

ACKNOWLEDGMENTS

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INTRODUCTION

INTRODUCTION

This handbook is intended to provide Counselors with a resource for information to assist in providing Vocational Rehabilitation services using the return to work model for injured workers who are eligible for Vocational Rehabilitation services. Over the last several years, many factors have created an increased interest in using the return to work model. The Council of State Administrators for Vocational Rehabilitation and the RSA Commissioner, as well as other leaders in the field of Vocational Rehabilitation, have recognized the need for public VR agencies to develop greater partnerships with employers. The return to work model is a true example of creating relationships with employers which not only returns their workers to employment, but also opens the door for other people with disabilities to find employment.

Employers are increasingly concerned about the high cost associated with maintaining qualified personnel and costs associated with Workers' Compensation and on-the-job injuries. The return to work model has proved to be successful and cost-effective. Therefore, the return to work concept is being increasingly endorsed by private employers, and recently, due to State legislation, Texas State agencies. The Texas Rehabilitation Commission, through the Vocational Rehabilitation Program, is in an ideal position to assist private employers and State agencies to return injured workers back to employment as soon as possible. Of course, there are also numerous private providers of return to work services in communities.

The return to work model uses services that are provided through the traditional Vocational Rehabilitation Program. The unique aspect of return to work is the role of the Counselor as the facilitator of planning, action and information among the employer, health care providers, the insurance carrier and the injured worker.

This handbook is a compilation of information about the various aspects of return to work and procedural guidelines for achieving success in using the return to work model. The procedures and forms contained in this handbook are not mandatory, but are presented as optional tools to assist clients and Counselors in the return to work process.

Please submit any best practices to be considered as additions to the handbook to:

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RETURN TO WORK HANDBOOK

TABLE OF CONTENTS

I. OVERVIEW

Introduction/Table of Contents

1. Return to Work Concept (CDR)
2. Return to Work Overview

II. GENERAL INFORMATION ON RETURN TO WORK

Introduction/Table of Contents

1. Goals of Return to Work
2. Role of the Counselor in Return to Work Cases
3. Suggested Procedures for Return to Work Cases
4. Other Return to Work Issues
5. Return to Work Process/Disability Management
6. Objectives of Return to Work/Disability Management
7. Factors Affecting Early Return to Work
 - Introduction
 - Strategies to Combat Conflicting Self-Interests
 - Injured Worker Questionnaire
8. Roles and Responsibilities in Return to Work
9. Flowchart of Return to Work
10. Areas for Consideration in Working Return to Work Cases

III. MARKETING RETURN TO WORK

Introduction/Table of Contents

1. Benefits to Client
2. Benefits to Employer
3. Keys to Success in Return to Work
4. Return to Work Presentation to Employers
5. Sample Return to Work Presentation Materials
6. Employers Speak Out on Return to Work
7. Sample Return to Work Agreement
8. Sample Letter From Employer to Employee
9. Sample Notification of Referral Letter From TRC to Injured Worker

TABLE OF CONTENTS
(Continued)

IV. TRANSITIONAL EMPLOYMENT AND LIGHT DUTY

Introduction/Table of Contents

1. Transitional Employment vs. Light Duty
2. Transitional/Light Duty Work

V. JOB ANALYSIS

Introduction/Table of Contents

1. What is Work?
2. Worker Functions
3. What is a Job Analysis?
4. Sample Job Analysis
5. Blank Job Analysis
6. Sample Medical Opinion Form
7. Residual Functional Capacity Assessment
8. Blank Residual Functional Capacity Assessment Form

VI. WORKERS' COMPENSATION INFORMATION

Introduction/Table of Contents

1. Workers' Compensation Information (CDR)
2. Answers to VR Questions on Workers' Comp and Rehabilitation/TRC Services
3. Workers' Compensation Benefits Chart
4. Managing Referrals From TWCC

VII. RETURN TO WORK FOR STATE AGENCIES

Introduction/Table of Contents

1. Workers' Compensation Commission's Return to Work Guidelines for State Agencies

VIII. AMERICANS WITH DISABILITIES ACT & FAMILY AND MEDICAL LEAVE ACT

Introduction/Table of Contents

1. What is Reasonable Accommodation?
2. Reasonable Accommodations for Individuals With Psychiatric Disabilities
3. Leave Policies and the ADA, FMLA and Workers' Comp Laws
4. EEOC's ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations
5. Federal Employees Compensation Act & Longshore & Harbour Workers' Act (CDR)

OVERVIEW

INTRODUCTION

Return to work is a technique for providing traditional Vocational Rehabilitation services to workers who are injured on the job. This section contains information about the role of the Texas Rehabilitation Commission in the provision of return to work services. Guidelines are given in a step-by-step format on how to proceed with assisting an injured worker in returning to work as early as possible. Benefits to clients, employees and TRC by intervention in early return to work are outlined.

TABLE OF CONTENTS

1. Return to Work Concept (CDR)
2. Return to Work Overview

RETURN TO WORK

CONCEPT

Return To Work Concept

The return to work concept may apply to any disability group and can be the first step a Counselor takes when working with a client. A phone call to the client's place of employment regarding possible job retention may be all that is necessary. The first point of contact usually is the risk manager and/or personnel representative.

The client with an on the job injury often may think the employer is not interested in keeping the client on the job. A phone call to the employer can facilitate greater communication between all parties and enhance the possibility of the client returning to employment.

The Americans With Disabilities Act (ADA) may further encourage employers to accept their injured workers back on the job.

General Information

Return to work services involve coordination between the client, employer, attorney, physician and other health care providers. When all agree with the process, the injured worker is more likely to return to the same employment.

Generally, services such as long term training and physical restoration are not necessary when using the return to work concept. Services usually needed include job analysis, vocational assessment, vocational counseling and negotiation between the employer, physician, attorney and client.

Procedures

1. Injured worker is referred to TRC. Counselor receives a copy of a letter to client from TWCC, or is referred from an employer interested in return to work for an individual or as a company system, physician or other medical service provider, and, occasionally, from insurance carriers. Use Workers' Compensation referral source codes and answer Workers' Compensation questions on the application profile.
2. Obtain information and determine eligibility using TRC policy in RSM. If client is still considered an employee, in addition to usual eligibility document the following:
 - A. Loss of employment is imminent.
 - B. Unable to get job consistent with abilities.

3. The Counselor develops information which assists in decisions on whether or not an injured worker is capable of performing the essential functions of the job. (Use - job description, work tolerance, vocational evaluation, reports from doctors, job analysis, accommodations, rehabilitation technology, etc.)
4. If Counselor and client agree that the client can perform the essential functions of the job, the Counselor meets with the employer to develop a plan to return the client to work, i.e. reasonable accommodations, job modifications, etc.
5. If unable to perform the essential functions of the job, and modification of the previous position is not possible, the Counselor begins to explore the possibility of the worker performing in a new job within the department and/or organization. Identify transferable skills, matching those with alternative jobs in the company, then determining any need for enhancement of skills that may be required. Short term training may be considered to enhance existing skills.
6. If a position is located and available, a copy of the new job description can be sent to the injured worker's primary physician. (If possible, the Counselor may accompany the worker to the appointment with the physician.) This will insure that accurate information is relayed. If time does not allow the Counselor to accompany the injured worker, the Counselor can call the physician to explain the proposed job duties.

The physician can document that the client is capable of performing the new work tasks and the return to work endeavor can then be completed with the assurance that employment is suitable.

7. If return to work with the same employer is not a possibility, initiate job placement with another employer based on transferable skills.
8. As a last resort, additional training or other services with a focus on placement outside the original place of employment might be considered, or referral to another TRC program or other organization.

Role of the Counselor in Workers' Compensation Cases

1. Advocates for client to return to work with same employer.
2. Educates injured worker about disability and its resulting limitations.
3. Provides information about employer's/injured worker's responsibilities.

4. Provides general information about Workers' Compensation law, being careful not to present as an expert or as giving legal advice.
5. Serves as intermediary between all parties involved in worker's returning to employment, including: physician, attorney, Texas Workers' Compensation Commission (TWCC), employer, insurance carrier, other rehabilitation professionals, service providers and the injured worker.

RETURN TO WORK

OVERVIEW

RETURN TO WORK OVERVIEW

The TRC Counselor's involvement in Workers' Compensation cases can be valuable to the injured worker, the employer and TRC.

NOTE: Referral of injured workers from TWCC to TRC is mandatory for certain injuries, and all recipients of Supplemental Income Benefits (SIBS) are required to cooperate with rehabilitation services, either private or TRC. If cooperation is disputed by insurance carrier, the client may have to prove cooperation. Client permission is needed to release information to Workers' Compensation insurance carrier.

Benefits to Client:

1. Someone managing the case to assist with coordination of rehabilitation services. Insurance coverage is available to pay for services, e.g. work hardening, work tolerance, or functional capacity assessment, etc., while the person is receiving Workers' Compensation benefit payments to help pay for living expenses.
2. An third party intervening on the client's behalf to assist in return to work.
3. Professional providing expertise in Vocational Rehabilitation to identify abilities to retain employment.
4. A third party who is collaborating with employer, physician and insurance company on behalf of client.
5. Early determination if additional training is needed so it can begin while client is still receiving some income.
6. Early intervention reduces likelihood of experiencing additional anxiety, depression and loss of self-esteem.

Benefits to Employer:

1. Professional to help identify appropriate work for an injured worker.
2. Reduces cost of Workers' Compensation by returning trained employee to job sooner.
3. Reduces development of adversarial relationships between employee and employer, thereby lessening possibility of costly litigation.
4. Reduces cost of hiring and retraining new employee to replace injured worker.
5. Reduces cost of hiring temporary personnel and/or paying for overtime.

Benefits to TRC:

1. Cases tend to be less expensive since comparable benefits are used to pay for diagnostics and services.
 2. Early intervention generally means shorter time for return to work and status 26 closure.
 3. Clients are more likely to be rehabilitated since they have a work history and usually have transferable skills.
 4. Provides a working relationship with employers who are a primary partner in the rehabilitation process and can lead to placement opportunities for other clients.
- Substantial Services are counseling and guidance, coordinating of services, help in understanding disability, identification of transferable skills, etc.

**GENERAL RTW
INFORMATION**

GENERAL INFORMATION ON RETURN TO WORK

TABLE OF CONTENTS

1. Goals of Return to Work
2. Role of the Counselor in Return to Work Cases
3. Suggested Procedures for Return to Work Cases
4. Other Return to Work Issues
5. Return to Work Process/Disability Management
6. Objectives of Return to Work/Disability Management
7. Factors Affecting Early Return to Work
 - Introduction
 - Strategies to Combat Conflicting Self-Interests
 - Injured Worker Questionnaire
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10. Areas for Consideration in Working Return to Work Cases

GOALS

OF

RETURN TO WORK

GOALS OF RETURN TO WORK

There are five options for client employment in the provision of return to work services. The options are listed in order of preference, with option number one generally being the preferred goal:

1. The client returns to the same job, with or without accommodations, held at the time of injury with the same employer.
2. The client returns to an alternative job, with or without accommodations (including job coach when needed), with the same employer, utilizing current skills.
3. The client returns to an alternative job with the same employer, after receiving job-specific short-term training.
4. The client secures the same type of job or better job, using current skills, with a different employer.
5. The client secures an alternative job with a different employer, after being provided training for new job skills.

ROLE OF THE COUNSELOR

IN

RETURN TO WORK CASES

ROLE OF THE COUNSELOR IN RETURN TO WORK CASES

1. Advocates for client to return to work with same employer.
2. Educates injured worker about disability and its resulting limitations.
3. Provides information about employer's/injured worker's responsibilities.
4. Provides general information about W.C. law, being careful not to present as an expert or as giving legal advice.
5. Serves as intermediary between all parties involved in worker's returning to employment, including: physician, attorney, Texas Workers' Compensation Commission (TWCC), employer, insurance carrier, other rehabilitation professionals, service providers and the injured worker.

SUGGESTED PROCEDURES

FOR

RETURN TO WORK CASES

SUGGESTED PROCEDURES FOR RETURN TO WORK CASES

1. Injured worker is referred to TRC. Counselor receives a copy of a letter to client from TWCC, or is referred from an employer interested in return to work for an individual or as a company system, physician or other medical service provider, and, occasionally, from insurance carriers. Use Workers' Compensation referral source codes and answer Workers' Compensation questions on the application profile.
2. Obtain information and determine eligibility using TRC policy in RSM. If client is still considered an employee, in addition to usual eligibility, document the following:
 - A. Loss of employment is imminent.
 - B. Unable to get job consistent with abilities.
3. The Counselor develops information which assists in decisions on whether or not an injured worker is capable of performing the essential functions of the job. (Use - job description, work tolerance, vocational evaluation, reports from doctors, job analysis, accommodations, rehabilitation technology, etc.)
4. If Counselor and client agree that the client can perform the essential functions of the job, the Counselor meets with the employer to develop a plan to return the client to work, i.e. reasonable accommodations, job modifications, etc.

5. If unable to perform the essential functions of the job, and modification of the previous position is not possible, the Counselor begins to explore the possibility of the worker performing in a new job within the department and/or organization. Identify transferable skills, matching those with alternative jobs in the company, then determining any need for enhancement of skills that may be required. Short term training may be considered to enhance existing skills.
6. If a position is located and available, a copy of the new job description can be sent to the injured worker's primary physician. (If possible, the Counselor may accompany the worker to the appointment with the physician.) This will insure that accurate information is relayed. If time does not allow the Counselor to accompany the injured worker, the Counselor can call the physician to explain the proposed job duties.

The physician can document that the client is capable of performing the new work tasks and the return to work endeavor can then be completed with the assurance that employment is suitable.

7. If return to work with the same employer is not a possibility, initiate job placement with another employer based on transferable skills.
8. As a last resort, additional training or other services with a focus on placement outside the original place of employment might be considered.

**OTHER
RETURN TO WORK
ISSUES**

OTHER RETURN TO WORK ISSUES

1. Counselor needs knowledge of company policies about long term and short term disability, light duty or transitional employment.
2. Counselor needs basic knowledge of Workers' Compensation law and process.
3. Counselor needs to have expert knowledge of ADA (Americans with Disabilities Act) and Family and Medical Leave Act (FMLA).
4. Secondary gain - financial, attention, time for recreation, etc.
5. TRC doesn't pay for physical restoration services for injury covered by Workers' Compensation.
6. Recognize job description may not accurately describe job. A job analysis may be necessary.
7. Accessing comparable services and benefits from employer and insurance carrier, e.g. vocational evaluation, work hardening. Coordinate with carrier, either rehabilitation nurse or claims adjuster, explaining your thoughts about the case and justify the need.
8. Release of information - Need current release form. Can't re-release records, e.g. records received from a hospital. Release only those records that are necessary to achieve return to work. Consideration should be given to the ADA requirements for releasing information to an employer. Contact TRC's ADA Specialist in the Office of Civil Rights for additional information. Records should be released only to a representative of the company who is responsible for safeguarding and maintaining personnel information.

RETURN TO WORK PROCESS

AND

DISABILITY MANAGEMENT

RETURN TO WORK PROCESS/DISABILITY MANAGEMENT

1. Facilitate an early response to injury/disability.
2. Coordinate a referral process to TRC.
3. Initiate contact with worker and maintain communications.
4. Initiate contact with treating physician to determine work restrictions and influence safe and timely return to work.
5. Determine short term interventions and strategies to protect employability.
6. Initiate and maintain communications between worker/employer/labor/management/physician, etc.
7. Coordinate a detailed employment assessment as follows:
 - Obtain assessment of worker's functional limitations.
 - Obtain assessment of worker's physical job demands.
 - Assess worker's employment needs.
 - Develop return to work plan according to hierarchy of return to work options.
8. Initiate referrals to appropriate qualified service providers.
9. Coordinate and monitor worker's treatment/rehabilitation process.
10. Facilitate return to work and decision making process.
11. Determine return to work plan.
12. Prepare co-workers and supervisors for worker's re-entry to the employment setting.

**OBJECTIVES OF
RETURN TO WORK
AND
DISABILITY MANAGEMENT**

OBJECTIVES OF RETURN TO WORK/DISABILITY MANAGEMENT

1. Employer controls cost.
2. Reduce work disruptions and employee lost time.
3. Maximize use of internal resources.
4. Protect employability of workers.
5. Improve management of external service providers.
6. Enhance employee morale.
7. Reduce adversarial nature of on-the-job injuries and possible litigation.
8. Improve labor relations/promote labor-management collaboration.

FACTORS AFFECTING

EARLY

RETURN TO WORK

FACTORS AFFECTING EARLY RETURN TO WORK

INTRODUCTION

The success of return to work is dependent upon the full participation of all parties, including the injured worker, employer, health care providers and attorneys, in those rare cases where an attorney is involved. This section provides perspectives on how to deal with the issues that each of the players may have in the process. Also included in this section is a sample questionnaire that the Counselor may use in obtaining useful information from the injured worker to assist in understanding his or her perspective about the employer, the job and the disability.

**STRATEGIES TO COMBAT
CONFLICTING SELF-INTERESTS**

STRATEGIES TO COMBAT CONFLICTING SELF-INTERESTS OF WORKERS

Self-Interest

Safety.

Strategy

Formal Safety Committee for the elimination of hazards, causes of injuries.

Job security.

Accommodation: Transitional employment and work options.

Income maintenance.

Pay continuation during transitional work.

Responsive medical services.

Formal linkages with responsive health care providers/medical case management.

STRATEGIES TO COMBAT CONFLICTING SELF-INTERESTS OF PHYSICIANS

Self-Interest

Protect liability from re-injury upon early return to work.

Strategy

Provide physician with functional job description, results of job analysis, job safety procedures, transitional work options.

Prolonged & unnecessary treatment.

Continuous medical management, utilization review, influence worker choice of treating physician.

Maintain positive relationship with patient by accepting subjective complaints as valid.

Use on site work capacity evaluations, challenge physician's objective evidence.

STRATEGIES TO COMBAT CONFLICTING SELF-INTERESTS OF LABOR UNIONS

Self Interest

Protect employability of workers' relationships.

Maintain control & influence in decisions affecting workers.

Protect seniority system.

Strategy

Develop formalized transitional work program for workers with restrictions.

Create joint labor-management disability management committee.

Design policies to accommodate injured workers that will not compromise seniority system.

**INJURED WORKER
QUESTIONNAIRE**

OPTIONAL FORM

NAME: _____ COMPANY: _____
DISABILITY: _____ DOI: _____

1. Tell me about yourself. How would your friends describe you?
2. ___ Married ___ Single ___ Divorced ___ Children (Age/Name) _____

3. What is your medical condition?
 - a. Receiving therapy?
 - b. Next doctor's appointment?
4. Tell me about your job. Date started working for this company? _____
5. Have you worked at other jobs at this company? If yes, give details.
6. Jobs you have had with other companies.
7. Do you want to return to work? _____ When do you think you will be able to return? _____
8. What type of job(s) do you think you can do at your present company?
9. What jobs do you think you could do with some modifications/changes? What modification would need to be made?
10. Are you willing to work at a less rate of pay?
11. Tell me what you consider a dream job?
12. How do you think your company is about taking people that have been injured back to work?

13. What is it like to work at _____?

14. Who is your supervisor? What kind of person is your supervisor?

15. How do you get along with your supervisor?

16. How do you get along with your co-workers?

17. What did you receive on your last job evaluation?

18. How was your attendance:

19. If you continue working there, where do you see yourself in 5 years?

20. Financial situation?

21. What is your support system?

22. Is the family supportive?

23. Educational level...favorite subject?

24. Transportation?

25. Other:

ROLES AND RESPONSIBILITIES

IN

RETURN TO WORK

ROLES AND RESPONSIBILITIES IN RETURN TO WORK

TRC'S RESPONSIBILITIES AND SERVICES:

1. Meet with the employer, insurance carrier or other appropriate person to discuss potential referrals and to assist in identifying workers who are appropriate for TRC services.
2. Obtain medical and/or psychological information when an injured worker applies for TRC services, to determine medical status and eligibility.
3. Coordinate information and services with the employer, injured worker, employer, insurance carrier and health care providers.
4. Plan and provide vocational counseling which includes:
 - a. Counseling and guidance to the injured worker regarding acceptance of disability; and,
 - b. Acceptance of appropriate job placement that is compatible to their physical/mental capabilities and limitations.
5. Analyze the worker's original job; determine the duties of the job that they can/cannot perform; obtain physician approval on the job offered, and assist with modifications, if needed.
6. Analyze other job possibilities with the employer that may be identified as alternative employment opportunities.
7. Provide follow-up counseling and guidance after placement. This may be determined by the worker, employer and/or supervisor and usually takes place at the job site.

EMPLOYER RESPONSIBILITIES:

1. Identify and refer injured workers soon as the employer is certain that the individual will not be able to return to their job without assistance.
2. Share information about the injured worker with TRC staff to facilitate services. Release of Confidential Information forms will be signed by the injured worker and maintained in the TRC case folder to allow necessary exchange of information.
3. Allow TRC Counselor access to job descriptions; allow analysis of jobs; and, provide expertise regarding employment opportunities.
4. Allow for reasonable accommodations of the job, where appropriate, to facilitate employment of the worker.
5. To assist the rehabilitation Counselor in identifying appropriate training and/or skills required for alternate jobs.
6. Allow the rehabilitation Counselor access to first line supervisors to: assure a smooth transition back to work; and, help explain the benefits of placing qualified disabled workers in their departments.

INSURANCE COMPANY RESPONSIBILITIES:

1. Provide medical information regarding the injured worker's disability, prognosis, diagnosis and possible restrictions, as available.
2. Participate in the cost of rehabilitation services to reduce the length of compensation payments and reduce loss of work time. There is no charge for Counselor time, but financial participation may be requested if short-term training is required. This is to be determined on an individual basis, only as needed for a specific job offer, and in conjunction with the insurance company's representative and employer's input.

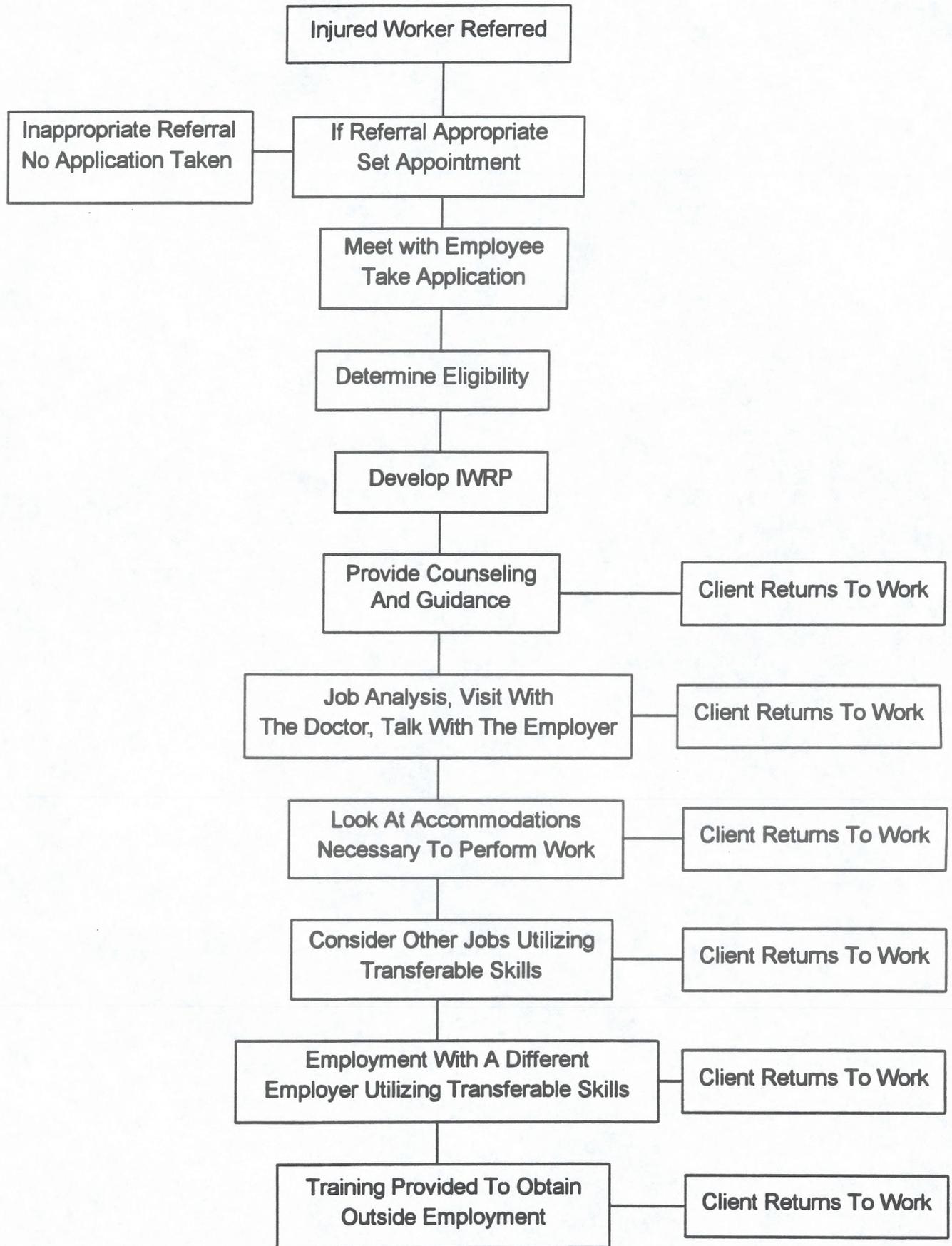
WORKER RESPONSIBILITIES:

It is expected through this agreement that the employee will:

1. Sign a waiver of confidentiality which will allow for the exchange of information between all parties.
2. Cooperate with all parties involved in the return to work endeavor.

