

RISK COMMUNIQUÉ

Return to Work Considerations

Medical or health conditions, whether incurred on the job or on personal time, can prevent an employee from functioning at a full-duty level. It is not unusual for the injured employee to want to return to duty as soon as they begin feeling better. However, returning prematurely to the unpredictable work environments encountered can lead to an increased risk of further injury. Some organizations may be able to accommodate a limited duty return to work program on a case-by-case basis. Transitional duty is a favorable option, however it is imperative the employee reaches a full level of functionality before returning to full-duty.

An objective evaluation of several important factors may help protect both the organization and the employee. These include but are not limited to the following:

How serious is the health condition?

The first administrative step would be to adopt key definitions as they relate to injuries and return to work. Not all medical conditions require a complete rehabilitation program before an employee can return to work. For example, an uncomplicated case of the flu may require a few days off from work, but does not require the employee to undergo rigorous return to duty scrutiny.

A serious health condition can be one in which the employee is unable to perform their duties as a result of a health condition requiring inpatient care, absence of more than three calendar days that also involves continuing treatment by a medical professional or any incapacity related to a period of treatment for a chronic condition¹.

While the serious health condition definition can be a starting point for the organization, it may not encompass the entire realm of health conditions that may affect an employee and therefore conditions outside of the serious health condition definition may still require scrutiny before an employee returns to work. Consider adopting definitions addressing other injuries and medical conditions that would impair the employee's ability to perform their duties safely and may require scrutiny before an employee returns to work.

How frequently should the organization and the employee communicate?

In instances where an employee may be unable to return to work for a long period of time, it is often beneficial for supervisors to maintain regular contact with the employee. Regular contact reinforces to the employee the organization wants them back to work and is concerned about their well-being. This also helps the organization keep up-to-date on changes in the employee's condition and monitor their progress.

Engaging the employee in communication also allows the employee to know the organization is supportive of their efforts to return to work. Keep in mind the need to maintain confidentiality about the employee's condition.

Can the individual meet the demands outlined in the functional job description?

Having a functional job description is essential in evaluating an employee's ability to fully return to their position. Define the basic position requirements; the environment and conditions in which these requirements may be encountered; and any physical requirements. (Refer to Risk Communiqué *Employee Practice Exposure—Job or Position Description*)

¹ A serious medical condition as defined by the U.S. Department of Labor Wage and Hour Division in reference to the Family and Medical Leave Act (FMLA) may be used by an ESO as a guide to determine when an employee may need to participate in a return to work evaluation prior to returning to duty. This can be utilized by the ESO whether or not they are required to participate in FMLA. (Complete details are available at: www.dol.gov/whd/regs/compliance/1421.htm).

RISK COMMUNIQUÉ

Share the functional job description with the medical professional caring for the affected employee. This will allow the medical professional to review the specific physical requirements of the job – enabling them to decide on the ability of an employee to return to full duty. If the employee is unable to perform all of the tasks in the functional job description – they should not be allowed to return to full duty.

An important adjunct to the functional job description is the development of a validated Physical Ability Test (PAT), which reflects the demands of the job. After a serious health condition, completion of the PAT will validate the ability of the employee to return to work.

Does the injury require rehabilitation and work hardening?

After suffering a debilitating medical condition or injury that requires a return to work evaluation, an employee may be required to participate in physical rehabilitation and/or work hardening programs.

Provide the medical professionals who oversee rehabilitation and work hardening with a copy of the functional job description and any PATs to better understand the demands of the employee's job. This will help focus the rehabilitation and work hardening efforts on performing the duties that are expected. Ideally, consider selecting a rehabilitation or work hardening professional familiar with your operations. The organization's workers' compensation carrier may also be involved in the selection of an appropriate medical professional based on past results.

Are reasonable accommodations feasible for the employee?

In certain instances, an employee is unable to return to full duty as described in the functional job description, but may remain a valuable employee of the organization by the employer allowing a reasonable accommodation. A reasonable accommodation is a modification or adjustment to a job, the work environment or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity (Job Accommodation Network, 2009).

The employer may have a legal responsibility to create a reasonable accommodation based on American's with Disabilities Act (ADA), which states in part it is unlawful "not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship ..." (29 C.F.R. 1630.9(a)).

Reasonable accommodations and other aspects of the ADA can be complex and must be evaluated on a case-by-case basis. It is recommended employers determine if reasonable accommodations may exist within the organization and consult with legal counsel before offering or declining to offer an employee a reasonable accommodation.

What should be considered once the employee returns to work?

Once an employee has returned to full duty (or a reasonable accommodation has been made), maintain frequent open communication with the employee regarding their status and ability to perform essential job functions. Refer any difficulty performing functions to the employee's medical professional for additional follow-up.

Additional Resources/References:

Job Accommodation Network. (2009, May 1). *Employers' Practical Guide to Reasonable Accommodation Under the Americans with Disabilities Act*. Retrieved January 2, 2014, from AskJAN.com: <http://askjan.org/ERguide/ERGuide.pdf>

LeDuc, T. (2012, October 17). *Firefighte rNation*. Retrieved December 26, 2013, from firefighternation.com: <http://www.firefighternation.com/article/firefighter-safety-and-health/firefighter-fitness-duty-understanding-nfpa-1582>