Early return-to-work programs: Transitioning the injured worker.

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EARLY RETURN-TO-WORK PROGRAMS:
TRANSITIONING THE INJURED WORKER

by

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CHAPTER 1

OVERVIEW OF EARLY RETURN-TO-WORK PROGRAMS

Work-related injuries impose economic costs on employers, and social, psychological, and economic costs on employees. There is considerable justification, therefore, for encouraging employees to return to work as soon as possible following an injury. Although many external factors, such as benefit levels, inherent industry risk, and state laws and regulations, may serve as barriers or disincentives to the employee's early return to work, many internal factors lie within the control of the employer. Early Return-to-Work (ERTW) programs represent efforts to control these internal factors. They are part of a comprehensive "disability management" strategy (see Addendum 1) designed to effectively manage the costs of workers' compensation, as well as short-term and long-term disability benefits, by taking a pro-active and assertive role early in the process. More specifically, an early return-to-work program is a coordinated process in which managers, physicians, claims adjusters, supervisors, and co-workers work together to return disabled employees to light duty assignments or alternate jobs as soon as possible. In the disability management literature, this process is also termed "transitional employment."

The purpose of this paper is to synthesize what is known about ERTW programs so that workshops can be organized to educate employers and those individuals who manage human resources about the benefits of these programs. This paper provides an
overview of ERTW programs, evaluates their advantages, and discusses how to implement and manage such programs.

The Challenge

Large companies, such as Sears, Roebuck and General Motors Corporation, have adopted extensive disability management programs, and have already reaped the benefits of an ERTW program. (see Addendum I. Employer Trends in the Use of Disability Management Initiatives and Interventions). Small businesses, by contrast, often do not have either the time or resources to explore the possibilities of such programs. In addition, they often do not have the information, nor the experience, to understand how intervention in the form of ERTW programs can impact the "bottom line." Yet another problem is the traditional lack of control over the return-to-work process. In Montana, this process has historically been physician-driven and managed by claims adjusters working for the state workers' compensation fund or third party administrators (TPAs). Physicians and claims adjusters, rather than employers, determined when an employee would return to work. For this reason, special efforts are needed to influence the decisions of external parties whose cooperation is essential to the coordination of ERTW efforts. A final problem is that frequent changes in workers' compensation legislation at the state level, and anti-discrimination laws at the federal level, affect how and when an injured employee can be returned to work. This problem is discussed in Chapter 4.
Methodology and Chapter Outline

There is very little information in the disability management literature about how to implement ERTW programs in small businesses and what benefits might be expected. Consequently, analysis presented in this paper is based on interviews with professionals who work in the field and employers who have attempted to establish some form of an ERTW program. Analysis is also based on information gathered from legal and rehabilitation workshops conducted in Montana. The following three chapters form the outline for a workshop to be presented to human resource professionals, especially those who work for small businesses. Chapter 2 describes the advantages of ERTW programs for the employee and the employer, and discusses the ultimate problem for injured workers, the "Disability Syndrome." Chapter 3 provides a practical description of how to implement and manage ERTW Programs. Finally, Chapter 4 analyzes state and federal laws which impact ERTW programs. The addenda are designed as handouts, audio-visual aids, and overhead transparencies for the actual workshop presentation.

As noted above, the purpose of this paper is to provide human resource professionals with the information and resources they will need to establish an Early Return-To-Work program in their workplaces. This is designed with specific learning objectives in mind. At the end of this workshop participants will be able to:

1. Explain the advantages of Early Return-to-Work Programs and the positive impacts on the cost of industrial injury, productivity, and workplace morale.
2. Pro-actively reduce or avoid many of the elements of the “Disability Syndrome.”
3. Develop a policy for an Early Return-to-Work Program.
4. Implement and manage an Early Return-to-work Program in their organizations.

5. Understand how state and federal laws come into play when establishing a disability management philosophy.
CHAPTER 2

ADVANTAGES OF ERTW PROGRAMS

Early Return-to-Work programs are part of an emerging disability management culture. They are a relatively new expression of the concern for human resources and cost containment. It is driven by the extensive health and welfare role that has been assumed by employers over the last fifty years. Today, employers are expected to provide much more than a simple paycheck to their employees. Research is beginning to confirm that it is within the power of the employer to enact policies and practices that will reduce the number of injuries significantly, increase the number of injured employees who return to work, and at the same time lower disability costs. The sooner a chronically ill, impaired or disabled person recovers and returns to a productive work role, the more it will benefit the worker, the employer, and the insurer. This chapter explains the advantages of ERTW programs for both the employer and the employee, including an explanation of the "Disability Syndrome." It also addresses concerns of the injured employee and provides examples of ERTW program successes in regional, national, and local organizations.

Employer-Related Advantages

For the employer, the main purpose of investing time and effort in establishing an ERTW program is cost containment. In 1960, the United States spent $2.1 billion on workers' compensation. In 1990 that cost had risen to $56 billion, and in the year 2000
the estimated cost will be $150 billion. Medical costs consumed 38% of total workers’ compensation benefits in 1987, and average costs per employee nearly doubled in five years between 1982 and 1987 (Chan et al, 1991). Workers’ compensation premiums can be as high as 12% of payroll costs for a small business owner. An ERTW program can lower workers’ compensation premiums, as there are fewer and less costly claims, thus improving the workers’ compensation experience rating. Currently these costs are rising rapidly due to skyrocketing medical costs, an expanding definition of what are “work-related” injuries, abuses by employees and health-care providers, and more attorney involvement (Drobka 1995, I-9). As a comparison, if the hourly wage kept pace with increases in workers’ compensation costs, the minimum wage would be $75.00 per hour by the year 2000 (Pimentel, 1995, 25). In short, ERTW programs are intended to contain costs by lowering workers’ compensation through fewer and less costly claims, reducing the number of worker-days lost to injuries, reducing overtime for existing employees, and reducing the need to hire temporary replacement workers.

A second advantage of investing time and effort in ERTW programs is productivity. Returning an experienced employee to work, either in the previous job or in a modified job, enhances productivity. The returning worker is experienced and familiar with the workplace and work environment. Even in a modified position, the time the injured employee requires to learn the "new" job is minimal.

The third advantage of implementing ERTW policies involves the employer-employee relationship. An effective, coordinated effort to return injured workers delivers
a message to all employees that the employer is doing everything possible to help employees to return to work. At the same time, it tells malingers that their behaviors will not be permitted. Employee morale is positively impacted when management supports and assists the injured worker return to meaningful work, and seeks the cooperation of supervisors, co-workers and other employees. Early intervention in either returning the injured employee to an appropriate job or ending the employment relationship is a company decision. Because supervisors play an important role in the process they need training, resources, and technical assistance. Often the climate for returning the injured worker to work can be created by the supervisor. A worker who is unpopular often has problems before they are injured, and has escalating problems with job satisfaction upon returning. Workers who are unhappy in their jobs traditionally are off work longer, and have more expensive and complicated claims (Pimentel, 1995).

Overall, the employer who establishes an ERTW program demonstrates a commitment to employees and shows them that they are valued resources (see Addendum VII. Advantages of an ERTW program).

A fourth advantage, although difficult to verify, is that ERTW programs may also reduce the likelihood of injured workers going to lawyers by taking the above steps. Keeping in contact with the injured workers was found to be an especially effective lawyer-prevention move. (What's New in Benefits and Compensation, July 11, 1995).

This pro-active and supportive philosophy helps circumvent potential legal action by the injured employee, especially under the Americans With Disabilities Act (ADA). (see Addendum II. Most Common ADA Claims).
The company may choose to bear the ongoing costs of sustaining injured and
disabled employees in dependency, or it may choose to underwrite disability
management, thus minimizing its ultimate outlay, or, when the employee returns to
work, eliminating it entirely (Akabas, 1992). When an employee is injured on-the-job,
one of three outcomes will occur. The injured employee is either returned to the time-of-
injury job (with or without reasonable accommodation, leave, or modified duty), returned
to a modified duty position (performing meaningful tasks within the medical restrictions
for a finite period of time to promote healing or work hardening), or may be terminated
(and may or may not be eligible for workers' compensation payments or any other
disability).

Employee-Related Advantages

There are also advantages to the employee when an effective ERTW program is a
part of the employment relationship. First, the employee benefits financially by returning
to work with full pay, rather than receiving a reduced income while on workers'
compensation time-loss payments. Workers' compensation benefits are tax-free, but they
only replace a part of the injured worker's wages. Also, the employee's time-of-injury
benefits are continued. When an injured employee is on an extended unpaid leave of
absence, by contrast, vacation and sick leave benefits do not accrue. Additionally, if the
employee was contributing to a retirement or pension fund, these contributions will not
continue while on a workers' compensation unpaid leave.

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A second advantage of ERTW programs is the offer of productive employment in some capacity. While this is also an advantage to the employer, the employee is encouraged to return to work while maintaining his or her benefits and status in the workplace. Additionally, the employee is gaining strength and mobility by performing duties in a "work hardening" situation. Physically and emotionally, injured workers benefit because they are exercising muscles other than those required to operate the remote control on the television. Injured employees are soon back in the routine of work, with a schedule and an incentive to return to full employment.

