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Developing a Robust Return to Work Program

I. PRE-RETURN TO WORK PHASE

Overview

Taking a proactive approach in the workplace leads to successful return to work outcomes. This begins by educating and training supervisors and managers to help prevent work injuries from happening in the first place, and also including them in the return to work policies and planning. The relationship between supervisors and managers is vital due to their close proximity to the employees as well as their first-hand knowledge and awareness of the industry environment. By designating an individual or a team to be responsible for coordinating the return to work program will only enhance and strengthen communications with an injured employee. Ultimately, committing to a strong safety protocol and recognizing the proper resources necessary to implement an effective return to work program are key elements during this early phase.

Establishing a Positive Work Setting and Environment

Building support and obtaining commitment from senior leadership within the company is necessary to create a positive return to work environment. Written policies and procedures that provide a road map for implementation of the return to work program must be established. Once a program is firmly established, encouraging open communication between employees, supervisors, managers and human resource personnel is critical to the success of the program.

By emphasizing a positive culture through a proper orientation program (which includes discussions about safety, proper chain of command and performance review), employees will clearly understand their rights and what is expected of them by the employer. As part of this continuing education of employees, the employer must maintain accurate physical demand job descriptions of all available jobs. This can be accomplished by retaining vocational experts to update and develop changing job descriptions.

To further establish a positive work environment, an employer must be aware of all wages, bonuses and incentives for all available jobs. In addition, identifying specific personnel most knowledgeable of job tasks and responsibilities is crucial. By recognizing ergonomics as a tool to increase productivity, decrease injury/discomforts and coincide with an employee's ability, the employer is better equipped to deal with injured workers.

Utilize insurance carrier resources (including people and technology) to develop and maintain an effective network of approved medical providers. Familiarize the approved medical providers with business and

job tasks while maintaining positive relationships with them in order to control treatment and assess an employee's ability to return to work. Finally, diary all workers' compensation injuries to control exposure and assess return to work potential, timeliness of treatment and progression of claim.

The Benefits of a Well-Organized Return to Work Program

Providing the employer with control over work activity and wages and allowing for daily oversight of the employee is a strong benefit to a well-organized return to work program. Keeping employer-employee lines of communication open and promoting this positive relationship will ultimately decrease litigation costs. In fact, studies have shown that after employees are out of work for an extended period of time, they are less likely to return to work on their own or in good faith. Thus, it is imperative to get injured workers back to the job as quickly and efficiently as possible, and to critically consider the length of the return to work program, i.e. six months to one year, one year, or ongoing.

II. RETURN TO WORK PHASE

Overview

While accident prevention is the first line of defense in preventing work injuries, it is an effective return to work program that best manages costs and improves worker recovery after an injury has occurred. As outlined above, after effectively establishing a return to work program and creating a positive culture within the company, you are now ready to implement the program once an employee is injured.

Implementation of the Effective Return to Work Program

First, identify the accepted injury via the state filed forms and then carefully clarify any injuries accepted, but not identified, specifically on the state forms. Consider if the panel doctor is an appropriate provider to rely on in getting the employee to be able to return to work. Consider an independent medical examination to define the nature and extent of injury, particularly when the employee is not recovering as expected or not compliant with treatment. Next, determine whether more than one independent medical examination expert may be necessary, such as scheduling a neurological exam as well as an orthopedic exam on an employee who has an injured back. Confirm that the independent medical examination experts are provided with all medical records and diagnostic study films for review and analysis.

The next step is to identify any and all releases to return to work by treating providers and securing a Physical Capacities Form from the treating physician and/or the independent medical examination expert that specifically outlines the exact nature of physical capacities and/or restrictions. Retain a nurse case manager to secure immediate feedback on medical treatment and restrictions. Rely upon the nurse case manager to maintain a favorable relationship with the injured employee and work with the nurse case manager to understand and appreciate the employee's activities, home life and physical limitations and restrictions.

If the employee remains out of work for an extended period of time, consider a functional capacity evaluation as a good way to measure the validity of the employee's complaints and abilities and to evaluate why the employee continues to be out of work. Prepare the proper state forms in order to notify the employee and his attorney, if known, of employee's capabilities of returning to work. Finally, coordinate a claims review/strategy meeting and communications with key risk managers and safety personnel to discuss return to work restrictions and job availability for the injured employee.

