

Community of Practice

Enhancing SAW/RTW Outcomes through Employment Engagement

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August 8, 2019

Questions Submitted After the Community of Practice Meeting

1. **Employers are more inclined to work with employees that have incurred an occupational injury or illness as doing so can have a direct impact on their experience and work comp premiums. In contrast, employers are almost always reluctant to allow an employee with a non-occupational injury or illness to return to work until the employee has been release to full duty. What advice can you provide?**

Bottom Line Up Front:

- Employers should have consistent retention and reasonable accommodation policies.
- Focus should be on whether an individual is able to work with or without reasonable accommodations rather than how or where the injury occurred and release to full duty.
- These separate policies and practices equate to lost productivity.
- Reasonable accommodations are inexpensive and will help re-capture productivity.

It's important to consider two angles when addressing this issue with employers.

First, employers should understand the legal requirements in order to know how or where the injury or illness develops is not directly impacting whether the person is able to return to work with or without reasonable accommodation. Specifically, the employer is at risk if there are separate policies, practices or standards in place for occupational and non-occupational injuries or illnesses. The approach should both be on whether or not there is an ability to accommodate an injury or illness, not whether it was an occupational or non-occupational injury or illness. And it is inappropriate to await full medical clearance to return to duty if it is possible to return to duty or partial duty without full recovery, with or without reasonable accommodation.

Access official guidance on this matter in Equal Employment Opportunity Commission's [Employer-Provided Leave and the Americans with Disabilities Act](#)

Excerpt:

Return to Work and Reasonable Accommodation (Including Reassignment)

Employees on leave for a disability may request reasonable accommodation in order to return to work. The request may be made by the employee, or it may be made in a doctor's note releasing the employee to return to work with certain restrictions.

100% Healed Policies

An employer will violate the ADA if it requires an employee with a disability to have no medical restrictions -- that is, be "100%" healed or recovered -- if the employee can perform her job with or without reasonable accommodation unless the employer can show providing the needed accommodations would cause an undue hardship.^[7] Similarly, an employer will violate the ADA if it claims an employee with medical restrictions poses a safety risk but it cannot show that the individual is a "direct threat." Direct threat is the ADA standard for determining whether an employee's disability poses a "significant risk of substantial harm" to self or to others. If an employee's disability poses a direct threat, an employer must consider whether reasonable accommodation will eliminate or diminish the direct threat.

Example 13: *A clerk has been out on medical leave for 16 weeks for surgery to address a disability. The employee's doctor releases him to return to work but with a 20-pound lifting restriction. The employer refuses to allow the employee to return to work with the lifting restriction, even though the employee's essential and marginal functions do not require lifting 20 pounds. The employer's action violates the ADA because the employee can perform his job and he does not pose a direct threat.*

Example 14: *An employee with a disability requests and is granted two months of medical leave for her disability. Three days after returning to work she requests as reasonable accommodations for her disability an ergonomic chair, adjusted lighting in her office, and a part-time schedule for eight days. In response, the company requires the employee to continue on leave and informs her that she cannot return to work until she is able to work full-time with no restrictions or accommodations. The employer may not prohibit the employee from returning to work solely because she needs reasonable accommodations (though the employer may deny the requested accommodations if they cause an undue hardship). If the employee requires reasonable accommodations to enable her to perform the essential functions of her job and the accommodations requested (or effective alternatives) do not cause an undue hardship, the employer's requirement violates the ADA.*

The EEOC document also includes guidance on issues related to the interactive process and return to work and reassignment.

Second, it's also important to discuss the issue of lost productivity of the employees that are not at work due to non-occupational injuries or illnesses. According to the Job

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Accommodation Network (JAN), 59% of reasonable accommodations have no cost and of the 41% that do, about half of those cost \$500 or less. This means reasonable accommodations for non-occupational injuries and illnesses are mostly inexpensive and the return on investment equates to increase in productivity.

More details from the JAN research published in March 2019 are provided below.

