

5 STEP

Sequence to Coordinate Return to Work with ADA Compliance



The Americans with Disabilities Act and Workers' Compensation are two separate and distinct laws. However, the best practices of ADA compliance and workers' compensation return to work are often synergistic and complimentary.

ADA Interactive Process

The first step in understanding the overlay of the ADA and Return to Work is defining the ADA interactive process.

According to Wikipedia, the interactive process "refers to the collaborative effort involving an employer and employee to determine if the employee can return to work subsequent to an occupational or non-occupational injury, disease or disorder."

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Aaron Konopasky:

The interactive process sounds complicated, but it's really just talking. It doesn't have to be formal or ultra-organized, it is simply talking and problem-solving.

**Contributions from Aaron Konopasky drawn from presentation as a guest on How to Coordinate ADA Compliance with Return to Work Best Practices*

Workers' Compensation Return to Work

When an employee is injured on the job, the employer's main goal is to return the employee to work as soon as the worker is medically able to return. Transitional duty (TD) enables injured workers to stay in the work world while they recover from the injury.

Similarities and Differences of ADA and Collaborative Return to Work

The sequence of accommodation chart above displays the similarities and differences of the ADA and collaborative return to work process.

Similarities

The most similar and synergistic point between and ADA and RTW is the goal to provide employees with the benefits

of work. Steps 1 and 2 in both the ADA and Collaborative Return to Work sequences are nearly identical with the interactive process and collaborative approach to RTW. The goal is to work with the injured employee and obtain input from medical professionals to place the individual back to work.

Differences

The biggest difference between the ADA and Collaborative RTW is in Step #2 with the expectation of employee production output. The ADA requires the same employee production of essential functions with or without an accommodation. In RTW transitional duty, the employee output expectation is often reduced (exp. 50% or 75% production capacity). First, consider a reasonable accommodation under the ADA in the employee's original position, then consider a reduced output transitional duty position following RTW best practices.

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5-Step Sequence to Coordinate Return to Work with ADA Compliance

The collaborative return to work process goes beyond ADA requirements in the efforts to keep an employee working.

- **ADA:** In the ADA sequence, if a reasonable accommodation in Step 2 would not allow the employee to accomplish all the essential functions of the original job, then the next step would be to consider leave or transfer to a vacant position for which the employee is qualified.
- **Collaborative RTW:** If a reasonable accommodation in Step 2 would not allow the employee to accomplish all the essential functions of the original job, collaborative return to work best practices would then consider transitional duty work in the employee's original position even if output expectations are reduced. If this option is not available then the next options to keep an employee working are transfer to a different division or off-site charitable work, even if an official open and vacant position does not exist, or if output expectations are reduced.

**Need to know the collaborative return to work process goes beyond ADA requirements in the efforts to keep an employee working.*

Aaron Konopasky: *One thing that I believe would help with ADA compliance in the return to work process is to stop and think at every step in the sequence of accommodation. Stop for a minute, step back, look at the big picture and ask yourself before going to the next step, is it really true that this person can't work at full capacity? Often people forget about this option because they're too busy moving forward in a transitional duty program or allowing the employee time off work.*

You always have to consider a reasonable accommodation and the possibility that the person doesn't need any time off or reduced expectations.



Sequence of Accommodation – ADA vs. Collaborative RTW

The collaborative return to work process includes communication and input from the injured worker, supervisors, medical providers, and others to create a productive position for the employer AND employee.

ADA	COLLABORATIVE RETURN TO WORK
1) Original position: Is it possible for the employee to return to their original position without an accommodation?	1) Original position: Is it possible for the employee to return to their original position without an accommodation or restrictions?
2) Original position with a reasonable accommodation. Is it possible for the employer and employee to identify a reasonable accommodation which will allow the employee to perform all of the essential functions of their original position without placing an undue hardship on the employer?	2) Original position with a reasonable accommodation or job modifications. Is it possible for the employer and employee to identify a reasonable accommodation which will allow the employee to perform all of the essential functions of their original position without placing an undue hardship on the employer? OR Is it possible for the employee to modify a portion of their original job, doing some, but not all tasks?
3) Unpaid Leave or FMLA. If there is no way that the employee can do the original job, the employee should be allowed to use accrued leave or FMLA leave, if any. (Employers with 50 or more employees are required to provide unpaid leave for up to 12 weeks under FMLA)	3) Transitional duty in a different job or different division. Consider if the employee may be transferred to another division within the company or another job that fits within the employee's restrictions.
4) Reassignment to open position which employee qualifies. If leave would not allow the person to return eventually and would not cause undue hardship, then the employer needs to consider reassignment. If there is a vacant position, the employee is qualified, and reassignment would not cause undue hardship, then the reassignment must be provided as a reasonable accommodation.	4) Transitional duty at an off-site alternative position. Employers who do not have readily available alternative tasks in their workplace can work with vendors to find alternative work placements at another company or charitable organization.
5) Terminate. If none of the above options are available, then the person can be terminated.	5) Remain off work. If none of the above options are available for the employee to safely work within their restrictions, then the injured worker will remain off work.



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