FLOWCHART
OF
RETURN TO WORK

FLOW CHART OF RETURN TO WORK



AREAS FOR CONSIDERATION

IN WORKING

RETURN TO WORK CASES

AREAS FOR CONSIDERATION
IN WORKING
RETURN TO WORK CASES

A. Company policies and benefits of the client's employer, regarding Return to Work Program.

1. Where the company has written rules or program guidelines regarding injured workers, the VR Counselor will need to understand these guidelines, as they will impact client resources, and options on jobs available within the company. These factors will affect how the case is to be worked.
2. The following may be included in company programs available.
 - a. Long -Term/ Short -Term Disability benefits.
 - b. Availability of light duty jobs.
 - c. Possibility of company sponsored training.

B. ADA implemented July 26, 1990.

1. Modeled after Article 504 of Rehabilitation Act of 1973
2. Disability for ADA coverage is defined as
 - a. Physical or mental impairment that substantially limits one or more of the major life activities of such individual
 - b. A record of such an impairment.
 - c. Being regarded as having such an impairment.

C. Under ADA, it is unlawful to discriminate in any of the following employment areas:

1. Recruitment, advertising, application.
2. Having promotion tenure, demotion, transfer, layoff, return to work
3. Pay
4. Job assignment
5. Benefits/Leave of Absence
6. Fringe benefits/ whether direct or contract
7. Training/ Meetings
8. Social activities related to employer arranged or sponsored
9. Any other term or employment consideration

D. Any person TRC determines eligible for services, meets the ADA definition of a disabled person.

1. Just meeting ADA definition of "disabled" does not make a person eligible for TRC services. Use TRC eligibility guidelines

E. TRC does not legally advise or interpret the ADA, to include determining whether a person must be returned to work, or accommodated, and to what extent.

1. This decision is for the employer to make.
2. The EEOC or the Department of Justice, have the responsibility for legal interpretation and the enforcement of ADA regulations.

F. TRC does not certify a process of employment, company policy, or whether accommodations meet ADA requirements.

1. The employer must determine what the company can and will do, in order to meet the requirements of the ADA.
2. The employer must determine what is an "essential job duty", and what would constitute an "undue hardship" for the company, as a defense to "non compliance of ADA"
3. The settlement of disputes is set up for litigation.

G. What a TRC Counselor does provide, is expertise, whether directly provided by the VR Counselor, purchased from a vendor, or co-ordinated or arranged.

1. In helping the client to understand the disability.
2. Helping the client and the employer to identify any functional limitations.
3. Identifying ways to eliminate the client's inability to perform a job duty, either by reassignment, accommodation, technology, or job redesign.
4. The VR Counselor helps in communication between the client and the employer, to facilitate mutual resolution of problems, in order that the client can return to work, and the employer is able to have the job done to their satisfaction.

H. TRC can educate, and advise on alternatives, to assist the client in returning to work.

1. TRC sees the client as it's "primary customer".
2. TRC also sees the employer as a "customer".
3. TRC provides fair, honest, and impartial services, to both the client and the employer

I. TRC sponsorship of Medical Services in Workers Compensation Cases.

1. Where there is an active Workers Compensation Case, there is medical coverage for necessary medical/physical restoration, related to the work injury.
2. TRC funds are not expended on services covered under Workers Compensation Benefits
3. When the TRC Counselor determines that Physical Restoration would improve the client's physical/functional capacity, the TRC Counselor would work with the company, insurance carrier, treating physician, or the Texas Workers Compensation Commission, to secure the treatment for the client

4. Exceptions to this policy are approved by the TRC Program Director
5. TRC may sponsor medical restoration following policy, if the restoration is unrelated to the injury, or impairment, caused by the Workers Compensation Case. For example, restoration to correct a hand impairment for a client with an active Workers Compensation Case for back injury, because the hand impairment was prior to and unrelated to the back injury

J. Release of Records

1. In Workers Compensation or other Return to Work Cases, TRC's policy on receiving or releasing client information, is followed per instructions in RSM 40-1.
2. The employer is not automatically entitled to copies of TRC records or client medical records, as the employer, without first obtaining a release from the client

K. Job Descriptions

1. Companies are not required to have job descriptions, although they are helpful in many ways, including working with injured workers, and applying the ADA
2. Often, the job description which the company has, does not really reflect the duties the worker actually performs.
3. The VR Counselor, in provided, coordinated, or purchased job analysis, may help the employer determine what are the "essential" job duties of a particular position

MARKETING RETURN TO WORK

INTRODUCTION

While many employers either already have an established return to work program in place, or at least have an interest in establishing one, some employers may need additional information or guidance from the Counselor. Assisting the employer in understanding return to work and its benefits to the company in reducing cost provides a good opportunity to establish a collaborative relationship. This section provides several versions of information that can be used in making a presentation to an employer, including some step-by-step procedures and sample presentation materials. A written agreement with an employer is encouraged, but not required, if the employer would prefer a more informal relationship. A sample return to work agreement is included in this section.

TABLE OF CONTENTS

1. Benefits to Client
2. Benefits to Employer
3. Keys to Success in Return to Work
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1. Someone managing the case to assist with coordination of Rehabilitation Services while insurance coverage is available to pay for services, e.g. work hardening, work tolerance, or functional capacity assessment, etc., and while the person is receiving Workers' Compensation benefit payments to help pay for living expenses.
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3. A professional providing expertise in Vocational Rehabilitation to identify abilities to retain employment.
4. A third party who is collaborating with employer, physician and insurance company.
5. Early determination if additional training is needed so it can begin while client is still receiving some income.
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2. Reduced cost of Workers' Compensation by returning trained employee to job sooner.
3. Minimal development of adversarial relationships between employee and employer, thereby lessening possibility of costly litigation.
4. Reduced cost of hiring and retraining new employee to replace injured worker.
5. Reduced cost of hiring temporary personnel and/or paying for overtime.

KEYS TO SUCCESS

IN

RETURN TO WORK

KEYS TO SUCCESS IN RETURN TO WORK

Our experience with return to work shows that for success, the following commitments are helpful:

1. Support from employee's management.
2. Education of employees on return to work process.
3. Support from labor unions.
4. Company operational support and a process that crosses departments and focuses on the goal of the worker returning to work.
5. Support from the insurance carrier.
6. Early identification and intervention for eligible injured workers.
7. Awareness and support for the Americans With Disabilities Act, with regards to job modification.
8. A Case Manager with the authority and responsibility to facilitate employee return to work activities.
9. Identification of one person who is "in charge" of the company's return to work process.
10. Employer's development of written policies and procedures for a return to work program.

RETURN TO WORK

PRESENTATION TO EMPLOYERS

RETURN TO WORK PRESENTATION TO EMPLOYERS

Usually a meeting with the Human Resources Manager, Risk Prevention Manager or Safety Director. For organizations that are self-insured, include the Claims Administrator.

Note: Take along general TRC brochures, return to work brochures, sample agreement and business cards.

1. Overview of general Vocational Rehabilitation - eligibility, services, etc.
2. History and purpose of return to work.
3. Question: What, if any, return to work process is already in place with employer?
4. How many lost days injuries do you have?
5. Is company self-insured or is there an insurance carrier?
6. If there is an insurance carrier, will be helpful to have their support for return to work.
7. Determine whether employer wants assistance with retaining employees or if they just want to refer injured workers for regular Vocational Rehabilitation services.
8. We can assist with retaining employees or with regular Vocational Rehabilitation services.
9. Services we can provide - early intervention, neutral advocate for injured worker.
10. We can coordinate job duties with physician and employer for possible accommodations.
11. There is an advantage to referring to us early while still receiving TIBS.
12. It is not our role to handle employment issues, e.g. termination issues.
13. If they agree, suggest beginning with 5 - 8 referrals.
14. Identify who will be "in charge" of return to work process in company.
15. Mention that we have written agreements with some companies and referral to TRC is contained in personnel policies for some companies. We can have a relationship that is formal or informal. Pass out sample agreement or agree to develop one.

Return to Work Presentation to Employers, page 2

16. Suggest that company make referral by letter, but recognize that the employee may choose not to cooperate.
17. Suggest contacting Andrea Des Marais at Southwest Research Institute, phone number (210) 522-2225 for information about their return to work experiences.
18. Goal is "safe return to work."

NOTE: For additional assistance, consider consulting with the Regional Program Specialist.

SAMPLE

RETURN TO WORK

PRESENTATION MATERIALS

TEXAS

REHABILITATION

COMMISSION

PURPOSE

- **Return to work**
- **Job held at time of injury**
- **Alternative job**
 - **Same Company**
 - **Current skills**
- **Alternative Job**
 - **Same Company**
 - **Short-term training**

BENEFITS TO EMPLOYEE

- **Early Intervention**
 - **Reduces Anxiety**
 - **Reduces Depression**
 - **Minimize loss of self-esteem**
- **Contact is maintained**

BENEFITS TO EMPLOYEE

- **Case Management to coordinate rehabilitation services**
- **Individual written rehabilitation plan**
- **Professional third party**

BENEFITS TO EMPLOYEE

- **Early training determination**
- **Receives support and guidance**

BENEFITS TO EMPLOYER

- **TRC has an established system whereby determination is made**
 - **Capable of returning to work**
 - **Medical records**
 - **Light duty/transitional duty**
 - **Full duty**

BENEFITS TO EMPLOYER

- **Reduces Company Expense**
 - **Workers Compensation payment**
 - **Salary/training cost for replacements**
 - **Employee return to work**
 - **Medical treatment diminishes**

BENEFIT TO EMPLOYER

- **Job ANALYSIS/Job Description**
- **Focus on options**
- **Timely Communications**
- **Improves supervisor morale**
- **Reduces employee turnover**

JUST SAY, "YES"

- **Relationship**
 - **Formal or Informal**
- **Referrals**
 - **Letter**
 - **Employee**
 - **When**
 - **Now**
- **Return to Work or regular VR services**

EMPLOYERS SPEAK OUT

ON

RETURN TO WORK

EMPLOYERS SPEAK OUT ON RETURN-TO-WORK

Human Resource Literature Reviewed

Bernard Miller, of Helene Curtis, Inc., "warns that there will probably be three fairly common litigation causes in relation to ADA: failure to allow for reasonable accommodations; failure to reassign with reasonable accommodation; and failure to deal with issues involving direct threat (p.54)."

Kurkland, Orin. Making the Workplace Safer and More Productive. Risk Management. v.41, Jan '94, p. 54-5.

Although termination of disabled workers has been a popular policy among employers, the Americans with Disabilities Act requires employers to make reasonable accommodations for employees with disabilities. This involves a transfer to a vacant equivalent position, or a lesser position if no equivalent position exists, when a return to the previous position is not possible.

Fox, John C. Return to Work Issues Under ADA. HR Focus. v.71, Jan '94, p.23.

"The most important element of an effective disability plan is a return-to-work program in which the employer maintains frequent, supportive contact with the injured worker, risk and disability managers say."

Schachner, Michael. Helping Hand Gets Injured Back to Work. Business Insurance. v.25, May 6 '91, p.26

Will-Burt, a 300-employee steel fabrication and manufacturing firm, has reduced its workers' compensation costs from \$200,000 in 1985 to \$9,000 in 1990. The company does whatever it takes to bring workers back to work as soon possible - often reassigning to sales or office position - even if only a few hours a day.

Akabas, Shella H. Transitional Employment Encourages Earlier Return to Work. HR Focus. v.69, July '92, p.21.

"According to a study cited by Bill Kizorek, president of In-Photo Investigations, 50 percent of claimants who are able to stay out of work for six months do not return to the job."

Quick Return-to-Work Contains Workers Comp Costs. Risk Management. v.36, Sept. '89, p.54.

"Education about the rehabilitation process and early involvement of rehabilitation professionals in workers' comp cases are key to solving current system-related problems, according to a draft report released at the 1989 Workers' Compensation Congress in Philadelphia."

Report Finds Rehab Critical to WC System. National Underwriter Property and Casualty Risk and Benefits Management Edition. v.93, Oct.9 '89, p.40.

"While Ms. Workman (director of corporate risk management for Belz, Inc.) credits the return-to-work program with helping lower Belz's workers' comp losses, she can't quantify the success of the program. But, "our indemnity costs are down, so it appears to be working.""

Return-to-work Program Healthy for Belz and Employees. Business Insurance. v.26, Mar. 30 '92, p.132.

"Political, not physical, reasons keep an employee out of work more often than not," said Edward Swanson, vp of The Return to Work Center. "Offer alternative work and make the alternative work fit the injury," he said.

Return Workers to Work and Save. Business Insurance. v.24, May 14 '90, p.54.

"Vocational rehab techniques are effective and economical if used early. These techniques - which include job analysis and modification, light duty assignments, special fixtures and aids - are common sense approaches with a bias toward simple solutions, and they're not that difficult."

Dent, Gene L. Effective Disability Management: Employers often overlook ways to help worker, save money. Business Insurance. v.24, July 9 '90, p.21.

"virtually all of the companies I recently evaluated were able to reduce workers' compensation costs by a minimum of 28% one year after the programs were implemented.

Werner, Susan M. Ask a Risk Manager: Light-duty Programs cut Work Comp Costs, Reduce Work Days Lost. Business Insurance. v.24, Apr. 9 '90, p.19.

Statistics compiled by the Washington Business Group on Health and the Institute for Rehabilitation & Disability Management show that "for every \$1 million spent in payroll, \$50,000 is spent on disability alone."

Harty, Sara J. Return-to-work Plans Boost Bottom Lines. *Business Insurance*. v.26, Apr. 13 '92, p.23.

Millennium Building Services, a janitorial fund, had a loss ratio (claims paid out as a percentage of the workers' compensation premium) of 118% of a \$146,000 premium in 1987. Two years later, after starting return-to-work program, the loss ratio dropped to just 23% of the company's \$124,000 premium, which means that the company can expect a refund of more than \$50,000.

Solomon, Stephen D. (1992) Workers' Compensation: Keeping In Touch. *INC*. Feb. '90, p.100-1.

Estimate that nearly 5% of total payroll expenditures go to disability costs and that the average injury sustained on the job results in expenses totalling \$19,000.

Roesler, Richard T. and Schriener, Kay Fletcher. Partnerships: The Bridge from Disability to Ability Management. *Journal of Rehabilitation*. Jan/Feb/Mar '91, p.53-8.

Burnes of Boston reports that between 1989 and 1990, "the average number of lost time work days used by employees fell from 681 to 45, a 93% decrease. By developing an active modified-duty return to work program, Burnes of Boston has also saved \$378,480 lost time dollars (p.31)."

Fitzgerald, Michael W. How To Take on Workers' Compensation and Wm. *Personnel Journal*. v.70, July '91, p.31-3.

"Steelcase has saved an average of \$4 million a year since it implemented its comprehensive return-to-work program in 1986 (p.73)."

Laabs, Jennifer J. Steelcase Slashes Workers' Comp Costs. *Personnel Journal*. v.72, Feb. '93, p.72-3+.

Comparing a hospital using a return-to-work program with one who did not, the hospital with a return-to-work program decreased the number of injuries almost by half, reduced the average days of absence per injured employee by more than a week, and lowered workers compensation premium costs by more than \$100,000 over a three-year period. (p.65)

Gice, Jonathan H. and Tompkins, Kathryn. Cutting Costs with Return-to-work Programs. *Risk Management*. v.35, Apr. '88, p.62-5.

"In California in 1987, 53 cents of every dollar used for rehabilitating injured workers was spent on litigation (p.51)."

Colledge, Alan and Johnson, Hugh. Teaming Up Against Workplace Injuries. *Risk Management*. v.39, Oct. '93, p.47-8+.

The Buick-Oldsmobile-Cadillac (B-O-C) group of General Motors developed a rehabilitation internship agreement with the master's program in rehabilitation counseling from Michigan State University to provide on-site rehabilitation services.

Munro, Diane C. and Beecher, Patrick J. Rehabilitation in an Industrial Setting: The General Motors B-O-C Group Lansing. *Journal of Applied Rehabilitation Counseling*. v.17(3), Fall '86, p.23-7.

"vocational rehabilitation remains an underutilized resource in solving problems of work-related disability (p.10)."

The authors Encourage employers to utilize services from private and public rehabilitation agencies, as well as Projects with Industry to enhance internal resources and improve effectiveness.

Tate, Denise G., Habeck, Rochelle V., and Galvin, Donald E. Disability Management: Origins, Concepts and Principles for Practice. *Journal of Applied Rehabilitation Counseling*. v.17(3), Fall '86, p.5-11.

"As the U.S. population ages and the "baby boom" generation grows older, the number of disabled people will increase (p.22)."

Beaudway, Deborah L. 3M: A Disability Management Approach. *Journal of Applied Rehabilitation Counseling*. v.7(3), Fall '86, p.20-22.

Because disability and unemployment have similar effects or reducing personal empowerment and self-control, "An early return to work intervention must enhance these personal control, goal-setting and problem-solving capacities (p.99)."

Kuesler, Richard T. A Conceptual Basis for Return to Work Interventions. *Rehabilitation Counseling Bulletin*. v.32(2), Dec. '88, p.98-107.

June 20, 1996

Mike Brevell
Program Specialist
Texas Rehabilitation Commission
4900 North Lamar Blvd.
Austin, Texas 78751-2399

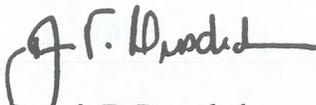
Dear Mr. Brevell:

During a recent meeting with Arnold Barrera, TRC, Region IV, we were asked the following: "Why did HEB choose to participate in the Return to Work Program?" The answer is surprisingly simple. TRC's Return to Work Program:

- Provides consistency. Everyone has access to the same process.
- Enables us to better match individual ability to company need.
- Heightens the level of expertise dedicated to the job placement process.

H-E-B has enjoyed a long and rewarding relationship with TRC. Your Return to Work Program has enabled us to better assist approximately 156 injured or ill Partners assigned to our Distribution and Manufacturing Center. Working together, we expect this partnership to be just as effective in assisting Partners on a company-wide basis.

Sincerely,



Joseph T. Deosdade
Partner Relations

SAMPLE

RETURN TO WORK AGREEMENT

**(NOTE: Agreements are signed by the Regional Director or their designee
and the Director, BSS/GCU.)**

**RETURN TO WORK AGREEMENT BETWEEN THE
TEXAS REHABILITATION COMMISSION
AND
ABC COMPANY**

Introduction:

This agreement is entered into between the Texas Rehabilitation Commission (hereafter referred to as the Commission) and ABC Company (hereafter referred to as ABC).

Purpose and Legal Authority:

To establish procedures and responsibilities for returning injured workers who are eligible for Vocational Rehabilitation services to employment.

The legal authority for the Texas Rehabilitation Commission to enter into this non-financial agreement is Title 7, Section 111.052, Human Resources Code, VTCS.

I. The Commission agrees to:

- (a) Schedule and coordinate with the injured worker, ABC and the company's Workers' Compensation insurance carrier diagnostic services for injured workers to assess each injured worker's vocational skills, limitations and capabilities.
- (b) Provide necessary diagnostic information to ABC's return to work coordinator upon proper authorization signed by the worker.
- (c) Assist in the payment of necessary on-the-job training, vocational training and other types of formal or informal training as deemed necessary by the Commission for returning the injured worker to employment. Comparable services and benefits will be used to assist in paying for any treatment in accordance with Commission policy.
- (d) Provide placement services to those injured workers who can no longer return to employment with ABC.
- (e) Provide vocational services to include maintenance, transportation, books and supplies, equipment, etc., as necessary and appropriate to the injured worker, if and when these services are necessary for the worker to return to employment, as determined by the Commission.
- (f) Assign appropriate staff to act as liaison with ABC to receive referrals and provide Vocational Rehabilitation services. This staff member will coordinate rehabilitation plans and services between the worker, ABC, attorneys, physicians, etc.
- (g) Provide vocational counseling and guidance to injured workers.

II. ABC agrees to:

- (a) Refer injured workers to the Commission within one to three months of injury.
- (b) Provide diagnostic medical information to the Commission upon proper written authorization.
- (c) Coordinate with their Workers' Compensation carrier for payment of all necessary diagnostic procedures to determine injured workers' physical and/or vocational limitations and capabilities. Diagnostic services may include one or more of the following: medical exams, vocational assessment, psychological testing, work hardening, back schools, etc.
- (d) Cooperate with the Commission's staff in performing job analysis and job site modification, if necessary.
- (e) Provide assistance in maintaining employment within the company whenever possible.
- (f) Identify and develop on-the-job training sites within ABC for qualified injured workers who require additional skills.

III. The Commission and ABC agree to the following general provisions:

- (a) All decisions relating to eligibility for and the provision of Vocational Rehabilitation services are the responsibility of Texas Rehabilitation Commission employees and cannot be delegated.
- (b) All client information is provided under the assurance that it will be properly safeguarded, used only for the purpose for which it was provided, and not released to unauthorized persons.
- (c) They do not discriminate in the provision of services or benefits on the basis of race, color, religion, sex, national origin, age or disability.
- (d) This agreement may be amended at any time upon receipt of 30 days written notice of request for modification and by mutual consent of both parties.
- (e) In the event that ABC fails to perform in accordance with the provisions of this agreement, the Commission may, upon written notice to the company, immediately terminate the agreement in whole or in part. The parties shall deal with each other in good faith during the 30 day period after any notice of intent to terminate has been given.

Such termination shall not be an exclusive remedy, but shall be in addition to any other rights and remedies provided by law or under this agreement. Termination may result from, but is not limited to:

1. Material violation of this agreement;
2. Any act exposing the other party to liability to others for personal injury or property damage;
3. Substantiated abuse or neglect of clients of the Commission;
4. Any violation of state or federal law.

(f) This agreement shall be governed by the laws of Texas.

(g) If any part of this agreement shall be held unenforceable, the rest of the agreement will nevertheless remain in full force and effect.

(h) This agreement represents the entire agreement of the parties.

IV. Agreement Period:

This agreement shall be in effect from _____, 199 through _____, 199 .

ABC Company Representative

Date

Texas Rehabilitation Commission Representative

Date

Director, BSS/Grants and Contracts Unit

Date

SAMPLE LETTER

FROM EMPLOYER TO EMPLOYEE

SAMPLE LETTER FROM EMPLOYER TO EMPLOYEE

Dear

I have been advised of the fact that you are currently missing time due to a work-related injury. We are concerned about your well-being and want to provide you with the best service available to expedite your safe return to work. One of the best agencies to help us fulfill this objective is the Texas Rehabilitation Commission (TRC).

TRC has Rehabilitation Counselors who work closely with us, medical care providers and others that will assist in returning you to employment as quickly as possible.

I am referring you to them so they may extend an offer of assistance. A representative from the local TRC office will be mailing you information regarding their program in the near future. I hope you will take advantage of TRC's services, and I assure you of our full cooperation and support during your participation in the program. I anticipate that TRC's assistance will bring about your timely and safe return to work.

Sincerely,

6/7/96
samplr.sam

SAMPLE

NOTIFICATION OF REFERRAL LETTER

FROM TRC TO INJURED WORKER

Dear

You have been referred to the Texas Rehabilitation Commission by

One of the services provided by the Texas Rehabilitation Commission is to assist individuals who have sustained on-the-job injuries in returning to work safely. Our services include coordinating information between employers, physicians and insurance companies. Our focus is on assisting you in safely returning to work within the physical restrictions outlined by your physician.

Your participation is encouraged by your employer. We will be working closely with you to assist you in returning to your previous job if possible, or to identify other jobs with the same employer. This will depend on your physical capabilities, restrictions and medical release from your physician.

