



**WORKERS' COMP  
TRAINING CENTER**

## **How to Coordinate RTW with ADA Compliance**

### **Introduction: (5 minutes)**

- Welcome to WC Mastery training
  - Such a valuable law, also very confusing, frustrating, and intimidating
  - Aaron Konopasky, Senior Attorney Advisor EEOC
- Introduce 3 Major Points
  - Demystify the ADA and Reasonable Accommodation
  - Coordinate RTW with ADA Compliance
  - How should I handle this?

### **Main Point #1: Demystify the ADA and Reasonable Accommodation– (20 minutes)**

- What is ADA & ADAA?
  - Applies 15+ employees; ½ of ADA Claims Injured Employees
- What qualifies as a disability?
  - Often much sooner than expected
  - physical or mental impairment that substantially limits one or more major life activities
- What is an essential function vs marginal function?
- What is a reasonable accommodation?
  - Is NOT – lowered expectations
  - How does FMLA interact?
- What is an Undue Hardship?
- Reasonable Accommodation vs. Undue Hardship
  - Cleaning Crew & Lifts
  - Examples
- Question: Is a reasonable accommodation having someone else do part of the worker's job?



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- *If essential function, then NO; If marginal short term, then YES*
- ADA – Latest Developments
  - Opioids
  - Comfort animals
- ADA Summary: things to know
  - What qualifies as disability
  - Essential function
  - Reasonable Accommodation
  - Undue hardship

**Notes:**



**Main Point #2: Coordinate RTW with ADA Compliance – (15-20 minutes)**

- Interactive process & return to work
  - What is the interactive process?
  - Flexible, creative, & individual
  - When does this start?
  - What about when they have been off work for a long time?
- **Interactive process is point at which employers are most likely to violate the ADA**
- Transitional duty and Reasonable Accommodation
  - Biggest Difference is Expected Output of Employee
  - Doctor not thinking about ADA
    - What if the treating physician is not cooperating?
    - Employer needs to figure out what to do
    - Ask for clarification
    - Avoid downward spiral
- **ACOEM – 3-Part SAW/RTW Framework**
  - **Work Capacity.** What are the worker's current work capacity, medical restrictions, and functional limitations?
    - What can do?
    - What can't do?
    - What shouldn't do?
      - Ask - when do you think you'll return to work?
      - Ask – what part of your job can you do today?
      - Involve injured workers' family, create individual plan
  - **Functional Demands.** What are the functional demands of the intended job?
    - Job description as quantified as possible demands, tasks, other body parts used in range of motion
    - Video of job?
    - Share with treating providers – medical provider brochure
    - State precisely what you need from the doctor & why
  - **How do we make this happen?** If the worker's functional capacity matches the functional demands, what is required to affect an actual return to work?
    - Collaborate with adjuster, NCM, Peer Review doctor, EE, ER, JAN



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- **Sequence of Accommodation - RTW**
  - Original job
  - Modify original job – some, but not all tasks
  - TD in different job in company
  - Off-site alternative job
- **Sequence of Accommodation – ADA**
  - Original job
  - Original position w/ reasonable accommodation
  - FMLA or Unpaid Leave
  - Reassignment to vacant position
- How does ADA come into play with permanent restrictions?
  - Possible under ADA w/ expected outcome

**Notes:**



### **Main Point #3: How Should I Handle This? (10-15 mins)**

- If no light duty is available, can the employer terminate employment?
  - *Answer:*
    - *1) discuss with doctor why can't work and clarify to confirm. Double check NCM / IME*
    - *2) Offer leave FMLA (50 employees) or under 50 reasonable accommodation*
    - *3) If leave not allow return, re-assign to alternate vacant employment*
    - *4) If no alternate employment, terminate*
- In Workers Compensation, many injured workers do not feel as if they can return to work on light duty. How does this dialogue happen when they are opposed to Return To Work?
  - *Answer:*
    - *1) If have sick/vacation/FMLA, allowed to take*
    - *2) If no leave and medical restrictions, can require as any employee*
      - *If employee disagrees with restrictions, employee required to produce documentation supporting from doctor, or IME*
      - *If no documentation, then can require or terminate*
    - *NOTE: Ensure communicating & demonstrating care with employee, may be misunderstood and willing to return to work*
- What about when a reasonable accommodation can't be found? Or employee says not aware of a reasonable accommodation?
  - *Answer: Job Accommodation Network*
- Can the employer set a policy for how long transitional duty can last?
  - *Answer: 90-120 days with reasonable accommodation*
    - *Use Injury Duration Guidelines*
- Can an employee require an employee to return to work?
  - *Answer: should say in your transitional duty policy that RTW is a condition of employment*



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**Notes:**