

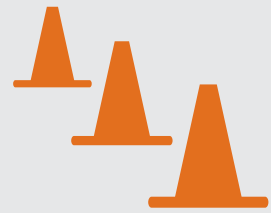
Workers' Comp & Safety News



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Early Return-to-Work Saves Money

After an employee is injured on the job, getting him or her back to work as soon as possible is good for both the company and the employee. It saves the company money and improves the morale and effectiveness of employees. Here's what you should know.

An early return-to-work program gives injured employees a pathway back to their regular jobs by providing temporary jobs that are modified to accommodate their physical abilities and skills.

Getting employees back to work sooner saves money in many ways. For the company, an early return-to-work program:

- Decreases the number of lost days
- Reduces the costs for temporary workers
- Reduces workers' comp payments

- Minimizes increases in the company's experience modification and insurance rates
- Reduces the potential for litigation
- Reduces the opportunity to malingering
- Reduces the potential of re-injury when workers return to work.

For the employee, early return-to-work offers the advantage of a full, regular paycheck. There are many intangible advantages for the worker that also pay intangible dividends to the company. Returning to work as soon as possible:

- Improves the worker's morale and self-worth
- Reinforces a positive work ethic
- Discourages thinking of herself as "disabled"
- Reinforces the desire to recover quickly
- Improves the morale of co-workers.

Getting Workers Back to Work

There are many components to a successful early return-to-work program. The first step is to recognize that it is a program, not an informal invitation to come back to work.

A structured plan needs to be

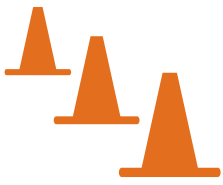
This Just In

The unemployment rate could rise to 9 percent by year-end, predicts the National Association for Business Economics, an independent research organization. By January 31, it had reached 7.6 percent, a 16-year high.

High unemployment has implications for your workers' compensation program. When employees on workers' comp disability lose their jobs – or when they fear they might – they can be inclined to extend their claims. Downsizing can also make claims settlement more difficult because, if there is no job to return to, there is also no early return-to-work option.

Additionally, reductions in staff can lead to increased accident rates, as stressed workers take on additional tasks. Employers need to be prepared to see former employees open new workers' comp claims or reopen old ones.

For more information on controlling workers' compensation claims or reviewing existing claims, please contact us.



How to Investigate an Injury

Injuries sometimes happen, even in the most safety-conscious business. In order to understand how an injury happened and to help prevent future accidents, you need to have a post-injury safety investigation plan.

Don works in the warehouse at the Acme Corporation, where he routinely lifts boxes weighing up to 30 pounds. One day Don and another worker are lifting boxes when Don suddenly feels an intense pain in his back. He tells his supervisor that he thinks he's thrown his back out. What happens next?

In one scenario, the supervisor sympathizes with Don and lets him go home.

In a much better scenario, Acme implements a step-by-step process to document the injury and its probable causes. A designated employee asks Joe, his co-worker and his supervisor specific questions about what happened. The investigator examines the box Joe was lifting and notes its weight. Joe's supervisor tells him to call his doctor to get immediate help. Then Joe goes home.

The Investigation

It is important to have a process for investigation in place before an injury occurs.

First, you need to establish who has the responsibility to investigate. This role should be an official part of a person's job description. Training is important to make sure the investigator (or investigating team) knows exactly what to do. Supervisors and executives need to value the role and provide support.

Then, your company must have an approved injury-investigation form that works for your specific workplace. According to OSHA (Occupational Safety and Health Administration), your form needs to answer six questions: who, what, when, where, why and how. Some key questions cover:

- Conditions at the accident site, i.e., wet floors
- Unsafe activities, i.e., using equipment improperly
- Description of the injury
- Names of witnesses.

If possible, talk to an injured worker immediately to get a statement as to how the injury occurred. The investigator will also talk to everyone who saw the accident and to the worker's supervisor. The goal is to record people's perceptions while they are still fresh.

The goal is not to establish blame. Even when an employee blames himself for the accident, a trained investigator should look for other factors that may have contributed to the employee's mistake. Everyone needs to know that the ultimate goal is to identify the cause of the injury or accident so that steps can be taken to prevent similar problems in the future.

