



Returning to Work – The Workers’ Compensation Challenges

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An injured worker is about to return, and the employer arranges to resume the customary job. Yet, the worker shows up with a doctor’s note that limits the amount of lifting, standing or bending the worker can do. These restrictions make it impossible for the worker to resume the customary job. What’s the employer to do?

There are two options. One, the employer can tell the worker to stay off the job. However, such a decision must be reported to the workers’ compensation carrier or third-party administrator. This is because staying off the job due to medical restrictions keeps the employee eligible for a continuation of temporary total disability benefits (TTD). Such benefits are mandated as long as the worker is not deemed at “maximum medical improvement” and the restrictions keep the worker from performing the customary and usual job done at the time of injury.

Another option is for the employer to offer work that is NOT the customary job but does comport to the physical restrictions. For example, a pest-control company might offer desk work to a worker who can’t move furniture to spray for bugs. If the employee accepts the desk work, then the company might be exempt from paying TTD benefits. This solution has other advantages as well – the worker is doing a productive service, staying active and remaining more likely to return to the customary job.

These options, however, trigger a number of questions:

- **Is the worker required to accept the less-physical work?** No. The worker always retains the option of taking the less-physical work or refusing it.
- **Is the employer required to offer the alternate work?** No. The employer is not required to create a job where none exists.
- **What if the employee keeps changing doctors who keep issuing work restrictions?** This would trigger suspicions that the employee is, indeed, physically capable of resuming the customary job but wants to stay off work and draw TTD. The one truly legal way to stop this pattern is for the employer to obtain a doctor’s note, record or report that declares the employee at “maximum medical improvement.” These magic MMI words mean that the worker stabilizes so that his medical condition or impairment may reasonably be viewed as permanent. Once a doctor deems the worker at MMI, the eligibility for TTD benefits ceases.
- **What if the treating doctor will not provide an MMI note?** – The employer has the right to schedule the worker for an exam by an independent doctor and ask for an opinion on that issue. The employer also should ask the independent doctor what, if any, physical restrictions the doctor would impose. If the independent doctor imposes no restrictions, then the employer may order the worker to return to the customary job on a specified day.
- **What if the worker refuses to return because his doctor’s restrictions contradict the MMI or return-to-work report of the independent doctor?** – The employer still may terminate TTD benefits based on the MMI report. If the worker refuses to return, the employer may take action consistent with state and federal law and with the employer’s own policies.

The employer should report and discuss any and all of these events to the workers’ comp carrier or third-party administrator. This ensures one or the other does not take contrary action and is fully informed. A coordinated approach often ensures the best outcome for the employee and the employer when it comes time to return to work.