A third and very important advantage to the injured employee is psychological. The feeling of self-worth improves as the injured employee is welcomed back into the workplace among supportive co-workers and supervisors. By returning to work, the injured worker re-establishes contact with peers and the level of comfort they had previously established as a member of a group.

In conjunction with the feelings of self-worth, a fourth advantage of ERTW programs to an injured employee is avoiding the "Disability Syndrome." Hanson-Mayer defines the disability syndrome as "a psychological state or frame of mind which discourages, and ultimately prevents, an injured worker from returning to employment in a job that is consistent with his or her level of physical recovery. This syndrome is the result of a combination of factors including habit, family structure, and a specific coping style (referred to as a fortuitous possible solution to the problems or to maintaining the status quo which the patient may be afraid of losing)" (Hanson-Mayer, 1984, 50). The
disability syndrome may manifest itself as an extended patient role in which there is a regression to childlike behavior patterns that are characterized by hostile dependency or as an apparently well thought out, calculated, and systematic plan to draw maximum benefit from an unfortunate accident.

These injured workers cling to their “disabled” status and give up all hope of returning to the work force. Consciously or unconsciously, these individuals pursue a strategy in order to be compensated while not working, even after the residual effects of their injury no longer justify the maintenance of a non-working lifestyle. Those who suffer from this condition have a strong pre-disposition to make such a dependent response to the demands of living. Even minor stress and trauma of everyday living and working are instrumental in their becoming neurotic and compensation-minded. This condition is also described as “compensation neurosis.”

Rehabilitation specialists have observed that there is a large discrepancy between the injured worker’s complaint and his or her actual physical health. Infrafamilial conditions often set the stage for compensation neurosis. The battle which the injured worker fights is not in the workplace or labor market (that is, to return to work in some capacity), but rather within the confines of the worker’s own family dynamics. His or her predisposition to prolonged disability are important factors. Other factors include the attitude of the employee toward the employer and vice versa, the perception of job security, and the presence or absence of disabling medical problems such as depression or drug and alcohol addiction. Another important factor is the way an injured employee
views the purpose of the compensation system. Many injured workers believe that as a result of being injured on the job they are entitled to a significant amount of money as a means of acknowledging their injury, as compensation for pain and suffering. Until this struggle is resolved, these injured workers find it extremely difficult to focus their energy and efforts on returning to health and work. Instead, they are preoccupied with their pain and the anticipation of what their lives will be like when their settlement is reached (Hanson-Mayer, 1984).

A significant problem exists in states such as Montana that provide a lump sum settlement. Such settlements make the injured worker feel that they are better off being disabled than they would be working. As they lose their self-confidence as workers, they ironically come to believe that the worse off they are healthwise, the better chance they have of gaining the attention of physicians and other providers in the workers' compensation network. The closer the worker comes to returning to work, the more the system they have been used to and the logic they assume about their disability-generated income becomes threatened. The worker who has come to this point, without supporting physical findings, is experiencing the "disability syndrome."

Addressing Concerns of the Injured Employee

When employees are injured on-the-job, they have additional issues and concerns about their treatment in the workers' compensation system. According to Michelle McCann, Claims Supervisor, injured workers are often angry because they feel they have been mistreated. They assume a right to be totally healed and they are upset with
employers, doctors, and vocational rehabilitation consultants because these individuals have not done more for them and in a more timely manner. They also often feel that they are assigned "punitive" jobs when they return to the workplace. Injured employees sometimes consider the benefits derived from the Workers' Compensation Insurance Fund to be an entitlement. In addition, injured workers slip into the mindset that "someone is going to pay." There is also a power issue. The claimant feels he or she is no longer in charge and must go to everyone for approval.

The key to success is to empower injured workers to be productive by returning them to "real" work with cooperation from coworkers. The ideal situation occurs when the supervisor keeps in constant contact with the injured worker, has the support of top management, has a pool of modified work assignments created complete with job analyses and job descriptions for a limited time period, and has a department budget for modified or light duty positions so that no one supervisor feels that they have had the injured worker "thrust" on them.

Evidence of ERTW Program Success

At a regional level, one company which has documented success with such an approach is Owensby Company, in Blainsville, Georgia. They reduced their workers' compensation costs by more than 90% over three years with an injury management philosophy that included a return-to-work program. Another example is Boise Cascade's effort to reduce workers' compensation costs at its Rumford plant by 73% over four
years with the same pro-active approach (What’s New in Benefits and Compensation, July 11, 1995).

Locally, Montana Rail Link (MRL) has an aggressive Early Return-to-Work program. In spite of over 500 industrial injuries a year, a rate which is low for the industry as a whole, MRL develops an “alternative work” assignment and closely monitors the injured worker’s progress from the time of injury to the return to work. Management works with supervisors to develop a “wish list” of duties which can be used for modified or light duty assignments in each department, and prepares separate job analyses and job descriptions. The supervisor keeps close contact with the injured employee and the treating physician. MRL pays full wages until the employee is eligible for long-term disability, if the injured worker cannot return to their time of injury job. Management involves the entire family, and returns injured workers to jobs specially suited to their location and situation (Hagemo, 1994).

Weyerhaeuser Company, a forest products company headquartered in Tacoma, Washington, has 250 facilities in thirty-six states. These facilities include sawmills, logging, home-building sites, and other high-injury risk operations. In the early 1980s, Weyerhaeuser was averaging more than 7,000 injuries a year. Workers’ compensation had increased 750 percent, from $3 million paid out in 1971 to over $25 million in 1982, and fewer and fewer employees were returning to work after on-the-job injuries. Because Weyerhaeuser viewed employees as a vital resource to the company, it committed itself to initiatives which substantially intensified its return-to-work program, including
utilization of rehabilitation providers, work site accommodations using modified or light-duty assignments, employee assistance programs, and health and fitness promotion. The results were impressive. From 1984 to 1990, workers' compensation costs decreased 51%, and the cost per claim decreased 18% (see Table 1). The lost workday rate dropped dramatically from 102 per 100 employees in 1985 to 53 per 100 employees in 1990. Costs per claim dropped from $3,500 in 1985 to about $1,500 in 1989 (Akabas, 1992, 225-228).

The most significant result is reflected in Weyerhaeuser's workers' compensation benefits when measured against national trends. While benefits nationally increased 400 percent from 1976 to 1988, Weyerhaeuser leveled off in 1985, and after the company reorganized its workers compensation disability management efforts, benefit payments continued to fall (Akabas, 1992, 228).

Table 1

<table>
<thead>
<tr>
<th>Total Workers' Compensation Costs (millions)</th>
<th>Costs per Claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984 $26.1</td>
<td>$2,640</td>
</tr>
<tr>
<td>1986 $16.4</td>
<td>$2,170</td>
</tr>
<tr>
<td>1988 $16.5</td>
<td>$2,300</td>
</tr>
<tr>
<td>1990 $12.8</td>
<td>$2,161</td>
</tr>
</tbody>
</table>
Weyerhaeuser recognized that it needed to assume greater control through in-house administration, supervisory accountability, and adoption of the principle that many employees injured on the job can return to work in some capacity. The following are some prominent features of the program. Workers' compensation costs are charged back to the impaired employee's department. This serves as a motivator to supervisors. Elsewhere, workers' compensation claims are often paid out of a pool at corporate headquarters, giving the immediate supervisor no particular incentive to bring the employee back to work. Another important factor in the success of an ERTW program is the organization's support of front-line supervisors. This can be accomplished through training, supporting and encouraging creative accommodations, and rewarding supervisors for their commitment to disability management. Developing an evaluation system that provides detailed information on costs and results of workers' compensation management is an essential element in documenting outcomes and the overall success of an ERTW program.

From an employer's perspective, the sooner the injured employee returns to work the sooner the organization can manage the cost of workers' compensation. The longer an employee stays out, the less chance he/she will return to the job. This requires part innovation, part diplomacy, and part flexibility. It does not have to be costly. Injured workers can be given the opportunity to work in new or modified positions without employers having to worry about increasing costs.
During all stages of this process, the employer's commitment and support for the injured worker are absolutely essential to the success of the employee's return to work and the success of the ERTW program. The injured employee may not know at this stage of the early-return-to-work process that the employer is assisting in avoiding the "Disability Syndrome."

**Missed Opportunities**

Workers' compensation costs shot up nearly 60% as a percentage of wages and salaries between 1987 and 1994, according to the US Department of Labor (What's New in Benefits and Compensation, July 7, 1995). Employers are missing opportunities to cut these costs because they are not educating employees about the workers' compensation system, steering them to doctors who specialize in worker injuries, communicating with injured workers and maintaining an ongoing, positive relationship with them, and implementing light duty return to work programs for injured workers. The federal government and private employers tend to ignore the costs of disability, now estimated at $170 billion annually (Human Resource Executive, 1989, 71). ERTW programs are about infusing managers and supervisors with a new sensitivity toward the needs of mentally and physically disabled persons, employing safe workplace practices, and taking every possible step to help the 1.4 million individuals who are injured on the job each year (Human Resource Executive, 1989, 71). The next chapter provides a practical description of how to implement and manage ERTW programs.
An organization's ERTW program policy should be comprised of two parts: a) Statement of Management Philosophy and b) Statement of Individual Responsibility. Once employers realize the significance of implementing an ERTW program, there is a chronology of action and tasks they should initiate. Developing a policy establishes the rights and responsibilities of the workers and the employer and forms a structure as the basis for decision and action.

