

COMPLIANCE WITH ADA CAN HELP EMPLOYEES WHILE REDUCING WORKERS' COMPENSATION COSTS

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ABSTRACT

Contrary to popular opinion, compliance with the Americans with Disabilities Act (ADA) can lower employers' workers' compensation costs, while benefiting employees by a rapid return to work after workers' compensation claims. The ADA and state workers' compensation laws are complementary, with few, if any, major conflicts. Implementation of ADA concepts concerning reasonable accommodations and adjustments for disabled employees will reduce workers' compensation costs by reducing the amount of lost time for injuries or sickness. Good return-to-work programs following the concepts of the ADA also benefit employees by returning them to paid work and reducing the chance that a temporary medical problem will cause a more permanent psychological impairment. This article outlines relevant ADA provisions, examples of company cost savings, and the steps that should be followed in establishing an effective, legal workers' compensation cost-reduction program.

There is a common misconception that the Americans with Disabilities Act (ADA) is incompatible with state workers' compensation laws and will increase workers compensation costs. A random survey of published articles include statements such as the following:

- One of the indirect consequences of the Americans with Disabilities Act of 1990 will be greater workers' compensation costs to employers. . . . [1].
- The ADA may increase costs by forcing the hiring and rehiring of workers who . . . may be predisposed to . . . injuries or illnesses. It may also increase costs due to an onslaught of discrimination complaints. . . . [2].

- Critics of the Americans with Disabilities Act raise fears that injured workers will use the act to circumvent the limits placed by workers' compensation [3].
- . . . the Second Injury Fund requirement that the employer have knowledge of pre-existing disability could not be met (because of the ADA) and the employer will be liable for one hundred percent of the compensation award [4].

Contrary to the impression given by these quotes and other statements in journal articles and seminars, effective compliance with the ADA should *decrease* workers' compensation costs for most employers while benefiting employees. This will be shown later in this article. First, however, the actual relationship of the ADA and state workers' compensation laws must be understood.

UNDERSTANDING THE ADA AND WORKERS COMP

As state laws, workers' compensation rules that conflict with the ADA are invalid. However, few, if any, provisions of state workers' compensation laws are in direct conflict with the ADA. The basic purpose of the laws are different, but complementary. Workers' compensation laws have the purpose of reimbursing employees for on-the-job injuries and job-related sickness, while the ADA's purpose is to prevent employment discrimination based on an individual's physical or mental disability.

In many employer-employee situations the ADA and workers' compensation laws will not overlap; therefore there will be no conflict. For example, the ADA appears to have no effect on who is covered by workers' compensation laws, how premiums are determined, the process of making claims, or the amount or type of benefits to be paid. By the same token, workers' compensation laws do not attempt to govern discrimination against disabled people.

The major issues of overlap and possible conflict occur in the following areas: Obtaining information about job applicants, gathering and storing information about employee health and medical conditions, administration of second injury funds, and returning legally disabled workers to a job after a health- or injury-related leave of absence [5].

OBTAINING INFORMATION ON JOB APPLICANTS

The ADA imposes major restrictions on an employer's ability to discover and use medical and workers' compensation information:

- Job applicants cannot be asked about the state of their past or present health.
- Questions that cannot be asked of job applicants cannot be answered by obtaining information from other sources. For example, it is illegal to ask an

applicant's references or previous employers about the individual's past or current physical or mental condition, or to contact other people or agencies to obtain the information.

- An employer cannot attempt to discover whether an applicant has had workers' compensation claims, whether by asking the applicant or other means.
- An employer cannot give applicants medical exams or require health histories. This restriction covers the traditional types of physical exams or health histories. It also appears to prohibit some psychological examinations given by employers that were developed for testing mental illness, i.e., the Minnesota Multiphasic Personality Inventory and similar tests.

