# CEO/OFFICE OF RISK MANAGEMENT PROGRAM POLICY

Effective Date: **August 2010** Policy Number: RM RTW 1

Revised:

ADMINISTRATIVE AUTHORITY: CEO/Office of Risk Management

TITLE: County of Orange Return To Work/Transitional Duty Program

#### I. Introduction

The County Executive Office, Office of Risk Management acknowledges that employees are a valuable resource and shall establish a Return-To-Work (RTW) /Transitional Duty Program. The County's RTW program ensures a transition process to return to active work those employees who have lost-time from work due to illness or injury, are disabled for any reason, and are capable of returning to work at modified duty or with specified restrictions. The program focus is on employees' medical situation or condition, not whether it occurred at (i.e., Occupational) or outside (i.e., Non-Occupational) of work, in order to maintain employee productivity at its highest level.

# II. Purpose

The purpose of this policy is to establish a collaborative planning process with Agencies/Departments to assist and enable injured/ill employees in their recovery by effectively returning them to the work force through the use of a temporary transitional duty program as soon as medically feasible. All internal and external stakeholders (i.e. injured/ill employees, co-workers, management, supervisors, safety and occupational health, and third party administrators) shall demonstrate good faith efforts in returning employees to work; improve efficiencies and achieve cost effectiveness by reducing work absences and disability expenses, and minimize re-injury or permanent disability while encouraging proper and ethical practices to realize our moral, ethical and legal responsibilities to our employees.

## III. Scope

County Agencies/Department Heads and Staff are significant partners within the RTW program relative to the effectiveness of returning their injured/ill employees to their regular duties in a timely manner by utilizing modified duty or temporary transitional assignments to accelerate the recovery process and return employees to their regular duties. The benefits of the RTW program include building strong relationships between the County and its employees, motivating employees to stay at work, and the resulting reduction in costs associated with injury or illness. The RTW program does not

guarantee temporary modified duty for every injured employee or that temporary duty will be available for the total period of disability. Also, the RTW program is not intended for employees with permanent limitations resulting from serious injuries/illnesses.

Overall, the County's RTW program outcomes include the ability to:

- Minimize employee wage loss
- Reduce Workers' Compensation costs
- Accelerate recovery from an injury or illness
- Improve employee morale
- Improve employee and management relations
- Ensure an interactive return to work process
- Coordinate everyone's efforts to achieve a better outcome
- Create awareness of safety concerns
   Coordinate with other leave programs, i.e., the California Fair
   Employment and Housing Act (FEHA) and Family Medical Leave Act (FMLA)
- Maintain and encourage optimal employee productivity
- Accomplish necessary tasks in the workplace
- Minimize negative effects on the injured/ill employee's personal life
- Provide a positive workplace atmosphere

### IV. Compliance

The County of Orange Return To Work/Transitional Duty Program shall abide by the regulations and compliance requirements imposed by Federal and State Laws. These regulations and requirements apply to but are not limited to the Family and Medical Leave Act (FMLA), Americans With Disabilities Act (ADA), The Americans With Disabilities Act Amendment Act of 2008 (ADAA), California Family Rights Act (CFRA), Fair Employment and Housing ACT (FEHA), Pregnancy Disability Leave (PDL), Workers' Compensation, Social Security Disability Income (SSDI), Medicare Secondary Payer Statute, MSP Omnibus Budget Reconciliation Act of 1985 (COBRA), and the Health Insurance Portability and Accountability Act (HIPAA).