I would like to discuss our services with you in more detail and answer any questions that you may have regarding your return to work. Please contact me at _____ so that we can schedule a convenient appointment.

I am looking forward to meeting with you. If you have any questions, please feel free to call either me or my technician, _____, for assistance.

Sincerely,

Counselor
Texas Rehabilitation Commission

6/7/96
notiftr.sam

TRANSITIONAL
vs. LIGHT DUTY

TRANSITIONAL EMPLOYMENT AND LIGHT DUTY

INTRODUCTION

Transitional employment is considered to be one of the best ways of ensuring early return to work for injured employees. The philosophical basis of transitional employment is that work in itself is therapeutic, therefore a structured program of limited duty leading toward achieving maximum performance has numerous benefits, both to the employee and employer in the return to work effort.

TABLE OF CONTENTS

1. Transitional Employment vs. Light Duty
2. Transitional/Light Duty Work

TRANSITIONAL EMPLOYMENT VS. LIGHT DUTY

Characteristics of transitional employment not found in traditional light duty:

- a. Has a start and end date.
- b. Has a therapeutic goal.
- c. More closely resembles usual work, both functionally and socially.
- d. Supervisor is involved in monitoring worker's progress toward established goals and is trained to work with injured and ill workers.
- e. Injured worker is involved in developing the written plan and establishing goals.
- f. When problems occur, the plan is reevaluated with consultation from the treating physician.
- g. Weekly reviews are performed and progress documented until ready to return to previous or similar job.

In summary, transitional employment uses work as therapy instead of just waiting for the employee to improve. It generally lasts from 6 to 12 weeks.

TRANSITIONAL/LIGHT DUTY WORK

Time limited work that is productive to the company, made available to an injured worker who is able to work, but not released to full duty at his or her traditional job.

- Transitional work is provided to keep an employee active and motivated for employment.
- Transitional work is within the capabilities of the employee, given his/her medical condition (usually per medical doctor's directive/limitations).
- Transitional work is seen as being temporary, leading to permanent assignment upon completion of restoration/medical treatment.

JOB ANALYSIS

INTRODUCTION

In some instances it will be helpful to conduct a job analysis to determine the physical and/or mental demands of the injured worker's position. A job analysis is conducted by the TRC Counselor or a service provider with the consent and collaboration of the employer. The goal of the job analysis is to determine whether the person can return to their previous position, given their limitations, or if accommodations are needed before they can return to the position. The job analysis is also a means of assisting the physician to better understand what the worker's duties are so that a better assessment can be made regarding release to full or limited duty.

TABLE OF CONTENTS

1. What is Work?
2. Worker Functions
3. What is a Job Analysis?
4. Sample Job Analysis
5. Blank Job Analysis Forms
6. Sample Medical Opinion Form
7. Residual Functional Capacity Assessment
8. Blank Residual Functional Capacity Assessment Form

WHAT IS WORK?

WHAT IS WORK?

The definition of work is, "Effort directed toward the production or accomplishment of something; labor."

Work is defined according to the functional tasks of which it is comprised. Categorically, work functions can be divided into six units or segments. The segments are:

1. Occupation
2. Job
3. Position
4. Duty
5. Task
6. Element

OCCUPATION:

An occupation is a grouping of jobs which are similar in terms of the experience, training and types of skills, knowledge and abilities required of workers. An occupation involves an entire category of work, without regard to level or grade.

JOB:

A job is a group of positions which are identical or at least very similar in their significant duties. A job is defined as a group of positions or with a particular level or grade. While a distinction is made between job and position, in practice the terms are often used interchangeably.

POSITION:

A position consists of the duties requiring the activities of one worker. Positions may vary in scope and purpose. There are as many positions as there are workers. The characteristics of a position distinguishing it from a job are:

- It has a definite scope and purpose.
- It requires the full time activities of one individual.
- It involves work which utilizes related skills, knowledge and abilities.
- It is usually established and formally recognized on an organizational table/chart.
- It exists whether occupied or vacant.

DUTY:

A duty is a distinct and major activity involved in the work performed or required of a position. The distinguishing characteristics of a duty are:

- It is usually recognized as one of the principal responsibilities.
- It occupies a reasonable portion of the work time.
- It occurs with reasonable frequency in the work cycle.
- It involves tasks which utilize related skills, knowledge and abilities.

- It is performed for some purpose, by some method, according to some standard with respect to speed, accuracy, quality or quantity.

TASK:

A task is a logical and necessary step required in the performance of a duty. The distinguishing characteristics of a task are:

- It occupies a reasonable portion of the work time spent in performing the duty.
- It involves activities with closely related skills, knowledge and abilities.
- It is performed according to some standard.

ELEMENT:

An element is the smallest unit into which work can be divided without analyzing separate motions, movements and mental processes involved.

WORKER FUNCTIONS

WORKER FUNCTIONS

All work requires performances on the part of the worker to Data, People and Things (D.P.T.). A combination of the highest functions which the worker performs in relation to data, people and things express complexity of the job-worker situation. The worker functions are structured into these three categories with the sub-categories listed in a hierarchical fashion from the lowest to the highest level of complexity.

Per the U.S. Department of Labor, work functions are defined as:

<u>DATA</u>	<u>PEOPLE</u>	<u>THINGS</u>
0. Synthesizing	0. Mentoring	0. Setting up
1. Coordinating	1. Negotiating	1. Precision working
2. Analyzing	2. Instructing	2. Operating, controlling
3. Compiling	3. Supervising	3. Driving-operating
4. Computing	4. Diverting	4. Manipulating
5. Copying	5. Persuading	5. Tending
6. Comparing	6. Speaking- signaling	6. Feeding-offbearing
	7. Serving	7. Handling
	8. Taking instructions	

Understanding the relationship of data, people, things to positions is necessary to define the actual functions (duties) a worker performs. It is possible to compare a specific worker's ability to perform a particular job. This is helpful in assisting to return a person with a disability to a particular job or to provide a reasonable accommodation so that the job is performable.

WHAT IS A JOB ANALYSIS?

WHAT IS A JOB ANALYSIS?

A job analysis is a written document identifying and describing an individual's work activities in a specific position. Also, it identifies the sequence in which tasks using machines, equipment and tools are performed within a specific environment requiring a defined range of physical and mental demands.

A job analysis is a tool for:

- Counseling the injured worker about job duties.
- Management to use in determining job requirements and describing job performance expectations.
- Physicians to clearly understand what the patient does at work and what activities can or cannot be safely performed.

The Job Analysis Process:

The following steps are involved in conducting a job analysis:

- Step 1: Meet the supervisory staff to become familiar with the cultural aspects of the job and supervisory expectations.
- Step 2: Obtain a copy of the job description.
- Step 3: Get permission from the employer and arrange a convenient time to observe job being performed.
- Step 4: Visit the job site and observe the manner in which other employees perform the various tasks of the same or a similar job.
- Step 5: Note the procedures, routines, physical and mental demands and levels of supervision available.
- Step 6. Meet with the supervisor and injured worker to determine accuracy of job analysis.
- Step 7. Finalize written job analysis document.

SAMPLE
JOB ANALYSIS

JOB ANALYSIS

SAMPLE

DATE CONDUCTED: . 1995

EMPLOYEE:

EMPLOYER:

JOB SITE: (Bakery Department)

INFORMATION SOURCE:

JOB TITLE: Production Partner II

JOB ANALYST:

JOB ASSIGNMENTS AND TASKS:

The Production Partner II employee works on an assembly line with three to five other workers. As the assembly line moves along a conveyor belt (36" high) the team worker does a variety of duties in an eight to ten hour shift. Their duties include dumping food items (donuts, muffins, etc.) out of baking pans and onto the conveyor belt and place into plastic baskets (six per basket); stacking baskets on top of each other and sliding them over to the area where they will be picked up and taken to the shipping area. Duties are not rotated and employees are moved to various assembly lines depending on the item being baked during shift (eg, cookies, donuts, cakes, muffins, brownies, etc.)

SPECIFIC JOB DUTIES: STEP BY STEP:

This section is intended to reflect a step-by-step process of how a typical day might flow

1. Arrives at work and checks work schedule for work station assignment
2. Go to assigned station and begin duties for that assembly line
Note: Each station/ assembly line has different (but similar) duties
3. Depending on assignment and place in line, perform one of the following duties
 - a) Dump item onto conveyor belt (out of baking pans)(less than one pound)
 - b) Place item into container (six to ten each container)(one to two pounds)
 - c) Pick up container (of item) after container is labeled (automatically) and place container into blue plastic basket. Stack basket on top of each other (until six baskets are stacked high, then slide stacks to the holding area (ten to fifteen feet).

SAMPLE

CONTINUE STEP BY STEP DUTIES:

- 4 Occasionally, push hand jack on wheels - loaded with boxes (five to pounds per box, approximately fifty to sixty pounds) Push carts with trays of baked goods on wheels, approximately one hundred to one hundred and twenty pounds Note Although, some items may weigh one hundred pounds, use of hand jack eliminates need for lifting of heavy items Jack is hydraulic and boxes slide easily on slick floor
- 5 Rotate duties on line during shift (as directed by shift supervisor)
- 6 Rotate lines during shift (as directed by shift supervisor)
- 7 Clean up area (pick up paper food, etc.) and prepare area for next shift

ADDITIONAL COMMENTS/OBSERVATIONS:

- There is no sitting except during break and lunch
- Standing is on a concrete floor At some work stations, a rubber mat is available
- Bending and lifting of approximate fifteen pounds is required, about thirty minutes per hour (muffin line)
- Reaching overhead and lowering trays (approximately fifteen pounds) approximately thirty minutes per hour (muffin line)

Various seasons (Christmas, Thanksgiving, Valentine's Day, etc) require extra production, due to high demand for baked goods from IEB stores. Because of demand, employee must be flexible and available to work day or night shift with little notice Some shifts work eight hours per day, five days a week and some shifts work ten hours per day, four days a week

SUMMARY OF ACCOMMODATIONS:

- Partners work as a team with three to six members of the team rotating duties, and rotating stations during a shift This is done to prevent boredom, and repetitive motion injuries
- All workers are provided with uniforms, hair nets, hard hats, safety back belts (upon request) and other safety equipment as needed.
- Teamwork and safety is constantly monitored to insure safety of workers and to keep up with production.
- Plastic boxes slide easily on floor and portable hand jacks are used for larger boxes on pallets
- Order selectors often come to the area and take boxes and pallets to loading area, thus preventing Production Partners from having to move large items

Job Title: Production Partner II
Employer: _____

SAMPLE

PHYSICAL DEMANDS

I In a typical work week, the employee is required to work

8 hours per day/5 days per week 10 hours per day 4 days per week Other (Describe) _____

II. The following physical demands are required on the job during an _____

8 hour shift (5 days per week) 10 hour shift (4 days per week)

Sitting: Hours at one time: Not applicable

Total time: Not applicable (Except during break and lunch)

Standing Hours at one time: 2 - 3 Hours

Total time: 8 Hours

III This job requires repetitive action within:

	<u>Simple Grasping</u>	<u>Firm Grasping</u>	<u>Fine Manipulation</u>
Right Hand	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Left Hand	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

IV A. Working on unprotected heights Yes No
Comments: _____

B. Being around moving machinery. Yes No
Comments: Conveyor belts (3 feet high) and some moving jacks.

C. Exposure to marked changes in temperature and humidity Yes No
Comments: Although ovens are hot, room temperature remains stable (above 70%)

D. Driving automotive equipment. Yes No
Comments: _____

E. Exposure to dust, fumes, gases: Yes No
Comments: _____

F. Exposure to noise (Ear protection required) Yes No
Comments: Many duties within the bakery are going on at one time, and some require heavy lifting. However, heavier jobs (such as, mixing and pouring 100 pound bags of sugar etc., are performed by packaging/mixing specialist (Production Partner III).

Job Title:
Employer:

PRODUCTIVE CABINET

SAMPLE

PHYSICAL DEMANDS CONCLUDED

I. In a typical work day, the job requires:

8 hr day/5 day week 10 hr day/4 day week

Not At All Rarely Occasionally Frequently Continuously
0% 1% - 10% 11% - 33% 34% - 66% 67% - More

Position

A. Lift/Carry

1 - 10 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11 - 20 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21 - 35 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
36 - 50 pounds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
51 - 75 pounds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
76 + pounds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. Bending/Stooping

C. Squatting

D. Kneeling

E. Climbing

F. Reaching

Above shoulder	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Below shoulder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

G. Pushing/Pulling

H. Additional Physical Requirements: (See below)

Comments: _____

Completed By: _____
Title: Vocational Rehabilitation Counselor

Date: _____
Phone Number: _____

BLANK
JOB ANALYSIS
FORMS

JOB ANALYSIS

Date Conducted: _____ **Employee:** _____

Employer: _____

Job Site: _____

Information Source: _____

Job Title: _____

Job Analyst: _____

JOB ASSIGNMENTS AND TASKS:

SPECIFIC JOB DUTIES (STEP BY STEP):

CONTINUE STEP BY STEP DUTIES:

ADDITIONAL COMMENTS/OBSERVATIONS:

SUMMARY OF ACCOMMODATIONS:

Job Title: _____
Employer: _____

PHYSICAL DEMANDS

I. In a typical work week, the employee is required to work:

8 hours per day/5 days per week 10 hours per day/4 days per week Other (Describe): _____

II. The following physical demands are required on the job during an: _____

8 hour shift (5 days per week) 10 hour shift (4 days per week)

Sitting: Hours at one time: _____

Total time: _____

Standing: Hours at one time: _____

Total time: _____

III. This job requires repetitive action within:

	<u>Simple Grasping</u>	<u>Firm Grasping</u>	<u>Fine Manipulation</u>
Right Hand	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Left Hand	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

IV. A. Working on unprotected heights: Yes No
Comments: _____

B. Being around moving machinery: Yes No
Comments: _____

C. Exposure to marked changes in temperature and humidity: Yes No
Comments: _____

D. Driving automotive equipment: Yes No
Comments: _____

E. Exposure to dust, fumes, gases: Yes No
Comments: _____

F. Exposure to noise (Ear protection required) Yes No
Comments: _____

Job Title: _____
Employer: _____

PHYSICAL DEMANDS CONCLUDED

I. In a typical work day, the job requires:

8 hr day/5 day week 10 hr day/4 day week

	<u>Not At All</u> 0%	<u>Rarely</u> 1% - 10%	<u>Occasionally</u> 11% - 33%	<u>Frequently</u> 34% - 66%	<u>Continuously</u> 67% - More
Position					
A. Lift/Carry					
1 - 10 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 - 20 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21 - 35 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
36 - 50 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
51 - 75 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
76 + pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Bending/Stooping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Squatting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Kneeling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Climbing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Reaching					
Above shoulder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Below shoulder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Pushing/Pulling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

H. Additional Physical Requirements: (See below)

Comments: _____

Completed By: _____
Title: Vocational Rehabilitation Counselor

Date: _____
Phone Number: _____

**SAMPLE
MEDICAL OPINION
FORM**

MEDICAL OPINION

PHYSICIAN NAME: _____

RE: CLIENT: _____

EMPLOYER: _____

Rehabilitation Counselor: _____

I have reviewed the job analysis for the above-cited worker's position as a _____,
and I find it within the worker's medical restrictions.

Yes

No

If no, please indicate what aspects of the job the worker cannot perform due to **medical reasons**.
The employer will be asked to modify the job to meet these accommodations (if possible).

ADDITIONAL COMMENTS:

PHYSICIAN SIGNATURE

RETURN TO: _____

RESIDUAL FUNCTIONAL CAPACITY

ASSESSMENT

RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

PURPOSE:

The purpose of the Residual Functional Capacity Assessment is to understand the restrictions of an injured worker, usually prior to MMI, so an accommodated or alternate duty position can be negotiated and the worker can return to work.

ADVANTAGES:

- It clearly defines the worker's restrictions.
- It provides a doctor's release.
- It provides an indication of how long any restrictions will continue.
- It allows doctor to clarify comments.

BLANK

RESIDUAL FUNCTIONAL CAPACITY

ASSESSMENT FORM



**Texas Rehabilitation Commission
Rehabilitation Services Division
Residual Functional Capacity Assessment**

The information requested is necessary to help counselors determine eligibility and/or a plan for rehabilitation services for the person named.

Identifying Data:

Return Report To:

Name: _____
 Date of Birth: _____
 Social Security Number: _____
 Client Phone Number: _____

Reported Disability: _____
 Reason for Referral: _____

Diagnosis

Diagnosis of Patient: _____
 (Please attach copies of your prior medical records)

Prescribed Medications/Dosage	Indications (Purpose)	Possible Side Effects

Does this client have a medical release for employment?

- Yes, no restrictions.
- Yes, with restrictions listed on form.
- No (anticipated date of release) _____

Functional Assessment

What can the client do now? Check the appropriate blocks that are applicable during designated work day.

Standing:

Hours at one time: None 1-2 hours 2-4 hours 4-6 hours 6-8 hours 8+ hours
 Total hours: None 1-2 hours 2-4 hours 4-6 hours 6-8 hours 8+ hours

Sitting:

Hours at one time: None 1-2 hours 2-4 hours 4-6 hours 6-8 hours 8+ hours
 Total hours: None 1-2 hours 2-4 hours 4-6 hours 6-8 hours 8+ hours

Walking:

Hours at one time: None 1-2 hours 2-4 hours 4-6 hours 6-8 hours 8+ hours
 Total hours: None 1-2 hours 2-4 hours 4-6 hours 6-8 hours 8+ hours

Stairs:

Unlimited 4 flights 2 flights 1-2 flights None

Climbing:

Ladders Ramps Scaffolds

Residual Functional Capacity Assessment

Functional Assessment (Continued)

Check one frequency box for every weight limit and every body motion listed below.

Lifting:

Frequency	Continuously, 66% or more of the time	Frequently, 33-66% of the time	Occasionally, up to 33% of the time	Not at all
10 lbs or less	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10-20 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20-50 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
50-100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Over 100 lbs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bending:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Squatting:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kneeling:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reaching:				
Overhead	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shoulder Level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Below Waist	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Hand function:

	Unlimited	Simple Grasping	Fine Work	Pushing/ Pulling	Low Speed Assembly	High Speed Assembly
Left	<input type="checkbox"/> Yes <input type="checkbox"/> No					
Right	<input type="checkbox"/> Yes <input type="checkbox"/> No					

Other Assessment Areas

Environmental Restrictions:

- Dust
 Heat
 Cold
 Damp/Wet
 Fumes
 Height

Other functional limitations (please describe): _____

Can this client engage in training within the functional limitation you have indicated? Yes No

Many employees have overtime or work a ten (10) hour/four (4) day week.

In one day, client may work: 4 hours 4-6 hours 6-8 hours 8-10 hours 10 + hours

Otherwise, do you feel that this client is in good medical condition? Yes No

All information is to be treated as confidential. Examinee has the legal right to see this report when the examinee requests.

_____ Examining Physician Signature Degree	Type or Print Physician's Name and Address:
_____ Phone Number Date of Examination	

**WORKER'S COMP
INFORMATION**

WORKERS' COMPENSATION INFORMATION

INTRODUCTION

Counselor's knowledge about the Workers' Compensation system is essential to providing assistance to injured workers. This section contains some general information about Workers' Compensation in Texas. More detailed information can be obtained from TWCC's regional and field offices.

TABLE OF CONTENTS

1. **Workers' Compensation Information (CDR)**
2. **Answers to VR Questions on Workers' Compensation and Rehabilitation/TRC Services**
3. **Workers' Compensation Benefits Chart**
4. **Managing Referrals From TWCC**

Workers' Compensation

There are two workers' compensation systems that apply to persons who are injured on the job; the Texas Workers' Compensation Act and the Federal Employees Compensation Act and Longshore and Harbour Workers Act.

The Texas Workers' Compensation Act (TWCA) provides workers' compensation for employees injured on the job. It does not cover employers who choose to be non-subscribers. The Texas Workers' Compensation Commission (TWCC) keeps records on accidents reported, the amount of compensation due, and data concerning each claim. Records of employers who carry workers' compensation insurance are also kept on file.

If an employer has workers' compensation insurance, insured workers receive:

- Medical costs related to an on-the-job injury; and
- Income benefits to replace part of the wages lost due to an on-the-job injury; and
- Death benefits to a legal beneficiary if a worker is killed on the job.

Disputes

After a claim has been filed, a dispute may arise over benefits. TWCC provides several ways for resolving disputes. First, the TWCC Dispute Resolution Officer works to resolve a dispute (informal dispute resolution).

If the informal dispute resolution is not successful, the dispute goes into formal dispute resolution:

- Benefits Review Conference (BRC) - provides an informal mediation;
- Arbitration - can be used for disputes not resolved at the BRC; all parties must agree to go into arbitration; NOTE: Arbitration is rarely agreed on by all parties since it is a binding decision;
- Contested Case Hearing (formal administrative hearing) - can be used for disputes not resolved at the BRC; allows sworn testimony;
- Document Review by the TWCC Appeals Panel - must be requested by the dissatisfied party;

- Litigation in Texas courts (only the disputed issue, not the entire claim) - a suit must be filed in district court within forty days of the Appeals Panel decision.

The new workers' compensation system no longer uses trial de novo (no new evidence or issues may be submitted). Through dispute resolution, all information may pass through four steps: the benefits review, the contested case hearing, the appeals process and litigation.

Benefits

There are four types of benefits for injured workers under the TWCA: temporary income benefits, impairment income benefits, supplemental income benefits and lifetime income benefits.

Each year, the dollar amount of these benefits is changed according to the state average weekly wage as determined by the Texas Workforce Commission. Currently, the benefits are as follows:

Temporary Income Benefits (TIBS)

Weekly maximum: \$472; weekly minimum: \$71.

Benefits are paid until the worker reaches maximum medical improvement, or 104 weeks from the date of the injury, whichever comes first.

Impairment Income Benefits (IIBS)

Seventy percent of average weekly wage; maximum: \$330; minimum: \$71.

Based on three weeks of benefit checks for each percentage of impairment.

Supplemental Income Benefits (SIBS)

Benefits are paid after impairment income benefits end and the following four conditions are met:

- Impairment rating is 15% or more; and
- The injured worker is earning less than 80% of pre-injury wage; and
- The injured worker is seeking employment commensurate with physical limitations; and
- The injured worker has not requested and received lump sum payment of impairment income benefits; and

- The injured worker is cooperating with vocational rehabilitation, either TRC or a private provider, if referred by TWCC.

Maximum: \$330; no minimum.

NOTE: The maximum number of weeks of compensation for temporary, impairment and supplemental income benefits combined does not exceed 401 weeks.

Lifetime Income Benefits (LIBS)

Seventy-five percent of average weekly wage for catastrophic compensable injury: loss of hands, feet, eyesight and other conditions described by law.

Weekly maximum: \$472; weekly minimum: \$71.

Referrals

The Texas Workers' Compensation Act and the Texas Workers' Compensation Commission's Rules require that certain injured workers be referred to TRC. At the time of the application, identify referrals received from TWCC, or a physician, or other sources by:

- Indicating the referral source as Workers' Compensation; and
- Answering the Workers' Compensation questions on the profile.

TWCC Offices

Each TWCC office has information regarding the TWCA. See Exhibit A for addresses and phone numbers.

Texas Workers' Compensation Insurance Fund

The Texas Workers' Compensation Insurance Fund (TWCIF) is the largest insurance carrier in the state, with over 25% of all insured employers in the system. The Texas legislature created TWCIF during the 1991 Reform Session. TWCIF operates as a private firm.

TWCIF has several benefits for the injured employee and incentives for the employer. Representatives may meet with employers to discuss cost saving measures such as return to work, safety and risk management.

TWCIF makes referrals to TRC, usually within two months of injury. TWCIF requires efforts on a timely basis to return the employee to the same job. Diagnostic information is available from TWCIF after a release is signed by the

applicant. The employer usually is willing to retain the individual in the same job, or work with the injured employee to accommodate the employee into other jobs. Most referrals return to their old jobs with minimum assistance from TRC. The goal is to return injured workers to the same job/same employer in the shortest time possible, with no cost to TRC.