Every ERTW program should be characterized by eight essential elements. The first element is in two parts, a pre-program collection of baseline data and a needs assessment. Baseline data includes characteristics of the work force, incidences of disability in the work force, resources in the community, and experience of people in the system. The employer can determine the need for an ERTW program by gathering and analyzing historical information on disability experience. The most obvious and available records are workers' compensation time-loss and medical claims. The second element of the ERTW program is the coordinating structure. This is a committee, task force, or advisory team composed of representatives from the departments involved. This team has the responsibility of implementing and managing this process to ensure coordination of related tasks throughout the organization. The third element, and one of the most important, is early identification and intervention. The organization establishes
a reporting mechanism in order to notify the parties involved that a worker has been injured and may need immediate assistance. By identifying the needs of the injured worker early in the process, relevant individuals can be notified to intervene. For example, case managers can determine if the worker is being treated, and claims adjusters can ensure that the worker receives timely time-loss payments to avoid financial problems. Early identification and intervention reassures the injured worker that the employer is concerned about his or her well-being, resolves problems before they become insurmountable, and facilitates early return to work. The fourth element is training. Key personnel need to be trained initially and updated as changes occur. The fifth element is case management. Case management is the most effective way to realize the benefits to the organization and the individual by coordinating inter-related issues such as health care, family involvement, support systems and job modifications. The sixth element is work modification options. In order to accomplish the primary goal, the return of employees to work, changes to the work site and the work tasks or duties must be considered. The seventh element is data collection, analysis, and feedback. This information is used to monitor how well the program is operating, and to make needed adjustments. The eighth and final element is prevention. Whereas the previous steps have focused on rehabilitation, accommodation, and management of the program, the most effective strategy is to teach workers how to avoid injury and illness. Prevention is a way to maintain a healthier work force and reduce the cost of workplace incidents. This chapter will discuss the components of an ERTW program policy, as well as the essential elements of the ERTW program itself.
Developing the ERTW Program Policy

"Policy is the linchpin of any management program," states Sheila Akabas (1992, 103). When management develops an ERTW policy there should be two defined statements, the statement of management philosophy and the statement of individual responsibility. First, the statement of management philosophy defines the intent of management. A good policy leaves no doubt in anyone's mind about the intent of management and its commitment to follow through at all levels to ensure that the policy is implemented. The following questions must be addressed:

- Who does the policy cover?
- What does it provide?
- When (under what circumstances) is it activated?
- Where does it apply?
- How will it be implemented?

The important details are, apart from developing a clear policy, to communicate the policy throughout the work system and to reinforce it with procedures and allocation of resources. A policy statement informs the system and all of its players. These include employees, supervisors, managers, human resource personnel, and the heads of all departments involved in the program, including medical, benefits, employee assistance, and collective bargaining. A good policy will provide a guide to these players and offer the basis for understanding the consequences that will flow from particular actions. At the start, the statement should convey a sense of the philosophy and values of the organization, move to the objectives of the program, and end with a particular set of
implementation procedures. New policies should be compatible with all other related policies because they will be ignored if they contradict existing, accepted and valued practices. As an example, if an existing policy, implemented by the human resource department, addresses health and disability issues covered under the Americans With Disabilities Act (ADA) or Family Medical Leave Act (FMLA), an ERTW policy must be consistent with it. The elements of a good policy follow, and a sample ERTW policy and procedure is attached. (see Addendum IV. Sample Early Return-To-Work Policy and Procedures).

If there is no written policy, the unspoken policy encourages injured employees to drop out of the work force, wallow at home, overutilize medical care, and draw payments to stay home while they await total recovery. Management and supervisors may cringe at the mention of philosophy and values, but it is important to communicate these, and to ensure that they are consistent with the encouragement of a productive work force. A management philosophy statement may, for example, communicate that management values its employees, is committed to the growth, development, and protection of its human resources, and intends to maintain a safe and healthy workplace and a climate that empowers workers. The philosophy statement can also create an understanding that the workers and management are engaged in a partnership to achieve these conditions, and that mutual rights and responsibilities exist.

Second, a policy statement that identifies program objectives provides concrete guidelines against which outcomes can be measured. Individual and organizational
objectives are necessary if the policy is to serve as a guide for action. Individual objectives require individual action, and players will pursue the objectives pertaining to their individual role in the process. For example, the injured employee may measure successful outcomes by reducing the recovery time from injury or illness, or keeping his or her job and protecting the income and benefits enjoyed at the time-of-injury.

Supervisors, on the other hand, may be concerned with achieving work accommodation within the employee’s own department or reducing the number of employees out on disability by reducing or eliminating the causes of accident and industrial illnesses.

The ERTW program seeks to satisfy both humane and cost-containment objectives. Instead of allocating funds to support injured workers who are not returning to work following an injury, the organization establishes an ERTW program to return the injured worker to normal, full employment. Instead of casting off valuable human resources, this program enhances the organization’s human assets by promoting rehabilitation in the work setting. Success is measured by reducing the costs of disability and increasing morale, commitment, and well-being within the organization. According to Akabas (1992), indicators of accomplishments of these objectives include the following:

+ Contact established with employees within the first week where lost time is likely.
+ Reduced lost time due to shortened periods of absence from work, arranging return to accommodated work during recovery rather than allowing long periods of idleness.
+ Appropriate work opportunities available for all those interested in keeping their jobs or returning to work.
+ Fewer employees seeking representation by lawyers and fewer adversarial workers’ compensation cases.
+ Reduced costs of medical care, workers’ compensation, sickness and accident payments.
Increased coordination of employee care among the organization, community physicians, other providers, and, when indicated, union representatives, thereby improving the quality of care, employee morale and company image.

In the policy statement, the organization commits resources in the form of transitional employment by creating modified jobs and schedules or other forms of accommodation, salary or wage adjustments for the injured worker. The policy should also include a section on conflict resolution. Although the employee, attending physician and the committee decide on the type and scope of modified duties and schedule, it does not eliminate the possibility of disagreement. A designated individual or group of individuals should be assigned the task of resolving conflict in these and other employee relations issues. Once the policy statement has been written, the necessary procedures for implementing it can be developed.

**Defining Needed Procedures**

The procedures define how the policy will be implemented and how and what will be monitored and evaluated. Safety measures, reporting procedures, and the organization's philosophy on ERTW programs should be communicated at the time of hire, well before an employee is injured. Employers in Montana are required to establish an education-based training program under the Montana Safety Culture Act of 1993. This program encourages workers and employers to come together to create and implement a workplace safety philosophy. The Department of Labor and Industry, Employment Relations Division, recommends that all new employees receive information which
includes accident and hazard reporting procedures, emergency procedures, and procedures dealing with fire safety, first aid, personal protective equipment, and work site hazards. In addition, employers with more than five employees must develop policies and procedures that assign specific safety responsibilities, as well as procedures for reporting, investigating and taking corrective action on all work-related injuries and accidents. In addition, work safety procedures are more specifically defined and regulated under the federal guidelines of the Occupational Safety and Health Administration (OSHA) and in union contracts. Human resource professionals and risk managers are often responsible for orienting new employees and they should use this opportunity to explain the organization’s ERTW Program in conjunction with other safety and security procedures.

Elements of an ERTW Program

Implementing all these ERTW program elements may be unrealistic and even unnecessary for a small or medium size employer. As this program is evolutionary and takes shape over time, it must be responsive to the needs of the employer, changes in the workplace and the community and, most of all, the needs of workers who are injured and/or disabled.

Needs Assessment and Collection of Baseline Data

The initial step involves developing a needs assessment and collecting baseline data. These two elements precede the implementation of the ERTW program. The employer may have the expertise to develop a needs assessment internally, or may need
to consult with specialists in vocational rehabilitation and risk management. A needs assessment evaluates the present situation based on historical data in terms of cost, safety, and hiring practices. The cost of workers' compensation is readily available in time-loss injuries and medical claims reports. Another source of relevant information is the organization's health and safety records. Reports on the frequency and the seriousness of work injuries and incidences can be used to analyze when, where, and how injuries occur. The employer assumes the responsibility for ensuring that the physical requirements of the job are appropriately documented and communicated to the applicant prior to the hire. Employers should prepare job descriptions identifying current "essential job functions" and physical requirements for each position. When new employees are neither advised of the physical requirements of a job or receive safety training, the incidences of work injuries for new employees may be higher than expected. The challenge for the employer would then be to create a modified job under an ERTW program for a new and inexperienced employee. The data collected for the needs assessment provides the employer and management the information necessary to analyze the cost of existing services and conditions.

Gathering data on the history of injuries has a dual purpose. First, it provides a basis for program design. Second, it provides a baseline against which to evaluate program effectiveness. Akabas (1992) provides the example of a traditional hospital work force made up of young, single women with children. Given this profile, there would be an expectation that the injuries might be unique to women and that many of the problems encountered during the recovery will concern child care and other child-related
issues. This is an example of how this information can further assist in the development of appropriate preventative strategies, e.g., intensive training on lifting techniques.

