

2008 risk management strategies

systems and strategies to support your business

Establishing an Effective Return-to-Work Program

With workers' compensation continuing to represent a significant spend for California companies, employers continue to look for ways to reduce these costs and manage their workers' compensation programs more effectively. Establishing an accident and injury prevention program, along with an accident and injury response program, are two important ways employers can help control their costs. However, for many employers, the most effective way to reduce their workers' compensation costs is by bringing injured employees back to work as soon as medically possible, in a modified duty capacity if necessary. This article, focusing on return-to-work programs, is part of a series designed to provide practical advice and guidance to employers on managing their risk and controlling workers' compensation costs. Other articles in this series feature accident and injury prevention and accident and injury response, including accident investigations and claims management.

There are many benefits to an effective return-to-work program. Employers can reduce workers' compensation costs, avoid the costs of hiring and training a replacement worker, reduce fraud, and promote employee morale. Employees who know there is a job available and that their employer is willing to work with them are less likely to feel that the only way to protect themselves and their family is to retain an attorney and sue their employer. A return-to-work program also helps to avoid "disability syndrome," the failure to return to gainful employment when it is medically feasible, which according to insurance industry statistics is a factor in about 15 percent of workers' compensation claims. Additionally, research shows that employees who are engaged in productive activity are less likely to experience depression, and that the physical conditioning involved helps the injured employee recover faster.

A return to work program has two components: 1) temporary disability and modified duty; and 2) "permanent and stationary" conditions which may require on-going accommodation.

Temporary Disability & Modified Duty

The cost of temporary disability can have a major impact on workers' compensation premiums. If temporary disability time is not being managed, large reserves will be allocated to these claims to allow for payment of lengthy disability periods. These reserves directly impact your company's insurance premiums. The goal of a temporary modified duty program is to get workers back on the job, as quickly as their medical condition will allow. Employees who are encouraged to return to work are more likely to cooperate with treatment plans; complete their recovery more quickly; and are less likely to litigate their claims.

Some issues to consider in establishing a modified duty program are the administrative time required to set up and implement the program; payroll cost associated with modified duty workers; the supervision needed to ensure that employees are staying within their work restrictions; and managing the effects on employee morale (for example, modified duty may be seen as preferential treatment, employees on modified duty may view it as "make-work" or may come to prefer the modified duty to their regular jobs, etc.). Following is a step-by-step guide to establishing an effective return-to-work program.

> Get ready . . . Is your company return-to-work friendly?

Before you launch your return-to-work program, here are some things you can do that will help make the program a success.

Review your policies. Your safety policy should reinforce that the rapid and efficient return of employees to their original jobs is the goal and will be accomplished through transitional duty, if necessary. Your policy should also provide that employees are expected to fully cooperate with their treatment plan and transitional duty requirements once

released to work by their physician (the policy should also state that failure to do so could result in loss of benefits or termination).

Build Awareness and Support. Probably the most significant barrier to success of a return to work program is lack of support or even active resistance within the company. Often there is a tendency on the part of supervisors to view an injured employee as a liability – supervisors may not want an injured employee back until they are fully healed, because they are concerned about re-injury or the additional burden that will be placed on co-workers. Supervisors may pressure an employee on modified duty to exceed their work restrictions, or may resist a proposed accommodation (such as use of a stool or cart) on the basis that, if they allow it for this employee, they will have to allow it for everyone. There may be negative attitudes in the workplace about employees who file workers' compensation claims or who are out on temporary disability.

Supervisor training is important to ensure that supervisors understand the goals and benefits of the return-to-work program and can communicate the program in a positive way to their employees. Show your supervisors that the cost of bringing an employee back to work on modified duty is typically more than offset by the savings to the company that will result from a reduction in workers' compensation reserves and the effect on the company's experience-modification factor ("ex-mod"). Employees also need to be educated about the program so that reassignment of duties, reasonable accommodation or transitional duty is not perceived as preferential treatment. And everyone should understand the importance of treating injured workers with respect, as injured workers often face suspicion and negative stereotyping.

