



Successful IDM with Reasonable Accommodation as Main Ingredient



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FOR SUCCESS

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Moderator and Presentation Team

Moderator: Beth Lyons, Senior Pool Administrator, Risk Pool Administrators

Dennis Hernandez

Risk Manager, City of Hawthorne, California

Dennis has a deep understanding of California workers' compensation (WC) having worked with Labor and Management to establish the City's policies and procedures, including return-to-work. He is a Past-President and continuing Board Member for the ICRMA and Board Member of COSIPA. After graduating with degree in Criminal Justice/Law Enforcement Administration, Dennis obtained his Associate in Risk Management. Mr. Hernandez is dedicated to ensuring the City's program is responsive to injured employees and cost effective.

Carol A. Kemper

Defense Attorney, Graves, Bourassa, Rippinger & Kempner

Carol provides legal representation for California WC cases, including disability retirement cases. She is committed to ensuring claimants are provided benefits owed while defending the interests of her clients, which include self-insured employers, third party administrators, insurance carriers and governmental entities. Ms. Kempner received her Bachelor's Degree in Economics from California State University Northridge and her Juris Doctorate from Ventura College of Law. She is admitted to practice before all courts in California.

Jacquelyn Miller

Manager, Workers' Compensation for Bickmore

Jackie has 29 years contributing to WC results for third party administrators, insurance companies, and a bill review company. She served as Corporate Quality Assurance Director for Health Net, overseeing the audits for claims nationwide. Jackie is familiar with the needs of public and private employers. As the WC Program Manager for two Joint Power Authorities including the Judicial Branch WC Program, Jackie assists employers to identify Return to Work options meeting their needs and the needs of the injured workers.



Legal Requirements Leading to Costs

- Workers' Compensation
- Civil Liability



Workers' Compensation Labor Code (LC)

- **LC 4850** provides eligible temporarily disabled (TD) injured workers (IW) 52 weeks full wages
- as **LC 4656** provides 104 weeks TD within 5 years for dates of injury (DOI) 1/1/2008 and thereafter



Other Potential Civil Liability

- Americans with Disability Act (ADA)
- California Fair Employment and Housing Act (FEHA)
- Family Medical Leave Act (FMLA)



Costs

- Avg CA Firefighter earns \$1,900/week
- Salary continuation for year of LC 4850 = \$98,800
- Additional year at TD rate (2/3) is \$65,966
- At max TD rate annual benefit is **\$60,973.64**



Disability Definition

Workers' Compensation Disability is determined by primary treating physician (PTP) or Qualified Medical Examiner (QME) where injured worker is determined incapable of performing work.



Disability Types

- Temporary Total Disability (TTD)
- Temporary Partial Disability (TPD)
- Permanent Partial Disability (PPD)
- Permanent Total Disability (PTD)



Reasonable Accommodation Opportunities

Where there is partial disability, have opportunity to:

- Limit **TD** by offering Temporary Restricted Duty
- Avoid Supplemental job displacement benefits (**SJDB**) by offering interactive process to offer work



Restricted Duty Assignments

Employer offers work involving:

- Regular occupation with self accommodation to avoid exceeding limitations
- Modified work with activities exceeding limitations reassigned
- Alternative work with transfer to different duty assignment with same or different employer



Post MMI Reasonable Accommodation

IW is engaged in interactive process to determine employer's capacity to offer reasonable accommodation of 1 year duration or longer:

- Regular work with self accommodation to avoid exceeding limitations
- Modified work with activities exceeding limitations resolved by RA
- Alternative work with same employer



Post MMI Work Offer

- Offer is made in writing
- Employee has 30 days to accept offer
- Employer may withdraw the offer after 30 days
- IW will probably be ineligible for SJDB



Probably ?!*!?

The reasonable accommodation must be successful for 12 months.



Duty to Provide Reasonable Accommodation

Duty is limited where circumstances present:

- Undue hardship, determined by considering the totality of the circumstances
- Risk to health or safety of individual or others defined as “imminent and substantial degree of risk”
- An employee needs to be able to perform the essential functions of the position, with or without a reasonable accommodation.



Practical Approach to Policy Implementation

Free help – <https://askjan.org>

- “JAN” = Job Accommodation Network
- provided by the U.S. Department of Labor's [Office of Disability Employment Policy \(ODEP\)](#)
- Collaboration between ODEP, West Virginia University and private industry



Tips for Promoting RA Success

1. Recognize PD and consider accommodation requests – no specific format required
2. Involve appropriate parties in interactive process
 - Employee
 - Supervisor
 - Human Resource representative
 - Union representative
 - Risk Manager and / or Safety representative
 - Outside accommodation specialist or resource such as SOAR



Tips for Promoting RA Success

(continued)

3. Monitor RA effectiveness
4. Manage accommodation issues:
 - Address work-site accessibility
 - Restructure job
 - Modify work schedule
 - Modify policies improving effectiveness
 - Address equipment and services
5. Establish a dispute resolution process



6 Reasons to Provide RA

1. Reduction of indemnity cost (TD & SJDB)
2. Maintaining relationship with trained employees
3. Reduced training and recruitment costs
4. Increasing productivity in work groups
5. Diversifying workforce – 1 in 5 Americans have a disability and this translates to **\$1 trillion** dollars of purchasing / tax paying resources
6. Accommodated workers spend less time litigating and seeking unnecessary treatment



QUESTIONS