**TEXAS WORKERS' COMPENSATION COMMISSION
REGIONAL/FIELD OFFICES**

NORTHERN REGION

REGIONAL OFFICE

Director
6421 Camp Bowie Blvd. #100, MS-100
Ft. Worth, Texas 76116-5419
(817) 735-4216

FORT WORTH (Field Office)

Deborah Laubert, Field Office Manager
6421 Camp Bowie Blvd. #100, MS-103
Fort Worth, Texas 76116-5421
(817) 735-4216

ABILENE

Frank Sayre, Field Office Manager
Triangle West Building, MS-401
3125 Catclaw
Abilene, Texas 79606-2227
(915) 690-7900

LUBBOCK

Herbert Martinez, Field Office Manager
22 Briercroft Office Park, #A, MS-404
Lubbock, Texas 79412-3089
(806) 765-2700

AMARILLO

Jerry Rangel, Field Office Manager
7112 IH-40, West, Bldg. D, MS-402
Amarillo, Texas 79106
(806) 351-1222

MIDLAND/ODESSA

Vickie Vincent, Field Office Manager
Executive Office Park, #315, MS-405
4500 West Illinois Avenue
Midland, Texas 79703-5486
(915) 699-1281

DALLAS

Dan Shouse, Field Office Manager
Frito Lay Tower, MS-101
6300 Forest Park, # 900
Dallas, Texas 75235-5412
(214) 350-9299

SAN ANGELO

Steve Lawson, Field Office Manager
202 West Beauregard, #C, MS-407
San Angelo, Texas 76903-5884
(915) 657-0404

DENTON

Anthony Walker, Field Office Manager
Dallas Dr. Tech Center, MS-102
625 Dallas Dr., #475
Denton, Texas 76205-7289
(817) 380-1400

TYLER

Kim Dobbs, Field Office Manager
3800 Paluxy Drive, #570, MS-104
Tyler, Texas 75703-1665
(903) 534-6250

EL PASO

Luis Mata, Field Office Manager
Dyer Office Park, MS-403
8815 Dyer, #340
El Paso, Texas 79904-2030
(915) 757-8081

WICHITA FALLS

Will Mercado, Field Office Manager
Triad Building, MS-106
2910 Kemp Boulevard, # 118
Wichita Falls, Texas 76308-1040
(817) 720-4900

SOUTHERN REGION

REGIONAL OFFICE

John Facey, Director
9514 Console Drive, #200, MS-300
San Antonio, Texas 78229-2043
(210) 593-0070

ANGLETON

Maria Stites, Field Office Manager
1027 S. Velasco, #1, MS-206
Angleton, Texas 77515-5249
(409) 849-8680

AUSTIN

Sarah Taylor, Field Office Manager
Lamar Crest Towers, MS-301
7701 North Lamar, #202
Austin, Texas 78752-1022
(512) 453-8230

BEAUMONT

JoAnn Anderson, Field Office Manager
Goodhue Building, MS-201
398 Pearl Street, #101
Beaumont, Texas 77701-2473
(409) 838-8400

BRYAN/COLLEGE STATION

Gerry Urso, Field Office Manager
Varisco Building, MS-202
219 North Main, #503
Bryan, Texas 77803-5337
(409) 361-9000

CORPUS CHRISTI

Manuel Acevedo, Field Office Manager
2727 Morgan Avenue, #300, MS-302
Corpus Christi, Texas 78405-1821
(512) 883-2551

GALVESTON

Eduardo Zamora, Field Office Manager
6000 Broadway St., #103, MS-203
Galveston, Texas 77551-4307
(409) 744-5773

HARLINGEN

Christina Ortiz, Field Office Manager
119 West Van Buren Street, MS-303
Harlingen, Texas 78550-6446
(210) 423-0402

HOUSTON-EAST

Barbara Voloto, Field Office Manager
7151 Office City Drive #101/120, MS-207
Houston, Texas 77087
(713) 643-1330

HOUSTON-WEST

Eileen Fiedler, Field Office Manager
1445 North Loop West, #600, MS-204
Houston, Texas 77008-1654
(713) 880-0206

LAREDO

Gilbert Davila, Field Office Manager
1403 North Seymour Avenue, MS-304
Laredo, Texas 78040-8759
(210) 718-2040

LUFKIN

Cindy Goff, Field Office Manager
4415 S. Medford Dr., MS-205
Lufkin, TX 75901-5639
(409) 639-6425

MCALEN

Mary Rodea, Field Office Manager
4415 N. McColl Road, MS-209
McAllen, Texas 78504
(210) 618-2716

SAN ANTONIO(Field Office)

John Garza, Field Office Manager
9514 Console Drive, #200, MS-305
San Antonio, Texas 78229-2043
(210) 593-0070

SUGAR LAND

Clara Caldwell, Field Office Manager
13313 Southwest Freeway, #220, MS-208
Sugar Land, Texas 77478
(713) 491-9800

VICTORIA

Field Office Manager, Vacant
American General Building
3001 North Cameron Street, MS-306
Victoria, Texas 77901-3931
(512) 576-9612

WACO

Bill Hoggard, Field Office Manager
4201 Lake Shore Drive, #G, MS-105
Waco, Texas 76710-1968
(817) 751-5900

**ANSWERS TO VR QUESTIONS
ON WORKERS' COMPENSATION
AND
REHABILITATION/TRC SERVICES**

ANSWERS TO VR QUESTIONS
ON
WORKERS COMPENSATION
AND
REHABILITATION/ TRC SERVICES

A How to manage and integrate client needs with insurance needs/Workers Compensation

- 1 Make sure what you are addressing is a VR issue, and relates to improvement of the disability, and or getting the client back to work
- 2 Secure diagnostics/prescriptions/recommendations, and submit to Carrier, with a copy to TWCC Case Worker (as a courtesy and to keep informed). If a Conflict on service approval occurs, can help client with TWCC Conflict Resolution/Appeal process

B Who is making the decisions in the client's TRC Case?

- 1 VR/TRC Case, a separate issue from Workers Compensation Benefits
- 2 VR Counselor and client make informed choices for VR Services Neither TRC or TWCC can make binding decisions for the other agency
- 3 Medical Records with client release should not be a problem with insurance companies TWCC can help if there is a problem Do not forget that the employer may also have a copy

C When do they need to begin to come to TRC for services?

- 1 It depends upon who is referring the client and when it appears that VR Service is needed to assist the injured worker to return to work.
- 2 In an actual Return to Work Incentive Program with a company and a specific TRC Counselor, six weeks after the injury occurs is a good time to staff the case with the company representative and the TRC Counselor At this time frame, it is often possible to determine if the injury will have any significant impediment to employment issues, which would benefit from TRC Services. If it is determined to be too early for TRC to initiate services, then set another date to review the injured worker's file in the future

D Will VR Services interfere with Workers Compensation Services?

- 1 Not usually The most common effect of VR Service is that the client is able to return to work earlier, or is able to start focusing on services to secure an alternate job when necessary
- 2 TRC Services do not impact Workers Compensation Benefits paid to an injured worker

E TWCC does not tell the client what to expect from TRC

- 1 It would be difficult, if not inappropriate, for a TWCC Caseworker, to tell a client what to expect from TRC, other than that TRC helps eligible disabled persons to return to employment
- 2 Only the TRC Counselor can determine individual client eligibility for TRC/VR Services
- 3 Only the TRC Counselor and the client, can determine appropriate services to be provided, as a part of the IWRP

F Job Re-Training Expenses.

1. Re-Training is not a part of the Texas Workers Compensation Law This is a Vocational issue
- 2 Some companies have, as a part of their company process, a system, or benefit program, which provides in-house, or outside training, to assist injured workers in returning to employment This is a company by company benefit, which is not mandated or required The VR Counselor should investigate the employer's program, or it's willingness to train, or to sponsor training, when required to enable a client to return to work Note that often small employers without a formal program, when properly approached, will be open to In-House Training

G Clients wanting training.

1. The necessity for training is a part of the Rehabilitation Process between the client and the VR Counselor The focus of a Return to Work Program, is to assist the client to return to their usual and customary job.
2. Training would usually be the course of action to take, when because of the permanent functional limitations of a disability, that creates a permanent impediment to the performance of the essential job duties of that client's job (which is still waiting at the company most of the time)
- 3 When the client will not be able to return to employment, even with accommodations, due to the disability caused impediment to job performance, the client and TRC Counselor would work out the appropriate Vocational Services, following sound rehabilitation practices

WORKERS' COMPENSATION

BENEFITS CHART

WORKERS' COMP. BENEFITS PROCESS

TYPE OF BENEFITS	WHO RECEIVES BENEFITS	HOW MUCH BENEFITS PAY	MINIMUM/MAXIMUM	WHEN BENEFITS BEGIN	WHEN BENEFITS END
TEMPORARY Income Benefits (TIBS)	<p>Temporary Income Benefits are weekly checks that are paid while you recover from a compensable injury, if:</p> <ul style="list-style-type: none"> • you have lost time from work for <u>more</u> than 1 week because of the injury. • you earn lower wages for <u>more</u> than 1 week because of the injury. <p>Lost time or lower wages resulting from an on-the-job injury is called <u>disability</u>.</p>	<p>Weekly Temporary Income Benefits checks pay 70% of the difference between your Average Weekly Wage* and your post-injury earnings, after you have 1 week of lost time (or lower wages). This is usually about \$7 for each \$10 of income lost after the 1st week.</p> <p>If you earned less than \$8.50/hour before your injury:</p> <p>For the 1st 26 weeks, weekly Temporary Income Benefits checks pay 75% of the difference between your Average Weekly Wage* and your post-injury earnings, after you have 1 week of lost time (or lower wages). Amount cannot exceed your previous year's earnings.</p>	<p>Temporary Income Benefits</p> <p>Weekly Minimum: \$66 Maximum: \$438 (effective 9/1/91 - 8/31/92)</p> <p>Weekly Minimum: \$68 Maximum: \$456 (effective 9/1/92 - 8/31/93)</p>	<p>Temporary Income Benefits are paid weekly if you have more than 1 week of lost time (or lower wages). Benefits begin to be counted on the 8th day after your lost time (or lower wages) began. Your 1st check, for 1 week of benefits, is paid at the end of your 2nd week of lost time (or lower wages).</p> <p>No check is paid for the 1st week unless you have 4 weeks or longer of lost time (or lower wages).</p>	<p>Temporary Income Benefits may end temporarily if you return to your pre-injury pay rate, then start again if you have more lost time (or lower wages). Temporary Income Benefits end permanently when you reach Maximum Medical Improvement or 104 weeks after benefits begin to be counted, whichever is earlier.</p>
IMPAIRMENT Income Benefits (IIBS)	<p>Impairment Income Benefits are weekly checks that are paid if you have permanent damage from a compensable injury.</p>	<p>Weekly Impairment Income Benefits checks pay 70% of your Average Weekly Wage*.</p>	<p>Impairment Income Benefits</p> <p>Weekly Minimum: \$66 Maximum: \$307 (effective 9/1/91 - 8/31/92)</p> <p>Weekly Minimum: \$68 Maximum: \$319 (effective 9/1/92 - 8/31/93)</p>	<p>Impairment Income Benefits begin to be paid weekly after you reach Maximum Medical Improvement (MMI) if a doctor assigns an impairment rating for you. If you do not agree with the impairment rating, you must dispute it within 90 days.</p>	<p>Impairment Income Benefits end after you get 3 weeks worth of checks for each percent of your impairment; maximum payment period is 300 weeks.</p>
SUPPLEMENTAL Income Benefits (SIBS)	<p>Supplemental Income Benefits are monthly checks that are paid after Impairment Income Benefits end, if you meet certain conditions for permanent damage and for lost income because of a compensable injury.</p>	<p>Monthly Supplemental Income Benefits checks pay 80% of the difference between 80% of your Average Weekly Wage* and your current wages. The amount is calculated quarterly & payments may be small. You must report changes in your income to TWCC.</p>	<p>Supplemental Income Benefits have no minimum.</p> <p>Maximum: \$307 (per week, paid monthly, effective 9/1/91 - 8/31/92)</p> <p>Maximum: \$319 (per week, paid monthly, effective 9/1/92 - 8/31/93)</p>	<p>Supplemental Income Benefits begin to be paid monthly after your Impairment Income Benefits end if your impairment rating is 15% or more & you are earning less than 80% of pre-injury wage as a direct result of your injury.</p>	<p>Supplemental Income Benefits end when you are no longer eligible or 401 weeks after the date of your injury, whichever is earlier.</p> <p>All Temporary, Impairment and Supplemental Income Benefits end 401 weeks after the date of your injury.</p>
LIFETIME Income Benefits (LIBS)	<p>Lifetime Income Benefits are weekly checks that are paid if you suffer a catastrophic compensable injury, loss of hands, feet, eyesight & other conditions described by law</p>	<p>Weekly Lifetime Income Benefit checks pay 75% of your Average Weekly Wage*.</p> <p>Payment increases 3% annually</p>	<p>Lifetime Income Benefits</p> <p>Weekly Minimum: \$66 Maximum: \$438 (effective 9/1/91 - 8/31/92)</p> <p>Weekly Minimum: \$68 Maximum: \$456 (effective 9/1/92 - 8/31/93)</p>	<p>Lifetime Income Benefits begin to be paid weekly if you have an injury that meets conditions described by law</p>	<p>Lifetime Income Benefits are paid until your death</p>

* DOLLAR AMOUNTS CHANGE EVERY YEAR.

MANAGING REFERRALS FROM

TWCC

MANAGING REFERRALS FROM TWCC

The TWCC mails a copy of a referral letter to TRC for every injured worker that has one of ten types of injuries listed in the Workers' Compensation Act and prior to an injured worker becoming eligible for Supplemental Income Benefits (SIBS).

The VRC sends a letter to the injured worker indicating that the TWCC has made a referral for possible rehabilitation services. This letter should provide the Counselor name, location and phone number for the injured worker to contact to initiate an appointment for application. The letter should include a TRC VR brochure.

The VRC keeps a file of the TWCC referral letter and the corresponding TRC letter to the injured worker. These records of first contact are automatically deleted from the automated system after six months.

Workers' Compensation insurance carriers may contact TRC to determine if an injured worker is cooperating with Vocational Rehabilitation as required by the rules governing receipt of SIBS. Do not provide information to the insurance carrier without an appropriate release signed by the injured worker.

**RTW & STATE
AGENCIES**

RETURN TO WORK

FOR

STATE AGENCIES

RETURN TO WORK FOR STATE AGENCIES

INTRODUCTION

By law, every state agency is required to have a return to work program in place to reduce costs associated with on-the-job injuries. The following guidelines from TWCC are intended to assist state agencies in developing a return to work program. The guidelines also provide an excellent overview of the return to work process.

TABLE OF CONTENTS

1. **Workers' Compensation Commission's Return to Work Guidelines for State Agencies**

WORKERS' COMPENSATION COMMISSION'S
RETURN TO WORK GUIDELINES
FOR
STATE AGENCIES

CHAPTER 5

RETURN TO WORK PROGRAM

TABLE OF
CONTENTS

Intro. to Return to Work Program 1
 Goals 2
 Objectives 2
 Benefits 2
 Behavioral Aspects 3

Interrelationships of ADA, FMLA and
Workers' Comp in RTW Programs 3
 Americans with Disabilities Act. 4
 Family and Medical Leave Act 5
 Comparisons of ADA, FMLA and Work. Comp . 6

Elements of a RTW Program 8
 Return to Work Assignments 9
 Types of Modifications 10
 Duration of Leave and Temp. Assignments ... 10
 Communications 10

Sample RTW Policy & Procedures
for State Agencies 11
 RTW Policy 11
 RTW Procedures 11

Additional Resources for
State Agencies 15
 Publications 15
 Agencies & Organizations 15
 Endnotes 16
 RTW Checklist for State Agencies 16

Sample RTW Forms 18

INTRODUCTION TO A
RETURN TO WORK PROGRAM

A return to work program provides a mechanism for an employer to encourage and allow employees to return to work as soon as possible after injury or illness. Return to work programs are designed for employees who sustain job-related injuries and illnesses who are receiving workers' compensation benefits, but may also be designed for employees who sustain injuries or illnesses off the job. This chapter of Risk Management for Texas State Agencies concentrates on a return to work program for state employees who are injured during the course and scope of their employment and are receiving workers' compensation benefits, but also provides the basis for an employee's return to work following off the job injuries and illnesses. The information presented in this chapter takes into account the requirements of both the Americans with Disabilities Act and the Family Medical Leave Act as they relate to injured employees.

A return to work program is a valuable loss control measure that helps control workers' compensation costs. The program helps control losses by directly reducing the amount of lost time away from work, and ultimately reduces workers' compensation indemnity benefits paid by the state. The return to work program emphasizes joint employer and employee efforts to quickly return the employee to the productive workforce. It emphasizes the abilities of the employee to resume the same or similar duties and tasks performed prior to the injury or to perform alternate duties and tasks. This enhances productivity, reduces employee turnover, and reduces employment-related costs.

Every state agency is required by the Texas Workers' Compensation Act (Labor Code, Title 5, Subtitle A, Section 412.0025) to develop and implement an appropriate return to work program. Such a program should include appropriate, detailed procedures that identify specific responsibilities and actions that should be taken by designated return to work coordinators, supervisors, and employees. This chapter further discusses the concepts of return to work and the roles and responsibilities of all persons involved in the program.

Goal of a Return to Work Program

The primary goal of a return to work program is to assist employees who sustain an injury or illness to safely return to work at the earliest possible time at either full duty or in a temporary (modified or alternate duty) assignment. If the employee is unable to perform his or her full, regular duties, the return to work program provides opportunities for the employee to perform a temporary work assignment within functional capacities and job demands that can be safely performed. By allowing an employee to perform modified regular duties or alternate duties, the employee remains a productive member of the workforce while recuperation and rehabilitation take place.¹

Objectives of a Return to Work Program

Some important objectives of implementing a return to work program are the following:

- Assist the employee to return to their normal work environment in an expedient manner.
- Reduce the monetary burden and emotional strain and return the employee to a work level as close as possible to pre-injury earnings and productivity.
- Demonstrate the employer's concern and fulfill obligations to the employee.
- Provide reasonable accommodation whenever necessary to enable the employee to perform the essential functions of the job.
- Ensure the employee's return to work is in compliance with all requirements of the Americans with Disabilities Act, Family Medical Leave Act, and the Texas Workers' Compensation Act, as appropriate and necessary.

Benefits of a Return to Work Program

Employers who implement return to work programs are able to realize direct and indirect savings and enhance relations with their employees. Employees also benefit from the return to work program. The following identifies many of the potential benefits of a return to work program.

- **Benefits to the Employer - Direct Savings**
 - Workers' compensation costs are reduced when temporary income benefits cease.
 - Productivity increases and human resources are utilized to the maximum extent.
 - Litigation costs are normally prevented or reduced.
 - Wage costs for substitute employees are saved.
- **Benefits to the Employer - Indirect Savings**
 - Recruitment and staff training costs of new or substitute employees are saved.
 - Work delays and business interruptions are eliminated when the experienced employee returns to work.
 - Co-workers are not required to perform extra duties to compensate for the absent employee.
 - Goodwill and a positive image with the public and employees are created, as the employer is perceived as a caring employer.
 - Communications and relations between employees and management are enhanced.
- **Benefits to the Employee**
 - Employees remain active and mobile when returned to the productive workforce.
 - Full or partial wages are earned which brings the employee's income closer to pre-injury wages than workers' compensation temporary income benefits alone.
 - Self-esteem, morale and personal security are maintained or restored through gainful employment and a productive life style.

- Stress, boredom, and depression of the injury/illness and being out of work are reduced or eliminated.
- Physical conditioning through a work-life discipline is maintained.
- The chances of returning the employee to work permanently are improved. Studies indicate that more than 50% of the injured employees who are away for five or six months do not return to work.
- Employee concerns about continued employment are resolved.²

Behavioral Aspects of Return to work

Managing employees with injuries or illness often involves having an understanding of behavioral forces that motivate an employee to be a productive participant in the workforce. Normally, an employee who is satisfied with his or her job and employment situation, and who suffers an injury or illness resulting in absence from work, is self-motivated to return to productive employment as quickly as possible. However, an employee's attitude and outlook regarding returning to work may change if the person remains out of the workforce for an extended period of time.

The longer an employee is off work the more difficult it becomes to return these individuals to employment. Certain factors may present barriers to return to work. Such factors may include personal fears and anxieties, decline of self-image or self-esteem, depletion of personal financial resources, family problems, potential loss of position or status at work, lack of understanding about physical limitations, and lack of information about the workers' compensation system.³

Studies have shown that the longer an employee is away from work, the less likely he or she will ever return to full duty work status. Employees who return to work in a modified or alternate duty capacity are likely to recover more quickly and with less impairment. Additionally, employees who are offered modified regular duties, or alternative duties, while they are recuperating maintain higher levels of self-esteem and are less likely to become treatment dependent.^{2,3,4,5,6}

A return to work policy and procedures, coordination among the claims and return to work coordinators, the employee's supervisor, the human resources officer, the

claims adjuster, and the treating physician are necessary to overcome any barriers that may exist. The return to work program provides a proactive approach to assist employees to return to full duty as quickly as possible.^{2,7}

INTERRELATIONSHIPS OF THE ADA, FMLA AND WORKERS' COMPENSATION IN RTW PROGRAMS

The Texas Workers' Compensation Act was enacted in part to provide the mechanism for an injured worker who sustains a compensable injury in the course and scope of employment to receive medical and income benefits. The Americans with Disabilities Act (ADA) was enacted to protect people from discrimination on the basis of disability. The Family Medical Leave Act (FMLA) was enacted to provide job security to employees who have a serious medical condition or who must meet their personal and family obligations and tend to vital needs at home. These laws serve different purposes. However, they interrelate in a return to work context when an employee who sustains a compensable injury in the course and scope of employment also meets the criteria for protection under the ADA and/or the FMLA.

A return to work program must be in compliance with the Americans with Disabilities Act protections afforded a qualified individual with disability. The return to work program must also be in compliance with the Family Medical Leave Act protections afforded an eligible employee who has a serious medical condition. When the qualifying disability or serious medical condition is sustained in the course and scope of employment and state workers' compensation laws conflict with the Americans with Disabilities Act and/or the Family Medical Leave Act, the federal requirements and regulations supersede state law. It is also important to note that when the Americans with Disabilities Act offers greater protection to an employee than the Family and Medical Leave Act when both apply, the greater protections afforded by the ADA controls.

The discussion below summarizes the Americans with Disabilities Act and Family Medical Leave Act provisions that relate to a return to work program for employees. The discussion does not present all ADA or FMLA requirements, and state agencies should refer to the respective Acts and associated federal regulations for more specific details. More detailed information is also provided in Volume IV, Section Two, Chapters 3 and 5 of Risk Management for Texas State Agencies.

The Americans with Disabilities Act

The Americans with Disabilities Act⁴ is a comprehensive federal antidiscrimination law designed to remove barriers to employment and increase access to public accommodations and services for individuals with disabilities. The ADA contains five titles that prohibit discrimination in employment, public accommodations, public services, telecommunications, and miscellaneous provisions. With respect to the employment provisions, the ADA requires employers to determine whether reasonable accommodations can be made for qualified persons with disabilities. An individual with a disability, as defined by the ADA, must be able to perform the essential functions of the job with or without reasonable accommodation, in order to be considered a qualified individual with a disability. A more detailed discussion of the Americans with Disabilities Act is contained in Volume IV, Section Two, Chapter 3 of Risk Management for Texas State Agencies.

The following summarizes the interrelationship of the Americans with Disabilities Act as it affects workers' compensation in a return to work context:

- **Individual with Disability** - An employee who sustains a compensable workers' compensation injury is eligible for protection under the ADA if the employee is an "individual with a disability" that meets one of the following criteria:

- A physical or mental impairment that substantially limits one or more major life activities,
- A record of such an impairment, or
- Is regarded by the employer as having an impairment.

If none of the above three criteria applies, then the ADA does not apply to the injured employee.

- **Essential Functions and Reasonable Accommodation** - Injured employees who meet the above definition of "individual with a disability" are covered under the ADA if the employee can perform the "essential functions of the job" "with or without reasonable accommodation".
- **Substantially Limits a Major Life Activity** - A work-related injury must cause physical or mental impairments severe enough to "substantially limit" a major life activity in order for the ADA to apply. Most job-related injuries cause non-chronic impairments which heal within a short period of time

with little or no long-term or permanent impact. Such injuries in most circumstances are not considered disabilities under the ADA.

