



# Workers' Compensation: Strategies for Handling Return-to-Work Issues

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Workers' comp is a resource designed to be beneficial to both workers and employers. If an employee becomes injured or ill due to work-related reasons, workers' comp provides the individual with monetary compensation to replace lost wages, in addition to medical care. While this benefits the individual worker, the benefit to the company or employer is the fact that by receiving workers' compensation, an employee agrees not to sue the company for their actions contributing to the accident or injury.

The description above outlines how workers compensation is intended to work. However, there are often complications that keep it from working smoothly. Some of the largest complications occur when an individual who had been receiving workers compensation benefits is ready to return to work. By knowing what kind of problems could be caused by return to work issues, employers will be in a better position to prepare for and solve those issues if and when they do occur.

### **Employee Returns to Work Too Soon**

One of the most common return to work issues that employers must deal with occurs when doctors approve employees for work too early. In some cases, doctors may approve an employee to return to his or her previous position because the doctor genuinely thinks that the employee can return. In other cases, the doctor may have been pressured by either the employee or the organization to allow the individual to return to work. Whatever the case may be, the

employee who returns to work too early is often injured again. Getting injured on the job again means more workers' comp benefits for the employee, including more days off work, medical payments, and/or a move to a new position. All of these cost the company money, so it is in the best interest of the company to ensure that the employee does not come back to work until he or she is physically capable of performing his or her job.

Supervisors should be on the lookout for employees recently released from workers' comp who may be coming back to work too early. For example, they may look for employees who seem to be having difficulty performing their jobs, who seem to be in a great deal of pain or who are overly fatigued. It is a good idea for supervisors to speak with employees who have recently come back from medical leave after a day or a few days back on the job. This way, they can get an idea of whether or not the individual is coping well with his or her previous position.

### **Employee Returns to the Wrong Position**

In some cases, doctors allow employees to go back to work but not to the jobs they had before they were injured or became ill. Often, doctors require workers to return to work in a light duty position. This means that the employee who was injured is well enough to return to work but not well enough to return to their previous positions. For example, an employee who was injured while working construction for a company

might not be fit to return to the construction field. However, he or she might be able to return to work in a desk or inspection position. When doctors certify individuals to come back to work in light duty positions, employers, employees and their doctors need to ensure they all know what kind of work the individual can and cannot handle. This way, all parties will be able to make the most informed decisions regarding where the injured individual should work.

The legal procedure for assigning an individual to a light duty position differs from state to state, but it generally follows the following steps:

1. The employer must determine if a job exists or can be created that would fit the employee's medical restrictions.
2. If a job is found or created, the employer must write a job description that details the job's physical requirements and present it to the employee's doctor, the employee and his or her legal representation. At this time, any parties with concerns should voice them and discuss any further modifications that need to be made.
3. The employee attempts to work in the light duty position.

In some cases, employees will be certified to return to work in light duty positions, but their bosses will require them to work in their old positions or in a different position that is still too difficult for them to manage.

Sometimes this happens because bosses and employees just aren't paying attention to the doctor's orders, and the employee doesn't feel any pain while working, so he or she just continues to work until he or she becomes injured. In other cases, bosses move the employee into a heavy duty position because this will benefit the company, and the employee is too intimidated or fearful of losing his or her job to complain. It is against the law for employers to force employees to return to work in positions that those employees are too injured to fulfill. However, some employers still do so. Ensuring that employers stay in line with the law by accommodating injured workers is an important job for the company's legal and HR departments.

The best strategy to handle employees who have returned to work in the wrong position is to prevent this from occurring. One way in which employers can do this is by having an in-take appointment with any employee who is returning to work. The company's HR -- or in a small company the owner or manager -- should review the worker's medical release forms, contact the doctor about any questions that arise and then carefully go over the duties of the position to which the individual will be assigned with that individual. Employers should follow the steps above, and should determine if there is any other documentation or procedure that law in their state requires.

Employers should also routinely perform wellness checks on individuals who have

returned to work, asking them if they feel any physical strain in the current position. If an employer comes across an individual who has recently returned to work and who appears to be struggling physically with his or her position, the employer may wish to encourage the individual to see a doctor to re-evaluate his or her readiness to work in this capacity -- in addition, the employer might suggest a move to a less taxing position.

### **Employee Does Not Wish to Return to Work**

Employers have all heard horror stories about employees who have tried to get injured on the job and then have milked that injury for all it was worth, receiving workers compensation benefits for the rest of their lives. In some cases, employees do attempt to take advantage of workers comp. There are a few ways in which employees who do not wish to return to work take advantage of their employment benefits.

First, employees may hope that employers cannot find a light duty position that will suit them if they are cleared to work in a light duty capacity. If an employer cannot find or create a modified position in which the employee can work within his physical limitations, then the employee can stay at home and continue to receive workers comp benefits. In some cases, an employee will insist that each light duty position that is found for him or her requires too great of a physical burden. If the doctor's note certifies the individual to work in this position, however, the employer can still require the

employee to come back to work, but the employee and his or her attorney may fight the decision.

Second, employees who do come back to work in a different or even the same position may try to perform work that is so substandard that the employer will request that he or she continue on workers' compensation benefits. This is a difficult situation for an employer to be in because while it is possible for employers to fire individuals who have recently been re-admitted into the workplace after a workers' compensation claim, it is also likely that the terminated employee will sue. Employees cannot be fired for issues relating to their injuries, and it is likely that an employee terminated soon after coming back to work will claim that the termination was due to injury. To prevent this from occurring, employers should also be careful to maintain a paper trail. If an employee is on thin ice for other reasons, employers need to keep careful track of those employee's mistakes or reasons why a firing would be called for.

Workers compensation is beneficial for both employee and employer, but return to work issues can cause problems for employers. Employers need to be mindful of these return to work issues and the strategies that can solve them to ensure a workplace that functions well.

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