

Employer's Duty to Accommodate and Administering a Return to Work

An insurer can play a key, supportive role in assisting an employer with their duty to accommodate an employee and arranging for a return to work when an employee has been absent.

When an insurer is involved in managing absences from work, either as a result of a short term illness or injury, or a longer term condition, a comprehensive review of an employee's medical situation and work related requirements is completed. This puts an insurer in a unique position to provide support to the employer.

An insurer can also provide employees the assistance and support mechanisms they need to return to the workplace as soon as they are able and ready, whether in their own job or in some type of modified work. In this way, the insurer acts as the bridge between the employee and the employer.

An insurer can assist with the initial assessment of whether an employee is ready for a return to work plan based on the evidence in the claim file. Every complex claim should be reviewed for return to work potential and if the medical condition is stable, the case may be referred to a return to work, or rehabilitation specialist. The specialist will make an initial assessment of the claim and may initiate immediate action, or set a follow-up date for a subsequent review if the employee is not yet physically and mentally fit for rehabilitation intervention and return to work.

Once an employee is identified as a return to work or rehabilitation candidate, an insurer may do some or all of the following:

- Meet with the employee to discuss job readiness and determine if there are barriers to a successful return to work.
- Meet with the attending physician(s) to determine if there are medical barriers to a return to work. We also advise the physician of possible return to work plans to gain the support of the physician.
- Meet with a designated person(s) in the workplace to explore how the employee's own job can be modified to accommodate the medical restrictions, what alternate duties may be suitable and available, and to support the employer in structuring and monitoring the return to work plan.
- Assist in determining alternative job options best suited to the employee's needs.
- Determine if the employee requires retraining and assist with those arrangements.
- The return to work program would be monitored by the Return to Work Specialist.

In assisting the employee, an insurer looks for opportunities to link the employee with existing resources such as an Employee Assistance Program or other appropriate community support networks when required by the employee to gain and maintain focus on a return to productive work.

As part of the assessment of an absence, the insurer ensures that all medical and non-medical issues have been fully investigated and determines if treatment is appropriate to the identified condition(s). Sometimes there is opportunity to support the employee by gaining an earlier assessment or treatment intervention that will avoid delays that might negatively impact the employee's health and thereby promote quicker return to health and productivity.

In addition to promoting evidence-based, outcome-focused treatment as part of our case management, we also ensure that non-medical barriers are dealt with by identifying and solving the underlying root problem and ensuring long-term measures are put in place to ensure that the root cause has been dealt with and will thereby not trigger recurrent absences. This may lead to a mediation or facilitation type of role.

Many absences from work can include, and be exacerbated by workplace conflict, performance or other non-medical issues. These must be dealt with in order to successfully return an employee to work. This aspect of case management can be delivered in a couple types of cases:

- It is delivered as a vital part of short term absence management programs in which we're identifying and resolving return to work barriers and where there may not be an underlying disability.
- It can also be delivered as part of disability claims management when there is a combination of medical and non-medical barriers interfering with the employee's return to work.

Here are two case studies dealing with return to work.

Case #1 – Mental Health

Diagnosis	Depression
Situation	<ul style="list-style-type: none"> • Employee was absent from work with depression for one week at referral. • Receiving treatment in the form of medication. • Case Manager discovered that a number of issues contributed to the employee's absence from work including workplace factors including a communication breakdown between the employee and the employer that created increasing levels of anxiety and ultimately resulted in the workplace absence.
Intervention	<ul style="list-style-type: none"> • The Return to Work Specialist investigated the workplace issues, confirming factors to be: <ul style="list-style-type: none"> • the employee had recently moved to a new role within the company, • struggled through the training and • did not meet performance expectations • The Return to Work Specialist negotiated an agreeable resolution with the employee and employer, coordinating a graduated return to work plan that incorporated additional

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	<p>technical training.</p> <ul style="list-style-type: none"> • A mentor was assigned to the employee to answer any questions and help to problem solve if the employee ran into problems. • The employee ultimately resumed regular duties.
Value	<ul style="list-style-type: none"> • Early re-entry into the workplace through resolution of interpersonal issues between employee and employer, effective training, a graduated return to work developed to meet the needs of the employee (gradually reintegrate into the workplace, build up tolerance, stamina and cognitive capacity) and the manager (able to meet staff scheduling and customer services requirements). • Early return to work also benefits the employee's recovery - as work is a normal part of daily life and regular routine can promote recovery. • Without this intervention, the employee could have remained off work for an extended period of time, receiving only symptom-focused treatment and the underlying issues may never have been addressed and resolved, resulting in a longer term claim. Instead, the employee achieved a shortened duration of absence and the employer's absence costs were contained.