However, these prohibitions do not mean that an employer must employ people without consideration of their physical impairment, mental condition, or workers' compensation history. The information that cannot be obtained about a job applicant may be obtained after "tentatively hiring" an individual. Tentative hiring occurs when an employer selects an individual and notifies the person that they are "hired" or "tentatively hired." The employer can then require a medical exam, ask health-related questions, and look into the individual's history of making workers' compensation claims.

USING MEDICAL AND WORKERS' COMP INFORMATION

If the information proves the individual's mental or physical condition prevents effective job performance, even after consideration of reasonable accommodations, the new employee may be rejected—whether legally disabled or not. Nothing in the ADA requires employers to hire and retain individuals who cannot effectively perform their jobs. If the medical information proves that the individual's employment creates a substantial risk of serious injury or death that cannot be eliminated or effectively reduced by reasonable accommodations, the new worker—disabled or not—can be released.

Discovery of past workers' compensation claims may also give an employer grounds to terminate employment. If the past workers' compensation claims were based on temporary impairments and the individual is not legally disabled, the ADA does not apply. The employer may, consistent with any state law limitation, reject the employee. Thus, individuals who are not disabled who show a pattern of abuse in making workers' compensation claims may be rejected on the same basis as before the ADA became effective.

The ADA does create three major changes concerning medical or workers' compensation information about job applicants and employees. First, the time period in which the information can be gathered must be altered so that the information concerning new employees is gathered only after tentative hiring.

Second, rejected individuals will know the reason(s) for rejection. In the past, a rejected job applicant might not know the reason for his/her rejection, even when rejected because of a disability or history of compensation claims. Was it the disability that caused the person to fail to obtain the job, or was there a more qualified applicant? Was the reason for rejection a lack of experience, or too many workers' compensation claims? Under the ADA, one who is tentatively hired, then rejected (unhired) after undergoing a medical exam, giving a health history, or undergoing a review of workers' compensation history will know the reason for the rejection. This does increase the possibility of legal action.

Third, although employers can continue to reject new employees based on a disability or workers' compensation claim history, employers must understand and comply with strict ADA rules concerning who is disabled, who is a qualified disabled person, and under what conditions an individual's impairment creates a substantial risk of future injury or death.

WHO IS DISABLED

Under the ADA, a legally disabled individual is one who has a physical or mental impairment that substantially limits a major life activity such as walking, reading, eating, reaching, standing, climbing, working, procreating, or caring for oneself. Under this definition, courts have found people with the following conditions, among others, to be disabled: HIV-virus or AIDS, diabetes, epilepsy, cancer, profound mental retardation, amputated leg, heart disease, hepatitis, alcoholism, schizophrenia, learning disorders, mastectomy, and past drug addiction. Also disabled are those with a past history of a disability (such as cancer which has been cured), individuals who are treated as if they are disabled (thus an employer who treats a person as disabled may actually create a legal disability), and those who receive unfavorable treatment because of their association with a disabled person (such as spouse or child) or a disability group (such as an AIDS awareness organization).

Other conditions such as bad backs, repetitive motion injury, asthma, arthritis, and vision or hearing impairments will constitute legal disabilities if they are severe enough to limit a major life activity. Normally, this includes people whose condition is chronic and causes them to be unable to engage in a major life activity, as compared to an average person. For example, a person who needs eyeglasses normally is not disabled; however, if the correction achieved by the glasses leaves the person unable to see as well as the average person, there may be a disability. If the person is legally blind, there is a disability.

Individuals with temporary medical problems are not legally disabled. Therefore, assuming no permanent aftereffects, people with broken arms or legs, or cuts and bruises causing no permanent disfigurement are not disabled. Nor are individuals with typical short-term illnesses such as the flu, colds, appendicitis, physical reaction to chemical exposure, or temporary stress not connected to a

long-term mental condition. The ADA specifically excludes from coverage homosexuals, bisexuals, people with a number of listed sexual behavior disorders, current drug abusers, and individuals with a compulsive gambling disorder, kleptomania, pyromania, or a disorder resulting from illegal drug use.