### V. Policy

The County of Orange Return To Work/Transitional Duty Program shall be offered to all injured/ill employees when feasible and is dependent upon the availability of suitable assignments and the qualifications of the eligible employee. Employees are to be provided with assistance while making their transition back to their regular duties as expediently as possible. In order to identify and interact with employees who can benefit from the RTW Program and gain physician approval to ensure their safe return and capacity to work, the program shall adhere to the following administrative guidelines:

• The County Return To Work Manager shall oversee the administration of the County's Return To Work/Transitional Duty Program through a collaborative planning process with Agencies/Departments, Risk

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Management Workers' Compensation Program Manager (Occupational Illnesses/Injuries), EEO Manager (Non-Occupational Illnesses/Injuries), Agency/Department Managers, all Stakeholders, and Chair the Return To Work Committee;

- Agencies/Departments shall implement a RTW program designed to support employee recovery while they are ill/injured/disabled and out of work for a period of time; and provide them opportunities for job modifications based on available accommodations.
- Agencies/Departments shall identify and determine placement of their injured/ill employees in a modified/transitional duty assignment based on each employee's ability to return to work and perform duties that are within the acceptable limitations or restrictions arranged for them by the treating healthcare professional.
- Agencies/Departments are encouraged to consider Return-To-Work and Transitional Duty as an interim step in the physical recovery and conditioning of an employee with restrictions in order to protect the employability of the employee while reducing disability costs.
- If job accommodations are not available for an employee within his/her work location, the feasibility of other job assignments shall be considered/explored by the Agency/Department Human Resource Manager. When Agencies/Departments complete their due diligence to identify RTW/Transitional Duty assignments within their operations and determine that no position(s) exist, the Agency/Department Human Resource Manager shall contact the County Return To Work Manager who will ascertain other possible temporary Return To Work Duty assignments in the County.
- Employees participating in the RTW/Transitional Duty Program will be compensated at the employee's current rate of pay for the duration of their temporary assignment, regardless of whether their temporary assignment is outside of their current job classification.
- While participating in the RTW/Transitional Duty Program, employees'
  wages will be funded by their Agency/Department whether they are
  working in their Agency/Department or another County
  Agency/Department.
- Basic guidelines for transitional duty plans shall include a specific start and end date within a timeframe of 90 days based on the medical restrictions of employees' critical illnesses/injuries and the availability of transitional/modified duty assignments. Transitional duty assignments should be closely evaluated and re-assessed on a periodic basis by County Agencies/Departments to determine the appropriateness of continuing transitional duty assignments based on the employee making medical progress toward recovery and return to full duty. Transitional duty assignments may be extended beyond 90 days depending on individual

circumstances, documentation of medical necessity, or change in condition. A review of a 90 day extension must be conducted by the Agency/Department Human Resources Manager; and based on the determination that the additional time would facilitate a return to full regular duties, and would not adversely affect the Agency's/Department's operational goals or the objectives of the Transitional Duty Return to Work Program. Approval for a 90 day extension will require the signatures of the Agency/Department Head and its Human Resource Manager followed by the signature of the CEO/Risk Management Return to Work Manager.

- Due to the level of importance, Agencies/Departments are advised to seek out the employee and offer to engage in the interactive process as it relates to return to work opportunities.
- Agency/Department RTW Staff shall require the attending physician to provide them with medical documentation relative to work restrictions in order to verify that an employee is able to perform all temporary transitional duty tasks. Once the temporary transitional duty assignment is verbally offered by the RTW Staff, and accepted by the employee, the offer is valid. A Return To Work Transitional Duty Agreement which defines the employee's transitional duties, duration of duties, and operational needs of the Agency/Department, will be signed by the employee, supervisor, and Agency/Department Human Resources Manager.
- An employee is not obligated to return to a transitional duty assignment under FMLA. However, if an employee refuses the RTW assignment or refuses to sign the Transitional Duty Agreement, he/she may not be eligible for Workers' Compensation Disability Benefits.
- Agencies/Departments shall gather and interpret their RTW employees' information relative to work restrictions, identify work-related impairments, and provide results to the County Return To Work Manager for comparison to program goals. CEO/Risk Management will provide a quarterly report on Modified Duty that extends beyond 90 days. To measure the success of the RTW program and implement best practices that accomplish the goals of the program, the Return To Work Manager shall work with Agencies/Departments and assist in the development of evaluation criteria/measurements. Measurements for consideration that may improve results over time are:
  - A RTW Questionnaire will be offered to employees at the end of their temporary assignment to document their experience, and determine if the program goals meet their needs.
  - Aggregate claim costs by coverage type (i.e., Workers' Compensation, State Disability, STD and LTD)

