Memorandum



Date March 22, 2016

To Executive Staff

From Cheryl E. Kennedy, Vice President, Office of System Safety

Re Injury Response Guideline

The Office of System Safety (OSS) has revised the Injury Response Guidelines to reflect a new telephone number and email address for the New York City Transit Workers Compensation Division. The On-the-job Injury Form has also been revised since the last distribution of the Injury Response Guidelines.

Local management's immediate response to a report of an employee injury and the subsequent follow-up are critical in our efforts to ensure that employees receive proper medical attention and are able to return to work as soon as possible. The injured employee's medical needs must be given the highest priority and <u>local management</u> must follow-up with the employee to determine if the employee can return to work on the next scheduled work day after the injury.

The attached revised Injury Response Guidelines must be distributed to managers and supervisors and they must be monitored to ensure that they are following up on their employees who experience an accident.

Attachment

cc: V. Hakim

Injury Response Guidelines

March 22, 2016

Initial Decision - Is this an on-the-job injury?

The following on-the-job injury examples are intended only as a guide. The facts of each case will determine if a claim of injury is job related. If an employee alleges that an injury occurred on-the-job or in/on Agency property the supervisor must investigate the accident. If the employee requests an On-the-job Injury Form (see attached), it must be provided, even if the injury does not meet the on-the-job injury criteria stated below. If subsequently, the supervisor's investigation cannot substantiate the alleged on-the-job injury, the supervisor must note this on the form with all relevant details. Such notation can be made in the area provided for recording the root cause and by attaching a G-2 to the form.

What is an on-the-job injury?

- Any injury or illness related to work while in/on agency property and while on duty.
 - An injury sustained in/on Agency property immediately prior to or following the employee's tour of
 duty may be an on-the-job injury and requires an On-the-job Injury Form to be completed with a
 notation in the Injury Time section that the incident occurred before/after the employee's tour of duty.
 - An illness (e.g. fainting, shortness of breath, chest pains) related to an employee's work, which requires
 more than ordinary first aid, and the taking of the employee to the hospital directly from the Agency's
 premises, including buses and trains, may be an on-the-job injury and requires an On-the-job Injury
 Form to be completed.
- Assault while performing assigned duties.
- Injury sustained in work related travel while performing work related duties.
- Injury sustained during authorized operation of an Agency vehicle.

What is not an on-the-job injury?

- Personal illness or condition reported at work but not related to a work assignment, e.g. cold, indigestion, and headache.
- Medication reaction taken for a non-job related injury, illness or condition.
- Psychological stress or anxiety claims related to work directions, evaluations or discipline procedures.
- Injury unrelated to any work activity sustained as a result of alcohol or drug use.
- An employee witnessing another employee's injury who is not themselves injured. (*Note:* if the witness employee claims psychological injury as a result of witnessing the injury of the other employee(s), this may or may not be compensable depending of the facts, and an On-the-job Injury form should be completed.)
- Lunch-break, pre-tour of duty, or post-tour of duty injuries, occurring off the Agency's property. (*Note:* if the employee claims that the injury occurred just outside the Agency's property, the claim may or may not be compensable depending of the facts, and an On-the-job Injury form should be completed)

If the incident is not an on-the-job injury or the employee receives treatment under medical benefits/sick leave – Do not complete an On-the-job Injury Form.

Medical treatment/assessment

When should the employee be sent for emergency medical treatment?

- Loss of Consciousness or an altered mental status (incoherent/confused)
- Breathing difficulties
- Bleeding that could require immediate attention
- Possibility of a head, neck, or spinal cord injury
- Chest pains
- Broken bones, when the injured cannot be moved
- Severe Pain

Injury Response Guidelines

NYC Transit policy requires that an employee receive requested medical attention. If the employee requires or requests emergency services or seeks immediate medical attention from his/her private physician, the employee is allowed to do so. Employees involved in a work-related accident may be sent for drug/alcohol testing based upon circumstances. See November 21, 2013 memo issued by the Office of Labor Relations attached. All MAC's are open for drug/alcohol testing 8:00 AM – 4:00 PM Mon.-Fri. except holidays and MAC 1 at 180 Livingston Street is open for the testing at all times. The employee must also report to his/her personal physician for evaluation. The employee must advise supervision of the status of the medical evaluation by their personal physician before the next workday. Compensation/differential pay will not be considered until the employee submits the diagnosis and medical findings substantiating the claimed on-the-job injury. Upon notification of the on-the-job injury, the Department of Law's Worker's Compensation Unit will make an appointment for the employee to be evaluated by an Independent Medical Consultant (IME) selected by NYC Transit and will advise the employee, in writing, seven business days in advance of the appointment.