- **Disability** - The fact that an employee is awarded workers' compensation benefits, has disability as defined by the Texas Workers' Compensation Act, or is assigned an impairment rating by a physician under the workers' compensation system, does not automatically establish that the employee is protected by the ADA. "Disability" under state workers' compensation law is defined differently than disability under the ADA, because the state workers' compensation law serves a different purpose.
- **Regarded as Having a Record of Impairment** - An employee who is seriously injured and is unable to work for an extensive period of time may be regarded as "having a record of" a substantially limiting impairment. If an impairment or condition caused by a job-related injury does not substantially limit an employee's ability to work, but the employer regards the individual as having an impairment that makes the employee unable to perform a class of jobs, such as "heavy labor", then the employee would be "regarded as having a disability" by the employer.
- **Reasonable Accommodation** - Reasonable accommodations under ADA for an employee include work station modifications and work schedule modifications. Reasonable accommodations may also include reassignment to a vacant position if the employee is qualified to perform the essential functions of the job with or without accommodation. "Alternate duty" jobs or positions are not required to be created by the ADA as a reasonable accommodation. "Heavy duty" tasks which are marginal functions of the job may be reallocated. However, if the employer has vacant light duty positions, then assigning an employee to such a position may be a reasonable accommodation if the employee is a qualified individual with a disability. If the alternate duty position was created as a temporary job, then reassignment to that position need only be for a temporary period, but the temporary nature of the assignment should be communicated in writing to the employee at the outset.
- **Discrimination** - In a return to work program, consideration must be given to potential actions that, under the Americans with Disabilities Act are unlawful. According to the ADA, it is unlawful for a covered entity to:

- discriminate on the basis of disability against a qualified individual with a disability in regard to:
 - (a) recruitment, advertising, and job application procedures;
 - (b) hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (c) rates of pay or any other form of compensation and changes in compensation;
 - (d) job assignments, job classification, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (e) leaves of absence, sick leave, or any other leave;
 - (f) fringe benefits available by virtue of employment, whether or not administered by the covered entity;
 - (g) selection and financial support for training, including: apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;
 - (h) activities sponsored by a covered entity including social and recreational programs; and
 - (i) any other term, condition, or privilege of employment.
- Limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.
- Require a medical examination of an employee unless the medical examination is job related and consistent with business necessity.
- Make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability."

If the injured employee is determined to be a "qualified individual with disability" and afforded protections under the ADA, then the employer may not discriminate against the employee in any employment decisions.

The Family and Medical Leave Act

The Family and Medical Leave Act was enacted to provide federal entitlement to eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons. The Act contains provisions relating to employer coverage;

employee eligibility for the benefits of the law; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and protections for employees who request or take FMLA leave. A more detailed discussion of the Family Medical Leave Act is provided in Volume IV, Section Two, Chapter 5 of Risk Management for Texas State Agencies.

The following summarizes the interrelationship of the Family and Medical Leave Act as it affects workers' compensation in a return to work context:

- **FMLA Leave Entitlement** - The eligible employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period. A state employee is eligible if he or she has been employed by the employer for at least 12 months, for at least 1,250 hours of service during that 12-month period immediately preceding commencement of the leave. A State is considered to be a single public agency, and therefore a single employer. The absence from work must be a period of incapacity of more than three consecutive calendar days. The leave is normally continuous, but may be taken intermittently or on a reduced leave schedule.
- **Serious Health Condition** - A covered employer must grant FMLA leave when the employee is unable to work because of a serious health condition. A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
 - inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity ; or
 - continuing treatment by a health care provider, including any period of incapacity.

The serious health condition may result from injury to the employee either "on or off" the job. The FMLA definition of incapacity includes inability to work or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom. Continuing treatment includes either two visits to a health care provider or one visit followed by a regimen of continuing treatment under the supervision of the health care provider. If the serious health condition to the employee is the result of a compensable injury sustained in the course and scope of employment, the employee may receive workers' compensation benefits while on unpaid FMLA leave.

Comparisons of ADA, FMLA and Workers' Compensation

- **Designation of Leave** - The employer is responsible for designating if leave counts as FMLA leave, based on information provided by the employee. This should be accomplished within two business days of receiving notice that leave is requested. Oral notice is allowed but must be followed in writing no later than the next payday. If the employer designates the leave as FMLA leave, the employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition.
- **Unable to Perform the Functions of the Position** - Under the FMLA, an employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all, or is unable to perform any one of the essential functions of the employee's position as defined by the ADA and federal regulations. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. An employer has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier.
- **Prohibited Acts** - The FMLA states that it is unlawful for any employer to:
 - interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided by the Act;
 - discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by the Act; or
 - discharge or in any manner discriminate against an individual because such individual—
 - (1) has filed any charge, or has instituted or caused to be instituted any proceeding under or related to the Act;
 - (2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the Act; or
 - (3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act.

● **Medical Inquiries or Examinations**

- Under the ADA, an employer may require an employee to submit to a medical examination, or may make inquiries regarding an employee's disability, only if the examination or inquiry is job-related and consistent with business necessity. The employer is prohibited from inquiring whether an employee has a disability, or inquiring about the nature or severity of the disability. If an employee has a job-related injury which appears to affect the employee's ability to perform essential job functions, then a medical examination or inquiry is considered job-related and consistent with business necessity. A medical examination may also be necessary in order for the employer to provide reasonable accommodation. However, the medical examination must be a "job-related" medical examination and not a full physical examination.
- Under FMLA, the employer may require an employee who requests or takes FMLA leave to provide in a timely manner certification issued by a health care provider that states:
 - the date on which the serious health condition commenced;
 - the probable duration of the condition;
 - the appropriate medical facts within the knowledge of the health care provider regarding the condition;
 - the employee is unable to perform the functions of the employee's position; and
 - if intermittent leave or leave on a reduced schedule is involved, the certification may include the medical necessity for the intermittent leave or reduced leave schedule and duration of the intermittent or reduced leave.

However, if the employee is also a qualified individual with a disability under the ADA, and if the serious health condition is also a disability under the ADA, the ADA limits inquiries regarding the disability to those that are job-related and consistent with business necessity, such as the ability to perform the essential functions of the job. In this situation, the request for the certification should be limited to the opinion of the health care provider on whether

the employee could perform the essential functions of the job with or without a reasonable accommodation, and whether the employee would pose a significant harm that could not be reduced to an acceptable level with a reasonable accommodation.

- cannot perform the essential functions of the job the employee holds or desires with or without a reasonable accommodation; or
- would pose a significant risk of substantial harm that could not be reduced to an acceptable level with reasonable accommodation.

- Also under FMLA, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information contained in the health care provider's certification referenced above. The second opinion health care provider may not be employed on a regular basis by the employer. Again, if the employee qualifies for protection under the ADA, the second opinion should be limited as noted above.

- In contrast, under the Texas Workers' Compensation Act, communications with the employee's treating physician regarding the employee's medical condition and medical treatment are normally a function of the employer's insurance carrier rather than the employer. Requests for second medical opinions under the Texas Workers' Compensation Act are made by the insurance carrier and are limited to one every 180 day period, or for spinal surgery second opinions and/or designated doctor appointments. The Texas Workers' Compensation Commission issues required medical examination orders and orders for spinal surgery second opinions and designated doctor appointments.

- The FMLA specifies that an employee who takes FMLA leave is entitled on return from such leave to be restored by the employer to the position of employment held by the employee when the leave commenced; or be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. The employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider that the employee is able to resume work. However, if the employee is also a qualified individual with a disability under the ADA, the certification should be limited to the opinion of the health care provider on whether the employee could perform the essential functions of the job with or without a reasonable accommodation and whether the employee would pose a significant risk of substantial harm that could not be reduced to an acceptable level with a reasonable accommodation.

- Under the Texas Workers' Compensation Act, an employee may not be discharged or in any other manner discriminated against because the employee has:

- **Periodic Status Reports**

- The FMLA does not prohibit an employer from requiring an employee on FMLA leave to periodically report to the employer the status and intention of the employee to return to work. If the employee is disabled under the ADA, the employer may not inquire about the nature or severity of the injury.

- Filed a workers' compensation claim in good faith;
- Hired a lawyer to represent the employee in a claim;
- Instituted or caused to be instituted in good faith a proceeding under the Texas Workers' Compensation Act; or,
- Testified or is about to testify in a proceeding under the Texas Workers' Compensation Act.¹⁰

- **Return to Work**

- Under the ADA, the employer cannot refuse to let a qualified individual with disability return to work because the worker is not fully recovered from the injury unless the employee:

However, an employer may not be in violation of these statutory provisions if the employer terminates an employee for violation of a reasonable absence-control policy provided to employees if the policy is applicable to all employees and if the actions of the employee

described above were not part of the reason for the termination.¹¹

ELEMENTS OF A RETURN TO WORK PROGRAM

● Offers of Alternate Duty in a Return to Work Program

- An employer may not require an employee to return to work during FMLA leave, even if the health care provider treating the employee certifies the employee is able to return to an "alternate duty" job. The employee may decline the employer's offer of an alternate duty job and remain on leave.
- However, the Texas Workers' Compensation Act allows income benefits to be reduced when an employee refuses a bona fide offer of employment. This reduction in benefits is permitted regardless of FMLA leave status.

● Substitution of Paid Leave

- The employee is entitled to unpaid leave, but the employee may elect, or the employer may require the employee, to substitute accrued paid vacation leave, personal leave, or medical or sick leave for the required leave period. Leave taken with compensatory time or overtime cannot be designated as FMLA leave.
- The current General Appropriations Act, enacted by the 74th Texas Legislature, specifies that employees who take FMLA leave must utilize all available applicable paid vacation and sick leave. However an employee on FMLA leave who is receiving temporary disability benefit payments or workers' compensation benefits shall not be required to utilize paid vacation or sick leave. Under the Texas Workers' Compensation Act, a state employee may elect to use sick leave, and if the use of sick leave is elected, the state employee must exhaust accrued sick leave before receiving workers' compensation income benefits.
- An employee on FMLA leave because of a compensable injury sustained in the course and scope of employment may receive workers' compensation while on unpaid FMLA leave.

Successful return to work programs generally incorporate the following elements into the program:

- Full cooperation of all personnel and functional units or departments to support and participate in the return to work program.
- Analysis and evaluation of accidents, injuries, and workers' compensation claims data through an accurate information system.
- Job hazard analysis that identifies the physical requirements of a job, and that identifies specific hazardous operations to correct unsafe working conditions. The analysis should include an ergonomic evaluation of the duties and work station.
- Job descriptions for all positions that identify the essential functions of the job and its physical requirements.
- Identification of jobs on an on-going basis that are suitable for alternate duty assignments. The physical requirements of the job should be documented. These jobs may be established in a "job bank" of alternate duty jobs.
- Designation of a knowledgeable, proactive return to work coordinator to provide administrative support and direction to plan, lead, control, and monitor return to work program activities. For many state agencies, it may be advantageous for the return to work coordinator to also perform the duties of workers' compensation claims coordinator.
- Return to work policy and procedures that are consistently applied across all functional operations of the organization, consistently applied to all employees, and in compliance with the ADA, FMLA, and the Texas Workers' Compensation Act.
- Forms (samples included at the end of this chapter) designed to accomplish return to work of employees, including:
 - "Position Description" that identifies the employee's regular job duties and physical requirements of the job, and which assists the treating physician to determine whether or not the employee can perform them, based upon the

physician's evaluation of the employee's physical condition.

- "Certification of Health Care Provider" Form WH-380 (USDOL) that provides the health care provider's certification that the employee is unable to perform the essential functions of the job, the period of time required away from work, and/or the medical necessity of intermittent leave or a reduced leave schedule. (Important Caution: If the employee is disabled as defined under ADA, the employer is prohibited from requiring a medical examination or inquiring as to whether the employee has a disability unless the examination or inquiry is job-related and consistent with business necessity. The employer may make medical inquiries and require fitness for duty exams necessary to determine whether the employee is able to perform the essential functions of the job.)
- "Employer Response to Employee Request for Family or Medical Leave" Form WH-381 (USDOL) that acknowledges FMLA leave and certain terms and conditions of the leave.
- "Return to Work Status" form for periodic status reports regarding the employee's status and intention to return to work, and to identify any limitations or restrictions to duty imposed by the physician.
- On-going education and training of managers, supervisors, and employees regarding the workers' compensation system, FMLA, ADA, and the return to work program.
- Early intervention and prompt, sympathetic regard for injured employees, often referred to as the "caring employer concept".
- Written communications to inform and educate newly hired employees of the agency's return to work program.
- Temporary assignments that take into consideration the employee's physical capabilities resulting from the medical condition and restrictions to duty specified by the health care provider.
- Documents and information obtained from an employee or a health care provider of that employee may contain medical information which is confidential

under law. Such information must be kept in a file separate from an application for employment file and in a manner that will ensure its confidentiality.

Return to Work Duty Assignments

Three distinct categories of duty status are applicable to the return to work program:

- Full Duty - Performance of all duties and tasks of the position for which the employee is employed. Full duty entails performing all essential and non-essential functions of the employee's regular job.
- Modified Duty - Performance of all of the essential functions, but only a portion of the non-essential functions and tasks of the regular job duties for which the employee is employed. Modified duty allows the employee to return to current employment in his or her regular job, and perform those duties and tasks that are within the capabilities of the employee, given the restrictions to duty imposed by the treating physician. Modified duty is a temporary arrangement until the injured employee can resume full duty. If the employee is a qualified individual with a disability as defined under the Americans with Disabilities Act, then modified duty may become a permanent arrangement as a reasonable accommodation, if the accommodation does not create an undue hardship on the agency.
- Alternate Duty - Performance of the essential functions of a job or position other than the position for which the employee is employed. Alternate duty allows the employee to temporarily perform other duties and tasks are within the restrictions to duty imposed by the treating doctor. Such alternate duty may be physically located in the same facility or in some other facility. Alternate duty is a temporary arrangement until the injured employee can resume full activities of his/her regular job. If the employee is a qualified individual with a disability as defined under the Americans with Disabilities Act, then alternate duty may become a permanent arrangement as a reasonable accommodation, if the accommodation does not create an undue hardship on the agency.

Alternate duty is intended to be a temporary assignment for a limited period of time. The duration of the assignment should be communicated to the employee at the outset of the assignment. The intent of the transitional duty assignment is twofold:

- To provide an interim means, prior to complete recovery from an injury, for the employee to return to the workplace in a productive capacity.
- To reduce the amount of indemnity payments (temporary income benefits) that are paid by the state under the workers' compensation program.

Temporary assignments are not intended to displace other employees, nor are they intended to consist of menial tasks or simply "busy work". The temporary assignment should consist of duties and tasks that constitute productive work for the agency.

Types of Modifications

Different types of modifications can be made to a job that can provide a temporary assignment for an employee. Some of these modification types are:

- Modify non-essential duties and tasks of the job to meet the injured employee's functional capacities as determined by the treating physician. This may involve a temporary reassignment of non-essential functions that the employee is unable to perform to another employee.
- Modify the work site or purchase equipment to enable the employee to perform essential job functions, if the employee qualifies under ADA, and the modification does not create an undue hardship. The Job Accommodation Network estimates that 80% of accommodations cost less than \$500, and for every dollar spent on an accommodation, the employer receives nine dollars back. Examples of such modifications are:
 - Raising or lowering furniture
 - Telephone headsets
 - Adaptive light switches
 - Addition of a detachable extension arm on a rake
- Modify the work schedule which allows the employee to work reduced hours, attend doctor and physical therapy appointments, and receive rehabilitation services.

The length of time that an employee may remain off work depends upon statutory requirements and upon business necessity to have the employee's position filled. If FMLA leave is designated, then the employee is entitled to a total of 12 weeks of leave annually, which may be taken at one time, or may be intermittent if certified by a health care provider that such intermittent leave is medically necessary. Neither the ADA nor Texas Workers' Compensation Act address duration of leave. Extending the length of leave beyond 12 weeks may be required as a reasonable accommodation under the ADA.

If all statutory requirements for leave time have been honored, and the employee has not returned to work, then business necessity of having the position filled may dictate that discontinuing employment is in the best interests of the agency. Statutory requirements that address accrued sick leave, extended sick leave and/or emergency leave, reasonable accommodations under the ADA, and internal agency policies regarding unpaid leave of absences should be considered. Before arriving at such a decision, the factual situation should be reviewed by legal counsel.

The length of time that an employee may be allowed to work in a temporary assignment should also be based on the business necessity of having the employee's position filled. In most cases, a full recovery can be expected within a thirty-day time period. However, more serious injuries may require longer periods of time. Therefore, each case should be handled on a case-by-case basis, and each employee informed at the outset of the duration of the temporary assignment.

The temporary assignment of an injured employee should be terminated prior to the end of the assignment when any one of the following circumstances occurs. The employee:

- Is authorized to return to full duty, with or without reasonable accommodation, by the treating physician;
- Finds other employment outside of the agency; or
- Is dismissed from employment by the agency.

At the end of a temporary assignment period, the agency should have the employee obtain from the health care provider documentation concerning the employee's duty status. If the employee cannot return to full duty but meets the requirements of the ADA and can perform the essential functions of the job, the agency should determine whether a reasonable accommodation can be made. If the employee cannot return to full duty and does not meet the

Duration of Leave and Temporary Assignments

requirements of the ADA, the employee may be considered for dismissal from employment.

Importance of Timely Communications

During the period of time an employee is on FMLA leave and/or workers' compensation lost time, there are several actions that the employee's supervisor, claims coordinator and/or return to work coordinator may take to help reduce the amount of time that the employee remains off work. These actions involve timely communications with the employee and claims adjuster. Close coordination and cooperation should be maintained between the supervisor and claims and/or return to work coordinator to routinely communicate with the employee. Such coordination and communications should include:

- Expressions of sincere regard for the injured employee's quick recovery and concern for the employee to return to productive work. Inform the employee that his or her efforts are needed by the team.
- Prompt initiation of benefits by processing documents and forms.
- Provide complete and timely information to the employee regarding the workers' compensation system or the ADA and FMLA, as appropriate.
- Frequent coordination with an employee on workers' compensation regarding any questions or requests for assistance.
- Appropriate communication with the health care provider regarding functional abilities, limitations and work restrictions.
- The importance of following the instructions of the health care provider while off work and during a temporary assignment.
- Information concerning the return to work program.

SAMPLE RETURN TO WORK POLICY AND PROCEDURES

The following pages provide a sample policy and procedures that a state agency may incorporate into a return to work program. This "model" return to work program should be customized to the specific needs of the agency.

Return to Work Policy Statement

It is the policy of the (Agency name) to provide a return to work program as the means to return employees to meaningful, productive employment following injury or illness. In order to provide the highest level of quality service to the citizens of Texas, it is necessary for every employee of the (Agency name) to be available for work, ready, and capable of performing the duties and responsibilities for which the employee was hired.

The return to work program provides opportunities for any employee of this agency who sustains a compensable injury during the course and scope of employment, a disability as defined by the Americans with Disabilities Act, and/or a serious health condition as defined by the Family Medical Leave Act to return to work at full duty. If the employee is not physically capable of returning to full duty, the return to work program provides opportunities when available for the employee to perform a temporary assignment in which the employee's regular position is modified to accommodate the employee's physical capacities, or to perform an alternate duty position.

This return to work program shall not be construed as recognition by this agency, its management, or its employees that any employee who participates in the program has a disability as defined by the Americans with Disabilities Act of 1990. If an employee sustains an injury or illness that results in a disability under the ADA, it is the employee's responsibility to inform his or her supervisor or a person in a responsible management position when a disability under the ADA exists and that a reasonable accommodation is necessary to perform the essential functions of his or her job.

Specific procedures shall be provided to guide all employees regarding the return to work program. All employees, divisions, and facilities of the (Agency name) are expected to support and fully comply with this policy and the procedures provided to implement this policy.

(Signature of Agency Head)

(Date)

Return to Work Procedures

Definitions - The following definitions apply to this procedure:

1. Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves:
 - inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity ; or
 - continuing treatment by a health care provider, including a period of incapacity.
2. FMLA Leave - Federal leave entitlement of up to 12 weeks of unpaid leave when an eligible employee is unable to work because of a serious health condition. The absence from work must be a period of incapacity of more than three consecutive calendar days. The leave is normally continuous, but may be taken intermittently or on a reduced leave schedule.
3. Lost Time - Time spent away from work at the direction of the treating doctor as a result of a compensable injury sustained in the course and scope of employment. The term does not include time worked in a temporary assignment.
4. Full Duty - Performance of all duties and tasks of the position for which the employee is employed. Full duty entails performing all essential and non-essential functions of the employee's regular job.
5. Temporary Assignment - Performance of a temporary job assignment that is intended to return an injured employee to work at less than his or her full duties when a compensable injury or serious medical condition prevents the employee from working full duty. Two types of temporary assignments are modified duty and alternate duty.
6. Modified Duty - Performance of all of the essential functions, but only a portion of the non-essential functions and tasks of the regular job duties for which the employee is employed. Modified duty allows the employee to return to current employment in his or her regular job, and perform those duties and tasks that are within the capabilities of the employee, given the restrictions to duty imposed by the treating physician. Modified duty is a temporary arrangement until the injured employee can resume full duty. If the employee is a qualified individual with a disability as defined under the Americans with Disabilities Act, then modified duty may become a permanent arrangement as a reasonable accommodation, if the accommodation does not create an undue hardship on the agency.
7. Alternate Duty - Performance of the essential functions of a job or position other than the position for which the employee is employed. Alternate duty allows the employee to temporarily perform other duties and tasks of that are within the restrictions to duty imposed by the treating doctor. Such alternate duty may be physically located in the same facility or in some other facility. Alternate duty is a temporary arrangement until the injured employee can resume full activities of his/her regular job. If the employee is a qualified individual with a disability as defined under the Americans with Disabilities Act, then alternate duty may become a permanent arrangement as a reasonable accommodation, if the accommodation does not create an undue hardship on the agency.

Prohibited Actions - This return to work policy and procedure shall not be applied to any situation or circumstance in a manner that discriminates on the basis of race, color, sex, national origin, religion, or disability.

It is a violation of the return to work policy, procedures and state or federal law for any employee, supervisor or manager of this agency to:

- Discharge or in any other manner discriminate against an employee of this agency because the employee:
 - Files a workers' compensation claim in good faith;
 - Hires a lawyer to represent the employee in a workers' compensation claim;
 - Institutes or causes to be instituted in good faith a proceeding under the Texas Workers' Compensation Act; or
 - Testifies or is about to testify in a proceeding under the Texas Workers' Compensation Act.
- Discharge or in any other manner discriminate against an employee of this agency because the employee:
 - opposes any practice made unlawful by the FMLA or ADA; or
 - has filed any charge, or has instituted or caused to be instituted any proceeding under or related to the FMLA;
 - has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the FMLA; or
 - has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the FMLA.

- Interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided by the Family Medical Leave Act (FMLA);
- Discriminate on the basis of disability against an employee of this agency who is a qualified individual with a disability under the Americans with Disabilities Act (ADA) in regard to:
 - Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - Leaves of absence, sick leave, or any other leave;
 - Upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - Rates of pay or any other form of compensation, changes in compensation, and fringe benefits available;
 - Selection and financial support for training; or
 - social and recreational activities.
- Limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.
- Require a medical examination of an employee who is disabled as defined under the ADA unless the medical examination is job related and consistent with business necessity.
- Make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability.

Position Descriptions of All Positions - All supervisors and managers are responsible for identifying, documenting and maintaining the essential and non-essential functions in a position description for all positions for which they are responsible. The physical requirements of the position should be included in all position descriptions as either an essential or non-essential functions. All position descriptions shall be reviewed at least annually, and must be submitted for approval to the human resources manager.

Designated Return to Work Coordinator - A return to work coordinator shall be appointed in the _____ Division (Facility/Unit). The return to work coordinator shall be responsible for coordinating all activities associated with the return to work program, unless specific duties are otherwise assigned to another person or position.

Education and Training - The return to work coordinator shall develop, maintain and provide an appropriate training module for inclusion in orientation training for new employees. The return to work coordinator shall also develop, maintain and provide an appropriate refresher training module for presentation to employees on an as needed basis.

Employee Participation in the Return to Work Program - In order for an employee of this agency to be eligible to participate in this return to work program, the employee must have:

1. sustained a compensable injury as defined in the Texas Workers' Compensation Act that results in lost time away from work;
2. a serious health condition as defined by the Family and Medical Leave Act; and/or
3. a disability as defined by the Americans with Disabilities Act.

An employee who meets the above criteria shall be encouraged to participate in the program. However participation by the employee in the program is voluntary and the employee cannot be forced to participate.

Notification of Injury or Illness - An employee who sustains an injury or illness either on or off the job is expected to notify his/or her supervisor, or a person in a management position, that an injury or serious health condition exists. Such notification should occur at the earliest possible time after occurrence of injury or knowledge that a serious health condition exists. Such notification should ideally occur within 24 hours of the injury or when the serious health condition first manifests itself. In order to receive workers' compensation benefits, an employee must give notice of injury within 30 days.

