

Delaware Compensation Rating Bureau, Inc.

Return to Work Topic – March 8, 2013 Workers Compensation Task Force Meeting

During the March 8, 2013 Task Force meeting the DCRB suggested a potential means of enhancing employer incentives for participation in return-to-work programs. At the invitation of the Task Force Chair, this narrative will attempt to provide greater detail about the core idea which we were espousing for consideration by the group.

BACKGROUND:

The March 8, 2013 meeting discussion portrayed an environment in which invocation of return-to-work opportunities for injured workers in Delaware has been extremely limited. Completion of modified duty availability reports by employers was generally perceived to be almost non-existent, with one experienced medical practitioner reporting having seen just three such completed forms since the 2007 reforms and applicable penalties for noncompliance described as never having been imposed to date.

DCRB believes that properly designed “light duty” or “early return to work” programs may be helpful in maintaining and/or re-establishing employees’ connections to their workplaces and commitment to gaining maximum improvement from, and functionality after, work injuries. While not appropriate for all claims, or at all times during the life of those claims which are candidates for this case management approach, DCRB believes that the potential benefits of such programs are sufficient to render their current absence, or at least rarity, in Delaware to be of concern.

DCRB understood from the meeting discussion that if an employer insured by a commercial carrier offers modified work duties consistent with the employees’ health care provider’s assessment of their capabilities, that employer is responsible for the payment of wages to the employee, albeit at a level lower than their pre-injury wages. Total disability benefits are no longer payable to the employee, but if the modified duty produces earnings that are less than the employee’s total disability benefit rate then the carrier makes up that difference during the period of modified duty employment.

The interactions between wages and total disability benefits noted above, in concert with the paucity of active return-to-work programs at present in Delaware, gave rise to the following possible modification to the system.

CONCEPT:

The scenario which we envision as a condition for a modification to the existing Delaware system would involve claims for which the following conditions were ALL true:

- The injured worker is currently receiving total disability benefits,

- The Physician's Report of Workers' Compensation Injury identifies work classifications, postures and positional tolerances within the injured worker's current capabilities,
- The Physician's Report of Workers' Compensation Injury describes the injured worker's limitations from pre-injury activities as "temporary" and/or "anticipate full duty release"

Under the above circumstances, DCRB's perspective was that the Task Force could consider providing for a continuation of the payment of full total disability benefits for workers participating in modified duty employment for a period of time not to exceed 90 days. This could serve as an added incentive for employers to design and offer modified duty assignments to their employees. If the modified duty employment merited wages in excess of the total disability benefit, then the employer would pay the difference between the modified duty wages and total disability benefits.

If the injured worker became capable of full-time work at their pre-injury duties during the statutory period of 90 days, total disability benefits would cease to be payable and the employer would resume paying the employee's wages. If at the end of the statutory period total the worker remained in modified duty status, the employer would commence paying the modified duty wages with the carrier supplementing those payments if and to the extent that the modified duty wages fell below the applicable total disability benefit amount.

DCRB would envision this obligation on insurers to be attendant only to one (the first) attempt to introduce an injured worker to modified duty, as the premise for these programs is not particularly compatible with serial iterations of modified duty interspersed with recurring periods of total disability. That said, if carriers were empowered to voluntarily provide such accommodation for selected cases in which they saw potential value for a repeated period(s) of modified duty that ability might occasionally prove fruitful.

DISCUSSION:

For employers, the suggested system would be intended to offer the opportunity to engage employees in modified duty at lower cost than the current approach, potentially even at no cost where modified duty wages did not exceed total disability benefits for the workers. For insurers, the suggested system would hopefully produce more frequent application of modified duty regimens for employees in position to benefit from those measures as part of their transition back to full employment than occurs at present. The total disability benefits paid during the initial 90 days of modified duty would presumably also be paid absent the modified duty program, so that carriers would receive the potential benefit of modified duty activities at no added cost from those that would apply under a continuation of total disability benefits without modified duty.

IMPLEMENTATION CONSIDERATIONS:

In order for employers to be made aware of the envisioned administration of modified duty programs, the Physician's Report of Worker's Compensation Injury form might be modified or supplemented to include language advising them of the steps in this process.

Immediately after the conclusion of the March 8, 2013 meeting, DCRB received some comments to the effect that paying total disability benefits during a period of participation in modified duty might have some impediments and/or repercussions from Human Resources and/or tax perspectives. DCRB was not mindful of such considerations when offering its idea for discussion, and while we would be hopeful that properly framed language could avoid any unintended conflicts or adverse consequences for employers, employees and insurers, the Task Force should reflect on whether any concerns in this area might apply.

DCRB does not see this initiative as being amenable to advance estimation of its impact on system costs. The new program could see no appreciable take-up, or it could be employed with limited or no success in accelerating workers' return to full-time employment. Even for individual cases in which modified duty programs were followed by return to work, the extent, if any, to which those returns were caused or assisted by the modified duty program could be argued. Following all cases for which modified duty was employed in a fashion that would allow review of the program results would be costly and complicated, particularly keeping in mind employers' demonstrated reticence to submit forms and respond to inquiries from agencies such as the Department of Labor. However, if and to the extent that claim durations and benefit costs were to improve subsequent to the implementation of this approach those factors would be assimilated into experience data, carrier reserves and actuarial projections in the normal course of business over time.