WHO IS A QUALIFIED, DISABLED PERSON

Individuals receive no protection under the ADA unless they are qualified, disabled people. Qualified, disabled individuals are those with a legal disability who can still effectively perform the job in question, with or without reasonable accommodations. No employer is required to hire or retain an unqualified person—even if a legal disability caused the lack of qualification. For example, in each of the following fact situations a court ruled that the individual was not a qualified, disabled person:

- A blue-collar postal worker with wrist pain that limited him to no more than four hours work per day in a sedentary job [6].
- A utility company employee whose job was to drive to various schools throughout the State of New York who lost his driver's license because of driving under the influence [7].
- An entry-level worker at a paper company with a bad back that prevented him from lifting over 50 pounds, where the job involved much heavy lifting in numerous areas of the plant [8].

If the provision of reasonable accommodations allows an individual to effectively perform the job, the accommodation must be supplied unless it creates an undue burden on the employer. For example, in a case involving the U.S. Postal Service [9], a court said the following accommodations were reasonable and would allow a deaf time and attendance clerk to perform his job: allowing one of three other clerks to answer the phone, use of laminated cards containing phrases often used, a prepared list of questions and answers that could be pointed to, elementary training of coworkers in sign language, and expanding the use of a TTY keyboard for the hearing impaired that was already available in the post office.

RISK OF FUTURE INJURY

One of the most frequent causes of lawsuits under the federal Rehabilitation Act and state laws with provisions similar to the ADA involve an employer's decision not to hire or return to work an individual who is perceived to create a risk of future injury or death. Furthermore, employers have lost over 90 percent of these cases. In order to refuse employment on these grounds, an employer must be able to prove the individual's physical or mental impairment creates a *significant* risk

of future *serious* injury or death [10]. Lawsuits that employers have lost include refusals to hire or return to work people in jobs such as laborers, truck drivers, and employees working around dangerous machinery who had epilepsy, diabetes, bad backs, and AIDS.

In order to deny employment because of a risk of future injury it is not enough to show a significant risk. One must also prove the risk involves substantial injury or death. For example, when a Shoney's Restaurant discharged a salad attendant after she had experienced several epileptic seizures at work, a court found the employer had violated the law since none of the seizures created any serious risk of injury. The employee simply fell to the floor, injuring no one [11]. Where an employee with epilepsy was refused employment working with dangerous machinery with moving parts, another court decided the employer had violated the law by their refusal to hire the individual because the evidence showed the employee had not had major, day-time seizures for many years and had successfully worked in a previous job with similar machinery. Thus, while an accident could create a major injury, the chance of a seizure at work that would cause an accident was not significant [12].

OBTAINING AND STORING INFORMATION

The ADA requires all health, medical, and workers' compensation information gathered after tentative hiring, or any other time, to be kept in a confidential file separate from employee personnel files. If an employer uses paper files, these records should be kept in a separate, locked filing cabinet. If computerized, the records should be in a separate data file with a confidential password required for entry. Medical or workers' compensation materials covered by the confidentiality requirement include information gathered before or after the ADA went into effect. The ADA, Equal Employment Opportunity Commission (EEOC) regulations, and an EEOC interpretive guidance state that the confidential information may be released only to supervisors who need to know in order to make accommodations, company health and safety personnel, government investigators investigating compliance with the ADA, and workers' compensation insurance officials (the latter exception allows notice to second-injury funds, where required by state law). Of necessity, the list must also include a limited number of human resource employees or managers who must receive and file the information.

SECOND-INJURY FUNDS

Almost all states have a workers' compensation second-injury fund, although the procedures under the laws vary from state to state. In essence, a second-injury fund encourages employers to hire previously injured or ill employees. For example, many employers might hesitate to hire a new blue-collar worker who is blind in one eye because an accident causing a loss of the good eye would result

in total blindness—an expensive workers' compensation claim. Under a second-injury fund, the new employer or its insurance company would have to pay only for the loss of one eye, with the state's second injury fund paying the added expenses of total blindness.