If an injury is not serious (e.g. application of band-aid), and does not require professional medical care, the employee should be offered the opportunity to use a first aid kit at the work location.

Immediate local management follow-up

The supervisor must immediately notify local management of an on-the-job injury and the employee's status. Once an employee leaves work due to an on-the-job injury, all days off work must be charged to workers compensation benefits (*i.e.* no sick, vacation, overtime offset, etc.). Employees with a challenged claim or one where the validity of the claim is undecided may be entitled to payment in accordance with the Waiver and Election provisions of the applicable collective bargaining agreements.

Before the next workday starts, local management must obtain the status of the medical evaluation by the employee's personal physician and determine if the employee may be able to return to work on the next workday. If the employee can return to work with work restrictions on the first workday after the injury, local management must make every effort to accommodate the employee. This accommodation could include training or the performance of other useful job functions that will not violate the restriction. If the employee has not been evaluated by his/her personal physician at the beginning of the first workday after the injury, local management must attempt to obtain the status of the medical evaluation each day until the medical evaluation is conducted by the personal physician or the IME consultant selected by NYC Transit.

If an employee can resume his/her normal job functions before the end of the next workday after the injury, the employee can do so without providing medical documentation substantiating the injury.

If an employee's medical provider determines that the employee can return to work without restrictions before the Independent Medical Examination, the employee must provide the medical documentation to supervision for evaluation. Worker's Compensation must be notified of the employee's return to work to determine if the Independent Medical Examination should be cancelled.

In instances when a health condition, unrelated to the on-the-job injury, is identified and the employee is unable to resume full work as a result of the unrelated health condition, local management must specifically note this issue on the On-the-job Injury Form. Any time off work may be charged to the employee's annual sick balance if the employee meets the appropriate criteria.

The employee work restrictions and work status must be sent to Worker's Compensation. Scan and email the On-the-job Injury Form to workerscompiod@nyct.com or fax to (718) 694-3281/3807.

Injury Response Guidelines

On-the-job Injury Reporting

The supervisor must call the Telephonic Accident Reporting System at 1-888-682-4301 within 24 hours of notification of an on-the-job injury. Some departments require the supervisors to call the accident in to a central location and the central location calls the Telephonic Accident Reporting System. A preliminary accident investigation must be completed by the end of the employee's work shift. A second call to the Telephonic Accident Reporting System must be made within 48 hours of the first report to advise if the employee has lost time and/or begun medical treatment for the injury. The reference number provided during the first call must be used for the second call

The employee and supervisor must complete the On-the-job Injury Report Form and the supervisor must investigate the accident to identify a root cause and corrective actions. The supervisor must perform an on-site investigation at the location where the incident occurred. As a result of the observation the supervisor must incorporate the findings into the accident report. The findings must include a detailed description of the location and conditions under which the injury occurred i.e., surface area/lighting etc., the cause/agent that resulted in the injury and if the cause/agent cannot be identified the supervisor must state this in the report. In instances where a cause/agent is unfound the report must still include a detailed description of the location and conditions at the time of the observation. The On-the-job Injury Report form must be completed in its entirety and submitted to management for verification that an on-site investigation was conducted that includes a detailed description of the location and conditions under which the injury occurred, cause/agent and corrective actions for mitigation. (Note if a cause/agent cannot be identified by the supervisor it must be stated in the report that the cause/agent is unfound)

Management must scan and email the form to <u>workerscompiod@nyct.com</u> or fax the form to Workers Compensation (718-694-3281/3807) in addition to any department specific notification requirements. The original form must be sent to Workers' Compensation, 130 Livingston Street, 10th Floor. This process must be completed and the form submitted to Workers Compensation within 2 business days of notification of the injury by the employee.