Akabas describes baseline data as a "collection and analysis of four types of information: 1. Characteristics of the work force 2. History of disability in the work force 3. Resources in the community 4. Experience of people in the system." As a first step, the characteristics of the work force include age, gender, marital status, level of education, work history and job titles, and ethnicity. The purpose of collecting this data is to predict the potential services the worker population will need, predict the types of injuries and disability to which the program will have to respond, and assist in the development of appropriate preventative strategies. Second, collecting data on the history of disability in the work force provides information on the immediate problems that need to be addressed. Historical data also enable managers to determine if there are patterns or trends in the occurrence and severity of injuries and incidents at the work site or sites. Third, information about community resources is important information for the employee to be able to access. An injured worker may need financial and psychological support beyond the benefits and services offered by the employer. Community resources include health service agencies, church groups, support and self-help groups, rehabilitation facilities, public assistance associations, family service agencies, and mental health networks. The fourth baseline data source is personnel who are currently in the system. Experienced people already in the system can provide information about how the system operates and what types of assistance are needed for injured workers. From the risk manager to the employee assistance program counselor, these professionals
have experience with what has already been tried, the successes, and any problems previously encountered.

Shrey (1995) terms this initial process the “Foundation Development.” This is a program planning process comprised of six baseline data collection components: key interviews, case analysis, disability patterns, cost analysis, policies and procedures, and community influence. First, interviews conducted with key personnel provide an insight into the culture, attitudes, policies and procedures, and resources in an organization. Second, case analysis involves a retrospective review of the records of injured and disabled workers. An analysis of these records can be used to assess the level of employer involvement and respective outcomes in response to work disruptions caused by injury and illness. The third source involves gathering data to establish disability patterns. This information includes the demographics of the work force, types of injuries by age, sex and job, definition of high risk jobs, and absenteeism patterns. The fourth source of information is a cost analysis. An employer's total cost of work-related injuries can be elusive because of the hidden costs which may include lost productivity, overtime payments, and loss of use of idle equipment. Traditionally, an employer would assess costs associated only with wage replacement benefits, medical claims, fees for case management, rehabilitation services, claims reserves, and workers' compensation premium ratings. The fifth source of information for this baseline data collection is a review of the organization's policies and procedures. Policies and procedures often reflect distinct management values, as well as commitment and attitudes to safety issues. They contain information such as how thorough the mechanisms are for reporting work-
related injuries, the degree of involvement of collective bargaining units in disability management, and how employee benefits are committed to workplace safety measures.

The sixth source is community influence. The early-return-to-work process for injured workers is strongly influenced by insurance carriers, community treatment providers, and external case management services. Insurance carriers and third-party claims administrators can positively influence and encourage an early return to work philosophy.

As medical costs account for more than one half the total cost of workers’ compensation medical and time-loss claims, the employer needs to convey the organization’s commitment to disability management by establishing a collaborative working relationship with medical providers in the community. Recognizing the influence and encouraging a collaborative effort among these community resources can assist early intervention measures and improve workers’ compensation efforts.

Assessing needs and collecting baseline data determines what the organization is currently doing to assist return-to-work efforts, identifies what additionally needs to be done, provides hard data about patterns of disability over time, and indicates the current status of injured workers, making it possible to assess how best to implement the program. Furthermore, this information forms the basis for development of the program components and provides the future basis for evaluating program effectiveness.

The Coordinating Structure

The second element in the ERTW program is the coordinating structure. This coordination effort is performed by a committee or team composed of representatives
from all the departments involved and the union, if the work site is unionized. Returning
workers to their time of injury job, or another modified job, cannot be the responsibility
of one person or one department. (see Addendum III. Limited Duty Program).

Committee representation includes members from these areas: human resources, benefits
management, medical and occupational health services, employee assistance, safety and
risk management, training, education and wellness, production, finance and
administration, information systems (IS), and the legal department. Together these
individuals ensure that injured workers receive the optimal assistance and help alleviate
the problems of workers falling through the bureaucratic cracks and never returning to
work. Their responsibilities are diverse and vital to the success of the ERTW program.

Although these responsibilities may vary with each organization, they typically include
the following:

1. Developing administrative policy, procedures and systems. The
policies and procedures are guidelines for injured workers and
management. Systems must be in place so that the committee can
coordinate these efforts. For example, the committee may establish
how an injured worker is referred to the employee assistance program.

2. Ensuring the efficiency of the system. At all stages of the program,
the committee ensures that the activities of the different departments
involved in the program do not overlap or contradict one another. If a
supervisor is not informed that an injured worker is returning to work
on a modified work assignment with reduced hours, he or she
believing that the employee is returning to a full-time position,
incorrectly notifies the benefits department to cease time-loss
payments.

3. Establishing formal lines of communication among different
departments, and coordinating activities to assist the injured worker
through the system. In this way the departments remain responsive to the injured worker and to one another.

4. Coordinating activities which do not fit in any one department. For example, a modified work assignment may involve the union, supervisor, medical, benefits management, and the safety department.

5. Reviewing cases for making changes and improvements. The committee should be responsible for making suggestions of ways to manage specific cases and determining whether the program needs to be changed to accommodate the situation represented by troublesome cases.

6. Providing a mechanism for commanding resources, their allocation and utilization. This committee should be empowered to use existing resources and solicit additional resources when needed.

7. Furnishing a mechanism to reexamine policy and program procedures. Committee members can see where the program is or is not working, analyze the problems and initiate change in program policy or systems. (Akabas, 1992, 73).

The coordinating committee sets up a reporting and evaluation mechanism, receiving reports from individual departments on program functioning and successes. The members synthesize this information to report to top management. Thus, this committee is a key link between those involved in implementation and top management (Akabas, 1992).

Early Identification and Intervention

The third element in the ERTW program is early identification and intervention. The reporting mechanism established by the coordinating committee notifies the specific
parties that a worker has been injured and may need immediate assistance. After identifying the needs of the injured worker, the employer is able to coordinate services and benefits by taking a pro-active approach early in the process. The early identification and intervention process is one of the most important elements of the ERTW program.

Identifying the needs of an injured worker early in the process has three advantages. First, early intervention by case managers or assigned individuals determines whether or not the worker is receiving the appropriate medical care. A study by Akabas and Gates (1990) found that some workers are dissatisfied with their medical care and do not agree with the decisions their treating physicians make about their ability to return to work.

Through early intervention the employer can determine if the worker is being treated, if the worker is satisfied with the treatment, and whether or not the worker perceives the treatment as helping in his or her recovery. Second, early intervention can affect how workers perceive themselves, the organization, and their supervisor. Early and frequent contact with the worker reinforces the value of the injured worker to the organization by focusing on his or her ability rather than disability. Third, early intervention can resolve problems before they become insurmountable. Problems are not restricted to physical recovery. According to EBI Companies ERTW Handbook, sixty percent of workers off work beyond fourteen days are already in financial trouble. These workers experience financial problems, personal and family concerns, and problems in returning to work.

Assisting with these issues at the start helps reduce the additional distress and facilitates return to work. The supervisor is the initial link between the injured worker and the
organization, as they make the follow-up contact with the injured worker and stay in touch throughout this process.

The optimal time for intervention is never clear. Some injured workers may return to work without time-loss or medical treatment. The organization's experience with workers' compensation and past research offer some guidelines (Akabas, 1992). The worker may approach the supervisor, case manager, or human resource personnel with a concern or specific problem which could result in the worker requiring assistance through the process. In some instances, the return-to-work date set by the treating physician is appropriate for the work site physical conditions, but the worker may be having trouble adjusting emotionally to returning to the place he or she was injured.

Training

The fourth element in the ERTW program is training key personnel. Introduction of an ERTW program will have an effect throughout the organization. Consequently, personnel directly involved in disability management need to be trained in the technical aspects of workers' compensation and the ERTW program. Individuals who have a specific role or expertise in this process need additional training. For example, claims officers from the benefits department will need training in early identification and referral procedures.

There is a perception that since there are apparently no additional management skills required for supervising injured workers, supplemental training is not required. This overlooks the reality that the skills, abilities and knowledge of individual
supervisors about the return to work of injured workers often makes the difference between success and failure (Pimentel, 1995). Supervisors are in the best position to deal with co-worker attitudes towards injured workers, accentuate the positive aspect of returning to work, and help turn fear and anxiety into motivation. Apart from frequently contacting the injured worker, the supervisor should also assist with the development of the job analysis and position summary or job description. (see Addendum V. ADA Sample Format - Example of a Job Analysis. Addendum VI. VRI Position Summary - Executive Assistant).

All staff involved in the ERTW program need, at a minimum, a thorough orientation that describes the entire program, their role in the process, time frames for reporting and feedback, and who to contact inside and outside the organization. It is important for top management to be oriented to the program's objectives and procedures, as top management must demonstrate commitment and support for this program. Outside service providers are often forgotten in the training step. Community resource providers and insurance companies, at a minimum, need to receive an overview of the program and an understanding of how it affects them.

The initial training requires an intensive effort to introduce the program. Outside consultants, particularly representing case management service companies, vocational rehabilitation specialists, or third party administrators may develop and present the program. There are, however, personnel with expertise within the organization. for example, the occupational health nurse or benefits administrator, who understand how the
program works and are qualified to present a part of the training and maintain ongoing training.

As the monitoring, feedback and program evaluation evolves, staff will need training updates. As state, federal and workers' compensation legislation changes, staff will need training to understand and adapt to these changes. When newly hired or assigned staff become involved in the ERTW program, they will need intensive training as well.