Documenting the investigation is important because you may need to file a report with OSHA. Also, the documentation is important for the doctor and your workers' compensation carrier and for defending your company in the event of an employee lawsuit.

Employees' Role

Once you have identified and trained your investigators and you have the forms and processes in place, make sure that your employees

know that the process exists and they know what actions to take if they are injured or if they see a fellow employee injured.

Employees also need to know that they must report all accidents or injuries, even if minor. Before an injury occurs, they should be aware of the steps they will be required to take, such as reporting on their medical progress and being available for light duty. Some employers give all their workers a paper to sign that lays out the employees' responsibilities in the event of an injury.

Discussions about reporting and investigating injuries should be included in safety meetings, departmental meetings and new employee orientations. Reinforcing the company's commitment to safety will streamline investigations and make employees less likely to feel threatened.

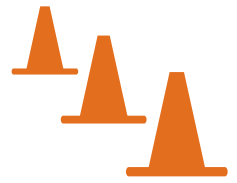
Investigating Near-Misses

The National Safety Council defines a near-miss as an incident in which no property was damaged and no one was injured but, given a slight change in events, damage or injury would have occurred.

Investigating near-misses is a very effective way to make the workplace safer by identifying potential injuries before they occur. It usually requires a level of trust between supervisors, management and workers that fosters an openness to recognize and analyze the causes of the near-miss.

If you would like information on how to develop your own post-injury investigation plan, give us a call. ■





When Rights and Safety Collide

The ADA gives disabled workers certain legal rights. But sometimes those rights seem to conflict with the employer's need to maintain a safe workplace. How can you maintain a safe and efficient working environment that also respects all employees and their needs?



Most employers strive to accommodate employees with disabilities. However, when safety becomes an issue, employers can be confused about which regulations apply and what actions to take.

Applicable laws

The Americans with Disabilities Act (ADA) of 1970 prohibits discrimination against qualified people with disabilities in businesses with 15 or more people. The law defines a disabled person as one who has a physical or mental impairment that substantially limits one or more major life activities. The ADA also covers people who have the appearance of being impaired.

The U.S. Equal Employment Opportunity Commission, which enforces the ADA, defines a qualified person as someone who can perform the essential functions of a given job – with or without accommodation. “Reasonable accommodation” can include:

- Making existing facilities readily accessible

and usable for the disabled person

- Restructuring the job, modifying the work schedule or assigning to another job
- Buying or modifying equipment
- Adjusting exams or training materials
- Providing qualified readers or interpreters.

However, the federal Occupational Safety and Health (OSH) Act obligates the employer to provide a safe workplace by furnishing “... each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” If an employee's disability could cause harm to himself or another in the workplace, employers need to assess whether he or she can safely perform a job with reasonable accommodation.

Some specific situations employers could encounter include:

CHRONIC CONDITIONS: The ADA protects people with chronic physical conditions

that limit their life activities. For example, Steve drives a delivery truck. When his supervisor sees him sleeping between deliveries, Steve discloses that he has sleep apnea, an ADA-protected impairment that causes people to fall asleep without warning. His employer becomes concerned that Steve poses a safety threat because he may fall asleep at the wheel. The company requests medical tests. If tests reveal Steve's condition could threaten safety, the company needs to explore whether it can reasonably accommodate Steve's needs while maintaining safety standards. Perhaps Steve can be reassigned to a desk job.

COMMUNICABLE DISEASES: The ADA defines AIDS and HIV infection as disabilities, and employees with those conditions require accommodation. People who are perceived to have AIDS or HIV are also protected. When Mary, suffering liver damage from hepatitis A, applies for work at a computer company, she is not required to disclose her disability. However, if she wants reasonable accommodation in her work schedule in order to get treatment, she will need to disclose her condition so her employer can accommodate her.

If Mary were to apply for a job at a restaurant, her disability would disqualify her, based on Food & Drug Administration regulations regarding communicable diseases. It is unlikely that the restaurant could offer reasonable accommodation.