Your company's safety program should include ways to recognize and reward supervisors for bringing employees back to work and supporting modified duty in their departments. Safety incentive programs should include a measure of lost time days (for example, with a goal of improving on lost time days the preceding quarter). Performance reviews for supervisors should also include measures directly related to safety, including both a focus on accident prevention and support of return to work programs/reduction in lost time days.

Review job descriptions. Make sure job descriptions are up-to-date and as detailed as possible, including not only the physical requirements of the job (e.g., lift 30 pounds) but how often the task is required (e.g., repetitive vs. occasional lifting). This will let the treating physician know what kind of physical conditioning will prepare the employee

Will the new law help?

Changes to the workers' compensation system in California (effective January 1, 2004) require the creation of a return to work program and a fund designed to help employers create programs to facilitate the prompt return to work by injured workers. The law provides for wage subsidies of up to 50 percent of an injured employee's wage for up to 90 days of modified duty; and subsidizes the cost for workplace modification of up to \$1,500 to return a worker on temporary disability, or \$2,500 for a permanently disabled worker. Additional subsidies reimburse employers for up to 100 percent of workers' compensation premiums attributable to returning disabled employees to work. Funding for this program, however, is still uncertain.

for coming back to work. Job descriptions are also important in assessing which tasks could potentially be reassigned to create a transitional duty position. Consider photographing or videotaping someone performing the job.

Designate a medical care provider. Under current workers' compensation law, the employer has the right to designate the physician for the first 30 days after an injury or illness (unless the employee has pre-designated a physician). Look for a physician or clinic that specializes in occupational injuries, understands the workers' compensation system, and is committed to returning employees to work at the earliest possible point in the recovery process. Make sure they are willing to take the time to understand the jobs performed by employees in your company and the types of modified duty that are available, including reviewing job descriptions, visiting the work environment, or viewing photos or videos of jobs being performed. It is also important that the treating physician is able to establish trust and rapport with the injured worker since they will play a role in educating the worker about his/her injury and aspects of returning-to-work (when it's safe to return to work, even while experiencing some pain; advantages of returning to work to help speed recovery, etc.).

> Get Set . . . Establishing a Program

Here is a checklist for establishing your return-to-work program:

- ✓ Decide on a time limit for modified duty assignments so as not to create new jobs from temporary accommodation (e.g., modified duty could be assigned for 30 day periods, subject to a 90-day maximum).
- ✓ Select jobs or departments suited for modified duty. Develop a list of duties that can be performed within typical limitations given to workers in these positions.
- ✓ Work with supervisors to brainstorm light duty work. Be creative. Ask about backburner or “wish list” projects. Look for cross training opportunities. (The goal is to find meaningful work that is not demeaning to the injured employee, yet avoid creating a job that becomes too “comfortable” or that looks like a permanent job).
- ✓ Determine how payroll costs will be allocated, whether to the employee’s department or to a corporate cost center (often you can neutralize resistance to the program by assuring the department offering the modified duty that they will not be charged).
- ✓ Select a program coordinator and develop a process for assigning available modified duty workers and maintaining communication with the injured worker, the supervisor, the treating physician, and the claims administrator.

> Go . . . Assigning Modified Duty

Once an employee on temporary disability is released back to work with restrictions, it’s time to put your return-to-work program into action. First, assess the type of injury, the work restriction and anticipated duration of the restriction, and the job duties of their particular position. Can the work environment or equipment be modified, or additional tools or equipment provided to allow the injured employee to perform the job? Could tasks ordinarily a part of the injured employee’s position and that they are currently unable to perform be temporarily reassigned to other employees? Could work schedules be adjusted to comply with limitations or treatment schedules?

When you have formulated a modified duty position, put it in writing. Clearly state that the position is within the applicable work restrictions, describe the job duties, include the date the position is available and anticipated duration, work hours, reporting lines and timekeeping requirements, pay and benefits. (If the total pay will be less than the employee’s disability benefit, supplemental disability benefits will offset this discrepancy). Include an

expectation that the employee is responsible for staying within their work restrictions. While the modified duty position is in effect, you will need to monitor the assignment regularly. Check in with both the employee and the supervisor to see how things are going, and address any issues promptly. Review progress reports from the treating physician and/or reports from the Case Manager to monitor the employee’s progress and identify other opportunities. Remember, the goal is to return the employee to their regular position as quickly as possible.

