



Modified Duty: Five Best Practices

Workers' Compensation:

For workers' compensation claims, a physician has to agree that an injured worker can return to work in a modified job with certain restrictions. Without a doctor's letter, or a primary treating physician's progress report, your company cannot offer a modified job to your employee. Work restrictions might impact lifting, pushing or pulling if the employee is given a restriction to weight or frequency. Other examples of restrictions could include the need to sit and/or stand as needed, to avoid climbing (think stairs and ladders), or even reduce time on a keyboard.

Five best practices for modified job duty:

1. Build a business relationship with your approved medical clinic. Go meet the doctor! Businesses that know each other are more apt to listen to each other and act on requests.
2. Share your company's job descriptions with your medical clinic. Let the clinic know that you have other jobs available for injured employees. By sharing your job descriptions, a doctor at the clinic will know that another job might be available for modified duty and recommend it.
3. Make sure you have a written return to work program in place, and that every new employee acknowledges the program when they sign your personnel practices.
4. Use our recommended letter ([click here](#)) for your offer of modified duty to the employee and provide it to your insurance company. You need to have something in writing. Just saying there was an offer will not be enough if there is a dispute later.
5. Follow up with your employee while he is on modified duty about how he is feeling and if the temporary modified job is working out for him. A follow-up every week would be great, but please remember not to allow modified duty to run past 90 days.

The offer letter should include these 5 items:

1. Clearly state when (date and time) and what location your employee is supposed to report to for his modified job.
2. Identify the supervisor to whom the employee is to report for the modified duty, plus a phone number for any potential questions.
3. Specify the salary to be paid while on this duty. Usually the same wage as pre-injury.
4. State the type of work the employee will do for your business.
5. Restate the temporary restrictions, and identify the doctor who issued those restrictions.

What happens if an employee refuses a Modified Job Duty?

If the employee refuses your written offer of modified duty work that is consistent with the doctor's restrictions, then the employee loses the right to receive workers' compensation Temporary Total Disability (TTD) benefits. The medical benefits will continue to the employee but not the TTD benefits. A potential escape for the employee would be that his physician later opines that the restrictions have to be increased or the injured worker should not work at all.

Keep a copy of the temporary modified duty letter. If TTD benefits are denied by your insurer, you may need to provide proof, before an administrative law judge, that a legitimate offer was made in compliance with the medical restrictions. Remember, stopping TTD payments can sometimes have a very favorable impact on your Experience Modification Rating.

How long do you keep the employee on modified duty?

Below are some things to consider:

- A. What is the impact on your Experience Modification Rating? You can talk to your insurance broker about possible choices to contain your loss. Sometimes you might be better off not to offer modified duty if a large sum has already been paid or will be paid in the future by your insurer.
- B. What if the injured worker is not performing in the modified job? We appreciate you wanting to mitigate your claim's costs, but at what point is it truly mitigating costs if you are paying an employee not working very well or very hard?
- C. Are other workers being affected by the injured worker's lack of performance in his modified job? Your other employees will notice if an injured worker is taking extra breaks or just not working. This is a morale issue.
- D. What if the injured employee's medical condition does not seem to be improving? We have seen where an employee would put off his surgery because he was working modified duty and did not want to go off work. This act not only stalled the recovery of his condition, but ultimately stalled the progression of his claim.
- E. Is the employee at risk of reinjuring or creating a new injury by not abiding by his medical restrictions, essentially causing your company to babysit him on the job?

Think a minimum of 30 days of modified duty to monitor the above issues, but cap it at 90 days.

Added thoughts about follow-ups with your employees:

It is important to stay engaged with your injured employees on a regular basis. Plan on weekly meetings inclusive of post medical appointments. Try to have meaningful conversations with your injured workers. Actually talk to them and ask:

- How are you feeling?
- How is your treatment going?
- Do you feel okay in this modified job?
- Do you think you are getting better?
- Do you like your doctor?
- Do you have questions as to how workers' compensation works?
- How can I help you in this process to get you back to full duty?

The answers to these questions can make a big difference in the outcome of the claim—specifically, the overall cost of the claim and the length of time until closure. Imagine if the injured worker is frustrated, not getting better, afraid about an upcoming surgery, or at the worst, a supervisor is pushing them to work outside of the medical restrictions. It is better for you to address these things early as opposed to an attorney being engaged by your employee because he felt nobody cared or would listen.

This may seem like overkill, but it works twofold. Constant communication and engagement with your employee will make him feel important in your company by giving him a sense of value. Leading to the primary goal that he will want to get better physically and back to full duty work sooner.

Red Flags:

Be wary of any injured employee and these issues:

- Post-injury physical movements are greatly exaggerated.
- Not getting along with other co-workers.
- Has a poor attitude.
- Has a history of disciplinary issues.
- Has a poor attendance record.
- Always has an excuse for why he can't work at certain times.

Warning: Don't allow your company to be fooled by an injured employee's false promises or false pretences. It can be a costly mistake. Pay attention not only to what your employee says to you, but also his actions. An injured worker that says he is getting better but every time he reports back from his doctor his restrictions are increased could be a problem.

PentaRisk has a workers' compensation claims specialist to help guide you through all of these scenarios and more. No two claims are alike, and each claim warrants discussion and strategy. Please reach out to Nicole Corey or Greg Roush at PentaRisk for more information.

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