Making the Job Offer to the Injured Worker

When making a job offer to the injured worker, the best approach is to have the job offer in writing. It should contain all of the requisite information, including but not limited to, the employee's change in medical condition. In addition, the job offer must take into account whether the employee is capable of returning to the workforce. The job offer must identify what occupational category to which the employee is released (sedentary, light, medium or heavy-duty work). A specific and accurate description of the job duties being made available with an attached formal job analysis must also be included.

The job offer must outline the specific wages/salary and hours available for the position, as well as the name and telephone number of the person to contact to get started with the new position. The offer needs to identify the start date and should be sent to the worker via regular and certified mail, along with a copy to the known attorney, to prevent the worker from claiming that he/she never received the job offer.

Once the job offer has been communicated to the employee, verify that the employee has returned to work and then file with the Bureau the required state forms. Confirm that any light-duty employee is subject to the same disciplinary policies as the other employees. Continue to maintain contact with the employee during this return to work program and address any complaints verbally, then follow-up with written documentation.

III. LITIGATION PHASE

Overview

Unfortunately, even with an effective return to work program and a positive and supporting work environment, many workers' compensation claims still need to be litigated for a variety of reasons. Communicating with counsel is important during the litigation phase in order to make sure that all information is being processed correctly by the different individuals. By continuing to be proactive and aggressively litigating the matter, in the end, many costs can be limited or avoided all together.

Litigation Tools and Strategies at the Defendant's Disposal

After a claim has entered the litigation phase, the employer can consider engaging a vocational expert who can perform an earning power assessment and rely on labor market surveys to strengthen the evidence and defenses to the claim being litigated. Securing the personnel file is imperative in order to analyze and strategize any and all potential employment-related issues.

Counsel should identify fact witnesses from the employer who can testify, and then arrange meetings with these witnesses to discuss facts, documentation and prepare for testimony. With regard to expert witnesses, careful consideration of who to retain and the costs associated with that retention is paramount to efficiently litigating the case. Included in these costs is the amount of time needed to review all medical records and diagnostic, review the pre-injury job description and alternative job description with physical demand, examine the injured worker, prepare a comprehensive report and then ultimately testify at deposition.

Other than fact and expert testimony, there are many other effective litigation tools and strategies. The use of audio and video surveillance is often persuasive evidence with the court, as the judge can see with his/her on eyes whether the employee is suffering from the injuries he/she is claiming. In addition, using video of actual job tasks helps the judge appreciate what the employee needs to do to perform the job and can often counter contrary allegations of the employee. Social media is a powerful source of information and often is helpful in discrediting the testimony of the claimant. On the medical front,

identifying any additional treating providers to unearth contrary facts and potential support for a return to work is useful.

Although the theoretical goal of litigation is to win every case, the practical goal is to resolve the case in the most cost effective way possible. This can be accomplished through mandatory and/or voluntary mediation. The best way to enter into mediation is after you have secured testimony and evidence that could win the case for you. After arranging a strategy meeting with key managers to discuss facts, exposure and settlement authority, counsel must persuasively articulate why the defenses to the claim are more believable than claimant's allegations. A successful mediation occurs when both sides leave the meeting feeling like they received the better deal!

IV. AFTERMATH PHASE

Overview

Once the claim has resolved either through litigation (decision or settlement) or by the fact that the employee has completely healed from his/her injuries and returned to work full-time, a little bit of "Monday morning quarterbacking" is needed to assess how well the claim was handled from start to finish. This evaluation and analysis is important in order for all parties involved to determine how they could improve processing the next claim.

Identify Strategies for Improving Financial Impact of Claim

Many aspects of how the claim was handled should be identified and analyzed to determine if cost savings and greater efficiency could have been accomplished if the claim was handled differently. Some of these aspects include:

- Proper orientation – safety training; zero-culture for injury; ongoing training; responsibility/expectations
- Initial contact-gathering information – respect/fairness
- Communication to ease concerns and empower employee
- Taking time to talk to employee to reduce chance of litigation and reinforce care and desire to achieve best result
- Set expectations – benefit delivery, return to work and medical care
- Performance metrics to evaluate effective communication within the employer and with outside vendors

Other ways to ensure proper handling of a claim is the creation of a mentoring program for employees. This mentoring program would ensure that new employees were conducting their job responsibilities properly and safely, thus avoiding potential injuries. Assessing medical provider outcomes is also another avenue to explore in trying to more effectively handle claims. Items that should be considered on this issue are reliance on approved medical provider vs. independent medical examination, proper expertise and record review, and detailed physical capacities and job analysis review. Finally, retaining an ergonomics expert to identify and modify job tasks, address aging workforce and assess low cost accommodations could be helpful in limiting potential new claims and exposure to existing claims.