



“Light Duty” Landmines – A Workers’ Compensation Overview

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Few areas in workers’ compensation law are more potentially explosive than the “light duty” or “modified duty” situation.

In the “light duty” scenario, the injured worker can resume work, but a physician places limits on what the worker can do on the job. For example, an EMT may have an injured back, but the doctor approves a return to work with a 20-pound weight limit.

Usually, employers as well as workers begin treading lightly when “light duty” is approved. The worker wonders whether he must return to work with light-duty restrictions. The employer wonders what kind of environment it must provide for the worker, if any, and how much to pay.

Here are just a few of the maxims to remember when confronted with a light duty:

Employers are not required to make up light-duty work – Just because a worker has been returned with a 10-pound lifting restriction does not mean an employer must create a 10-pound job. The employer is also not required to place the worker in a light-duty job if no regular openings in such jobs exist. The employer can say there simply is no job available that fits the restriction, and the worker stays off while drawing worker’s comp benefits. However, if the employer has made it a practice to find light-duty work for other similarly situated injured workers, it may be obligated to offer light duty to all of them.

Workers may be required to accept light duty – If a doctor says the employee can work, and such work is available, then the worker may be subject to discipline for not accepting the light-duty job. The worker who declines would remain eligible to draw workers’ comp benefits, however, despite the fact he might never work for that employer again.

Employers may be liable for payments even if a worker is disciplined – The Kentucky Court of Appeals recently decided that a worker who came back on light duty – but was suspended for misconduct – still was eligible for workers’ comp payments. This is because the worker remained physically unable to perform the same work he did at the time of injury. See *Lexington-Fayette Urban County Government v. Bright*, 2013-CA-000553-WC, Nov. 8, 2013). Some may disagree such a ruling, but the Kentucky and Ohio courts have repeatedly tried to keep injuries separate from purely management situations.

The law does not favor a double recovery – In other words, a worker cannot work light duty, collect pay for that work, and actually collect more than his pre-injury salary when workers’ comp benefits are added. The worker can collect workers’ comp temporary total benefits and light-duty pay up to the level of his pre-injury average wage, however. Conversely, it is improper for an employer to offer light-duty work but pay the worker less than the statutory minimum workers’ comp payments.

Light-duty jobs don’t have to last forever – Suppose a physician never lifts the 10-pound restriction for the worker. In such a case, the employer is not obligated to keep the worker on light-duty forever. Based on company policy, the employer may terminate the injured worker if the worker can never go back to the pre-injury job. Based on company policy, the employer can also post the pre-injury job and make it available to others even while the injured worker is on light duty.

Employers and carriers should pin down doctors on their restrictions – A doctor may impose a 10-pounds lifting limit for a low-back injury but be silent on other restrictions. If the job is as a cashier at a dollar store, however, the employer may want to know if the employee can twist the low back repetitively

for up to 8 hours or be on his feet, with breaks, for 8 hours. Pinning the physician down is necessary in these situations, so that an injury does not become worse or is prolonged.

As can be seen, "light-duty" disputes can involve not only workers compensation carriers and administrators, but also department managers and HR departments. Employers can be pro-active by looking ahead and developing long-range policies to deal with "light-duty" return-to-work situations, in order to avoid unnecessary blow-ups.