a LTLDA in a budgeted position or post which may be suitable for an employee with a temporary documented medical limitation(s) or restriction(s) which cannot be accommodated with a reasonable accommodation.

Additionally, the CDCR and CCHCS propose to adopt provisions regarding a Temporary Modified Work Assignment (TMWA), which will provide employees the opportunity of a temporary assignment with work duties which meet the employee's documented medical limitation(s) or restriction(s) when employees cannot be accommodated with a reasonable accommodation or LTLDA.

It is necessary to file these regulations on an Emergency Operational Basis to ensure valuable trained employees remain on the job and provide necessary services to accomplish the critical mission of CDCR.

Every day that passes, employees placed in a 60-day LTLDA under the current regulation face the potential risk that their LTLDA will end before they are able to resume their full duties due to the continuation of the documented medical restriction(s) or limitation(s). At that point, the employee faces possible options that include temporarily medically demoting to a position in which the employee is able to meet the essential functions of the position, take leave and use personal leave credits, or even choose to leave CDCR. This results in either CDCR being without a trained employee's services for an extended period of leave, an employee suffering a decrease in pay, or the employee leaving CDCR. These possible outcomes negatively impact CDCR's ability to accomplish its mission.

Additionally, if no vacant budgeted position is available when an employee seeks an LTLDA under the current system, there is no LTLDA possible and no other option besides those mentioned above.

Because CDCR values its employees and their vital contributions to CDCR's mission, it is imperative that other options are available as soon as possible to permit temporarily disabled employees with documented medical limitation(s) or restriction(s) to remain productive and on the job even when they cannot be reasonably accommodated in their current positions.

Therefore, it is critical for CDCR to enact emergency regulations in the California Code of Regulations, Title 15, Division 3, to amend Section 3436, Limited Term Light Duty Assignments, and adopt new Section 3436.1, Temporary Modified Work Assignments.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes at the scheduled hearing or during the written comment period.

CDCR and CCHCS considered not amending current regulations, and retaining the existing language in Title 15, Section 3436. However, that option was rejected because CDCR and CCHCS would continue to lose the vital services of employees who would be out for extended periods after a 60-day LTLDA expired, thereby negatively impacting CDCR's ability to accomplish its critical mission. Also, employees would be required to continue to use personal leave, temporarily demote to positions in which they are able to perform the essential functions, request an unpaid leave of absence, or choose to leave CDCR.

CDCR and CCHCS also considered extending the duration of the LTLDA without adding the option of a TMWA. However, that alternative was rejected because of concern that insufficient vacant budgeted positions would be available for all employees who were eligible for an LTLDA.

ECONOMIC IMPACT ASSESSMENT:

The Department believes there will be economic impact with the proposed regulations, as other full duty employees will have to be hired behind an employee who is removed from their regular position and placed in a TMWA within the CDCR or CCHCS. CDCR and CCHCS estimate costs of \$27.8 million annually, and will request funding through the State's budgetary process.

In accordance with Government Code Section 11346.3(b), the Department has made the following assessments regarding the proposed regulations:

Creation of New or the Elimination of Existing Jobs within the State of California

The Department has determined the proposed regulations will have no impact on the creation of new, or the elimination of existing jobs or business within California because the proposed regulations impact the internal management of CDCR and CCHCS employees.

Creation of New, Expansion, or the Elimination of Existing Businesses Currently Doing Business in the State of California

The Department has determined the proposed regulations will not have an impact on the creation of new, expansion, or the elimination of existing businesses currently doing business in California as the proposed regulations only affect the internal management of CDCR and CCHCS employees. Additionally, there have been no facts, evidence, documents, testimony, or other evidence provided that would alter the Department's initial determination.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Department has determined the proposed regulations will benefit the health and welfare of California Residents by allowing for CDCR employees that need a LTLDA or TMWA accommodation to possibly extend their accommodation up to a maximum of 360 days. By extending their LTLDA or TMWA, this will benefit the health and welfare of the employee by allowing them to continue working in an assignment that will be conducive to their health needs; and will benefit worker safety by not creating a situation where a re-injury/further illness could occur had the employee been forced to return to their regular assignment duties. The Department has determined the proposed regulations will not affect the State's environment.

Significant Adverse Economic Impact on Business

The Department has made an initial determination the proposed regulations will not have a significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations only affect the internal management of CDCR and CCHCS employees and place no obligations or requirements on any business.

BENEFITS OF THE REGULATIONS:

These regulations expand opportunities for employees to continue working in less strenuous assignments that are consistent with documented job restrictions, and reduce financial impact to employees during temporary disability, injury, or illness who have limited or no leave balances. These regulations also reduce the negative impact to CDCR and CCHCS when employees are absent for extended periods due to temporary disability, injury or illness. And, the Department will benefit by retaining valuable trained employees that provide necessary services to accomplish the critical mission of the Department.