Case Management

The fifth element in the ERTW program is case management. Case management, as defined in a disability management program, is the "coordination of resources dispersed throughout the organization and the community to meet the needs of the individual worker (Akabas, 1992, 79)." Case management is the most effective way to realize the many benefits to the organization and the injured worker provided by the ERTW program. The role of the case manager is to identify the needs of the injured worker and act as a liaison in the system, rallying the representatives from all areas to work together to bring the employee back to work. This role may be assigned to a representative from human resources in a smaller organization. Larger companies, such as Montana Power Company, contract with case management service companies who provide registered nurses to manage cases for injured workers. There are many benefits to case management. Injured workers respond differently to the pressures of returning to work, and case managers are trained to recognize the differences and handle each case on
its merits. Another benefit is the personal contact with a case manager. Injured workers are often vulnerable and overwhelmed, and helping them on an individual basis provides support and often motivation for returning to work. Also, the case manager provides a systematic approach to marshaling resources on behalf of the injured worker. Without a case manager, injured workers must find the resources on their own before they can attempt to access them. The role of the case manager is to identify the needs of the disabled worker, return the injured worker to work, and provide assistance in a wide range of areas.

When the injured worker is facing a readjustment to work, the case manager may provide options in the form of accommodation in the workplace, explain the criteria used by a physician to determine a return to work date and the rationale for approving the duties in a modified or alternate position, and assist the injured worker through the maze of benefits and services available to them inside and outside the organization. The case manager is often the problem solver, that injured employees come to rely on and trust, especially if, as frequently happens, injured workers are bounced around the system, from the medical providers to the claims adjuster, to the benefits coordinator, and back again.

Work Modification Options

The sixth element in the ERTW program is work modification options. Work modification involves making changes to accommodate the returning worker who may be limited in his or her level of functioning. Modifications may include changing the tasks of a job, providing a new job with modified tasks, reducing the work day or allowing
time off for rests, doctor's visits or rehabilitation, or assistance in the form of equipment or adaptive devices if parts of the job have become problematic. These modifications are provided by the employer at the work site for injured workers returning to work under an ERTW program.

Transferring the non-essential job functions to another employee is considered a "reasonable accommodation" under the ADA. For example, an administrative assistant may occasionally be asked to lift an exceptionally heavy carton of copy paper. This function could be assigned to another employee and considered to be a non-essential job function in the Job Description. Acquisition or modification of equipment or devices is another solution. These simple measures may assist the employee in performing the essential functions of the job. A common employer reaction is to assume that such equipment is either unavailable or is very expensive. In fact, equipment-related accommodations are among the simplest of accommodations and there is a tremendous amount available, much of it at minimal cost. Reassignment to another position, with restricted duties and/or a limited work schedule, or creating an alternative position, are other options. For example, an administrative assistant with carpel tunnel syndrome, an occupational disease claim under workers' compensation, may be restricted from the repetitive motion of word processing, but may be able to answer the telephone and greet clients.

Returning injured workers to work is the primary goal. The organization therefore, must be prepared to provide modified jobs for returning workers. Injured
workers may, with physician approval, return to their time of injury position, with or without accommodation. However, it is more likely that the injured worker will be placed in a modified job (which has to be created for an injured worker, and for an established limited period of time), with increasing expectations as the employee is assisted to normal, full duty. Work modification options are divided into two classes. First, physical changes may be made to the work site. Ergonomic changes such as the redesign of the workstation or physical location of someone's work can be considered. Second, changes may be made in the work tasks or work schedule. As stated earlier, duties of an non-essential function can be re-assigned. A part-time work schedule may be necessary to ease the injured worker back into full-time employment. This can require innovation, creativity and a commitment of resources.

Injured workers are often less anxious if they return to their own department, even in a modified job suited to their limited capacity. They are familiar with the surroundings and they have the support of their co-workers. When the supervisor demonstrates an empathetic understanding and maintains a positive attitude, it is more likely that co-workers will respond and accept the injured worker back into the work place. Supervisors are more committed to injured workers who return to the department when the supervisor is instrumental in creating a modified position, and is responsible for monitoring and evaluating the success of the process.
Data Collection, Analysis and Feedback

The seventh element in the ERTW program is data collection, analysis and feedback. Following the development stages of the ERTW program, the employer will need tools to monitor how well the program is operating, refine the program, evaluate its effectiveness, and make improvements. Although this stage is not usually included in the policy and procedures, the collection of data at each stage of development of the ERTW program is necessary to analyze costs, maintain quality assurance, and assess program needs. For clarification purposes, some ideas on developing data collection procedures follow:

- Determining what ERTW procedures are already in place. Scattered information understates the cost of early return-to-work endeavors, and limits the response to the process.

- Deciding who uses the data and how. The coordinating committee requires frequent, current data to make decisions and advise top management.

- Determining additional program data that need to be collected. Community resources may change, or access to health care services may be restricted. This information is helpful in advising the injured workers through the workers’ compensation maze.

- Efficient collection and storage of data, how and when to access it for evaluation and reporting purposes.

Prevention

The eighth and final element in the ERTW program is prevention. Although the focus of this analysis has been early identification and intervention, case management, work modification, and training, when developing an ERTW program one of the most
effective strategies for managing workplace injuries is to teach workers how to avoid injury and illness. According to Akabas, "Prevention is a way both to maintain a healthier workforce and to reduce the cost of disability by reducing the need for benefits and health care payments (1992, 37)." Although we know that prevention should be in the forefront of any worker safety and disability management culture, it requires a systematic approach in dealing with workplace injuries and illnesses, out of which an employer and employees can develop a prevention strategy.

In summary, designing an ERTW program requires the effort and expertise of a number of professionals, as well as hands-on management skills. As a practical and proactive approach, human resource professionals should be involved in the policy making decisions, preparing adequate job descriptions for the work place, and being available as a resource to the injured worker. To be effective, a comprehensive ERTW program must begin long before the worker is ever injured. It starts with top management support and commitment, and employee and supervisor education before the injury. The goal of any meaningful disability management process is to turn potential work time-loss injuries into medical treatment-only injuries. Physical limitations are an important aspect to consider, along with worker's skills and abilities, when determining how a temporary assignment might bring the most value to the organization. Creative modifications to existing duties also provide the best plan of work therapy, leading to a timely, full recovery for the worker. Temporary assignments should have a specific starting and ending date be adaptive to change weekly as the worker improves and grows stronger, and have the flexibility to adjust to ongoing medical treatment, and physical therapy. It

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is important to terminate the employee who is unable to work. There are complexities and risks involved if the termination is not handled appropriately. A sound ERTW program effectively reduces the risk of future legal liability from the terminated or mishandled injured worker.

Furthermore, an ERTW program integrates policy and procedures to ensure compliance with federal and state discrimination, leave, and workers’ compensation laws. This is the subject of the next chapter.
CHAPTER 4

STATE AND FEDERAL LAWS WHICH IMPACT ERTW PROGRAMS

In administering ERTW programs, human resource professionals must make sure that their actions do not conflict with state workers’ compensation legislation and federal laws. This chapter explains the requirements of the Americans With Disabilities Act (ADA), state workers' compensation legislation, and the Family Medical Leave Act (FMLA). It also evaluates how these laws impact ERTW programs.

Requirements of the ADA, State Workers’ Compensation Laws, and the FMLA

The purpose of the Americans With Disabilities Act of 1994 (ADA) is to protect people from discrimination on the basis of a disability. Title 1 of the Act mandates strong civil rights for people with disabilities. An employer is prohibited from discriminating against a qualified individual with a disability in regard to job application, hiring, discharge, compensation, training, and other terms, conditions, or other privileges of employment. The ADA protects injured workers with permanent or long-lasting work-related restrictions who can perform essential job functions with or without accommodation. These injured workers are considered “individuals with a disability” under the ADA. The law prohibits discriminatory employment practices against qualified individuals with a disability, those with a record of a disability, or those perceived as being disabled.
Employers are required to make "reasonable accommodation" to the known physical and mental limitations of an otherwise qualified individual, unless to do so would impose an undue hardship. Employers are required to make reasonable accommodation for individuals who are disabled because of an injury on or off the job. Changes in the work process, equipment, or schedule may be sufficient to enable the worker to return to their time-of-injury job, or a modified job. This law concentrates on improving the quality of work life for the disabled worker.

State workers' compensation laws were designed to provide needed assistance, both financial and medical, to workers who suffer many kinds of work-related injuries and occupational diseases. Employers in Montana, whether they are state-funded or self-funded, are required to comply with state workers' compensation laws regarding timely reporting of work-related injuries or accidents, payment of medical and time-loss claims and lump-sum impairments, and appropriately returning injured workers to the workplace, or alternatively arranging for long-term disability.

The final regulations covering medical leaves under the Family Medical Leave Act (FMLA) were published in June 1995. This federal law requires that employers with 50 or more employees provide paid or unpaid leave of up to 12 work weeks to eligible employees. Leave is granted under these conditions: birth or placement for adoption or foster care of a child; serious health condition of an employee; or serious health condition of an employee's spouse, parent or child. The definition of a "serious health condition" has been amended to read, "an illness, injury, impairment, or physical or mental
condition that includes inpatient care at a hospital, period of incapacity, a chronic
condition, a period of incapacity which is permanent or long term due to a condition for
which treatment may not be effective, and period or absence to receive multiple
treatments by a health care provider." In short, both the ADA and FMLA provide
additional rights to injured workers of which human resource professionals must be aware
(Drobka, 1995).

