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Commentary

Returning injured employees to the workforce

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In 1982, the General Assembly promulgated R.I.G.L. §28-33-18.2, the so-called "Suitable Alternative Employment" provision of the Rhode Island Workers' Compensation Act.

Suitable Alternative Employment was created by the Legislature to give employers a means to compel employees to return to the workforce even when they are incapable of returning to their full-duty work activities.

Prior to the enactment of the statute, an injured employee had no duty to respond to an offer of light-duty employment made by an employer, let alone return to the workforce in a light-duty capacity. Instead, the employer was limited to shopping around for full-duty releases or relying on the employee voluntarily agreeing to return to light-duty work or otherwise agreeing to a suspension of weekly indemnity benefits.

The Suitable Alternative Employment statute empowers the employer, not an insurer or third-party administrator, with the ability to require an employee to return to work, even though he remains partially incapacitated and may be disinterested in returning to work in a position other than his pre-injury employment.

An employee who refuses to return to work following a valid offer of Suitable Alternative Employment risks losing his weekly indemnity benefits as well as his ability to return to work for the pre-injury employer at the end of his period of incapacity.

Similarly, an employee who returns to work in response to an offer of Suitable Alternative Employment and is subsequently terminated for cause risks loss of his entitlement to weekly indemnity benefits even if he remains partially incapacitated.

On the other hand, an employee who accepts an offer of Suitable Alternative Employment who is then unable to continue in light-duty work either due to the work injury itself or forces beyond his control, such as a reduction in force, will have his weekly indemnity benefits reinstated.

Elements of the offer

Because the consequences of refusing an offer of Suitable Alternative Employment can be quite dramatic, the statutory dictates are generally strictly construed.

The offer itself must be in writing, and a copy must be filed with the Department of Labor and Training. The offer must specify what the employee's job duties will be and the expected rate of pay per week.

The statute mandates that the offer specifically must ensure that acceptance of the position will not result in any inequitable loss or forfeiture of seniority or monetary benefit, or any other substantial benefit, including, but not limited to, vested pension and/or profit sharing contributions.

The position offered also must be suitable to the employee's qualifications, background, education and training, and be consistent with the physical restrictions placed on the employee by the work injury itself.

The intent of the statute is to return employees to work in positions that are productive to the employer's business and are suitable to the individual em-

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ployee's physical needs and qualifications. In that regard, the offer need not be at the same number of hours and rate of pay as the pre-injury employment and may be supplemented by a partial weekly indemnity benefit if the offered pay falls below the pre-injury earnings.

The offer should reference the medical opinion upon which it is premised. The employer is not beholden to the medical opinions of the treating physician with respect to the employee's capacity to perform the offered position.

If the court finds that the offer was suitable despite restrictions suggested by the treating physician and the employee nonetheless refuses the position, the court may establish an earnings capacity based on the earnings the employee would have earned had he accepted the offered job.

Depending on the offer, that can result in a significant reduction in, or even termination of, weekly indemnity benefits. Accordingly, the employee acts at his own risk in ignoring or refusing an offer of Suitable Alternative Employment.

Going forward

The Suitable Alternative Employment statute was designed as a tool for employers to bring partially incapacitated employees back into the workforce with certain protections.

The fact that the Suitable Alternative Employment provisions of the Workers' Compensation Act have remained virtually untouched is a testament to their versatility and usefulness in accommodating both the needs of employers and the rights of employees.

In that regard, an employer that brings an employee back into the workplace in a light-duty capacity without documenting that position as Suitable Alternative Employment risks being unable to avail itself of the remedies provided by the statute if the employee simply walks off the light-duty job or is otherwise terminated for misconduct.

Such employees may well be entitled to a reinstatement of their full weekly indemnity benefits despite their misconduct if they remain under open orders or agreements to pay them weekly indemnity benefits.

On the other hand, an employee who attempts to perform a valid offer of Suitable Alternative Employment and is unable to do so due to the work injury itself is protected by the statute from having his weekly indemnity benefits terminated or reduced based on the failed attempt at light-duty employment.

The Legislature has enacted many changes to the Workers' Compensation Act since 1982. The fact that the Suitable Alternative Employment provisions of the act have remained virtually untouched since that time is a testament to their versatility and usefulness in accommodating both the needs of employers in lowering costs and returning workers to the workplace, and the rights of employees to be protected from performing work that might subject them to further injury. RILW

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