



Economic Affairs Interim Committee

61st Montana Legislature

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Memo on Return-to-Work Issues

To: Economic Affairs Committee Members
From: Pat Murdo, committee staff

Early return-to-work, stay-at-work, or transition-to-work issues help both the employer and the employee if an injured employee is able to return to work in some fashion. The employer is helped because the longer that the employer has to pay workers' compensation indemnity benefits, the greater the likelihood that the experience modification percentage applied to premium rates will increase. The employee is helped because at a certain point in the healing process, inactivity may be harmful to better physical health. Also, research has shown that being around supportive coworkers may improve morale and decrease the tendency to stay at home, where there is a perception that the employee is less than productive.

The size of employer may affect the types of problems faced in trying to get an employee back to work if an employee is less than 100% of the preinjury status. Large employers often have a variety of tasks that may be assigned to an employee who is unable to lift as much weight as prior to the injury, for example. However, a large employer may also be faced with union contracts and workers with an ability to take a variety of leave options over which the employer has no say. For example, from the union perspective, the more workers at work the better. There is an assumption that a union can provide a substitute for an injured worker, so that the substitute earns full pay while the injured employee earns the work comp indemnity payment, usually at 66 2/3% of the state's average weekly wage. The result is more people working. The injured worker will want to return to work as soon as possible to obtain full pay, however. Another issue facing large employers is that the combination of annual leave and sick leave may allow an employee to be out longer than that employee actually needs for recovery. From the perspective of a small employer, there may be only limited tasks for a less-than-fully-functioning employee and limited ability to be missing an employee for any length of time.

The speakers for return-to-work concerns will address these issues and how they have handled trying to get workers back to work early or to stay at work if the injury is not debilitating. Another option is for an employer to assign the injured employee to work for a nonprofit organization at tasks not as strenuous as their regular job as they transition back into full-time work.

In addition to the speakers at the Sept. 9, 2009, meeting, the responses in the Table (below) were received from small employers who have typically fewer than 10 employees. The comments are all from participants in Insure Montana, which does not allow participation by more than 9 employees.

Industry	Comment (sample from either email or phone conversation)
Lumber	<p>"In regards to getting employees to return to work after an accident, we have not had to deal with this issue. I am very interested in the high cost of workers comp that I am paying through the Mt state fund. I am squeaky clean and feel the cost is sky high."</p> <p>Joe Cross, Stillwater Lumber, Columbus</p>
Log Hauler/Trucking	<p>Back injuries are a big problem in this business. The company offers light duty, office work for someone who is injured. The employer commented that her rates went down even though they had a claim from an employee who was off the job for four months, although in two of those months the employee did light duty work. The employee came back to work to keep his health insurance and keep his wife's health insurance (which the employer pays). The employer also has had experience with a worker claiming workers' compensation even though he was climbing in and out of his sports car. The employer's insurer, Associated Loggers Exchange, was willing to hire an investigator. She feels her business has an advantage because workers have to have a Department of Transportation physical before they are hired. Truckers also have to provide a previous history (10 years), and sometimes the employer can determine from the history if there have been previous injuries.</p> <p>Susan Miller, Miller Trucking, Judith Gap</p>
Insurance	<p>"NCCI will drop off 70% of the dollar value of a claim if people return to light duty" through its calculation of the experience modification factor. She encourages employers to understand that the mod factor (which lasts for 3 years at a time) is affected by indemnity payments and that they benefit by getting people back to work sooner. For every \$1 paid out in indemnity, the cost of premium is \$4 more. If they run out of light duty tasks, she said, she recommends that the employer send the injured worker to work at a charity -- within a doctor's guidelines for returning to work. She indicated that the employer can deduct those wages as a charitable deduction.</p> <p>Deb Arnold, Big Mountain Insurance, Whitefish</p>
Fencing	<p>This employer found that there are two classifications, depending on the type of fencing and that one was much higher than the other. Because vinyl or wood/split rail fencing does not have a category of its own, the insurer has put that employee payroll in construction, which has a higher premium than the premium for erecting wire fencing. The employer is curious who determines the category. Construction is \$32 per \$100 payroll for them, which recognizes that they have had injuries in the past three years, including a badly injured worker in 2006. "We did everything they asked of us about a return to work program and they still increased our rates and our experience rate modifier to 26%. In 2008 we had a worker strain his back and was off work a little while and had some tests run (MRI). The reason he was off so long was due to Workers Comp not getting them into their doctors to sign a form to return to work. He never had any surgeries or anything, but they left his case open in case he needed something and tacked another 15% on to our experience rate modifier. This is about breaking our company. We had to cut our employees because we couldn't afford the extra" work comp. Insured by MT State Fund.</p> <p>Cindy Jacobsen, T&C Fencing, Inc., Ovando</p>

Fencing/Landscaping	<p>This employer, insured through Liberty Northwest, pays \$22 per \$100 of payroll for fencing employees and \$9 per \$100 payroll for landscaping employees. She said if they do have a claim, they get the worker back to work as soon as possible. They also do weekly training. Because of costs, they have had to lay some people off.</p> <p>Anna Youngquist</p>
Agriculture (Farm and Ranch)	<p>This employer feels that once a worker starts getting workers' compensation benefits that "they don't want to do anything. Just vegetate." He gave as an example an overweight employee who hurts his knee and that he later found he had had a preexisting condition of knee problems. But the employee quit and "now sits on his butt". The employer noted that there are difficulties in the hiring process in asking about previous conditions. The employer also noted that employees come in three categories: those who like to work, those for whom the job is just a job, and those who aren't really interested. He said it was too easy to collect work comp.</p> <p>Don Herzog, Rapelje (insured by MT State Fund)</p>
Physical Therapy	<p>This employer provided a Claims Prevention Program sample aimed at reducing claims (through protective "post-offer screening" of new workers, injury prevention aimed at risk assessments and injury management, and rehabilitation, using post-injury screening and on-site physical therapy when possible, plus restricted duty programs, education, and functional capacity evaluations. She said the program has proven results.</p> <p>Rebekah Stamp, Catalyst Physical Therapy, Hamilton</p>
Employment Consultant	<p>Based on his experiences as a safety manager (at Ramsey Construction in Billings and then at Tractor and Equipment Company and at Western Sugar Company), the owner of Employment Source provided the following recommendations:</p> <ul style="list-style-type: none"> --Educate the employers and work with them to develop a simple and easy to use early return to work program; --Work with doctors and medical people across the state who can help the employer get injured workers back on the payroll. --The state fund should see it as their first duty to get the injured worker off the couch and back to work. It is so easy for people to fall into what I call the "Opra[h] Syndrome" where they decide it is easier to stay home and collect worker's comp, and watch TV, than to go back to work. --A representative from the State Fund and a representative from the medical community should meet with the employer at least once a quarter to review their accident log and discuss each claim and close them as fast as possible. --The State Fund, the medical communities, and the employers need to work together to ensure this problem does not get out of control. <p>Terry Mammenga, Employment Source</p>