

AN INJURED EMPLOYEE'S RETURN TO WORK AND THE IMPACT ON WORKER'S COMPENSATION EXPOSURE

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Mark Peterson defends numerous employers and sureties at all stages of *workers' compensation* matters including at hearings and mediations before the Idaho Industrial Commission and in appellate matters before the Supreme Court of Idaho. Mr. Peterson's workers' compensation experience spans from small companies to some of the largest employers and insurance companies in the U.S. His experience also includes representing employers and sureties in compliance matters before the Idaho Industrial Commission.





WORKERS' COMPENSATION

There is no requirement under Idaho's workers' compensation law to provide modified duty work to an employee who has physical restrictions due to a work-related accident or occupational disease.

However, benefits under the workers' compensation system are impacted by an employer providing employment to an injured worker who has work-related restrictions.



BENEFITS TO EMPLOYEES AND EMPLOYER

- Benefits of making light duty work available:
 - Employee
 - Employer
 - Indirect Impact
 - Direct Impact



WELL-ESTABLISHED TRENDS FAVOR EARLY RETURN TO WORK

- American Academy of Orthopedic Surgeons has issued a position statement favoring early return to work programs.
- Most states, including Idaho, favor early return to work.



BENEFITS TO EMPLOYEES

- Financial incentives: Employees returning to work receive more income through wages than workers' compensation benefits
- Prevents deconditioning
- Encourages and accelerates recovery
- Prevents psychological behavior patterns inhibiting successful return to work
- Improves quality of life



BENEFITS TO EMPLOYER INDIRECT IMPACT

- Worker retention
- No rehiring and retraining
- Reduced costs for lost production
- Reduced business interruption
- Improved workforce morale



BENEFITS TO EMPLOYER DIRECT IMPACT

- Temporary Total Disability Benefits
- Temporary Partial Disability Benefits
- Permanent Partial Disability
- Total Permanent Disability



**TEMPORARY TOTAL DISABILITY AND
TEMPORARY PARTIAL DISABILITY BENEFITS**

- Until found by a physician to have reached maximum medical improvement, an injured worker is entitled to:
 - Temporary Total Disability: If no work is available to the employee consistent with the physician-imposed restrictions, then the employee is entitled to a portion (generally 67 percent) of his or her average weekly wage.
 - Temporary Partial Disability: If less than full wages are available to the employee, then the employee is entitled to a portion of the difference in wages.



**TEMPORARY TOTAL DISABILITY BENEFITS
(CONT'D)**

The *Malueg* Doctrine

If a claimant remains in a period of recovery, they are entitled to total temporary disability benefits unless and until:

- 1) they have been medically released for light duty work; and
- 2) the former employer has made a reasonable and legitimate offer of employment which:
 - a) the employee is capable of performing; and
 - b) employment is likely to continue throughout period of recovery.

The employer may also meet the burden by demonstrating appropriate employment is available in the general labor market, which Claimant has a reasonable opportunity of securing and which employment is consistent with the terms of the light duty work release.

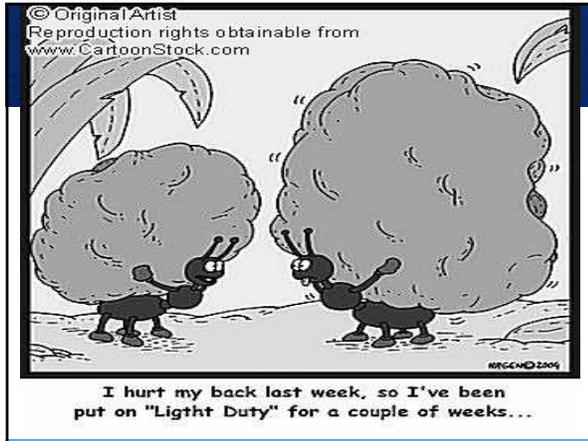
Malueg v. Pierson Enterprises, 111 Idaho 789 (1986).



