SJR 30 Briefing Paper

Return to Work

In

Workers' Compensation Cases

Submitted to Jerry Keck, Administrator
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By

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Background

Employers and Insurers in the Montana workers compensation system spend more on vocational rehabilitation than do other states and yet workers in Montana seem to experience a greater number of days away from work[1]. Based on interviews with system stakeholders and ERD staff as well as a review of the Montana statutes and ERD data, it appears this is in part because the Montana benefit structure requires an evaluation of employability to determine entitlement to some benefits. A secondary factor appears to be the usual practice of the payment in a lump sum of job placement services which is often settled at the time of a settlement of permanent partial disability benefits. Although no data is available to determine the number of injured workers who have been helped to return to work as a result of vocational rehabilitation services, it is hypothesized that few of the vocational rehabilitation dollars paid by employers and insurers actually go toward assisting the injured worker in returning to work. It appears that Montana is in need of a revised rehabilitation structure that would result in better return to work outcomes at more reasonable costs.

This is a significant challenge since Montana has more small employers who may have less flexibility in making job accommodations that allows an injured worker to return to work while healing.

Best Practices in Return to Work

Over the last ten years a body of knowledge has been developed on what is now called "disability management", which has for the most part replaced the previous concept of "vocational rehabilitation". Numerous research studies in the 1990's found that mandatory vocational retraining in workers' compensation was not very efficient or effective. Additionally, a study done in Michigan revealed that employers could reduce their workers' compensation costs by tenfold using a number of management practices, including an active return to work program[2]. A result of this research was the elimination in most jurisdictions of mandatory vocational rehabilitation programs and instead a focus on returning the employee to the workplace in a modified position temporarily until they were healed and

[1] Ballantyne, Duncan S., *Workers' Compensation in Montana: Administrative Inventory,* March 2007, Workers Compensation Research Institute, Cambridge, MA.
[2] Hunt, Allan H., and Rochelle V. Habeck, *The Michigan Disability Prevention Study,* May 1993, W. E. Upjohn Institute for Employment Research, Kalamazoo, MI

able to return to their original position or another position with permanent accommodations. This process is now called “disability management” and is usually an interactive process between the employer and the employee with information from the treating physician and assistance from an individual functioning as a return to work facilitator (usually a physical or vocational rehabilitation specialist, physical therapist, occupational therapist or ergonomist).

The encyclopedia defines “best practice” as a management idea which asserts that there is a technique, method, process, activity, incentive or reward that is more effective at delivering a particular outcome than any other technique, method, process, etc. The idea is that with proper processes, checks, and testing, a desired outcome can be delivered with fewer problems and unforeseen complications. Best practices can also be defined as the most efficient (least amount of effort) and effective (best results) way of accomplishing a task, based on repeatable procedures that have proven themselves over time for large numbers of people[3]. In the area of Workers’ Compensation Disability Management and Nurse Case Management, many best practices have developed over time. Some of these best practices are supported by research and data, some by anecdotal outcome reviews often recognized in the industry through publications/conference presentations or industry awards for “best outcomes”, and some are time-tested practices of the leading industry organizations (industry practices), or are new innovations that are likely to create new “best practices”.

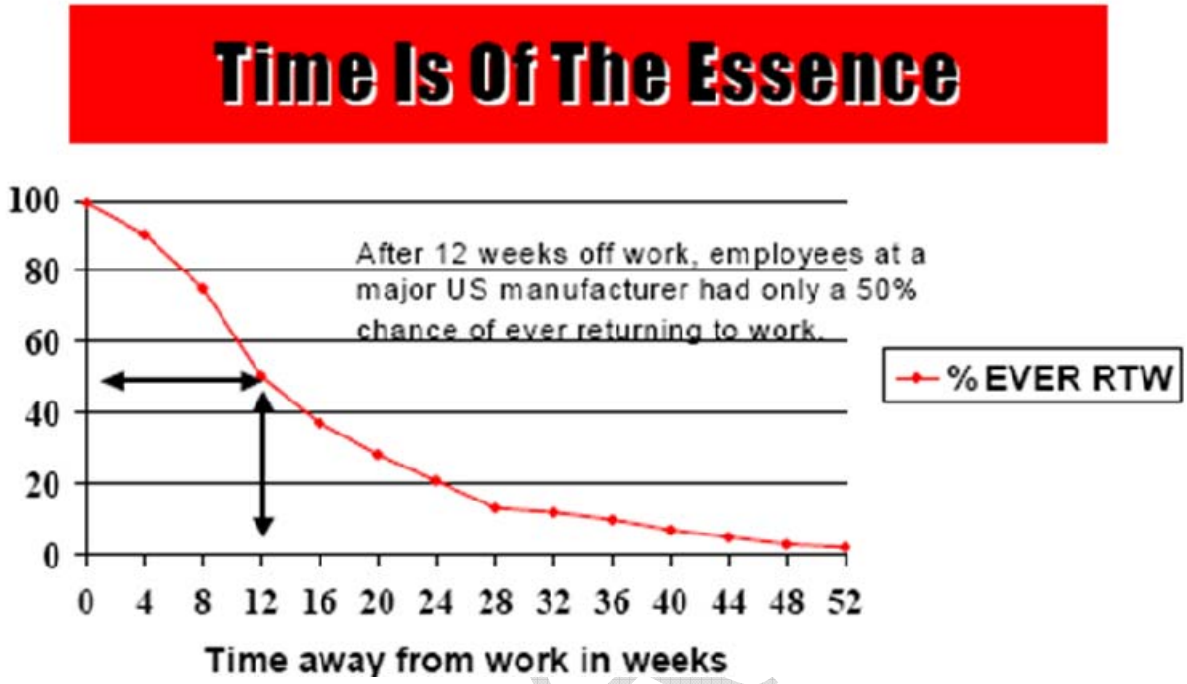
Early intervention has been a “best practice” in Workers’ Compensation claims management since the release of data demonstrating that early reporting of an injury, and thus timely intervention, had a direct impact on the likelihood of a return to employment.