The ADA does not invalidate second injury funds, nor does it affect the procedures or administration of the funds in most cases. In states where the fund automatically applies when hiring a worker with a preexisting injury, no change in law or procedure is required for ADA compliance. In states that require employers to know of and note the previous injury, the only change caused by the ADA is that the knowledge may be acquired between the time of "tentative hiring" and the start of work, and the notation must be placed in the employee's confidential medical file. In the few states that require notice to a workers' compensation state agency or insurance company, the notice simply must be sent after tentative hiring rather than before hiring (state law provisions to the contrary are in conflict with the ADA), and copies of the notice should be kept confidential.

MEDICAL EXAMS OF CURRENT EMPLOYEES

The ADA prohibits medical exams of current employees unless the employee voluntarily agrees to the exam or the exam is job-related. This rule should place little or no restriction on medical exams for alleged on-the-job injuries or sicknesses in connection with a workers' compensation claim because they are job-related. The exam is necessary to determine whether the employee can continue to work, or in the alternative, the employee needs a leave of absence and/or medical treatment before being able to perform the job. Likewise, medical exams given to determine whether an employee is qualified to return to work after medical treatment and/or leave of absence are job-related.

Although the physician may give a complete physical or mental exam in connection with a workers' compensation claim or return-to-work decision, employers should request that any medical report to the company be limited to facts directly relevant to the employee's current ability to work in his or her job, with or without accommodations, or ability to do light-duty or part-time work. Obtaining additional information (such as HIV status, past drug abuse, etc.) is not job-related and not consistent with business necessity, as required under the ADA for exams of current employees. Thus, it is best if the company is not informed of these types of additional medical information.

RETURNING EMPLOYEES TO WORK

The ADA does require employers to make reasonable accommodations to allow workers' compensation claimants to return to work, but only if the claimant is legally disabled under the ADA. Many employees who receive workers' compensation benefits and later return to work are not legally disabled; thus the employer

need not worry about compliance with the ADA. In cases of temporary impairments not constituting a legal disability, an employer can follow the traditional procedure of demanding a physician's statement certifying the employee as capable of performing all the duties of the job without changes or accommodations before allowing the employee to return to work.

ADA COMPLIANCE REDUCES WORKERS' COMPENSATION COSTS

Even though not required, it is in the best interest of employers to treat all workers' compensation claimants as if they are disabled and under the protection of the ADA. In fact, it is best to exceed the requirements of the ADA in making reasonable accommodations—whether the employee is disabled or not.

Companies that actively manage workers' compensation cases and do everything possible to return employees to work at the earliest possible time save significant amounts in workers' compensation costs. Sprague Electric Company of Concord, New Hampshire, reduced its average disability absence rate by 50 percent by encouraging early return to work and making accommodations to allow such returns. At one company location Sprague reduced workers' compensation costs from \$350,000 annually to \$40,000 in just two years, after instituting its disability management program. It reduced the average days lost due to accident from six-and-a-half days to one day [13].

Will-Burt, a 300-employee steel fabrication business in Ohio, brings injured employees back to work for as little as two hours a day in changed or light-duty jobs—allowing employees to try a number of different light-duty jobs until they find one they can do. The program reduced its workers' compensation costs from \$200,000 per year to \$9,000, during a time that other employers were experiencing rapid increases in cost [14]. In just one year, workers' compensation expenses per employee at Burnes of Boston dropped from \$1,000 to \$300 after they instituted a disability and return-to-work program, while lost-time work days fell 93 percent [15].