MATERIALS RELIED UPON:

The Department has not relied upon any technical, empirical, or theoretical report, study, or similar document.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b)(1):

Section 3436(a) is amended to remove outdated language, and provide new language that updates and describes a LTLDA assignment. This language is necessary to provide a current description and specifications regarding LTLDA assignments.

Section 3436(b) is amended to remove outdated language, and provide new language which specifies the Hiring Authority's authority regarding placement of an employee into a LTLDA position. This language is necessary to specify the requirements in regards to the Hiring Authority's procedures for the placement of an employee into a LTLDA position.

New Section 3436(c) is adopted to establish the duration of an LTLDA at 90 days, and sets a potential extension up to a maximum duration of 360 days. This language is necessary to ensure that the duration will be long enough to cover a temporary disability, illness, or injury, but still have a firm end date to avoid indefinite placement. The Department determined 360 days was a more sufficient amount of time to recover from a temporary disability, injury, or illness.

New Section 3436(d) is adopted to clarify that an LTLDA is not a right or entitlement, but is based on availability and operational needs. This language is necessary to clarify the provisions regarding a LTLDA assignment.

New Section 3436(e) is adopted to establish that the employee will be assigned to a LTLDA that takes into account the employee's medical limitation(s) or restriction(s), the employee's classification, and the needs of the Department. This language is necessary to specify the requirements regarding a LTLDA assignment. By meeting these requirements for assignment to a LTLDA appropriate placement of the employee will be maximized.

New Section 3436(f) is adopted to establish that an employee in a LTLDA continues to be required to maintain all professional licensure, certifications, and qualifications of their regular duty classification, as long as they are able to do so in light of their medical restriction(s) or limitation(s). This language ensures that all of the requirements of the employee's regular duty classification are maintained, provided the employee is able to do so with their medical restriction(s) or limitation(s), and is necessary to provide a clear understanding regarding the provisions for a LTLDA.

New Section 3436(g) is adopted to establish that the LTLDA assignments would generally be to assignments with limited inmate contact and that are less strenuous than

the employee's regular assignment. This language is necessary to help to clarify the description of a LTLDA assignment.

New Section 3436.1 is adopted to establish the section title heading "Temporary Modified Work Assignments." This language is necessary to identify the name of the section.

New Section 3436.1(a) is adopted to establish Temporary Modified Work Assignments (TMWA) as an additional option when an employee cannot be accommodated with a reasonable accommodation or a LTLDA assignment. This language is necessary to set forth the requirements regarding a TMWA.

New Section 3436.1(b) is adopted to clarify when a TMWA may be authorized. This language is necessary to provide clear instruction regarding the Hiring Authority's authority for assignment of an employee to a TMWA.

New Section 3436.1(c) is adopted to establish the duration of a TMWA at 90 days, and sets a potential extension up to a maximum duration of 360 days. This language is necessary to ensure that the duration will be long enough to cover a temporary disability, illness, or injury, but still have a firm end date to avoid indefinite placement. The Department determined 360 days was a more sufficient amount of time to recover from a temporary disability, injury, or illness.

New Section 3436.1(d) is adopted to clarify that a TMWA is not a right or entitlement, but is based on assignment availability and operational needs. This language is necessary to clarify the provisions regarding a TMWA assignment.

New Section 3436.1(e) is adopted to establish that the employee will be assigned to a TMWA that takes into account the employee's medical limitation(s) or restriction(s), and the needs of the Department. This language is necessary to specify the requirements regarding a TMWA assignment. By meeting these requirements for assignment to a TMWA, appropriate placement of the employee will be maximized.

New Section 3436.1(f) is adopted to establish that an employee in a TMWA continues to be required to maintain all professional licensure, certifications, and qualifications of their regular duty classification, as long as they are able to do so in light of their medical restriction(s) or limitation(s). This language ensures that all of the requirements of the employee's regular duty classification are maintained, provided the employee is able to do so with their medical restriction(s) or limitation(s), and is necessary to provide a clear understanding regarding the provisions for a TMWA.

New Section 3436.1(g) is adopted to clarify that employees who end a TMWA will be retrained if necessary in order to enable them to perform all duties and all essential functions of their regular-duty classification. This language is necessary to ensure that employees maintain knowledge of their regular-duty classification, and provides a clear understanding regarding the provisions for a TMWA.

New Section 3436.1(h) is adopted to establish that the TMWA may generally be to assignments that are less strenuous than the employee's regular duties, and have limited inmate contact. This language is necessary to help to clarify the description of a TMWA.

New Section 3436.1(i) is adopted to establish that a vacant position or post does not preclude placing an employee into a TMWA. This language is necessary to provide a clear understanding regarding the provisions for a TMWA.

New Section 3436.1(j) is adopted to establish that probationary employees who are placed in a TMWA shall have their probationary period extended pursuant to California Code of Regulations, Chapter 2, Article 14, Section 321. This is to ensure that the probationary period includes sufficient time for the evaluation of the employee's ability to perform all duties and all essential functions of their regular duty classification. This language is necessary to provide a clear understanding regarding an employee's probationary period for their regular duty classification when taken into account with a TMWA.