

Getting Healthy with Return-to-Work Programs

By Michele R. Punturi, Esq. and Michelle M. Leighton

Risk Management

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A well-structured return-to-work program is one of the most effective ways to manage—and even reduce—the costs associated with a workers compensation claim while efficiently improving an employee’s recovery after an injury.

All parties can benefit from a successful return-to-work program. Employees re-enter the workforce in a meaningful job, earning wages and maintaining job status with the company. Employers reduce the amount of time that workers are absent and eliminate the costs of retraining other workers to fill the positions. Unions keep their members employable. Health care providers have another tool at their disposal to aid in an injured worker’s recovery.

A successful return-to-work program can be broken down into four phases that each help achieve a desirable outcome in the aftermath of an employee injury.

1. The Pre-Return-to-Work Phase

Taking a proactive approach in the workplace leads to successful outcomes in the event of an injury. This begins by educating and training supervisors and managers to help prevent injuries from happening in the first place, and also including them in the return-to-work policies and planning. The relationship between supervisors and managers is vital due to their close proximity to the employees as well as their first-hand knowledge and awareness of the industry environment. Designating an individual or a team to be responsible for coordinating the return-to-work program will only enhance and strengthen communications with an injured employee. Ultimately,

committing to a strong safety protocol and recognizing the proper resources necessary to implement an effective program are key elements during this early phase.

To create a positive return-to-work environment, it is critical to build support and obtain commitment from senior leadership within the company. Written policies and procedures that provide a road map for implementation of the program must be developed. Once it is firmly established, encouraging open communication between employees, supervisors, managers and human resources personnel is critical for success.

By emphasizing a positive culture through a proper orientation program that includes discussions about safety, proper chain of command and the performance review process, employees should clearly understand their rights and what is expected of them by the employer. As part of this continuing education, the employer must maintain accurate physical-demand descriptions of all available jobs. This can be accomplished by retaining vocational experts to update and develop changing job descriptions.

To further establish a positive work environment, an employer needs to be aware of all wages, bonuses and incentives for available jobs. It is also crucial to identify specific personnel most knowledgeable about job tasks and responsibilities. In addition, recognizing ergonomics as a tool to increase productivity, decrease injury and discomfort, and coincide with an employee’s ability will better equip the employer to deal with injured workers.

Take advantage of insurance carrier resources, including people and technology, to develop and maintain an effective network of approved medical providers. Familiarize the approved medical providers with business and job tasks while maintaining positive relationships with them in order to control treatment and assess an employee's ability to return to work. Finally, keep a record of all workers compensation injuries to control exposure and assess return-to-work potential, timeliness of treatment and progression of the claim.

A well-organized return-to-work program provides an employer with control over work activity and wages, and allows for daily oversight of the employee. Keeping employer-employee lines of communication open and promoting this positive relationship will ultimately decrease litigation costs. Studies have shown that, after employees are out of work for an extended period of time, they are less likely to return to work on their own or in good faith. Thus, it is imperative to get injured workers back to the job as quickly and efficiently as possible, and to critically consider the length of the return-to-work program (six months to one year, one year or ongoing).

2. The Return-to-Work Phase

While accident prevention is the first line of defense, not all accidents can be prevented. When a worker is injured, an effective return-to-work program can manage costs and improve worker recovery. After establishing a program and creating a positive culture within the company, you should be ready to implement the program once an employee is injured.

The first step to implementing a return-to-work program is to identify the accepted injury via the applicable forms provided through each state's workers compensation system and then carefully clarify any injuries accepted, but not specifically identified, on the state forms. Determine if the panel doctor is an appropriate

provider to rely on in getting the employee to be able to return to work. Consider an independent medical examination to define the nature and extent of injury, particularly when the employee is not recovering as expected or not complying with treatment. Next, determine whether more than one independent medical expert may be necessary to perform, for example, both a neurological exam and an orthopedic exam on an employee who has an injured back. Confirm that these experts are provided with all medical records and diagnostic study films for review and analysis.

The next step is to identify any and all releases to return to work by treating providers and to secure a physical capacities form from the treating physician and the independent medical expert that specifically outlines the exact nature of physical capacities and restrictions. Retain a nurse case manager to secure immediate feedback on medical treatment and restrictions. Rely upon this person to maintain a favorable relationship with the injured employee and work with them to understand and appreciate the employee's activities, home life and physical restrictions.

If the employee remains out of work for an extended period of time, consider a functional capacity evaluation as a good way to measure the validity of the employee's complaints and abilities, and to evaluate why the employee continues to be out of work. Prepare the proper state forms in order to notify the employee and his or her attorney, if applicable, of the employee's capabilities of returning to work. Finally, coordinate a claims review and strategy meeting and communicate with key risk managers and safety personnel to discuss return-to-work restrictions and job availability for the injured employee.