Effective cost-cutting and ADA compliance will not necessarily result from contracting with insurance companies or consultants to manage workers' compensation costs. Fast Motor Service, Inc., of Brookfield, Illinois, discovered this when it found its workers' compensation insurance company was not strictly evaluating claims, nor interviewing claimants. In a subsequent lawsuit, it won a \$75,000 court judgment against the insurance company [16]. Olsten Corporation, a Westbury, New York, temporary help agency, and HGO, a King of Prussia janitorial service, sued their insurance companies on the same grounds [16].

If a consulting company is used, or a workers' compensation insurance company is selected based on claims of reducing workers' compensation costs, the company should, at the very least, retain some supervision and control over claims and include in any consultant's contract the right to terminate the arrangement if it

does not, in the sole opinion of the company, effectively reduce costs. Because insurance contracts are typically on a year-to-year basis, nonperforming companies may be terminated by not renewing the insurance.

Companies should also consider an effective return-to-work program that exceeds ADA requirements when dealing with employees on nonworkers' compensation medical or disability leave. Companies that voluntarily provide paid sick leave or short-term disability and companies in states that mandate temporary disability coverage—California, Hawaii, New Jersey, New York, Puerto Rico, and Rhode Island—may save as much in these areas as in workers' compensation claims. Furthermore, all companies may be required to cover both job-related and personal medical problems under new federal health care proposals, or under new state “twenty-four-hour coverage” laws. Pilot twenty-four-hour coverage programs have recently been authorized by the laws of Florida and Massachusetts, while Alaska, Colorado, Idaho, Minnesota, Oregon, and Michigan, among other states, are considering such programs. Although the twenty-four-hour coverage proposals vary in their specific provisions, all would require some method of combining workers' compensation and nonworkers' compensation disability coverage for employees. Therefore, it is likely that methods to reduce workers' compensation costs are, or will be, equally important in dealing with employee sickness and disability leaves.

EFFECTIVE STEPS IN REDUCING WORKERS' COMPENSATION COSTS: A BAKER'S DOZEN

The merger of ADA compliance with effective workers' compensation cost-control methods and the handling of other health-related leaves may be achieved by companies that comply with the following steps:

Step 1. Institute a Company Return-to-Work Program

Most companies reporting large savings in workers' compensation costs have done so by creating a comprehensive company program that is managed by the company. Outsiders such as consultants or insurance companies may be used to help design and implement the program, but control over the program is retained by the company. Federal Express's “Modified-Duty Rehabilitation Program,” which saved four million dollars in its first year of operation, is run by the human resources department and uses employees' supervisors, a doctor, and a benefits expert to manage each case [17]. Burlington Northern also manages its own return-to-work program, using the services of a medical doctor, rehabilitation counselor, the company's own insurance claim agent, and the employee's immediate supervisor. Overall, the company has more than two dozen teams that manage disability and return to work [18].

Individual companies may create different combinations of company personnel, physicians, and other experts to handle return-to-work programs, but each company should have at least one disability coordinator to oversee the program. Typically, the coordinator is placed within the company's human resource department. Individuals or teams who manage workers' compensation and other medical leaves should receive strong support from top management and be given the authority to do anything that reasonably reduces costs.

Step 2. Intervene Early

The company should have procedures in place to contact injured and sick employees as soon as possible so as to show personal concern and remind the employees how valuable they are to the company. For example, FMC Corp., a Chicago company, contacts its employees within twenty-four hours of an injury [19]. In large companies the person contacting employees may be a member of the human resources staff, probably the disability coordinator as suggested in the previous step, while in smaller companies it may be a supervisor or general manager. The human resources individual or manager should receive an immediate copy of all lost-time accident reports, health-related absences for other than minor illnesses, and all workers' compensation claims, to allow a quick contact with sick or injured employees. Allowing a disability coordinator or other individual performing these tasks to see the health-related information should not violate the ADA's confidentiality provisions because the individual can be considered either a company health and safety officer, or the company representative who is making a determination of current job qualifications.

Intervention before lost-work time or medical treatment is even better and is possible in some cases. A procedure whereby supervisors can report employees who are developing problems or who have stated an intent to take medical leave can allow the company to contact the individual and plan the leave, treatment, and return-to-work plan.

