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## Return to Work: The Essentials of Modified Duty Offers

The prompt and safe return of an injured employee to modified duty employment is both therapeutic for the employee and cost effective for the employer. Once an employee is released to return to work at a sedentary, light or medium level, an employer may offer a modified duty position to the employee that falls within the employee's vocational and physical capabilities. If the employee accepts the position and returns to work, workers' compensation wage benefits may be reduced or suspended. If the employee refuses to accept the offer, the employer may petition the Workers' Compensation Bureau for a reduction or suspension of wage benefits. Defects or omissions in the letter offering the employee modified duty work can sometimes be fatal to an employer's efforts to modify or suspend benefits. Below is an outline of what should be included in the return-to-work offer letter.

### Fundamentals

The letter should be sent to the injured employee through both regular mail and in a manner that requires a receipt signed by the employee. The letter should advise the employee that a physician has released the employee to return to modified duty employment. The name of the physician, the date of release, and all documentation regarding the release to return to modified duty work should be included. Documentation such as medical reports or physical capabilities checklist also should be enclosed. The employee should be specifically advised that the position being offered is within his/her vocational and physical capabilities.

The rate of pay also must be identified. If the employee is to be paid per hour, the hourly rate and hours per week should be set forth. The starting date of the position, the specific time to report to work, as well as the identity of the individual to report to should be clearly spelled out.

Copies of the letter should be sent to the workers' compensation claims representative, the employer's attorney and, if applicable, the employee's attorney, all with enclosures.

### Additional Considerations

An employee may refuse to accept the modified duty job offer, claiming the job does not fall within his or her physical capabilities. It is important that the letter specifically advise the employee that the job will be

modified to accommodate the physical restrictions. Ideally, the letter should describe how accommodations will be achieved, such as co-employee assistance, changes in the work station, elimination of duties, etc.

The letter should give the employee sufficient information to ensure that the job falls within his or her physical capabilities. The amount of information regarding the modified position depends upon the nature of the job and the employee's knowledge of the position. If the employee is familiar with the job requirements, the employer need not provide a detailed explanation of the duties and physical requirements. Conversely, if the employee is not familiar with the modified duty position or has no prior experience in the position, the employer should provide a detailed description of all relevant physical requirements of the position. If a specific job description or job analysis has been approved by a physician, such approval should also be contained in the letter.

Sufficient time should be given between the date of mailing the job offer and the starting date. If an employee has been out for several weeks or months due to a work injury, it may not be reasonable to expect the employee to return to modified duty employment within one or two days. Preferably, the employee should be given at least seven days to consider and respond to the offer.

The employer should be prepared to document any contact made by the injured employee or his counsel relative to the job offer. The employee's verbal responses to the job offer may be relevant to a determination of whether the employee responded in good faith to the job offer.

If an employee is reluctant to return to modified duty employment, multiple job offers may be necessary. Employees often obtain medical evidence from a new or different health-care provider, which indicates the employee is totally disabled or incapable of performing the offered position. Keep in mind that the prompt and safe return of an employee to meaningful modified duty employment reduces the cost of the claim.

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