



The Employer Perspective On Return to Work Following a Workplace Illness or Injury

Chairperson: Debra Dyleski-
Najjar

Monday, March 27th, 2023

8:45-9:35am



Developing Programs to Decrease Workplace Illness or Injury Costs: Proactive Wellness & Conditioning

Mike VanAmberg, MA, LAT, CSCS
Vice President of Operations
Work-Fit

What is the Real solution?

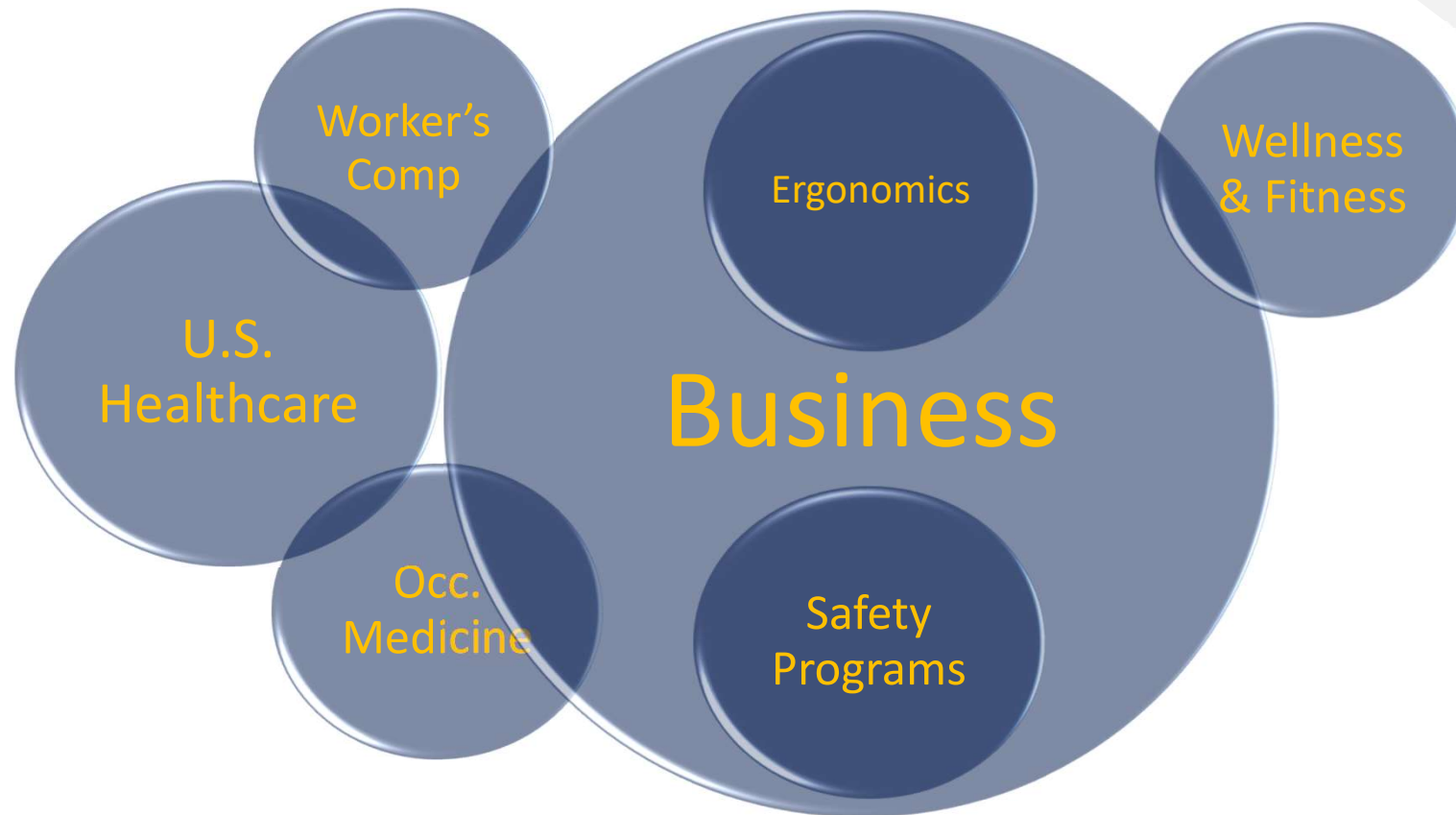
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Work Related Injuries
Workshop

Is this a time for
Innovation or is this a
time for
Integration?

