

Managing the Worker Who Won't Come Back

What to do when an employee is stretching disability leave to the max? A strong return-to-work program and a disability manager who's willing to dig for root causes can help avoid adversarial or litigious situations.

By [An Brunelle, CRC, CDMS, and Renee Mattaliano, MA, CRC, CDMS](#)

John had perfect vision until an injury left him with a severe impairment in one eye. Otherwise healthy, he was reluctant to return to his job as tree trimmer. His employer's disability manager, sensing that there was more than a physical reason for John's hesitancy, tried to figure out what was really going on. Was he angry about the injury? Did he feel entitled to more time off?

John was reticent at first, but the truth emerged in further discussions: With one good eye, John was flat out afraid of getting back in the bucket truck and using power equipment to trim branches from the tops of trees. The fear was reasonable, but not insurmountable. The disability manager set up discussions with John's eye doctor, who assured him that someone with monocular vision could do this job, albeit with adjustments in the way he worked. John could start out working side-by-side with his supervisor. If the trial run proved successful, he'd transition back to full duty.

As it turned out, his supervisor also had monocular vision, which neither John nor the disability manager had known. Sharing his own experiences, the supervisor played a vital role in helping John return to full, productive duty. That opportunity never would have occurred if the disability manager had not taken the extra steps to discover and address what was troubling John.

When disability managers are confronted with a difficult case — someone who is reluctant or outright refuses to return to work — very often there are issues beyond injury or illness. There may be fear of re-injury or depression. Some employees may feel vulnerable or even humiliated by being placed in return-to-work positions that look like "busy work" compared with their usual duties. In a few cases — practical experience shows these to be the exception — refusal to accept a return-to-work accommodation is due to something else entirely: an employee/supervisor conflict, a past performance issue or ongoing workers' comp litigation. (We'll address the complex issue of lawsuits later in this article.)

Whatever the circumstance, the disability manager must invest extra time and effort to identify the underlying causes and choose the right course of action. In all situations — from the bona fide concerns to gaming the system — disability managers must take care to document all steps they take to help resolve the issues. Documentation is even more critical when there may be litigation involved.

Looking for the root cause

Disability managers and return-to-work coordinators need to be on alert for the "warning signs" of difficult cases. Many times these are the individuals who emphasize how sick

they are, even as they start to recover. Others may be loudly skeptical about return-to-work programs. "Handling difficult return-to-work situations requires patience, determination and the ability to communicate with all parties on their terms," commented Neil Bennett, M.Ed., CRC, CDMS, a practicing vocational rehabilitation counselor/disability manager for OSC Vocational Systems in Seattle, Wash., which provides workers' comp and ADA-related services to self-insured employers.

"It is very important that the disability manager humanize the management of the individual's abilities, relating those abilities to personal productivity in the workplace," Bennett added. This "humanizing" ensures that the focus of the return-to-work program is not solely, as some workers might perceive, on maintaining productivity. Recognizing what the employee does and the abilities he or she has places equal emphasis on the person's contribution and importance to the workplace.

Other times when an employee resists returning to work, the underlying problem is the person's need to express something regarding the workplace or the injury/illness suffered. "The employee needs that opportunity — even if it's just to express that being injured is a difficult situation to deal with," Bennett continued. "When the employee feels heard, then in most cases they are open to participate in a return-to-work solution."

The root cause of reluctance to return to work may not be directly related to the documented medical condition. Identifying these secondary issues quickly is important as payable benefits may cease upon a return-to-work release from a physician. If the cause of the person's reluctance to return to work is psychological — such as fear of how co-workers will react, depression or personal problems at home — the employee can be directed to other resources to help.

For example, many large employers offer Employee Assistance Programs (EAP) that provide counseling. Some companies are even implementing procedures for "warm transfers" from the disability manager to the EAP personnel at the moment the problem is discussed. Being careful not to breach confidentiality, the disability manager requests the employee's permission to contact the EAP for a referral. The disability manager does not stay on the line, but assists the employee in taking the first step to reach out to the EAP.

Disability managers and EAP professionals can provide complementary services that greatly enhance the effectiveness of return-to-work programs. For example, an EAP referral was crucial in the case of a valued employee who had injured her back, but sensed that her co-workers resented her job accommodations with full pay. The validity of her perception was not the issue; the fact that it was keeping her from participating in a return-to-work program was. When the woman received the support she needed from an EAP counselor, the return-to-work program was implemented and she came back to full duty as expected.

The workplace environment

The success of the return-to-work program also depends upon the workplace environment. Without buy-in from supervisors and managers, the process will fail. Accommodations are best formulated collaboratively by the disability manager, human resources/legal department, the employee, the physician and the employee's manager. It should be an interactive process that particularly allows the supervisor to help identify

possible alternatives.