The Impact of the Law on ERTW Programs

Standards for employees returning to work under ADA are totally different from
many workers' compensation statutes. The ADA standard asks whether the returning
employee can perform the essential job functions of the former job, with or without
reasonable accommodation, or the essential functions of a vacant job, with or without
reasonable accommodation. This standard takes precedence over any conflicting state
or local workers' compensation laws. Incentives in some workers' compensation
arrangements seem to keep people at home. The ADA, by contrast, helps ensure that
employees return to work, assuming that they wish to return. Under the ADA, if an
employee refuses an accommodation that would have allowed the employee to do the job,
or return to the job, the employee loses the protection of the ADA. Fear of losing ADA
protection may work as an incentive to encourage injured employees to return to work.
In some states, under the workers' compensation system, injured employees can refuse
such jobs.
There is little case law so far to guide managers on what a “perceived disability” means. When in doubt, employers must assume a workers’ compensation injury also constitutes a disability under the ADA. Employers can reasonably accommodate an injured employee by providing additional unpaid leave and reassigning that employee to a vacant (preferably equivalent) position. The ADA does not require an employer to accommodate an employee by creating a new “light duty” position. The law does, however, require that non-essential job functions be re-assigned to other co-workers as reasonable accommodation.

The FMLA goes beyond the scope of the ADA. An impaired employee, who is on a time-loss leave and who cannot perform the essential job functions of a position, is not entitled to the rights and privileges under another federal law, the Family Medical Leave Act (FMLA). When an employee is out for reasons cited under the FMLA, the employer does not have to worry about the ADA. If the returning employee cannot do the same job or a substantially equivalent job, he or she is entitled to “reasonable accommodation” under the ADA. Absences that initially appear to fall under workers’ compensation should later be re-examined for FMLA leave eligibility since impairment may no longer be classified under industrial injury or occupational disease. It may still be considered a “serious health condition” under the FMLA. Injured employees who are eligible for FMLA leave may exercise their right to take this leave rather than return to work in a “light duty or modified” position under an ERTW program. The employer cannot force the employee to accept a “light duty” position, or require him or her to return to work in a transitional employment or reasonable accommodation situation.

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Injured employees may want to take up to 12 weeks leave under the FMLA, because when they return to work, they are guaranteed reinstatement in the same or equivalent job and reinstatement of benefits under the FMLA. There is no such guarantee under state workers' compensation and the ADA.

It is a misconception that employers can automatically terminate an employee who is unable to return to work after exhausting the 12 week leave guaranteed under the FMLA. A “serious health condition” may still constitute a disability under ADA (Drobka, 1995). When the employee returns from an FMLA leave, the employer must return the employee to the same or equivalent position, with the same pay, benefits and conditions of employment he or she received before the leave. The ADA does not require employers to keep the time-of-injury job open pending the return of the injured employee.

Employers might want to create “light duty” positions, even if they do not develop an ERTW program, to offset time-loss costs. Under the Montana state workers' compensation law, employers are not required to provide either "light duty" positions or an ERTW program to employees injured on the job. Furthermore, employers have no duty to maintain or guarantee that employees can return to their time-of-injury position, and have no duty to maintain benefits when an injured employee is receiving time-loss payments under workers' compensation. FMLA and the ADA make it more difficult to reduce unnecessary absenteeism, promote return to work, and reduce or contain benefit costs. While employers may not compel an employee to return to work within the 12
weeks under the FMLA, the employer should not diminish efforts to return willing
employees to the job as quickly as possible.

Employers should keep in mind that, although injured workers' claims may be
compromised by non-cooperation, no program can force a worker to come back to work.
The key to the overall success of handling work injuries and the respective state and
federal laws is an open and honest approach, offering the employee options that are
advantageous and appropriate for him or her.
CONCLUSION

The management of injured workers through early return to work, and "transitional" work programs heralded an era of transformation in dealing with workers' compensation costs for the employer. The escalating costs of workers' compensation will be experienced world-wide by industry and businesses, large and small, throughout the next decade. With the decreasing labor pool, an aging work force, and increased world-wide competition, employers must seize the opportunity to control the personal and economic costs of injury and disability in the workplace. An employer's success will be determined by the extent to which it is able to shape positive attitudes among labor and management, while creating a structure supportive of such programs. Employers are limited only by their creativity, imagination, and flexibility in adapting ERTW programs to their work environment.

Job accommodations and temporary, modified positions with nontraditional job options expand the range of transitional work alternatives for workers with restrictions. Redesigning tools, ergonomically correct work stations, adaptive devices, and work schedule modifications are all effective methods that enable the worker to perform job functions. These same interventions can be utilized in a preventative manner to identify and redesign jobs which are likely to cause future injuries.

Protecting the rights of injured workers is an important component of this program. Every year, thousands of workers become disabled through industrial accidents or occupational disease. Without transitional work options, early return to work, and
accommodations, workers with disabilities risk similar discrimination as other individuals with disabilities, and can fall victim to the "Disability Syndrome." ERTW programs represent a method of intervention to protect the employability and psychological well-being of the worker, as well as the economic interests of the employer.

How do we know ERTW programs will work? We do know that injured workers prefer to work. A study by Akabas and Gates (1991) of the factors that affect return to work among newly injured workers found that most people (95%) wanted to return to work, both for financial rewards and the sense of self-esteem and well-being it provides.

The employer plays a significant role in affecting worker perceptions of the workplace. Early intervention, the interest and caring of the case manager, as well as the contact and support of supervisors and co-workers, provide the motivation to return. From the injured worker's perception, the supervisor is the key person conveying workplace policy and controlling the probability of return to work.

While there are costs involved in developing ERTW programs, the employer benefits by reducing the cost of workers' compensation claims, and the ancillary costs of additional wages and salaries when injured workers are replaced. ERTW programs enhance productivity when the experienced worker is performing some duties, even in a modified position.

The most significant issue for the employee is to be valued, therefore, maintaining his or her self-worth and esteem. Morale improves when a coordinated, supportive effort
is made to return the injured worker and assist him or her to reach the goal of normal, full duty employment.
ADDENDA

ERTW PROGRAMS:

A PRACTICAL WORKSHOP
EARLY RETURN-TO-WORK PROGRAMS

A PRACTICAL WORKSHOP

PRESENTED BY MARY OESTREICH, SPHR,
HUMAN RESOURCE DIRECTOR, VRI.

OBJECTIVES

- Explain the advantages of Early Return-to-Work (ERTW) Programs, and the positive impact on the cost of industrial injury, productivity, and workplace morale.
- Pro-actively reduce or avoid many of the elements of the "Disability Syndrome".
- Develop a policy for an Early Return-to-Work Program.
- Implement and manage an Early Return-to-Work Program in your organization.
- Understand how state and federal laws interact when establishing a disability management philosophy.
Employer Trends in the Use of Disability Management Initiatives and Interventions

<table>
<thead>
<tr>
<th>Initiative/Intervention</th>
<th>1991</th>
<th>1993</th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Pre-certification of Medical Treatment</td>
<td>19%</td>
<td>57%</td>
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<tr>
<td>♦ Case Management</td>
<td>30%</td>
<td>84%</td>
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<tr>
<td>♦ Negotiated Provider Discounts</td>
<td>18%</td>
<td>46%</td>
</tr>
<tr>
<td>♦ Utilization Review</td>
<td>28%</td>
<td>70%</td>
</tr>
<tr>
<td>♦ Use of Managed Care Networks</td>
<td>20%</td>
<td>50%</td>
</tr>
<tr>
<td>♦ Coordination of Workers’ Comp with Group Health Plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>♦ Fee Schedule Compliance Checks</td>
<td>34%</td>
<td>50%</td>
</tr>
<tr>
<td>♦ Medical Bill Audits</td>
<td>48%</td>
<td>68%</td>
</tr>
<tr>
<td>♦ Claim Administration Audits</td>
<td>45%</td>
<td>61%</td>
</tr>
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<td>♦ Return-to-Work Program</td>
<td>62%</td>
<td>78%</td>
</tr>
<tr>
<td>♦ Vocational Rehabilitation</td>
<td>54%</td>
<td>66%</td>
</tr>
<tr>
<td>♦ Safety Initiatives/Injury Prevention</td>
<td>84%</td>
<td>85%</td>
</tr>
</tbody>
</table>

(*) Eighty percent (80%) or more of the employers surveyed found these cost control measures effective in managing injury and disability problems.