Step 3. Personalize the Action

A key benefit of early intervention is increased employee morale and desire to return to work. The individual who first contacts the employee or employee's family (if the employee's health condition is too serious to allow direct contact) should emphasize the fact that the company wants to do everything possible to help the employee. The company representative should also explain any relevant company benefits, encourage questions, and emphasize the value of the employee to the company. The latter point should then lead into a discussion of an early-as-possible return to work.

An early, personal, positive intervention emphasizing what the company can do to help the employee is vital to an effective disability or workers' compensation cost reduction program. A good program must break the traditional workers'

compensation-disability leave scenario that features distrust on both sides and an employee attitude that prompts the employee to stay out of work as long as possible so as to receive maximum benefits.

Because this step is a key factor in reducing costs, the selection of the person to contact the employee or the employee's family member is vitally important. He or she must be a person who can, and will, show the company's personal concern, while knowing enough about company benefits and procedures to explain them. In most companies this would be a member of the human resources department who is a compassionate person with good verbal skills. This duty should not be turned over to a consultant or insurance company representative, since the company needs to show personal concern for the employee.

By showing an early, caring attitude toward the worker with emphasis on the importance of the employee to the company, the chance of the employee faking a claim, falsely extending the need for leave, or seeing a lawyer is reduced.

Step 4. Establish an Early Return-to-Work Date

As early as possible after consultation with the employee and the employee's physician, set a date for returning to work. Leaving the date open fails to provide the employee with a goal to reach and may create an attitude of disability. If the date becomes impracticable, it may be changed.

Step 5. Don't Require Full Recovery Before Return to Work

The goal must be to return the worker as soon as possible, even if this requires part-time work, special light-duty jobs, or accommodations. For example, Sprague Electric's successful program returns workers for as little as four hours per week [13]. Honeywell Company returns workers' compensation claimants for any number of hours at any job they can find or create [19].

At Chrysler, managers, medical experts and company attorneys meet each week to design temporary jobs for injured workers. One of the medical experts involved in the program reports: "At home, workers sit around, gain weight, lose tone, and they have all the psychological baggage that comes with being unproductive" [20]. Steelcase, the office furniture manufacturer, found light duty work for returning employees by ceasing the contracting out of cleaning work gloves, and using returning employees to perform this light-duty job [14]. Weyerhaeuser reduced its workers' compensation costs from \$26.1 million in 1984 to \$16.5 million in 1988, in part by obtaining agreement from its security subcontractor to place sawmill workers unable to return to work in temporary, less-strenuous guard positions [18, pp. 15-16].

A cautionary note: Employers who create temporary light-duty jobs and allow part-time reemployment should specify in writing, such as in a company policy statement, that light-duty jobs and part-time work are intended to be temporary only, so as to allow the quick return of employees with temporary limitations, and

the ability to do these specially created temporary and part-time jobs does not prove an individual is qualified for a permanent position. Without this qualification, the creation of part-time and light-duty jobs might be used as proof that a disabled job applicant should be offered such positions permanently, as a reasonable accommodation.

Step 6. Involve the Disabled Person and Supervisor in the Planning of Accommodations and Return to Work

An employee is more likely to have a positive attitude if allowed to participate in return-to-work decisions and accommodations. If the accommodations require the cooperation of the employee's supervisor, participation in solving the problem of accommodations and return to work may gain the supervisor's support. Additionally, the employe and supervisor may have practical suggestions and thoughts that the professionals—human resource, medical, and rehabilitation personnel—may not have considered.

Step 7. Choose Medical and Rehabilitation Experts Who are Aggressive

While keeping ultimate control of return-to-work programs and accommodation decisions within the company, attempt to identify physicians and rehabilitation experts who keep current with the new trends in active, aggressive treatment of injuries and sicknesses. Where possible under state law, attempt to direct injured or ill employees to these physicians and rehabilitation experts.