Workplace Accommodations: Low Cost, High Impact

Of the 718 employers who were able to provide cost information related to accommodations they had provided, 423 (59%) said the accommodations needed by their employee cost absolutely nothing. Another 261 (36%) experienced a one-time cost. Only 25 (3%) said the accommodation resulted in an ongoing, annual cost to the company and 9 (1%) said the accommodation required a combination of one-time and annual costs. Of those accommodations that did have a one-time cost, the median one-time expenditure as reported by the employer was \$500. When asked how much they paid for an accommodation beyond what they would have paid for an employee without a disability who was in the same position, the median answer given by employers was \$300.

It is important that both occupational and non-occupational injuries and illnesses should focus on the same question: Is the employee able to perform the essential duties of the position with or without reasonable accommodation? If not, is there another temporary position that the employee is able to perform those essential functions with or without reasonable accommodations?

Also review [ODEP's Fact Sheet](#) the employer strategies for Stay at Work and Return to Work. Although the fact sheet was published in September 2014, there are some good strategies and resources for consideration.

2. What type of resources or tool kits are available to assist Employment Coordinators in their conversations with employers about light duty work, workplace accommodations, SAW or RTW policies and understanding the impact of the ADA (Americans with Disabilities Act)?

Bottom Line Up Front:

- Resources and toolkits are available but might need to be customized for your state or purpose. A list of these resources as key starting points is provided below.
- RETAIN will take the inputs from the Employer Engagement CoP and the responses to your question and provide an Employer Engagement information tool to assist the state projects in evolving employment engagement moving forward.
- Any resource or toolkit that is developed should be refreshed as a living document.

The following resources are recommended for Employment Coordinators.

Office of Disability Employment Policy (ODEP) Return to Work Resources

[Return-to-Work Resources for Employees and Employers](#)

An organization's workforce is its most valuable asset. And when an employee can't work due to illness or injury, it impacts not only an organization's productivity, but also its morale. This toolkit helps both employers and employees understand the return-to-work process and provides resources to assist in getting employees back on the job quickly and smoothly.

[TRANSITION BACK TO WORK: Policies to Support Return to Work after Illness or Injury](#)

The Stay-at-Work/Return-to-Work (SAW/RTW) Policy Collaborative was established by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP) to support the development of policies, programs, and practices that encourage the continued employment of workers likely to leave the workforce due to injury, serious illness, or disability. The Collaborative consists of a Community of Practice to provide input and real-time feedback on specific policy topics related to SAW/RTW, and Policy Working Groups (PWGs), led by Subject Matter Experts (SMEs) and supported by IMPAQ International who explore policies and practices that curtail long-term work disability and job loss due to injury and illness, provide policy recommendations to key stakeholders, and develop resources to support policy action. The 2017 PWGs focused on three topics: (1) Replicating and Adapting the State of Washington's Centers of Occupational Health and Education (COHE) Model; (2) Musculoskeletal Conditions and Pain Management; and (3) Transition Back to Work. *This Policy Action Paper is a product of the Transition Back to Work Policy Working Group.*

Citation: Ashley, J., Cashdollar, W., Etcheverry, R., and Magill, K. (ed.) (2017). Transition Back to Work: Policies to Support Return to Work after Illness or Injury. For SAW/RTW Policy Collaborative, U.S. Department of Labor, Office of Disability Employment Policy, IMPAQ International, LLC.

[WHAT STATES CAN DO TO ENGAGE EMPLOYERS IN SAW/RTW PROGRAMS](#)

The Transition Back to Work Policy Working Group (PWG) of the U.S. Department of Labor's Office of Disability Employment Policy's (ODEP's) Stay-at-Work/Return-to-Work (SAW/RTW) Policy Collaborative developed recommendations to state actors that would help workers who have lost work time due to injury, illness, or disability make the transition back to work as early as possible in their recovery process. This guide, published in September 2017, provides specific recommendations.

[ODEP's Stay at Work / Return to Work Fact Sheet](#)

September 2014 publication with useful strategies to approach and educate employers.

[ODEP's Employer Engagement Strategy Report](#)

This report provides an overview of ODEP's Employer Engagement Strategy (EES), an employer-focused marketing framework for addressing the lack of employment opportunities for individuals with disabilities in the private sector. September 2015.

