

Establishing a Return to Work Program

Purpose & Objective

The goal of a Return to Work (RTW) program is to bring an injured employee back to work as quickly and safely as possible in accordance with medical restrictions. RTW is part of an overall risk management program with an organized approach to managing the rehabilitation process.

Section 400.015 Legislative Intent

The intention of the Workers' Compensation Law is to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to *facilitate the worker's return to gainful reemployment at a reasonable cost to the employer.*

Benefits to Employers: Direct Savings

- Indemnity payouts are reduced or eliminated when an injured worker returns to work.
- Medical costs are reduced and recovery time is shortened.
- Wage costs for substitute employees are saved.
- RTW programs directly impact loss ratios and experience modifiers, helping to control premium costs

Other Benefits to Employers

Productivity

- Retained production of skilled, experienced workers.
- Overtime is lessened to make up for lost production.
- Work delays, business interruptions are reduced.
- RTW programs reduce possibilities of employee fraud and litigation.

Morale

- Relationships between labor and management are improved.
- Management commitment to its employees is reinforced.
- Co-workers not required to pick up slack of absent worker.

Benefits to Employees

Quicker recovery | Stay active, productive, & conditioned | Wages are closer to pre-injury income | Company benefits & seniority continues | Job skills are maintained | Fear of unemployment is resolved | Stress, boredom, & depression are reduced | Family & social life are maintained | Focus on pain and suffering is minimal; overall wellness is promoted

RTW Definitions

Temporary Total Disability (TTD) – No work status:

Employee may not return to work in any capacity per authorized treating physician.

Temporary Partial Disability (TPD) – Light duty or modified duty:

Employee can temporarily perform suitable jobs within the physical restrictions assigned by doctor.

Full duty or regular duty status:

No physical restrictions in place, but does not mean “released” from treatment.

Maximum Medical Improvement (MMI):

Further recovery is not expected. Employee may be assigned an Impairment Rating (PIR) from 0% or greater. PIR may or may not involve permanent restrictions.

RTW Obligations

An RTW program DOES NOT obligate employers to create unnecessary work or return an injured worker if there is no appropriate, productive work available.

It DOES obligate the employer to try to provide productive work that accommodates the worker’s physical abilities as often as possible.

Two Types of Suitable Light Duty

Modified Duty:

The employee’s regular job is temporarily modified to accommodate specific physical restrictions.

Alternate Duty:

The employee is temporarily placed in a different position. This is the most common use of light duty.

Light Duty: Key Points

- RTW light duty is temporary and not considered a permanent accommodation to a workplace injury.
- Some modifications to a worker's current job may result in permanent changes. However, most accommodations are for the healing period until the doctor releases the worker to full duty.
- When a light duty assignment has been made, an assessment should occur after a pre-determined time interval regarding the employee's progress and whether the offer will continue.

Obstacles in Establishing RTW Programs

- Idea that workers' compensation claimants are bad employees.
- The "problem" employee.
- Employer believes there is no light duty to offer.
- Communication issues between supervisors and employees.
- Disciplinary or pay issues, workload concerns, job dissatisfaction.

440.15 (6) Employee Refuses Employment

If an injured employee refuses employment suitable to the capacity thereof, the employee shall not be entitled to any compensation at any time during the continuance of such a refusal. This is unless at any time, in the opinion of, the judge of compensation claims such refusal is justifiable.

Fears of Long-Term Light Duty

- Adverse effects on other employees and widespread morale problems.
- May be an incentive for injured employee not to recover.
- The light duty program spirals out of control to where a high percentage of the workforce is languishing away under light duty restrictions, hurting productivity, and poisoning the culture of the workplace.

Employers' Fears Addressed

It's unlikely these fears will be realized. Remember, an employee who is able to work light duty and yet collects wage benefits represents a failure of the workers' compensation system.

A savvy employer will do anything within reason to keep that worker on the job and away from the expensive payment of worker's compensation.