Follow-up when employee is on restricted duty or no work

If an employee is on restricted duty or no work status, local management must obtain the date of the employee's appointment with the IME selected by NYC Transit.

Local management must receive the completed Medical Consultant Evaluation form which provides the updated work status on the day of the medical evaluation. If the form is not received, local management must contact the Workers Compensation Unit within the Law Department (718-694-1053) to obtain the employee's status and date of the next appointment for medical evaluation, if necessary.

If the employee does not appear for the medical evaluation and does not have a valid medical reason for missing the medical examination, or is medically qualified to return to work but does not return, local management must ensure that no payments are made for the absence (i.e. no sick, vacation, OTO, etc) and review the facts to determine what, if any, disciplinary action should be taken. The Workers Compensation Unit should be consulted before any disciplinary action is taken, to ensure compliance with the requirements of the Workers Compensation Law.

The attached On the Job Injury Management Follow-up Form is provided to assist management with the follow-up process and to document the follow-up activities.

Memorandum

New York City Transit

Date:

November 21, 2013

To:

All Managers

From:

Christopher J. Johnson, Vice President, Office of Labor Relations

Re:

Drug & Alcohol Testing following an Accident or Unusual Incident

The purpose of this memorandum is to clarify NYC Transit's existing policies with respect to drug and alcohol testing after an accident or unusual incident. This includes accidents or unusual incidents where an injury on duty has occurred.

First, drug and alcohol testing is not automatic after every accident or unusual incident including an injury-on-duty. Supervision and management must analyze each situation on a case-by-case basis to determine whether the accident or unusual incident meets the criteria which must be met for drug/alcohol testing to occur.

FTA Covered Safety Sensitive Employees

FTA safety sensitive employees <u>must be tested</u> under federal regulations following an accident, defined by federal regulations as an occurrence associated with the operation of a revenue service vehicle (or associated vehicle when used by an armed guard or when a CDL is required) in which:

- 1. An individual dies; or
- An individual suffers bodily injury and immediately receives medical treatment away from the scene; or
- The mass transit vehicle is a bus, electric bus, van or automobile, in which one or more vehicles
 incurs disabling damage and is transported away from the scene by a tow truck or other vehicle;
 or
- 4. The mass transit vehicle involved is a rail car, trolley car, trolley bus or vessel, and is removed from revenue service.
- For accidents involving fatalities, each surviving safety sensitive employee operating the mass transit vehicle at the time of the accident must be tested. Safety sensitive employees not in the vehicle (e.g. maintenance personnel), whose performance could have contributed to the accident (as determined by the transit agency using the best information available at the time of the accident) must be tested.

- For non-fatal accidents involving a bus, electric bus, van or automobile, employers shall test
 each safety sensitive employee operating the mass transit vehicle at the time of the accident
 unless their behavior can be completely discounted as a contributing factor to the accident.
- For non-fatal accidents involving rail cars, trolley cars, trolley buses or vessels employees on
 duty in the vehicle at the time of the accident must be tested unless their behavior can be
 completely discounted as a contributing factor to the accident.
- For all non-fatal accidents, the employer shall test any other safety sensitive employee whose performance could have contributed to the accident as determined by the employer using the best information available at the time of the accident.

Post Accident/Unusual Incident Testing Agreed upon through Collective Bargaining

In addition to the testing mandated by federal regulations, NYC Transit has bargained for post accident/unusual incident testing under certain circumstances.

Drug and/or alcohol testing may be ordered after an accident or unusual incident where it is reasonable to conclude that drug/alcohol use could have contributed to the accident or incident. (Please note that Cleaners, Station Agents and all clerical employees are not subject to post-accident/incident testing. These employees can only be tested following an incident if there is reasonable suspicion of drug/alcohol use.)

It is important to remember that testing after an accident or unusual incident where it is reasonable to conclude that drug/alcohol use could have contributed to the accident or incident is different from "reasonable suspicion" testing. In "reasonable suspicion" testing, the supervisor or manager is gauging the individual employee for signs of impairment at the time the decision to test is made.

In "post-accident/incident" testing, there is no "impairment" analysis. Instead, the manager/supervisor should look at the known facts of the accident/incident and focus on the employee's behavior under the conditions at the accident/incident scene.

When can you test under the Contractual Post-Accident/Unusual Incident Standard?