Authorization for Leave and Lost Time - An employee who must miss work due to a compensable injury and/or a serious health condition must be certified or authorized by a health care provider to be off work. It is the employee's responsibility to obtain such certification from the health care provider and to return the certification to his/her supervisor in a timely manner. A "Certification of Physician or Practitioner" form is attached to this procedure for this purpose. If an employee is disabled as defined under the ADA, the request must be job-related, consistent with business necessity and cannot inquire as to the nature or severity of the injury.

In general, the treating health care provider's certification should be provided by the employee to the supervisor according to the following timelines:

1. When the employee knows in advance that FMLA leave is necessary, the certification form should be provided to the supervisor a minimum of three work days prior to the time when leave will commence.
2. When the employee cannot know in advance that leave is necessary, the certification form should be provided to the supervisor within a maximum of three calendar days after the initial visit to the health care provider.

The employee's supervisor shall provide a copy of the employee's position description to employee to take to the health care provider to assist the health care provider to determine whether the employee can perform the essential functions of the job.

Substitution of Paid Leave for Unpaid Leave - If an employee is injured off the job, the current General Appropriations Act requires the employee's accrued annual leave and accrued sick leave must be utilized before unpaid leave is taken. If a compensable work-related injury or illness is involved, the employee is not required to use all accrued annual or sick leave. The employee may elect to use, but may not be required to use, accrued sick leave before receiving workers' compensation temporary income benefits. However, if the employee elects to use sick leave, all accrued sick leave must be exhausted before the employee is entitled to workers' compensation temporary income benefits.

Periodic Status Reports - If an employee is certified by a health care provider to be off work, the employee is required to submit periodic status reports to his/her supervisor to report the employee's status and intention to return to work. Such status reports are required at the time of each scheduled visit with the treating health care provider and are due immediately following the visit. A "Return to Work Status Report" form is attached to this procedure for this purpose. The status report should be provided to the supervisor within 24 hours of the scheduled visit, or if a weekend or holiday is involved, before close of business on the next scheduled workday.

If an employee has returned to work in a temporary assignment, and follow-up health care provider appointments are necessary, the employee shall schedule the appointments to minimize time away from the job. Time away from work for these health care provider

appointments shall be counted against FMLA leave, if designated by the employer.

Communications with the Employee - At the time of first communication with the employee, the return to work coordinator shall provide information to the employee that contains the following, as appropriate:

- The agency's return to work policy and procedures, and appropriate forms.
- If an job-related injury or occupational disease occurs:
 - Notification that the State of Texas provides workers' compensation benefits to employees who sustain compensable job-related injuries and/or occupational diseases;
 - How medical expenses and income payments are made;
 - How employee health benefits are continued;
 - The name, location and telephone number of the local Texas Workers' Compensation Commission's (TWCC) field office and the name of the TWCC ombudsman at that office. The notice should state that the employee has a right to information and assistance from the TWCC ombudsman with his/her claim; and
 - The rights available to the employee under the Texas Workers' Compensation Act.
- For FMLA leave:
 - Information regarding the employee's FMLA leave entitlement;
 - How employee health benefits are continued; and
 - Required certifications from the health care provider.

The return to work coordinator is responsible for maintaining regular, weekly communications with the employee. The purposes of these communications are to: encourage the employee during recuperation from the injury; communicate the value of the employee to the agency; encourage return to work at the earliest possible date; and if the employee is on lost time for a workers' compensation claim, offer assistance to the employee if needed to attend health care provider visits.

Communications with the Workers' Compensation Division - The claims coordinator is responsible for timely submission to the Workers' Compensation Division, Office of the Attorney General and/or to the Texas Workers' Compensation Commission, all required reports and other important documents in the agency's possession regarding a workers' compensation claim.

including the "Certification of Physician or Practitioner" form and "Return to Work Status" form. Timely submission of reports and forms is necessary in order to promptly initiate workers' compensation benefits, or cease payment of benefits when the employee returns to work. All reports and forms shall be submitted in a timely manner in accordance with the requirements of the Texas Workers' Compensation Act.

Temporary Assignment Positions - If an employee is certified by the health care provider to return to work, but in less than full duty, this agency may provide a temporary assignment position to the employee. Directors and managers are responsible for identifying temporary assignment positions to facilitate return to work based on the business necessity of filling the employee's position, the employee's entitlement to FMLA leave, the availability of temporary assignments, and other appropriate factors. These temporary assignments shall be coordinated with the return to work coordinator and/or human resources manager. The maximum length of time that a temporary assignment may last must be based on relevant factors including the business necessity of the employee's original position being filled. Temporary assignment positions shall be identified, assigned and managed on a case by case basis upon the business necessity of the agency. The temporary assignment position shall be documented in a "bona fide offer of employment" letter to the employee.

Bona Fide Offer of Employment - The bona fide offer of employment letter shall include the following information:

- The type of position offered and the specific duties;
- A statement that the agency is aware of and will abide by any physical limitations under which the treating doctor has authorized the employee to return to work;
- The maximum physical requirements of the job;
- The wage rate of the job;
- The location of the temporary assignment;
- The expected duration of the temporary assignment;
- The consequences of not accepting a temporary assignment, in terms of duration and amount of temporary income benefits payable under the Texas Workers' Compensation Act, and if the leave has not been designated by the agency as FMLA leave, the appropriate administrative penalties/disciplinary measures by the agency as specified in the human resources procedures.
- The person to contact if the employee has questions regarding the temporary assignment, job modifications, or questions regarding the FMLA or ADA.

The employee may accept or reject this bona fide offer of employment. The employee should be informed that rejection of the bona fide offer of employment may result in workers' compensation temporary income benefits (if applicable) being stopped by the Workers' Compensation Division as the state's insurance carrier. If the employee accepts the bona fide offer of employment, then the employee shall perform the duties of the temporary assignment position for the term of the assignment or until the employee is able to return to full duty, whichever is sooner. If the employee rejects the bona fide offer of employment, then the employee remains off work until the end of the FMLA leave entitlement period or until the employee is certified by the health care provider to return to full duty.

If the employee is unable to return to full duty by the end of the temporary assignment period and/or by the end of the employee's FMLA leave entitlement period, then the employee's continued employment with the agency shall be considered based upon the business necessity of having the employee's position filled and whether any reasonable accommodation is required under the ADA.

ADDITIONAL RESOURCES FOR TEXAS STATE AGENCIES

Publications

Title 29, Code of Federal Regulations, Part 825, "The Family and Medical Leave Act of 1993"; WH Publication 1419; U.S. Department of Labor, Employment Standards Division, Wage and Hour Division; April, 1995.

Title 29, Code of Federal Regulations, Part 1630, "The Americans with Disabilities Act".

Texas Labor Code Annotated, Title 5, Subtitle A, "Texas Workers' Compensation Act".

Agencies and Organizations Providing Assistance

State Risk Management Division (MS 50)
Texas Workers' Compensation Commission
Southfield Building
4000 South IH-35
Austin, TX 78704
(512) 440-3800
FAX: (512) 440-3910

Texas Commission on Human Rights
701 West 51st Street
P.O. Box 13493
Austin, TX 78711
(512) 837-8534

U.S. Department of Labor
Wage and Hour Division
Federal Building, Room 578
300 East 8th Street
Austin, TX 78701
(512) 482-5638

Equal Employment Opportunity Commission
San Antonio District Office
5410 Fredericksburg Road
San Antonio, TX 78229
(512) 229-4810
1-800-RELAY-TX (TDD Access)

ENDNOTES

1. Welch, Edward M.; Workers' Compensation: Strategies for Lowering Costs and Reducing Workers' Suffering; Selected proceedings from conferences held in Lansing, Michigan on April 22, 1987 and May 12, 1988; LRP Publications; Fort Washington, PA.
2. Deu, Gene L.; Return to Work by Design: Managing the Human and Financial Costs of Disability; Martin-Dennison Press; Stockton, CA.; 1990.
3. Crawford & Company Healthcare Management: "Structured Return to work and the Americans with Disabilities Act"; Healthcost Monitor; Volume 2, Number 3; 1993.
4. The Riskletter; "North Carolina Study Shows Need for Return to work Programs in Workers Comp"; Volume 2, Number 2; 1993.
5. Derebery, V. Jane, M.D., and William H. Tullis, M.D.; "Delayed Recovery in the Patient with a Work Compensable Injury"; Journal of Occupational Medicine; Vol. 25, No. 11; November 1983.
6. Lipson, Fran; "How to Cut the Waste from Workers' Compensation"; HR Magazine; June 1993.
7. Burrous, Nikki L.; Safe Workplace; "Finding the Courage to Use Your Resources (and Control Costs)"; National Council on Compensation

Insurance; Boca Raton, FL; Volume 1, Issue 1; January 1993.

8. 29 Code of Federal Regulations, Part 1630, "The Americans with Disabilities Act".
9. Title 29, Part 825, Code of Federal Regulations, "The Family and Medical Leave Act of 1993"; WH Publication 1419; U.S. Department of Labor, Employment Standards Division, Wage and Hour Division; April, 1995.
10. Texas Workers' Compensation Act, Texas Labor Code Annotated, Title 5, Subtitle A, Section §451.001.
11. Texas Division - Tranter v. Carrozza, 876 S.W. 2d 312 (Tex. 1994), Gifford Hill American, Inc. v. Whittington, 899 S.W. 2d 760 (Tex. App. Amarillo, 1995, no writ), Trevino v. Corrections Corporation of America, 850 S.W. 2d 806 (Tex. App. El Paso, 1993, writ den'd), Palmer v. Miller Brewing Co., 852 S.W. 2d 57 (Tex. App. Ft. Worth, 1993, writ den'd), and Continental Coffee Products Co. v. Cazarez, 903 S.W. 2d 70 (Tex. Ap. Houston [14th Dist.] 1995, writ requested).

CHECKLIST FOR TEXAS STATE AGENCIES

1. Does the agency have a return to work program for employees who sustain injuries in the course and scope of employment, serious health conditions, and disabilities? Yes No
2. Does the return to work program include a policy statement signed by the agency head? Yes No
3. Does the policy statement include a "disclaimer" that the return to work program shall not be construed as recognition that an employee who participates in the program has a disability as defined by the ADA? Yes No
4. Are specific, detailed procedures included to guide the return to work program? Yes No
5. Are the key terms defined in the procedures? Yes No

6. Do the procedures include provisions relating to non-discrimination and prohibited acts? Yes No
7. Do all agency position descriptions identify the essential and nonessential functions of the job, including the physical requirements of the job? Yes No
8. Has a person been designated as the return to work coordinator? Yes No
9. Are provisions made for new and existing employees to receive initial and appropriate follow-up training regarding the return to work program? Yes No
10. Do the procedures include the terms and conditions under which an employee is eligible to participate in the program? Yes No
11. Is a provision included that addresses notification by the employee to the agency regarding the injury, serious health condition or disability? Yes No
12. Does the procedure address authorization or certification of leave and lost time by a health care provider? Yes No
13. Is provision made for the substitution of paid leave for unpaid leave? Yes No
14. Is the employee required by the procedure to provide periodic status reports from the health care provider to the employee's supervisor? Yes No
15. Do the procedures address communications with employees by the supervisor? Yes No
16. Are communications with the Office of the Attorney General, Workers' Compensation Division for workers' compensation claims addressed? Yes No
17. Does the procedure provide for temporary assignment positions to be provided for employees who are certified to return to work at less than full duty? Yes No
18. Are modified duty and alternate duty positions included as temporary assignment positions? Yes No
19. Are temporary assignment position documented in a "bona fide offer of employment"? Yes No
20. Does the procedure specify that the employee may reject a bona fide offer of employment, and the consequences to the employee of such rejection? Yes No
21. Does the procedure address the conditions under which a temporary assignment ends? Yes No
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Certification of Health
Care Provider
(Family and Medical Leave Act of 1993)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



1. Employee's Name

2. Patient's Name (if different from employee)

3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1) ____ (2) ____ (3) ____ (4) ____ (5) ____ (6) ____ , or None of the above ____

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity² if different):

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)? _____

If yes, give the probable duration:

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated² and the likely duration and frequency of episodes of incapacity²:

6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

² "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind? _____

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform:

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment?

8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation? _____

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery? _____

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

(Signature of Health Care Provider)

(Type of Practice)

(Address)

(Telephone number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

(Employee Signature)

(Date)

A "Serious Health Condition" means an illness, injury impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity² of more than three consecutive calendar days (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves:

(1) Treatment³ two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment⁴ under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity² (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity² which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Employer Response to Employee Request for Family or Medical Leave
(Optional use form - see 29 CFR § 825.301)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



(Family and Medical Leave Act of 1993)

(Date)

TO: _____
(Employee's Name)

FROM: _____
(Name of appropriate employer representative)

SUBJECT: Request for Family/Medical Leave

On _____, you notified us of your need to take family/medical leave due to:
(date)

- the birth of a child, or the placement of a child with you for adoption or foster care; or
- a serious health condition that makes you unable to perform the essential functions of your job; or
- a serious health condition affecting your spouse, child, parent, for which you are needed to provide care.

You notified us that you need this leave beginning on _____ and that you expect leave to continue until on or about _____.
(date) (date)

Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are eligible not eligible for leave under the FMLA.
2. The requested leave will will not be counted against your annual FMLA leave entitlement.
3. You will will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____ (insert date) (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is submitted.

4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We will will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used, the following conditions will apply: *(Explain)*
- 5(a). If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: *(Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.)*
- (b) You have a minimum 30-day *(or, indicate longer period, if applicable)* grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We will will not pay your share of health insurance premiums while you are on leave.
- (c) We will will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you will will not be expected to reimburse us for the payments made on your behalf.
6. You will will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until certification is provided.
- 7(a). You are are not a "key employee" as described in § 825.218 of the FMLA regulations. If you are a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us.
- (b) We have have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. *(Explain (a) and/or (b) below. See § 825.219 of the FMLA regulations.)*
8. While on leave, you will will not be required to furnish us with periodic reports every ____ *(Indicate interval of periodic reports, as appropriate for the particular leave situation)* of your status and intent to return to work *(see § 825.309 of the FMLA regulations)*. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you will will not be required to notify us at least two work days prior to the date you intend to report for work.
9. You will will not be required to furnish recertification relating to a serious health condition. *(Explain below, if necessary), including the interval between certifications as prescribed in § 825.308 of the FMLA regulations.)*

RETURN TO WORK STATUS FORM

TO: EXAMINING HEALTH CARE PROVIDER

RE:

Name of Employee

FROM:

Name of State Agency

Social Security Number

It is our desire to assist our employee and your patient to return to work as soon as possible, and to assist him/her in performing essential job functions at this agency. The information you provide on this form is vital to us regarding the:

- A. employee's working without risk of further injury;
- B. provision of a temporary duty assignment if necessary that meets the employee's needs and the needs of this agency;
- C. provision of any temporary reasonable accommodations to aid the employee in performing his/her duties.

If you have any questions regarding the information requested on this form, please contact

Name & Title

Phone Number

TO BE COMPLETED BY PHYSICIAN:
(see reverse side for physical requirements of employee's duties)

Considering this employee's job duties and health condition, this employee may perform work in the following manner:

_____ FULL DUTY (no restrictions) beginning:

Date

_____ TEMPORARY ASSIGNMENT (Modified or Alternate Duty) beginning:

Date

Estimated Length of Temporary Assignment: _____

Full-Time Part-Time (____ hours per day)

(Please indicate restrictions to duty on reverse side)

_____ OFF WORK until re-evaluated, beginning on:

Date

Date of next office visit: _____

Date

Physician's Signature

Date

FOR STATE AGENCY USE:

Temporary duty assignment Begins: _____ Ends: _____

Temporary duty assignment: _____

The specific duties of the temporary assignment must be provided in a written offer of employment.

EMPLOYEE INSTRUCTIONS: Return this form to your supervisor immediately after each visit to your health care provider.

INSTRUCTIONS TO HEALTH CARE PROVIDER:

The physical requirements below, marked with an "X", are those required of the employee in performance of his/her duties. Please mark the indicated column with a response of "Yes" if the employee can accomplish that specific task.

- DUTY - Supervisor indicates with an "X" those that are applicable.
- YES OR NO - Marked by Health Care Provider for each duty indicated by supervisor.

DUTY	REQUIREMENTS	YES	NO	DUTY	REQUIREMENTS	YES	NO
()	Heavy lifting, 45 lbs. & up	___	___	()	Heavy Carrying, 45 lbs. & up	___	___
()	Moderate lifting, 15 - 45 lbs.	___	___	()	Moderate carrying, 15 - 45 lbs.	___	___
()	Light lifting, up to 15 lbs.	___	___	()	Light carrying, up to 15 lbs.	___	___
()	Straight pulling	___	___	()	Pulling hand over hand	___	___
()	Repeated bending	___	___	()	Reaching above shoulders	___	___
()	Simple grasping	___	___	()	Dual simultaneous grasping	___	___
()	Walking	___	___	()	Standing	___	___
()	Sitting	___	___	()	Crawling	___	___
()	Twisting	___	___	()	Kneeling	___	___
()	Pushing	___	___	()	Stooping	___	___
()	Climbing Stairs	___	___	()	Climbing ladders	___	___
()	Operating mechanical equipment	___	___	()	Operating office equipment	___	___
()	Specify: _____			()	Specify: _____		
()	Operating a motor vehicle	___	___	()	Hearing	___	___
()	Speaking	___	___	()	Depth perception needed	___	___
()	Ability to type	___	___				
()	Ability to see	___	___				
()	Ability to write	___	___				
()	Ability to read	___	___				
()	Must be able to intervene with individuals in combative or aggressive situations in an emergency.					___	___
()	Must be able to perform Cardiovascular Pulmonary Resuscitation (CPR) in an emergency.					___	___

OTHER ACTIVITIES SPECIFIED BY SUPERVISOR

- () _____
- () _____

PLEASE SPECIFY ANY ADDITIONAL RESTRICTIONS TO DUTY:

Physician's name (Printed) _____

Physician's Signature _____ Date _____

ADA & FMLA

**AMERICANS WITH DISABILITIES ACT (ADA)
AND
FAMILY AND MEDICAL LEAVE ACT (FMLA)**

INTRODUCTION

This section contains general information about reasonable accommodations as related to the ADA and questions that are frequently asked by employees and employers in working with people with disabilities. The Family and Medical Leave Act is addressed, since it is a consideration when working with persons who have been injured on the job.

TABLE OF CONTENTS

1. What is Reasonable Accommodation?
2. Reasonable Accommodations for Individuals With Psychiatric Disabilities
3. Leave Policies and the ADA, FMLA and Workers' Comp Laws
4. EEOC's ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations
5. Federal Employees Compensation Act and Longshore and Harbour Workers' Act (CDR)

**WHAT IS
REASONABLE
ACCOMMODATION?**

WHAT IS REASONABLE ACCOMMODATION?

Reasonable Accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done that enables a qualified person with a disability to enjoy equal employment opportunities. The Americans With Disabilities Act (ADA) requires Reasonable Accommodation in three aspects of employment:

- 1 To ensure an equal employment opportunity in the application process
- 2 To enable a qualified individual with a disability to perform the essential functions of a job.
- 3 To enable an employee with a disability to enjoy equal benefits and privileges of employment

Reasonable Accommodation is only required for individuals with disabilities who are otherwise qualified for the job for which they are asking accommodations. The ADA does not require the employment of an individual who is not qualified for the job.

- 1 Managers and supervisors must involve the person with the disability in the development of an accommodation
- 2 The ADA does not require an employer to lower production standards

COMMON FORMS OF REASONABLE ACCOMMODATION

1 Job Restructuring If a worker asks that a non-essential function be reassigned or exchanged with another employee, this could be considered a Reasonable Accommodation, in exchange for a task which the worker is physically able to perform. This could include job sharing, altering work schedules, etc.

2 Reassignment to a Vacant Position The ADA does not require that such a reassignment be automatically granted. Rather, an attempt should be made to enable the employee to perform the essential functions of his or her regular job.

However, if this does not prove feasible, the employer does have a duty to offer to transfer the worker to a vacant position (there is no requirement to bump another employee or to create a new job) for which the employee is qualified. If no comparable position is available at the same rate of pay, the employee may be demoted. Promotions, however, are not required as accommodations under the ADA.

3. Acquisition or Modification of Equipment or Devices. Equipment-related accommodations are some of the most simple of accommodations. Information about specialized equipment, including where such equipment can be purchased, is readily available through the Job Accommodation Network (JAN) at 1-800-JAN-7234.

HOW DOES A MANAGER OR SUPERVISOR IDENTIFY A REASONABLE ACCOMMODATION?

1. Identify Barriers to Performance. Ask the person with the disability to clearly identify which tasks of the job are difficult now because of the disability limitations.
2. Identify Possible Accommodations. As previously mentioned, the Job Accommodation Network (JAN) is an outstanding resource for accommodation ideas, as are local vocational rehabilitation specialists, including state and private agencies. Ask the person with the disability what might be of assistance.
3. Assess the Reasonableness of Each Accommodation. The obligation is not to choose the most elaborate or expensive accommodation, but simply to choose one which enables the worker to perform the job effectively. One can evaluate individual accommodations by asking this question. "Does the accommodation enable the person to perform the essential functions of the job to the employer's normal standards?" The individual with the disability does not have to accept the recommendations.

THE ROLE OF LIGHT-DUTY EMPLOYMENT UNDER THE ADA

Many employers provide what is generally referred to as "Light Duty." The ADA does not require that employers create light-duty positions.

To reduce the cost of workers' compensation claims, employers are making an effort to return injured employees back to work as soon as possible. Even when the injured employee is not fully recovered, an employer may create a "light" duty position or modify the job duties to accommodate the employee's physical limitations. Some of these positions place few physical demands on an employee. Where these measures have been implemented, employers often find that the employee is able to return to work more quickly and as a result, their workers' compensation costs are reduced. Further, by reducing the time which the employee is absent from work, the need to hire a temporary employee to fill the position may be reduced. The ability of employers to use light or modified duty positions, however, has been affected by the passage of laws such as the Americans with Disabilities Act ("ADA") and the Family and Medical Leave Act of 1993 ("FMLA").

GENERAL QUESTIONS CONCERNING LIGHT DUTY WORK AND MODIFIED POSITIONS

A Must an employer create a light duty position?

No. The Technical Assistance Manual published by the EEOC to answer questions concerning the ADA, indicates that the ADA does not require an employer to create a light duty position. An exception to this statement exists where the "heavy duty" tasks which the injured worker cannot perform are marginal job functions which may be reallocated to co-workers as part of the reasonable accommodation of job restructuring.

The EEOC noted that most light duty positions involve a totally different job from the job that a worker performed before the injury. Further, if a vacant light duty position exists for which the employee is qualified, the employer may make a reasonable accommodation by reassigning the worker to that position. However, if the position was created as a temporary job, the reassignment need only be for a temporary period.

B Can the employer require the employee to accept the light duty position?

No. Where the employee is eligible for FMLA, an employer may not require an employee to take a light duty assignment in lieu of taking leave under the FMLA and may not require an employee with a serious health condition to return to light duty work if that employee still has the condition

C Can the employer require the employee to accept light duty work under the TWCA?

Yes, under certain circumstances. Employers may require employees to work light duty jobs if the employee's doctor has released them to perform light duty work. However, if an employee is eligible for FMLA leave, employers may not require injured employees to take light duty work while eligible for FMLA

D Is an employer required to keep a light duty position open indefinitely?

Generally no. The EEOC has recognized that employers can place time limitations on light duty positions. However, where an employer permits other employees to remain on light duty for extended periods, the employer may have an obligation to accommodate injured employees for a similar period

REASONABLE ACCOMMODATIONS

FOR INDIVIDUALS WITH

PSYCHIATRIC DISABILITIES

REASONABLE ACCOMMODATIONS FOR
INDIVIDUALS WITH
PSYCHIATRIC DISABILITIES

1. ☹ **Problem:** Decreased Concentration

☺ **Solutions:**

- Provide room dividers, a private work space, or an enclosed office.
- Modify the environment in other ways to decrease distractions; for example, move noisy equipment as far away from the person's work space as possible.
- Provide regular, scheduled supervision to establish hourly or daily goals.
- Change when or how a task is performed; for example, re-schedule the time a task is performed to coincide with the worker's peak performance hours.
- Allow the person to perform part or all of the work after hours or when others are not around.
- Allow the person to perform part or all of the work off-site or at home and provide necessary equipment.
- Provide written instructions on specific tasks so the employee can refer to them.
- Put each work request in writing and leave in a "to do" box.
- Provide specialized, individualized, or additional training.
- Teach new skills in installments rather than all at once.
- Allow extra time to complete applications and standardized testing and/or to learn new tasks.
- Allow the use of a job coach in the application and interview process.
- Redistribute tasks among employees with the same responsibilities, so each can do more of one type of job task than a lot of different tasks.
- Eliminate the number of simultaneous tasks.

