Go Toward the Light (Duties) – Benefits Of Return-To-Work Programs

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An Oasis in the Workers’ Compensation Desert

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Go Toward the Light (Duties)
Benefits of Return to Work Programs
What Exactly is a Return to Work Program?

• Most return to work programs allow injured employees to resume working before they are fully discharged from medical care for an injury.
• Most programs allow for work restrictions to be accommodated and allow the employee to perform modified duties.
• Return to work programs may be formal or informal, depending on the policies and needs of the employer.
What Work Restrictions Can Be Accommodated?

- Almost any restriction can be accommodated – provided that the employer is willing to do so.
- Accommodations can be relatively simple – allow more frequent breaks, reduced schedule.
- Accommodations can involve devices or equipment – lifting belt, sit/stand adjustable desk.
What are Some of the Benefits of a Return to Work Program for the Employer?

- Reduced Disability Costs - more to come…
- Reduced Medical Costs – studies show that returning to work often speeds recovery from injury.
- Increased Employee Retention – employees are less likely to return to work following extended disability.
- Lower incidences of fraud and/or litigation.
- Increased Employee Morale
- Lower costs to retrain employees to replace those on disability.
Reduction in Disability Costs – A Closer Look

- Disability – generally 40% - 60% of the costs associated with a claim of work injury.
- In most jurisdictions, workers are not able to receive indemnity benefits if they do not accept a valid offer of modified work.
- Indemnity benefits can generally be offset by wages if the employee is only able to return to part-time work.
Common Components of a Formal Return to Work Program

- Accurate and Current Job Description – It is critical that job duties are accurately described and documented.
- May use a licensed professional to conduct on-site analysis of duties and physical requirements.
- Physical requirements of duties, both average and maximum.
- Positioning and posture required to perform duties.
- Measurement of weight required for lifting/carrying.
- Environmental Conditions – e.g. dust/fumes
- Any equipment or devices required to perform duties.
Medical Considerations

• Employer must ensure that modified duties comport with current work restrictions issued by employee’s treating physician.
• Arrange for employee’s treating physician to review description of modified duties to confirm duties are appropriate for medical condition.
Formal Return to Work Programs – Additional Considerations

- Not all employers are willing to incur the costs associated with implementing a formal Return to Work Program.
- Some employers have little flexibility or options with respect to offering modified duties.
- Managers and Supervisors must be properly trained to ensure modifications and restrictions are implemented and followed.
Importance of Communication

- Written guidelines and policies ensure that company philosophy regarding return to work is clearly articulated.
- Must establish clear responsibilities and expectations for both management and employees.
- Decrease potential resentment by non-injured employees
- Consider training program for management and employees to increase awareness of importance of Return to Work Program.
- Ongoing evaluation and review to ensure that program evolves to meet changing business environment.
Informal Return to Work Programs

- Partial or complete absence of formal policies or procedures
- More common at small-to-medium sized employers
- Usually overseen by Human Resources Department or Department Supervisor
- Work restrictions usually agreed upon during interactive accommodation process
- Success depends upon frequent communication between injured employee and Supervisor/HR Department
Benefits of Informal Return to Work Programs

- More cost effective than establishing and maintaining a formal program
- Generally more flexible than formal program
- Less need for specialized employees to oversee program
Possible Drawbacks to Informal Return to Work Program

- Lack of structure makes mistakes in implementing program more likely.
- No written policies to which supervisors can refer if they do not completely understand how to implement accommodations/work restrictions.
- Employees may not be aware program exists.
- May lead to legal issues under FMLA, ADA, EEOC if program is incorrectly administered.
Red Flag – Short Term Disability Policies

• Must coordinate workers’ compensation benefits with potential Short Term Disability policies which employee may have
  • These can be private disability insurance policies, or disability benefits provided by a state or public entity – e.g. Employment Development Department in CA
  • Employees not permitted to “double dip” when receiving benefits from multiple sources
Red Flag – Termination of Injured Employee

- Some employers have policies providing for termination of employees after they have missed certain amounts of time from work.
- Workers’ compensation laws in some states require job training or other vocational services if work injury results in permanent work restrictions which cannot be accommodated.
- Some jurisdictions have statutes which prohibit discrimination by employers in the event an employee reports an industrial injury. Termination during disability can lead to discrimination claims.
Red Flag - ADA

- Generally applies to employers of more than 15 employees for certain periods of time.
- Some states have similar laws that may be more strict than ADA.
- Requires a good faith effort by employers to accommodate a disability reported by an employee, including providing a leave.
- Good faith effort to accommodate may be required even if no request is made by employee.
ADA - continued

- Employee is entitled to return to same position after leave unless employer asserts doing so would impose an undue hardship or employee cannot perform essential job functions with or without reasonable accommodation.
- If employee has disability caused by a work injury, and work restrictions can be accommodated, the employee can reject the modified work if eligible for FMLA.
Return to work programs can be an asset to employers and employees. These programs can reduce disability costs by the employer associated with work injuries, as well as increase employee morale and retention of experienced employees. Programs may be formal or informal, depending on the needs of the individual employer. Programs must be properly implemented and followed – communication is key! Be aware of red flags and address potential problems quickly.