

# Light Duty v. Reasonable Accommodation

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Most Postal employees know that if they are injured on-the-job, the Postal Service must provide a Limited Duty assignment within the employee's medical restrictions. The Postal Service is motivated to provide Limited Duty assignments to on-the-job ill or injured employees to avoid lost work-day injuries.

*When a Postal employee becomes permanently ill or injured off-the-job, what are their options?* Postal unions attempt to negotiate these concerns by Light Duty under the Contract's Article 13. Light Duty is for both temporary and permanent ill or injured, but here I address the permanently ill or injured employee.

Article 13, Section 2B(1) states, "Any ill or injured full-time regular or (PTF) employee having a minimum of five years of postal service can submit a **voluntary request** (emphasis added) for a permanent reassignment to light duty or other assignment."

The language specifies "voluntary" because if you voluntarily request Light Duty under Article 13 you agree that the assignment, work location, hours of duty, and number of hours you work would be at the discretion of the installation head. [See also Local Memo Items #15-17, ELM 355 - Ed.] Also, if the employee receives a Light Duty assignment, the agency can require medical documentation when it "has reason to believe the incumbent is able to perform in other than the light duty assignment," or at least once a year. Other protections, such as assignments based on seniority, are waived when an employee submits a Light Duty request.

EEO Commissioners have recognized permanently ill or injured employees can lose certain rights when they apply for Light Duty. See *Irving v. Runyon*, EEOC No. 01940501 November 1<sup>st</sup>, 1994), *Tolar v. Henderson*, EEOC No. 01965083 (16 December, 1998).

## How to Apply

Typically, the Postal Service will provide to an employee with a permanent off-the-job illness or injury with a Light Duty packet or form. Usually completing the form seems like an instruction rather than an option. On occasion, once the employee submits a request, they are subjected to removal for failure to perform the essential functions of their position.

To avoid this pitfall, first determine whether the permanent illness or injury constitutes a 'disability' as defined by the Rehabilitation Act and the Americans with Disabilities Act. The disability must affect 'major life activities' to qualify. Also, the illness or injury cannot be temporary or transitory. Just last year the Supreme Court made new rulings. They opined that if a disability can be overcome with corrective measures (say with medications or prosthetics), then the person can fail to qualify as a disabled individual.

## Using Reasonable Accommodation

If the employee meets the definition, then he/she can submit a request for Reasonable Accommodation. This request is covered not only by the Rehab Act and the ADA, but also agency manual EL-307, which specifically addresses the procedure to make such a request. *An employee is not required to have been an employee for five years, as is the case with Light Duty.*

EL-307, Section 130 Light Duty, states "The reasonable accommodation guidelines described in this handbook do not apply to temporarily injured persons. Individuals returning to work with permanent physical limitations resulting from non work-related injury or illness should be afforded reasonable accommodation under these guidelines."

Reasonable Accommodation provides legal protections for an employee to articulate what accommodation(s) they require, as well as ensure that the employee is entitled to other privileges and benefits of employment (such as working a full eight hours). Whenever an employee makes a reasonable accommodation request, it's supposed to trigger an interactive process. *The agency becomes obligated to discuss accommodations with the employee, and make specific searches for a position the employee could perform.*

When the Postal Service realized that an employee's request required the agency's participation, they invented the Reasonable Accommodation Committee (RAC). As a subterfuge, on several occasions a supervisor or manager has advised an employee that they will appear before the committee to represent the employee's interests. Can you believe that a supervisor, who may have refused to provide the requested accommodation, is really going to represent the employee's best interests? [Ed. note: the local RAC has permitted stewards or other designated reps to appear with employees at RAC meetings.]

Most RAC's are staffed with managers, Human Resource Specialists, Safety Specialists, medical unit personnel, and sometimes an EEO Counselor and/or union representative. Generally, RAC committee members have little knowledge, or understanding of Rehab Act and ADA requirements. Even EEO Counselors have demonstrated limited understanding.

Permanent ill or injured employees, and union leaders and members, should know the differences between Light Duty and Reasonable Accommodation. As currently stated, Art. 13 can become an unsuspecting disaster for disabled and/or permanently ill or injured employees. Union members and leaders at the local level should discuss Article 13 to determine whether its language should be supplemented to incorporate the same legal theory, and ensure the proper protections, of employees under the Rehabilitation Act, the ADA, and the EL-307.

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## An EEO Victory

Reversing prior decisions involving Light Duty, the EEOC accepted an appeal of a former San Diego custodian, who was permanently injured in an off-the-job auto accident. After his recovery, the employee tried to return to duty with medical restrictions, limiting him, for example, to a 5-10 lbs lifting restriction. He requested Light Duty under Article 13. However the RAC denied his request, stating that he was ineligible for a vacant position because those positions were reserved for Limited Duty employees, those with an on-the-job injury.

The EEOC opined that *the distinction between light and limited duty has no bearing on the agency's duties under the Rehabilitation Act. See McCutchen v. Henderson, EEOC Appeal No. A1A00408 (01/08/01).* Article 13 notwithstanding, if you are permanently disabled, and your disability affects your major life activities, you may be afforded more protection under the law by requesting reasonable accommodation per the Rehabilitation and Americans with Disabilities Acts, and the agency manual EL-307, than under Article 13 Light Duty.

[Editor's note: Article submitted by Associate Editor Nancy Jackson. Edited and reprinted with permission. UTAH LEGAL ADVOCATES are not attorneys. The above article has been prepared for educational and informational purposes only. It does not constitute legal advice or legal opinions. The author is a former, 11-year Postal employee. For contact information about Mr. Pritchett see <[www.PostalEmployeeAdvocate.com](http://www.PostalEmployeeAdvocate.com)> See your steward for your rights under the Contract and manuals.]

## Why is it the 'Swing Room'?

I was surprised so many don't know where the term "swing room" started. Only old timers know the answer, and I'm sure all of us are glad it's no longer applicable, thanks to the union.

An employee used to come to work and work the mail that was available. When you were finished, management would have you punch off the clock, but you could not leave the building. You would go to the "swing room" and wait. When more mail came in, you would "swing" back on the workroom floor and back on the clock.

Only a few employees left actually worked during swing room times. I'm sure they don't miss the swing room days, being at the Post Office without getting paid. This working condition was rectified during the many struggles of our union. One of many wrongs righted that we have either forgotten, or, more likely, never knew. We can be grateful we now call it a "break room" and not a "swing room."

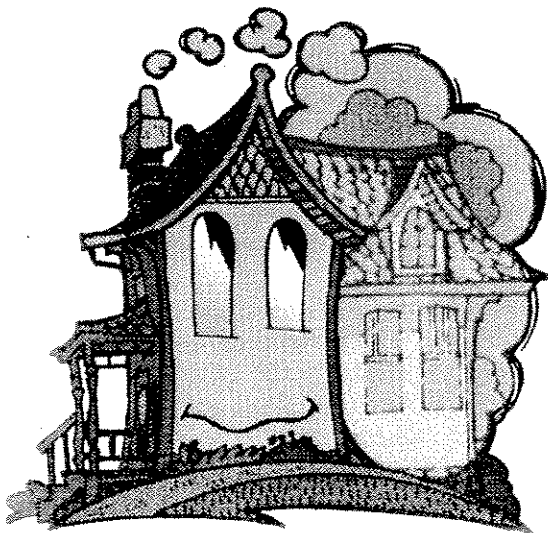
[ - Bob Gunter, *The Heartbeat*, Illinois ]

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