- Exchange or remove nonessential functions of a job.
- Allow longer or more frequent breaks.

2. ☹ **Problem: Inability to Maintain Stamina**

☺ **Solutions:**

- Change when or how a task is accomplished; for example, re-schedule an essential function of a job to a time during the work day when the individual is most productive.
- Allow an extended day to provide additional breaks or rest periods.
- Allow flexible hours, a part-time or modified work schedule, and back-up coverage.
- Teach new skills in installments.
- Distribute tasks throughout the day.
- Provide extra time to finish examinations or projects.
- Institute a job-sharing policy.

3. ☹ **Problem: Difficulty Managing Time**

☺ **Solutions:**

- Allow the use of a job coach to help the worker apply time-management skills on the job.
- Provide daily supervision to work out a plan for what will get accomplished during the day and to establish priorities and/or daily or short-term goals.
- Utilize computer technology to help the employee structure time.
- Provide a room divider or a quiet location to decrease distractions.
- Provide written, detailed, clear explanations of job assignments and deadlines and consequences of not meeting these requirements.
- Reassign non-essential functions of a job.

4. ☒ **Problem: Difficulty with Problem Solving**

☺ **Solutions:**

- Providing on-going consultation and problem-solving; for example, provide assistance by the Human Resources Department to assist the employee in choosing insurance and health providers or in filling out work-related forms. Assistance may also include daily or frequent planning sessions with a supervisor.
- Break complex tasks down into simpler components.
- Exchange problematic non-essential tasks with another employee.

5. ☒ **Problem: Problems with Interpersonal Communication**

☺ **Solutions:**

- Allow use of the telephone under specified conditions to call the job coach or other supportive person.
- Provide more frequent supervision to discuss problems as they arise.
- Provide detailed, written work requests along with instructions if verbal instructions increase confusion or anxiety.
- Allow written answers to questions during the interview process if verbal communication is difficult.

6. ☒ **Problem: Side Effects of Medications**

☺ **Solutions:**

- Allow flexible scheduling; for example, permit the employee to take a certain number of hours off each week or change working hours to accommodate medical appointments or emotional needs.
- Provide extra unpaid leave or the use of accrued time for necessary medical or psychiatric treatment.
- Allow a part-time or modified work schedule, especially when the person is returning to work after an episode of mental illness.

- Provide any of the other accommodations listed under "Inability to Maintain Stamina" if fatigue is a problem.
- Provide any of the accommodations under "Decreased Concentration", "Difficulty Managing Time", or "Difficulty with Problem-Solving" if dulled senses is a problem.
- Reassign, eliminate, or exchange non-essential functions of a job.
- Provide specialized equipment; for example, a computer with audible sound for a computer operator who has blurred vision due to the side effects of medication.

**LEAVE POLICIES AND THE
ADA, FMLA
AND
WORKERS' COMP LAWS**

LEAVE POLICIES AND THE ADA, FMLA, AND WORKERS' COMP LAWS

INTRODUCTION

Recently there has been an expansion of laws pertaining to employee protection and employee leave. Employers today must consider and deal with a number of complex compliance issues when considering employee leave questions. More particularly, the interrelationship between such statutes as the Texas Workers' Compensation Act ("WC"), the Americans with Disabilities Act ("ADA"), and the Family and Medical Leave Act ("FMLA"), has created numerous questions for employers dealing with injury/disability and leave issues.

FAMILY AND MEDICAL LEAVE ACT ("FMLA")

Generally speaking, the FMLA entitles an eligible employee to take up to a total of twelve (12) work weeks of unpaid leave during any twelve-month period for specific family or medical reasons, such as the birth or adoption of a child and the care of such child, to care for a spouse or an immediate family member with a serious health condition, or because the employee's own serious health condition makes him or her unable to perform the functions of his or her job. While on FMLA leave, the employee is entitled to have his or her health benefits maintained as if he or she had continued to work. FMLA leave is typically "job-protected." That is, an employee has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave. Also, the taking of FMLA leave may not result in the loss of any benefit that accrued prior to the start of such leave.

AMERICANS WITH DISABILITIES ACT ("ADA")

The ADA was enacted in 1990 and became effective in August 1992 for all employers of 25 or more employees and in August 1994 for all employers of 15 or more employees. The ADA was passed to provide protection for the disabled in employment, public services, public accommodations, services operated by private entities and telecommunications.

The employment title, (Title I), specifically prohibits discrimination against disabled individuals in the employment process, with ongoing employment issues and in the termination of employment. The ADA protects qualified individuals with disabilities who, with or without reasonable accommodation, can perform the essential functions of a

job. Under the ADA an employer may have to provide reasonable accommodation to disabled applicants/employees unless the employer can show that to do so would create an undue hardship for the employer.

TEXAS WORKERS' COMPENSATION ACT

The Texas Workers' Compensation Act was enacted to provide injured employees with medical treatment and income replacement for time off of work due to an injury sustained on the job. Pursuant to the Act, a qualifying employee (or his or her legal beneficiary, where applicable) may be eligible for medical benefits, income benefits, death benefits and/or burial benefits based on a compensable injury. Further, with respect specifically to income benefits, the Act provides for four different levels of income benefits: temporary income benefits; impairment income benefits; supplemental income benefits; and, lifetime income benefits.

COVERED EMPLOYEES

ADA: Employers with 15 or more employees are covered under the ADA. (The ADA was effective on July 26, 1992 for employers with 25 or more employees, and on July 26, 1994 for employers with 15 to 24 employees).

FMLA: An employee of a covered employer is eligible for FMLA leave if he has been employed by the employer for at least one year, has been employed for at least 1250 hours of service during the 12 month period immediately preceding the commencement of the leave and is employed at a worksite where (50 or more employees are employed by the employer within 75 miles of that worksite).

WC: Any employer with workers' compensation insurance is covered by the Act, although the non-retaliation provisions have been held to apply to non-subscribers as well. Additionally, employees of non-subscribers are covered by the non-retaliation provisions of the Act.

DEFINING PROTECTION ELIGIBILITY

ADA: The protection and benefits of the ADA are available only to individuals who are determined to be disabled. A person is disabled if (1) they have a physical or mental impairment that "substantially limits one or more of their major life activities," (2) they have a record of such an impairment; or (3) if they are regarded as having such an impairment.

FMLA: An employee is entitled to a leave of absence under the FMLA for their own or their family member's "serious health condition," provided such condition requires an absence from work of more than three calendar days.

WC: Coverage is triggered under workers' compensation for an "injury" which arises out of the "course and scope of employment," regardless of fault or liability

EMPLOYER RIGHTS AND OBLIGATIONS

ADA: Under the ADA, medical examinations or inquiries can be required of applicants on if (1) the applicant is offered employment contingent on passing the physical, (2) all entering employees in a category are subject to the examination, and (3) the examination is job-related and consistent with business necessity. An employer may inquire only about an applicant's ability to perform specific job-related functions and not whether the applicant is disabled or has filed workers' compensation claims. Records of medical examinations or inquiries must be maintained in separate confidential medical records files and not in the employees' personnel files.

WC: Employers can no longer require that a select group of applicants or employees, presumably those with histories of workers' compensation injury or illness, undergo medical questioning and examination because such screening would violate the ADA. Medical questions and examinations are allowed only if all accepted applicants are questioned or examined. Under the ADA, medical information, including that generated through workers' compensation programs, may not be placed in an employee's personnel file.

EMPLOYEE LEAVE OF ABSENCE

ADA: Under the FMLA, an employer may require medical certification from an employee requesting medical leave. The ADA, however, prohibits an employer from inquiring as to whether an individual is disabled or inquiring into the nature and severity of such disability. Under the ADA, an employer cannot require a current employee to submit to a medical examination unless the examination is "job-related and consistent with business necessity." The ADA imposes an affirmative duty on employers to "reasonably accommodate" qualified individuals with disabilities who, either with or without such reasonable accommodation, can perform the essential functions of their jobs. Reasonable accommodation includes job restructuring, part-time or modified work schedules, job reassignments and the acquisition or modification of equipment. A medical examination may be necessary to determine a suitable accommodation. Depending on the particular circumstances of the employer, unpaid leave under the FMLA, may or may not satisfy the duty of reasonable accommodation. There may be, at the least, a good argument that if an employer must give leave time as a reasonable accommodation, the length of time of such obligation is 12 weeks, as is consistent with FMLA.

(1) The reasonable accommodation cannot impose an undue hardship on the employer. An undue hardship is an action requiring a significant difficulty or expense.

(2) The reasonable accommodation cannot pose a direct threat to the health or safety of other employees. A direct threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

Discrimination against an employee on the basis of his or her filing a workers' compensation claim, hiring an attorney, or participating in a workers' compensation proceeding is prohibited by statute. The statute enforcing this states that:

A person may not discharge or in any other manner discriminate against an employee because the employee has:

- (1) filed a workers' compensation claim in good faith;
- (2) hired a lawyer to represent the employee in a claim;
- (3) instituted or caused to be instituted in good faith a proceeding under Subtitle A; or
- (4) testified or is about to testify in a proceeding under Subtitle A.

The burden of proving that the workers' compensation claim was the reason the employee was fired is on the employee.

**EEOC GUIDANCE
ON
PREEMPLOYMENT
DISABILITY-RELATED ISSUES
AND
MEDICAL EXAMINATIONS
UNDER THE ADA**



ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations

Introduction

Under the Americans with Disabilities Act of 1990 (the "ADA"),¹ an employer may ask disability-related questions and require medical examinations of an applicant only after the applicant has been given a conditional job offer. This Enforcement Guidance explains these ADA provisions.²

Background

In the past, some employment applications and interviews requested information about an applicant's physical and/or mental condition. This information was often used to exclude applicants with disabilities before their ability to perform the job was even evaluated.

For example, applicants may have been asked about their medical conditions at the same time that they were engaging in other parts of the application process, such as completing a written job application or having references checked. If an applicant was then rejected, s/he did not necessarily know whether s/he was rejected because of disability, or because of insufficient skills or experience or a bad report from a reference.

As a result, Congress established a process within the ADA to isolate an employer's consideration of an applicant's non-medical qualifications from any consideration of the applicant's medical condition.

¹ Codified as amended at 42 U.S.C. §§ 12101-17, 12201-13 (Supp. V 1994).

² The analysis in this guidance also applies to federal sector complaints of non-affirmative action employment discrimination arising under section 501 of the Rehabilitation Act of 1973. 29 U.S.C.A. § 791(g) (West Supp. 1994). In addition, the analysis applies to complaints of non-affirmative action employment discrimination arising under section 503 and employment discrimination under section 504 of the Rehabilitation Act. 29 U.S.C.A. §§ 793(d), 794(d) (West Supp. 1994).

The Statutory and Regulatory Framework

Under the law, an employer may not ask disability-related questions and may not conduct medical examinations until *after* it makes a conditional job offer to the applicant.³ This helps ensure that an applicant's possible hidden disability (including a prior history of a disability) is not considered before the employer evaluates an applicant's non-medical qualifications. An employer may not ask disability-related questions or require a medical examination pre-offer *even if* it intends to look at the answers or results only at the post-offer stage.

Although employers may not ask disability-related questions or require medical examinations at the pre-offer stage, they *may* do a wide variety of things to evaluate whether an applicant is qualified for the job, including the following:

- Employers *may* ask about an applicant's ability to perform specific job functions. For example, an employer may state the physical requirements of a job (such as the ability to lift a certain amount of weight, or the ability to climb ladders), and ask if an applicant can satisfy these requirements.
- Employers *may* ask about an applicant's non-medical qualifications and skills, such as the applicant's education, work history, and required certifications and licenses.
- Employers *may* ask applicants to describe or demonstrate how they would perform job tasks.

Once a conditional job offer is made, the employer may ask disability-related questions and require medical examinations as long as this is done for all entering employees in that job category. If the employer rejects the applicant after a disability-related question or medical examination, investigators will closely scrutinize whether the rejection was based on the results of that question or examination.

If the question or examination screens out an individual because of a disability, the employer must demonstrate that the reason for the rejection is "job-related and consistent with business necessity."⁴

³ 42 U.S.C. § 12112(d)(2); 29 C.F.R. §§ 1630.13(a), 1630.14(a),(b).

⁴ 42 U.S.C. § 12112(b); 29 C.F.R. §§ 1630.10, 1630.14(b)(3).

In addition, if the individual is screened out for safety reasons, the employer must demonstrate that the individual poses a "direct threat." This means that the individual poses a significant risk of substantial harm to him/herself or others, and that the risk cannot be reduced below the direct threat level through reasonable accommodation.⁵

Medical information must be kept confidential.⁶ The ADA contains narrow exceptions for disclosing specific, limited information to supervisors and managers, first aid and safety personnel, and government officials investigating compliance with the ADA. Employers may also disclose medical information to state workers' compensation offices, state second injury funds, or workers' compensation insurance carriers in accordance with state workers' compensation laws⁷ and may use the medical information for insurance purposes.⁸

⁵ 42 U.S.C. § 12113(b); See 29 C.F.R. pt. 1630 app. § 1630.2(r).

⁶ 29 C.F.R. § 1630.14(b)(1)(i-iii).

⁷ See 42 U.S.C. § 12201(b); 29 C.F.R. pt. 1630 app. § 1630.14(b).

⁸ See 42 U.S.C. § 12201(c); 29 C.F.R. pt. 1630 app. § 1630.14(b). For example, an employer may submit medical information to the company's health insurance carrier if the information is needed to administer a health insurance plan in accordance with § 501(c) of the ADA.

The Pre-Offer Stage

What is a Disability-Related Question?

Definition: "Disability-Related Question" means a question that is *likely to elicit* information about a disability.

At the pre-offer stage, an employer cannot ask questions that are *likely to elicit* information about a disability. This includes directly asking whether an applicant has a particular disability. It also means that an employer cannot ask questions that are *closely related* to disability.⁹

On the other hand, if there are many possible answers to a question and only some of those answers would contain disability-related information, that question is not "disability-related."¹⁰

Below are some commonly asked questions about this area of the law.

- May an employer ask whether an applicant can perform the job?

Yes. An employer may ask whether applicants can perform any or all job functions, including whether applicants can perform job functions "with or without reasonable accommodation."¹¹

⁹ Of course, an employer can always ask about an applicant's ability to perform the job.

¹⁰ Sometimes, applicants disclose disability-related information in responding to an otherwise lawful pre-offer question. Although the employer has not asked an unlawful question, it still cannot refuse to hire an applicant based on disability unless the reason is "job-related and consistent with business necessity."

¹¹ However, an employer cannot ask a question in a manner that requires the individual to disclose the need for reasonable accommodation. For example, as described later in this guidance, an employer may not ask, "Can you do these functions with ___ without ___ reasonable accommodation? (Check One)"

- **May an employer ask applicants to describe or demonstrate how they would perform the job (including any needed reasonable accommodations)?**

Yes. An employer may ask applicants to describe how they would perform any or all job functions, as long as all applicants in the job category are asked to do this.

Employers should remember that, if an applicant says that s/he will need a reasonable accommodation to do a job demonstration, the employer must either:

- provide a reasonable accommodation that does not create an undue hardship; or
- allow the applicant to simply describe how s/he would perform the job function.

- **May an employer ask a particular applicant to describe or demonstrate how s/he would perform the job, if other applicants aren't asked to do this?**

When an employer could reasonably believe that an applicant will not be able to perform a job function because of a known disability, the employer may ask that particular applicant to describe or demonstrate how s/he would perform the function. An applicant's disability would be a "known disability" either because it is obvious (for example, the applicant uses a wheelchair), or because the applicant has voluntarily disclosed that s/he has a hidden disability.

- **May an employer ask applicants whether they will need reasonable accommodation for the hiring process?**

Yes. An employer may tell applicants what the hiring process involves (for example, an interview, timed written test, or job demonstration), and may ask applicants whether they will need a reasonable accommodation for this process.

- May an employer ask an applicant for documentation of his/her disability when the applicant requests reasonable accommodation for the hiring process?

Yes. If the need for accommodation is not obvious, an employer may ask an applicant for *reasonable* documentation about his/her disability if the applicant requests reasonable accommodation for the hiring process (such as a request for the employer to reformat an examination, or a request for an accommodation in connection with a job demonstration). The employer is entitled to know that the applicant has a covered disability and that s/he needs an accommodation.

So, the applicant may be required to provide documentation from an appropriate professional, such as a doctor or a rehabilitation counselor, concerning the applicant's disability and functional limitations.

- May an employer ask applicants whether they will need reasonable accommodation to perform the functions of the job?

In general, an employer may not ask questions on an application or in an interview about whether an applicant will need reasonable accommodation for a job. This is because these questions are likely to elicit whether the applicant has a disability (generally, only people who have disabilities will need reasonable accommodations).

Example: An employment application may not ask, "Do you need reasonable accommodation to perform this job?"

Example: An employment application may not ask, "Can you do these functions with ___ without ___ reasonable accommodation? (Check One)"

Example: An applicant with no known disability is being interviewed for a job. He has not asked for any reasonable accommodation, either for the application process or for the job. The employer may not ask him, "Will you need reasonable accommodation to perform this job?"

However, when an employer could reasonably believe that an applicant will need reasonable accommodation to perform the functions of the job, the employer may ask that applicant certain limited questions. Specifically, the employer may ask *whether s/he needs reasonable accommodation* and *what type of reasonable accommodation* would be needed to perform the

functions of the job.¹² The employer could ask these questions if:

- the employer reasonably believes the applicant will need reasonable accommodation because of an obvious disability;
- the employer reasonably believes the applicant will need reasonable accommodation because of a hidden disability that the applicant has voluntarily disclosed to the employer; or
- an applicant has voluntarily disclosed to the employer that s/he needs reasonable accommodation to perform the job.

Example: An individual with diabetes applying for a receptionist position voluntarily discloses that she will need periodic breaks to take medication. The employer may ask the applicant questions about the reasonable accommodation such as how often she will need breaks, and how long the breaks must be. Of course, the employer may not ask any questions about the underlying physical condition.

Example: An applicant with a severe visual impairment applies for a job involving computer work. The employer may ask whether he will need reasonable accommodation to perform the functions of the job. If the applicant answers "no," the employer may not ask additional questions about reasonable accommodation (although, of course, the employer could ask the applicant to describe or demonstrate performance). If the applicant says that he *will* need accommodation, the employer may ask questions about the type of required accommodation such as, "What will you need?" If the applicant says he needs software that increases the size of text on the computer screen, the employer may ask questions such as, "Who makes that software?" "Do you need a particular brand?" or "Is that software compatible with our computers?" However, the employer may not ask questions about the applicant's underlying condition. In addition, the employer may not ask reasonable accommodation questions that are unrelated to job functions such as, "Will you need reasonable accommodation to get to the cafeteria?"

¹² It should be noted that an employer might lawfully ask questions about the need for reasonable accommodation on the job and then fail to hire the applicant. The rejected applicant may then claim that the refusal to hire was based on the need for accommodation. Under these facts, the EEOC will consider the employer's pre-offer questions as evidence that the employer *knew* about the need for reasonable accommodation, and will carefully scrutinize whether the need to provide accommodation was a reason for rejecting the applicant.

An employer may only ask about reasonable accommodation that is needed now or in the near future. An applicant is not required to disclose reasonable accommodations that may be needed in the more distant future.

- May an employer ask whether an applicant can meet the employer's attendance requirements?

Yes. An employer may state its attendance requirements and ask whether an applicant can meet them. An employer also may ask about an applicant's prior attendance record (for example, how many days the applicant was absent from his/her last job). These questions are not likely to elicit information about a disability because there may be many reasons unrelated to disability why someone cannot meet attendance requirements or was frequently absent from a previous job (for example, an applicant may have had day-care problems).

An employer also may ask questions designed to detect whether an applicant abused his/her leave because these questions are not likely to elicit information about a disability.

Example: An employer may ask an applicant: "How many Mondays or Fridays were you absent last year on leave other than approved vacation leave?"

However, at the pre-offer stage, an employer may not ask how many days an applicant was *sick*, because these questions relate directly to the *severity of an individual's impairments*. Therefore, these questions are likely to elicit information about a disability.

- May an employer ask applicants about their certifications and licenses?

Yes. An employer may ask an applicant at the pre-offer stage whether s/he has certifications or licenses required for any job duties. An employer also may ask an applicant whether s/he intends to get a particular job-related certification or license, or why s/he does not have the certification or license. These questions are not likely to elicit information about an applicant's disability because there may be a number of reasons unrelated to disability why someone does not have -- or does not intend to get -- a certification/license.

- May an employer ask applicants about their arrest or conviction records?

Yes. Questions about an applicant's arrest or conviction records are not likely to elicit information about disability because there are many reasons unrelated to disability why someone may have an arrest/conviction record.¹³

- May an employer ask questions about an applicant's impairments?

Yes, if the particular question is not likely to elicit information about whether the applicant has a disability. It is important to remember that not all impairments will be disabilities; an impairment is a disability *only* if it substantially limits a major life activity. So, an employer may ask an applicant with a broken leg how she broke her leg. Since a broken leg normally is a temporary condition which does not rise to the level of a disability, this question is not likely to disclose whether the applicant has a disability. But, such questions as "Do you expect the leg to heal normally?" or "Do you break bones easily?" *would* be disability-related. Certainly, an employer may not ask a broad question about impairments that is likely to elicit information about disability, such as, "What impairments do you have?"

- May an employer ask whether applicants can perform major life activities, such as standing, lifting, walking, etc.?

Questions about whether an applicant can perform major life activities are almost always disability-related because they are likely to elicit information about a disability. For example, if an applicant cannot stand or walk, it is likely to be a result of a disability. So, these questions are prohibited at the pre-offer stage *unless* they are specifically about the ability to perform

¹³ However, investigators should be aware that Title VII of the Civil Rights Act of 1964, as amended, applies to such questions and that nothing in this Enforcement Guidance relieves an employer of its obligations to comply with Title VII. The Commission has previously provided guidance for investigators to follow concerning an employer's use of arrest/conviction records. See Policy Guidance No. N-915-061 (9/7/90) ("Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (1982)"); EEOC Compliance Manual, Vol. II, Appendices 604-A ("Conviction Records") and 604-B ("Conviction Records - Statistics").

job functions.

- May an employer ask applicants about their workers' compensation history?

No. An employer may not ask applicants about job-related injuries or workers' compensation history. These questions relate directly to the *severity of an applicant's impairments*. Therefore, these questions are likely to elicit information about disability.

- May an employer ask applicants about their current illegal use of drugs?

Yes. An employer may ask applicants about current illegal use of drugs¹⁴ because an individual who currently illegally uses drugs is not protected under the ADA (when the employer acts on the basis of the drug use).¹⁵

- May an employer ask applicants about their lawful drug use?

No, if the question is likely to elicit information about disability. Employers should know that many questions about current or prior lawful drug use are likely to elicit information about a disability, and are therefore impermissible at the pre-offer stage. For example, questions like, "What medications are you currently taking?" or "Have you ever taken AZT?" certainly elicit information about whether an applicant has a disability.

However, some innocuous questions about lawful drug use are not likely to elicit information about disability.

Example: During her interview, an applicant volunteers to the interviewer that she is coughing and wheezing because her allergies are acting up as a result of pollen in the air. The interviewer, who also has allergies, tells the applicant that he finds "Lemebreathe" (an over-the-counter antihistamine) to be effective, and asks the applicant if she has tried it. There are many reasons why someone might have tried "Lemebreathe" which have nothing to do with disability. Therefore, this question is not

¹⁴ "Drug" means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812). 29 C.F.R. § 1630.3(a)(1).

¹⁵ 42 U.S.C. § 12114(a); 29 C.F.R. § 1630.3(a).

likely to elicit information about a disability.

- May an employer ask applicants about their lawful drug use if the employer is administering a test for illegal use of drugs?

Yes, *if* an applicant tests positive for illegal drug use. In that case, the employer may validate the test results by asking about lawful drug use or possible explanations for the positive result other than the illegal use of drugs.

Example: If an applicant tests positive for use of a controlled substance, the employer may lawfully ask questions such as, "What medications have you taken that might have resulted in this positive test result? Are you taking this medication under a lawful prescription?"

- May an employer ask applicants about their prior illegal drug use?

Yes, provided that the particular question is not likely to elicit information about a disability. It is important to remember that past *addiction* to illegal drugs or controlled substances is a covered disability under the ADA (as long as the person is not a current illegal drug user), but past *casual* use is not a covered disability. Therefore, the question is fine as long as it does not go to past drug *addiction*.