Occupational Support Integration Model

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Integrating Wellness & Conditioning

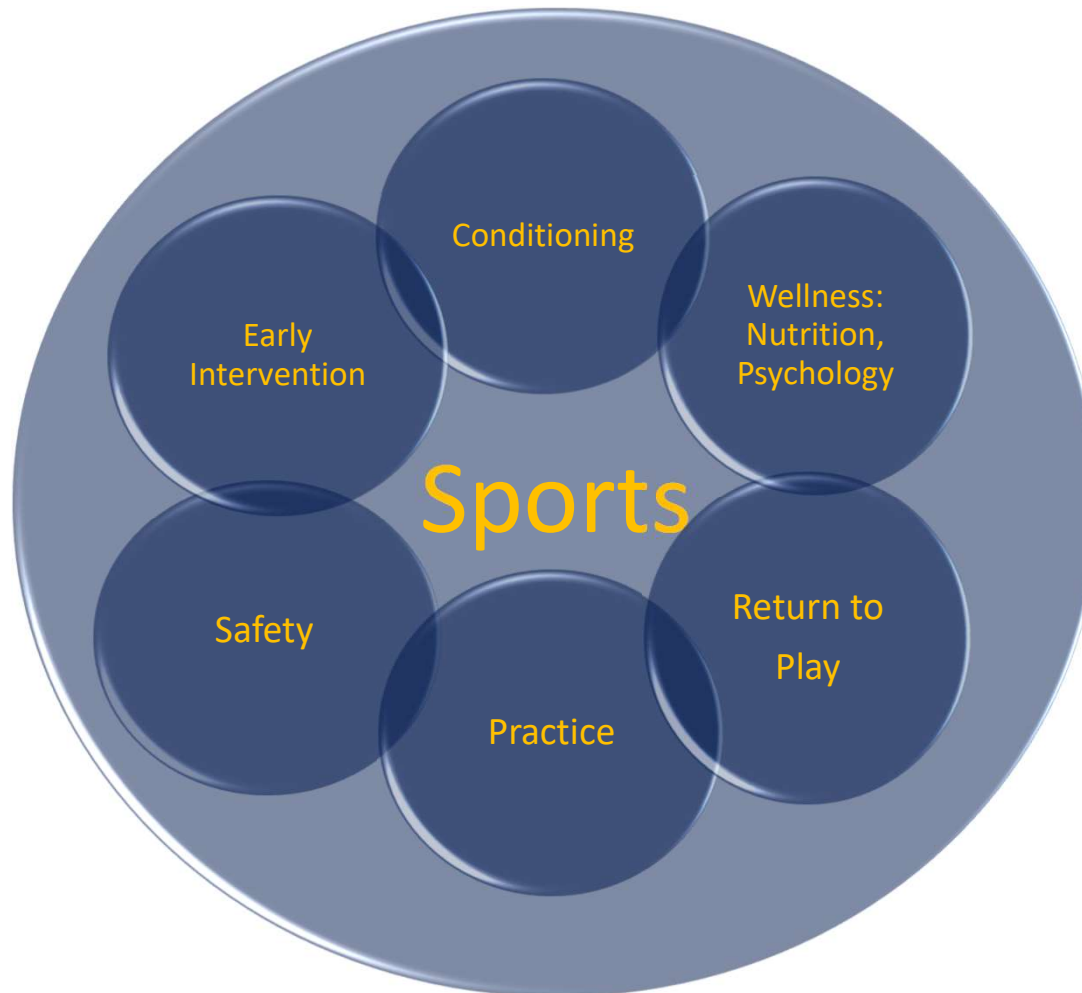
Who are the leaders?

- **Sports: Embedded Performance Teams for over 70 years**
- **The US Military: Holistic Health and Fitness (H2F)**
 - Well-trained, combat-ready Soldiers are best produced by allocating healthcare assets that facilitate the early identification and management of MSK injuries, prevention of injuries, and optimization of physical performance.
 - The H2F concept is vastly different from a clinical setting. Most work will be performed in a military training environment.
 - The H2F system creates an environment that makes proper behavior and decision making the most likely choice.
 - The program is immersive-it does not rely upon appointments away from the unit.

Sports Integration Model

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How does it work?-Strategy 1

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- Pre-Work Warm-Ups
 - Physical preparation: Prepares the employee to meet the physical demands of their day.
 - Mental preparation: Mental modeling done in conjunction w/ exercise.

Warm Up to Work!

Reduce your muscle fatigue by getting ready to work!
Start by warming it up, then stretch it out!

For Your Neck

Warm it Up




Bend neck down, chin toward chest.