MENTAL DISORDERS: Mental disorders can also be a protected disability. Employers need to recognize that many mental illnesses do not cause safety issues. According to Rebecca Speer, a principal of Speer Associates, an employment law consulting firm in San Francisco, employers should not let their own prejudices influence their perceptions. “If you happen to know that an employee has a diagnosed mental disorder,

RIGHTS AND SAFETY—continued on Page 4



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developed – one that requires the support and approval of senior management. Management and supervisors should speak with one voice about the company's commitment to safety

and early return-to-work. In safety meetings, the leaders should discuss it so that employees understand the basic principles of modified work – before an injury occurs.

Job descriptions and job analyses should exist for each job, especially for positions that require physical labor. This up-front work is valuable for identifying potential safety issues before an injury occurs, and it is an important tool for determining when an employee can return to work after an injury. Both the doctor and the insurance company will need the analysis to determine how to modify the employee's duties to facilitate returning to work.

Prompt reporting and treatment are extremely important after an injury occurs. Employees need to know they must report even minor injuries immediately. Injured employees should see a doctor immediately, and supervisors need to comply with regulations by completing necessary paperwork, usually within 24 hours.

Open and regular communications are needed between the employee, supervisor, doctor and insurance company. When a supervisor shows concern for the injured worker, the worker will be more eager to return. According to the California Workers' Compensation Institute, calling an injured employee within a week after an accident to talk about the employee's value to the company reduces the chance of

a lawsuit by 50 percent. It also helps the employee maintain a positive attitude so she looks forward to returning.

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Returning to Light Duty

Injured workers are often given light duty, which is the cornerstone of an early return-to-work program. Light duty may entail a temporary assignment that will not stress the injury. For instance, someone recovering from carpal tunnel surgery might be assigned to work as a receptionist. In other cases, the doctor may require specific restrictions on how the employee performs his existing job. The worker who is recovering from carpal tunnel surgery might be restricted to typing for 30 minutes at a time, three times a day.

Supervisors should try to develop a light duty plan that includes as many of the employee's regular duties as possible. Sometimes modifying procedures allows an employee to continue to perform part of his job. The employee with carpal tunnel may need to have his workstation adjusted, and he may be able to use a stylus or keyboard commands to help reduce stress from using a mouse.

Injured employees sometimes seem to relapse after returning to work – usually a short-term problem, following months of being at home. One secret of successful early return-to-work programs is to have the employee return on a Wednesday or Thursday, which allows for

gradual adjustment.

And finally, when the employee returns, welcome him and make sure he knows his contributions have been missed. ■



don't speculate on his impairment," Speer said.

If an employee seems to be acting unsafely, your first step is to define the essential job functions so you can

evaluate the employee's actions within that context. Then Speer recommends talking to the worker and engaging in a legally compliant, interactive process that enables the employer to evaluate whether the employee suffers from a disability covered by the ADA and, if so, whether the employer can and should provide accommodations that would enable the employee to safely perform the essential functions of the job.

If an employee with a mental illness is angry or aggressive, you may need to turn to a psychologist who specializes in assessing employees for safety risks. The ADA provides protection to employees with mental disorders, but does not require a business to retain an employee who demonstrates a credible threat of violence. In that situation it would be prudent to also consult with an employment law attorney before terminating someone who has a known mental disability and demonstrates disruptive behavior.

For more information on accommodating disabled employees, please contact us. ■

Religious Practices and Safety

The Equal Employment Opportunity Commission (EEOC) protects workers from religious discrimination. Employers need to reasonably accommodate employee's religious practices by allowing flexible schedules, job reassignments and/or modifications of grooming requirements. However, safety issues can sometimes impact accommodation.

For example, some religions require men to wear beards. OSHA (Occupational Safety and Health Administration) requires that face masks have a tight seal, but most masks do not seal tightly when worn over a beard. The employer may need to accommodate the employee by buying a special face mask that works safely with a beard.

Men who are members of the Sikh religion wear

turbans that they do not remove. If a Sikh applies for work at a construction site, the hiring manager faces a thorny issue because, most likely, the man will refuse to wear a hard hat. The manager cannot discuss religious practices during the hiring process. In this case, the best course of action is to consult a labor attorney who is familiar with the national laws and any state OSHA regulations.

Similarly, religious requirements to wear certain clothing such as head scarves, face coverings or jewelry can cause safety concerns around heavy equipment. Some religions require men to have long hair. Employers need to have detailed job descriptions to use to evaluate whether it is possible to accommodate each qualified candidate's religious needs.