Case #2 – Physical Health

Diagnosis	Lower back surgery
Situation	<ul style="list-style-type: none"> • Employee works in an office setting at a desk all day. • Was recovering from lower back surgery for a herniated disc and had limited tolerance for sustained sitting/standing. • Employee had to attend physiotherapy 3 days per week for 8 more weeks and perform 15 minutes of exercises mid-day every day.
Intervention	<ul style="list-style-type: none"> • The Return to Work Specialist worked with the manager and employee to develop a graduated plan that accommodated sitting tolerance limitations (employee was given access to a sit/stand workstation and could vary work activities such that he didn't have to sustain the same position for long periods) and documented the plan for all parties. • A graduated return-to-work plan was developed to allow the employee to attend his physiotherapy - either before or after he started work. • The Return to Work Specialist assisted the employee in negotiating with the manager to provide the employee with space to perform his daily exercises at work.
Value	<ul style="list-style-type: none"> • Early re-entry into the workplace through a graduated return to work developed to meet the needs of the employee (build up tolerance, stamina and functional capacity and reduction of risk of recurring absence due to the lower back problem) and the manager (i.e. scheduling, requirements to service customers, etc). • Early return to work was beneficial for this employee as activity promotes effective recovery from surgery. • Management of health risks reduces chance of further injury to the employee and more lost time from workplace. This in turn helps the employer to be supportive of its employees while shortening duration of absences and containing absence costs.

An employee's disability may be more severe or complex. In this case, an insurer engages in a longer-term intervention requiring a series of meetings with the employee, employer and

relevant health care providers to identify and then resolve functional impairments in order to enable the employee's return to work with the pre-disability employer.

The assessment may incorporate any or all of the following measures in order to expedite safe, efficient return to work as early as medically possible:

- assess cognitive or physical function;
- evaluate worksite ergonomics (e.g., workstation set-up, production sequencing);
- facilitate treatment, identifying treatment options and facilitating referrals to health care providers when appropriate to confirm medical impairment, to promote recovery of health, to improve function;
- develop, implement and monitor return to work programs

Here are two case studies involving a more complex return to work program.

Case # 3 – Mental Health

Diagnosis	Depression
Situation	<ul style="list-style-type: none"> • Employee was off work with depression. • Followed by a family doctor as well as a Psychiatrist and was receiving medication.
Intervention	<ul style="list-style-type: none"> • The Functional Rehabilitation Specialist met with the employee at home to perform an initial assessment interview. • The assessment identified that the employee was not making progress as expected despite increasing dosages of anti-depressant medications. • Through the interview process the Functional Rehabilitation Specialist was able to identify that the employee had multiple stressors - family (a parent with declining health and a troubled marriage), work (difficulty coping with work demands) and had always struggled with balancing the multiple demands of day-to-day life. • The Functional Rehabilitation Specialist expedited a referral to a Psychologist trained in Cognitive Behavioural Therapy techniques with whom the employee developed the tools necessary to proactively deal with life stressors and became better able to cope with her situation. • The Functional Rehabilitation Specialist then worked with the family doctor, Psychiatrist and Psychologist to facilitate re-entry into the workplace ensuring that the employee was able to sustain health and work.
Value	<ul style="list-style-type: none"> • The Functional Rehabilitation Specialist was able to identify underlying contributors to the employee's depressive symptoms and work with the treating physicians to augment treatment focused on improving cognitive and emotional coping capacity. • Had the underlying risk factors been left unaddressed, the employee's symptoms may have persisted despite the treatment and the claim would have extended. • Instead, an earlier return to work helped to promote effective recovery of the employee's health and productivity, resulting in a shorter duration of absence.

