

JAN

Job Accommodation Network

Practical Solutions • Workplace Success

Accommodation and Compliance Series

Return-to-Work Programs

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A service of the U.S. Department of Labor's Office of Disability Employment Policy

Preface

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03/18/13.

JAN'S ACCOMMODATION AND COMPLIANCE SERIES

Introduction

JAN's Accommodation and Compliance Series is designed to help employers determine effective accommodations and comply with title I of the Americans with Disabilities Act (ADA). Each publication in the series addresses a specific medical condition or topic and provides information about the condition or topic, ADA information, accommodation ideas, and resources for additional information.

The Accommodation and Compliance Series is a starting point in the accommodation process and may not address every situation. Accommodations should be made on a case by case basis, considering each employee's individual limitations and accommodation needs. Employers are encouraged to contact JAN to discuss specific situations in more detail.

For information on assistive technology and other accommodation ideas, visit JAN's Searchable Online Accommodation Resource (SOAR) at <http://AskJAN.org/soar>.

Information about Return-to-Work (RTW) Programs

What is an RTW program?

An RTW program is part of a business strategy to retain valued employees and to enhance the productivity of the workforce. There are various definitions of RTW programs, but generally they are designed to return an injured, disabled, or temporarily impaired worker to the workplace as soon as medically feasible. The anticipated result of an RTW program is the progressive return of the injured employee to full duty. RTW programs are historically associated with returning employees from occupational injuries, but many companies are now integrating RTW programs for non-occupational injuries into their overall disability management strategy. RTW programs in smaller businesses are typically managed "in-house" while the trend for larger businesses is for third party vendors to assist in managing the process.

An RTW program may include temporary or permanent accommodations such as modified schedule, modified job duties, modified method for completing job duties, or transitional work, or reassignment to an alternate position.

Why should employers consider RTW programs?

RTW programs aim to accomplish three important business goals: 1) reduce disability leave costs, 2) maintain productivity of employees and work units, and 3) comply with disability-related legislation. RTW programs reduce costs by minimizing the impact of an employee's injury or disability, including the cost of lost productivity time, permanent loss of an employee, and the use of disability related leave benefits. RTW programs

may also reduce the cost associated with recruiting, on-boarding, and training a new employee.

In addition, effective RWT programs help injured or disabled employees maintain productivity while still recuperating, protecting their earning power and boosting an organization's output (ODEP, 2012). By enabling employees to remain employed, an RTW program provides employees with financial stability. The program can also minimize injured or disabled employees' loss of skills and workforce value. In addition, an RTW program keeps employees active and engaged thereby reducing the long term debilitating effects of disability such as emotional isolation and depression.

And finally, an RTW program helps ensure compliance with disability-related legislation such as the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Occupational Safety and Health Act (OSH Act), and workers' compensation and other state laws.

Does research support RTW programs?

Research shows that RTW programs help reduce workers' compensation costs and increase productivity by returning employees to work earlier. In a 2007 review of current literature, the Canadian Institute for Work and Health concluded that RTW programs "have positive impacts on duration and costs of work disability" (IWH, 2007). In addition, the American College of Occupational and Environmental Medicine (ACOEM) reports that "early intervention is the key to preventing disability" (ACOEM, 2006). ACOEM recommends that employers "revamp disability benefits systems to reflect the reality that resolving disability episodes is an urgent matter, given the short window of opportunity to re-normalize life." The short window of opportunity to prevent disability refers to research suggesting that the likelihood of an injured worker returning to work drops to 50 percent by the 12th week of leave.

Research conducted by JAN with employer customers suggests the cost of retaining an employee is lower than often thought. Employers responding to the on-going JAN Study report that a high percentage (57%) of accommodations cost absolutely nothing to make (JAN, 2012).

How does an employer begin developing an RTW program?

There are two initial tasks that must be completed when developing an RTW program. The first task is development of a business case to be communicated to senior leadership. The second task is development of the policies and processes that will govern the program and guide its implementation.

As with most, if not all, workplace initiatives there are costs. Buy-in from senior leadership for start-up and long term support is essential. Support from these leaders can assist in resolving challenges during program implementation. This support can be

justified with a cost/benefit analysis. Using the results of this analysis as well as industry specific metrics and benchmarks (if available), a succinct business case can be communicated to senior leadership. A precise internal business case also provides clear measures to evaluate the RTW program once implemented.