Slowly roll head to one side, ear toward shoulder.

Roll head to drop chin back toward chest and continue to finish on other side with ear toward opposite shoulder.

Perform 5-10 continuous rolls.

This information is for health improvement and injury prevention only.



How does it work?-Strategy 2

- Micro-Break and Body Mechanic Strategies
 - Reduces fatigue caused by repetitive movement and static postures.
- Optimizes human performance by maximizing efficiency of body movement.



How does it work?-Strategy 3

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- Job Conditioning
 - Prepares new hires for physical demands of the job.
 - Maintains a minimal fitness level for all employees above the physical demands of their job.
 - Increases resiliency-the capacity to withstand or recover from difficulty



Sounds Great! How do you pay for it?

- Customer Reported Outcomes:
 - 4.9:1 ROI for direct costs
 - 10:1 ROI for direct and indirect costs
- Military:
 - 1% reduction in the non-availability rate is equivalent to adding a battalion-sized ready force, **AND** \$30 million in cost avoidance in non-mission capable assets.

- Source: The U.S. Army Holistic Health and Fitness Operating Concept
https://www.army.mil/e2/downloads/rv7/acft/h2f_operating_concept.pdf





Thank-You!

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Employer Perspective: Effective Tools for Employers to Keep or Return Workers to the Workforce -- Light and Alternative Productive Duty

Anissa Zabriskie, SHRM-CP
Global HR Business Partner
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What is a Return to Work (RTW) Program?

- Get the employee back to work as soon as possible

AND

- Back to work safely without re-injuring themselves at work

Reference: How to Build Your Light-Duty and Return-to-Work Programs - Guy Burdick, EHS Daily Advisor Apr 10, 2019

Outline of a RTW Policy

Key Elements

- Purpose – Reference ADA, FLMA and HR as points of reference
- Eligibility – Full-time or Part-time employees
- Transitional Work – What types, what happens if someone refuses an assignment.
- Procedures – What forms are needed? Who does the employee turn their documentation into?
- Job Offer – What happens if the employee does not take the position?
- Return to Work Coordinator

Building a Light Duty Program

Procedures	How to communicate with healthcare providers, supervisors, the worker, and the union if a collective bargaining agreement is in place
Schedule	Monitoring a worker's needs and progress while away from work
Positions	Identify Light Duty roles before they are needed. Example – Training, Hybrid work, departments for light duty
Employee Communications	New Hire Orientation, Summary Plan Descriptions
Points of Contact	Which manager has responsibility for the return-to-work program, who is then authorized to make decisions about light or alternate duties and workplace accommodations for injured workers' disabilities.



Questions?

Thank you!



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New Hampshire Workers' Compensation and Return to Work Opportunities

Danielle N. Albert, Esq.

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Compensation

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Labor

Reinstatement and Temporary Alternative Duty

- New Hampshire's Workers' Compensation Law requires qualifying employers to provide specified return to work opportunities for injured workers.
- Return to work opportunities include:
 - Right to reinstatement within 18 months of the injured workers date of injury as per N.H. RSA 281-A:25-a; and
 - Temporary Alternative Duty (TAD) as per N.H. RSA 281-A23-b





Return to Work Opportunities

Reinstatement

Return to Work Opportunities

Right to Reinstatement per N.H. RSA 281-A:25-a

Requirements for Reinstatement to Employment

- Employers with 5 or more employees are required to reinstate injured workers to their job of injury if requested by the employee.
- In order for the right of reinstatement to apply, the position the injured worker seeks to return to must:
 - Exist;
 - Be available; and
 - The employee must establish that he/she is able to perform the job with reasonable accommodations.

The position must “exist” and be “available”

- N.H. RSA 281-A:25-a defines a position to be available even if the position is filled by a different employee during the time the injured worker was out of work.
- If a position is eliminated, the employer is obligated to reinstate the injured worker to any other vacant existing position that is suitable, with reasonable accommodations for the injured workers work related limitations.

Return to Work Opportunities

Right to Reinstatement per N.H. RSA 281-A:25-a

Reinstatement and Reasonable Accommodations

- Per N.H. RSA 281-A:25-a, I a certificate from the employee's attending physician attesting that the physician approves the employee's return to regular employment with reasonable accommodations for the employee's limitations is prima facie evidence that the employee is able to perform such duties.
- It is important to note that while the right to reinstatement is contingent on the injured workers' ability to perform the job with reasonable accommodations, New Hampshire's Workers Compensation Law, N.H. RSA 281-A et seq., does not define what constitutes a reasonable accommodation in a workplace injury scenario.
- Reasonable accommodation is defined in other areas of law, including by New Hampshire's State Commission for Human Rights at N.H. RSA 354-A and the Americans with Disabilities Act (ADA).
- Given this, there is interplay between employment law and workers compensation law of which employers and injured workers should be aware.