Case #4 – Physical Health

Diagnosis	Coronary Artery Disease
Situation	<ul style="list-style-type: none"> Employee had coronary artery bypass surgery and was recovering. His job as a maintenance engineer in a warehouse had light to medium physical demands.
Intervention	<ul style="list-style-type: none"> The Functional Rehabilitation Specialist met with the family doctor to discuss rehabilitation options for the employee. Through this meeting it was determined that a multidisciplinary cardiac rehabilitation program including education, exercise, nutrition and prevention was required. The Functional Rehabilitation Specialist expedited a referral to an appropriate rehabilitation program and then assisted the employee in negotiating modified duties to facilitate an early re-entry into the workplace in an accommodated capacity (the employee performed sedentary work to start, gradually increasing to his normal job demands as he progressed through the cardiac rehabilitation program).
Value	<ul style="list-style-type: none"> The Functional Rehabilitation Specialist facilitated getting the employee into the rehab program and then matched and monitored it with the return to work. The Functional Rehabilitation Specialist was able to increase the employee's work demands based on progress in the cardiac rehab program - such that the workplace was part of his rehabilitation and reconditioning and the employee was kept safe. This kind of return to work program is typically about 8-12 weeks but ensures the employee recovers fully and reintegrates safely to the workplace.

Drug and Alcohol Testing

Insurers are not involved with drug or alcohol testing at the pre-employment stage. Nor are they involved with periodic testing in the workplace. However, an insurer may become involved when drug or alcohol abuse has become serious enough to cause an absence from the workplace.

Most disability insurance contracts include a provision that requires an employee to be under medical care that is appropriate to the condition causing disability. In some cases, a contract may specifically require participation in an in-patient treatment program for drug or alcohol abuse for benefits to be payable. The insurer reserves the right to determine whether any given treatment is appropriate.

This approach creates an incentive (payment of the disability benefits) for the employee to participate in a treatment program that will help them with their abuse and ultimately allow the employee to return to the workplace.

Privacy Legislation Across Canada

For companies that operate across Canada, or in varying industries, there is a range of legislation that must be considered. Privacy policies must meet the test in all of the jurisdictions in which a company operates.

Private Sector

Businesses that operate in the private sector generally need to comply with PIPEDA, or substantially similar provincial legislation. At present, Quebec (Act respecting the Protection of Personal Information in the Private Sector), Alberta (Personal Information Protection Act) and BC (Personal Information Protection Act) are the only provinces with substantially similar legislation. All other provinces will be governed by PIPEDA.

Fortunately, these acts are “similar”. An organization that operates in all jurisdictions would typically provide direction to staff that meets the highest level from all provinces. However, when dealing with a complaint or other inquiry, the processes, or legislative references will be different.

Public Sector

Protection of personal information held or controlled by public sector organizations is governed by forms of Freedom of Information and Protection of Privacy legislation in the provinces. BC, Alberta, Saskatchewan, Manitoba, Ontario, PEI and Nova Scotia have legislation entitled Freedom of Information and Protection of Privacy Act. Ontario also has a Municipal Freedom of Information and Protection of Privacy act to govern the actions of municipalities.

Newfoundland, Yukon, NWT and Nunavut have legislation entitled Access to Information and Protection of Privacy Act.

New Brunswick has the Protection of Personal Information Act. Quebec completes the list with an Act respecting Access to Documents Held by Public Bodies and the Protection of Personal Information.

For Federal works, the Privacy Act is the driving legislation.

A private corporation that acts as a service provider to a public body, either federal or provincial, may find that it needs to comply with any or all of these acts, in addition to PIPEDA that governs its own business actions.

Health Information

Some provinces have enacted specific legislation to govern the treatment of health information created and retained by health custodians. These are generally medical practitioners who create or collect health related information within their scope of practice. Custodians will include physicians, pharmacists, nurses, and other medical or paramedical practitioners. While these acts may not apply directly to a private corporation, you can be affected if you need to access that health information for your business. For example, an insurance company acquires health information when assessing a claim for payment and will need to understand the requirements to obtain this information within the various acts.

Alberta, Saskatchewan, Manitoba and Ontario have a form of Health Information Protection Act. In other provinces, health information will be captured within the other privacy protection acts.

This patchwork of legislation across the country and separation by the nature of the industry creates a challenge for the privacy professional in organizations that operate in many jurisdictions.