As with workplace accommodation programs, an RTW program should have clearly written policies articulating the challenge that has been identified, how the policy addresses the challenge, the role and responsibilities of those involved in the policy implementation as well as timeframes for various actions, and how the program will be evaluated. Policies should also reflect the values of the organization and guiding principles. For example, if an organization believes that returning to work is the best strategy for keeping injured and disabled employees engaged with the company then this may be expressed in the value that no employee is expendable. An example of a guiding principle may be that all employees using the program are treated with dignity. Reflecting the company values and guiding principles within the RTW policy helps to create a positive atmosphere in which employees know they are valued.

In addition, processes and supporting materials also need to be developed. In a publication produced by the Florida Partnership for Safety and Health with support from the Public Entity Risk Institute, the authors write that the key components of an RTW process are (PERI, 2003):

- process flow actions to be followed when an injury occurs;
- an emergency plan that includes directions for reporting an injury, instructions for getting immediate medical help for the employee, and a list of phone numbers for all contacts involved (from the process flow chart);
- a communication plan including a regular schedule of communication between all parties involved in the process flow; and finally
- a transitional employment plan including modified employment or employment accommodations and/or alternate employment assignment to enable workers to safely transition back into the work environment after an injury.

One of the most practical, process-related resources is produced by Return-to-WorkMatters.com in a publication called the *Injury and Case Management: A practical guide to dealing with return to work after work injury*, which outlines specific actions to be taken in various time frames, and the challenges if these are not carried out (RTWmatters.com, 2010).

Crucial elements of an RTW process include viewing the process as a partnership between the employer and employee where both parties' needs are met. The employee may be very apprehensive about the process initially. As with anyone, the employee's focus beyond recovery will be on understanding the financial implications of return to

work. Providing clear information that includes all the employer and legislatively mandated benefits ready for the employee will help build a trusting partnership.

Another important element in this process involves continuous communication between the employer representative and the employee. From the first few minutes after an injury and through the return to work process, communication may be the difference between successful return to work or litigation. RTW Matters suggests from the first five minutes after employees are injured: “Don’t pre-judge, or assume what they are feeling – ask them...be mindful of their concerns, and take the situation seriously.” If not, the writers remind us that “In most claims that result in litigation, the initial conversation was the starting point for blame and resentment” (RTWmatters.com, 2010).

Accurate job descriptions that include the physical demands of particular essential functions are also important. Accurate job descriptions help everyone in the process (e.g., doctors, rehabilitation staff, and accommodation specialists) understand the job requirements. A good understanding of the job demands and the employee's limitations and abilities is the starting point for determining if effective job accommodations will enable the employee to return to or stay at work while still recovering from injury. Effective job accommodations insure that the employee returns to work as soon as possible without risk to the employee or employer. For more information about job descriptions please see <http://AskJAN.org/media/JobDescriptions.html>.

Once you have buy-in from upper senior leadership, policies and procedures to implement the RTW program, and materials to support the implementation, then you are ready to institutionalize the program. In the Workers Compensation Gazette, the CEO of Douglas Claims and Risk Consultants, Inc., suggests the next steps should be (Workers Compensation Gazette, 2010):

- Review the policy with new employees during their new-hire orientation or with existing employees during their annual review.
- Establish a working relationship with a walk-in clinic or occupational medical center – if your State allows you to select the initial treating facility.
- Assign a specific person in your organization to be responsible for administering the RTW program. This person should have a thorough knowledge of the ADA, FMLA, and the workers’ compensation statutes.

As mentioned previously, it is very important to understand federal and state legislation and regulations and their relationship with RTW programs. One federal law that often overlaps is the ADA, as amended. The ADA, whether the nature of the employee’s injury is occupational or non-occupational, may need to be considered during the RTW process. As information initially discussed in relation to an injury or disability may be

protected under the ADA, you may want to understand the context for medical inquiries. Guidance on this topic can be found at: <http://AskJAN.org/media/Medical.htm>.

JAN also provides a six step interactive process for engaging the injured employee and negotiating accommodation. This detailed process can be found at: <http://AskJAN.org/topics/interactive.htm>.

Information about the FMLA can be found at: <http://AskJAN.org/links/fmlalinks.htm>.

State workers' compensation and state leave laws may also overlap with return to work. Thus, it can be essential to assign a specific person in your organization who has thorough knowledge of the ADA, the FMLA, and the workers' compensation statutes. For more information about laws relevant to workers' compensation, please see more at the Office of Disability Employment Policy's Return-to-Work Toolkit at: <http://www.dol.gov/odep/return-to-work/employer-law.htm#law>. For information on state workers' compensation programs, visit: <http://www.dol.gov/owcp>. For information on federal workers' compensation programs, visit: <http://www.dol.gov/owcp/dfec/>.

