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4/7/14  
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**U.S. DEPARTMENT OF COMMERCE  
OFFICE OF HUMAN RESOURCES MANAGEMENT**

**HUMAN RESOURCES (HR) BULLETIN #182, FY14**

**SUBJECT:** Workers' Compensation Return-To-Work Program

**EFFECTIVE DATE:** Upon release of this HR Bulletin

**EXPIRATION DATE:** Effective until canceled or superseded

**SUPERSEDES:** HR Bulletin # 018, FY06, "Workers' Compensation Return to Work Initiative"  
(November 29, 2005)

**PURPOSE:** This HR Bulletin defines bureau responsibilities for implementing the Workers' Compensation Return-To-Work (RTW) Program.

**BACKGROUND:** The Department of Commerce (Department) is committed to preventing work-related injuries and illnesses as well as maintaining workplaces free from recognized hazards. However, when work-related injuries and illnesses occur, all reasonable efforts will be used to ensure that affected employees receive appropriate medical care and return to work as soon as they are medically able.

There are direct and indirect costs associated with workplace injuries and illnesses. Direct costs include workers' compensation payments, medical expenses, and costs for legal services. Examples of indirect costs include: training replacement employees, investigating accidents and implementing corrective measures, repairing damaged equipment and property, lost productivity, and other costs associated with lower employee morale and absenteeism.

From 2009–2013, the Department paid out more than \$95 million in direct workers' compensation costs, which do not include indirect costs that can be equal to the direct costs. These costs can be effectively reduced by returning injured employees to work as soon as they are medically able. One example of a positive outcome occurred in 2009, when the Office of Occupational Safety and Health (OOSH) worked closely with one bureau to return an injured employee to work that had been off work and receiving workers' compensation for 6 years. In addition to returning the employee to productive work, the projected cost avoidance to the Department was \$1.9 million. While some bureaus have had success returning injured workers to work, there is much room for improvement as well as increased savings.

A RTW program is critical in reducing the Department's overall workers' compensation (WC) costs, comprised of three elements: 1) the actual chargeback costs, 2) the Continuation of Pay (COP) costs, and 3) the indirect costs.

In 2012, the Department's WC chargeback costs were \$19.2 million, including the medical and compensation payments made to employees as a result of work-related injury and illness claims. Claims over 9 years old, and some claims dating back 50 years, accounted for \$11 million or 57 percent of the total compensation paid. An effective RTW program will reduce chargeback costs for new and old claims.

The second cost element is the approximate \$300,000 annual expense for COP, which the bureaus pay to cover the first 45 days an employee is absent from work due to a work-related injury. An effective RTW program can also reduce COP costs.

The third cost element is indirect costs, which are conservatively estimated to equal or exceed the chargeback costs. Reducing chargeback and COP costs will also reduce the indirect costs to the bureau.

**COVERAGE:** This HR Bulletin applies to all Department bureaus, organizations, and operating units, including the U.S. Patent and Trademark Office (USPTO). Commitments from the bureaus will generate short and long-term savings in three ways. First, their review of old claims will identify claims that are no longer eligible for benefits and can be resolved. It will also identify those with RTW potential. Second, bureaus will identify jobs that are suitable for the employee's medical limitations and will make offers to return employees to work. Third, bureaus and operating units will review new claims, challenge claims that are questionable with respect to the fact of injury or work-relatedness, and work with newly injured employees to bring them back to work to reduce COP costs.

**POLICY:** The policy of the Department is to provide suitable RTW opportunities for employees medically able to work, but because of temporary or permanent medical restrictions cannot perform some or all of their permanent job assignments. This policy is in accordance with the requirements and provisions of the Federal Employees' Compensation Act (FECA), the Americans with Disabilities Act, and applicable statutes from the Code of Federal Regulations. (This bulletin does not alter the terms of an existing collective bargaining agreement.) As Department bureaus, organizations, and operating units, including the USPTO, develop their written RTW plans, the following guidelines shall be used:

**Beginning July 1, 2014, bureaus will be required to submit quarterly reports in a Microsoft Excel spreadsheet** (within one week after the end of the quarter; the first report will be due before July 7, 2014) to OOSH. This report will contain the following information:

- Number of open claims
- Number of employees returned to work including the cost savings and cost avoidance
- Number of employees on COP, and the costs

**Also, beginning in 2014, bureaus will put into effect their annual written RTW plans.** The FY 2014 plan must be developed and submitted to the Director, Office of Human Resources

Management, and to the Office of Occupational Safety and Health (OOSH) no later than **July 1, 2014**, and by **August 31** in subsequent years.