Example: An employer may ask, "Have you ever used illegal drugs?" "When is the last time you used illegal drugs?" or "Have you used illegal drugs in the last six months?" These questions are not likely to tell the employer anything about whether the applicant was addicted to drugs.

However, questions that ask how much the applicant used drugs in the past *are* likely to elicit information about whether the applicant was a past drug addict. These questions are therefore impermissible at the pre-offer stage.

Example: At the pre-offer stage, an employer may not ask an applicant questions such as, "How often did you use illegal drugs in the past?" "Have you ever been addicted to drugs?" "Have you ever been treated for drug addiction?" or "Have you ever been treated for drug abuse?"

- May an employer ask applicants about their drinking habits?

Yes, unless the particular question is likely to elicit information about alcoholism, which is a disability. An employer may ask an applicant whether s/he drinks alcohol, or whether s/he has been arrested for driving under the influence because these questions do not reveal whether someone has alcoholism. However, questions asking *how much* alcohol an applicant drinks or whether s/he has participated in an alcohol rehabilitation program *are* likely to elicit information about whether the applicant has alcoholism.

- May an employer ask applicants to "self-identify" as individuals with disabilities for purposes of the employer's affirmative action program?

Yes. An employer may invite applicants to voluntarily self-identify for purposes of the employer's affirmative action program *if*:

- the employer is undertaking affirmative action because of a federal, state, or local law (including a veterans' preference law) that requires affirmative action for individuals with disabilities (that is, the law requires some action to be taken on behalf of such individuals); *or*

- the employer is *voluntarily* using the information to benefit individuals with disabilities.

Employers should remember that state or local laws sometimes permit or encourage affirmative action. In those cases, an employer may invite voluntary self-identification *only* if the employer uses the information to benefit individuals with disabilities.

- Are there any special steps an employer should take if it asks applicants to "self-identify" for purposes of the employer's affirmative action program?

Yes. If the employer invites applicants to voluntarily self-identify in connection with providing affirmative action, the employer *must* do the following:

- state clearly on any written questionnaire, or state clearly orally (if no written questionnaire is used), that the information requested is used solely in connection with its affirmative action obligations or efforts; and

- state clearly that the information is being requested on a voluntary basis, that it will be kept confidential in accordance

with the ADA, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with the ADA.

In order to ensure that the self-identification information is kept confidential, the information must be on a form that is kept separate from the application.

• **May an employer ask third parties questions it could not ask the applicant directly?**

No. An employer may not ask a third party (such as a service that provides information about workers' compensation claims, a state agency, or an applicant's friends, family, or former employers) any questions that it could not directly ask the applicant.

What is a Medical Examination?

Definition: A "Medical Examination" is a procedure or test that seeks information about an individual's physical or mental impairments or health.

At the pre-offer stage, an employer cannot require examinations that seek information about physical or mental impairments or health. It is not always easy to determine whether something is a *medical* examination. The following factors are helpful in determining whether a procedure or test is *medical*:

- Is it administered by a health care professional or someone trained by a health care professional?
- Are the results interpreted by a health care professional or someone trained by a health care professional?
- Is it designed to reveal an impairment or physical or mental health?
- Is the employer trying to determine the applicant's physical or mental health or impairments?
- Is it invasive (for example, does it require the drawing of blood, urine or breath)?
- Does it measure an applicant's performance of a task, or does it measure the applicant's physiological responses to performing the task?
- Is it normally given in a medical setting (for example, a health care professional's office)?
- Is medical equipment used?

In many cases, a combination of factors will be relevant in figuring out whether a procedure or test is a *medical* examination. In some cases, one factor may be enough to determine that a procedure or test is medical.

Example: An employer requires applicants to lift a thirty pound box and carry it twenty feet. This is not a medical examination; it is just a test of whether the applicant can perform this task. But, if the employer takes the applicant's blood pressure or heart rate after the lifting and carrying, the test *would* be a medical examination because it is measuring the applicant's physiological response to lifting and carrying, as opposed to the applicant's ability to lift and carry.

Example: A psychological test is designed to reveal mental illness, but a particular employer says it does not give the test to disclose mental illness (for example, the employer says it uses the test to disclose just tastes and habits). But, the test also is interpreted by a psychologist, and is routinely used in a clinical setting to provide evidence that would lead to a diagnosis of a mental disorder or impairment (for example, whether an applicant has paranoid tendencies, or is depressed). Under these facts, this test is a medical examination.

Below are some commonly asked questions about the ADA's restrictions on pre-offer medical examinations.

• May an employer require applicants to take physical agility tests?

Yes. A physical agility test, in which an applicant demonstrates the ability to perform actual or simulated job tasks, is not a medical examination under the ADA.¹⁶

Example: A police department tests police officer applicants' ability to run through an obstacle course designed to simulate a suspect chase in an urban setting. This is not a medical examination.

• May an employer require applicants to take physical fitness tests?

Yes. A physical fitness test, in which an applicant's performance of physical tasks -- such as running or lifting -- is measured, is not a medical examination.¹⁷

However, if an employer measures an applicant's *physiological or biological responses* to performance, the test would be medical.

¹⁶ Of course, an employer cannot use a test in violation of other federal civil rights statutes. For example, if a test has an adverse impact under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, it must be shown to be job-related and consistent with business necessity.

¹⁷ Although physical agility tests and physical fitness tests are not "medical" examinations, these tests are still subject to other parts of the ADA. For example, if a physical fitness test which requires applicants to run one mile in ten minutes screens out an applicant on the basis of disability, the employer must be prepared to demonstrate that the test is "job-related and consistent with business necessity."

Example: A messenger service tests applicants' ability to run one mile in 15 minutes. At the end of the run, the employer takes the applicants' blood pressure and heart rate. Measuring the applicant's physiological responses makes this a medical examination.

- May an employer ask an applicant to provide medical certification that s/he can safely perform a physical agility or physical fitness test?

Yes. Although an employer cannot ask disability-related questions, it may give the applicant a description of the agility or fitness test and ask the applicant to have a private physician simply state whether s/he can safely perform the test.

- May an employer ask an applicant to assume liability for injuries incurred in performing a physical agility or physical fitness test?

Yes. An employer may ask an applicant to assume responsibility and release the employer of liability for injuries incurred in performing a physical agility or fitness test.

- May an employer give psychological examinations to applicants?

Yes, unless the particular examination is *medical*. This determination would be based on some of the factors listed above, such as the purpose of the test and the intent of the employer in giving the test. Psychological examinations are medical if they provide evidence that would lead to identifying a mental disorder or impairment (for example, those listed in the American Psychiatric Association's most recent Diagnostic and Statistical Manual of Mental Disorders (DSM)).

Example: An employer gives applicants the RUOK Test (hypothetical), an examination which reflects whether applicants have characteristics that lead to identifying whether the individual has excessive anxiety, depression, and certain compulsive disorders (DSM-listed conditions). This test is medical.

On the other hand, if a test is designed and used to measure only things such as honesty, tastes, and habits, it is not *medical*.

Example: An employer gives the IFIB Personality Test (hypothetical), an examination designed and used to reflect only whether an applicant is

likely to lie. This test, as used by the employer, is not a medical examination.

- **May an employer give polygraph examinations to applicants?**

Although most employers are prohibited by federal and state laws from giving polygraph examinations, some employers are not prohibited from giving these examinations. Under the ADA, polygraph examinations are not medical examinations.¹⁸ Many times, however, polygraph examinations contain disability-related questions, such as questions about what lawful medications the applicant is taking. Employers cannot ask disability-related questions as part of a pre-offer examination, even if the examination is not itself "medical."

- **May an employer give vision tests to applicants?**

Yes, unless the particular test is *medical*. Evaluating someone's ability to read labels or distinguish objects as part of a demonstration of the person's ability to do the job is not a medical examination. However, an ophthalmologist's or optometrist's analysis of someone's vision *is* medical. Similarly, requiring an individual to read an eye chart would be a medical examination.

- **May an employer give applicants tests to determine illegal use of controlled substances?**

Yes. The ADA specifically states that, for purposes of the ADA, tests to determine the current illegal use of controlled substances are not considered medical examinations.

- **May an employer give alcohol tests to applicants?**

No. Tests to determine whether and/or how much alcohol an individual has consumed are medical, and there is no statutory exemption.

¹⁸ A polygraph examination purportedly measures whether a person believes s/he is telling the truth in response to a particular inquiry. The examination does not measure health or impairments. Rather, it just measures relative *changes* in physiological responses of the test taker.

The Post-Offer Stage

After giving a job offer to an applicant, an employer may ask disability-related questions and perform medical examinations. The job offer may be conditioned on the results of post-offer disability-related questions or medical examinations.

At the "post-offer" stage, an employer may ask about an individual's workers' compensation history, prior sick leave usage, illnesses/diseases/impairments, and general physical and mental health. Disability-related questions and medical examinations at the post-offer stage do not have to be related to the job.¹⁹

If an employer asks post-offer disability-related questions, or requires post-offer medical examinations, it must make sure that it follows certain procedures:

- all entering employees in the same job category must be subjected to the examination/inquiry, regardless of disability;²⁰ and
- medical information obtained must be kept confidential.²¹

Below are some commonly asked questions about the post-offer stage.

- What is considered a *real* job offer?

Since an employer can ask disability-related questions and require medical examinations after a job offer, it is important that the job offer be *real*. A job offer is real if the employer has evaluated all relevant non-medical information which it reasonably could have obtained and analyzed prior to giving the offer. Of course, there are times when an employer cannot reasonably obtain and evaluate *all* non-medical information at the pre-offer stage. If an employer can show that is the case, the offer would still be considered a real offer.

Example: It may be too costly for a law enforcement employer wishing to administer a polygraph examination to administer a pre-offer examination asking non-disability-related questions, and a post-offer examination asking

¹⁹ But, if an individual is screened out because of disability, the employer must show that the exclusionary criterion is job-related and consistent with business necessity. 42 U.S.C. § 12112(b); 29 C.F.R. §§ 1630.10, 1630.14(b)(3).

²⁰ 42 U.S.C. § 12112(d)(3); 29 C.F.R. § 1630.14(b)(1),(2).

²¹ Id.

disability-related questions. In this case, the employer may be able to demonstrate that it could not reasonably obtain and evaluate the non-medical polygraph information at the pre-offer stage.

Example: An applicant might state that his current employer should not be asked for a reference check until the potential employer makes a conditional job offer. In this case, the potential employer could not reasonably obtain and evaluate the non-medical information from the reference at the pre-offer stage.

• Do offers have to be limited to current vacancies?

No. An employer may give offers to fill current vacancies or reasonably anticipated openings.

• May an employer give offers that exceed the number of vacancies or reasonably anticipated openings?

Yes. The offers will still be considered *real* if the employer can demonstrate that it needs to give more offers in order to actually fill vacancies or reasonably anticipated openings. For example, an employer may demonstrate that a certain percentage of the offerees will likely be disqualified or will withdraw from the pool.

Example: A police department may be able to demonstrate that it needs to make offers to 50 applicants for 25 available positions because about half of the offers will likely be revoked based on post-offer medical tests and/or security checks, and because some applicants may voluntarily withdraw from consideration.

Of course, an employer must comply with the ADA when taking people out of the pool to fill actual vacancies. The employer must *notify* an individual (orally or in writing) if his/her placement into an actual vacancy is in any way adversely affected by the results of a post-offer medical examination or disability-related question.

If an individual alleges that disability has affected his/her placement into an actual vacancy, the EEOC will carefully scrutinize whether disability was a reason for any adverse action. If disability was a reason, the EEOC will determine whether the action was job-related and consistent with business necessity.

- After an employer has obtained basic medical information from all individuals who have been given conditional offers in a job category, may it ask specific individuals for more medical information?

Yes, if the follow-up examinations or questions are medically related to the previously obtained medical information.²²

Example: At the post-offer stage, an employer asks new hires whether they have had back injuries, and learns that some of the individuals have had such injuries. The employer may give medical examinations designed to diagnose back impairments to persons who stated that they had prior back injuries, as long as these examinations are medically related to those injuries.

- At the post-offer stage, may an employer ask all individuals whether they need reasonable accommodation to perform the job?

Yes.

- If, at the post-offer stage, someone requests reasonable accommodation to perform the job, may the employer ask him/her for documentation of his/her disability?

Yes. If someone requests reasonable accommodation so s/he will be able to perform a job and the need for the accommodation is not obvious, the employer may require *reasonable* documentation of the individual's entitlement to reasonable accommodation. So, the employer may require documentation showing that the individual has a *covered disability*, and stating his/her *functional limitations*.

Example: An entering employee states that she will need a 15-minute break every two hours to eat a snack in order to maintain her blood sugar level. The employer may ask her to provide documentation from her doctor showing that: (1) she has an impairment that substantially limits a major life activity; and (2) she actually needs the requested breaks because of the impairment.

²² Once again, if an examination or inquiry screens out someone *because of disability*, the exclusionary criteria must be "job-related and consistent with business necessity." Where safety considerations are the reason, the individual can only be screened out because s/he poses a "direct threat."

Confidentiality

An employer must keep *any* medical information on applicants or employees confidential, with the following limited exceptions:

- supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations;
- first aid and safety personnel may be told *if* the disability might require emergency treatment;
- government officials investigating compliance with the ADA must be given relevant information on request;²³
- employers may give information to state workers' compensation offices, state second injury funds or workers' compensation insurance carriers in accordance with state workers' compensation laws;²⁴ and
- employers may use the information for insurance purposes.²⁵

Below are some commonly asked questions about the ADA's confidentiality requirements.

- May medical information be given to decision-makers involved in the hiring process?

Yes. Medical information may be given to -- and used by -- appropriate decision-makers involved in the hiring process so they can make employment decisions consistent with the ADA. In addition, the employer may use the information to determine reasonable accommodations for the individual. For example, the employer may share the information with a third party, such as a health care professional, to determine whether a reasonable accommodation is possible for a particular individual. The information certainly must be kept confidential.

²³ 29 C.F.R. § 1630.14(b)(1)(i-iii).

²⁴ See 42 U.S.C. § 12201(b); 29 C.F.R. pt. 1630 app. § 1630.14(b).

²⁵ See 42 U.S.C. § 12201(c); 29 C.F.R. pt. 1630 app. § 1630.14(b). For example, an employer may submit medical information to the company's health insurance carrier if the information is needed to administer a health insurance plan in accordance with § 501(c) of the ADA.

Of course, the employer may only share the medical information with individuals involved in the hiring process (or in implementing an affirmative action program) who *need to know* the information. For example, in some cases, a number of people may be involved in evaluating an applicant. Some individuals may simply be responsible for evaluating an applicant's references; these individuals may have no need to know an applicant's medical condition and therefore should not have access to the medical information.

- Can an individual voluntarily disclose his/her own medical information to persons beyond those to whom an employer can disclose such information?

Yes, as long as it's *really* voluntary. The employer cannot request, persuade, coerce, or otherwise pressure the individual to get him/her to disclose medical information.

- Does the employer's confidentiality obligation extend to medical information that an individual voluntarily tells the employer?

Yes. For example, if an applicant voluntarily discloses bipolar disorder and the need for reasonable accommodation, the employer may not disclose the condition or the applicant's need for accommodation to the applicant's references.

- Can medical information be kept in an employee's regular personnel file?

No. Medical information must be collected and maintained on separate forms and in separate medical files.²⁶ An employer should not place any medical-related material in an employee's non-medical personnel file. If an employer wants to put a document in a personnel file, and that document happens to contain some medical information, the employer must simply remove the medical information from the document before putting it in the personnel file.

²⁶ A notation that an individual has taken sick leave or had a doctor's appointment is not confidential medical information. Of course, documentation of the individual's diagnosis or symptoms would be medical information.

- Does the confidentiality obligation end when the person is no longer an applicant or employee?

No, an employer must keep medical information confidential *even if* someone is no longer an applicant (for example, s/he wasn't hired) or is no longer an employee.

- Is an employer required to remove from its personnel files medical information obtained before the ADA's effective date?

No.

INDEX

Affirmative Action	1, 12, 13, 22
Alcohol	12, 17
Alcohol Tests	17
Alcoholism	12
Arrest or Conviction Records	9
Attendance	8
Broken Leg	9
Confidentiality	21-23
Controlled Substances	10, 11, 17
Describe or Demonstrate	2, 5, 7
Direct Threat	2, 3, 20
Disability-Related Question	2, 4, 19
Documentation	6, 20, 22
Drinking Habits	12
Drug Addiction	11, 12
Drug Use	10, 11
Illegal Drug Use	11
Impairments	8-10, 14, 17, 18, 20
Information Obtained Before the ADA	23
Job Functions	2, 4, 5, 7, 10
Lawful Drug Use	10, 11
Liability for Injuries	16
Licenses	2, 8
Major Life Activities	10
Medical Examination	2, 14-17, 19
Medical Files	22
Need for Accommodation	6, 7, 22
Physical Agility	15, 16
Physical Fitness	15, 16
Polygraph Examinations	17
Pool	19
Post-Offer Stage	2, 18, 20
Pre-Offer Stage	2, 4, 8, 10, 12, 14, 18, 19
Psychological Examinations	16
Real Job Offer	18
Reasonable Accommodation	3-8, 20, 22
References	1, 22
Self-identify	12, 13
Sick	8, 18, 22
Statutory and Regulatory Framework	1
Third Parties	13

Vacancies	19
Vision Tests	17
Voluntarily Disclose	22
Voluntary Self-Identification	12
Workers' Compensation	3, 10, 13, 18, 21

APPENDIX TO ENFORCEMENT GUIDANCE

1. SUBJECT: Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations.
2. PURPOSE: This document provides the EEOC's position under the Americans with Disabilities Act of 1990, on preemployment disability-related questions and medical examinations.
3. EFFECTIVE DATE: Upon receipt.
4. EXPIRATION DATE: As an exception to EEOC Order 205.001, Appendix B, Attachment 4, § a(5), this Notice will remain in effect until rescinded or superseded.
5. ORIGINATOR: ADA Division, Office of Legal Counsel.
6. INSTRUCTIONS: File after Section 902 of Volume II of the Compliance Manual.

10/10/95
Date



Gilbert F. Casellas
Chairman

DISTRIBUTION: CM Holders

**FEDERAL EMPLOYEES
COMPENSATION ACT**

AND

**LONGSHORE AND HARBOUR
WORKERS' ACT**

Federal Employees Compensation Act and Longshore and Harbour Workers' Act

Under the Federal Employees Compensation Act and the Longshore and Harbour Workers' Act, federal employees disabled because of work related injuries are screened by a Department of Labor (DOL) rehabilitation specialist who refers the employee to TRC for rehabilitation services. TRC determines eligibility, and then coordinates with the DOL rehabilitation specialist to provide services.

Eligibility

Determine eligibility for rehabilitation services. The amount of client participation in the cost of services is not an issue in these cases since DOL pays for most or all of the services.

- If a referral is eligible, notify the DOL rehabilitation specialist.
- If a referral is ineligible, notify the DOL rehabilitation specialist and close the case.

Services

Diagnostic Records

DOL provides updated medical and diagnostic records for the work related injury at no cost to TRC.

Training

DOL prefers short term training such as OJT for a couple of months up to a two year academic training program. Consult with the DOL rehabilitation specialist when developing training plans.

Training programs can be provided after approved by the DOL rehabilitation specialist. DOL may pay for all training programs if approval is obtained *before* the service is rendered. DOL pays the vendor directly; TRC does not encumber funds for these clients.

Medical

TRC is not responsible for medical services for the work related injury. The DOL rehabilitation specialist provides medical services for the work related injury.

If medical services not related to the work related injury are required, contact the DOL rehabilitation specialist to investigate other available benefits such as group medical insurance. If no other funding sources are available, determine eligibility for TRC to provide the services.

Maintenance and Transportation

TRC does not provide maintenance or transportation for DOL-TRC clients. The Federal Employees Compensation Act provides maintenance up to \$200 per month, and the Longshore and Harbour Workers' Act provides transportation up to \$100 after approved by the DOL rehabilitation specialist.

If maintenance or transportation is needed, contact the DOL rehabilitation specialist. After determining a need, the DOL rehabilitation specialist provides maintenance and transportation to the client.

Referrals

At the time of application, indicate the referral source as Federal Workers' Compensation and answer the Workers' Compensation questions on the profile.

After determining eligibility and completing the IWRP, submit recommendations for VR services to the DOL rehabilitation specialist for approval. If financial support for the services is required, complete form OWCP-16, Rehabilitation Plan and Award, and submit it for approval to the DOL rehabilitation specialist (a copy of Exhibit B can be submitted).

After DOL approval, process the case as any other case, but do not encumber funds.

If rehabilitation services are interrupted, immediately notify the DOL rehabilitation specialist.

Notify the DOL rehabilitation specialist if the injured worker fails to keep appointments or is otherwise uncooperative.

Every month, provide the DOL rehabilitation specialist with copies of case notes for each approved DOL case.

When closing a DOL-TRC case, notify the DOL rehabilitation specialist before closure.



INSTRUCTIONS: Complete items 1 through 13 and send to the Division of Rehabilitation. Attach the maintenance request, complete testing or work evaluation information and the justification for the rehabilitation program. No further monies or other benefits may be paid out under this program unless this report is completed and filed as required by existing law and regulations. OWCP exercises discretion to terminate or revise the plan when it becomes evident that the plan conditions will not be met.

1. Name of injured worker (First, middle initial, last)	2. Date of birth (Mo., day, yr.)	3. OWCP No.
4. Address (Number, street, city, state, ZIP Code)		
5. Rehabilitation services(s) or program	6. Rehabilitation period (Month, day, year) From _____ to _____	
7. Name and address of rehabilitation facilitator (School, etc.)	8. Is this the complete plan? <input type="checkbox"/> Yes <input type="checkbox"/> No - Explain _____	
9. Occupation after rehabilitation program	10. Estimate yearly earnings after rehabilitation program \$ _____	

11. REHABILITATION COST

a. Fees - Specify		e. Other costs - Specify	
_____ \$ _____ per _____ x _____ = _____ \$		_____ \$ _____ per _____ x _____ = _____ \$	
_____ \$ _____ per _____ x _____ = _____ \$		_____ \$ _____ per _____ x _____ = _____ \$	
_____ \$ _____ per _____ x _____ = _____ \$		_____ \$ _____ per _____ x _____ = _____ \$	
_____ \$ _____ per _____ x _____ = _____ \$		_____ \$ _____ per _____ x _____ = _____ \$	
b. TOTAL FEE COST _____ \$		f. TOTAL OTHER COST _____ \$	
c. Supplies (Books, tools, etc.)		g. Tuition \$ _____ per _____ x _____ = _____ \$	
_____ \$ _____ per _____ x _____ = _____ \$		FOR OWCP DISTRICT OFFICE USE ONLY	
_____ \$ _____ per _____ x _____ = _____ \$		h. Maintenance \$ _____ per week _____ x _____ = _____ \$	
d. TOTAL SUPPLIES COST _____ \$		TOTAL REHABILITATION COST _____ \$	

12. INJURED WORKER: I understand and approve of the provisions of this plan of services. I believe this plan will help me to get and keep suitable employment and I will cooperate in every way possible to carry out the plan successfully.

Signature _____ Date signed _____

13. COUNSELOR RECOMMENDING PLAN: A thorough vocational evaluation was performed and employment may reasonably be expected as a result of the implementation of the rehabilitation plan considering the interest and abilities of the injured worker, the competence of the rehabilitation facilitator and the nature of the job market.

Signature _____ Date signed _____

FOR OWCP DISTRICT OFFICE USE ONLY BELOW THIS SPACE

14. Date of injury	15. Date of referral to OWCP Rehab.	16. Date of referral to Rehab. Agency	17. Date of maximum medical recovery
18. Was there a previous plan? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes -Mark (X) one <input type="checkbox"/> Successive to previous plan <input type="checkbox"/> Change of previous plan - Enter date _____		19. Payment - This award is payable from the fund created by the following compensation law. Mark (X) one. <input type="checkbox"/> Federal Employee's Act <input type="checkbox"/> Longshoremen's Act <input type="checkbox"/> District of Columbia Act	

20. RECOMMENDATION OF OWCP REHABILITATION SPECIALIST: The injured worker meets the eligibility requirements for OWCP rehabilitation services. I have reviewed the rehabilitation plan and find it within the interest and ability of the injured worker. The facilitator is competent to provide the services.

Signature _____ Date signed _____

21. APPROVAL OF DEPUTY COMMISSIONER: I concur with the OWCP rehabilitation specialist, and hereby award the foregoing benefits for payment (1) for the purpose of providing additional compensation for maintenance and/or (2) for the purpose of providing necessary rehabilitation services in connection with a rehabilitation plan.

Signature _____ Date signed _____