A more proactive approach has the disability manager work with the company to identify potential job accommodations and/or temporary assignments *before* they are needed. This gives supervisors tools that they need and can prevent potential adversarial connotations. In the extreme, there has been litigation brought by employees who felt ostracized and inferior in their temporary assignments. Because of this perception, the return-to-work accommodation was experienced as punitive and not therapeutic.

The disability manager can help build bridges of understanding with supervisors and managers, bringing home the point that return-to-work programs have a proven track record of helping employees become more productive more quickly than if they stayed at home until they were "100 percent." For the employee, return-to-work programs help boost morale and provide "work hardening" experiences that enable an individual to become stronger and heal faster.

Past practice can influence supervisors' willingness to make accommodations. Before a formal return-to-work program was put into effect, a department head may have had an unofficial policy of giving someone "a break," allowing that person to forego certain duties after an illness or injury. Over time, these ad hoc accommodations have a tendency to be carved in stone. As more employees assume they have a new and less extensive description, there are fewer people to perform necessary tasks.

Having lost productive capacity in the past, a supervisor may resist identifying permanent accommodations for yet another employee. There may be little that a disability manager can do to reverse these unofficial job accommodations. Going forward, however, all permanent job accommodations must be done according to sound disability management and return-to-work practices, including the identification of essential functions of each job at the work site. With job functions documented in advance, job accommodations are facilitated.

Temporary job modifications and/or transitional assignments must have a specified timeframe during which the employee takes on increasing levels of activity, as approved by a physician, with the ultimate goal of returning to full duty. If the accommodations are permanent and the employee is covered under the Americans with Disabilities Act (ADA), decisions regarding accommodations once again must be made in collaboration with the disability manager, human resources/legal, the employee, physician and the supervisor/manager.

When litigation is involved

In a small percentage of cases, a worker outright refuses a return-to-work accommodation. In most instances, these individuals are involved in litigation with the company, often related to workers' compensation. Whenever there is a litigious situation, disability managers must ensure that every appropriate resource is offered to enable the employee to return to work. Disability managers should communicate with the physician to make every attempt to design a modified transitional work program, just as they would with non-litig.

"There are times when some employees, for no clinical reason, are non-compliant in terms of working toward the ultimate goal of returning to work," commented Elizabeth

Hogue, Esq., a Burtonsville, Md.-based attorney who is an expert in case management issues. "At that point, the disability or case manager, for the sake of the patient, must take a definite stand: that all has been done to accommodate the employee and that he or she must come back to work."

At all times, documentation is vital, to ensure the employee's rights are being protected and to shield the employer and potentially the disability manager, as well, from litigation.

"Experienced disability and case managers have a 'sense of smell' about these kinds of cases. When something is not quite right or they are worried about litigation, they are going to know it. In these instances, the disability or case manager must absolutely pay more attention to documentation," Hogue added. "They must also pay more attention to communication, even though it's tempting to hang back and not communicate as promptly as you should when you are dealing with a difficult person."

Ultimately, it is the employer's choice regarding the direction to take in a litigated situation, but the disability manager can and should offer suggestions for resolving the issues.

The employee who doesn't want to come back to work is an exception. Even if there is some initial resistance, most employees are willing to work through the issues in order to return to their jobs. The disability manager should ensure that the employee knows what job duties are expected, and that both the employee and the supervisor understand the necessary modifications. If problems arise during the return-to-work placement, the disability manager must be brought back into the discussion loop. Disability managers also should take advantage of additional help and resources at the company, whether from human resources or the EAP.

Inside or outside the company?

When the disability manager works inside the company, it is often easier to gain access to information or resources. A disability manager working as an outside consultant must make the extra effort to find out what resources are available at the company. Does the company have an EAP? Is the return-to-work program well supported by supervisors and managers?

Whether on staff or consulting, disability managers must consider other factors that could influence the success of the return-to-work program. For example, is there an underlying corporate culture that would discourage an employee from coming back to work as soon as possible? If the company's emphasis is so strong on productivity — at the apparent expense of how employees feel — an employee may be feeling "burned out" and want to take extra leave.

Looking internally at the company can also help the disability manager to consider proactive measures that can potentially reduce workplace absences, particularly in a department in which there is a history of certain illnesses or injuries. For example, many companies have well-established disease management and wellness programs that address such common health issues as smoking cessation and high-blood pressure. But if the biggest driver of employee absences is depression or back injury, the disability

manager might suggest addressing these health issues in its wellness programs.

Handling difficult or chronic cases requires extra effort on the part of disability managers, but the payoff is substantial. When disability managers seek the root cause of the employee's resistance to return to work, the underlying problem can be addressed, allowing a healthier, happier and more productive worker to return to the job.

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[Benchmarking: What Works in Disability Management](#) (Jan. 20, 2003)

[Return-to-Work Report Card](#) (Nov./Dec. 2000)

[Disability Management: It Takes a Pro to Solve the Puzzle](#) (Feb. 1, 2000)

Resource Links:

[Certification of Disability Management Specialists Commission](#)

<http://www.cdms.org>

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