- Overall utilization and cost patterns (i.e., incidence, number of claims, number of loss days, FT/PT status)
- > Days/hours saved from established guidelines
- ➤ Financial and Cost Trend Reports (data collected by RTW Manager may include but not limited to cost per claim, aggregate costs by injury/illness, benefits costs per employee, incidence rates, overtime costs, replacement costs, ADA accommodations costs, etc.,)
- Supervisor activity (i.e., employee anticipated and actual return-to-work date, return-to-work status, accommodations discussed, accommodations implemented, and reasons for non-compliance with return-to-work dates)
- Agencies/Departments shall make training available to new and existing
  employees with respect to the return-to-work program and frequently
  provide updates to account for the changing nature of medical conditions,
  essential job functions, work aids, technology and the law.

#### VI. Definitions

Disability Management has grown to include absence, health, risk, productivity and behavioral management thereby expanding the language used in implementing and managing events associated with employee absence in the workplace according to the Disability Management Employer Coalition (DMEC). The following definitions are a compilation from DMEC Terms of the Trade as it pertains to Absence, Disability, Health, and Productivity; and cover the full range of disability programs both statutory and nonstatutory as well as expanded references to federal and state regulations pertinent to disability management (ADA, FMLA, HIPAA, etc).

- **Absence Management** A program to control absences due to illness or injury with an emphasis on controlling unexplained or excessive absenteeism. Programs with a broader focus (i.e. not limited to disability related absence) are often referred to as "total absence management".
- **Absenteeism Rate** The percentage of employees absent from work during a period of time.
- Accommodation An adjustment to tools, work station, job design, work environment or other job factors to help a formerly injured or ill employee return to work following a disability event. Accommodation is one of the basic skills necessary in achieving early return to work to reduce disability costs.
- Americans with Disabilities Act (ADA) Federal law that prohibits discrimination against employees or potential employees with disabilities, in the terms and conditions of employment. Employers with more than 15 employees must provide reasonable accommodation for the physical or

mental limitations of qualified persons to perform the essential functions of a job. The ADA also outlaws discrimination against individuals with disabilities in state and local government service and employment, public accommodations, transportation, and telecommunication. The law was enacted in July, 1990.

- Benchmarking A process that identifies the best performance in the industry for a particular outcome, determines the best practices used for the achieved performance outcome and applies those best practices to improve performance.
- California Fair Employment and Housing Act FEHA Government Code 12900 12996 The FEHA is the principal California statute prohibiting employment discrimination covering employers, labor organizations, employment agencies, apprenticeship programs and any person or entity who aids, abets, incites, compels, or coerces the doing of a discriminatory act. It prohibits employment discrimination based on race or color; religion; national origin or ancestry, physical disability; mental disability or medical condition; marital status; sex or sexual orientation; age, with respect to persons over the age of 40; and pregnancy, childbirth, or related medical conditions. The FEHA also prohibits retaliation against for opposing any practice forbidden by the Act or for filing a complaint, testifying, or assisting in proceedings under the FEHA. For unlimited compensatory and punitive damages, Plaintiff does not have to win a unanimous jury verdict.
- California Family Rights Act (CFRA) California law allows new parents to take up to 12 weeks of leave from work to bond with their newborn child (birth/adoption/foster care placement) and is consistent with the federal Family and Medical Leave Act (FMLA). To qualify under CFRA, it applies to employers with at least 50 employees and you must have worked for your employer for at least 1,250 hours in the last 12 months (there are a variety of rules that apply to who can take leave and when).
- California Pregnancy Disability Leave (PDL) The PDL is a provision of the California's Fair Employment and Housing Act and requires employers who employ 5 or more employees to provide employees who are disabled by their pregnancy (e.g. prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth or any related medial condition) a reasonable period of unpaid leave and job protection, not to exceed four months.
- Case Management (Integrated) Coordination of short- and long-term disability, health care, workers' compensation, ergonomics, and return-towork programs to improve care delivery, streamline and make more effective claims management and administration, and effectively return employees to work.
- **Confidentiality** The degree of protection afforded individually-identifiable health information. When sharing information and records