The contractual standard is extremely broad, and covers a large range of accidents and unusual incidents which occur on the property/vehicle. However, you are not required to send employees after every accident or unusual incident even where the contractual standard applies. Use the following as a guide:

- You should send an employee for testing if you conclude, based upon the information that you
 have at the time, that one or more of the following forms of employee behavior played a primary
 role in causing the accident or unusual incident.
 - a. Carelessness
 - b. Inattention to his/her surroundings
 - c. Failure to follow normal safety and/or operating rules
 - d. Placing him/herself or others in a dangerous situation
 - e. Taking inappropriate risks on the job
 - f. Unexplained negligent behavior.
- You should not send the employee for testing, if you cannot reasonably infer that any of the
 factors in paragraph "1" occurred and/or you are not able to articulate how these relate to the
 accident or unusual incident.

- You should not send an employee for testing, if the accident or unusual incident is minor in nature and there were no injuries, inconsequential injuries and/or no potential for injuries.
- 4. You should not send an employee for testing, if there is a reasonable explanation for what caused the accident which discounts the employee's behavior as a primary contributing factor.

Example No. 1

In a well-lighted area with no obstructions or debris on the floor, an employee trips and injures his/her back. The employee has no explanation for the incident and states that one-minute he/she was walking and the next minute he/she was on the ground.

Response: The employee should be tested. There is no reasonable explanation as to why employees would trip in a well-lit area with no obstructions unless the employee was being extremely careless or wholly inattentive to his/her surroundings. In this case, drug or alcohol use could have contributed to the accident.

Example No. 2

A conductor opens the subway car doors on the wrong side after arriving in a station.

Response: The employee should be tested. Opening subway car doors on the wrong side demonstrates a high level of inattentiveness and carelessness by the conductor which would warrant testing. Under normal circumstances, a conductor who was paying attention and in control of his faculties would not open the doors on the wrong side. Drug or alcohol use <u>could</u> have contributed to this incident.

Example No. 3*

An employee fails to wear required face protection and suffers an eye injury when operating equipment.

Response: The employee should be tested. An employee who suffers an injury which is or could be severe, after placing themself in a dangerous situation by not wearing required protective equipment, demonstrates a lack of judgment as to their own safety and potentially to those around them. Drug or alcohol use <u>could</u> have contributed to the accident.

Example No. 4

.An employee who is wearing a hardhat and working under an overhead structure is hit on the head by falling debris. There are no posted signs warning of falling debris.

Response: The employee would not ordinarily be tested. There is no reasonable explanation as to how the employee's own behavior could in any way have contributed to the accident, and other circumstances readily explain how the accident occurred.

Example No. 5*

Same facts as in Example No.4, except there are numerous signs warning of falling debris. In addition, supervision has warned the employees not to walk in this area. An employee ignores the warnings and walks in the area and is injured by the falling debris.

Response: The employee should be tested. The employee placed himself/herself in danger by walking in an area where debris was falling overhead. Such conduct demonstrates a high level of carelessness for personal safety. Therefore, it is reasonable to conclude that drug/alcohol use could have contributed to the accident.

Example No. 6*

An employee is operating a piece of machinery on the track, the equipment breaks and the employee injures his/her back.

Response: The supervisor or manager on the scene should quickly evaluate the situation. Testing may or may not be required under these facts.

What do you want to know?

- A. Has the equipment ever broken in the past and under what circumstances?
- B. Is the equipment broken?
- C. What is the employee's explanation?
- D. From what you have learned on the scene, is there a basis for believing that employee's behavior was a primary contributing factor to the accident. If not, no testing should occur.

Example No. 7

A bus operator is stopped at a red light and is rear-ended by a car behind the bus. There is no evidence at the scene disputing the contention that the bus was stopped at the light prior to the accident occurring.

Response: The employee should not be tested. The employee's conduct could not have contributed in any way to the accident.

Example No. 8

An employee with a back injury from a previous work related accident returns to duty. While walking to his/her assignment, the employee experiences continuing back pain which prevents them from working. The employee reports a recurrence of the old injury.

Response: A recurrence cannot be attributed to carelessness, inattentiveness etc., and the employee should not be sent for testing.