The American College of Occupational & Environmental Medicine notes the following, “The key to preventing disability is intervening while the situation is still fresh and fluid. Research has confirmed that people who never lose time from work have better outcomes than people who lose some time from work. Several studies confirm that the odds of returning to work drop with every passing day not at work. Some studies have shown that the odds for return to work to full employment drop to 50-50 by the time 6 months of absence has occurred. Even less encouraging is the study behind Figure 1 (below), showing the decay curve for workers’ compensation cases at a major US manufacturer. In this population,

[3] Wikipedia, http://en.wikipedia.org/wiki/Best_practice, 2007

the odds of a worker ever returning to work had dropped to 50% by just the 12th week." [4]

Figure 1



"Preventing Needless Work Disability by Helping People Stay Employed" ACOEM, 2005

Many employers and some insurers now begin return to work efforts within 72 hours and some now begin on the day of injury -- rather than the more traditional approach of waiting to intervene until after 90 days of work disability. One large workers' compensation insurer has a group of "pre-injury consultants" who work with employers to set up plans and systems beforehand so that they are prepared to respond promptly to avert needless lost work days from the moment of injury.

Every year, the trade journal *Risk & Insurance* sponsors the Theodore Roosevelt Workers' Compensation & Disability Management Awards. The Theodore Roosevelt Workers' Compensation and Disability Management Award honors a company and a government or nonprofit organization for its efforts in innovations in disability management and workers' compensation that reduce the number and cost of injuries to workers on-the-job. The award was named in honor of President Theodore Roosevelt, who in 1908 introduced and promoted the first piece of important workers' compensation legislation in the United States – the Federal Employees' Compensation Act. The award has been given by *Risk &*

[4] *Preventing Needless Work Disability by Helping People Stay Employed*, Stay-at-Work & Return-to-Work Committee of the American College of Occupational & Environmental Medicine, 2005

Insurance for 11 years and it is presented at the annual Workers' Compensation and Disability Management Conference and Expo.

In 2006 the winners were Frito Lay and Integris Health Incorporated. Frito Lay's Theodore Roosevelt WC & Disability Management Award was based upon their Return to Work program. Their application stated, "Our transitional duty program is one of the cornerstones of our post-injury management program. We believe that an injured employee should be provided with temporary, transitional duty job assignments as soon as it is safe for them to return to the workplace. Our transitional duty assignments are based upon 4 fundamental principles:

- The job assignment must be constructive to the business
- The job assignment must be rehabilitative to the employee
- The job assignment must be temporary in nature, not to exceed 90 days
- The job assignment must not pose a safety risk to the employee, co-workers or the general public.

Upon commencement of a transitional duty assignment, the employee and his or her supervisor complete a Return to Work Agreement which outlines the employee's job responsibilities during the transitional duty assignment. Thereafter, the supervisor and the employee meet following each medical appointment to discuss their progress, any changes in their physical abilities and a modified duty assessment is completed at that time. The modified duty assessment allows us to document progress (or lack thereof), confirm that transitional duty will / will not continue, and amend the transitional duty job responsibilities based on the most current medical information.

Frito-Lay understands that as an employer, we have responsibilities to our employees. We are responsible for providing a safe workplace and we are responsible for ensuring that our employees who do suffer a work related injury have immediate access to the best medical care available. We believe this exceptional level of commitment to our employees is a distinctive strength of the Frito-Lay workers' compensation program."

Frito Lay measures their success in the reduction of LT days/100 Employees year over year and reported the following in their application for the Theodore Roosevelt WC & Disability Management award.