Step 8. Work With and Education Physicians

Physicians of all types, even specialists in occupational medicine and rehabilitation, often know little about the actual mental and physical requirements of specific jobs. Often they are too conservative in their return-to-work decisions. Other times they may certify a worker as able to resume a job that he or she is incapable of performing because of the physicians' misunderstanding of the duties of the job. A company disability coordinator should contact the attending physician(s) in each disability and workers' compensation case to explain the exact duties of the job, available light-duty jobs, and possible alternative or part-time schedules.

Sprague Electric invites physicians to visit the workplace and observe the employee's job duties [10]. Since most physicians are reluctant to spend that much time, videotaping a worker doing the job in question, as well as videotaping the actions required in alternative, light-duty jobs can be easily done and then given to the physician(s).

Physicians who help make return-to-work decisions should also be educated as to the ADA's requirement of making reasonable accommodations for disabled

employees and the law's strict rules concerning denial of work because of a risk of future injury.

Step 9. Consider All Possible Accommodations

Part-time work or light-duty jobs are only two of many possible accommodations. Others include a temporary or permanent change in job duties, allowing employees to swap job duties, modification of the workplace, providing adaptive devices, flexible working hours, changing the time of work breaks, job-sharing, or a change in method of supervision. Many of the ideas developed for application to permanently disabled employees can also be helpful to solve temporary problems. Two sources of information include 1) the Job Accommodation Network, which provides a free service in suggesting one of over 15,000 accommodation ideas actually used by other businesses; and 2) the author's book on the ADA, which in Part II lists various medical problems, suggested accommodations, and sources of information. The Job Accommodation Network may be contacted by calling 1-800-232-9675. The author's book, *Employer's Guide to the Americans with Disabilities Act* may be ordered by calling 1-800-372-1033.

Step 10. Consider Outplacement

If a company is unable to return an injured or ill employee to any job at the company, even after consideration of part-time or light-duty work, placing the individual with another company can stop or reduce workers' compensation weekly payments. A company may contact company vendors such as travel agencies, office supply companies, janitorial supply companies, and security companies (such as Weyerhaeuser does) to attempt placement of an employee when a job within the company cannot be found.

Step 11. Motivate Supervisors to Take an Active Role in Early Return to Work

Temporary light-duty work, accommodations to allow employees to return to work, and part-time work will be effective only if managers and supervisors have a strong motivation to cooperate in a return-to-work and workers' compensation cost-reduction program. Three methods to induce cooperation can be used: First, managers and supervisors should be educated as to the benefits of a return-to-work program. Second, the company can make cooperation and effective action in aiding early return to work a part of the manager's or supervisor's performance evaluation. A third method is sometimes the most effective: charge workers' compensation costs to the employee's department, but charge any accommodation costs, or other costs in arranging light-duty or part-time work to a central budget. This gives a powerful financial motive to department heads or others who operate

under a budget to stop workers' compensation costs, even if the return to work entails some expenses.

Step 12. Remember Job Applicants

The disability coordinator or return-to-work team will gain expertise in dealing with disabilities. This expertise can also be applied when hiring new disabled employees. Legally, a company should be consistent in dealing with employees who become disabled while on the job, possibly in connection with a workers' compensation claim or other medical leave, with the method they handle new employees whose disability requires accommodation. Thus, there are practical and legal reasons for the company personnel dealing with old and new employees to be the same.

Step 13. Insure Confidentiality

Remember that the ADA requires *all* medical and health information to be strictly confidential and maintained in files separate from employee personnel files. This applies to the actions taken in return to work programs, as well as medical exams and other health information.

SUMMARY

Effective action to reduce workers' compensation costs matches the acts that should be taken by employers to be fair to employees and to abide by the ADA. Therefore, the steps given above should be taken by all companies who desire to obey the law while reducing the increasing and exorbitant costs of employee disabilities and workers' compensation claims.

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