WHAT IS LIGHT DUTY WORK?

- Making modified work available to an employee who has recovered enough from injury or illness to do some work, but has physician restrictions during the recovery period preventing the employee from fulfilling all of the physical requirements of the job.





TEAM APPROACH NEEDED FOR SUCCESS

- Worker, physician, management, supervisor, sometimes the Industrial Commission Rehabilitation Division ("ICRD")
- Identify real jobs
- Develop clear job descriptions
- Video helpful for physicians
- Consistency

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OFFERS OF TEMPORARY WORK

Offers of modified duty employment should generally:

- Be made in writing.
- Identify the job, shift, and wage that is being offered.
- Instruct the employee when he/ she is to report to work and who he/she is to report to.
- Represent that the modified duty job is to last during the expected period of recovery.

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OFFERS OF TEMPORARY WORK (CONT'D)

- State that the job is within the current physician-imposed restrictions and that employee is to immediately advise if that changes
- Instruct the worker not to do work outside the physician-imposed restrictions and to report to the human resources designee if asked to work outside those restrictions
- Require a signature acknowledging acceptance of the offer



OFFERS OF TEMPORARY WORK (CONT'D)

An employee who rejects a bona fide modified duty job offer is not entitled to temporary disability benefits.





PERMANENT PARTIAL DISABILITY

- Permanent partial disability is a potential benefit to an injured worker designed to compensate for loss of earning capacity resulting from permanent limitations or restrictions.
- Disability in excess of impairment is a rather nebulous, non-formulaic part of the workers' compensation system designed to assess loss of earning capacity. The Industrial Commission focuses on a claimant's pre- and post-accident earnings available to he or she and any loss of access to the labor market based upon permanent physical restrictions.



PERMANENT PARTIAL DISABILITY (CONT'D)

- Permanent Partial Disability is calculated under a statutory formula based upon a 500 week model.
- Example: A worker who has a 50 percent disability based upon a 2019 injury would receive \$108,075 (500 weeks x .50 = 250 x \$432.30). The employer would get credit for any impairment paid.



PERMANENT PARTIAL DISABILITY (CONT'D)

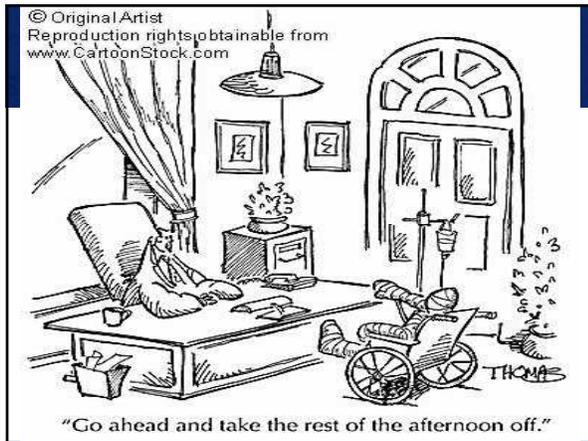
- Although not statutorily provided, the Industrial Commission tends to award smaller disability awards when the employee remains employed with the employer.
 - No or little wage loss.
 - Shows ability to compete in the labor market and perform the nature of work.
 - However, the absence of wage loss, even if working time of injury job, does not preclude disability if there are permanent limitations restricting access to labor market.



TOTAL AND PERMANENT DISABILITY

- An injured worker is considered totally and permanently disabled if there is no work available in the general labor market absent a sympathetic employer, temporary good luck, or the extraordinary effort of the worker.
- A worker found totally and permanently disabled is entitled to weekly time loss benefits for the rest of his or her life.
- Total and permanent disability findings where the injured worker remains employed with the time-of-injury employer are extremely unusual, but such determinations do rarely occur.





QUESTIONS/COMMENTS?

THANK YOU!



**FOR MORE INFORMATION
PLEASE CONTACT**

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