Return to Work Opportunities

Right to Reinstatement

Termination and Liability

- The right to reinstatement terminates if:
 - 18 months from the date of injury has passed;
 - A treating physician or the Department of Labor has determined that an injured worker cannot return to his/her job of injury; or
 - The injured worker accepts a job with another employer.
- Insurance carriers cannot force an employer to reinstate an injured worker in the absence of a clearance from a treating physician to return to the job of injury or if the employee is otherwise disabled from performing the duties of the job with reasonable accommodations.
- Under N. H. RSA 281-A:25-A, IV, an employer's failure to validly reinstate an injured worker will subject the employer, or the employer's insurance carrier, to liability for all weekly wage benefits retroactive to the date the injured employee is determined eligible for reinstatement. See Appeal of Holloran, 147 N.H. 177 (N.H. 2001).





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Return to Work
Opportunities
Temporary Alternative Duty

Return to Work Opportunities

Temporary Alternative Duty per N.H. RSA 281-A:23-b

Requirements for Temporary Alternative Duty

- Employers with 5 or more employees are required to develop and provide temporary alternative work opportunities to their injured employees.
- Temporary alternative duty is intended to be temporary and transitional in nature, that the duty elements are variable as the injured employee's work capacity increases with the goal of the employee returning to his/her pre-injury work capacity.
- Employers are required to offer and provide temporary alternative duty but cannot compel injured workers to accept temporary alternative duty unless a treating physician has first reviewed and approved the alternative work proposed.
- To do this, employers should outline duties that conform to the injured worker's given work restrictions, and prepare an alternative duty work plan for review and approval by the treating physician.

Return to Work Opportunities

Temporary Alternative Duty per N.H. RSA 281-A:23-b

Requirements for Temporary Alternative Duty

- While employers have an obligation to develop and offer temporary alternative duty, injured employees have an onus to “demonstrate a reasonable effort to comply” with appropriately offered temporary alternative duty.
- Employees who refuse or otherwise do not make reasonable efforts to comply with appropriately offered temporary alternative duty are subject to reduction or termination of indemnity benefits based on a change in condition.
- There is no statute of limitations for which temporary alternative duty terminates.
- However, employers will not be obligated to provide temporary alternative duty if the employee’s restrictions become permanent and preclude performance of the requirements of the worker’s job, as the work ceases to be temporary and transitional in nature.

Return to Work Opportunities and Disputes

- Disputes related to an employer's obligation to provide or an employee's obligation to receive return to work opportunities can be adjudicated through the New Hampshire Department of Labor administrative hearing process, pursuant to N.H. RSA 281-A:43, I.
- Given that the duties and obligations of the parties are clearly outlined by statute, disputes regarding the right to reinstatement and temporary alternative duty are rarely brought forward to the New Hampshire Department of Labor for adjudication. In addition, as noted, there is intersection with other areas of law that parties to a workers compensation claim may not be as well versed in, which may impact a cost-benefit analysis for dispute.
- More often, disputes related to return to work, inclusive of whether an employee has reasonably participated in temporary alternative work offered, are brought forward in the context of the insurance carriers ongoing obligation to make payment of weekly indemnity benefits.



Thank you!