- about an individual, insurers and employers must respect an individual's right to privacy.
- Consolidated Omnibus Budget Reconciliation Act 1986, (COBRA) mandated at which allows terminated employees to continue health care coverage for themselves and their dependents through the group rates of the employer, for a limited time period.
- **Disability Management** Programs and processes that seek to prevent disability, reduce the cost impact of disability, and provide mechanisms to promote maximum functional recovery and return to work. Integrated disability management refers to those initiatives that implement a uniform umbrella of management across all disability plans (e.g. STD, LTD, WC, FMLA, salary continuation and leave programs).
- **Employee** A person who is in active employment with an employer. For benefits eligibility, plans have specific definitions for employees, such as the number of hours worked requirements.
- Employee Assistance Program (EAP) An employer-sponsored program designed to assist employees whose job performance is being affected by personal problems such as alcoholism, drug abuse, family programs or other psychological problems. Some employers use EAPs to address the psychological aspects of disabling injuries or illnesses.
- Family and Medical Leave Act (FMLA)- A 1993 federal law requiring employers with more than 50 employees to provide eligible workers up to 12 weeks of unpaid leave for birth, adoptions, foster care placement, and serious illness of employees and their families. An employee is eligible on the date on which the leave is to commence and has physically worked for at least 1,250 hours during the previous twelve (12) month period. California has added an FMLA-based leave insurance requirement for employers, and other states may add other FMLA-based requirements.
- **Incidence Rate** A measure of the frequency of injuries and illness occupational claims. Used by OSHA to make reliable year-to-year and industry-to-industry workers' compensation comparisons. Expressed as the number of occurrences per 100 employees working 40 hours a week for 50 weeks (WC) or number of claims per 100 employees/year (STD/LTD).
- **Integration-** Develop an occupation and non-occupation return to work program, as return to work is the best way to impact cost and productivity for both occupational and non-occupation injuries having a single program to support both processes.
- Leave of Absence Coordination- Federal, state, and company leaves of absence programs coordinate for both occupational and non-occupation programs.

- Long Term Disability (LTD) A benefit plan that typically replaces a portion (usually 50%, 60% or 66-2/3%) of an employee's income when that income is lost due to an extended illness and/or injury. After a waiting period (usually 90-360 days) benefits are payable until the employee retires or reaches a specified age, provided the disability is continuous, and that policy criteria are met. The actual number of days or months considered "long-term" and the duration of payments will vary by insurer.
- **Productivity Productivity = Value / Time** (productivity equals value divided by time), the relationship between production of an output and one, some or all of the resource inputs used in accomplishing the assigned task. It is a measure of efficiency and is usually considered as output per person-hour.

By this definition there are two primary ways of increasing productivity:

- 1) Increase the value created
- 2) Decrease the time required to create that value
- Return to Work Program (RTW) An organized effort by an employer
  to assist recovering employees in assuming constructive job duties.
  Programs may include temporary limited hours, modified job duties, or
  transitional jobs including modified or alternate jobs.
- Return To Work Committee Organized and Chaired by the County Return To Work Manager to ensure ongoing commitment and support from Agency/Department Heads and Staff relative to the benefits of participating in the County's Return To Work/Transitional Duty Program.
- Short Term Disability (STD) Usually associated with group insurance, this type of insurance pays income replacement benefit (usually 60% to 80%) for total disability after a brief waiting period (1-7 days). STD typically pays three to 12 months.
- Transitional Return-to-Work Program A program to enable employees who have been disabled to return to temporarily-modified work. The program coordinates the efforts of physical therapists, physicians, department supervisors, occupational health nurses and disability management services. Modifications may include job restructuring, assistive devices, workstation modifications, reduced hours or reassignment to another job.
- Worker's Compensation Programs- A system of providing for the cost
  of medical care and weekly payments to injured employees or to
  dependents of those killed in industry in which no-fault liability is imposed
  on the employer. In return, employees are generally prohibited from suing
  employers, even if the disabling event was due to the employer's
  negligence.