For information on state labor laws, visit: <http://www.dol.gov/whd/state/state.htm>.

Please see the resources section for RTW organizations that may be able to assist in setting up your RTW program.

Return-to-Work and the American with Disabilities Act

JAN often receives questions about the ADA and return-to-work issues. The following are the most frequently received questions:

What is light duty?

The term "light duty" has a number of different meanings in the employment setting. Generally, "light duty" refers to temporary or permanent work that is physically or mentally less demanding than normal job duties (EEOC, 1996).

Is light duty required as a reasonable accommodation?

Reassigning an employee with a disability to a light duty job might be required as a reasonable accommodation, depending on how an employer's light duty program is designed. If an employer reserves certain jobs for light duty, rather than creating light duty jobs as needed, the employer must reassign the employee to a vacant, reserved light duty position as a reasonable accommodation if (1) the employee cannot perform his current position because of his disability, with or without a reasonable accommodation; (2) the employee can perform the light duty job, with or without a reasonable accommodation; and (3) the reassignment would not impose an undue hardship. This is because reassignment to a vacant position and appropriate modification of an employer's policy are forms of reasonable accommodation required by the ADA, absent undue hardship (EEOC, 1996). There is, however, no requirement to create a light duty position or any other position under the ADA (EEOC, 2002).

Is an individual with a workers' compensation injury protected under the ADA?

An individual with an injury covered under workers' compensation may be protected by the ADA, but is not automatically protected. To be protected by the ADA, the employee must meet the definition of disability. The ADA does not require an employer to provide a reasonable accommodation for an employee with an occupational injury who does not have a disability as defined by the ADA (EEOC, 1996).

The term disability means: (1) a person who has a physical or mental impairment that substantially limits one or more major life activities, (2) a person with a record of a physical or mental impairment that substantially limits one or more major life activities, and (3) a person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

For more information about the definition of disability, visit [How to Determine Whether a Person has a Disability under the Americans with Disabilities Act \(ADA\)](http://AskJAN.org/corner/vol02iss04.htm) at <http://AskJAN.org/corner/vol02iss04.htm>.

Can employers require employees to be 100% before returning to work?

Policies requiring employees to be completely restriction-free may violate the ADA. Some courts have characterized "100% healed" policies as per se violations of the ADA, but most courts have held that such policies only violate the ADA when applied to an employee who meets the definition of disability. One of the ways an employee can meet the definition of disability is to show that the employer "regarded" him as having a disability. In some cases, employees have proved that their employers regarded them as having a disability by showing that the employer would not let them return to work until 100% healed.

Do employers have to remove functions from an individual's job as a reasonable accommodation?

Under the ADA, employers have to consider job restructuring as a reasonable accommodation. Job restructuring includes modifications such as: reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability and altering when and/or how a function, essential or marginal, is performed (EEOC, 2002). There is no requirement under the ADA to remove essential functions as a form of reasonable accommodation. However, an employer can do so if it chooses.

What types of accommodations may be possible for returning an employee to work after an injury or illness?

For a summary of job accommodations for returning employees to work, see JAN's Effective Accommodation Practices Series: Job Accommodations for Return-to-Work at: <http://AskJAN.org/media/eaps/rtwEAP.doc>.

For accommodation ideas by disability, see <http://AskJAN.org/media/atoz.htm>.

SITUATIONS AND SOLUTIONS

Situation:

An employee working in concrete production had a work related back injury resulting in pain when standing for long periods of time and had been on leave under the FMLA.

Solution:

The employee was able to return to work after being provided with a sit/stand stool and assistance with lifting when necessary. The employer reported the accommodation enabled the business to keep a valuable employee and saved the cost of hiring and retraining a new employee. The employer reported that the industry suffers from high turnover. While the employer did not report the cost of the sit/stand stool, the typical cost is between \$75 and \$150.

Situation:

An employee who uses computers extensively while working in the insurance industry developed low vision and was out on leave as a result.

Solution: The employer provided the doctor recommended accommodations including screen reading software, more lighting at work space, and hand/desk magnifier. These accommodations enabled the employee to return to work. The employer reported that that the business was able to retain an excellent, skill professional. The accommodation cost \$700.