Source: Disability Management Practice at the Worksite

Addendum I
Most Common ADA Claims

Total ADA charges received during reporting period
July 26, 1992 - March 31, 1995: 45,053

**Impairments Most Often Cited**

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<thead>
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<th>Impairments</th>
<th>Percentage</th>
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<td>BACK IMPAIRMENTS</td>
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<tr>
<td>NEUROLOGICAL IMPAIRMENTS</td>
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<tr>
<td>EMOTIONAL/PSYCHIATRIC IMPAIRMENTS</td>
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<td>EXTREMITIES</td>
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<tr>
<td>HEART IMPAIRMENTS</td>
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<tr>
<td>DIABETES</td>
<td>3.6%</td>
</tr>
<tr>
<td>SUBSTANCE ABUSE</td>
<td>3.5%</td>
</tr>
<tr>
<td>HEARING IMPAIRMENTS</td>
<td>3.0%</td>
</tr>
<tr>
<td>VISION IMPAIRMENTS</td>
<td>2.8%</td>
</tr>
</tbody>
</table>

(This is not a complete list; therefore, percentages do not add up to 100%)

**ADA Violations Most Often Cited**

<table>
<thead>
<tr>
<th>Violation</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>DISCHARGE</td>
<td>50.7%</td>
</tr>
<tr>
<td>FAILURE TO ACCOMMODATE</td>
<td>26.2%</td>
</tr>
<tr>
<td>HARASSMENT</td>
<td>10.9%</td>
</tr>
<tr>
<td>HIRING</td>
<td>10.7%</td>
</tr>
<tr>
<td>DISCIPLINE</td>
<td>7.6%</td>
</tr>
<tr>
<td>LAYOFF</td>
<td>5.0%</td>
</tr>
<tr>
<td>BENEFITS</td>
<td>4.1%</td>
</tr>
<tr>
<td>PROMOTION</td>
<td>3.8%</td>
</tr>
<tr>
<td>REHIRE</td>
<td>3.7%</td>
</tr>
<tr>
<td>WAGES</td>
<td>3.5%</td>
</tr>
<tr>
<td>SUSPENSION</td>
<td>2.3%</td>
</tr>
</tbody>
</table>

(This list adds up to more than 100% because individuals can allege multiple violations.)

Source: Data compiled by the Office of Program Operations from EEOC’s Charge; Data System’s National Data Base.

Addendum II
LIMITED DUTY PROGRAM

Employee Absent for >-7 days
Evaluated by Physician
Statement Sent to Employee’s Supervisor
Human Resource Submits Request for Limited Light Duty to Physician

NOT ELIGIBLE FOR PROGRAM
Employee Receives Temporary Disability From Workers Comp
Employee Continues Medical Treatment
Human Resources Resubmits Request for LDP
Employee Ineligible for LDP
Employee Placed in LDP
Human Resources Follow-up
Application for Subsequent Injury Certification
Preference in Hiring if < 2 years

ELIGIBLE FOR PROGRAM
Employee Referred to Physician
Results to Human Resources
Employee, Supervisor, Human Resource Identify Appropriate Limited Duty Assignment
Employee Placed for > = 90 days
Human Resources and Supervisor Evaluate Weekly
Evaluations Sent to Human Resources and Physician
Physician Release to return to Work
If < 42 day Returns to Regular Job
If > 42 days Given Preference in Hiring
Case Reviewed by Return-to-Work Committee
Committee Reports to Management

Source: VRI Disability Management Program

Addendum III
SAMPLE

EARLY RETURN-TO-WORK PROGRAM POLICY AND PROCEDURES

POLICY

Approved By: ___________________ Effective Date: __________
Dates Revised: __________

__________________________ encourages and is committed to facilitating the earliest return-to-work possible by employees temporarily disabled as a result of work related illness, accident, or disease. In order to create an environment conducive to an employee’s early return, temporary or transitional (maximum eight weeks), restricted duty and/or schedule will be identified which will ease the employee’s reentry into the work force. The organization will make every attempt to explore workplace accommodation that will permit such a job return.

During the structured early return-to-work program, management will assist the recovering employee in maintaining their customary standard earnings, and a structured, if limited, work schedule. If an employee must return to a job at a lower wage/salary than the predisability wage/salary, under the discretion of the committee, either short-term or long-term disability will make up the difference between the current wage and the employee’s original standard earnings.

Addendum IV
Short-term or long-term disability will supplement the employee's wage/salary on the "new" job only to the amount not greater than the disability payment the employee would have been eligible to receive (when the salary for the "new" job is less than the original standard earnings).

The type of work schedule and light or modified duty assignment will be reviewed by the employee's attending physician, and the committee prior to implementation. The supervisor, human resources, and the attending physician will monitor the employee's progress, on a regular basis, to integrate the work plan with treatment. The ultimate goal is to return the employee to normal, full duty.

Training programs for supervisors and others will be planned and offered at regular intervals to describe the early return-to-work program for employees, and to identify the role of the supervisor as an early referral source. The organization will also provide literature and training programs for employees on safety and preventative measures, and any new programs or policies that are part of the process.

Injured employees may access a Dispute Resolution Mechanism, available to them during their participation in the early-return-to-work program. Upon receiving written documentation of the dispute, the designated committee (representatives from management, staff and providers) will meet with the employee in an attempt to resolve the issue, so that the expected outcomes of the early return-to-work program can be realized.
### PROCEDURE

<table>
<thead>
<tr>
<th>Step</th>
<th>Responsibility</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Employee</td>
<td>Reports incident or accident within 24 hours, to supervisor.</td>
</tr>
<tr>
<td>2.</td>
<td>Supervisor/ Occupational Nurse</td>
<td>Maintains ongoing contact with injured employee. Status of the injured employee is monitored weekly. Ongoing communication with treating physician, concerning date of return to work to either time-of-injury position, with restrictions, or a temporary, modified position, or no return to work, and/or disability.</td>
</tr>
</tbody>
</table>
| 3.   | Human Resources/ Supervisor/ Return-to Work Committee | Identifies temporary, light duty, or transitional positions with parameters;  
(a) Maximum of eight (8) weeks in duration.  
(b) Each week represents an increased stage of physical mobility and strength, based on the physician’s recommendation.  
(c) Obtain Job Analysis from Vocational Rehabilitation Counselor.  
(d) Regular, weekly monitoring by supervisor, physician, and human resources/benefits coordinator. Integrate work plan with medical treatment or therapy schedule.  
The goal is to facilitate the return to normal, full duty. |
| 4.   | Manager/ Supervisor | Develops Position Summary/Job Description for transitional position. Physician approves, with or without limitations. Advise co-workers to be helpful and supportive in the modified role. Encourage and welcome the injured employee. Review and explain the status, restrictions, expectations, and what will be done to assist the employee to return to full duty. |
5. **Human Resources**

Advises employee of rights and responsibilities under the Early Return-To-Work Program, duties and work schedule. Review compensation and benefits.

6. **Reinstatement under ADA**

It is the intent to return medically stable injured employees back to work, with or without "reasonable accommodation". The organization will reasonable accommodate workers with disabilities, except where the accommodation would create an "undue hardship", or a direct threat to the organization, its employees, customers, or clients.

7. **FMLA Leave**

The FMLA authorizes an eligible employee up to twelve (12) work weeks of unpaid leave during a "rolling" twelve (12) month period when an employee is unable to work because of a serious health condition. For those employees eligible under the FMLA, the employer will use the physician’s certificate to grant a leave of absence due to injury or accident, or concurrently charge such leave toward the 12 weeks of FMLA.

8. **Worker’s Compensation**

An employee is covered under state workers’ compensation during the course of the employee’s work schedule, and in the course of normal business travel.

9. **Human Resources/Committee**

Monitors employee’s progress. Return-to-Work Committee recommends alternative modifications in duties and/or schedule as necessary. Supports and encourages employee to return to full duty, in time-of-injury position.

10. **Return-to-Work Committee**

Reports progress to management.

11. **Employee**

Either: (1) Returns to full duty, time of injury position, or (2) Continues transitional or further modified position, with physician’s and committee approval, or (3) Terminates from employment.
CLIENT: Jane Doe  
JOB TITLE: Dietary Assistant  
EMPLOYER: Retirement Villa  

JOB#(s): 318.687-010  
SVP#: 2  
VRI#: 72465  
CLAIM#: 03-94-87623-1  

VRI#: 72465  
CLAIM#: 03-94-87623-1  

CLAIM#: 03-94-87623-1  

JOB DESCRIPTION: Provides general kitchen and dining room assistance to cook in nursing home facility.

Specific Functions:

Y 1. Feed or tail dish machine
Y 2. Set up trays and push/pull tray carts
Y 3. Move dish dollies to/from cook station
Y 4. Sweep/mop floors, wipe tables, and wash floor mats
Y 5. Assist with serving meals and setting up trays
Y 6. Stock storage room
N 7. Restock milk machine
Y 8. Prepare juice and pour ice water, empty garbage into dumpster

Average Length of Shift: 8 hours

Machines, Tools, Equipment: Dish machine, coffee urn, milk dispenser, garbage disposal, knives, can opener, microwave, meat slicer, carts, pitchers, dish dolly

PHYSICAL DEMANDS:

Activity | Frequency | Job Function (incl. level, body part, surface, distance)
--- | --- | ---
Lift &lt;16 (lbs) | 75% | Handle dishes, trays, utensils at varying heights
16-56 (lbs) | 1% | Wash rubber mats (25 lbs.), empty garbage can (may empty as needed—assistance available), stock milk machine (56 lbs.—not required)
Carry &lt;57 (lbs) | 1% | Empty garbage, move milk container (not req. to carry—carts available)
Push &lt;36 (lbs/force) | 3% | Open freezer door, move dish dollies or carts, pull mop bucket
Pull &lt;36 (lbs/force) | 3% | Sit on chair during breaks
Sit 0-10% | | Rubber mat on tile to perform duties
Stand 50-70% | | Rubber mat, tile to move around kitchen, dining area
Walk 25-35% | | Not required, but can use 2 step stool to empty garbage
Climb 0% | | Not required
Balance 0% | | Set trays on cart, move supplies (could crouch instead)
Crouch &lt;400X | | Set trays on cart, move supplies (could crouch instead)
Knee 0% | | N/A
Bend &lt;400X | | 45 degrees at waist, hips to mop floors
Twist 6% | | Access dishes, trays, utensils, food, cleaning equipment
Reach (beyond arm’s length) Dominant (forward) up to 60% | | Assist dominant arm
Dominant (abducted) up to 10% | | Access dishes, trays, utensils, food, cleaning equipment
Non-dominant (forward) up to 30% | | Assist dominant arm
Non-dominant (abducted) up to 5% | | Access dishes, trays, utensils, food, cleaning equipment

Addendum V
Job Analysis (Dietary Assistant-DOT #318.687-010)

ACTIVITY

<table>
<thead>
<tr>
<th>Handle</th>
<th>Frequency</th>
<th>Job Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dominant</td>
<td>up to 90%</td>
<td>Handle dishes, trays, utensils, etc.</td>
</tr>
<tr>
<td>Non-Dominant</td>
<td>up to 80%</td>
<td>Assist dominant hand</td>
</tr>
</tbody>
</table>

FINGER

<table>
<thead>
<tr>
<th>Dominant</th>
<th>Frequency</th>
<th>Job Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>Handle silverware, tray cards, write</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Dominant</th>
<th>Frequency</th>
<th>Job Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>Assist dominant hand</td>
<td></td>
</tr>
</tbody>
</table>

FOOT CONTROL

| Right | N/A |
| Left | N/A |

ENVIRONMENTAL CONDITIONS

<table>
<thead>
<tr>
<th>Y/N</th>
<th>Type</th>
<th>Inside (frequency)</th>
<th>Outside (frequency)</th>
<th>Temperature extremes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dust</td>
<td>X</td>
<td>Dishwasher, refrigerator</td>
<td>99%</td>
<td>35°-90°</td>
</tr>
<tr>
<td>Humidity</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fumes/Odors</td>
<td>X</td>
<td>Cooking</td>
<td>1%</td>
<td></td>
</tr>
<tr>
<td>Chemicals</td>
<td>X</td>
<td>Cleansers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Noise</td>
<td>X</td>
<td>Dish Machine, radio, voices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vibration</td>
<td>X</td>
<td></td>
<td></td>
<td>all weather</td>
</tr>
</tbody>
</table>

HAZARDS

| Potential slippery conditions, hot surfaces, slicer |

Safety Equipment Required/Provided: N/A

Y/N/Preferred Comments

<table>
<thead>
<tr>
<th>Y/N</th>
<th>Talk</th>
<th>See</th>
<th>Hear</th>
</tr>
</thead>
<tbody>
<tr>
<td>!X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PREREQUISITES

<table>
<thead>
<tr>
<th>Y/N/Preferred</th>
<th>Certifications/Licenses</th>
<th>Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Read</td>
<td>X</td>
<td>None required - will train</td>
</tr>
<tr>
<td>Write</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>HS/GED</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

GENERAL COMMENTS:

This employer is willing to consider accommodations for this position in accordance with the Americans with Disabilities Act guidelines.

Verified by Kim Smith (Employer) Date: July 20, 1995

Jane Doe (Injured Worker) Date: July 12, 1995

Physician Comments:

Approved ___ Disapproved ___ Date ___

Physician Signature

Approved ___ Disapproved ___ Date ___

PT/OT Signature

Vocational Consultant, M.S., C.R.C. 7/07/95

VRI Researcher

Source: VRI Sample Job Analysis
VR1

POSITION SUMMARY

ADMINISTRATIVE ASSISTANT

Incumbent:

Reports to: State Operations Manager

POSITION RESPONSIBILITIES

Responsible for secretarial support for managers and marketing personnel, and Employee Assistance Program (EAP) billing. Coordinates ordering and distribution of marketing materials and publications, office supplies, and maintenance of office equipment.

VR1 employees are expected to maintain a positive work atmosphere by communicating and behaving in a manner that is courteous and respectful of customers, clients, co-workers, and supervisors.

ESSENTIAL JOB FUNCTIONS

1. Types, formats and edits correspondence, reports, and proposals for managers and marketing and promotions personnel. (1,2,3,4)

2. Coordinates meetings and appointments by arranging schedules, making meeting and presentation room reservations, and preparing agendas and handouts. (1,2,3,4)

3. Prepares monthly billing for EAP customers, and tracks payments. Prepares monthly and quarterly reports for controller. (1,2,3,4)

4. Orders and distributes printed marketing materials. Maintains adequate levels of printed materials for all program areas. (1,2,3)

5. Maintains office supplies and equipment budget. Coordinates ordering and delivery of supplies with vendors. Ensures that office equipment is maintained and/or replaced. (1,2,5)

6. Attends meetings, participates on teams, and performs other duties as assigned. (1,5)

Addendum VI
Failure to perform this function may have serious consequences. The performance of this function is the reason the job exists. There are limited employees to whom the performance of this function can be distributed. This function is highly specialized. Employees are hired for their skills and abilities to perform this function. This function is non-essential, and can be reassigned.

**JOB SPECIFICATIONS**

Minimum Education: High school diploma, and at least one vocational/technical course in word processing and spread sheet application.

Minimum Experience: 3 years clerical experience in large office work environment. Some experience in marketing, or public relations desired.

Other Qualifications: Types 55 w.p.m., skilled in word processing and spread sheet programs; Microsoft Word, Lotus 1-2-3 or Quattro Pro. Ability to use automated office equipment. Excellent writing and oral communication, and telephone skills.

**PHYSICAL REQUIREMENTS**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Percentage/Occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sitting</td>
<td>70%, majority of time.</td>
</tr>
<tr>
<td>Standing</td>
<td>20% for filing, copying etc.</td>
</tr>
<tr>
<td>Walking</td>
<td>Some walking in office.</td>
</tr>
<tr>
<td>Lifting</td>
<td>Often lifts 20lbs.</td>
</tr>
<tr>
<td>Kneeling</td>
<td>Minimal while filing and sorting.</td>
</tr>
<tr>
<td>Bending</td>
<td>Frequently</td>
</tr>
<tr>
<td>Pushing</td>
<td>Seldom</td>
</tr>
<tr>
<td>Pulling</td>
<td>Seldom</td>
</tr>
</tbody>
</table>

Manual dexterity required for frequent keyboard operations, and visual ability to constantly view monitor/screen and edit print materials.

**PHYSICAL WORKING CONDITIONS**

Business setting, in well-lit, air conditioned office. Work station is ergonomically designed. Supply storage area and photocopy machine located on lower level, accessed only by stairs. May need to operate vehicle to travel to meetings and make deliveries.

The above statements are intended to describe the general nature and level of work being performed. They are not intended to be construed as an exhaustive list of all responsibilities, duties and skills required of personnel as classified.

Supervisor: ___________________________ Date: ________________

Position Summary Received By:

Employee: ___________________________ Date: ________________

Date(s) Position Summary Revised: ____________________________________________
ADVANTAGES OF AN ERTW PROGRAM

THE EMPLOYEE

• FINANCIALLY
  • RECEIVES FULL PAY, RATHER THAN REDUCED INCOME OF WORKERS’ COMPENSATION
  • CONTINUATION OF “OTHER” BENEFITS

• ENHANCED PRODUCTIVITY
  • PERFORMING DUTIES THEY KNOW, IN FAMILIAR SURROUNDINGS
  • PHYSICAL EXERCISE DURING “WORK HARDENING” TO GAIN STRENGTH AND MOBILITY
  • ROUTINE AND SCHEDULE OF THE WORK ENVIRONMENT

• PSYCHOLOGICAL
  • IMPROVES FEELINGS OF SELF-WORTH
  • SURROUNDED BY SUPPORTIVE CO-WORKERS AND SUPERVISORS
  • COMMITMENT AND SUPPORT OF THE EMPLOYER
  • HELPS AVOID THE “DISABILITY SYNDROME”
THE EMPLOYER

- COST SAVINGS
  - LOWER PREMIUMS - FEWER AND LESS COSTLY CLAIMS
    IMPROVES WORKERS' COMPENSATION EXPERIENCE RATING
  - REDUCED TIME-LOSS PAYMENTS DUE TO INJURIES
  - AVOIDS OVERTIME COSTS FOR EXISTING WORKERS
  - ELIMINATES HIRING COSTS OF TEMPORARY, REPLACEMENT WORKERS
  - HELPS CIRCUMVENT LEGAL ACTION

- ENHANCED PRODUCTIVITY
  - RETURN EXPERIENCED WORKER TO SAME OR MODIFIED JOB

- IMPROVES MORALE
  - ESTABLISHES PHILOSOPHY THAT EMPLOYER SUPPORTS INJURED WORKERS, AND WILL ASSIST IN THEIR TRANSITION BACK TO FULL EMPLOYMENT
  - EMPLOYEES ARE A VALUED RESOURCE

In 1960, the US spent $2.1 billion on workers' compensation. In 1990, the US spent $56.0 billion on workers' compensation. It is estimated that in the year 2000, the US will spend $150.0 billion on workers' compensation.
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