

## Manager/Supervisor Risk Management

#176–10/7/13

A periodic update to YCPARMIA's Supervisor Training Series

TOPIC: MODIFIED WORK IS NOT RETALIATION (follows #36-Temporary Disability, or #175-Cost of Injury)

A recent topic discussed the hidden indirect costs of workers' compensation claims, and the importance of minimizing those costs through non-discriminatory management practices. One area of cost containment is offering modified work to injured employees.

The treating doctor often places physical restrictions on what an employee can do during their recovery. In most cases those restrictions are mild enough that the employee is able to continue with their regular job duties. There are other cases where the medical restrictions are severe enough that the injured worker's ability to perform their duties is temporarily compromised. It is also important to realize that while these are "work restriction," common sense should tell the worker that the restrictions should also be followed when they are not at work.

In broad terms, the employer is empowered to offer the injured worker any modified work that fits the doctor's restrictions. The modified work:

- Can be at a time and place of the employer's choosing;
- Can be full-time, part-time, or occasional;
- Can be in a different department;
- Can be totally unrelated to the injured worker's normal duties; and
- Is not subject to "approval" or conditions desired by the injured worker.

An issue that sometimes arises involves an injured worker whose restrictions make it difficult for them to get to the worksite. As a general rule, if the employer is offering modified work, it is the employee's responsibility to get themselves to work – even when the medical restrictions are inconsistent with their travel/commute. A second issue that we see involves a disruption of child care when a parent's schedule is changed by the modified work. Similar to the commute, it is the injured worker's responsibility to adapt and adjust.

It is not uncommon for injured workers to react badly to their employer's offer of modified work. Changes in time, place, and activity can cause discomfort and inconvenience. But the Labor Code is pretty clear: if the employer offers modified work within the restrictions expressed by the treating doctor, the employee must accept it. If they do not, temporary disability benefits are cut off, and the worker is forced to use their own leave. In some rare cases this has led to termination for job abandonment after the individual's leaves are exhausted.

Offers of modified work fall under, and are controlled by the California Labor Code, and therefore, absent other discriminatory factors, are not retaliatory acts. The doctor's restrictions are objective, and the employer's response is totally discretionary.