Bureau RTW programs can reduce their workers' compensation and COP costs. At a minimum, an effective RTW program requires a commitment to do the following:

- A. Establish bureau roles and responsibilities.
  1. List who has the authority to make a job offer.
  2. Provide an organizational chart showing the workers' compensation section and where their bureau, organization, or operating unit is located in the chain of command.
  
- B. Identify open claims – List all open claims, provide current status on all open claims, and analyze all current Department of Labor (DOL) documentation to confirm the employees/dependents are still eligible to receive benefits. Missing documentation should be requested and obtained from the DOL. If it is not available, a request should be made to DOL to obtain it from the claimant. Track/document your RTW progress.
  1. Prepare a list of the bureau's individual open claims that includes, at a minimum,
    - a) Name
    - b) Age
    - c) Current case status (i.e., PR<sup>1</sup>, DR<sup>2</sup>, PW<sup>3</sup>, PS<sup>4</sup>, UN<sup>5</sup>, UD<sup>6</sup>, PN<sup>7</sup>, etc.)
    - d) Date of injury
    - e) Date of last medical report in the file
    - f) Total medical and compensation costs to date for each case starting from the beginning of the first DOL chargeback quarter (which begins on July 1 of each year) to the current date
  2. Does the case have RTW potential?
    - a) Verify eligibility to continue receiving coverage
    - b) Get current medical data and eligibility/dependent forms, etc.
    - c) Identify jobs: obtain current resume, conduct vacant position search, and identify positions for which the employee qualifies
    - d) Make a job offer (in writing)
    - e) For employees returned to work, prepare an estimate of the projected cost savings and cost avoidance for the lifetime of each case. (Cost savings is calculated through the end of the chargeback year and cost avoidance is calculated to the age of life expectancy using the SSA calculator for age expectancy – <http://www.ssa.gov/oact/population/longevity.html>. Include an annual 3 percent cost of living increase for each year up to age expectancy.)

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<sup>1</sup> Periodic Rolls

<sup>2</sup> Daily Rolls

<sup>3</sup> Loss of Wage Earning Capacity

<sup>4</sup> Schedule Award

<sup>5</sup> Unreviewed

<sup>6</sup> Under Development

<sup>7</sup> No Employment Potential



- C. Identify those claims with no RTW potential.
1. Verify eligibility to continue receiving coverage.
  2. Obtain current medical data and any other documents that would substantiate eligibility to receive benefits.
- D. Focus on new work-related injuries/illnesses – Establish an employee injury-reporting process, which should include immediate communication with the Safety Coordinators and/or Health Unit when an injury occurs.
1. Develop a plan and timeline for how/when managers, supervisors, and employees will be trained in procedures for reporting work-related injuries and illnesses, submitting DOL forms, understanding the workers' compensation claims process, and understanding the RTW process.
  2. Track the lost work days associated with new injuries.
  3. Ensure that every bureau establishment follows the OSHA recordkeeping rules for reporting and recording work-related injuries and illnesses.
- E. Commit to Finding Light Duty Positions – Establish procedures to provide limited duty opportunities for employees that temporarily cannot return to their permanent positions. Provide light duty work if the employee temporarily cannot return to the original position, and advise the employee of the offer in writing. If the employee is unable to return to the original position, review other jobs within the bureau for possible accommodation and long-term resolution of the case.
1. Identify bureau roles and responsibilities, including who has the authority to make a job offer and who has the authority to modify it.
  2. Compile a list of light duty positions (in the event the employee cannot return to their date of injury job) showing the office, location, and supervisor with contact information. At a minimum, the light duty position should include a position description showing the job title, grade, office, location, and supervisor with contact information.
  3. Develop a process that identifies RTW/light duty positions and how they will be funded and who is responsible for this process.
- F. Allocate Resources – Ensure WC and Safety Coordinators/Managers are properly trained and have the skills to return injured workers to productive work as soon as they are medically able. Bureau RTW efforts will be successful if resources are allocated to identify light duty positions. For example, in many of the bureaus, the Collateral Safety Coordinator is also the Collateral WC Coordinator, usually in addition to other duties. Are your WC Coordinators properly trained? Do they have the skills to be effective?
- G. Document Results – Establish a protocol to document all RTW actions taken. A review of the documentation should be included in the quarterly RTW reports.