When making a job offer to the injured worker, the best approach is to put it in writing. The written offer should contain all of the requisite information, including but not limited to the employee's change in medical condition. In

addition, the job offer needs to take into account whether the employee is capable of returning to the workforce. It must also identify the occupational category to which the employee is released (sedentary, light, medium or heavy-duty work) and include a specific and accurate description of the duties of the job being made available with an attached formal job analysis.

The job offer must outline the specific wages/salary and hours available for the position, as well as the name and telephone number of the person to contact to get started. The offer needs to identify the start date and should be sent to the worker via regular and certified mail, along with a copy to the known attorney, to prevent the worker from claiming that he or she never received it.

Once the job offer has been communicated to the employee, verify that the employee has returned to work and then file the appropriate form consistent with each state's workers compensation laws and regulations. Confirm that any light-duty employee is subject to the same disciplinary policies as the other employees. Continue to maintain contact with the employee during this return-to-work phase and address any complaints verbally, then follow-up with written documentation.

3. The Litigation Phase

Unfortunately, even with an effective return-to-work program and a positive and supportive work environment, many workers compensation claims still need to be litigated for a variety of reasons. Communicating with counsel is important during the litigation phase in order to make sure that all information is being processed correctly by the different individuals. Many costs can be limited or avoided altogether through consistent, proactive and aggressive litigation.

After a claim has entered the litigation phase, the employer can consider engaging a

vocational expert to perform an earning-power assessment and rely on labor market surveys to strengthen the evidence and defenses to the claim being litigated. Securing the personnel file is imperative in order to analyze and strategize any and all potential employment-related issues.

Counsel should identify fact witnesses from the employer who can testify, and then arrange meetings with these witnesses to discuss facts, documentation and prepare for testimony. With regard to expert witnesses, careful consideration of whom to retain and associated costs is paramount to efficiently litigate the case. Included in these costs is the amount of time needed to review all medical records and diagnostic testing; review the pre-injury job description and alternative job description with physical demands; examine the injured worker; prepare a comprehensive report; and then, ultimately, testify at deposition.

In addition to fact and expert testimony, there are many other effective litigation tools and strategies. The use of audio and video surveillance is often persuasive evidence with the court, as the judge can personally see whether the employee is suffering from the injuries he or she is claiming. In addition, using video of actual job tasks helps the judge appreciate what the employee needs to do to perform the job and can often counter contrary allegations from the employee. Social media is a powerful source of information and is often helpful in discrediting the testimony of the claimant. On the medical front, it is helpful to identify any additional treating providers to unearth contrary facts and potential support for a return to work.

Although the theoretical goal of litigation is to win every case, the practical goal is to resolve the case in the most cost-effective way possible. This can be accomplished through mandatory or voluntary mediation. The best way to enter into mediation is after you have secured testimony and evidence that could win the case for you.

After arranging a strategy meeting with key managers to discuss facts, exposure and settlement authority, counsel must persuasively articulate why the defenses to the claim are more believable than the claimant's allegations. A successful mediation occurs when both sides leave the meeting feeling like they have received the better deal.

4. The Aftermath Phase

Once the claim has been resolved either through litigation (decision, settlement or mediation) or by the fact that the employee has completely healed and returned to work full-time, a little bit of "Monday morning quarterbacking" is needed to assess how well the claim was handled from start to finish. This evaluation and analysis is important in order for all parties involved to determine how they could improve for the next claim.

An analysis to determine if there could have been cost savings and greater efficiency will address:

- Proper orientation and safety training, including establishing a zero-injury culture, conducting ongoing training, and communicating responsibilities and expectations
- Initial contact-gathering information
- Communication to ease concerns and empower employees
- Taking time to talk to employees to reduce the chance of litigation and reinforce care and desire to achieve the best result
- Setting expectations for benefit delivery, return to work and medical care

- Performance metrics to evaluate effective communication within the organization and with outside vendors

Another way to ensure proper handling of a claim is to create a mentoring program for employees. This mentoring program ensures that new employees are conducting their job responsibilities properly and safely, thus minimizing the risk of potential injuries. Assessing medical provider outcomes is another avenue to explore in trying to more effectively handle claims. Items that should be considered are reliance on the approved medical provider versus independent medical examination, proper expertise and record review, and detailed physical capacities and job analysis review. Finally, retaining an ergonomics expert to identify and modify job tasks, address aging workforce issues and assess low-cost accommodations could be helpful in limiting potential new claims and exposure to existing claims.

Truly effective workers compensation risk management should include implementation of an effective return-to-work program. Employers who follow this four-phase process will reap the benefits by getting their injured workers healthy and back on the job more efficiently while avoiding or eliminating costly litigation.



Michele R. Punturi, Esq., is a shareholder in the workers compensation department at Marshall Dennehey Warner Coleman & Goggin.

Michelle M. Leighton, AIC, is a vice president and senior claim consultant for Conner Strong & Buckelew.