Situation:

An employee working in a warehouse setting had to manually move materials from one location to another. The employee had both an intestinal disorder and back injury, which interfered with his ability to move the materials.

Solution:

Two accommodation options were offered to the employee including purchase of a material lifting device for \$600 or reassignment of the employee. The employee chose to be reassigned to a position where he would not have to perform lifting as a job duty. The accommodation resulted in goodwill from other employees who may find themselves in a similar situation and allowed the company to retain a valued employee. There was no cost associated with this accommodation.

Situation:

An employee who was the first line supervisor in a food and beverage store had an infection resulting from a surgery. The infection required an extended time to heal.

Solution:

The employer provided the employee with job protection, which secured the employee's position until he was able to come back to work. The employer reported that the accommodation enabled the business to keep an excellent employee. The first line supervisors are reported to be the key to survival for this type of store. Thus, it is important to train and keep excellent staff. This was viewed as a win-win for both parties. There was no reported cost for this accommodation.

Situation:

A front line manager in food preparation experienced a stroke and remained off work during recovery.

Solution:

The employee returned to work with limitations resulting from a stroke. After his return, the employer worked with him to develop a plan for modifying his job schedule and tasks. Final job tasks were determined by the abilities of the employee. The final decision about who would supervise the employee's return to work was determined by upper management based upon information gained from the planning process. The employer reported an excellent worker was retained with no direct costs.

Situation:

An employee working in a health care clinic had seizures that occur when she was exposed to noise emitted from a machine in the treatment rooms. As a result, she went out on leave.

Solution:

The employee's doctor indicated that the employee could return to work, but could not use the problematic machine for more than an hour at a time before taking an hour break away from the machine. The employee returned to work and began following her doctor's recommendations. She used her hour break away from the machine to complete other tasks. The employer reported that a quality employee was retained, avoiding hiring and training a new employee. The employer also reported that the accommodation did not interfere with service provided to patients at the clinic. No cost was reported for the accommodation.

Situation:

An executive in the telecommunications industry had alcoholism, recently relapsed, and had to take leave time for treatment.

Solution:

The employer provided leave above and beyond the current leave policy. The employee successfully returned to work after treatment. The employer kept a valued employee.

Resources

Job Accommodation Network

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The Job Accommodation Network (JAN) is the leading source of free, expert, and confidential guidance on workplace accommodations, the Americans with Disabilities Act (ADA) and other disability laws, and the employability of people with disabilities.

Office of Disability Employment Policy

200 Constitution Avenue, NW,
Room S-1303
Washington, DC 20210
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(202) 693-7881 TTY
infoODEP@dol.gov
<http://www.dol.gov/odep/welcome.html>
<http://www.dol.gov/odep/return-to-work/>

The Office of Disability Employment Policy (ODEP) provides national leadership by developing and influencing disability employment-related policies and practices affecting an increase in the employment of people with disabilities.

Disability Management Employers Coalition

5173 Waring Rd.
Suite 134 San Diego, CA 92120-2705
<http://www.dmec.org/>
(800) 789-3632
(877) 789-3632 Fax

Non-profit devoted to integrated disability and absence management that works to advance strategies and resources that improve workforce productivity by minimizing the impact of absence and disability.

Integrated Benefits Institute

595 Market St., Suite 810
San Francisco, CA 94105
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The Integrated Benefits Institute (IBI) provides employers and their supplier partners with resources for demonstrating the business value of health.

LRP Publications

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Milt Wright and Associates is a publishing, training and consulting firm focused on Disability Management, Job Creation and Employment Resources. For Employers, they specialize in the design and implementation of disability management, return to work programs, workers' compensation cost containment strategies, transitional employment, mentoring strategies, diversity, and job retention.

National Institute for Occupational Safety and Health

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cdcinfo@cdc.gov
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The National Institute for Occupational Safety and Health (NIOSH) is the federal agency responsible for conducting research and making recommendations for the prevention of work-related injury and illness.

Occupational Safety & Health Administration

200 Constitution Avenue, NW

Washington, DC 20210

Toll Free: (800)321-6742

TTY: (877)889-5627

<http://www.osha.gov>

Congress created the Occupational Safety and Health Administration (OSHA) to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance.

Return-to-Work Matters

<http://www.rtwmatters.org/>

Return to Work Matters is a practical online portal providing thousands of best-practice time saving tips, tools and training resources for those engaged in improving health outcomes for injured or ill employees.

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