Basic Elements of a Successful RTW Program

- Commitment by all managers & supervisors.
- Consistent application of the program.
- Emphasis on safety & accident prevention.
- Prompt medical care following injury.
- Continuous communication with employee while off work.
- Upon RTW, monitor work assignments and progress until full release.
- Involve employees in the development & implementation of program.
- Educate & share information about program before injuries occur.
- Link RTW with safety program in the review of accidents.
- Develop written job descriptions that clearly explain essential functions & tasks required.
- Designate a person/committee to coordinate program, be responsible for reporting & record keeping, and communicate with the injured worker & workers' compensation carrier.
- Evaluate the program periodically.
- Compliance with Americans with Disabilities Act (ADA), Family Medical Leave Act (FMLA) & other workers' compensation laws that might apply.

ADA, FMLA, & Workers' Compensation Laws

When an employee with a compensable injury also meets the criteria for protections under the ADA or FMLA, it is important to understand these laws and how they relate in a return to work context.

Employers should seek expert legal advice when making decisions involving the coordination of RTW programs, the ADA, and FMLA.

Americans with Disabilities Act (ADA) was enacted to protect people from discrimination on the basis of disability.

ADA requirements in a rehiring situation:

- ADA requires employers to rehire employees with a disability (a physical or mental impairment that substantially limits a major life activity such as walking, breathing, performing manual tasks, working, etc.), who can, with or without reasonable accommodation, perform the essential function of the job.
- Employers must provide accommodations unless doing so would create an undue hardship on the business.
- Examples of accommodations include:
 - Making the work environment accessible to and usable by the individual with the disability.
 - Restructuring the job functions to match the abilities of the worker (but not creating a new job).
 - Modifying work schedules.
 - Reassigning injured employees to vacant positions.
 - Acquiring or modifying equipment or devices used.

Employers must try to accommodate the impairments or limitations of injured employees with a disability and cannot have a policy of only taking employees back when they are 100%. The vast majority of workers' compensation injuries do not result in a "disability" under ADA.

Family Medical Leave Act (FMLA) was enacted to provide job security to employees with serious medical conditions or those who have personal and family obligations of tending to vital needs at home.

- Requires employers to provide up to 12 weeks of unpaid, job protected leave to eligible employees for certain family and medical reasons including a serious condition of the employee.
- Cannot force employee to return to work in a modified position if they request FMLA.
- An employer is required to place a returning employee (from FMLA) in the job previously held or in an "equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment."
- Reasonable accommodation may be necessary if an employee is returning from FMLA with a disability covered under ADA.

Building Blocks to Establishing a RTW Program

- Identify and state the policy's purpose and objective.
- Identify and state procedures and responsibilities.
- Communicate.
- Implement.

Identify & State Policy, Procedures & Responsibilities

- RTW program should be simple, realistic, and tailored to the employer's needs.
- A written statement reinforces the company's commitment and integrates the expectation into the workplace.
- Written information helps with communication to various parties and ensures the consistent application of the program.

Policy Statement

Create and post a policy statement that is brief and broadly written. Post it in an accessible area. Include statements that:

- Confirm the company's commitment.
- Explain the RTW philosophy.
- Stress safety and injury prevention.

Procedures & Responsibilities

Written information should include:

- How to report an injury.
- Procedures in getting medical attention.
- Who completes the FRII.
- Who keeps in contact with the injured worker.
- Job descriptions & job offer letters.
- What the injured worker can expect from the carrier, treating doctor, etc.
- How and who determines medically appropriate work assignments.
- How the incident is investigated.

Communication & Implementation

Establish a joint employee/management committee:

The success of the RTW program rests with a basic design that encompasses both labor and management perspectives, as well as ongoing support in the implementation from both parties.

Make sure there is appropriate coordination. Assign responsibility to an individual for RTW process coordination for each injury or illness. That individual needs to make sure of the following:

- There is ongoing communication between all parties – providers, administrators, supervisors, co-workers, and the injured employee.
- The physician’s evaluations are continually reviewed to determine the employee’s restrictions and the ability to accommodate them with transitional or light duty.
 - Consider modifying existing jobs to accommodate restrictions or limitations.
 - Look for alternative work assignments which may fit existing restrictions.