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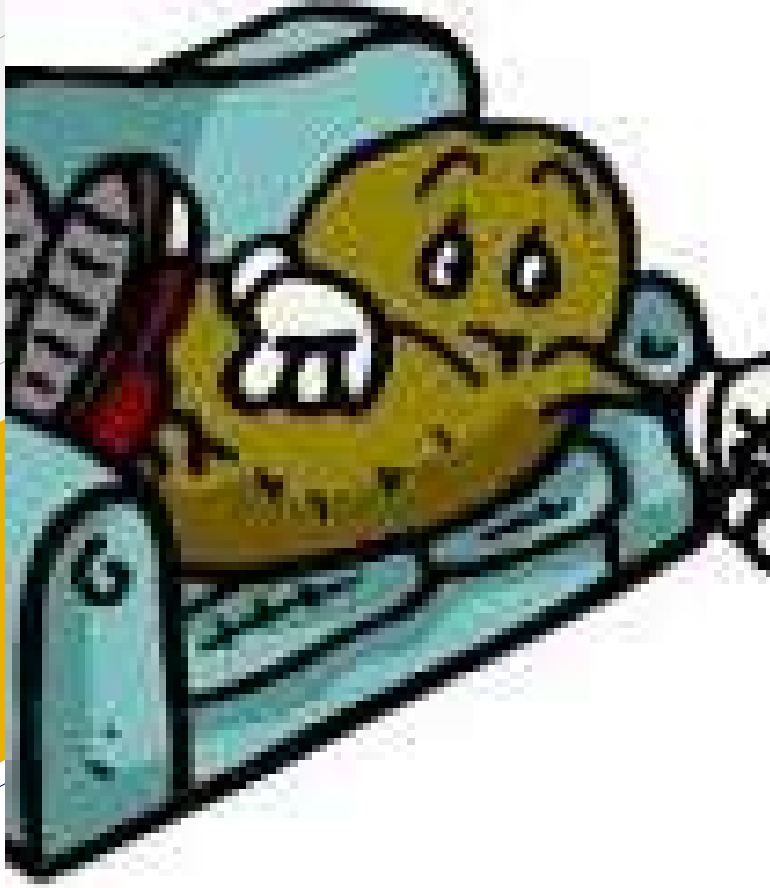


The Employers' Voice: Wellness, Leaves, Reinstatement & Work Hardening

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Agenda

- Employer's Role Managing Workers' Compensation
 - Before the Injury: Legal Considerations for Wellness Programs
 - "Out" on Workers Comp.: Managing the absence from the workplace
 - Employer Considerations for Return to Work



Conditioning and Training: Wellness

Avoiding the Injury

Several Laws to Consider When Designing and Implementing Wellness Programs

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- The Americans with Disabilities Act of 1990 (ADA)
- The Genetic Information Nondiscrimination Act of 2008 (GINA)
- The Age Discrimination in Employment Act of 1967 (ADEA)
- Title VII of the Civil Rights Act of 1964 (Title VII)
- The Employee Retirement Income Security Act of 1974 (ERISA)
- The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
- The Affordable Care Act (ACA)
- The Internal Revenue Code (Code)



“Out” on Workers Comp.

What does that mean?

No New England State Requires a WC Leave

- Workers' compensation is a no-fault system of insurance covering employees injured in the workplace or who suffer a work-related illness or death.
- Covers:
 - Medical care and expenses to help employee recover from a work-related injury or illness.
 - Lost wages if employee must miss work while they recover.
 - Funeral costs if a worker loses their life in a workplace accident; payment loss of function/body part.
- NO New England state WC Law requires the employer to provide a Leave of Absence for the worker.

What Governs the Leave Time for a Work-Related Illness or Injury?

- Federal FMLA – if employer is large enough (over 50 employees) and employee meets eligibility requirements
- State Sick Time Laws
- State Paid Family and Medical Leave
- Collective Bargaining Agreement
- Employer internal leave/time off policy
- Americans with Disabilities Act

Employer – not the WC Carrier -- Needs to Manage the Leave Time!



End of Leave and Covered Health benefits:

Good Incentive to RTW

Why Should the Employer Manage the WC Absence Under the Other Leave Laws?

- Legal compliance: If not offered the available leaves, employee can piggy-back/double dip time off
- Allows employer to manage the absence and anticipate workplace coverage needs
- Incentivizes the employee to Return to Work at end of state/federal required leave time
- End employer Group Health Insurance coverage and COBRA begins
- Set anticipated RTW and end of authorized time out of the workplace:
 - Replace the worker
 - Right of reinstatement?
 - Work Hardening/Light Duty?
- Job Descriptions

Returning to Work



**Will they be there
with “Bells On”?**

Return to Work?

- Legal Considerations:
 - Conflict with Insurance Carrier?
 - State Law Right to Reinstatement (ME/NH/VT)/Preference in Rehiring (MA)?
 - State law protect WC discrimination/retaliation?
 - State Law Right to Light/Alternative Duty?
 - Collective Bargaining Agreement?
 - ADA?
- Don't forget the business considerations – does it make business sense?

Managing Return to *Productive* Labor

- Alternative duty (How long?)
- Light Duty/Work Hardening (How long and who is supporting the return to full duties)(NH, VT, CT)(required or employer option?)
- Benchmarks (Is the worker progressing toward full duty?)
- ADA (Essential Job Duties; reasonable accommodation)
- Reinjury
- Malingerers?
- Supervisor buy-in and oversight



Helping Employers Stay Ahead Of The Curve

Questions?



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