Permanent Disability and Reasonable Accommodations

Some claims involve serious injury or chronic conditions that may never be fully reversed. At some point, the evaluating medical authorities may determine that the worker’s condition will not likely get better or worse. This is known as a “permanent and stationary” condition, or “P&S”. At this point, determinations are made as to the extent of any permanent disability; the need for continuing medical treatment; and the ability to return to work or the need to undertake vocational rehabilitation (for injuries occurring prior to January 1, 2004).

An employee who has been declared P&S may be capable of returning to his or her pre-injury job without limitation. The key determination is whether the employee is capable of performing the essential functions of the job with or without a reasonable accommodation, in accordance with the Americans with Disabilities Act (“ADA”). As above, an up-to-date job description is important in determining which job duties are essential functions. Generally, a function will be considered essential if it constitutes the fundamental job duties of the position or if the reason the job exists is to perform the function.

A reasonable accommodation may include eliminating or reassigning non-essential functions, acquiring or modifying equipment or devices (such as a higher stool or voice-activated software), reassigning the employee to an alternative position, if one is available, or even part-time or modified work schedules. The ADA requires that the employer engage in a timely, good faith, interactive process to determine effective reasonable accommodations. To comply with this requirement, the employer should meet with the injured employee to discuss possible reasonable accommodations, be open to the employee’s suggestions and be willing to try various accommodations in an attempt to find one that is successful. This process should also be documented. An employer will not be required to provide an accommodation if it poses an undue hardship, meaning that the accommodation would be unduly

costly, extensive, or substantial to the particular employer, or would fundamentally alter the nature of the operation of the business. Whether or not an accommodation poses an undue hardship is determined on a case-by-case basis taking into account the resources of the particular employer.

For workers' compensation purposes, an offer of a modified position or alternative position within the employee's work restrictions will avoid vocational rehabilitation benefits. A "modified position" (regular pre-injury duties as modified to accommodate the disability) must last at least 12 months and pay the same wages and benefits as the employee's former position. An "alternative position" (a different position for which the employee is qualified and which is within the employee's work restriction) must last at least 12 months, pay at least 85 percent of the wages and benefits of the employee's former job; and be at the same location or within a reasonable commuting distance. Document your efforts to identify other available jobs the employee could perform by keeping meeting notes, copies of job postings and job descriptions under consideration, and copies of written proposals and responses. Once an offer is made, the employee has 30 days to accept or reject the offer. If the employee fails to respond within that period, or rejects the offer, the employer is relieved from paying vocational rehabilitation benefits (for injuries occurring before January 1, 2004) or supplemental job displacement benefits (for injuries occurring on or after January 1, 2004), or from reinstating the employee.

Note: For injuries occurring on or after January 1, 2004, vocational rehabilitation benefits are replaced by a graduated benefit for injured employees with permanent partial disability (PPD) who do not return to work for the employer within 60 days of termination of temporary disability. This supplemental job displacement benefit is in the form of a nontransferable voucher for education-related retraining, skill enhancement, or both, at a state approved or accredited school. Benefits range from \$4,000 to \$10,000 depending on the extent of the disability.

Bringing injured employees back to work is just one part of an overall risk management strategy designed to control workers' compensation costs. Other key components are an accident and injury prevention program, and accident and injury response program (including accident investigations and claims management).

How Your Staffing Service Can Help

For workers' compensation purposes, the staffing service and the client are considered "joint employers" of the temporary employees. The staffing service as "primary employer" is responsible for providing workers' compensation coverage including payment of temporary disability benefits. Controlling workers' compensation costs is a critical factor in the staffing service's ability to maintain competitive pricing.

If a temporary employee is injured on assignment, the staffing service will work with your company to try to bring them back to work as soon as they are physically able, including in a modified duty position if one is available. Your staffing service may even offer a discount applicable to modified duty positions. By working together to promote a safe working environment, bring employees back to work, and control costs, everyone wins.