Lost Time Days / 100 Employees:

2000:	127
2001:	116
2002:	105
2003:	103
2004:	76

2005:	80
Improvement:	37%

The Theodore Roosevelt WC & Disability Management Award to Integris Health was based upon their RTW results which they attributed to their unique utilization of a Vocational Specialist dedicated to serving as a liaison between injured workers and supervisors to ensure that physical restrictions are honored in work performance. The Vocational Specialist locates suitable alternative employment in another department when necessary. The transitional employee receives full salary which is always charged back to the home department, making restriction accommodation a more likely outcome.

Their lost time results for the past five years as reported in their application for the Theodore Roosevelt WC & Disability Management Award have shown great improvement and are as follows:

Lost-time per claim	
2001	3.35 days
2002	5.31 days
2003	3.05 days
2004	2.84 days
2005	2.29 days

Disability management activities have been instrumental in Canada where successful disability management activities have resulted in annual awards and an entire disability management training and certification program. Their progress can be found at www.nidmar.ca . Most recently, they have posted the following results by a Canadian Health Organization using the early intervention and job accommodation processes supported by disability management, “Six months after the re-design of the DM program at Vancouver Coastal Health, results are that early intervention which previously averaged 45 days is now under 3 days, which has resulted in a reduction in duration by 60% and the need for permanent accommodations has been reduced by more than 50%.”

Disability Prevention Practices involve ensuring the injured worker has the support and encouragement they need to recover and successfully return to work. The longer the disability, the more support and encouragement most injured workers need in order to continue to believe they will recover and return to work. This is usually a team effort that involves the employer, the claim handler and often a nurse case manager, depending on the severity of injury and the expected length of disability.

Most employers have found that keeping the employee connected to the workplace helps reduce the feelings of loneliness and isolation that often accompany a significant disability. Having the owner, supervisor or occupational

nurse (depending on the size of the organization) call regularly to ask about the employee and to keep them informed of what is happening at work can help to reduce this sense of isolation.[5] We also often forget that if the employee cannot work, they cannot participate in activities at home or socially that they used to be able to do as well, like picking up young children, taking the garbage out, bowling, making meals, cleaning, etc. This can lead to anger within the family and additional stress further isolating the recovering worker. Claim handlers who regularly talk with the injured worker and who have established significant repo ire with them can often sense when the worker needs additional support and assistance to recover effectively and will assign a nurse case manager to work with the employee to assist them in their recovery and return to work. This is especially needed when there is a high likely hood that the injury will prevent the worker from returning to the type of work they had at the type of injury and certainly in catastrophic injuries. The worker needs to be reassured that they will return to work and thinking about life after disability. This can be a productive time for discussions about what they will do next if they cannot go back to the work at the time of injury and start exploring re-employment options.

Exploring Occupational Options should begin as soon as it becomes apparent that the employee is unlikely to return to the job at injury. This will differ from individual to individual based on the severity of injury, the nature of the work they did and the size of employer, as well as other factors. The physician, the employer, the employee and the claims handler (as well as any service providers) all need to be aware of when this occurs and be ready to explore re-employment options and overcome return to work barriers. To do nothing risks a long term disability and significant financial losses for the worker and a potential permanent total disability claim to be paid by the employer and insurer.

Current Practice in Other States

Most states have established provisions that allow employers and insurers to provide rehabilitation services to workers who have permanent physical limitations and cannot return to their pre-injury job. As of July 1, 2008, all states but New Jersey, New Mexico, and South Carolina had some provisions for rehabilitation benefits for injured workers.[6] The type of benefit structure greatly influences the type and use of rehabilitation services. For example, in a wage loss system such as Michigan, the employer/insurer must continue to pay weekly benefits until the worker is back to a job earning at least the same wage as at the time of injury. In wage loss states like Michigan, the insurer must provide vocational services or prove there are jobs available the worker can do in order to stop paying benefits. This is a huge incentive to provide rehabilitation services. However, in a state like Florida where impairment benefits are paid and there is a

[55] Welch, Edward, M., *Employer's Guide to Workers' Compensation*, 1994, Bureau of National Affairs, Washington, D.C.
[6] *WC Laws, 2nd. Edition,* 2009, Workers Compensation Research Institute, Cambridge, MA.

very high threshold for permanent total disability benefits, there is little incentive for the employer/insurer to provide rehabilitation benefits.

Recommendation

Montana needs to focus on early intervention and return to work in order to reduce disability durations and the adverse financial impact for both workers and employers that results from prolonged disability. Early intervention to explore return to work options in the first two weeks after injury should be tried. Such services would be limited to return to work coordination by a qualified individual working with the employee, employer, the physician and the insurer. If early return to work is not possible, return to work assistance should be provided as soon as it is apparent that the employee is at risk of not returning to the employer at injury or to the type of work they did at the time of injury. This should be considered by the employer/insurer at the request of the return to work coordinator, the employee, physician or employer or at any time the insurer believes those services are necessary to return the employee to regular employment.