ODEP's Employer Assistance and Resource Network on Disability Inclusion (EARN) [Stay at Work and Return to Work Site](#)

Equal Employment Opportunity Commission (EEOC) Resources

[Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act](#)

This Enforcement Guidance clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship. Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship. This Guidance sets forth an employer's legal obligations regarding reasonable accommodation; however, employers may provide more than the law requires.

This Guidance examines what "reasonable accommodation" means and who is entitled to receive it. The Guidance addresses what constitutes a request for reasonable accommodation, the form and substance of the request, and an employer's ability to ask questions and seek documentation after a request has been made.

The Guidance discusses reasonable accommodations applicable to the hiring process and to the benefits and privileges of employment. The Guidance also covers different types of reasonable accommodations related to job performance, including job restructuring, leave, modified or part-time schedules, modified workplace policies, and reassignment. Questions concerning the relationship between the ADA and the Family and Medical Leave Act (FMLA) are examined as they affect leave and modified schedules. Reassignment issues addressed include who is entitled to reassignment and the extent to which an employer must search for a vacant position. The Guidance also examines issues concerning the interplay between reasonable accommodations and conduct rules.

The final section of this Guidance discusses undue hardship, including when requests for schedule modifications and leave may be denied.

Job Accommodation Network (JAN) Return to Work Resources

[JAN's Return to Work Topics](#)

Return to Work (RTW) and Stay at Work (SAW) programs are part of a business' strategy to retain valued employees and to enhance the productivity of its workforce. The ultimate purpose of a return-to-work program, also known as a transitional duty program, is to make changes and provide accommodations so employees with injuries or medical conditions can return to work.

As with workplace accommodation programs, a RTW program should have clear written policies articulating each party's responsibilities. Accurate job descriptions including the physical demands of particular essential functions should also be developed. This helps 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.

[JAN's Providing Temporary or Trial Job Accommodations](#)

The Americans with Disabilities Act (ADA) does not establish a requirement for the duration of time accommodations must be provided. While we tend to think of accommodation as a long-term commitment, employers are not precluded from implementing trial or short-term solutions as part of the accommodation process. Implementing temporary or trial accommodations can benefit both the employee and the employer. For example, implementing a temporary change offers the opportunity to evaluate an accommodation for effectiveness before making the decision to implement the change long-term.

[JAN's Effective Accommodation Practice Series: Job Accommodations for Return to Work](#)

The goal of a return-to-work program, sometimes called a transitional duty program, is to make job changes or provide job accommodations that return individuals to work who are absent for workers' compensation or disability-related reasons. Return-to-work programs help reduce workers' compensation costs and increase productivity by returning employees to work earlier. As part of a broader disability management program, a return-to-work program, including the provision of light duty, should also address the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Occupational Safety and Health Act (OSH Act), and state workers' compensation and other disability-related laws.

Many of the accommodation questions JAN receives related to return-to-work involve gross motor limitations that cause difficulty lifting, carrying, moving, transferring, sitting, standing, walking, climbing, and accessing workstations and work-sites; fine motor limitations that involve keyboarding, mousing, writing, reporting, documenting, and gripping; difficulty reaching and bending; scheduling medical treatment; managing fatigue and weakness; performing activities of daily living; maintaining concentration; managing

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stress; and implementing ergonomic and light duty programs. The following is a quick overview of some of the job accommodations that might be useful when returning someone to work following an injury or illness.

[JAN's Accommodation and Compliance: Ergonomics in the Workplace](#)

The document outlines how to perform an ergonomic analysis with a special emphasis on accommodations. Considerations for the worker, workstation, and work-site are highlighted. In particular, the document looks at proper ergonomic spacing, flooring, doors, and storage areas for office, industrial, service, and health care settings. Administrative controls are also addressed.

[JAN's Accommodations, ADA and Light Duty](#)

Implement a light duty program. For additional information on providing light duty as a reasonable accommodation, review this JAN's Consultants' Corner "Light Duty as a Reasonable Accommodation."