**RESPONSIBILITIES:** Responsibility for RTW efforts, development, and implementation of the RTW plan rests with each bureau and operating unit. The Department's WC contractor receives new claims (injury, occupational, and death), processes claims, verifies, calculates, and controverts COP, verifies pay for compensation, leave buy back, obtains current medical restrictions, participates in hearings and reviews, resolves medical reimbursement issues, and short/long term claims management. OOSH will track compensation costs and savings and report to the Department's HR Director, Chief Financial Officer, and then back to the bureaus on the cost savings of the entire Department.

Management shall:

- Ensure that employees have the opportunity to receive immediate medical care when injured and adhere to the guidelines set forth herein.
- Develop and implement a RTW program.
- Complete the appropriate OWCP workers' compensation forms, as needed.
- Ensure a thorough investigation of the incident and identify corrective action to prevent a recurrence.
- Provide light duty work if the employee cannot return to the original position; advise the employee of the job offer in writing.
- Provide the treating physician with information on available light duty jobs.
- If the employee is unable to return to the original position, review other jobs within the bureau for possible reasonable accommodation, retraining opportunities, and long-term resolution of the case.
- Investigate injuries and/or illnesses and report to the workers' compensation contractor and bureau safety coordinator, ensuring all appropriate forms and medical documentation are filed in a timely manner.
- Provide regular training and notice of the worker's compensation process that includes notifying employees of a requirement to submit documentation of current medical restrictions and that a failure to do so may result in a challenge by the employing agency or denial of benefits by DOL, privacy protections that apply to information provided by employees, and the process by which these records will be safeguarded.

Employees shall:

- Adhere to all safety rules, regulations, and guidelines.
- Notify their supervisor as soon as practicable after they are injured on the job, and initiate the claims filing process.
- Submit medical evidence of a disabling traumatic injury within 10 calendar days of the date of disability begins, or pay may be terminated.
- Notify their supervisor of any changes in work status imposed by attending physician.
- Return to work in a light duty or modified job as provided for by a supervisor as soon as medically able after acceptable medical documentation clears him/her to return for such duty or work.
- Communicate with their supervisor on matters regarding their case.



- Submit medical reports and related documents from the attending physician or any referral physician to his/her supervisor and DOL/OWCP after each medical appointment, that are necessary to substantiate the claimed injury or requested adjustments to his/her workplace restrictions.
- Inform his or her supervisor when they have been released to perform full duties free of any work restrictions, by providing acceptable medical documentation clearing him/her for return to full-time duty.

**STAFFING LEVELS:** Bureaus or organizational units should have at least 1 skilled full-time Workers' Compensation Specialist. At a minimum, smaller bureaus shall assign these functional responsibilities as a collateral duty and shall ensure that this person receives appropriate training as identified by OOSH within 90 days of assuming duties.

**PROGRAM ASSISTANCE:** OOSH will review and update RTW guidance and provide training to bureau Workers' Compensation Specialists and supervisors annually.

**REFERENCES:** Department Administrative Order (DAO) 202-810, "Workers' Compensation for Federal Employees," September 18, 2007, <http://www.osec.doc.gov/opog/dmp/#202>; Department of Commerce, Office of Inspector General, Office of Inspections and Program Evaluations, Final Inspection Report No. IPE-17536/March 2006; The Federal Employees' Compensation Act (FECA), administered by the OWCP of the Department of Labor, and FECA Publication CA-810, "Injury Compensation for Federal Employees," Chapters 8 and 9, <http://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/CA-810.pdf>; "The Presidential POWER Initiative: Protecting Our Workers and Ensuring Reemployment," July 19, 2010, Presidential Memorandum

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