^{*} NYC Transit policy requires that an employee receive requested medical attention. If an employee requires or requests emergency services or seeks immediate treatment from his/her physician, testing may occur, if otherwise appropriate, only after treatment has occurred.

elephonic #	ON THE JOB INJURY FORM page 10f4	Report Date
-------------	-------------------------------------	-------------

Injured Employee	Complete PART A - Employee Section and Differential Application upon occurrence of injury or recurrence of injury on duty Make three (3) photocopies and keep one (1) copy
Supervisor	 Complete PART A - Employee Section if employee is not available Complete PART B - Department Section Fax form within 24 hours to Workers' Comp Unit (718-694-3281/3807) Send original form within 2 business days to Workers' Comp Unit, 130 Livingston, 10th fl. Department of Subways only - Send form within 2 business days to IOD Unit, 130 Livingston, 6th fl. Department of Buses only - Send form within 2 business days to DOB Safety, 25 Jamaica Avenue, Rm. 28H

PLEASE PRINT - FULLY ANSWER ALL QUESTIONS

(if employee is	PART A - EMPLOYEE not available, Supervisor must con		gn form)
Name: Last	First		M.I
Pass# BSC#	Date of Birth/	/ Soc. Sec.# X	XX-XX-
Home Address (& Apt. #)		City	State
Zip Code Gender (M	/F) Home Phone #	Cell Phone	e #
Home Email Address	Job Title	Title Code	ate of Hire/_/_
Dept./Division	RCN#Wo	rk Location	
Name of Supervisor		Total Hrs. Worked 7 I	Days Prior to Injury
Work Status at Time of Injury: Fu	ll Restricted Tour / Hrs. o	f Duty: From(AM	/PM) To(AM/PM)
Wages/Hr: Schedu	led Lunch: From (AM/PM) T	o(AM/PM) RD	Os
DESCRIBE INJURY:		20	
Date of injury//	Time of day employee began work	on date of injury:	(AM/PM)
Time of injury: (AM	VPM) Date of Death (if applicable	e)//	Įs.
Daguerana of Brian tois 2 V	N Date of Prior Injury/	/	
Recuirence of Prior Injury? 1			
	the state of the s		
Location of Injury: County	Tower Track #	Station	Shop
Location of Injury: CountyYard			

Effective 10/10/2014

Telephonic #	ON THE JOB INJURY FORM page 2 of 4	Report Date
Injured Employee's Name	I	Pass#
	occurred. Indicate what you were doing at the time of the interest caused the injury. (Attach an additional sheet(s) if necessity	
'ype of Injury (burn, cut, fracture)		
	t arm, head)	
Medical Treatment Requested? Y	N Date Notified Supervisor://	000000
eceived Workers' Comp Statemen	nt of Rights? Y N	
eceived Injury on Duty Instruction	n Sheet? Y N	
On-the-Job-Injury form and any latements made herein are subje- rounds for disciplinary action.	y, under the laws of the State of New York, that all sta accompanying documents are true and correct, with f ect to investigation and that any false or dishonest answ Da	ull knowledge that all
upervisor Signature:	(if employee fails to sign)	te/_/
e designated as leave usage under t	FAMILY MEDICAL LEAVE ACT (FMLA) If a lost time injury greater than 30 days, lost time relating the Family Medical Leave Act (FMLA) if you are otherwichat the Transit Authority has to controvert the claimed on	se eligible. This notice does
eport nor Workers' Compensation ifferential Benefit, I have agreed the	DIFFERENTIAL APPLICATION plication to begin processing. Signature does not denote determinations of eligibility. I understand that, in making nat the Authority may seek to recoup the value of Differer against third parties I may institute as a result of this Injur	this application for stial Benefits paid from any
nployee's Name (please print)		
nployee's Signature:	Date	;//
questing Waiver & Election? Y_ ast submit the form within 2 busing	WAIVER & ELECTION N If yes, Employee must complete Waiver & Elec	ction Form, and Department

Effective 10/10/2014

Tel	en	honic	H
	ch	MARITO	"

ON THE JOB INJURY FORM page 3 of 4

Report	Date
1	1

PART B - DEPARTMENT SECTION (Supervisor must complete this section and sign form)

Injured Employee's Name		Pass#		
Supervisor's Name: Last	Firs	st	M.I.	
Pass#BSC#_	Work Location	n		
Work Phone Number	Cell Phone Number			
INJURY INFORMATION				
Did you observe the injury? Y N	If no, Who reported the injury t	to you?		
Describe in detail your knowledge of	how the injury occurred. (Attach an a	additional sheet(s)	if necessary)	

At the time of the injury was the empl				
Was the employee working approved				
Did the employee appear fit for duty?				
Did the employee stop working? Y				
Has the employee returned to work? Y	N Return to work date:			
Date the employee reported to MAC for	or Drug/Alcohol Testing://	-	2	
RESPONSE TO INJURY				
Was first aid given? Y N If y	es, describe the type of first aid:			
Who was first at the injury scene? Na	me:	Phone Nun	nber	
Area secured/immediate hazard elimin	ated?			
/ Time: (AM/PM) N	If not, why?			
f treatment given away from worksite,	where was it given? Name of Facil	ity	***	
Address	City	State	Zip Code	
Vas the employee transported by ambu	lance? Y N Treated in E	/R? Y N	Hospitalized? Y N	
ame of doctor or health care profession	onal:	Badge #	(if applicable)	

	ON THE JOB INJURY FORM page 4 of 4		Report Date
Injured Employee's Name			Pass#
FACT-FINDING			
Did you speak to the injured emp	oloyee? Y N If yes, Date:	//	
No.	speak to or assist the employee? Y		nown If yes, List:
	Title		
	Title		
	Title		
	ideo If checked, by whom? Name:		
	Why did it happen? What actually cause		
Was an object (e.g., equipment, to	ool) involved in the injury? Y N	If yes, wha	t?
Was the equipment/tool defective	or used improperly? Y N If	yes, explain	The continue was a second of the continue of t
Was a chemical or air contaminar	nt involved? YN If yes, wha	ıt?	
Did the employee follow the police	cies or procedures for the tasks being	g performed at the	time of the injury? Y N
If no, please explain			*
	l training? YN Unknown		* *
Was required Personal Protective	Equipment (PPE) used? YN		*
Did the employee's actions (e.g., l	norseplay, distracted, drug or alcohol	l use) contribute t	o the injury? Y N
If yes, please explain			·
Were there any conditions (e.g., powalking/working surface) that con	oor housekeeping, insufficient lighting tributed to the injury? YN	ng, weather (snow	v, rain, heat, cold), defects in
f yes, explain			
	E ANALYSIS, what was the root can		nt?
	al investigation? Y N If yes		
RECOMMENDATIONS TO PR	EVENT RECURRENCE (What ca	an be done to pr	
-			
ocation Manager Name:	Signature:	· · · · · · · · · · · · · · · · · · ·	Pass #
Tective 10/10/2014			•

NEW YORK CITY TRANSIT ON THE JOB INJURY MANAGEMENT FOLLOW-UP FORM

Employee Name:	Manager Name:	
Title: Pass Number:	Title: Pass Number: Department/Division:	T. T.
Department/Division:	Pass Number:	
Department/Division:	Department/Division:	
Fax Number:		86
Date of injung		
Date of injury:		50
Description of injury		
		-
Action Taken:		
☐ Emergency Room	☐ Personal Physician	3.42
Hospital:	Name:	
Address:	Address:	F 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Telephone:		
relepnone:	Telephone:	
Physician:		
☐ Medical Assessment Center (MAC), or	Other, explain:	
☐ Independent Medical Examiner (IME)		
Location:		
Physician: Telephone:		
relephone.		
Employee condition:		
Employee condition:		
		-
☐ Non- work related condition identified, explai	n:	_
		_
Can employee work the following day?	□ Yes □ No	
If No, when can employee return to work?		
If return date is unknown, when is employee's n	next evaluation?	
, men ie empleyee e i		- i -,
☐ Contact day of employee:		
☐ Full duty: perform routine tasks		
☐ Restricted, explain:		
		3
☐ Restricted work available		
☐ Restricted work unavailable		
□ Return to full work	Date:	
☐ Employee failed to report to full work	Date: Date:	
☐ Employee failed to keep MAC/IME visit	Date:	
A STATE OF THE STA		
Manager's Signature		
	New Yor	rk City Transit

rev. 08/03/10